

**SHERIFFDOM OF SOUTH STRATHCLYDE DUMFRIES AND GALLOWAY AT
AIRDRIE**

[2025] SC AIR 53

AIR-F166-22

JUDGMENT OF SHERIFF ANTHONY MCGLENNAN

in the cause

A

Pursuer

against

B

Defender

**Pursuer: Thompson
Defender: Johnstone**

Airdrie 14 July 2025

The sheriff, having resumed consideration of the cause;

1. sustains both parties' first pleas- in-law but only to the extent of granting a joint residence order as set out at part 5 of this order;
2. quoad ultra repels parties' pleas-in-law;
3. dismisses the pursuer's second and third craves;
4. dismisses the defender's second crave;
5. quoad both parties respective first craves, grants same but only to the extent of granting a residence order in terms of section 11 (2) (c) of the Children (Scotland) Act 1995 whereby the child Anne shall reside as follows;

- (a) during the school term period;
 - (i) with the pursuer from 4 pm on a Sunday until 5 pm on the Friday; and
 - (ii) with the defender from 5 pm on the Friday until 4 pm on a Sunday;
- (b) during the entirety of the February school half term break;
 - (i) with the defender;
- (c) during the school Easter holiday;
 - (i) with the defender from 5 pm on the Friday prior to the first week of the holiday until 11 am on the Wednesday of the second week of the holiday;
 - (ii) with the pursuer from 11 am on the Wednesday of the second week of the holiday until school term recommences;
- (d) during the school summer holiday;
 - (i) with the defender for the first two weeks of the holiday beginning at 11 am on the first day of the holiday;
 - (ii) with the pursuer for the following week of the holiday; and thereafter
 - (iii) with each party alternately for a week until the conclusion of the school summer holiday, subject to the child requiring to be returned to the pursuer by no later than 12 midday on the day before school recommences;
- (e) during the October school holiday;
 - (i) with the defender from 5 pm on the Friday prior to the holiday until 4pm on the Sunday at the conclusion of the first week of the holiday; thereafter
 - (ii) with the pursuer from 4pm on the Sunday at the conclusion of the first week of the holiday until school recommences;

- (f) during the Christmas school holiday;
 - (i) for an equal number of nights with each party; subject to the child residing
 - (g) on Christmas Day Eve, Christmas Day and Boxing Day;
 - (i) in 2025 with the pursuer from 5 pm on Christmas Eve until 5 pm on Boxing Day;
 - (ii) in 2026 with the defender from 5 pm on Christmas Eve until 5 pm on Boxing Day; and
 - (iii) this alternating cycle continuing each year thereafter; and
6. finds no expenses to be due or by either party.

FINDS IN FACT:

Anne, the parties, and the action

1. Anne is a female child born on 21 November 2020.
2. Anne's father is A. He is the pursuer.
3. The pursuer resides with his partner in Airdrie in a two-bedroom property rented from the local authority.
4. The pursuer is employed with the NHS. His workplace is local to where he resides. He works from 8 am until 4 pm from Monday until Thursday. On a Friday he works from 8 am until 3.30 pm.
5. The pursuer's parents reside near to his house.
6. Anne's mother is B. She is the defender.
7. The defender resides in a town in North Strathclyde in a two-bedroom property rented from the local authority. She resides alone.

8. The defender is a student. She is studying a degree course.
9. The defender's parents reside in the same town as her.
10. Anne is due to commence primary school in mid-August 2025.
11. The pursuer wished Anne to attend at a primary school in Airdrie and he registered her for that school.
12. The defender wished Anne to attend at a primary school in her North Strathclyde town and she registered her for that school.
13. Each party sought that the court grant a residence order which provided that Anne would reside during the school term with the party from Sunday night until Friday afternoon.
14. The parties jointly proposed that the party who was not awarded residence should have residential contact with Anne from Friday at 5 pm until Sunday at 4 pm. That the party should also have residential contact with Anne for one half of the Easter, Summer, October, and Christmas school holiday periods.
15. Parties proposed that they share Christmas day contact on an alternate year basis.
16. The parties agree that Anne should attend the primary school selected by the party who is awarded residence.
17. Anne deeply loves her parents, and each of her parents deeply love her.

The parties' relationship, Anne's birth, and parties' separation

18. The parties began a relationship in 2017. Anne was born to them on 21 November 2020.
19. Parties were living together at the defender's flat in Glasgow when Anne was born.
20. Anne is the only child of each party.

21. Whilst she was pregnant the defender became ill with hyperemesis gravidarum, and at times was hospitalised. Those health issues resolved when Anne was born, but in or around April 2021 the defender experienced different health difficulties. These were triggered by hyperemesis gravidarum but related to her gallbladder. Her gallbladder was eventually removed in April 2022.

22. The parties' separated in or around June 2021. They have never resided together since.

Arrangements for Anne prior to the raising of the court action

23. At the time of the parties' separation, or very shortly thereafter, the defender asked the pursuer to look after Anne. The defender was unwell suffering with the gallbladder issues at that time. Her parents were unable to assist her in looking after Anne. The pursuer agreed to look after Anne. The pursuer and Anne then moved in with the pursuer's mother in Airdrie.

24. At this time the pursuer's hours of work were 8 am until 4 pm, Monday to Friday. Whilst the pursuer was at work his mother cared for Anne.

25. Initially by agreement, the defender had contact at weekends. In time the defender expressed that she wished more contact.

Arrangements for Anne during the court action

Initial orders

26. In May of 2022 the pursuer lodged a writ at this court seeking a residence order and an interdict.

27. The writ was warranted on 31 May 2022 and at that time the pursuer was granted an interim residence order and interim interdict preventing the defender removing Anne from his care and control.

28. Around this time the defender had moved from Glasgow to the North Strathclyde town she currently resides in. The property she then occupied in the North Strathclyde town was not the same property she currently resides in.

29. There were difficulties with service of the writ due to this change of address, but the action was served in due course and thereafter defended on 10 August 2022.

30. At a child welfare hearing on 18 October 2022 the interim interdict was recalled and the court also ordered that the defender have residential contact with Anne from 10 am on a Wednesday until 4 pm on a Saturday.

31. The interim residence order was never recalled during the court action.

32. The interim contact order of 18 October 2022 operated reasonably successfully.

The first child welfare report

33. The court also ordered a child welfare report on 18 October 2022.

34. The child welfare reporter appointed by the court to provide the report is a solicitor experienced in the area of family law.

35. The report sought enquiry into, and report upon, issues of residence and contact relating to Anne. The report was produced on 3 April 2023.

