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SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE IN DUNDEE

ADDENDUM REPORT
IN TERMS OF SECTION 11 OF THE
CHILDREN (SCOTLAND) ACT 1995

Prepared by

Mrs Margaret Leslie & Mrs Ingrid Von Arnim
Social Workers
Dundee City Council
Social Work Department
6 Kirkton Road
DUNDEE
DD3 0BZ

in causa

David Henderson Tarbett

PURSUER

against

Linda Sim Grant Archer

DEFENDER

Children Concerned:

[REDACTED]
[REDACTED]
William Tarbett

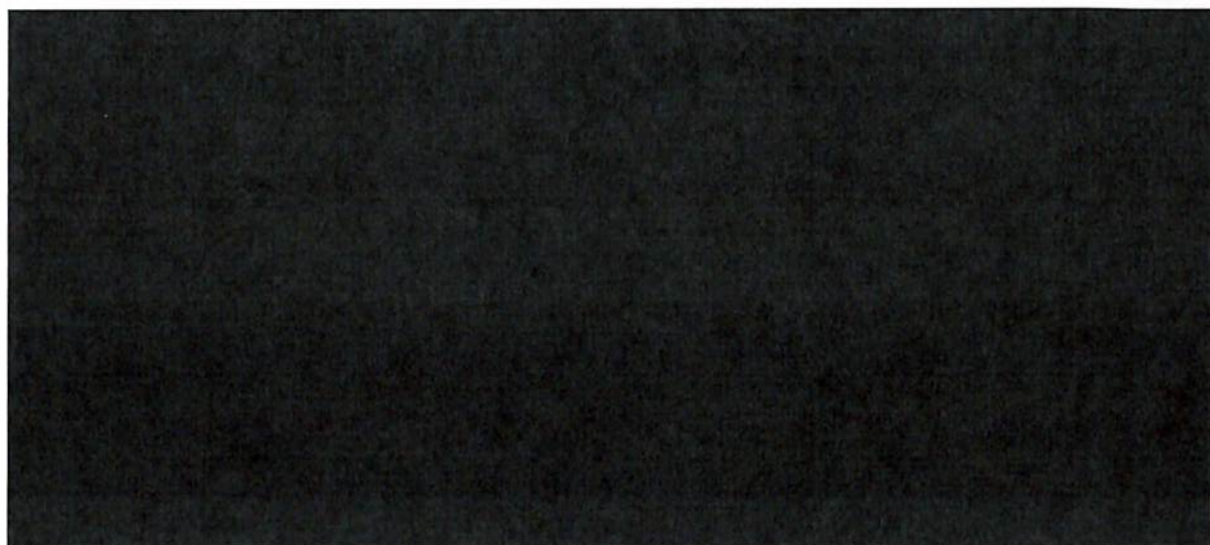
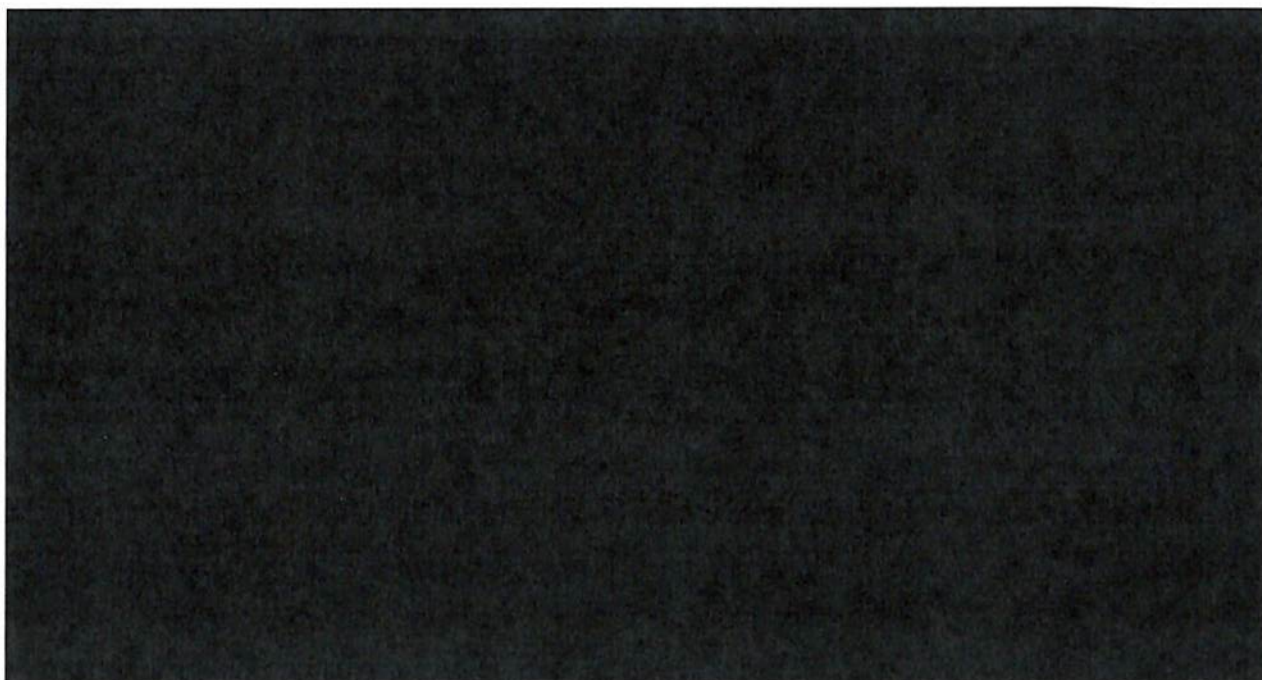
Court Ref No:
A1091/97

