**OUTER HOUSE, COURT OF SESSION**

**[2026] CSOH 19**

**A116/23**

OPINION OF LADY DRUMMOND

In the cause

GLASGOW CITY COUNCIL
a local authority established under the Local Government etc (Scotland) Act 1994

Pursuer

against

(FIRST) JAMES (ALSO KNOWN AS JIMMY) J R STRINGFELLOW; (SECOND) JON STRINGFELLOW; (THIRD) ELISE NEILSON; (FOURTH) JOHN JAMES STRINGFELLOW; (FIFTH) JON BRONSON STRINGFELLOW; (SIXTH) PERSONS OCCUPYING HOUSES 1-6 and (SEVENTH) CHANEL STRINGFELLOW AS LEGAL REPRESENTATIVE OF AMY

Defenders

**Pursuer: Reid KC, G Reid; A MacKenzie, (sol-adv); Harper MacLeod LLP**
**First Defender: Murray KC, Blockley; Drummond Miller LLP for JustRight Scotland**
**Seventh Defender: Scott KC, McEwan; Drummond Miller LLP for JustRight Scotland**
**Commissioner for Children and Young People in Scotland: Pirie KC, F McLeod, (sol-adv)**
**Lord Advocate: Mure KC, James; Scottish Government Legal Directorate**

5 March 2026

**Introduction**

[1] These proceedings are brought by the pursuer, Glasgow City Council, who asks the court to grant an order declaring that the defenders have no right or title to occupy land owned by the pursuer at 22 Pearce Street, Govan, Glasgow. The pursuer also seeks an order for the defenders to remove from the land, failing which, warrant for their ejection. The first

and seventh defenders argue that they have a right and title to occupy the land and that the pursuer has no right to remove them.

[2] The land occupied by the defenders is shown on a plan attached to the summons. It is indicated by an area outlined in red together with a further area shaded yellow. It is bound to the north by another site (occupied by the Johnstons) and to the east by a street named Water Row. Located on the site are chalets, vehicles and equipment.

[3] The people occupying the site are: the first defender, the first defender's wife, the second defender (the first defender's son); the third defender who is the former partner of the second defender and the two adult children of the second and third defender (who have not taken part in these proceedings). There is also a 5-year-old child who occupies the site. In order to protect her identity in these proceedings she is referred to as Amy. She has been represented throughout by the seventh defender. The seventh defender also occupies the site. She gave evidence but has not taken part in the proceedings in her own right.

[4] The site is within the Govan area of Glasgow, and within an area which the pursuer has identified for redevelopment in accordance with the Water Row Development Master Plan. Phase 1, for the development of commercial and residential units, was completed in June 2024 and did not affect the defenders' occupation of the site. Planning permission for phase 2 in principle was granted on 30 June 2020. That permission involves redevelopment of the area within which the defenders' site is located. The pursuer proposes to use the site for housing, parking and access routes to other accommodation and commercial blocks.

**The issues**

[5] Whilst the pursuer described the proceedings as a simple and straightforward action in which the owner of land seeks to recover possession, the parties initially identified twelve

issues for determination by the court. Neither defender made submissions on issues 9 and 10 which are therefore omitted. The parties identified a further issue, relating to the first defender's sequestrations, which I have added as issue 13. The following issues therefore arise for determination:

(1) Whether the pursuer is entitled to decree of declarator and removal as first to third concluded for.

(2) Whether the defenders have right or title to occupy the site and the present basis for the defenders' occupation of it.

(3) Whether the first defender has right to occupy the site pursuant to a tenancy created in terms of sections 11 - 12 of the Housing (Scotland) Act 2001.

(4) If the first defender has no such right, whether sections 11 - 12 of the 2001 Act ought to be read down in terms of section 3 of the Human Rights Act 1998.

(5) If sections 11 - 12 cannot be read down, whether the court should grant a declaration of incompatibility in respect of those sections of the 2001 Act.

(6) Whether sections 11 - 12 of the 2001 Act ought to be read down by the court in terms of section 24 of the United Nations Convention on the Rights of the Child (Incorporation)(Scotland) Act 2024.

(7) If sections 11 - 12 of the 2001 Act cannot be read down, whether the court should grant a strike down declarator in respect of those sections on the basis they cannot be read in a way compatible with the UNCRC requirements.

(8) If the first defender has no right under the 2001 Act, whether the provisions of the Mobile Homes Act 1983 in connection with protected sites operate to prevent termination of the occupation of the site by some or all of the defenders.

…

(11) Whether decree of declarator or removal ought not to be pronounced in respect of all or some of the defenders as being contrary to: (a) the Equality Act 2010; or (b) Articles 8 and 14 of the European Convention on Human Rights.

(12) Whether: (a) the pursuer is exercising a relevant function in terms of section 6 of the 2024 Act; and (b) if the pursuer is exercising a relevant function, whether decree of declarator or removal ought not to be pronounced in respect of the seventh defender as being contrary to Articles 2, 3, 6, 8, 12, 16, 24, 27, 28, 29 and/or 30 UNCRC?

(13) The effect of the first defender's sequestrations on the defenders' right to occupy the site.

Because the first and seventh defenders seek declarations of incompatibility the Lord Advocate entered the process. She took no part in examination of witnesses and made legal submissions only. Intimation of the compatibility issues was made to the Commissioner for Children and Young People in Scotland and a minute of written submission was lodged on her behalf. The proceedings were intimated to the Advocate General who did not enter appearance.

**Issues 1 and 2: The basis for the first defender's right to occupy the site: the extent of the 1995 lease**

[6] On 26 April 1995, the pursuer, as landlord, granted a lease of ground at 22 Pearce Street to the first defender, as tenant. The lease provides that Glasgow District Council (the pursuer's statutory predecessor) and the first defender hereby enter into a:

> "Missive of Let of ground situated at 22 Pearce Street, Glasgow G51, **shown or delineated within the boundaries coloured red on the plan annexed and subscribed as relative hereto from 28 March 1995 to 28 April 1995 and monthly thereafter** and terminable by either party on giving 28 days' notice in writing prior to the 28th day of any month and on the following terms and conditions." (emphasis added)

Under clause (1)(a) the rent is £50 per month per caravan based on the number of caravans on the site, subject to a minimum payment. The maximum capacity of the site was specified as 15 caravans (clause (1)(b)).

[7] Clause (2) provides:

> "**The subjects of let shall be used by the Tenant as a site for parking of showpeoples residential caravans and not for any other purpose without the prior written consent of Glasgow District Council. The term caravan is deemed to include the parking of 3 additional vehicles, other than a caravan which must not be used for residential purposes.** Rent for further vehicles including cars, lorries and trailers will be charged at a rate of £10 per month per vehicle, payable in advance, based on the number of vehicles on the site."

[8] Under clause (3), the first defender is prohibited from assigning or sub-letting the subjects of let either in whole or in part without the prior written consent of Glasgow District Council. The lease is signed and witnessed on behalf of the Council and the first defender. However, only a copy of the lease is produced, the original having not been found. A monochrome plan is attached to the copy lease. That plan bears a typed date of 6 April 1995 and the following typed statement:

> "This is the plan referred to in the missives of let dated [*left blank]* between GDC Estates Dept and Mr J R Stringfellow for let of ground at 22 Pearce St, Glasgow, G51 – as per specimen attached".

Under that statement is typed "signature of tenant" and "signature of landlord" but no signatures have been applied. The plan shows an area outlined in a broken black line which corresponds to the area outlined in red on the plan attached to the summons. The parties dispute the extent of the area leased, the pursuer contending it is only the area outlined in

red, whereas the defenders argue it is the entire area as shown outlined in red and shaded yellow.

[9] Council employee, Mr Gordon Smith, between 2009 and 2023 worked with an organisation that provided the council with management services in respect of their leases. He was not involved in the transaction which regulated the first defender's lease in 1995 but was aware of it due to later interactions he had with the defenders in respect of their removal. He stated that the lease gave the first defender the right to occupy the area outlined in red. He stated that the plan would have been prepared at the time of entering into the lease and formed part of the lease documentation. His evidence was that over time, the first defender and others associated with him began to occupy more land than they were entitled to in terms of the lease as shown by the further area shaded yellow. It was not clear when they began to occupy that further part of the site, but it was certainly prior to 2016 because he saw that the defenders were using this area to store items when he took access in 2016. He was not aware of pre-1995 documentation that related to planning permission for the site or any previous leases. Mr Burrows, a principal officer of the council since 2017, was also not involved with the preparation of the 1995 lease and understood that the area shaded yellow had never been regulated by any lease or other agreement with the pursuer. The defenders had extended their occupation of the site into the area shaded yellow over time. He understood original entry to the site was through Pearce St only. The council had erected a fence at Water Row in about 2012 to 2013 though from Google images from 2008 it looked like the defenders could not access the site from Water Row as the area was overgrown and covered in soil.

[10] David McEwan, has been divisional director within Glasgow City Council's Neighbourhood Regeneration and Sustainability Department since 2018. He explained that

in April 2023, the Council's ownership team drew up a plan of the ground occupied by the defenders. That plan was appended to the summons. His understanding is that the area outlined in red is the same area governed by the 1995 lease but was not involved in the drawing up of the 1995 lease either. His understanding was that the area shaded yellow has never been regulated by any lease or agreement.

[11] The first defender gave a full history of his family's occupation of the site. His understanding has always been that he is entitled to occupy the area outlined in red and shaded yellow. His family have occupied that area for over 40 years. His family are travelling showpeople and have been since at least the 1700s. They have always been connected to and lived in Govan. In the past there were around 20 showpeople yards in Govan. His parents and their grandparents before them all ran the fair in Govan which was a community event. As showpeople, they usually travelled in the summer and stayed at a yard in the winter. Prior to being a shipbuilding site, this area of Govan had been where fairground rides were built.

[12] His uncle had first moved on to the yard when it was known as the Pearce Street and Water Row yard. It covered the whole area that they presently occupy. His uncle, and thereafter his sister, stayed at the Pearce Street and Water Row yard as working showpeople for many years until they moved off, and the yard was used as a dumping ground for demolition works. The council subsequently allowed the first defender and his family to move into the yard. It took him about 6 months to make it habitable. He estimated they spent hundreds of thousands of pounds on clearing the land, tarmacking it, installing drains, water and electricity. They put up fencing and gates to make the site secure. Around 30 years ago, the first defender planted trees around the boundary. These now provide shelter and privacy. The space initially leased was the whole area including the

area that now forms the Johnstons' yard to the north. He worked with the council to arrange for the Johnstons to occupy that area.

[13] Within a couple of years of moving onto the site he replaced the caravans with chalets and static caravans. He recalled applying for planning permission for location of the chalets around that time. The application for planning permission in 1993 included the entire area the defenders currently occupy. Initially they had permission for 16 caravans on site. Until recently the first defender had his own chalet (chalet 6) having separated from his wife but had moved temporarily into chalet 1 with his wife due to ongoing health difficulties. He explained that they used the access at Water Row to enter and exit as it was needed for the larger rides which could not use the Pearce Street exit due to a tight corner. Once the council built a fence in front of the Water Row access they could no longer use it and could no longer move larger rides and equipment in and out of the yard.

[14] The second defender described growing up on the yard with his parents and siblings as travelling showpeople in caravans and chalets storing and maintaining equipment and vehicles. He confirmed his father's evidence about the extent of the site occupied by them and the use of two exits, the Water Row one being used for the larger vehicles. In 2013 after they had been using the access through Water Row for about 30 years the council put a lamppost up directly in front of the gates, locked the gates and put up metal fencing preventing use of that exit. As a result, they have not been able to get any of the larger vehicles out of the yard which has in turn prevented them running shows. Nor have they been able to get access to the larger vehicles to repair them. The seventh defender also confirmed that the yard has been her family home for most of her life and gave similar evidence to the second defender about the use made of it.

[15] Mr Troy Johnston stated that he had been a neighbour of the defenders for 36 years. He had always been told by the council that the lane access to Water Row was the first defender's access to his yard and a place for him to park his trucks. It was used for that for many years without any issue.