36. The reporter interviewed the parties and certain family members. Anne's health visitor provided a written statement to the child welfare reporter which was incorporated into his report.

37. The health visitor's statement addressed the care provided for Anne by the pursuer and his mother and stated; Anne's needs were being met to a high standard; the pursuer's home was clean, well-furnished, and safe; there was a garden allowing opportunity for activity and lots of age-appropriate toys; Anne was healthy, had a well-balanced diet, was up to date with immunisations, and always attended health appointments; Anne's home environment was warm and nurturing ; and the pursuer and his parents showed love, affection, and encouragement to Anne and encouraged her in appropriate social interactions. The statement's summary concluded that Anne felt secure and loved in the care of the pursuer and his parents.

38. The report recommended that the defender's contact stay be very slightly reduced, the defender to return Anne at 2pm on the Saturday, as opposed to 4 pm. The court did not follow the recommendation.

Anne's nursery and the second child welfare report

39. Anne was scheduled to begin nursery on or around her third birthday in late November 2023.

40. Both parties had registered Anne to attend at nursery.

41. The pursuer had registered Anne at a nursery in Airdrie.

42. The defender had registered Anne at a nursery in her North Strathclyde town.

43. On 11 August 2023 the court ordered a second child welfare report. The same child welfare reporter was appointed. The reporter was asked to enquire into the issue of who the primary carer for Anne should be, and also to note any material change in parties' circumstances. Only the parties were interviewed. The report was issued on 6 November 2023.

44. At the time of interview for the second report the defender had moved to a different flat in the North Strathclyde town. This property was also not the same property she currently resides in. It was a one-bedroom property.

45. The second report recommended that Anne attend nursery 5 days per week, spending 2 days at the Airdrie nursery and 3 days at the North Strathclyde nursery. It also recommended that the interim contact order in favour of the defender be altered to operate from conclusion of nursery on the Tuesday until the Friday at 5 pm. This contact to continue to operate weekly.

46. At a hearing on 17 November 2023 the court varied the defender's interim contact order in line with the child welfare reporter's recommendation. The court also made an order specifying that Anne attend the Airdrie nursery on Monday and Tuesday and the North Strathclyde nursery from Wednesday to Friday.

47. Given the pursuer's working hours, when Anne was attending the Airdrie nursery the pursuer's mother took her to and from the nursery. The pursuer's mother also looked after Anne for the short period between the end of nursery and the pursuer's return from work.

48. The orders made concerning contact and nursery operated reasonably successfully and continued to do so to date.

The third child welfare report

49. The court ordered a further child welfare report on 7 November 2024. Once more the same child welfare reporter was appointed. The reporter was again asked to enquire into issues of residence and contact for Anne. The reporter was also asked to obtain Anne's views on the same.

50. The parties were interviewed as were certain family members. Also interviewed was the lead practitioner/ key worker at the Airdrie primary school. The role bridges transition from nursery to primary school.

51. The lead practitioner/key worker advised that Anne was doing well at her nursery in Airdrie, that she was happy, independent, advanced for her age, rarely absent, and always timeous in attendance. She expressed the opinion that Anne was well cared for by the pursuer and his parents and that her grandparents seemed more involved in her life than the pursuer.

52. At the point of interview for the third report the defender had moved to a third flat in her North Strathclyde town. This is a two-bedroom local authority tenancy. It is the property which she still occupies. She continued to live alone. Her previous health issues had resolved.

53. At the point of interview for the third report the pursuer continued to reside in the same property in Airdrie. He was now living with a new partner. She had moved in with him in October 2024. The report recorded that Anne had a pet rabbit and goldfish at his property.

54. The reporter met with Anne at the Airdrie primary school, in the presence of the lead practitioner/ key worker and the school's head teacher, to take her views.

55. Anne told the child welfare reporter that she enjoyed the Airdrie nursery but she also enjoyed the North Strathclyde nursery, that she would be happy to stay with the defender from a Monday until a Friday and then spend each weekend with the pursuer, also to see her pets.

56. Anne was no older than 4 years and 4 months' old when she provided those views.

57. The report was produced on 14 March 2025.

58. The third report recommended that the court make a residence order in favour of the defender, with the pursuer obtaining residential contact each week from 3 pm or thereby on the Friday until 6pm on the Sunday. Residential contact for the pursuer with Anne during the school holidays was also recommended.

59. The pursuer's interim residence order was not recalled by the court following the report's recommendation, nor was the defender's interim contact order varied, no specific issue order was made by the court as to which primary school Anne should attend.

The reasoning for the residence order recommendation

60. The reporter's recommendation for residence was stated to be based on; the fact that there had been a huge change in the health and housing of the defender; that she is able, due to her studies, to be fully involved in Anne's life; and that she is able to conduct school drop off and pick up on a daily basis.

61. The reporter's reasoning did not include the views expressed by Anne.

62. The reporter's reasoning was flawed. It failed to address a number of material factors.

63. The reasons do not make assessment of the pursuer's case for having residence awarded to him, nor explain why he should not have residence, nor state the deficits, relative or otherwise, in his circumstances, or care for Anne.

64. The reasons do not explain what significance, if any, the reporter attached to the opinions expressed by Anne's health visitor and the lead practitioner.

65. The reasons do not explain why the positive change in the defender's housing and health favours her case for residence over that of the pursuer.

66. The reasons do not provide any detail as to what is meant by “fully involved”, nor why the pursuer could not be fully involved.

The parties’ homes

67. Both parties’ homes are suitable places for Anne to reside in.

Anne’s welfare

68. Anne’s welfare would not be adversely impacted by residing during the school week with either party.

Primary carer

69. Since parties separated the pursuer has always had Anne reside with him for the greater part of the week.

70. Anne’s welfare has not been impinged in any way by the role played by her maternal grandmother in taking her to and from nursery and looking after her for a short period following nursery.

71. Anne has thrived when in the pursuer’s care.

72. The pursuer is Anne’s primary carer.

The pursuer’s criminal convictions

73. In 2015, the pursuer was convicted of a breach of the peace that took place in a domestic setting. He was admonished.

74. In 2022 the pursuer was convicted of assaulting the defender.

75. Neither conviction involved abuse of Anne.

76. Neither conviction entailed that Anne is at risk of abuse.

77. Neither conviction, allied to the current circumstances of parties, entails that the defender is at risk of abuse.

78. Neither conviction will inhibit parties' ability to co-operate so that an order made by this court for residence or contact operates successfully.