The following information is to supplement the Social Work report submitted to the Sheriff Court on 16 December 1997.

██████████ and William Tarbett, the children of Mr David Tarbett and Ms Linda Archer (k/a Robertson) continue to be looked after by the Social Work Department under Section 70 of the Children (Scotland) Act 1995. They have been in the care of the Social Work Department since September 1994.

Copies of the current Supervision Requirements including conditions relating to contact with parents are appended to this report.

PRESENT CIRCUMSTANCES OF CHILDREN



William

William continues to live with foster carers Mr and Mrs [REDACTED] in Dundee and attends the local primary school. William is aware that this is not a permanent placement and that the Social Work Department continues to look for such a placement. Despite a national search through Scottish Resource Network, and referral to Barnardo's, no placement has been identified to date.

Despite the insecurity of this situation William is very settled with Mr and Mrs [REDACTED] and manages well to balance his daily family life with regular monthly contact with his parents.

William's development and slow educational achievement have given increasing cause for concern. A recent assessment by the community medical officer and occupational therapist has identified a need for occupational therapy, and it is hoped that an educational psychology assessment will follow shortly to identify William's specific learning needs and provide specific support in school.

PARENT'S VIEWS AND CIRCUMSTANCES AS KNOWN BY THE SOCIAL WORK DEPARTMENT

Between January and March 1998, the voluntary agency "Children 1st" became involved in reassessing the parents' potential to resume care of the children.

Ms Robertson chose not to become involved in the assessment as she was not contesting the long term plans for the children.

Mr Tarbett met with workers from Children 1st on a number of occasions where there was an attempt to look at 1) the previous difficulties experienced by the children whilst in his care; 2) the children's current needs and how he could meet these. Children 1st expressed particular concerns about Mr Tarbett's simplistic view of what the children needed, his lack of awareness of the impact of their experiences prior to and after being "looked after", and his inability to identify or recognise any problems in his own approach to or care of, the children. His animosity towards the children's mother was also still in evidence. It was therefore concluded that returning the children to the care of their father would not be recommended in terms of promoting the children's welfare.