[16] The following documentation pre-1995 was produced from the pursuer's records:

(i) A letter dated 29 February 1988 from the council's estates department to solicitors for the first defender headed "application for winter parking of showmen's caravans by J J R Stringfellow". It refers to terms and conditions which apply to the first defender's current occupancy of the ground at Pearce Street. It states that the tenancy will subsist from 1 October 1987 until 31 March 1988. It provides that the ground will be occupied "as a caravan site during the currency of the let and for no other purpose". The net rent is £700 for the period "based on the number of caravans on the site (ie 10 residential caravans at £70 per caravan)." It notes the tenant has obtained approval of planning.

(ii) A letter from the first defender's solicitor dated 4 December 1990 to the first defender asking for a suitable plan with the outline of the site indicated by a red line, for a planning application for Pearce Street.

(iii) A planning application made by the first defender dated 25 September 1993 seeks permission to use 22 Pearce Street as a "Showmans use caravan site" with no changes from its previous use.

(iv) The report by environmental health to planning on 27 October 1993 describes the proposal: to continue using the site for the parking of showmen's caravans/equipment and cars. It is observed in the report that a site licence was granted in 1989 in terms of the Caravan Sites and Control of Development

Act 1960. This licence was said to be granted before the expiry of planning permission on 16 April 1989. The report states that **"At present the ground is rented from Glasgow District Council Estates Department on a month to month lease." (emphasis added)**

(v) The report to sub-committee dated 3 November 1993 provides some information about the area of ground in relation to which planning permission was sought. It states:

> "The proposed site comprises a substantially flat area of cleared, formerly developed ground immediately to the north of Pearce Street. **The site is bounded to the north by further ground used for the parking of showpeople's caravans and the River Clyde**, to west by Govan Old Parish Church, **to the east by Water Row** and the Govan Retail Market, and to the south by the Pearce Institute and mixed commercial, retail and residential uses. The site has been used for many years for the parking of showpeople's caravans." (emphasis added)

It is also noted that "the ground is rented from GDC Estates Department on a month-to-month basis", that the site has been in use for the parking of showpeople's caravans for a considerable number of years, and has coexisted happily with the surrounding uses.

(vi) A letter from the Council Estates Department dated 17 November 1993 to the Director of Planning, states there is agreement to let the ground to the first defender for use as parking for show peoples' caravans, and that there is no objection to the planning application. It indicates that the plan is being returned as requested. Attached to the letter is a sketch plan showing the location of caravans, chalets and storing equipment within a site with the south entrance at Pearce Street, the northern boundary being the fence with Mr Johnston's yard

and a car park on the eastern boundary. The eastern boundary includes the lane to Water Row marked as an exit.

(vii) The grant of planning permission dated 10 December 1993 describes the proposal as "use of ground for the parking of showmen's caravans as shown on the plan(s) relative to the said application".

[17] The pursuer submitted that whilst the plan produced by the pursuer is monochrome, there is a clear delineated area which corresponds with the area delineated in red on the plan annexed to the summons. The area shaded yellow is not delineated on the monochrome plan and forms no part of the subjects let. Although the original 1995 lease has not been found, the monochrome plan appears to have come from the lease which is the most probable source of the plan. There is no evidence that the area shaded yellow was leased to any defender. No lease from 1987 or 1993 has been produced. While there is correspondence produced from 1993 which includes a sketch plan, it is not to scale and does not show any entrance on to Water Row.

[18] I am not persuaded by the pursuer's submissions. The fact that the pursuer, for the purposes of these proceedings, prepared a plan showing an area outlined in red to reflect the broken line of the monochrome plan does not assist in answering what it was the pursuer leased to the first defender in 1995. The monochrome plan does not show any area delineated within boundaries coloured red as the wording of the lease indicates it should. It is not subscribed as relative to the lease by either the landlord or the tenant. The pursuer's witnesses could not vouch for what was in fact agreed in 1995. None of them had any knowledge of the transaction at the time. Their evidence was limited to what they assumed would have been prepared in 1995 and what they understood would have been the area leased. The basis of their understanding remained unclear and at best limited: they were

unaware of any grant of planning permission in 1993, the extent of that grant or the grant of any lease prior to 1995.

[19] A clearer picture emerges from a combination of the defenders' evidence and the pre-1995 documentation. The first, second and seventh defender each described having always occupied the entire area shown in red and shaded yellow, indeed initially beyond that area, before Mr Johnston moved into the area to the north. They stated that the family had always been entitled to occupy the entire area for the last 40 years. They gave that evidence in an entirely straightforward manner. They were consistent with each other as well as the evidence of their neighbour Mr Troy Johnston. I had no difficulty accepting their accounts.

[20] The pre-1995 documentation supports their evidence. The sketch plan confirms that planning permission in 1993 extended to the whole area. Although it is a rough plan, and it is not to scale, it indicates that the area of grant was for an area bound to the north by the Johnston's yard and to the east by Water Row. I accept it is not clear whether the area marked exit and leading to Water Row is included. However, the description in the report dated 3 November 1993 indicates that the site was bound on the east by Water Row which suggests to me that the exit onto Water Row was included. That report also indicates that there was a lease operating on a month-to-month basis over that same area at that time.

[21] Whilst the pursuer's witnesses stated the defenders began by occupying a small area and over time encroached on the larger area, that is contradicted by the defenders themselves and by the pre-1995 documentation. The documentation indicates there was a lease in 1987 with subsequent planning permission in 1993 and lease running month-to-month which extended over the entire site. There is no explanation why the area of let would have been reduced in 1995. There is no explanation why the area shown in the sketch

plan and which appears to be the subject of planning permission and continuing lease would be significantly reduced within a year or two without the defenders being aware of that. The lease in 1995 specifies 15 caravans, an increase from 10 caravans mentioned in the 1988 letter, which although numbers might fluctuate, is on the face of it inconsistent with any intention in 1995 to reduce the area.

[22] The seventh defender in submission made a further point in support of the defenders being entitled to occupy the whole area. The report on the first defender's application for planning permission dated 27 October 1993 notes that a site licence was granted to the first defender in 1989 in terms of the Caravan Sites and Control of Development Act 1960 and the ground leased on a month-to-month basis. Under section 1 of that Act, an occupier of land requires a licence to use the land as a caravan site but does not require one if the land is less than 4000 square yards. The parties agreed measurements of the site taken by Mr Allmond, surveyor: the area outlined on the summons plan in red is 1507m sq or 1802 square yards and the area outlined in red and shaded yellow, currently occupied by the defenders, is 3697m sq or 4421 square yards. For the first defender to require a licence in 1989 he must at that time have occupied over 4000 sq yards, consistent with him having occupied the entire area, rather than the area outlined in red only.

[23] I am not persuaded that the area identified by the broken line on the map attached to the lease was the area leased in 1995. I find it much more probable that the area leased in 1995 was the same area that had been granted planning permission previously and been leased previously. I find that under the 1995 lease the first defender has a right to occupy the larger area as shown delineated in red and shaded in yellow on the plan attached to the summons.

**The applicable legislation**

[24] The parties disagreed as to the legislative framework which applied to the lease. The pursuer submitted that neither the Housing (Scotland) Act 2001 nor the Mobile Homes Act 1983 applied. The first and seventh defenders submitted that the 2001 Act applied and if not, as a fallback position, the 1983 Act applied and provides the defenders with protection from eviction. The defenders argued that if the 2001 Act did not apply, it should be read down to apply in order to be compatible with Article 8 and 14 of the European Convention on Human Rights and the requirements of the United Nations Convention on the Rights of the Child. Failing that, the court should make a declaration of incompatibility or a strike down declarator. The pursuer and the Lord Advocate argued there was no such incompatibility.

**The Mobile Homes Act 1983: issue 8**

[25] Although it is the defenders' fallback position, I begin with consideration of the Mobile Homes Act 1983 since, if the defenders are correct that it is applicable, it impacts other issues. The pursuer submitted that the 1983 Act is not applicable since the 1995 lease is not an agreement which entitled the first defender to station a mobile home on a protected site as defined by the Act. In particular, the first defender's chalet is not a mobile home as defined by the Act.

[26] The statutory scheme on licensing, and security of tenure for owner occupiers of permanent residential mobile homes is found in the Caravan Sites and Control of Development Act 1960, the Caravan Sites Act 1968 and the Mobile Homes Act 1983. That scheme has been amended by the Housing (Scotland) Act 2006 and the Mobile Homes Act (1983)(Amendment of Schedule 1) (Scotland) Order 2013.

[27] The Mobile Homes Act 1983 grants security of tenure to an occupier of a mobile home by implying terms into the agreement governing their right to station their home on land. The implied terms apply notwithstanding any express term in the agreement (section 2(1)) and cannot be derogated from. In broad terms these mirror protections available to occupiers under other forms of residential tenancy, for example by limiting the grounds for eviction and eviction being subject to a sheriff determining it is reasonable. The protections include the right to undisturbed possession of the mobile home and the pitch, during the continuance of the agreement (paragraph 11, Schedule 1, Part I); the right to remain on the site subsists until the occupier gives 4 weeks' notice in writing, planning permission for the site's use as a caravan site expires or the owner's interest in the land expires (paragraphs 2 and 3) or the owner obtains a court order from the sheriff court. A court order will be granted in limited circumstances: where the court is satisfied that there has been a breach of one of the terms of the agreement and the occupier had not complied with a notice requiring remedy of the breach within a reasonable time (paragraph 4); the occupier is not occupying the mobile home as the occupier's only or main residence (paragraph 5); or having regard to its condition, the mobile home is having a detrimental effect on the amenity of the site. In addition there is a requirement that any such order be reasonable (paragraphs 4, 5 and 6).

[28] Section 1 provides:

> "(1) This Act applies to any agreement under which a person ('the occupier') is entitled—
> (a) to station a mobile home on land forming part of a protected site; and
> (b) to occupy the mobile home as the person's only or main residence."

The parties ultimately agreed that the site is a protected site. Section 5(1) defines "mobile home" as having the same meaning as "caravan" in Part I of the 1960 Act. Section 29(1) of the 1960 Act defines "caravan" for the purpose of Part I as:

> "'*caravan*' means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted, but does not include—
>
> (a) any railway rolling stock which is for the time being on rails forming part of a railway system, or
>
> (b) any tent;"

The definition was expanded by section 13 of the 1968 Act which provides:

> "13 – Twin-unit caravans
>
> (1) A structure designed or adapted for human habitation which –
>
> (a) is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices;
>
> (b) is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer),
>
> shall not be treated as not being (or as not having been) a caravan within the meaning of Part I of the Caravan Sites and Control of Development Act 1960 by reason only that it cannot lawfully be so moved on a highway road when assembled."

The pursuer argues that the first defender's chalet does not meet the terms of the definition of caravan because it is not capable of being moved. The pursuer relied on the first defender's evidence that the chalets are double chalets bolted together where they join. To move them they would have to be emptied and unbolted so that they could be transported in two separate parts, which would be a massive job. In cross-examination, he confirmed that his chalet was manufactured in two pieces, transported on two separate vehicles, and assembled when it arrived at the yard. The seventh defender stated that her chalet could not be moved as a result of damage from construction around the site when new housing was being developed. The vibration from the drilling weakened the support for her chalet

and during the night it tipped over. Repairs have made her chalet stable for living in, but the damage caused water to leak in and create damp. She stated it would not survive being moved because of its condition.

[29] The pursuer submitted that to qualify as a caravan it must be a "structure" which is "capable of being moved as a single unit" and not one "which has been dismantled before loading has taken place" (*Carter* v *Secretary of State for the Environment* [1994] 1 WLR 1212, per Sir Stephen Brown P at p 1219B, Russell LJ at 1219D-E, Roch LJ at 1220B). The pursuer argued a structure of the same nature as that described by the first defender was held not to fall within the statutory definition: *Bury Metropolitan Borough Council* v *Secretary of State for Communities and Local Government* [2011] EWHC 2192 (Admin) per HHJ Waksman QC at paragraphs 2, 23 - 27. Following the approach of the Court of Appeal in *Carter*, as applied in *Bury Council*, the chalet is not a structure capable of being moved and thus is not within the definition in section 29. Accordingly, the 1983 Act has no application. The pursuer accepted that a "caravan" which is too large to be transported lawfully on the road may still fall within the definition, provided that it is, when assembled, "physically capable of being moved by road" under section 13(1). However, there is no evidence to suggest that this statutory exception would apply in the present case, with the evidence on transportation of the chalets being to the effect that separation of the two parts first would be necessary.