Anne's settled arrangements

79. For nearly 3 years Anne's has resided for four nights of the week with the pursuer and three nights of the week with the defender. That has become her settled arrangement.

80. The settled arrangement has operated satisfactorily and to Anne's benefit.

81. The settled arrangement has allowed Anne to develop a strong relationship and bond with both of her parents.

82. The advent of the commencement of school entails that this settled arrangement should be disturbed.

83. Anne's parents reside a distance apart that requires at least one hour to travel between the two houses.

84. It is not conducive to optimising Anne's welfare to make that return trip on days when she has school the next morning.

85. It is conducive to optimising Anne's welfare for her to reside with one parent in one location on days when she has school the next morning.

86. It is most conducive to optimising Anne's welfare that she reside with the pursuer in Airdrie on days when she has school the next morning.

87. It is most conducive to optimising Anne's welfare that she attend the Airdrie primary school.

88. It is conducive to optimising Anne's welfare to disturb the settled arrangements which currently subsists as little as possible.

89. It is conducive to maintaining the strength of relationship and bond between Anne and the defender that Anne reside regularly and for substantial periods with the defender.

90. It is conducive to optimising Anne's welfare that she reside with the defender from 5pm on a Friday until 4pm on a Sunday each week.

91. It is conducive to optimising Anne's welfare that she reside with the defender for periods during school holiday periods which are greater than those during which she resides with the pursuer.

92. It is conducive to optimising Anne's welfare that during school holiday periods she resides with the defender for the hours set out in the court's order in this action.

FINDS IN LAW

1. It accords with the welfare principle set out at section 11 (7) (a) of the Children (Scotland) Act 1995 that a residence order regulating the periods when Anne lives with the pursuer and the defender be made in terms of section 11 (2) (c) of the Act.

2. It is better that this residence order be made than no order be made at all.

NOTE

Preface

[1] This action relates to Anne. She is 4 years old. The parties are her parents. A is the pursuer. He is Anne's father. He resides in Airdrie with his current partner. B is the defender. She is Anne's mother. She resides in a town in North Strathclyde. She does so on her own.

[2] I first presided over the action at its proof on 1 and 2 July 2025. Both parents craved a residence order. Each also had an esto crave seeking residential contact. The pursuer's pleadings sought an interdict but at submission stage he asked that I dismiss the crave. Essentially, the proof was directed at the residence craves. More specifically, at where Anne should reside during the week when her school is in term.

[3] I have made a joint residence order which, amongst other things, orders that Anne shall reside with her father during school weeks. That part of my order runs contrary to the view Anne provided. It is also contrary to the recommendation of the child welfare reporter. I am nevertheless satisfied that my order is best for Anne.

[4] In reaching my decision I looked to who it was that was Anne's primary carer; how best to limit disturbance of Anne's current settled arrangements (which were operating successfully overall); and the material available upon how Anne's home life operates when she is with each of the parties.

[5] The length of the contact stays which the defender has had with Anne for nearly three years readily persuaded me that the residence order should be joint. The defender should have Anne reside with her at weekends and for large portions of the school holiday.

[6] Finally, lest this get lost in the more detailed provision of my reasoning which follows: It was very clear that Anne deeply loves her parents and each of her parents deeply love her.

Background

[7] The parties commenced a relationship in 2017. Anne was born to them on 21 November 2020. She is their only child. On the material before me I was not able to determine for how long, if at all, they had lived together prior to Anne's birth. Certainly

however, they were doing so at the time of Anne's birth. They lived at the defender's then accommodation, a flat in Glasgow.

[8] The parties' relationship foundered in 2021 and they separated in June of that year. Anne was then 7 months old. The parties have never resided together since.

[9] Anne began residing with the pursuer at his mother's house in Airdrie. How and when that occurred was in contention.

[10] A writ seeking residence and interdict was lodged by the pursuer in May 2022. Upon the warranting of the writ the pursuer was granted interim residence and also interdict (ad interim) preventing the defender removing Anne from his care and control. There were difficulties with service and the writ was amended on 10 August 2022 to reflect that the defender had moved to an address in the town in North Strathclyde. A fresh warrant was granted. The writ was then defended.

[11] At a child welfare hearing on 18 October 2022 the interim interdict was recalled and an order awarding the defender interim contact was made. The court ordered that the defender have residential contact with Anne from 10 am on a Wednesday until 4 pm on a Saturday.

[12] This order remained in place until 17 November 2023. On that date the court made an order that Anne attend a nursery in Airdrie on a Monday and Tuesday, and a nursery in the defender's town on the Wednesday, Thursday and Friday. The defender's residential contact was adjusted so that it ran from the conclusion of nursery school on a Tuesday until 5 pm on a Friday.

[13] Anne will commence primary school next month. The pursuer wishes Anne to attend school in Airdrie. The defender wishes Anne to attend school in her North Strathclyde town. Each party has registered Anne at a primary school. The travel time

between parties' houses is, at best, an hour. Parties agreed that continuing to travel between their houses during the week once Anne commences primary school was untenable. Parties agreed that the court should make an order for residence and that Anne should attend the school in the town of the parent who was awarded residence.

[14] In terms of contact, at closing submissions I was presented with a joint position.

During the school term, the parent who was not awarded residence should have residential contact each Friday from 5 pm until Sunday at 4 pm. That party should also have residential contact for one half of the Easter, Summer, October and Christmas school holiday periods (but not the February half-term break). It was further specified that the summer school holiday period be divided in terms of weeks, with week one commencing on the first Friday that fell within that period. Anne should stay alternately with each parent thereafter until the expiry of the school holiday period. The pursuer's solicitor sought that in the event that his client was not awarded residence, he be given contact in week one. The Christmas school holiday period was to be divided equally also. As concerned Christmas Day, there was an agreed cycle. Anne should stay with one of her parents from 5pm on Christmas Eve until 5 pm on Boxing Day, and the other parent should enjoy having her stay on those days the following year. That pattern repeating thereafter. The pursuer's solicitor sought that regardless of the award of residence made, his client should have Anne with him this Christmas, as she had spent Christmas day in 2024 with the defender.

The law

Section 11 of the Children (Scotland) Act 1995

[15] Parties agreed that orders for residence and contact are governed by the Children (Scotland) Act 1995. Section 11 (2) (c) of the Act permits a sheriff to make a residence order regulating who a child lives with and for what periods.

[16] Correctly, I was directed that the factors to be considered in determining whether to make such an order are found at section 11 (7). The child's welfare must be the paramount consideration ("the welfare principle") informed by the Act's express injunction that any order applied for must, before it is granted, be found to be better for the child than no order being made at all. In making those assessments I must, taking account of the child's age and maturity, so far as practicable, have regard to such views as Anne had expressed.

