



EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

**[2026] CSIH 9
P789/25**

Lord Armstrong
Lord Ericht
Lady Carmichael

OPINION OF THE COURT

delivered by LADY CARMICHAEL

in the Petition of

DM

Petitioner/First reclaimer

**Petitioner/First reclaimer: Cheyne KC; Turcan Connell
First respondent/Second reclaimer: McAlpine KC, J Laing; Brodies LLP
Second respondent: Shewan KC, McEwan; Balfour + Manson LLP**

10 February 2026

Introduction and background

[1] This reclaiming motion (appeal) concerns an application under the Child Abduction and Custody Act 1985 by a father (DM) for the return of his two sons, H, who is 14 years old, and B, who is 8 years old, to Florida, in the United States of America. The Lord Ordinary (first instance judge) ordered that H should be returned to Florida, but refused to order that B be returned.

[2] DM argues that the Lord Ordinary should have ordered the return of both boys to Florida. Their mother (SM, the first respondent/second reclaimer) contends that the Lord Ordinary should not have ordered the return of H. The second respondent is H, who

is separately represented, as he was before the Lord Ordinary. He supports the decision of the Lord Ordinary.

[3] Both parents are British citizens who hold a green card, and were living in Florida with the children until they all travelled to the United Kingdom in July 2025. There is no dispute that the boys were habitually resident in Florida. During a planned 3 week holiday, on 26 July 2025, SM told DM that she proposed to stay in Scotland with the children. She raised proceedings in Peterhead Sheriff Court, and obtained an interim interdict preventing DM from removing the children from her care and control. Notwithstanding that order, H is currently in DM's care.

[4] There is no dispute that the retention of the children by SM in Scotland is wrongful in terms of Article 3 of the 1980 Hague Convention on the Civil Aspects of International Child Abduction. SM's defence was based on Article 13(b) of the 1980 Hague Convention, and the proposition that there was a grave risk that the return of each child would expose him to physical or psychological harm or otherwise place him in an intolerable situation.

The Lord Ordinary's opinion

Disputed matters of fact

[5] The Lord Ordinary was presented with evidence said have a bearing on the application of Article 13(b). He characterised the evidence before him as relating to the following areas:

- education;
- house moves/homelessness/general lifestyle;
- future accommodation;
- healthcare/health insurance;

- influence and manipulation of the children;
- domestic abuse;
- SM's mental health, including the risk of suicide;
- SM's unwillingness to return to the United States;
- whether SM had been the children's main carer.

[6] It is unnecessary to rehearse the evidence at length. For the most part, the Lord Ordinary's findings as to matters of fact and his approach to the evidence are not criticised. The main exception is in relation to his approach to the evidence regarding SM's mental health, which is the subject of challenge by DM. The Lord Ordinary had before him a report by Dr Katherine Edward, chartered clinical psychologist. She had not seen the children. The Lord Ordinary accepted that the opinions she expressed were admissible and capable of assisting the court. Some of what she wrote he regarded as falling within judicial knowledge. We summarise here the material aspects of the Lord Ordinary's opinion.

Education

[7] While in Florida, the children were moved from private education to home-schooling. DM claimed that on return to Florida, both boys would attend the Canterbury School. The Lord Ordinary did not accept that. He found that DM had either attempted deliberately to mislead the court, or had provided material unsatisfactorily lacking in detail, particularly with regard to payments made to that school.

House moves/homelessness/lifestyle; future accommodation; health insurance

[8] The Lord Ordinary found that the family had frequently moved as a result of DM's financial dealings, and that for the preceding year they had led a peripatetic lifestyle. He

did not accept the evidence of the petitioner as to his income or wealth. There was no evidence that he could fund the lifestyle that he wished to lead, and, on the contrary, there was evidence that he was sued frequently and was unable to pay his debts. That pattern was likely to continue on return to the United States. As to future accommodation, the Lord Ordinary found that DM had entered into a lease and there would be likely to be accommodation available on return. Given DM's financial history, there was no certainty that the lease would run its course. There was no realistic prospect that DM would, as he had claimed, purchase a property. The Lord Ordinary had no confidence that there would be health insurance in place for the children if they were to return. If there were an emergency situation, the children would receive care without consideration of ability to pay. Florida might provide free health care, if application were made in advance.

Influence and manipulation

[9] The Lord Ordinary found some support for the proposition that DM exerted improper influence on the children and manipulated them. He noted B's change of attitude following a contact visit with DM; the speed with which H was able to instruct solicitors; and both boys' inappropriate knowledge of the case. Despite that, he left improper influence at DM's hands out of account in his final analysis.