[30] Where moving the structure would be likely to cause damage to it, it will not constitute a "structure capable of being moved" for the purposes of the section (*Oades and Oades* v *Eke* [2004] RA 161 at paragraphs 26 - 27). Since the defenders do not rely upon a lease with any party other than the first defender, the characteristics of the other defenders' chalets are of limited relevance. The evidence in relation to the seventh defender's chalet

was that it could not be moved while maintaining its structural integrity. None of the chalets would fall within the statutory definition.

[31] The pursuer's submissions thus focus on the nature of the first defender's chalet and whether it falls within the statutory definition of "mobile home" for the purposes of the 1983 Act. Similar arguments were made before Carnwarth LJ in *Howard* v *Charlton* [2003] 1 P & CR 21. In that case, the respondent occupied a mobile home on a protected site, having taken over the agreement of her predecessor. Sometime later she added a porch extension onto her mobile home. The question raised was whether it remained a mobile home within the meaning of the 1983 Act following that addition. At first instance the judge concluded that since the porch could be unbolted, it was not an essential part of the mobile home, and her mobile home remained within the protection of the Act. On appeal Carnwath LJ held that the judge reached the right conclusion but for the wrong reasons. Submissions, very similar to the pursuer's submissions in this case, were made about the proper interpretation of the definition of caravan in the 1960 and 1968 Acts, and in particular the relevance of being able to move the structure, either as a single unit or in parts, on the highway. However, Carnwath LJ held that the question was not whether the structure remained a mobile home, but whether the agreement to station a mobile home had been validly terminated in accordance with its terms. Carnwath LJ observed that something may be a "caravan" for the purposes of the 1983 Act even though it bears no relation to what might be regarded as a caravan in ordinary language. In particular it does not need to have wheels and it is enough that it can be transported on a trailer. He further observed that:

> "However, it is also important to remember that the Act applies, not to the mobile home as such, but to any agreement under which the occupier is 'entitled to station a mobile home' on relevant land. Thus, the criterion for application of the Act is not whether the structure is a mobile home, but whether the agreement entitles the occupier to station a mobile home. One can no doubt envisage circumstances in

> which the structure on the site is so far from that contemplated by the original agreement, that the agreement is to be regarded as having been impliedly revoked, or in any event is not to be taken as applying to the structure on the site. However, that is far from this case. The agreement gave the right to station a particular form of caravan, as described in the Schedule. That caravan is still on site. The extension is entirely within the scope of the matters contemplated by the agreement." (p351, paragraph 23)

He noted that the definition of mobile home can arise in different contexts, either in the public context as a matter of planning law for example, or as an issue between owner and occupier under the 1983 Act. Under the 1983 Act, the wider public interest is not directly engaged. Once it is appreciated that the issue is one to be approached in most cases in accordance with the terms of the agreement, it is unlikely that the precise definition of mobile home will be determinative.

[32] I respectfully agree with those observations. The principal issue is whether the 1995 lease is an agreement under which the first defender is "entitled to station a mobile home". The 1995 lease makes it plain that it is a let of ground to be used as a site for the parking of caravans. When the 1995 lease was entered into the first defender already had his current chalet stationed on the site. The parties agreed in 1995 that the first defender could station caravans on the site, in the knowledge of the chalets the first defender and others had already stationed on site. To argue now, over 30 years later, that the chalets are not caravans and therefore that the first defender has none of the protections of the legislation seems to fly in the face of what the parties agreed in 1995.

[33] In any event, the definition of caravan under section 29 does not exclude chalets. It is defined as "any structure" designed or adapted for human habitation which is "capable of being moved from one place to another". It has been accepted that a chalet which can be moved is a "caravan" in the statutory sense, albeit not in the ordinary senses of the word (*Wyre Forest District Council Respondents* v *Secretary of State for the Environment and*

*Another* [1990] 2 AC 357 at p 364B-C). Section 13 makes it clear that the unit might come in two pieces designed to be bolted together and, in such circumstances, would still be considered to be a caravan.

[34] The pursuer accepted that the test in section 29 is to be applied at the commencement of the lease. The first defender's evidence was that the chalet had been moved onto the site in 1986, having arrived in two pieces and been bolted together. Unsurprisingly he gave evidence that if it were to be moved again it would need to be unbolted to be transported in two parts. Both the second and seventh defender stated that the chalets are moveable. The chalets were physically capable of being moved on to the site prior to the start of the lease when they arrived in two pieces unbolted. Whilst many mobile homes like chalets of this nature may not be easily moved, they are clearly capable of being so moved.

[35] I did not find assistance from the other authorities cited by the pursuer which arise in the planning or rating context. In *Carter* v *Secretary of State for the Environment* the issue was whether the Secretary of State had been right to confirm a planning enforcement notice, on the basis that the particular structure on the site was not a ''caravan'' for those purposes. The applicants replaced the caravan with a structure which consisted of four pre-fabricated sections that were delivered to the site by lorry. In *Carter* the structure comprised of four separate sections and not two sections as envisaged in section 13. The court considered that it would strain the language of the section to an unacceptable degree to include a structure which is prefabricated in as many as four separate sections (p 1819G). The case is distinguishable since there is no suggestion in the present case that the chalets consist of four separate sections.

[36] *Oades and Oades* v *Eke* is a rating decision about whether 123 chalets at a holiday park should be considered together as a single rating assessment or as individual assessments.

The tribunal held that the chalets were not caravans for the purpose of the relevant regulations because they were not capable of being moved. That was largely down to their flimsy construction which was considered to make it difficult to lift, drag or move them once installed (paragraph 25). There is no evidence in the present case that the first defender's chalet is incapable of being moved because of such difficulties.

[37] *Bury MBC* v *Secretary of State for Communities* is another planning case which concerned a structure that looked like a one-story wooden house but which it was argued was a caravan as a matter of law. It arrived in two parts on a lorry and trailer and was subsequently bolted together. It was contended it constituted a caravan within the meaning of section 13 of the 1968 Act. The inspector initially held it was a caravan but on appeal it was common ground that there was no evidence to conclude that the structure when assembled was physically capable of being moved by road from one place to another. The conclusion is limited to the error of the inspector having reached a conclusion without evidence in support of it.

[38] Although it is only the first defender that has a lease for the purposes of the 1983 Act, I do not consider that the fact the seventh defender's chalet had suffered damage, which made it difficult to move without further damage, means it is not capable of being moved. I agree with the submission for the seventh defender, the damage cannot change its essential and original nature nor that it had been moved on to the site by the start of the lease. I agree with the view expressed, *obiter* by Jack J in *Brightlingsea Haven Limited* v *Morris* [2008] EWHC 1928 (QB):

> "I do not have to consider whether a lodge which becomes frail through age and immovable for that reason may cease to be a 'caravan' because of it. Common sense suggests not. The answer may well be in the phrase in s.13(1) 'when assembled'. If it can be moved when assembled, when first assembled, that is sufficient. If that is right, this is a further reason for construing the section as I have."

[39] I find the 1995 lease is an agreement under the 1983 Act allowing the first defender to station a mobile home on a protected site and that the 1983 Act is applicable to that agreement. Until the agreement is terminated, in accordance with the Act, it continues on a month-to-month basis.

[40] The pursuer further argued that even if the first defender has an agreement to which the 1983 Act applies, none of the other defenders have such an agreement. The protections of the 1983 Act have been previously held to apply to travelling showpeople living in caravans on a site. In *West Lothian DC* v *Morrison* 1987 SLT 361, Lord Justice Clerk Ross held that the Act applied to a family of travelling showmen who had occupied a showground as tenants for some 50 years and who entered into a lease for 1 year with the local authority. The court recognised at p 1032 that the first defender may at the same time be lessee in a question with the pursuer and landlord in a question with subtenants. Although the 1995 lease prohibits sub-letting without the permission of the owner, the parties accept that the pursuer knew the first defender was sub-letting to some of the other defenders as the pursuer agreed to pay housing benefit in respect of their tenancies.

[41] It was implicit in the evidence of the first defender that he allowed and therefore agreed that the other defenders could stay on the site and station their chalets on the site. There is no requirement for any agreement under the 1983 Act to be in writing or for rent to be paid. The pursuer suggested that the evidence showed that the seventh defender obtained her chalet some 15 years ago by permission of the first defender but only used it as her main residence in the last 5 years. I find that the evidence from the seventh defender was that she lived in it for more than 5 years as her main residence but, in any event, having

lived in it for at least 5 years, that is enough to establish it is her main residence and for the 1983 Act to apply.

[42] The significance of the 1983 Act applying is that the pursuer has not sought to terminate the agreement in accordance with its provisions. Unlimited planning permission having previously been granted, the pursuer would need to obtain an order from the sheriff court on one of the grounds provided for in the Act. The order could only be granted on the sheriff being satisfied it is reasonable to do so (although I note that under the Housing (Scotland) Act 2025 this will, in the future, be a matter for the First-tier Tribunal for Scotland). The pursuer is not able to obtain such an order in these proceedings in the Court of Session.

**The first defender's sequestrations: issue 13**

[43] The pursuer further argues that irrespective of any statutory protections whether under the 1983 Act or the Housing (Scotland) Act 2001, the first defender's sequestrations terminated the lease and ended any right of the first defender to occupy the site. This issue was not identified by the parties in the note of issues and there is no plea-in-law to support such a proposition. Nonetheless, I consider the arguments made.

[44] The parties agreed that the first defender was initially sequestrated on or around 8 June 2009. His trustee in bankruptcy did not adopt his interest in the 1995 lease. Following the 2009 sequestration, housing benefit payments continued to be accepted by the pursuer in respect of the first defender's rent liability to the pursuer for occupancy of the site. The first defender was sequestrated for a second time on 2 August 2016. The Accountant in Bankruptcy did not seek to adopt any rights relating to the lease of the site.

[45] The pursuer submitted that the effect of an award of sequestration is to vest the entirety of the first defender's estate in the trustee in sequestration: section 31(1) of the Bankruptcy (Scotland) Act 1985. Although that legislation has since been repealed it was in force at the material time. A Scottish secure tenancy created under section 11 of the Housing (Scotland) Act 2001 is excluded from general vesting in the trustee (section 31(9)(c) of the 1985 Act). However, since the first defender did not have a Scottish secure tenancy, the exemption from vesting in ss (9) is inapplicable.

[46] The pursuer argues that as the trustee in sequestration did not adopt the first defender's interest, the first defender's interest in the 1995 lease was terminated, as with any contract which a trustee chooses not to adopt (*Anderson* v *Hamilton and Co* (1875) 2 R 355 per Lord Neaves at p 363 - 4, Lord Ormidale at p 365, Lord Gifford at p 367; Rankine, *The Law of Leases in Scotland* (3rd edition, 1916), p 698 - 700; Rennie (ed), *Leases* (2015), paragraph 20.18).

[47] It was accepted that the first defender continued to make rent payments after 2009, but these payments ceased on 9 July 2016. Insofar as any rights were created by the acceptance of rent between 2009 and 2016, therefore, these rights were brought to an end by the first defender's second sequestration on 2 August 2016. It was submitted that the first defender's evidence that rent was paid in cash to the council after 2009 was inconsistent with the evidence of council employee, Dorothy Coubrough, and ought to be rejected. His evidence that he offered to pay rent, which was refused, was not a basis for concluding that the lease has continued.

[48] I accept that by virtue of section 31(1) the whole estate of the first defender vested in the trustee on sequestration. However, section 31(1) must be read subject to section 33 of the 1985 Act (limitations on vesting), and section 11(1)(c) of the Debt Arrangement and Attachment (Scotland) Act 2002. These provisions make it clear that a mobile home which is

the debtor's only or principal residence does not vest. The first defender's chalet was thus protected from the consequences of his sequestration although his interest in the lease of land was not. For reasons I explain below, I do not consider that the 2001 Act applies to the first defender's lease, and accordingly his tenancy is not protected from vesting under section 31(9)(c). If I am wrong about that, his tenancy is protected from vesting on sequestration and the pursuer's submission that sequestration ended the tenancy cannot succeed.