[17] I noted that this case required also, as per section 11 (7B) and (7D) of the Act, that I have specific regard to a number of factors involving abuse or potential abuse that might affect Anne or those caring for her.

Case law

[18] The pursuer's solicitor brought principles from two authorities to my attention; the ratio in Lord Rodger's opinion in *White v White* 2001 SLT 45 at paragraph 21 that an order in terms of section 11 cannot be made in the absence of "relevant material" supporting it; and the principle found in Sheriff Principal Nicholson's judgment in *G v G* 1999 FLR 30 at paragraph 30 -20 that "evidence of a most compelling kind" is required before an interim residence order is disturbed.

[19] On behalf of the defender I was taken to the House of Lords authority of *Brixey v Lynas (no 1)* 1997 SC (HL) 1. I will address the principle emanating from this case when dealing with the defender's submissions.

Relevant Materials

The evidence received

[20] Both parties gave evidence. Each led a single witness. The pursuer led his partner. The defender led her mother. Evidence-in-chief was by affidavit with such further questioning in chief as the court allowed.

The pursuer's evidence

[21] The pursuer advised that he is 32 years of age and resides in Airdrie in a two-bedroom property rented from the local authority. He works for the NHS. His workplace is local to his house. He works on weekdays. His hours had been 8 am until 4 pm, but he now works only until 3.30 pm on a Friday.

[22] He had a four-year relationship with the defender, during which Anne was born. The parties separated in June 2021. The defender threw him out. He took Anne with him. Anne has resided with him from that point. The defender had contact regularly, it was residential contact at the weekend. The defender then began to express that she wished more contact.

[23] In May of 2022 he raised a residence action. He was granted an interim residence order by the court. Through court order, in time, the defender's contact was increased. Nevertheless, he is Anne's main carer. Anne lives with him for the greater part of the week, from Friday until Tuesday.

[24] He had “serious concerns” about how Anne was cared for by the defender. She was returned to him with her hair in a disgusting state. She was otherwise also dirty, and malodorous. On occasions it appeared she had scabies. On other occasions she had come back covered in bruises. Additionally, Anne had advised that she was allowed to go to a local shop herself. The pursuer had reported all of this to social work services but they had not been concerned. He nevertheless wished to promote contact.

[25] The pursuer criticised the child welfare reporter. When the reporter met Anne he had skewed his questions to elicit responses from her that favoured the defender. He had fabricated his report of Anne’s view that she would be happy to reside with the defender during the week. His daughter would confirm that she wished to attend the school in Airdrie. When it came to his own interview the pursuer felt that he was being unfairly assessed because his work commitments required him to have his mother take Anne to school, when that was a perfectly common feature of many people’s lives.

[26] His house allows Anne her own bedroom, with a large bed. The property has a front and back garden. Anne has toys and a bike. He stays with his partner and his mother stays nearby. Anne has friends who also live nearby. The school he has selected is connected to the nursery Anne attends. He has held interim residence for three years, that is what Anne has known and that should not be disturbed.

The pursuer’s partner’s evidence

[27] The pursuer’s partner is 31 years of age. She is employed as a support worker. She resides with the pursuer. Her evidence also addressed her concerns about the defender. She did so at greater length and more graphically than the pursuer had.

[28] In addition, she accounted Anne's home life with the pursuer. His house had everything Anne needed. There is a large bedroom, plenty of toys, as well as the pets. Anne loves the pets. She also idolises the pursuer and her grandparents. The latter live nearby. She herself has a close relationship with Anne and they play together.

The defender's evidence

[29] The defender is 25 years of age and currently a student in higher education. The affidavit sworn was in brief terms, extending to a page and a half of text. It explained that she began her relationship with the pursuer in 2017. Anne was born in 2020. The pursuer "moved out of the family home" around June 2021.

[30] During her pregnancy she developed "HG" (hyperemesis gravidarum). Following Anne's birth, the defender's health improved for a period of six months, but she was then diagnosed with gallstones. At this point she arranged for the pursuer's parents to "temporarily look after" Anne. There followed periods of hospitalisation and ultimately in 2022 her gallbladder was removed. Her health is no longer affected, however whilst she was hospitalised the pursuer was awarded interim residence without her knowing. Following her surgery "shared contact" had then been ordered by the court. Anne's time was now split 50/50 between the parties. Anne has attended a nursery in her town where she is well settled and has been registered for a local primary school.

The evidence of the defender's mother

[31] The defender's mother is 60 years of age. She resides in the same town as the defender and works locally there as a teacher. She deponed that she had a close relationship with Anne. She had observed that her daughter had a loving relationship with Anne,

collecting her from nursery and making dinners for her. The defender had worked in the past as an assistant in a nursery and had good practical skills. In addition, the defender arranged for Anne to attend clubs, including those for dance and swimming. Anne had settled in well to the defender's new house. The property had been improved by the defender and her father. Anne's cousins lived nearby, she enjoyed their company and had recently been on holiday with them.

The child welfare reports

[32] Three child welfare reports were ordered by the court. Each from the same reporter. The reports featured only lightly in evidence, more prominently in submission. I had regard to them in their entirety, as would be expected.

The report of 3 April 2023

[33] The first report was ordered on 18 October 2022 and produced on 3 April 2023. The remit was to enquire into issues of residence and contact. A number of interviews were conducted and Anne's health visitor forwarded a written statement.

[34] In her interview the defender accounted the background to matters. Whilst pregnant she had become very ill, and was hospitalised at times, with hyperemesis gravidarum. Once Anne was born other health difficulties arose, in or around April 2021. These were triggered by hyperemesis gravidarum but related to her gallbladder. In June 2021 she and the defender separated. Her health issues worsened. She was then living in Glasgow. Her parents were residing in the town in North Strathclyde in which she herself now resides. Both parents worked. They could not assist with looking after Anne. The defender asked

the pursuer to look after Anne. He did so. She was eventually hospitalised and had her gallbladder removed in April 2022.

[35] Her health had improved when spoken to, but she continued to have some difficulties. These now related to her spine. The defender had moved to a one-bedroom flat in the aforesaid North Strathclyde town. Contact (by the point that the report was instructed the interim order awarding Wednesday to Saturday contact had been made) was taking place with Anne. She was happy with the arrangement but wished to have her daughter “returned to her full time”. The defender was critical of the pursuer’s suitability as a resident parent. She pointed to the existence of a domestic assault conviction and his unstable personality. Her belief was that in actuality it was the pursuer’s mother who cared for Anne when the child was with the pursuer. The defender’s mother meantime advised that the defender took Anne to playgroup for an hour on Thursdays, and swimming lessons on a Saturday.