Domestic abuse

[10] In relation to domestic abuse, the Lord Ordinary was unable to conclude that, even if all the allegations were true, there would be a grave risk to the children if they were returned to Florida, with or without SM.

SM's mental health

[11] In September 2025 SM made an attempt on her own life. B discovered her unconscious and unresponsive. Her evidence was that B had returned from a contact visit with DM, repeating things that DM had evidently told him. B told SM that he would be fine without her. Following that incident, she took an overdose. She claimed to have no further thoughts of suicide. Professor Gary Macpherson, consultant forensic clinical psychologist, provided a report. The Lord Ordinary accepted that SM was suffering from adjustment disorder. Her symptoms would be likely to abate when the stressors causing them were absent, and one of those stressors was the possibility of both boys being returned to the United States.

[12] Although she did not currently intend to complete suicide, having regard to her history, which included two overdoses with suicidal intent, and of depression, the possibility of a further attempt on her own life could not be ruled out. In the light of the incident in September 2025, the Lord Ordinary ruled out the possibility of any tactical threat or ploy on SM's part. If the risk of completed suicide were to eventuate, it would be traumatic for both children and would cause them extreme psychological harm. Even a small risk of such extreme harm might constitute a grave risk.

[13] The Lord Ordinary went on to say that it was necessary to consider the extent to which the children would worry about the possibility of suicide, and about SM's mental health more generally. That gave rise to a "very real" risk of psychological harm to them. If her mental health were to deteriorate, that could have an adverse affect on her relationship with them.

SM's unwillingness to return to the United States

[14] SM's unwillingness to return to the United States was genuine, rather than tactical.

It was not surprising that she found the circumstances of family life, including the frequent changes of accommodation, financial uncertainty, and lack of health insurance, intolerable, and, given her mental health, her decision was both genuine and objectively reasonable.

A consequence of her decision not to return was that it would be, at best, difficult for her to raise proceedings in Florida regarding where the children should reside. The practical reality was that a return of the children to Florida would be determinative of their longer-term residence with DM.

Primary carer

[15] The Lord Ordinary accepted that until recently SM had been the primary carer for both boys.

The views of the children

[16] B wished to return to the United States. The child welfare reporter considered that B showed understanding and maturity consistent with his intellectual ability and age. She formed the view that B had an inappropriate knowledge of the petition, which she attributed to DM, and to H, and that there had been an attempt to influence B. B's views were based on his desire to return to his friends, his toys, and a place he considered as home.

[17] H wished to return to the United States and be educated there, in a system with which he was familiar. His position was articulated in the answers lodged on his behalf.

Article 13(b)

[18] The Lord Ordinary, at paras [76] and [77] of his opinion, summarised his findings in relation to future accommodation, education and health insurance. The situation in relation to each of these factors was not “ideal”. He considered that four further factors needed to be considered along with those matters:

- separation of the children from SM if they were returned without her;
- the risk of harm to the children caused by a deterioration in SM’s mental health, including, but not limited to, the risk of suicide;
- the relevance of the children’s wishes to be returned;
- the risk posed by a separation of the brothers, if one were to be returned and the other not.

[19] The Lord Ordinary was satisfied that separating the children from SM would be upsetting for, and potentially harmful to them. His conclusion in that regard was bolstered by Dr Edward’s opinion that there was a risk that separation of them from SM could result in psychological harm to them. His conclusions regarding the risks of harm caused by a deterioration in SM’s mental health are summarised at paras [12] and [13] of this opinion. He went on to say that it might be that none of these factors on its own gave rise to a grave - as opposed to real - risk that the children would suffer psychological harm or otherwise be placed in an intolerable situation should they return to the US without the first respondent, but the factors needed to be viewed collectively, and their impact considered in relation to each child separately.

[20] The Lord Ordinary was satisfied that the Article 13(b) defence was made out in relation to B. That arose from return to the United States:

- without SM;

- to accommodation that was unlikely to be permanent;
- to uncertain educational provision and health insurance;
- with DM, who was of uncertain means;
- with the added worry about SM's mental health, and the very grave harm that would eventuate if she were to complete suicide.

Taking account of all those factors there was a grave risk of him being placed in an intolerable situation if returned. His wish to return to the United States was based on a false premise that he would be returning to his friends and his toys. He was not of an age where his views carried a great deal of weight.