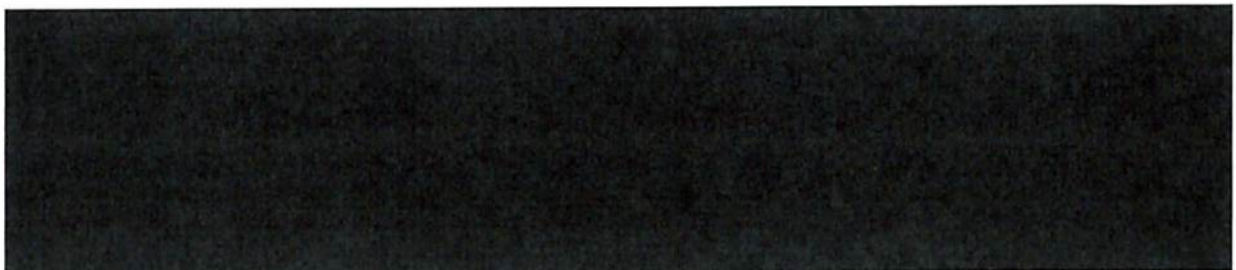
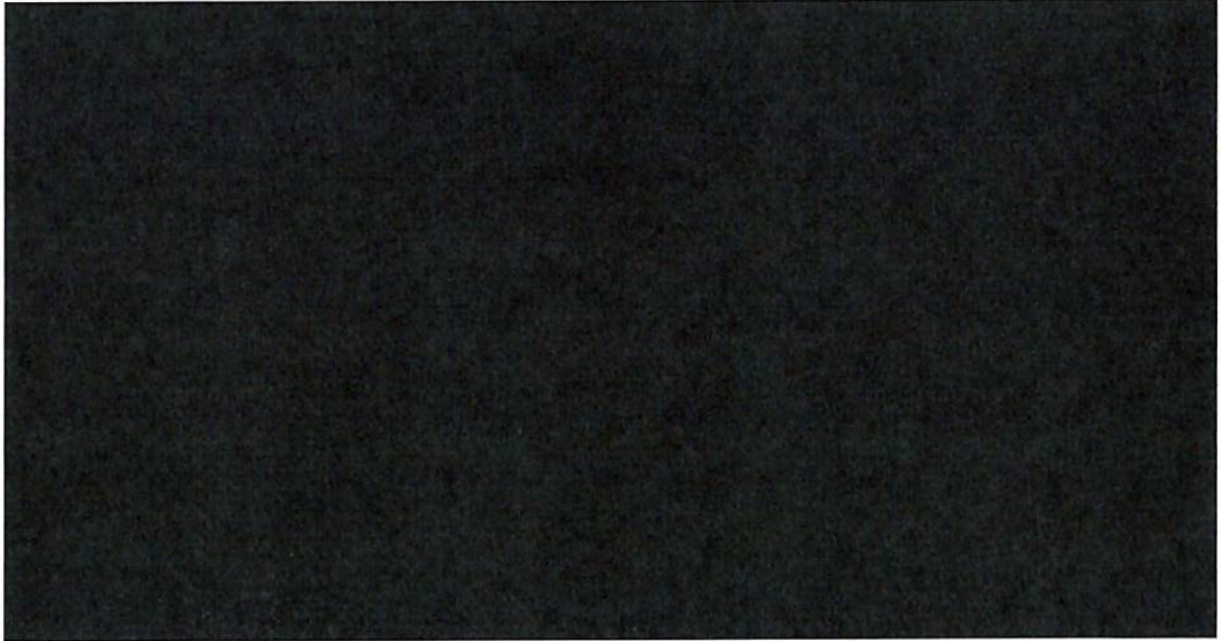
Mr Tarbett is completely opposed to the actions of the Social Work Department and has generally not been prepared to engage in a constructive dialogue about the everyday care of the children and his contact with [REDACTED] and William. Mr Tarbett indicated last year that he was not willing to meet with Social Workers and was insisting that all communication should be in writing and ideally, via his solicitor. However, he was subsequently dismissive of any letters sent to him regarding the children saying these were of little value.

This reliance on written communication and Mr Tarbett's general unresponsiveness, can make negotiating contact between himself and the children cumbersome and prone to misunderstandings. For example, in [REDACTED] case it has been difficult to agree and confirm contact arrangements, with Mr Tarbett seemingly unable to give much prior notice of when he can visit. This has made contact unpredictable, has created anxiety and instability for [REDACTED] which then impacts on his placement.

Ms Robertson is pregnant, the baby is due in February of this year.