[36] The pursuer accounted the relationship and advised the reporter that it ended in June 2021. He had then received a call from the defender. She had health difficulties and asked him to look after Anne. He did so, and Anne had been with him ever since.

[37] When the report was compiled Anne was not yet attending nursery. The pursuer worked from 8 am until 4 pm in the job he still has. Whilst he was at work the caring duties were carried out by his mother.

[38] His mother explained that the pursuer and Anne had come to live with her following the separation. Subsequently the pursuer obtained his own tenancy, the house he now lives in. She described approvingly the furnishings of the property and their suitability for Anne. She explained the activities, including a toddler group, which she had Anne engage in.

[39] The health visitor's statement addressed the care provided for Anne by the pursuer and his mother. Anne's needs were reported to be met to a high standard. The pursuer's home was clean, well-furnished, and safe. There was a garden allowing opportunity for activity and lots of age-appropriate toys. Anne was healthy. She had a well-balanced diet, aided by home cooked meals. She was up to date with immunisations and always attended health appointments. The home environment was warm and nurturing, the pursuer and his parents showed love, affection, and encouragement to Anne. They had also encouraged her in appropriate social interactions, including arranging for her to attend a toddler group. They had taken steps to select a nursery of their choice. The statements' summary concluded that Anne felt secure and loved in the care of the pursuer and his parents. They were dedicated to ensuring that Anne has the best home environment.

[40] The reporter concluded the contact arrangements were working reasonably well, but an earlier return to the care of the pursuer on a Saturday was recommended to better allow Anne to re-establish her weekly routine. The court did not follow that recommendation.

The report of 6 November 2023

[41] On 11 August 2023 the court ordered a supplementary report. It was prompted by Anne's then forthcoming attendance at nursery school. The court's instruction anticipated that Anne would have to reside weekdays with one or other parent in order to attend nursery. Parties disagreed on who that should be. The reporter was asked to address the question of who the primary carer should be, and note any material change in circumstance.

[42] The report was issued on 6 November 2023. It was brief, extending to just short of four pages. The reporter interviewed the parties, but no one else. He did not make a recommendation as to who should be Anne's primary carer, nor did he make

recommendation that Anne stay with one of her parents during the week. Rather, he recommended that Anne attend nursery 5 days per week, that she spend 2 days at the Airdrie nursery and 3 days at the North Strathclyde nursery.

[43] This recommendation was followed by the court on 17 November 2023. The defender's contact was altered accordingly, being amended so that it ran from the Tuesday after nursery until the Friday at 5 pm.

The report of 14 March 2025

[44] Finally, the court ordered a further supplementary report on 7 November 2024. As with the first report the remit provided by the court was the issue of residence and contact orders for Anne. The reporter was also asked to obtain Anne's views. The report was produced just over four months later, on 14 March 2025. It was more extensive than its predecessor. Those interviewed included the lead practitioner at the Airdrie primary school. This person was also noted to be Anne's key worker. The role bridges transition from nursery to primary school. The reporter also met with Anne at the Airdrie primary school to take her views.

[45] The report firstly addressed the defender's position. She had moved into a local authority tenancy (the defender continues to reside there). It had two bedrooms, was reasonably well furnished, clean, and tidy. Anne now had her own bedroom. Anne was present when the interview took place and was seen by the reporter playing happily. She was attending the nursery school local to the defender's house Wednesday to Friday, as the court had ordered. The defender no longer had health problems and was part way through a university degree course. She was not working but was intending to obtain employment related to her studies upon completion of her degree. The current arrangement for Anne

was working reasonably well. The defender had registered Anne at the primary school local to her house. She wished her to attend there and to look after her on a permanent basis. Her routine as a student would allow her to take Anne to and from school and orientate her life around her daughter's needs.

[46] The pursuer continued to reside in the same local authority tenancy in Airdrie (in which he too continues to stay). Anne now had a rabbit and a goldfish there. The pursuer had begun a relationship with his partner. She had moved into reside with him in October 2024. The pursuer's employment and work pattern remained the same. His hours then were 8 am until 4 pm. Anne was returned to him on Friday evening and they spent the weekend together. His work hours required his mother to take Anne to school, pick her up, and look after her until he returned from work. The pursuer's mother's working hours of 9.30 am until 2 pm presented no challenges to this arrangement. He was however trying to have his work hours adjusted to allow him to conduct school drop off and pick up. Anne was settled at her Airdrie nursery and had a good relationship with the teachers. He wished to obtain a final order for residence but was happy for the defender to have residential contact each weekend as well as during school holidays.

[47] The lead practitioner/key worker advised that Anne was doing well at her nursery school in Airdrie. She was happy, independent, advanced for her age, rarely absent, and always turned up on time. She was well cared for by the pursuer and his parents. The view was also expressed that her grandparents seemed more involved in her life than the pursuer.

[48] Anne spoke with the reporter at the Airdrie primary school. The meeting took place in the presence of the lead practitioner and the primary school's head teacher. Anne's views were recorded as follows:

“ She told me that she enjoyed (the Airdrie nursery) but she also enjoyed (the North Strathclyde nursery). She was very happy during the time that I saw her and indicated that she would be happy to stay with the Defender from a Monday until a Friday and then spend each weekend with the Pursuer, also to see her rabbit and goldfish”

[49] In its conclusion the report recommended that residence be awarded to the defender, with the pursuer obtaining residential contact each week from 3 pm or thereby on the Friday until 6pm on the Sunday. Residential contact to Anne during the school holidays was also recommended. The terms of the recommendation, and the proffered reasons were as follows:

“ There has been a significant change in the Defender’s circumstances since my two previous Reports. Her health has improved considerably and she has new accommodation which is much more suitable for Anne. The previous accommodation was, in my view, cramped and was not conducive to the Defender being awarded residence of Anne.

The present arrangements between the parties appear to work well. However, it is clear that these cannot continue in view of the fact that Anne will now be attending school on a full time basis from August 2025. It is also clear that it would not be in Anne’s best interests for her to spend two days at (the Airdrie Primary school) and thereafter three days at (the North Strathclyde primary school).

In all of these circumstances, I have concluded that it would be in the best interests of Anne for residence to be awarded to the Defender. Residential contact should be granted in favour of the Pursuer from 3 pm or thereabouts on a Friday until a Sunday at around 6 pm. Thereafter, Anne should be returned to the Defender who would ensure she was ready for school on the Monday morning.