[21] The Lord Ordinary noted that he was not aware of any authority as to whether H's wish to be returned was relevant in considering whether SM had made out an Article 13(b) defence. He considered that the views of the child could be taken into account only when, that defence having been established, the court was considering whether to exercise the residual discretion to return the child or not. On the other hand, it was difficult to hold that the views of a 14-year-old child should not be factored into the final decision at all. The Lord Ordinary concluded that a distinction might fall to be drawn between physical and psychological harm on the one hand, and placing a child in an intolerable situation on the other. What was intolerable must depend to some extent on what the particular child was able, and willing, to tolerate. At any rate, there was room for the child's views to be taken into account in assessing whether the situation to which he would be returning would be intolerable for him.

[22] H was of sufficient maturity – as it appeared from his affidavits and the other evidence about him – that regard should be had to his views. He was aware of the fragility of his mother's health and better able than B to take an informed view as to whether he

would find it intolerable to be living on the other side of the Atlantic from her in circumstances about which he was reasonably well informed. He was aware that his father had lied to him about which school he would attend. He would probably find it more difficult than B, given his age, to adjust to the Scottish curriculum, so that his wish to finish school in the United States carried particular weight.

[23] The effect on H of return without B was not determinative. There was a 6 year age gap between them and H might leave home for college or other endeavours soon in any event. In all the circumstances, H would not be placed in an intolerable situation were he to be returned, and nor would there be a risk of his suffering physical or psychological harm.

The law

Article 13(b)

[24] The leading case on the construction of Article 13(b) is *In re E (Children)* [2011] UKSC 27, [2012] 1 AC 144. The risk to the child must be grave, and it is not enough that the risk be real. Although “grave” characterises the risk rather than the harm, there is a link between the two. A relatively low risk of death or really serious injury might be grave, while a higher level of risk might be required for other less serious forms of harm: *In re E*, paragraph 33. The words “physical or psychological harm” are not qualified, but gain colour from “or otherwise place the child in an intolerable situation”. “Intolerable” when applied to a child means “a situation which this particular child in these particular circumstances should not be expected to tolerate”: *In re E*, paragraph 34, citing *In re D (Abduction: Rights of Custody)* [2006] UKHL 51, [2007] 1 AC 619, paragraph 52. Every child has to put up with a certain amount of “rough and tumble, discomfort and distress”.

Among the things that it is not reasonable to expect a child to tolerate are physical or psychological abuse or neglect of the child.

[25] It is clear, therefore, that although the assessment must be made in the context of the particular child, and the particular circumstances of the case, the question of what is intolerable is an objective one. The court must consider whether it is reasonable to expect the child to tolerate the situation on return.

[26] It is not the policy of the Convention that children should be put at serious risk of harm or placed in intolerable situations. It is inconceivable that a court which reached the conclusion that there was a grave risk that the child's return would expose him to physical or psychological harm or otherwise place in him an intolerable situation would nevertheless return him to face that fate: *In re M (Abduction: Rights of Custody)* [2007] UKHL 55, [2008] 1 AC 1288, paragraph 45, citing *In Re D*, paragraph 55.

[27] In principle, where a party's subjective perception of events leads to a risk to her mental health, this can found an Article 13(b) defence. If there is a grave risk that the children would be placed in an intolerable situation as a result of the mother's suffering, that may be sufficient: *AD v SD* [2023] CSIH 17, 2023 Fam LR 52, paragraph 28.

Hearing the child

[28] A child must be given the opportunity to be heard in any case in which the court is being asked to apply Article 12 of the 1980 Hague Convention and to direct the summary return of the child, and not only in cases where the "child objection" defence is in issue.

There is a presumption that the child will be heard unless that is inappropriate, although hearing the child is not to be confused with giving effect to his views: *In re D*, paragraphs 58 - 60. Senior counsel for DM and for H both suggested that the matter might

now be regulated by the United Nations Convention on the Rights of the Child (“UNCRC”) (Incorporation) (Scotland) Act 2024. They referred to *FPS v SM* [2024] CSIH 20, 2025 SC 61, at para [32], decided just before that Act came into force.

[29] Although we were not addressed in any detail on the point, we doubt that the court, exercising its jurisdiction under the 1985 Act, is acting in connection with a relevant function as defined in section 6 of the 2024 Act. There is, however, no doubt, having regard to the decision in *In re D*, that there must be compliance with Article 12 of the United Nations Convention on the Rights of the Child in proceedings of this sort.