Ms Robertson has indicated that she does not feel able to cope with the demands involved in resuming the care of the children. Ms Robertson nevertheless demonstrates an interest in the welfare of the children and keeps in touch with the Social Work Department regarding her own role in the children's lives.

CHILDREN'S CONTACT WITH PARENTS AND WITH EACH OTHER



William

William's contact with both his parents has been specified by the Children's Hearing as monthly for a minimum of forty-five minutes, supervised. Contact, for at least one hour, has been maintained on a regular basis. William clearly values contact with both parents but has not asked for any additional contact. William has expressed a wish to see Michael more frequently.

The children's contact with their mother has generally tended to be positive. It is observed that Mrs Robertson takes more of an active role in engaging the children through conversation or play. The children respond accordingly and are often quite happy to spend time with Ms Robertson in a play room in one of the Department's Family Centres.

The quality of the children's contact with their father has given previous cause for concern in that there often seemed to be little interaction, Mr Tarbett felt this was due to the environment in which contact took place (usually within a Family Centre). It was therefore agreed to arrange for the children to have outings with their father, still accompanied by a supervising worker. This has seemed to make contact a more enjoyable experience for Mr Tarbett and the children.

██████████ and William say very little about contact with their father. They look forward to the outings, the sweets and presents which are usually provided.

In being placed so far away from his home area, contact with parents assumes a greater importance for ██████████

██████████ and William see each other usually during school holidays.

CONCLUSION & RECOMMENDATION

The views of the Social Work Department regarding Mr Tarbett's application for either a Residence or Specific Issue Order remain as those expressed previously.

We would wish to highlight the following points:

- 1 ██████████ Supervision Requirement was reviewed on 2 July 1998 whereby her permanent placement with Mr and Mrs ██████████ was approved and contact with her father reduced. Mr Tarbett challenged this decision, his appeal was dismissed by the Sheriff on 14 August 1998.
- 2 ██████████ Supervision Requirement was reviewed at the request of his father on 5 November 1998. The Children's Hearing continued Michael's Supervision requirement unchanged.
- 3 William's Supervision Requirement was reviewed on 1 April 1998. Contact was reduced to a minimum of forty five minutes to be supervised, to avoid the parents involving the children in their disputes and to ensure quality contact.
- 4 With particular reference to the present action, whilst Ms Robertson is not pursuing care of the children, she is an important person in the eyes of ██████████ and William. She does demonstrate some insight into the children's needs and continues to show an interest in their welfare.
- 5 There are concerns about Mr Tarbett being granted a Specific Issue Order according him status as the children's legal representative:

██████████ and William have been in the care of the Social Work Department for over 4 years. For some time now they have been dependent on those other than their parents for physical and emotional care.

It is felt that the children require stability and security in their lives and therefore require to be placed in permanent or long term placements away from home.

Mr Tarbett has not so far demonstrated that he has an awareness of the children's needs, that he is able to take account of their wishes or that he can act in their best interests.

The Social Work Department have experienced ongoing difficulties in communicating with Mr Tarbett who has shown an intransigence, even when there is evidence that this creates disruption for the children. Our experience has therefore tended to be that Mr Tarbett has not been exercising his parental responsibilities appropriately or in a way which promotes the children's welfare.

The Social Work Department would therefore not be in support of the Pursuer's application for parental responsibilities under Section 11 of the Children (Scotland) Act 1995.

Regardless of Mr Tarbett's legal status, the children recognise him as their father. This would be the primary consideration for the Social Work Department in their approach to maintenance of contact between the children and Mr Tarbett, and also in continuing our attempts to keep him informed as to the children's welfare.