I would also recommend that the Pursuer obtain residential contact to Anne during the school holidays and that the parties agree contact at Easter, Summer and Christmas.

I base my recommendation for residence on the fact that there has been a huge change in the health and housing of the Defender. Further, she is able, due to her studies, to be fully involved in Anne’s life and is able to see her out to school and pick her up from school on a daily basis”

Parties' submissions

The pursuer's submissions

[50] The pursuer's solicitor sought that a residence order be granted in his client's favour. He was content for the court to make an award for residential contact (as previously detailed) in favour of the defender. The interdict craved was not insisted upon, neither were expenses sought. His argument in support of the residence order had three principal planks.

[51] Firstly, the court could be satisfied that the pursuer was Anne's primary carer and that this was the status quo. To succeed the defender required to present a compelling case that this arrangement should be departed from (*G v G* *ibid*). On the material available she had failed to do so. The pursuer had had his daughter in his care from the point that parties separated four years ago. The court had awarded him interim residence and that had not been recalled. The defender had in due course been awarded substantial residential contact, but the arrangements remained such that the pursuer had much more time with Anne. He had always had Anne reside with him for at least four nights of the week, and as he had Anne at weekends he was with her for far more of her free time. When Anne was with the defender she was at nursery during the day. She went to bed at 7 pm, thus waking hours spent with the defender were restricted. Separately the material relied upon by the defender did not support the making of a residence order (*White v White* *ibid*). In particular, the affidavits were fatally deficient – being absent of the information that the court would need to make the order sought. The information from the child welfare reports did not fill the gap.

[52] Secondly, the recommendation of the third child welfare report that the defender be awarded residence should be rejected. The reasoning was flawed. It was predicated on the

defender having recovered her health and having obtained more suitable accommodation.

The reporter did not set out why it was that Anne's welfare would better met by residing with the defender, rather than the pursuer. The pursuer's case was seemingly not examined.

[53] As concerned the taking of Anne's views, the pursuer's solicitor did not support his client's attack upon the probity of the reporter. However, Anne's young age and her maturity at the time she provided her views were factors which I required to take into account. The weight to be attached to Anne's views should be limited.

[54] Thirdly, the pursuer maintained that the defender's care was lacking for the reasons detailed in his evidence and that of his partner. The defender had elected not to address these allegations in her evidence, nor had her mother. They were in effect unchallenged. That did not oblige me to find the allegations established, but it strongly militated in favour of me doing so. Nor should I concern myself with how this stance squared with the pursuer's position on the contact the defender should have. The deficits highlighted impacted on the defender's suitability as the residential parent, not upon her suitability to have residential contact.

[55] I raised the defender's averment that the pursuer had been convicted of assaulting her. The pursuer's solicitor confirmed the existence of the conviction. His further position being that it was an isolated event and did not militate against the pursuer being granted the order which he sought.

The defender's submissions

[56] The defender's solicitor moved that I make a residence order in favour of his client. He informed me that if that award was made to his client, she was content for the pursuer to have residential contact which "mirrored" that detailed in the pursuer's submissions.

[57] I should set aside the critiques of the affidavits of the defender and her mother.

Purposefully, the defender's evidence dealt with the circumstances which led to the pursuer obtaining interim residence and her mother's affidavit addressed the defender's suitability as the resident parent. By comparison the pursuer's affidavit and that of his partner were dominated by the allegations made against the defender. Concerns which had not been taken up by social work services, nor by the child welfare reporter.

[58] The defender's case was supported by the recommendation of the third child welfare report. The criticism of the reporter should not be given weight to. The reporter was an experienced solicitor and experienced in providing reports of this type.

[59] I was also taken, as said, to the House of Lords authority of *Brixey v Lynas*. Initially the judgment was presented to me as authority for the principle that the "default" position in Scots Law is that the mother of a very young child should be awarded residence. That stance was later modified to being that the defender's status as Anne's mother was a factor to be considered in applying the welfare principle.

Decision

Necessity of making a residence order

[60] This litigation has subsisted for 3 years. The arrangements that have been in place for some time, although operating with success, cannot continue. Once school commences it is no longer tenable for Anne to commute between her parents' houses. She requires to live with one of her two parents for the entirety of the school week. Her parents cannot agree which of them that should be. They do agree that Anne should attend the school selected by the parent who has the residence order made in their favour. A judicial decision is necessary. It is better that a residence order be made than no order be made at all.

Brixey v Lynas

[61] The passage from *Brixey v Lynas* purportedly pertinent to the present case comes from the lead judgment of Lord Jauncey:

“.. to summarise, the advantage to a very young child of being with its mother is a consideration which must be taken into account in deciding where lie its best interests in custody proceedings in which the mother is involved. It is neither a presumption nor a principle but rather recognition of a widely held belief based on practical experience and the workings of nature. Its importance will vary according to the age of the child and to the other circumstances of each individual case such as whether the child has been living with or apart from the mother and whether she is or is not capable of providing proper care. Circumstances may be such that it has no importance at all.”

[62] This does not identify the existence in Scots Law of maternal preference as a default position. The ratio that a party’s status as a mother may be an “advantage” that requires to be considered does appear to be untouched by subsequent authority. However, the ratio is heavily qualified. Firstly, the child must be very young. I could not agree with the submission from the defender’s solicitor that Anne is a very young child. Anne is four years and seven months’ old and on the cusp of beginning school. Secondly, Anne has spent significant periods living apart from her mother. Even if it were correct to view Anne as a very young child, this was a circumstance which entailed that the defender’s status as the mother of Anne was not an “advantage” that I required to consider.

The pursuer’s welfare concerns about the defender

[63] I did not accept the evidence of the various welfare concerns raised about the defender’s care of Anne. I agree that, surprisingly, the defender’s evidence did not address them. However, they were not unchallenged. By inference her mother’s evidence approving her daughter’s parenting did so, and the defender’s solicitor closed his cross-

examination of the pursuer's partner by suggesting that she had made evidence up. The pursuer's solicitor had the opportunity to put the allegations to the pursuer in cross-examination but, also surprisingly, he did not do so. He also chose not to cross-examine the defender's mother at all.