Submissions

DM

[30] DM’s grounds of appeal were (1) that B ought to have been afforded an opportunity to express his views on the possibility that H might be returned without him; (2) that the Lord Ordinary had not afforded enough weight to B’s views; (3) that the Lord Ordinary had erred in concluding that there was a grave risk that B would be placed in an intolerable situation were he to be returned.

[31] The Lord Ordinary had erred in holding that little weight should be accorded to B’s views. Although they were expressed by reference to his friends and his toys, that is how one would expect a child of his age to express his views.

[32] Upset and potential harm did not constitute grave risk within the meaning of Article 13(b). The Lord Ordinary failed to consider what protective measures might be put in place in Scotland to guard against such upset and potential harm. The risk of suicide was long standing, and SM had long standing mental health problems. If anything, the risk of suicide, and the reasons for the children to worry about her condition, had diminished with

medical intervention following the crisis in September 2025. Professor Macpherson had recommended that SM engage in Cognitive Behavioural Therapy (“CBT”) if she were to continue to experience clinically significant symptoms of adjustment disorder. The onus was on SM to engage with CBT. The Lord Ordinary had erred because he had ignored the potential for SM to receive that therapy in Scotland, which would obviate the risk of a further suicide attempt.

[33] The Lord Ordinary should not have proceeded on the basis that a return of the children to Florida would be determinative of their longer-term residence with DM. The court must assume that SM would find a way to engage with the legal processes in Florida.

SM

[34] Although children required to be heard in proceedings under the 1980 Hague Convention, there were some aspects of its operation in respect of which their views were irrelevant, and others where they were relevant. The views of the child would not, for example, inform consideration under Article 3 of whether he had been removed or retained in breach of custody rights being exercised by a parent. They could not assist the court in determining whether a parent had consented or acquiesced in the removal or retention, in terms of Article 13(a). The views of the child were obviously central to a defence based on the objections of the child under Article 13(b). That was not the case in a “grave risk” case. It was wrong to characterise the case, as H did, as a mirror image of a “child objections” case.

[35] The Lord Ordinary had listed a number of factors that would bear on the children if returned to Florida, and had considered them in the round. He was plainly wrong to have proceeded on the basis that those factors would pose less risk of harm to H than to B. He

had not provided a proper rationale for distinguishing between the children in that respect. There was no information to substantiate the Lord Ordinary's conclusion that H knew that his father had lied about the school he would attend. Some of the factors might represent a more severe risk of harm to H than to B. The uncertainty as to the education he would receive posed a more acute difficulty for H, given his age and stage of education. The Lord Ordinary had failed to reconcile his decision to order H's return with the conclusions that he had reached in relation to the risks that would eventuate if there were to be deterioration in SM's mental health. He had not addressed the risk to SM's mental health that would arise on a court-ordered return of H to the United States.

[36] What H might be willing to tolerate was irrelevant. There were things that no child should be expected to tolerate, such as physical or psychological abuse or neglect, however willing, subjectively, they might be to return to the care of their abuser. Their views could never be relevant if the court had concluded that there was a grave risk of any of the outcomes identified in Article 13(b). The question of what was intolerable was an objective one, and the Lord Ordinary had erred in taking into account H's subjective wishes.

[37] Returning H to the United States would result in a grave risk of psychological harm, for the reasons set out by Dr Edward, and apparently accepted by the Lord Ordinary. H's stated views did not negate or mitigate that risk.

[38] The issue of separating the children had not been before the Lord Ordinary at first instance, and had not been an outcome contended for by the petitioner. It had been introduced by the Lord Ordinary towards the end of submissions. The Lord Ordinary had failed to address properly the issue of splitting the siblings. H had expressed the view that his relationship with B was important to him.

[39] The Lord Ordinary had failed to address the issue of whether H had been subject to improper influence at the hands of DM.

[40] Like DM, SM submitted that the Lord Ordinary should have afforded B the opportunity to express what his views would be if the court ordered H's return to the United States.

H's opposition to SM's reclaiming motion

[41] H wished the court to accede to his views. The case was the mirror image of a "child objections" defence. The court could interfere with the Lord Ordinary's decision only if it were plainly wrong: *G v G (Minors: Custody Appeal)* [1985] 1 WLR 647 at 652. The objections of quite young children to return had on occasion prevailed: *TS v S* [2024] CSIH 24, 2025 SC 76, para [38]. The older the child, the greater the weight their objections were likely to carry: *In re M*, paragraph 46.