Margaret Leslie

Margaret Leslie
Social Worker
Permanence Team

Ingrid von Arnim

Ingrid Von Arnim
Social Worker
Permanence Team

ML/SR
26.02.99
famplace\perm\tarbmtp



CONTINUATION UNDER SECTION 73(9)(e) OF THE ACT OF SUPERVISION REQUIREMENT

Children's Hearing Centre
91 Commercial Street
DUNDEE DD1 2AF

Date... 09.04.95

A children's hearing for Dundee, considering the case of

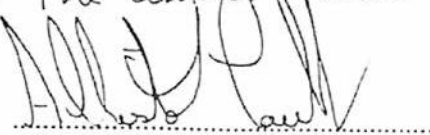
William Tarbert (09.07.91)

and the supervision requirement (a copy of which is attached), and in exercise of its powers under section 73(9)(e) of the Act, continues the said requirement in force/subject to the variations of that requirement noted below/with the insertions in the requirement noted below

The children's hearing in varying/imposing a requirement order that the place where
is to reside shall not be disclosed to

VARIATIONS/INSERTIONS REFERRED TO:

1. The conditions contained in the supervision requirement dated 03.04.97 are delete and replaced by the following conditions.
2. The child shall reside with Mr. & Mrs. [redacted] Dundee
3. The requirement to reside is subject to the ^{direction of the} Director of Social Work to grant leave of absence from time to time to enable the child to engage in approved activities.
4. Subject to the discretion of the Director of Social Work and the agreement of the child / mother / relevant person, the child may receive respite care with other carers approved by the Social Work Department in terms of The Fostering of Children (Scotland) Regulations 1996
5. The child shall have contact with his father for not less than forty five minutes, once per month. The contact shall be supervised and arranged by the Social Work Department.
6. The child shall have contact with his mother for not less than forty five minutes, once per month. The contact shall be supervised and arranged by the Social Work Department.



Chairman of the Children's Hearing

SHERIFFDOM OF TAYSIDE CENTRAL AND FIFE AT DUNDEE

ANSWERS FOR SECOND DEFENDERS

In causa

DAVID HENDERSON TARBETT, residing at
7D Bonnethill Court, Dundee.

PURSUER

against

LINDA SIM GRANT ARCHER, residing at
164 Alexander Street, Dundee.

FIRST DEFENDER

and

DUNDEE CITY COUNCIL, 21 City Square, Dundee.
SECOND DEFENDERS

ANSWERS TO CONDESCENDENCE

1. Admitted. Explained and averred that William Tarbett now resides with his foster carers at [REDACTED] For the avoidance of doubt William Tarbett continues to be subject to a supervision requirement.
2. Admitted that the children are too young to understand these proceedings and that intimation to them should be dispensed with. Admitted that it is not in the children's best interest to be served with intimation copies of the Initial Writ containing averments with regard to their mother as condescended upon therein. Admitted that the First Defender is the children's mother. Admitted that the other parties are not married and never have been married. Admitted that the Pursuer is named on the birth certificates of the said children as being their father. Believed to be true that the Pursuer is the children's father. Not known and not admitted whether the First Defender has ever disputed or denied the Pursuer's paternity of the children.
3. Admitted that the children were made subject to supervision requirements on 15 June 1993. Admitted that in terms of these supervision requirements the children were to have only supervised contact with the First Defender. Admitted that the children resided principally with the Pursuer during the period 15 June 1993 to 20 September 1994. Admitted that the Second Defenders provided respite care for the children for approximately two weeks from 21 January 1994 at the Pursuer's request. Quoad ultra denied. Explained and averred that it became apparent to the Second Defenders in early July 1993 that the Pursuer was permitting the First Defender to stay overnight at his home. From 13 July 1993 approximately the First Defender resided with the Pursuer and continued to do so until 20 January 1994. On 14 October 1993 the children's supervision requirements were varied to remove the condition that the children only had supervised contact with the First Defender. During the period 15 June 1993 to 20 September 1994 the Pursuer's co-operation with the Second Defenders was limited and grudging.