[49] Although I have concluded that the first defender's interest in the lease vested in the trustee, the pertinent question is whether the lease continued in effect after sequestration or, as the pursuer contends, was automatically terminated on sequestration. Bankruptcy of an individual tenant does not result in automatic termination of the lease though it might entitle a landlord to irritate (Rennie at p 4209; *Fraser* v *Robertson* 1881 8 R 347 at p 349; the same point was accepted in *Anderson* v *Hamilton and Co* where the question was whether the trustee had taken up the contract timeously). Once the trustee in bankruptcy is appointed, the trustee can either adopt or abandon the lease.

[50] In the present case, there is no evidence that the trustee abandoned or adopted the lease following the first defender's sequestrations. Nor is there any evidence that the first defender's sequestration resulted in irritancy of the lease. Under clause 16 of the lease the pursuer has an option, should the tenant be sequestrated at any time during the lease, to regard the let as terminated without notice. The pursuer did not offer to prove that it exercised that option at the time of either sequestration or subsequently and led no evidence that it did so.

[51] Rather than take steps to exercise that option and irritate the lease, the pursuer continued to accept rent (or at least housing benefit payments in lieu of rent) from the first

defender and others after the 2009 sequestration until 9 July 2016. The pursuer's continued acceptance of rent from the first defender, indicated that the lease continued. The pursuer waived any right it may have had to terminate the lease under clause 16 in those circumstances.

[52] There was some doubt in the evidence as to whether the first defender paid further rent or attempted to do so after the 2016 sequestration. The first defender stated that from when he first moved on to the site, he paid the rent in person to a council employee who came to the site. At some point they stopped attending the site though some of the rent was paid through housing benefit. Thereafter he tried to pay rent to the council including through lawyers, but they refused to take it. When they did take it, they sent it back abruptly and told him not to send it anymore. That had happened in the last 5 years. Ms Coubrough, accounts manager for the pursuer since 2015, gave evidence that the pursuer's records indicate the last payment of rent for the site was on 9 July 2016. She had no experience of rent being paid by an officer attending the site to take payment. In her experience, the pursuer does not accept payments in cash and payments are received online.

[53] I accept the evidence of Ms Coubrough, supported by the records, that payments at least since 2015 were made online rather than by cash and that the first defender has paid no rent since 9 July 2016. I also accept that the first defender tried to make payments of rent in the last 5 years to the Council, but these were either refused or initially accepted then returned to him. I take from this evidence that rent has not been paid since 9 July 2016 although the first defender has attempted to do so in the last 5 years.

[54] Ultimately, I do not consider anything turns on the fact that no rent has been paid since 9 July 2016, albeit that the first defender has attempted to do so. The pursuer made no attempt to terminate the lease in 2016 whether for non-payment of rent or for any other

reason. Sequestration of itself did not automatically terminate the lease. In the absence of any termination, it continued on a month-to-month basis. It was not until 9 October 2019 that the pursuer served a notice of removal on the first defender (dated 7 October 2019), over 3 years after the last sequestration and without reference to any exercise of the option to terminate under the lease. I have already held that the 1983 Act applied to the lease. The 1983 Act does not require payment of rent to be made for the statutory protections to apply. There having been no attempt by the pursuer in these proceedings to terminate in accordance with the statutory provisions, the lease continues on a month-to-month basis.

[55] I conclude that neither of the sequestrations terminated the lease. I find that the defenders continue to have a right to occupy the site. These findings on the 1983 Act and the effect of sequestration are sufficient to refuse the orders that the pursuer seeks and to grant decree of absolvitor.

**Further arguments: The Housing (Scotland) Act 2001 and its compatibility with the ECHR and UNCRC: issues 3 to 7**

[56] The defenders made further arguments: that sections 11 - 12 of the 2001 Act apply to the 1995 lease or that the court is obliged to read down these provisions to be compliant with the ECHR and UNCRC. It is not necessary for the purposes of my decision to decide these issues since I have already decided to refuse the orders sought on other grounds, but I address these arguments below acknowledging that this matter may proceed further.

***Does the first defender have a right to occupy the site pursuant to a tenancy under sections 11-12 of the Housing (Scotland) Act 2001?***

[57] The first defender submitted that, as a tenant under the 1995 lease, he has a Scottish secure tenancy by virtue of sections 11 - 12 of the 2001 Act. He further submitted that if he has no such right, sections 11 - 12 ought to be read down in terms of section 3 of the Human Rights Act 1998 to provide him with such a tenancy. If those sections cannot be read down, the court should grant a declaration of incompatibility in respect of those sections. The seventh defender submitted that those sections ought to be read down by the court in terms of section 24 of the United Nations Convention on the Rights of the Child (Incorporation)(Scotland) Act 2024. Again, if that was not possible, the court should grant a strike down declarator on the basis they cannot be read to be compatible with the UNCRC requirements. The seventh defender adopted the first defender's submissions.

[58] The first defender argued that the Housing (Scotland) Act 2001 introduced the Scottish secure tenancy as a new form of tenancy for local authorities in Scotland aiming to create a single, uniform regulatory framework across the social rented sector, ensuring tenants enjoyed a high level of basic rights, whoever their landlord is. The policy memorandum emphasised equal opportunities and aimed to benefit groups vulnerable to exclusion or discrimination, including those with a nomadic lifestyle. The consequence of the 2001 Act applying is that the pursuer must bring the tenancy to an end in accordance with section 12 of the Act. The notice of removal served on the first defender on 9 October 2019 does not comply with section 12.

[59] Under section 11, all existing local authority residential tenancies automatically converted to Scottish secure tenancies on 30 September 2002, unless specifically excluded under Schedule 2 of the 2001 Act (*Nisela* v *Glasgow CC* 2006 Hous LR 66). The only possible

argument against conversion in this case is that the tenancy did not involve a "house let as a separate dwelling" under section 11(1)(a). There was no substantial reason why such a narrow definition ought to be applied. The statutory definition of "house" in section 111 is broad and does not exclude other structures capable of forming permanent dwellings. In *Gordon* v *Kirkcaldy DC* 1990 SC 107 the Inner House held a static caravan should properly be regarded as a dwelling-house for the purpose of waste collection under section 124 of the Civic Government (Scotland) 1982. In *R* v *Rent Officer of the Nottingham Registration Area ex p Allen* (1986) 52 P & CR 41, at 44, the court held:

> "(w)here [the caravan] is rendered completely immobile, either by the removal of its wheels or by its being permanently blocked by some brick or concrete construction, then it is more likely to be regarded as a house in the same way as a bungalow or prefabricated dwelling would be …"

Interpreting "house" to include land on which a tenant may place a caravan, static caravan or chalet does not go against the grain of the legislation. It is a solution consistent with the aim of providing all tenants of social landlords with a uniform set of rights, and in particular, protection from eviction. The interpretation of "house" as meaning bricks and mortar is neither "clear express and intentional" and nor an "ingrained feature of the legislation" (*Smith* v *Lancashire Teaching Hospitals NHS Foundation Trust* [2018] QB 804 at paragraph 97 per Sir Terence Etherton MR).

[60] It was further argued that additional statutory indicators support this broader interpretation of "house". Housing benefit is payable to a local authority for a caravan situated on local authority land including in respect of the site on which it stands (Housing Benefit Regulations 2006, regulation 12). The pursuer's duties to house those who are made homeless under Part II of the Housing (Scotland) Act 1987 apply equally to people previously living in caravans. Under section 72 of the Local Government Finance Act 1992,

council tax is payable in relation to a "dwelling" which includes a caravan (as defined in Part I of the 1960 Act) where it is occupied as a person's sole or main residence.

[61] The pursuer and Lord Advocate submitted the first defender does not have a Scottish secure tenancy and there was no requirement to read down the provisions, make any declaration of incompatibility or strike down order since the provisions were compatible with the defenders' convention rights.

[62] I start by identifying the meaning borne by the words in section 11 in their particular context *(R(O)* v *Secretary of State for the Home Department*) [2023] AC 255 at paragraphs 28 - 33). Section 11(1) provides that a tenancy of a house is a Scottish secure tenancy if the house is let as a separate dwelling. Section 111 of the 2001 Act defines "house" as including:

> "(a) any part of a building, being a part which is occupied or intended to be occupied as a separate dwelling, and in particular includes a flat, and
> (b) any yard, garden, outhouses and pertinents belonging to the house or usually enjoyed with it"

[63] A "tenancy" for the purposes of the 2001 Act is defined at section 41 as: "an agreement under which a house is made available for human habitation, and 'lease' and related expressions are to be construed accordingly.".

[64] Under the 1995 lease the pursuer let to the first defender ground to be used by the first defender "for parking of showpeoples residential caravans". The lease was of ground and not a house or any part of a building. There was no evidence that the pursuer ever leased or made caravans available to the first defender. The 2001 Act requires there to be a building which the tenant leases. That is obvious not only from the reference to a "house" but the context of the Act as a whole. There are provisions for the landlord to repossess a house (section 18). The landlord has an obligation to "ensure that the house is, at the

commencement of the tenancy, wind and watertight and in all other respects reasonably fit for human habitation" (paragraph 1(a) of Schedule 4). That obligation makes sense in the context of a physical building but is meaningless if what is leased is a piece of land. Land cannot be made wind or watertight. Leases of buildings and bare leases of land are fundamentally different in nature. Grounds for recovery of possession will not be the same.

[65] The first defender's reference to case law in other statutory contexts is of no assistance. The reference to regulation 12 of the Housing Benefit Regulations 2006, only demonstrates that housing benefit may be payable in respect of periodical payments which a person is liable to make in respect of the site on which they have stationed their home or caravan. The reference to homelessness provision under Part II of the Housing (Scotland) Act 1987 demonstrates that a person will be provided with accommodation irrespective of whether they were previously leasing land owned by the local authority or a house. None of these statutory contexts indicate whether or not the first defender has a Scottish secure tenancy under the 2001 Act.

[66] I am also not persuaded by the first defender's arguments regarding section 11 of the 2001 Act. That section provided that all existing residential tenancies granted by local authorities were converted into Scottish secure tenancies unless exempted by Schedule 1 of the 2001 Act. In terms of section 11(1)(e) of the 2001 Act and the Housing (Scotland) Act 2001 (Scottish Secure Tenancy etc) Order 2002 (SSI 2002 No 318), the first defender did not have a tenancy that could be converted into a Scottish secure tenancy. In terms of those provisions any secure tenancy and any assured tenancy created before 30 September 2002 in which the pursuer was the landlord, became a Scottish secure tenancy with effect from that date. The defenders do not plead, nor have they proved, that they had either type of tenancy before that date. There was no conversion to a Scottish secure tenancy because the

1995 lease did not fall within the terms of the 2002 order. As a lease of ground, the 1995 lease does not qualify.

[67] Whilst the first defender relied on the case of *Nisala* v *Glasgow City Council* 2006 Hous LR 66, that did not concern the conversion by statute of pre-2002 tenancies, but rather whether a post-September 2002 tenancy was excluded by the Schedule from being a Scottish secure tenancy. Furthermore, paragraph 8 of Schedule 1 specifically excludes a let made in conjunction with a business, trade or professional purposes from the terms of the Act: the defenders' evidence throughout was that the site is used for carrying on repairing equipment in conjunction with their business as travelling showpeople.

[68] On a plain reading of sections 11 - 12 of the 2001 Act, I find that the Act does not apply to the first defender's lease of land.

***Should the court read down the 2001 Act?***

[69] The defenders argued that if the court is not satisfied that the 1995 lease is a Scottish secure tenancy under the 2001 Act, the court should read down sections 11 - 12 under section 3 of the Human Rights Act 1998 so that "house" includes caravans, static caravans and chalets and find that the first defender has a Scottish secure tenancy. This argument is made on the basis that sections 11 and 12 are incompatible with the first defender's rights under Article 8 and Article 14 of the ECHR.

[70] It was argued by the defenders that the construction of the 2001 Act which excluded from its provisions a lease of land on which caravans are situated, creates a difference of treatment between those local authority tenants who reside in houses and those who, by reason of their family and cultural origins, wish to live in travelling showpeople communities. The comparators are local authority tenants who to a significant degree share

similar financial circumstances to the first defender and his family. It was said that there is no objective and reasonable justification in the difference in treatment of the first defender and his family. The security of tenure for tenants created by the 2001 Act was intended to apply to a vast section of the population requiring affordable rental property provided by local authorities and housing associations. Excluding the defenders from the 2001 Act makes those provisions *prima facie* discriminatory without objective and reasonable justification.