[42] There was little point in complying with the obligations imposed under Article 12 of the UNCRC to hear the child, if the views of the child were then simply discounted as irrelevant to the question of whether or not there was a defence to an order for the child's summary return. What was intolerable for a particular child in particular circumstances could not be purely objective. It was open to the Lord Ordinary to place significant weight on H's views: *Singh v Singh* 1998 SC 68.

[43] The Lord Ordinary had not erred in his approach to Article 13(b). It was self-evident that he would not have contemplated subjecting H to something that he should not be expected to tolerate. H's views were also relevant to the exercise of the Lord Ordinary's discretion, in the event that he had found the Article 13(b) grave risk defence to have been established.

Analysis and decision

DM's reclaiming motion

[44] It is true that B expressed a wish to return to the United States. It is hardly likely that he would wish that less fervently were he aware of the possibility that H might be returned to the United States without him. In the circumstances of this case there is no merit in the suggestion by DM (and also SM) that B should have been afforded the opportunity to comment on that possibility, and that any failure to give him that opportunity has been material to the outcome of the case.

[45] B was 8 years of age at the time of the second hearing. There was no doubt that he was capable of expressing his views. The Lord Ordinary was, however, entitled to take into account his age in determining what weight to give to his views. Generally speaking, more weight falls to be accorded to the views of older children, in line with their greater maturity. The Lord Ordinary was also entitled to take into account that B's views were premised on his returning to his friends and the life he had known in the United States, and correct to take the view that that was a false premise. We detect no error in the Lord Ordinary's approach to the views expressed by B.

[46] The court must take into account all relevant information in assessing how likely it is that a risk of harm will eventuate, and how serious the harm involved would be. In a context where the risk of harm arises in the context of the mental health of a parent, the availability of treatment may be relevant to that assessment. The Lord Ordinary cannot be faulted for the conclusions that he reached regarding SM's mental health. He considered the contents of Professor Macpherson's report, as he recorded at paras [52] – [54] of his opinion.

[47] Professor Macpherson said that he would expect SM's symptoms of adjustment disorder with low mood and anxiety to resolve if there were to be a resolution in the situation to her satisfaction. His recommendation, if she were to continue to experience clinically significant symptoms, was that she engage in CBT, as the National Institute for Health and Clinical Excellence (NICE) recommended therapy for her symptoms. That therapy was available via the NHS or privately. He also expressed the view that a court ordered return of the children to the United States would have an immediate negative impact on SM's mental health. The reference to CBT cannot be looked at in isolation. It is incorrect to elevate that reference, as DM sought to do, to the status of a "protective measure" such as to mitigate the risk of suicide or mental ill health to such an extent as to vitiate the Lord Ordinary's conclusions on grave risk. The Lord Ordinary reached the conclusion that the possibility of a further attempt on her life could not be ruled out if the boys were returned to the United States. That conclusion was plainly open to him on the material before him. Having regard particularly to what happened in September 2025, it is difficult to see how he could reasonably have reached any other conclusion. The same can be said for his conclusion that there was a risk that the children would worry about their mother's condition.

[48] As there is no ground of appeal before us directed at the Lord Ordinary's conclusion about the difficulty for SM in engaging in proceedings in Florida, we have left out of account the oral submissions offered on DM's behalf in that regard.

[49] We therefore refuse the reclaiming motion at DM's instance.

[50] We record that DM placed before the court additional productions, which were said to bear on matters regarding DM's finances, and the issues of housing, education and healthcare about which the Lord Ordinary reached conclusions. In the event, senior counsel

did not advert to these in his oral submissions. There was in any case no ground of appeal directed at the Lord Ordinary's conclusions about those matters. DM produced also a further affidavit sworn by him which senior counsel submitted was significant because of new information it contained about B's living circumstances and views. We have left it out of account. Had it been thought necessary to obtain updated information about B's circumstances or views, there was ample time to instruct the child welfare reporter before the summar roll hearing, rather than produce information in the form of an affidavit from DM, about whose credibility the Lord Ordinary made adverse findings. Those findings, again, were not the subject of a ground of appeal.

SM's reclaiming motion

[51] We are satisfied that the Lord Ordinary erred in his approach to SM's case under Article 13(b) of the Convention on the Civil Aspects of International Child Abduction (the 1980 Hague Convention) in so far as H is concerned. The Lord Ordinary reasoned that a distinction fell to be drawn between physical or psychological harm on the one hand, and, on the other, otherwise placing the child in an intolerable situation. On the basis of that distinction it was relevant to consider what the child was willing and able to tolerate; there was at any rate room to take the child's views into account in assessing whether the situation to which he would be returning would be intolerable for him.