4. Admitted that on 22 September 1994 Place of Safety Orders were made in respect of the children and that the children have been in placement with the Social Work Department ever since. Admitted that the First Defender returned to the Pursuer after the Place of Safety Orders were made and that the attempt at reconciliation did not last. Admitted that during the period 15 June 1993 to 22 September 1994 the Pursuer enlisted the help of his daughter [REDACTED] to help in the day to day care of the children. Admitted that when the First Defender was still living with the Pursuer, the children were not properly cared for. Admitted that [REDACTED] would be left to look after the children. Admitted that the children were not fed or dressed properly while living solely with their mother. Admitted that on 13 or 14 February 1993 when the children and the Second Defender were not living with the Pursuer, [REDACTED] were found out playing at 4 am on their own. Admitted that on more than one occasion the children were returned to the Pursuer by the Social Work Department under explanation that on at least two of these occasions the Pursuer was responsible for the children's welfare at the time. Admitted that the Pursuer's sister, [REDACTED] was involved in the care of the children during the period January 1994 to September 1994. Believed to be true that for some time during the period 15 June 1993 to 22 September 1994 the Pursuer was working. Not known and not admitted the nature of the Pursuer's employment, nor the duration and hours of it. Not known and not admitted whether the First Defender went out soliciting. Not known and not admitted whether the First Defender has been convicted of any offence [REDACTED] or whether she engaged in this activity when the child William was nine months old. Not known and not admitted that the Pursuer's sister, [REDACTED] came from Glasgow to help look after the children. Quoad ultra denied. Explained and averred that while the children lived with the Pursuer, the Pursuer had a responsibility to do whatever was reasonable in all the circumstances to safeguard the children's health, development and welfare. The Pursuer failed to fulfil that responsibility with the result that support had to be provided by the Social Work Department and, eventually, the children were taken into care on a compulsory basis. The First Defender has admitted to the Second Defenders that she has engaged in prostitution at some point in the past but has alleged that she did so at the Pursuer's instigation. The First Defender's averments in answer are denied except so far as coinciding herewith.

5. Admitted that the Pursuer has always believed that it is in the children's best interest to live with him and has opposed almost every decision to continue or vary the supervision requirements in respect of the said three children. Admitted the Pursuer continues to have supervised contact with each of the children separately. Admitted that in a report dated 12 December 1997 commissioned by the Second Defenders in relation to contact between the children and their parents, Children First recommended that contact should involve going to different places and should not always take place in the same room. Admitted that the Pursuer presently enjoys an excellent relationship with the staff at Thornbrae. Believed to be true that the Pursuer feels he has been afforded more assistance and encouragement to have contact by the staff of Thornbrae than he has been afforded by the Second Defenders. Quoad ultra denied. Denied, in particular, that

it is in the children's best interest to live with the Pursuer. Explained and averred that when the children were living with him, the Pursuer failed to do whatever was reasonable in all the circumstances to safeguard the children's health, development and welfare. The children were taken into care by the Second Defenders as a result. Since that time the Pursuer has failed to work with the Second Defenders and other agencies to improve his parenting skills. Successive Children's Hearings have consistently held that it better serves the children's interests for them to be accommodated by the Second Defenders rather than be returned to live with the Pursuer. The Pursuer has appealed against decisions of the Children's Hearing on no less than six occasions since September 1994. On only one of these occasions was he successful. On that occasion the Pursuer appealed against a decision on 2 August 1995 to continue the supervision requirements in respect of the children and to restrict their contact with the Pursuer. The Sheriff held that the Hearing of 2 August 1995 had taken irrelevant considerations into account in reaching their decision. He remitted the matter back to the Hearing for reconsideration. Upon reconsideration the Hearing confirmed their earlier decision. With regard to the report by Children First dated 12 December 1997, the recommendation that contact should involve going to different places and should not always take place in the same room was not its only recommendation. A copy of that report is annexed to these Answers and its whole terms are incorporated herein brevitatis causa. The Pursuer resisted the implementation of the report's recommendations that each child should have contact with his or her parents separately and that his contact with William should be reduced in length. When the Pursuer's objections to the report were resolved by the Sheriff's dismissal of the Pursuer's appeal against the Children's Hearing decision of 1 April 1998, implementation of the whole terms of Children First's report by the Second Defenders followed as a matter of course and did not require any special instigation by the Sheriff. The Pursuer did not raise the question of the venue for contact at any time between the submission of the Children First's report and his appeal against the decision of the Children's Hearing of 1 April 1998. With regard to the Pursuer's averments about his treatment by the staff of Thornbrae it is pointed out that the staff of Thornbrae act as agents of the Second Defenders.