[71] Under section 3(1) of the Human Rights Act 1998, all legislation must, so far as it is possible to do so, be read and given effect in a way which is compatible with convention rights. The approach that the court should take to a challenge to read down legislation was outlined by Lord Reed in *S* v *L* 2013 UKSC 30 at paragraphs 15 - 17. The interpretative duty only arises where reading and giving effect to the legislation according to ordinary principles, would result in a breach of the convention rights. The meaning imported by the application of section 3 must be compatible with the underlying thrust of the legislation being construed. Words must "go with the grain of the legislation". The meaning adopted must not be "inconsistent with a fundamental feature of the legislation" and the court cannot make decisions for which it is not equipped (*Ghaidan* v *Godin-Mendoza* [2004] 2 AC 557, paragraph 33). It is only if the breach of convention rights is not remediable through the use of section 3, that the court may have recourse to section 4 of the 1998 Act to make a declaration of incompatibility.

[72] Sections 24 and 25 of the 2024 Act are broadly analogous to sections 3 and 4 of the Human Rights Act 1998. I accept the Lord Advocate's submissions, that broadly the same approach ought to be taken by the court in respect of the compatibility of legislation with the UNCRC requirements as in cases concerning ECHR compatibility.

[73] Article 8 provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The defenders rely on Article 8 and their right to respect for their home. The right to respect for a person's private and family life is not absolute but is capable of justification on the grounds set out in Article 8(2). Any interference must be lawful, necessary in a democratic society and proportionate to a legitimate aim. The series of questions analysing the proportionality of an interference are set out in *Bank Mellat* v *HM Treasury (No 2*) [2014] AC 700 at paragraphs 70 - 76 per Lord Reed and involve asking the following questions: (1) is the objective pursued by the measure sufficiently important to justify the limitation of a protected right; (2) is the measure rationally connected to the objective; (3) are the means chosen no more than is necessary to accomplish the objective, and (4) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter (paragraph 74).

[74] Article 14 provides:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

[75] It is not necessary for there to be a violation of the substantive article relied upon for there to be a violation of Article 14. But Article 14 can only become engaged if there is some

sort of differential enjoyment of the substantive rights provided for in the ECHR. It is not a freestanding prohibition on discrimination.

[76] The initial question in an Article 14 case is whether any treatment is within the "ambit" of Article 8, the substantive right relied upon. The general approach thereafter is as set out in *Carson* v *United Kingdom* (2010) 51 EHRR 13 at paragraph 61. Only differences in treatment based on an identifiable characteristic or status are capable of amounting to discrimination within the meaning of Article 14. There must be a difference in the treatment of persons in analogous, or relevantly similar situations. Such a difference will be discriminatory if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

[77] In cases concerning matters of social and economic policy such as housing, the court ought generally to afford a broad margin of appreciation to the legislature (*R (RJM)* v *Secretary of State for Work and Pensions* [2009] 1 AC 311, at paragraphs 56 - 57; *R (SC and others)* v *Secretary of State for Work and Pensions and others* [2022] AC 223 at paragraph 115. That will be particularly so if any treatment is not based on a "suspect" ground such as on grounds of race or sex (*SC* at paragraph 115(1)).

[78] It is not in dispute that the proposed eviction of the first defender falls within the ambit of Article 8. However, there is nothing in sections 11 - 12 which requires the eviction of the defenders. I have already found that on an ordinary reading of sections 11 - 12 those sections do not apply to the defenders but that the defenders have the protections of the 1983 Act. When Parliament enacted the 2001 Act it must have done so in the knowledge that the 1983 Act existed (along with the 1960 and 1968 Acts) and that those with agreements to

station mobile homes on protected sites already had the protections provided by the mobile homes statutory scheme.

[79] The first defender's arguments focus on the differences in treatment between him and other tenants as a result of the defenders' status as travelling showpeople. I heard evidence (which I refer to further below) about the culture of travelling showpeople with shared customs, beliefs and traditions. As I explain later, I accept that the defenders are of a particular "social origin" or "other status" as members of a cultural group identifying as travelling showpeople. However, any difference in treatment brought about by sections 11 - 12 is not based on their status or to do with their membership of such a group. The defenders are treated differently from those that the 2001 Act applies to because they do not lease a house. They are in the same position as others who have agreements with a landowner to station mobile homes on protected sites and to occupy it as their only or main residence. They are in an entirely different position from individuals who rent houses from local authorities. The first defender owns his chalet and lets the ground only. He is not in a comparable situation to those who hold Scottish secure tenancies, who do not own the house but rent it from the local authority. Any difference in treatment between the first defender and those who have Scottish secure tenancies is because of that different factual starting point, rather than because of any status as a travelling showperson.

[80] Such a difference in treatment between those who lease land and those who lease houses is justified. In enacting the 2001 Act, distinct from the 1983 Act, the legislation pursued the legitimate aim of managing and balancing the different interests of landowners and tenants. The legislature is entitled to take the view that leases of buildings and leases of land are fundamentally different in nature. The rights, protections and obligations relating to those different kinds of leases will necessarily be fundamentally different. It is well

within the margin of appreciation afforded to a democratically elected legislature to have different strands of legislation dealing with those different situations. As mentioned above, the obligation on a landlord to make a house wind and watertight and reasonably fit for human habitation, makes no sense in the context of a lease of land. Grounds for recovery of possession will not be precisely the same for leases of houses and land. That reflects the fundamentally different nature of leasing all or part of a physical structure, a building, from a local authority as opposed to leasing a plot of land.

[81] As the Lord Advocate submitted, the defenders' argument at its highest is similar to a claim to have been indirectly discriminated against because travelling showpeople are less likely to have leases of houses than other people. However, that is something that arises as a consequence of being a travelling showperson. It does not establish that the legislature was making different provision because of their status as travelling showpeople. In any event, the 1983 Act provides a statutory protection for those who, like the defenders, choose to make mobile homes their main residence. The compatibility of the 1983 Act with the ECHR or UNCRC is not challenged. The 1983 Act includes protection from eviction including the protection that a sheriff must be satisfied that eviction would be reasonable.

[82] At one point in oral submission the first defender argued that the 2001 Act protections were to be preferred to or given priority to the 1983 Act protections. That argument was not supported by averments or in written submissions. For the avoidance of doubt, I do not consider that any such case was made out. The protections given in the implied terms in Part I, Schedule 1, to the 1983 Act are significant requiring eviction on limited grounds to be reasonable, as is required also by the 2001 Act. Any difference in protection between the two statutory regimes is of minimal import and justified by the distinct nature of the agreements which the legislation addresses.

[83] The seventh defender argued that sections 11 - 12 were incompatible with the UNCRC requirements. She averred that her rights under Article 8 of the ECHR must be considered through the prism of Article 3(1) of the UNCRC requirements (best interests of the child shall be a primary consideration). The seventh defender does not herself have any lease with the pursuer and it is difficult to accept that she is in an analogous situation to persons who do have leases. In any event these arguments face the same difficulties as arise under the 1998 Act. The 2001 Act does not compel the pursuer to evict the seventh defender. In any event, the legislation does not discriminate against her or any other defenders on grounds of their status. Any different treatment between people who have leases of land and leases of buildings pursues a legitimate aim and is proportionate to the aim sought to be achieved.

[84] The 2001 Act, read and given effect to according to ordinary principles of statutory interpretation, does not result in a violation of the defenders' convention rights or the UNCRC requirements founded on by the defenders. There is no need to resort to the interpretative provisions outlined in section 3 of the 1998 Act or section 24 of the 2024 Act, let alone consider the powers granted to the court under section 4 and section 25 respectively.

**Further arguments: compatibility of removal with the ECHR: issue 11(b)**

[85] The defenders made further arguments independently of the 1983 Act or the 2001 Act, that any removal of the defenders by the pursuer, or by order of the court, would breach the defenders' rights under the ECHR or UNCRC**.** I have already decided removal is not in accordance with law as it is not in accordance with the 1983 Act. It is therefore not necessary for me to decide these further issues for the purpose of my decision, but I do so for

completeness. My views on whether removal would breach the defenders' convention rights are given on the assumption (contrary to what I have found) that the defenders have no right or title to occupy the site.

***Article 8 and 14 of the ECHR***

[86] It is agreed that eviction is capable of constituting an interference with respect for a person's private life. In *Kay* v *United Kingdom* [2012] 54 EHRR 30, the European Court of Human Rights held that the requirement in Article 8(2) that interference with a person's right to respect for their home must be "necessary in a democratic society" raised a question of procedure as well as one of substance. In principle, any person at risk of losing their home should be able to have the proportionality of their eviction determined by an independent tribunal in light of the relevant principles under Article 8, even though, under domestic law, their right to occupation has come to an end (at paragraphs 67 - 68; *Buckley* v *United Kingdom* (1997) 23 EHRR 101, at paragraphs 63 and 65).

[87] In *Manchester City Council* v *Pinnock* [2011] 2 AC 104, the UK Supreme Court held that the conclusion that Article 8 might found a defence to eviction proceedings by a public authority would not affect cases in which the reasonableness of granting an order has to be established. The court explained at paragraphs 55 – 56 that in such cases, any factor which has to be taken into account, or any dispute of fact which has to be resolved for the purpose of assessing proportionality under Article 8(2), would have to be taken into account or resolved for the purpose of assessing reasonableness under the relevant housing legislation. It therefore seems highly unlikely, as a practical matter, that it could be reasonable for a court to make an order for possession in circumstances in which it would be disproportionate to do so under Article 8. At paragraph 57 the court explained that the

implications of Article 8 are much more significant where a local authority is seeking possession of a person's home in circumstances in which domestic law imposes no requirement of reasonableness and gives an unqualified right to an order for possession. In such a case the court's obligation under Article 8(2), to consider the proportionality of making the order sought, does represent a potential new obstacle to the making of an order for possession.

[88] At this stage I am assuming that neither the 1983 Act nor the 2001 Act apply to the defenders so that the reasonableness of removal will not be considered by the court under that legislation. In *Pinnock,* after consideration of previous authorities, the Supreme Court held that to be compatible with Article 8, where a court is being asked to make an order for possession of a person's home by a local authority, the court must have the power to assess the proportionality of making the order, and in making the order, to resolve any dispute of fact. The critical passages of the court's judgment are at paragraphs 52 - 54. The court rejected the proposition that it would only be in "very highly exceptional cases" that it would be appropriate for the court to consider a proportionality argument, making the point that such a conclusion is "both unsafe and unhelpful". It would be unhelpful because exceptionality is an outcome and not a guide. It would be unsafe because there may be more cases than the court supposed where Article 8 could be invoked (paragraph 51). However, the court went on to consider a different approach to proportionality for such cases:

> "52 . We would prefer to express the position slightly differently. The question is always whether the eviction is a proportionate means of achieving a legitimate aim. Where a person has no right in domestic law to remain in occupation of his home, the proportionality of making an order for possession at the suit of the local authority will be supported not merely by the fact that it would serve to vindicate the authority's ownership rights. It will also, at least normally, be supported by the fact that it would enable the authority to comply with its duties in relation to the

distribution and management of its housing stock, including, for example, the fair allocation of its housing, the redevelopment of the site, the refurbishing of substandard accommodation, the need to move people who are in accommodation that now exceeds their needs, and the need to move vulnerable people into sheltered or warden-assisted housing. Furthermore, in many cases (such as this appeal) other cogent reasons, such as the need to remove a source of nuisance to neighbours, may support the proportionality of dispossessing the occupiers.

53. In this connection, it is right to refer to a point raised by the Secretary of State. He submitted that a local authority's aim in wanting possession should be a given, which does not have to be explained or justified in court, so that the court will only be concerned with the occupiers' personal circumstances. **In our view, there is indeed force in the point, which finds support in Lord Bingham's comment in Kay v Lambeth London Borough Council [2006] 2 AC 465, 491, para 29, that to require the local authority routinely, from the outset, to plead and prove that the possession order sought is justified would, in the overwhelming majority of cases, be burdensome and futile. In other words, the fact that the authority is entitled to possession and should, in the absence of cogent evidence to the contrary, be assumed to be acting in accordance with its duties, will be a strong factor in support of the proportionality of making an order for possession**. But, in a particular case, the authority may have what it believes to be particularly strong or unusual reasons for wanting possession - for example, that the property is the only occupied part of a site intended for immediate development for community housing. The authority could rely on that factor, but would have to plead it and adduce evidence to support it.