[52] The second of H's affidavits contained information about how he says he would feel if SM "tried to take an overdose again". The Lord Ordinary noted H was aware of the fragility of his mother's health and was better able than B to take an informed view as to whether he would find it intolerable to be living on the other side of the Atlantic in circumstances about which he was reasonably well-informed.

[53] As Lady Hale and Lord Wilson noted in *In re E (Children)* [2011] UKSC 27, [2012] 1 AC 144, at paragraphs 33 and 34, the risk to the child - whether of physical harm, psychological harm, or of otherwise being put in an intolerable situation, must be a grave one, taking into account both the seriousness of the harm and the likelihood of it eventuating. Any of these risks, if it is to be relevant for the purposes of an Article 13(b) defence, must be of the requisite level of seriousness. A grave risk of placing the child in an intolerable situation is not of a less serious character than a grave risk of physical or psychological harm. The point is reinforced by the use of the word “otherwise”. It makes clear that the level of physical or psychological harm – where one or more of these is in issue – is one the child cannot reasonably be expected to tolerate. With all that in mind, the question of what the child may be willing, subjectively, to tolerate cannot be any more relevant to the “intolerable situation” aspect of Article 13(b) than it would be to serious physical harm.

[54] The case of *Singh v Singh* 1998 SC 68, on which H relied, does not assist. It was a case based on the objections of a child, and the views of the child were directly relevant both to the defence, and potentially relevant to the discretionary decision as to whether or not to return the child.

[55] We conclude, therefore, that the Lord Ordinary erred in law in taking H’s views into account in assessing whether the situation to which he would be returning would be intolerable for him. Once H’s views are taken out of the assessment of whether the situation to which he would return would be intolerable for him, there is no proper basis for distinguishing between his situation and that of B, and the Lord Ordinary was plainly wrong to make that distinction. We view the matter, as the Lord Ordinary did, on the basis of the combination of factors identified by the Lord Ordinary, but among those we attach

particular weight to the risk of very serious harm to H were SM to complete suicide. The combination of circumstances to which H would be exposed on return, including that risk, is one which he should not reasonably be expected to tolerate. We are therefore satisfied that there is a grave risk that H's return to the United States will place him in an intolerable situation. Following the approach in *In re M*, it is inconceivable that we would exercise our discretion nonetheless to order his return.

[56] Having reached that conclusion we do not require to consider whether H's views may have been subject to influence from DM. We do not consider that the Lord Ordinary erred in the other respects that SM submitted. It is simply incorrect that the outcome whereby one child might be returned and not the other was not contemplated at first instance. The written submissions for DM expressly refer to that possibility. Junior counsel who then appeared submitted that the only realistic exercise of discretion might be to return H alone on the basis of his age and his strongly held views. The Lord Ordinary considered the impact of separation on both H and B. He recorded his understanding that it would be better if the siblings were not separated. He was entitled to take into account the difference in ages between the boys, and the fact that they would, therefore, not necessarily remain living in family together in the relatively near future. He considered the possibility of both video and in person contact between the boys. The risk posed to B by separation from his brother did not outweigh the risk to him if he were returned. It cannot be said that the Lord Ordinary's approach to this matter was plainly wrong.

Observations

[57] H's age is such that his views would tend to be afforded considerable weight, as he is likely to be more mature than a younger child. We are conscious that in this case there has

been no independent input - from a child welfare reporter, or a curator - in relation to H's individual level of maturity, or the independence of his views. He appears to have had legal advice at an early stage; he was designed in the schedule for service attached to the petition as care of his solicitors. His legal advisers will of course have assessed professionally and conscientiously his capacity to provide instructions. We intend no criticism of them whatsoever. Assessing capacity to instruct is, however, a different exercise from reporting as to his maturity and the incidence of any improper influence on him. It is a matter of concern to us that there was no independent assistance for the Lord Ordinary in relation to these matters, particularly in a situation in which a child came, during the life of the proceedings, to be faced with the recent reality of a serious mental health crisis in the life of his mother, in which he was expressing views about the effect of that on himself, and in which he came to be in the care of his father, contrary, as the Lord Ordinary put it, at least to the spirit of an interim interdict pronounced by the sheriff.

Disposal

[58] We therefore refuse DM's reclaiming motion and allow SM's reclaiming motion. We recall the interlocutor of the Lord Ordinary of 21 November 2025. We sustain the first respondent's pleas-in-law in respect of both children, repel the plea-in-laws for the petitioner and the second respondent and refuse the prayer of the petition in respect of both children.