[64] I did not find the pursuer's evidence and that of his partner on the matter to be credible. In both affidavit form and in oral testimony it presented as contrived to damage the defender's case. At times the language used by the pursuer's partner veered toward personal attack. Further, notwithstanding the allegations the pursuer proposed that the defender be awarded considerable amounts of residential contact. His solicitor conceded that this might present as an "objective contradiction" but maintained that in fact that was not so. I could not see it as being anything else. Quite serious neglect allegations were being made, they would, if true, impact on ability to care for a child during residential contact. Lastly, social work services had not shared the pursuer's concerns, nor the child welfare reporter. Indeed, welfare allegations barely made into his reports at all. The strong inference that arose was that the allegations were not credible.

The pursuer's convictions

[65] The pursuer accepted that in 2022 he had been convicted of an assault upon the defender. He also has an earlier conviction for a domestic breach of the peace. Neither conviction was relied upon by the defender at proof, although the conviction from 2022 featured in her pleadings. Regardless, I considered how they interacted with the terms of sections 11 (7B) and (7D) of the 1995 Act. Having done so I concluded that it was not an impediment to making a section 11 order in favour of the pursuer.

[66] There was surprisingly little information provided to me about the 2022 crime, and none related to the disposal. However there was no suggestion that a significant punitive disposal was imposed, nor that a non-harassment order was imposed. The prior breach of the peace conviction was said to have occurred in 2015. The court had admonished the pursuer. There had been no convictions since, nor were there any cases pending. An interim residence order had been made in favour of the pursuer in 2022, and that order had been affirmed and continued by the court following receipt of the welfare report which disclosed the conviction. The court had also continued contact orders which required cooperation between the parties. The orders had operated successfully. Examining the information available I was satisfied that; Anne had not been abused by, nor was she at risk of abuse, from the pursuer; there was no likelihood of a person conducting caring responsibilities for Anne being at risk of abuse by the pursuer; and the 2022 conviction did not make it inappropriate to make a section 11 order which would require cooperation between parties.

The submitted deficiencies in the evidence led by parties

[67] The defender's affidavit was brief. In large measure it addressed the circumstances in which interim residence had come to be granted to the pursuer. She did explain the terms of the current interim contact order, that Anne had settled at her North Strathclyde nursery and been registered for a local primary school, but no other information was provided supporting her case for a residence order. Neither did parole evidence add anything. This was an omission but not fatal to her case. Other sources of material allowed insight into her home life with Anne. The defender's mother's affidavit (although also brief) gave an account, and helpful information was available from the child welfare reports.

[68] The defender's solicitor's criticism that the evidence from the pursuer largely consisted of attacks on the defender was also overstated. There were large sections taken up by the welfare concerns, but the affidavits of the pursuer and his partner were more extensive. They also addressed in credible and reliable passages the provision for Anne at the pursuer's house, her play activities, and relationships with the pursuer's parents. Undoubtedly there was greater provision of information addressing what Anne's home life looks like obtained from the pursuer's evidence.

The child welfare reports

[69] I readily rejected the attacks on the probity of the child welfare reporter made by the pursuer (not supported by his solicitor). They were baseless. I found his reports to be of great assistance as sources of information. However, they were not without flaw, and I set aside the recommendation of the final report that the defender should be awarded residence. I had significant reservations as to the soundness of the reporter's reasoning.

[70] The final report's recommendation was a volte-face from the approach taken in its two predecessors. Neither of those reports recommended that the pursuer's interim residence order be recalled, nor included suggestion that factors existed that might require it to be reconsidered. The first report incorporated a health visitor's statement relating to the care Anne received with the pursuer. It was deeply approving of the same. This was a view expressed from an independent source, by a person who would have been visiting Anne and the pursuer regularly. Doubtless this influenced the conclusions of the first report, in which the reporter included the following opinion:

" I have great sympathy for the Defender and her health issues. There can be no doubt that she suffered a terrible period of health coupled with caring for Anne after she was born.

However, I cannot get away from the fact that Anne has now been in the care of the Pursuer for a considerable period of time. She appears settled with the Pursuer and the Pursuer's mother has adapted her life to ensure that Anne is well cared for when she need to help out.

Further the present contact arrangement seems to be working reasonably well and, as a result, I am of the view that the current arrangement should continue with minor amendments."

[71] The second report did not contain critique of the pursuer's care for Anne or the arrangements. Those arrangements remained those which had subsisted when the author had last reported. Other than the improved health of the defender it did not note any material change in her circumstances. The report did not identify a primary carer for Anne, as had been part of the remit, but it is hard to see how there could be any move away by the reporter from the view he had expressed in the conclusion of his previous report. Views that seemingly accepted the role of the pursuer as primary carer. The reporter did recommend that Anne attend the North Strathclyde nursery 3 days a week but the passage which made that recommendation did not include his reasoning.

[72] The final report included the reportage of the interview with Anne's lead practitioner/ key worker at her Airdrie nursery. Anne was said to be happy, independent, advanced for her age, rarely absent, and always timeous. She was, in the practitioner's view, well cared for by the pursuer and his parents. The commentary about the grandparents providing the majority caring role I perceived as reflecting that is they who would be seen at school drop off and pick up. No part of the final report critiqued in any way the care provided by the pursuer. The only additional information provided was that Anne had pets at his house, and that the pursuer would try and alter his work hours to allow him to do some school runs.

[73] The bases of reporter's recommendation were; the huge change in the health and housing of the defender; and that, due to her studies, she was able to be fully involved in Anne's life and drop and pick her to and from school. The positive change in housing only serves to make the granting of a residence order to the defender feasible, the reporter having opined that the one-bedroom flat previously occupied by the defender would not be habile for a residence order. The improvement in health was clearly viewed in the same way by the reporter – it now allowed the defender to make a case for a residence order. There was no explanation as to why these changes would favour an award to the defender as opposed to the pursuer, and it is hard to see how they could support a preference.

[74] Rather, the point in distinction presented was that the defender's day allowed her to be fully involved in Anne's life and to do the school run. How and why the pursuer would not be fully involved in his daughter's life was not explored. Nor was it explained what being fully involved meant. It cannot have meant the school run, as that was addressed separately by the reporter. One might infer that it is a reference to the hour either side of school which the defender would have with Anne that the pursuer would not have, but it was not said or explained. It was also hard to see what deficit arose from the pursuer's arrangements. The information available to the reporter was that Anne was thriving in the pursuer's care.

[75] As concerns the school run, I considered that the reporter attached too much emphasis to that matter. He had in a previous report approved the arrangements put in place for the pursuer's mother to drop off and pick up Anne. It was odd to now see that arrangement seemingly critiqued. Further, the report did not examine what may happen when the defender graduates in 2 years' time. As per the reports she intends to find work, as one would expect. If she does, will the hours leave her free to conduct the school run?