54. Unencumbered property rights, even where they are enjoyed by a public body such as a local authority, are of real weight when it comes to proportionality. So, too, is the right - indeed the obligation - of a local authority to decide who should occupy its residential property. As Lord Bingham said in Harrow London Borough Council v Qazi [2004] 1 AC 983, 997, para 25:

> 'the administration of public housing under various statutory schemes is entrusted to local housing authorities. It is not for the court to second-guess allocation decisions. The Strasbourg authorities have adopted a very pragmatic and realistic approach to the issue of justification.'

Therefore, in virtually every case where a residential occupier has no contractual or statutory protection, and the local authority is entitled to possession as a matter of domestic law, there will be a very strong case for saying that making an order for possession would be proportionate. However, in some cases there may be factors which would tell the other way." (emphasis added)

Importantly therefore in *Pinnock* the court rejected the structured approach to proportionality (set out in *Bank Mellat* v *HM Treasury (No 2*) above) in the context of eviction

proceedings where Article 8 alone is relied on. It identified the twin aims of (i) vindicating the local authority's property rights and (ii) enabling the authority to comply with its statutory duties in the allocation and management of its housing stock, as strong factors in support of the proportionality of making an order for repossession. Given that the twin aims amount to a very strong case for possession, the court would only be considering "factors which would tell the other way".

[89] That approach was subsequently confirmed by the Supreme Court in *Aster Communities Ltd* v *Akerman-Livingstone* [2015] UKSC 15, [2015] AC 1399. At paragraph 34, Baroness Hale under reference to *Pinnock* and *Hounslow London Borough Council v Powell* [2011] 2 AC 186, stated that in possession actions by social landlords against tenants who otherwise have no right to remain in the property, the twin aims are entitled to weigh heavily in a proportionality exercise. Baroness Hale referred earlier at paragraph 29 to the observation by Lord Hope in *Powell* that "It is against those aims, which should always be taken for granted, that the court must weigh up any factual objections that may be raised by a defendant in defence and what she has to say about her personal circumstances" (paragraph 41). Under reference to paragraph 35 of Lord Hope's judgment Baroness Hale observed that: "In the great majority of cases, the court is simply not equipped to judge the weight of an individual's right to respect for her home against the weight of the interests of the whole community for whom the authority has to manage its limited housing resources."

[90] However as explained at paragraph 31 in *Aster Communities Ltd* v *Akerman-Livingstone,* the Court accepted that the structured approach to proportionality is appropriate where an allegation of discrimination is relied upon (Baroness Hale, paragraphs 31 and 34). Thus in cases where discrimination is relied upon, it will be relevant to ask whether there is any lesser measure which might achieve the landlord's aims. A

balance will require to be struck between the seriousness of the impact on the tenant, and the importance of the landlord's aims.

[91] As explained above, I reject any argument that the defenders have been discriminated against on grounds of their status. The pursuer does not seek to remove the defenders because they are travelling showpeople. The pursuer seeks to remove the defenders to vindicate its property rights, to provide new housing and for regeneration of the area. Since I do not consider the defenders to have been the victim of discrimination, I consider the breach of Article 8 alone under the non-structured approach to proportionality in *Pinnock.*

[92] The twin aims of the authority are to (1) vindicate its rights of ownership and (2) to comply with its public duties in regenerating the area of Govan for the purposes of providing much needed housing stock. Both are of real weight and will of themselves amount to a very strong case for concluding that an order for possession would be proportionate and therefore compliant with Article 8.

[93] The defenders relied on several factors as pointing the other way. It was submitted that the pursuer had sought to justify its removal of the defenders after the decision had already been taken to remove them from the site. The prior decision was based on an initial need for commercial space which was no longer being pursued. The defenders led evidence from Mr Williamson, architect, who explained other options which would allow the site to be retained without losing any significant amount of housing. There is a subway running beneath the site which makes it unsuitable to build on and the current plan is to use much of the site for car parking or open space. The current masterplan for phase 2 does not have detailed planning permission and it would be possible to make adjustments to

accommodate retention of the defenders' site. Criticism was also made of the consultation process which it was said was not adequate.

[94] Whilst I allowed evidence from Mr Williamson to be led I did so under reservation of its competency and relevancy. In light of *Pinnock,* I have concluded his evidence about options to redevelop the area whilst retaining the site is not relevant. It is not for the court in proceedings for eviction to explore other possible options for regenerating the area, or, as it was put in *Pinnock,* to second guess the authority's decisions. Further, I was not persuaded that the alternatives put forward by Mr Williamson were consistent with the principles of the Masterplan. In any event, irrespective of that view, engaging in such an enquiry could lead to protracted and extensive proof as well as an opening up of the planning considerations. Decisions about the regeneration of the area is entrusted to the local authority. The court is not equipped to reach those decisions and it would be inappropriate for it to usurp the authority's role. It is not for the court in proceedings for removal to subject the planning authority's decision for the regeneration of Govan to such scrutiny. Rights to challenge those decisions at the relevant time were available under the relevant planning legislation or by judicial review. For the same reasons, the defenders' criticism of the pursuer's consultation process prior to finalising the Masterplan are not relevant to these proceedings.

[95] The other objections raised by the defenders included the fact that they faced constant uncertainty over their future, not knowing where they would be moved to next. It was submitted that there is a community interest in retaining the site as a showpersons' yard as part of local cultural heritage. Although the pursuer offered alternative sites these do not provide adequate space for a workshop or for equipment for show related vehicles. Ejection will render the family homeless and without somewhere to store their equipment and to

live. While they can seek homeless accommodation, that would not allow them to live in accordance with their ethnic and cultural heritage. Although the pursuer is likely to do their best to rehouse the defenders, there is a housing crisis, and their resources are under considerable pressure. Temporary accommodation would mean their possessions would go into storage. The impact on Amy is severe. Although child's rights and wellbeing impact assessments had been carried out, that exercise was of a general and unspecific nature and proceeded on the assumption she would have to leave.

[96] I am not persuaded that these facts and circumstances make what is a very strong case for removal based on the twin legitimate aims unlawful. The pursuer is proposing to remove the defenders on the basis they have no right to occupy the land and currently have no security of tenure. As explained in the evidence from Mr McEwan and Mr Burrows, which I accept, the pursuer has offered four alternative sites with lawful occupancy to the defenders. Most recently, in July 2024, the pursuer offered Manscroft Place, Carntyne as an alternative site. The pursuer secured £2.9 million of funding to acquire that land which it had purchased shortly before the start of the proof. The pursuer has stated that it will undertake the necessary remediation and redevelopment work, including connecting to utilities, which is estimated will take about 12 months. The total area at Manscroft Place is 3023m sq compared to the area the defenders currently occupy being 3697m sq (according to the evidence of Mr Allmond, surveyor). Whilst the alternative sites do not extend to the same footprint with equivalent space for storage as the defenders' existing site, the pursuer has selected sites with a broadly equivalent area and with the defenders' needs in mind. It is acknowledged that there is a housing crisis and the pursuer's resources are under considerable pressure. However, the pursuer has already taken significant steps to acquire an alternative site and undertake remedial works. The pursuer in evidence offered to store

the defenders' equipment should that be required if the defenders have to go into temporary accommodation whilst the work is being undertaken, although the evidence was that with adequate notice this would be less likely to occur. As explained below, child impact assessments have been carried out. It is in Amy's best interests to live with her extended family, which is being supported by the pursuer. Overall, the pursuer has taken various steps to accommodate the defenders' needs and to allow them to live lawfully as travelling showpeople. Removal is in pursuance of the twin legitimate aims and is not outweighed by the factors relied upon. The defenders' arguments amount to a plea to retain their home in a specific place which is not protected by Article 8.

**Further arguments: compatibility of removal with UNCRC requirements: issue 12**

[97] The seventh defender submitted that the court and the pursuer as public authorities are required under section 6 of the United Nations Convention on the Rights of the Child (Incorporation)(Scotland) Act 2024 to act in a manner compatible with the UNCRC requirements. To evict the seventh defender would be incompatible with those requirements. The children's commissioner lodged written submissions and made oral submissions to assist the court in addressing these issues.

**The 2024 Act**

[98] The 2024 Act incorporated into Scots law various provisions of the United Nations Convention on the Rights of the Child. It did so using the model contained in the Human Rights Act 1998. Various articles of the UNCRC (and two of its optional protocols), are set out in Schedule 1 to the Act and are made "UNCRC requirements" (the equivalent of convention rights under the HRA).

[99] Under section 6 it is unlawful for a public authority to act or fail to act, in connection with a relevant function, in a way which is incompatible with the UNCRC requirements. Section 6 provides:

> **"Acts of public authorities to be compatible with the UNCRC requirements**
>
> (1) It is unlawful (subject to subsection (4)) for a public authority to act, or fail to act, in connection with a relevant function in a way which is incompatible with the UNCRC requirements.
>
> (2) In subsection (1), a 'relevant function' means a function that—
> (a) it is within the legislative competence of the Scottish Parliament to confer on the authority, and
> (b) is conferred by—
> (i) an Act of the Scottish Parliament,
> (ii) a Scottish statutory instrument originally made wholly under a relevant enabling power,
> (iii) a provision in a Scottish statutory instrument originally made partly under a relevant enabling power, provided that the provision itself was either—
> (A) originally made under the relevant enabling power, or
> (B) inserted into the instrument by an Act of the Scottish Parliament or subordinate legislation made under a relevant enabling power, or
> (iv) a rule of law not created by an enactment.
>
> (3) In subsection (2), 'relevant enabling power' means a power to make subordinate legislation conferred by a provision in an enactment of a kind mentioned in that subsection, unless the provision was inserted by an enactment of a kind that is not mentioned in that subsection.
>
> (4) But subsection (1) does not make unlawful doing or failing to do something if the authority was required or entitled to act in that way by words that—
> (a) are not contained in an enactment of a kind mentioned in subsection (2)(b), or
> (b) are contained in such an enactment having been inserted into it by an enactment of a kind that is not mentioned in subsection (2)(b).
>
> (5) In this section, 'public authority'—
> (a) includes, in particular—
> (i) the Scottish Ministers,
> (ii) a court or tribunal,
> (iii) any person certain of whose functions are functions of a public nature (but see subsection (8)),

(b) does not include the Scottish Parliament or a person carrying out functions in connection with proceedings in the Scottish Parliament."

[100] The "relevant function" requirement distinguishes the 2024 Act from the HRA. It was added by amendment following a pre-assent reference of the Bill to the UK Supreme Court which asked the court for its opinion on whether the Bill was within legislative competence (*Re United Nations Convention on the Rights of the Child (Incorporation)(Scotland) Bill* 2022 SC (UKSC) 1). Under section 28(7) of the Scotland Act 1998, Parliament retained the right to make laws for Scotland ie in both reserved and devolved matters. However, under ss(8) it is recognised that Parliament will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament. The Supreme Court made it clear that the Scottish Parliament cannot make the effects of Acts of Parliament conditional on decisions taken by the Scottish Parliament, since to do so is to restrict Parliament's power to make laws for Scotland.

[101] Section 7 provides:

**"Proceedings for unlawful acts**

(1) A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) may—
(a) bring proceedings against the authority under this Act in any civil court or tribunal which has jurisdiction to grant the remedy sought, or
(b) rely on the UNCRC requirements concerned in any legal proceedings."

[102] Under section 7 a defender can rely on the UNCRC requirements as a defence in proceedings brought by a public authority provided that the claim is that the public authority has acted (or proposed to act) in a way which is made unlawful by section 6(1). That is what the seventh defender seeks to do in these proceedings.

[103] The parties disputed whether or not the pursuer and the court are acting in connection with a relevant function for the purposes of section 6. The pursuer submitted

that it had raised proceedings under section 189 of the Local Government (Scotland) Act 1973, a provision of an Act of Parliament and not an Act of the Scottish Parliament as required under section 6(2)(b)(i) of the 2024 Act. It would be beyond the legislative competence of the Scottish Parliament to purport to condition the use of the power in section 189 by reference to the UNCRC requirements.