The defender's solicitor submitted that she would find work that allowed her to do so, but I doubted that one could be certain about that.

[76] The reporter's reasons fail to address the pursuer's case. This is a fundamental flaw. They do not explain why he should not have residence, what the deficits in his circumstances are, including why the information from the health visitor and the lead practitioner were not significant factors. Bearing in mind also that there were no similar pieces of independent information supporting the defender's case. As such, grateful although I was for the information his reports provided to the court, I could not find the reporter's recommendation upon residence to be sound.

[77] The recommendation was not based upon Anne's views. Nevertheless I, of course, had regard to what she said. It is a feature of the welfare reports that the dates of meetings and interviews are not accounted. I did not therefore know when between instruction of the report and its production the meeting with Anne took place, nor, precisely, what age she was at the time. However, she could not have been older than 4 years and 4 months. Anne is by all accounts a bright child, but I required to take into account her age and maturity at the time of providing her views. Her expression of preference to reside with the defender was also, unsurprisingly perhaps for a child of that age, not accompanied by any provision of reasons. I considered that I could only apply limited weight to the view expressed.

The primary carer

[78] Looking at the material in the round I was satisfied that at the time of the parties' separation, or very shortly thereafter, the defender had asked the pursuer to look after Anne. He had done so. The defender was unwell at the time but I did not find that there was an agreement that care would be handed back to the defender. The defender had weekend

contact from that point, but when she was very ill with gallstones the pursuer exclusively cared for his daughter. Even when by court order the defender obtained significant amounts of residential contact, the pursuer has always looked after Anne for the majority of the week. I reject the suggestion that his work commitments mean that the actuality is that he has not spent much time with Anne. His working hours are standard, not lengthy. He works not far from where he resides. His employment clipped away a small piece of time spent with Anne, but it was outweighed by the time he had every weekend with her. Residing with her father for most of the week has been a constant in Anne's life. I viewed the pursuer as being her primary carer.

Anne's school

[79] For completeness, no part of the proof or the material before me attended to whether there was a qualitative distinction between the schools each party wished Anne to attend.

Anne's welfare

[80] I was satisfied that Anne's welfare needs would be met whether she resided with the pursuer or the defender. I was also satisfied that the pursuer's case contained evidence, which I accepted, of Anne thriving in his care. This was available from his evidence and that of his partner. More compellingly it was available from the independent sources of Anne's health visitor and the lead practitioner/key worker at the Airdrie primary school.

The residence order made

Residence during School weeks

[81] Had the parties resided in the same town, it is likely that I would have made a residence order aligning with the current interim orders. Faced with the circumstances before me I have decided that during school weeks Anne should reside from Sunday evening until Friday afternoon with the pursuer.

[82] As said, I had no concerns about the ability of either party to care for Anne. Moving on from that issue I considered it significant that the arrangements the court put in place from October 2022 (marginally adjusted on 17 November 2023) have operated successfully. I found that they had been to Anne's benefit. Their terms have become the framework of a settled environment, her status quo. Within that I adjudged the pursuer to be Anne's primary carer. Anne spends most of her week with him and has always done so. This is a fundamental feature of the status quo. Maintaining the status quo of a settled arrangement assists a child's welfare. It should be disturbed only with caution. Here the schooling issue required that there be disturbance. I examined how that might be best dealt with. The parent who was awarded residence during the school weeks – which is essentially what was in dispute – would have Anne reside with them for a greater period than the other parent. If the parent with school week residence was the pursuer that would disturb the status quo less.

[83] There was also better material before me about the care that Anne received when residing with the pursuer. This took the form of the evidence led by the pursuer and the information contained in the child welfare reports. The latter, importantly, included the opinions provided by the health visitor and the lead practitioner. All of this pointed to Anne thriving when residing with the pursuer. I was also satisfied that the arrangements

required by the pursuer's work commitments, whereby his mother took Anne to and from school, were not detrimental to her welfare. I took into account that Anne's maternal side cousins reside nearby to her mother in North Strathclyde. I considered that during the school week contact with them would in any event be limited and those relationships could flourish during the periods of time when Anne would be staying with her mother.

[84] I had regard to Anne's views. For the reasons stated I could not attach substantial weight to them. Similarly for the reasons provided I rejected the child welfare reporter's recommendation that the defender should be awarded residence during the week. I examined the pursuer's convictions in terms of sections 11 (7B) and (7D) of the 1995 Act and concluded that they did not impact on my view that granting an order awarding residence during the school week to the pursuer accorded with the welfare principle.

Residence at other times

[85] Anne spends 3 nights each week residing with the defender. She has been happy staying with her mother and has benefitted from the arrangement. That too is a significant feature of her settled arrangement, of the status quo. As said, I wished to limit the disturbance of the same. That could be achieved if I also made an order which provided time for Anne with her mother which, over the course of a year, was as close to equivalent to that which she currently enjoys as could be reasonably achieved.

[86] Separate from the status quo issue, I found that such an arrangement would assist in preserving the strength of relationship Anne currently has with the defender. I was not satisfied that the contact proposed jointly by the parties would do so. I required to formulate an arrangement. In doing so I stayed close to the structure that parties had used. The arrangement for Anne and her mother I have ordered amounts to a regulation of Anne's

residence arrangements. It should therefore be located within a residence order, not a contact order.

[87] As parties jointly thought was correct, Anne should spend each weekend with the defender. The allocation of time spent with each parent in the holiday period required however to be adjusted. Anne will spend more time with her mother during those times than parties had proposed. In that regard the order is framed around the court's understanding of the holiday periods of schools under the control of North Lanarkshire Council. The school selected by the pursuer is controlled by that local authority.

[88] This judgment is being issued during the school summer holiday. Anne will be away on vacation, first with the defender and then with the pursuer until 18 July 2025. The balance of the school summer holiday should thereafter be shared in accordance with the cycle set out in my order, Anne spending the first week with the defender.

[89] Anne needs her parents to work together to ensure that this order operates successfully and that her life does not become overshadowed by continuing parental litigation. She is only a short way into her childhood. It would be hubristic to be certain that my residence order could anticipate every twist and turn in life's journey. What happens if in the future an issue arises whereby parties consider that a feature of the order does not properly meet that issue? In my view no one could reasonably consider that decisions reached by Anne's parents by agreement deviating from the detail of this order in order to best meet that issue, and optimise her welfare, would be anything other than appropriate. Better surely, if possible, that such matters are addressed in a collegial environment than by minute to vary and further litigation.

Expenses

[90] I make no order for expenses.