[104] In relation to the court, the pursuer submitted its powers derived from the College of Justice Act 1532, a pre-Union Parliament of Scotland. The power to grant warrant for ejection as sought in the second and third conclusions derives from section 47A of the Court of Session Act 1988, an Act of Parliament. Whilst the first conclusion of the summons seeks declarator at common law, it cannot be that any remedy granted by the court in exercise of a common law power is a relevant function in terms of section 6(2)(b)(iv). The pursuer proposed a more nuanced approach was required. First it had to be ascertained whether the court is exercising a statutory power or function. If that power or function does not fall within section 6(2)(b), the Act is not engaged. If the court is not exercising a statutory power or function, the source of power has to be identified. If it falls within section 6(2)(b)(iv), then it may be exercising a relevant function. If, however, the party seeking the remedy is looking to vindicate a right or obligation conferred by legislation that falls outside the scope of section 6(2)(b), s6(2)(b)(iv) has to be read more narrowly so that the court is not exercising a relevant function. Otherwise, access to the remedy for a right or obligation conferred by an Act of Parliament would be contingent upon compliance with the 2024 Act which the Supreme Court held impermissible. Accordingly, the court may be exercising a relevant function where: (a) its power to grant a remedy falls within section 6(2)(b); and (b) the party seeking the remedy is not looking to vindicate a right or obligation conferred by legislation that falls outside the scope of section 6(2)(b).

[105] The pursuer's submissions promote a complex approach to section 6 which would not be readily understood or applicable in practice. Irrespective of that, they do not appear to be consistent with the purpose of the statutory provision. The High Court of Justiciary in *Lord Advocate's Reference* [2025] HCJC 2, 2025 SLT 101 held that the Lord Advocate, in deciding to prosecute a child was acting in connection with a relevant function under section 6. Although the Criminal Procedure (Scotland) Act 1995 is an Act of Parliament, she was not required by the 1995 Act to prosecute so that section 6(4) was not engaged. The court explains at paragraphs 43 to 46 that this interpretation is consistent with the context and the purpose of the statutory provision, that it is unlawful for a public authority to act in a way which is incompatible with the UNCRC requirements. Originally there was no reference to "relevant function" in the definition which provided simply that it was "unlawful for a public authority to act in a way which is incompatible with the UNCRC requirements". Reference to "relevant function" was only added to ensure that the provisions were within legislative competence. That appeared to be all that was intended by the "somewhat convoluted definition" of relevant function. On that basis there could be little question that the 2024 Act applied to the Lord Advocate in deciding whether to prosecute a child, other than where this was, for example, dictated by the terms of the 1995 Act.

[106] In broad terms the function that the pursuer is seeking to exercise in this action is as housing authority, seeking to obtain an order for removal of the defenders so that the pursuer can exercise its functions of regenerating land for the provision of housing stock in Govan. The pursuer is given powers to enable it to do so, but it is not required to raise proceedings or seek decree for removal by any Act of Parliament. Applying the approach of the High Court means it is not necessary to delve into the minutiae of the precise enabling

legislation or common law which underpinned different aspects of the pursuer's decision-making. If the pursuer's submissions are correct, virtually none of the functions of various statutory bodies such as local authorities, or Health Boards (which derive their existence from the National Health Service (Scotland) Act 1978) would be "relevant functions". That would deprive the 2024 Act of much of its meaningful content.

[107] There will often be numerous enabling provisions involved in the bringing of any proceedings. The pursuer's approach necessitates an analysis of the various statutory provisions or common law rules to decide which ones the authority is acting in connection with. That may involve deciding, if there is more than one, which one is the relevant one. The pursuer focuses on powers that are conferred by Acts of Parliament. But as the seventh defender and the commissioner's submissions illustrate, there are other candidates. The application for declarator is made at common law and potentially within paragraph (iv). Whilst not a focus of the written submission in this chapter, the pursuer avers on record (p 27) that it is section 20 of the Local Government in Scotland Act 2003, an Act of the Scottish Parliament, that provides it with the power under which it is developing Govan and in pursuance of which it seeks the defenders' removal from the site.

[108] Taking the same approach as the High Court, I find that in exercising its functions as a housing authority the pursuer is acting in connection with a relevant function. Determining that the removal of the defenders must be in accordance with the UNCRC requirements does not give rise to any of the legislative competence problems that were in issue before the UKSC in the *UNCRC reference*. If the court refuses to grant the decree that the pursuer seeks by applying the defence in section 7(1)(b), the effect on section 47A of the 1988 Act and section 189(1) of the 1973 Act does not amount to modification of section 28(7)

of the Scotland Act. The powers to raise proceedings and grant a warrant for ejection are untouched.

[109] I accept the seventh defender and commissioner's submissions that the court itself in deciding whether to grant common law declarator and order removal of the defenders is a public authority acting in connection with a relevant function in these proceedings, applying the approach of the High Court. In any event, as the seventh defender submitted, even if the 2024 Act did not apply, the UNCRC would be relevant, as would Article 8 of the ECHR. The child's rights under Article 8 would require to be looked at through the prism of Article 3(1) (*ZH (Tanzania)* v *Secretary of State for the Home Department* [2011] UKSC 4, [2011] 2 AC 166). The court is therefore required to act in a way which is compatible with the UNCRC requirements.

[110] Turning to the UNCRC requirements, the seventh defender listed various articles in her pleadings and in her note of issues: Article 2 (rights of the child as set out in the UNCRC are respected without discrimination of any kind); Article 3 (the bests interests of the child shall be a primary consideration); Article 8 (right of the child to preserve their identity, including nationality, name and family relations is respected without unlawful interference); Article 12 (where a child is capable of forming their own views, they have a right to express those views freely in respect of matters which affect them); Article 16 (no child shall be subjected to arbitrary or unlawful interference with their privacy, family, or home); Article 24 (children have the right to enjoyment of the highest attainable standard of health and facilities for the treatment of illness and should not be deprived of access to such healthcare services); Article 27 (right of every child to an adequate standard of living); Article 28 (right to education); Article 29 (child's education shall be directed to the development of the child's personality, talents and mental and physical abilities to their

fullest potential); and Article 30 (children shall not be denied the right to enjoy their own culture, in community with other members of their group).

[111] Article 3(1) provides:

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

[112] Section 4 of the 2024 Act gives a court determining a question in connection with the UNCRC requirements which has arisen in proceedings before it, the power to take into account various things mentioned in ss (2) so far as relevant to the interpretation of UNCRC requirements. SS (2) includes the General Comments of the United Nations Committee on the Rights of the Child. General Comment 14 explains the full application of the concept of the child's best interests. Article 12 provides for a child who is capable of forming her views the right to express those views freely in all matters affecting the child and an opportunity to be heard in judicial or administrative proceedings affecting the child either directly, or through a representative or an appropriate body.

[113] I recognise that the court and the pursuer must respect and implement the right of Amy to have her best interests assessed and taken as a primary consideration. Arrangements were made for Amy to speak to a psychologist, Dr Ashgar, to give her views and for an assessment of her best interests to be made. Dr Ashgar gave evidence and prepared a report in which she describes Amy, aged 5, as being currently settled and secure. Amy values being close to her wider family emotionally and wants to live with them. Her cultural identity is important to her as part of a group of travelling people, stability and security are beneficial to a child, and she should continue to be provided with a supportive and loving environment. She is very young and should be protected from any discussions and stress about the uncertainty around her future. She is enjoying school and comfortable

visiting the local health centre. She has some understanding and fear that she may not be allowed to stay in her home in Govan.

[114] In addition, I heard evidence from Amy's mother who explained further what was in Amy's best interests and how a move might impact on her as part of a family of travelling show persons. She attends school outwith the catchment area, selected by her mother as somewhere she will be likely to be spared bullying associated with her ethnicity. She has familiar and trusted health services in the area she lives. She is a secure and happy child save for the anxiety caused by the current proceedings. It was submitted her best interests are served by her continued family life in her current home in her current location attending her school and local health care. If she is exposed to instability and repeated transitions she and her mother will be exposed to stress which may injure her mental health.

[115] The pursuer prepared two child rights and wellbeing impact assessments dated 29 November 2024 and updated on 21 August 2025. The defenders criticised these assessments on the grounds that the author had not carried out such an assessment before and had not assessed Amy's best interests. I accept the pursuer's witnesses' evidence that the pursuer's regeneration team were only advised of the presence of a child on site in September 2024. The assessments refer to the 2024 Act which had come into force on 16 July 2024 and relative guidance. The assessments address the impact of removal on children generally and the specific impact on Amy. On a general level the assessment indicates that the redevelopment of the area as a whole could accommodate up to 200 children and reduce homelessness at a time when there is a housing crisis. It is also explained that it is not the pursuer's intention to leave the defenders or Amy without accommodation. The pursuer has a legal duty to assist those people in its area who are homeless and requires to take into account the child's needs when making temporary accommodation available for her

household. Likewise, when making permanent accommodation available, the pursuer would be obliged to ensure that the accommodation meets any special needs of the household, including the child's needs. If exercising these functions, the pursuer will have regard to the best interests of the child. The pursuer considered the information from Dr Ashgar, from the child's legal representative, as well as from the relevant education, social work and health authorities. It is also explained that on relocation Amy could continue to attend her current school which is already outside her catchment area.

[116] It is clear from these assessments that the pursuer has assessed Amy's best interests which were set out in the report from Dr Ashgar and is taking steps to support Amy and her extended family by respecting their cultural practice of living together as a close-knit family group. To achieve this, it has offered alternative locations that would allow the whole family to remain together and have the security of a lawful tenancy. Relocation will impact Amy who will have to move from the only place she knows as home, which will be unsettling for her and her family. She will most likely require to attend different health services. However, I agree with the pursuer and Dr Ashgar's assessment that it is in Amy's best interests to remain with her extended family. That will support Amy's need for security, stability, and continued proximity to her extended family. On relocation, Amy will be likely to have access to equivalent medical services. Importantly, she will continue to be able to attend her current school. It is acknowledged that homelessness can negatively affect children's health and wellbeing but that could be mitigated by allowing time to secure appropriate alternative accommodation which the pursuer has already taken steps to achieve. If carried out in that manner, a relocation would protect Amy's wellbeing and allow the family to stay together on a site where they have lawful occupation. That could provide the long-term stability and security recommended in Dr Asghar's report. For these

reasons, taking Amy's best interests as a primary consideration, I do not consider, that making an order for removal, is incompatible with the specified UNCRC requirements.

**Further arguments: The public sector equality duty: issue 11(a)**

[117] The defenders also argued, as a defence to removal, that the pursuer had not complied with its duty under section 149 of the Equality Act 2010. Section 149 provides:

> "(1) A public authority must, in the exercise of its functions, have due regard to the need to—
> (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
> (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
> (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
>
> …
>
> (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
> (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
> (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
> (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low."

[118] A preliminary point arises as to whether the defenders share a protected characteristic for the purposes of the 2010 Act in terms of their ethnic origins. Section 9(1) defines the protected characteristic of "race" to include "ethnic or national origins". The defenders submitted that they have that protected characteristic as travelling showpeople.

[119] The leading authority on the definition of a racial or ethnic group is the case of *Mandla* v *Dowell-Lee* [1983] 2 AC 548 where the House of Lords held that to constitute an

"ethnic group" under the Race Relations Act 1976, a group had to regard itself, and be regarded by others, as a distinct community by virtue of certain characteristics. The court in *Mandla* at p 802 stated that the material provision in the Act of 1976 is concerned with ethnic origins, and "ethnic" is not used in that Act in a strictly biological or racial sense.

[120] Lord Fraser of Tullybelton distinguished characteristics that are essential and others that are not essential but one or more of them will commonly be found and will help to distinguish the group from the surrounding community. The essential conditions are:

(1) a long shared history, of which the group is conscious as distinguishing it from other groups, and the memory of which it keeps alive;

(2) a cultural tradition of its own, including family and social customs and manners, often but not necessarily associated with religious observance.

[121] Other relevant characteristics are: either a common geographical origin, or descent from a small number of common ancestors; a common language, not necessarily peculiar to the group; a common literature peculiar to the group; a common religion different from that of neighbouring groups or from the general community surrounding it; being a minority or being an oppressed or a dominant group within a larger community, for example a conquered people (say, the inhabitants of England shortly after the Norman conquest) and their conquerors might both be ethnic groups.

[122] Romani gypsies and Irish travellers have been held to be separate ethnic groups for the purpose of equalities legislation (*CRE* v *Dutton* [1989] 2 WLR 17 and *Moore* v *Secretary of State for Communities and Local Government* [2015] EWHC 44 (Admin) at paragraph 58). Scottish gypsy travellers have also been recognised as a separate ethnic group (as reported at paragraph 8.43 - 45 *Gypsy and Traveller Law*; Willers QC and Johnston (3rd Edition). Travelling showpeople were recognised as an ethnic minority in the Scottish census in 2022.

[123] I heard extensive evidence on the identity, culture and traditions of travelling showpeople from the defenders themselves, other members of their family and from independent persons all of which I accept as evidence of fact. The defenders explained that travelling showperson is a status established at birth which persists through life. It is often found in participation in shows and membership of the Showmen's Guild of Great Britain ("the Guild"), although membership of the Guild is not necessary to acquire the status. The Showmen's Guild was formed in the 1880s but showpeople were in existence long before then. Retirement does not stop a person from being a showperson. Witnesses spoke of a strong connection between showpeople and Govan, the cultural importance of the yard and living in extended family. Historically they would travel during the summer months, when the fairs were on, from around February to October before pulling in for the winter. A yard is a combined living and workspace, important for storing equipment, rides and vehicles and working on equipment. A dialectogram of a showman's yard was produced, depicting the crucial elements of the yard.

[124] One witness, Jackie Bolton, who came from a travelling showpeople family, and had carried out research, specifically addressed the *Mandla* crtieria. I took into account her evidence, not as opinion evidence on whether the legal test was met, which is a matter for the court, but in describing the history and way of life of travelling showpeople. In terms of a long, shared history, she explained that most showpeople have ancestors in the fair business going back 100's of years. They live in chalets and caravans, travelling with their shows, having a base site where they locate their chalets alongside their show rides and vehicles when not travelling. They have strong family values; marrying from within the community; keeping children close; living with and looking after elderly family members; and not mixing with non-showpeople. There is a strong tradition of oral history, passing on

stories of the fairs to the next generation. Many showpeople are given the middle name of the town where their fair was visiting where they were born. There is a strong focus on keeping the tradition of the fairs alive.

[125] Showpeople also meet a number of the other relevant, but not essential, characteristics with many having shared ancestors. Many have experienced discrimination and bullying, including at school, because they are showpeople. They are seen as being gypsy travellers, and suffer the same prejudices. They have a separate language "Polari," or "Parlyaree", a language that was historically used by people in the performing arts, circus and fair people, as well as by other marginalised groups. Showpeople do not necessarily have a "a common religion different from that of neighbouring groups or from the general community surrounding it". However, they adhere to their own religious traditions and practices eg the practice of being “churched” which is a blessing given after having a baby.

[126] The pursuer referred to textbook commentary indicating that new travellers and other occupational travellers do not come within the definition of a racial group (Willers QC and Johnston; paragraph 8.47). An occupational traveller describes a much wider and more amorphous group which may be less likely to be recognised as a result. However, I am satisfied that the defenders do not form an amorphous group of occupational travellers. On the basis of the evidence summarised above, and applying the *Mandla* criteria, I am satisfied the defenders as travelling showpeople recognise themselves and are recognised by others as a distinct community. They are a segment of the population distinguished from others by a combination of their shared ancestry, language, way of life and traditions derived from a common past.

***Failure to fulfil the section 149 duty***

[127] The relevant plea-in-law for the first defender is that the pursuer has unlawfully discriminated against the first defender contrary to the public sector equality duty and that decree should not be granted as craved. The seventh defender's plea is slightly different, it states that the pursuer having unlawfully discriminated against the defenders, contrary to the 2010 Act, *et separatim* in breach of its public sector equality duty, decree should not be granted as craved. However, there are no averments for either the first or seventh defender supporting discrimination. No reliance is placed on section 13 or section 35 of the 2010 Act in the averments or in submissions. In any event, as I have already explained in relation to Article 14, there was no evidence that the pursuer treated the defenders less favourably than others because they were travelling showpeople. I do not consider that any claim of unlawful discrimination is properly made out. I consider below whether there has been a breach of the public sector equality duty.

[128] I accept that the section 149 duty applies to the pursuer as a local authority exercising its housing functions. It requires the pursuer to have due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. It requires the pursuer to take account of the defenders' protected characteristic of race, as travelling showpeople, and to have due regard to the need to take steps to meet the needs of persons who share that characteristic that are different from the needs of those who do not share it (section 149(1) and (3)).

[129] The defenders referred to a summary of what is necessary to fulfil the section 149 duty in *R (Bracking)* v *Secretary of State for Work and Pensions* [2013] EWCA Civ 1345 at paragraph 26, approved by the Supreme Court in *Hotak* v *Southwark London Borough Council* [2015] UKSC 30 at paragraph 73. I accept that summary whilst also recognising that

Turner J in *London and Quadrant Housing Trust* v *Patrick* [2019] EWHC 1263, at paragraph 42, observed that it may not be appropriate to take a one size fits all approach to ministerial decisions on matters of policy on the one hand and decisions of officers seeking possession of social housing on the other. He set out what he considered are likely to be the most relevant factors in the context of possession cases, where (as was relevant in the case before him) the proceedings affect a disabled person. These were not presented as a definitive or comprehensive list but as a useful summary of the *Bracking* principles applicable to an assessment of the duty in eviction cases:

(i) When a public sector landlord is contemplating taking or enforcing possession proceedings in circumstances in which a disabled person is liable to be affected by such decision, it is subject to the duty;

(ii) the duty is not a duty to achieve a result but a duty to have due regard to the need to achieve the results identified in section 149. Thus when considering what is due regard, the public sector landlord must weigh the factors relevant to promoting the objects of the section against any material countervailing factors. In housing cases, such countervailing factors may include, for example, the impact of the disabled person's behaviour on others;

(iii) The authority is not required in every case to take active steps to inquire into whether the person subject to its decision is disabled and, if so, is disabled in a way relevant to the decision. Where, however, some feature or features of the information available to the decision-maker raises a real possibility that this might be the case then a duty to make further enquiry arises;

(iv) The duty must be exercised in substance, with rigour and with an open mind and should not be reduced to no more than a "tick-box" exercise;

(v) The duty is a continuing one and is thus not discharged once and for all at any particular stage of the decision-making process.

[130] Turner J explained that the consequences of enforcing an order ought already to have been adequately considered by the decision-maker before the order is sought. Generally, the authority must assess the risk and extent of any adverse impact and the ways in which such risk may be eliminated before seeking and enforcing possession and not merely as a "rear-guard action" following a concluded decision. However, the duty to "have due regard" will then only take on any substance when the disability becomes or ought to have become apparent. In such cases, the lateness of the knowledge may impact on the discharge of the duty and could justify a less formal assessment than would otherwise have been appropriate. An important evidential element in the demonstration of the discharge of the duty is the recording of the steps taken by the decision-maker in seeking to meet the statutory requirements.

[131] The pursuer's witnesses explained that the pursuer was permitted limited access to the site. Aside from public meetings, access to the site was given once in 2016 with another meeting taking place in 2018 when the decision not to retain the site was communicated. The pursuer's witness Mr Smith recalled, under reference to a note of the meeting, the second defender commenting at the meeting that he had no intention of leaving the site.

[132] The first equality impact assessment was carried out on 18 October 2018. It can be seen from its terms that it was carried out as part of a screening process for the Water Row Masterplan. It looks at various areas including "assessment and differential impacts: reaching an informed decision on whether or not there is a differential impact on equality groups, and at what level." It is noted that it will develop an action plan to make changes where a negative impact has been assessed. It refers to the ethnicity of travelling

showpeople who although not formally classified within the protected characteristics define their ethnicity with the cultural group they belong to. The assessment identifies positive impacts contributing to promoting equality or improving relations and negative impacts that could disadvantage them. In relation to ethnic groups, the assessment identifies a negative impact specifically on showpeople yards requiring to relocate to alternative sites in Govan and the city to facilitate development/population growth. The action to be undertaken is targeted liaison with the families to assess and provide for their particular needs in as supportive a manner as is reasonably possible. The pursuer stated that it will continue to liaise with families to identify a suitable alternative site and to facilitate relocation.

[133] By the time of the second assessment on 22 May 2023, carried out by Mr Smith, the pursuer had already raised proceedings and phase 1 of the redevelopment was under construction. The assessment explains that the reason for carrying it out is the proposed action to remove unlawful occupiers from land owned by the pursuer where the occupiers have previously asserted that they may have protected characteristics. It is noted that the occupiers have not engaged with the pursuer and the pursuer is therefore unable to be definitive about the complete racial makeup of the occupiers. Consideration is given to whether the defenders have a protected characteristic under reference to the *Mandla* criteria. Mr Smith states, partly on the basis of what he reports the defenders have told him, that he does not consider the occupiers to be members of a distinct racial group. However, he continues:

> "Nonetheless, in the event that the occupiers are considered to be members of a distinct racial group, GCC is willing to assist the occupiers to source alternative accommodation."

It is noted that alternative sites have been offered for relocation but refused by the first defender and that the pursuer will continue to make reasonable endeavours to identify another. It is explained that removal will be pursued as there is considerable public interest in recovering the land in order to facilitate the progress of a large-scale development project following public consultation. No other action short of removing the occupiers from the site will allow the development to proceed.

[134] The first defender criticised the timing of the assessments, arguing that they were carried out after the pursuer had already decided to remove the defenders and were a "rear guard action". However I do not see that anything turns on that. As is explained in *London and Quadrant Housing Trust* v *Patrick* the duty is a continuing one and is thus not discharged once and for all at any particular stage of the decision-making process. It can be exercised at any point up until an order is made. The first assessment was carried out before any removal notice was served on the defenders and the second once it became known that proceedings would be raised.

[135] The pursuer has shown in these assessments that it has considered the impact of removal on the defenders as travelling showpersons (and on Amy as a child) who will be required to relocate and what steps it can take to address that. I do not consider that Mr Smith fudged the issue of whether the first defender and his family had a protected characteristic. He proceeded on the basis that it might be considered that they did, as did the previous assessment. His conclusion that: "no action short of removing the occupiers from the site will allow the proposed development to proceed" followed the adoption of the Masterplan. I do not consider that there is evidence that the pursuer did not approach the matter with an open mind. It was entirely reasonable to assume that the policy adopted in the masterplan would be pursued.

[136] Nor do I consider that either assessment took a cursory approach. The assessments were necessarily limited by the refusal of the defenders to engage with the pursuer and what little was known about the defenders. The pursuer's regeneration team were only advised of the presence of a child on site in September 2024. The assessment narrated the pursuer's efforts to identify alternative accommodation and the absence of options short of removal to allow the proposed development to go ahead. The current proceedings were taken against that background. In the circumstances, I take the view that the assessments were sufficient to fulfil the pursuer's duty under section 149.

[137] I would only add that had I taken a different view, that the pursuer had not fulfilled its duty under section 149, I heard no submissions on the consequences that would follow from that. The implicit proposition by the defenders is that because the pursuer breached the duty, the court could not order removal of the defenders. I reserve my opinion on that question having not heard submissions on it. I note from the caselaw that where an authority has failed to comply, it need not follow that any decision made thereafter must be set aside. The outcome will be dependent on an assessment on the facts of the case and the consequences of that failure including an assessment of the likelihood of a different decision being made by the authority if the breach had not occurred. The case would be different if there is direct discrimination and a breach of section 35 of the Act, but no such case has been made in the current proceedings.

**Conclusion**

[138] I repel the pursuer's pleas-in-law. I sustain the first defender's first to third and eighth pleas-in-law and repel the fourth to seventh and ninth to twelfth pleas-in-law. I sustain the seventh defender's first, second and sixth pleas-in-law (under deletion of the

reference to a declaration of incompatibility which the seventh defender did not seek) and repel the third, fourth, fifth, seventh and eighth pleas-in-law. I heard no submissions on the question of expenses and reserve those meantime.