6. Admitted that on 17 October 1997 the Pursuer appealed a decision of the Children's Hearing to make a Place of Safety Order with regard to [REDACTED] and the court deemed the Pursuer not to be a "relevant person" under Section 93(1) of the Children (Scotland) Act 1995. Admitted that the First Defender is automatically defined as a "relevant person" and continues to be allowed to be present at Children's Hearings in respect of the children. Admitted the First Defender is unable to look after the children. Admitted that as an unmarried father without parental rights, the Pursuer's consent to an Adoption Order would not be required. Believed to be true that the First Defender's son, [REDACTED] has been freed for adoption on the application of Perth and Kinross Council. Not known and not admitted whether the First Defender has any desire to have the children returned to her care. Not known and not admitted whether the First Defender consented to the freeing for adoption of her son [REDACTED]. Not known and not admitted whether the First Defender would agree to

any Order leading to the children's adoption. Not known and not admitted whether the Pursuer is concerned whether she will consent to any such Order. Quoad ultra denied. Explained and averred that the Pursuer did not appeal further the Courts determination that he was not a "relevant person" for the purpose of Children's Hearings. Further explained and averred that the children are unlikely to return to the Pursuer's care and control. The Second Defenders envisage that [REDACTED] placement at Thornbrae will remain open to him until he reaches adulthood. It is expected that if he leaves Thornbrae [REDACTED] will be placed with long term foster carers. [REDACTED] is presently placed with foster carers who have expressed a willingness to care for her until she reaches adulthood. The Second Defenders envisage that [REDACTED] carers will require considerable support and that her placement will therefore remain a foster placement. Any move towards [REDACTED] adoption will be prompted entirely by [REDACTED] wishes and those of her carers. The Second Defenders are currently seeking permanent substitute care for William. It is not clear at the present time whether the Second Defenders would determine that adoption would best meet William's needs. Esto applications were to be made for the children's adoption or freeing for adoption, it is likely there would be grounds for dispensing with the Pursuer's agreement. The Sheriff's duty to ensure that any adoption or freeing for adoption order is likely to safeguard and promote the welfare of the children throughout their lives is identical whether or not the Pursuer's agreement is required. The Second Defender's have no plans to return the children to their mother's care at the present time and the First Defender's averments in answer are denied insofar as they suggest otherwise.

7. Admitted that the said [REDACTED] has been placed in a local authority unit, his placement with foster carers having broken down and having been excluded from school. Admitted that [REDACTED] has been placed with her sixth placement with foster carers and her fifth school. Admitted that William Tarbett was separated from his brother in February 1997. Admitted that these changes have all caused confusion and instability in the children's lives. Quoad ultra denied.
8. Denied, except insofar as coinciding herewith. Explained and averred that the Pursuer has no real understanding of the children's needs and circumstances and fails to identify the children's needs as being separate to his own. The First Defender already possesses parental rights and responsibilities in relation to the children. She exercises these rights and responsibilities (including the right and responsibility of acting as the children's legal representative) adequately in the children's best interests within the limited scope permitted her by the children's supervision requirements. The children are looked after by the Second Defenders. In terms of Section 17 of the Children (Scotland) Act 1995, the Second Defenders have a duty to safeguard and promote the children's welfare. In the exercise of that duty, the Second Defenders are supervised by the Children's Hearing. The children do not need another person to act as their legal representative. Further explained and averred that it is likely that the children will continue to be looked after by the Second Defenders until they reach adulthood. It is therefore important that any person with parental rights and responsibilities in respect of the children maintains a reasonable relationship with the children's social workers. Since July, 1998 the Pursuer has

5
refused to communicate with the Second Defenders except through his solicitors. This causes difficulties, especially in arranging the Pursuers contact with the children. Furthermore, the Pursuer was convicted and fined on or about 7 February 1996 in relation to his threatening behaviour towards social work staff. An extract of the Pursuer's conviction and a copy of the complaint upon which the prosecution of the Pursuer proceeded are annexed to these pleadings and their whole terms are incorporated herein brevitatis causa. The Pursuer's contact with social work staff continues to be characterised by his aggressive and intimidating behaviour. Despite these difficulties the Second Defenders attempt to keep the Pursuer informed about the children. They sent him fortnightly letters until these were discontinued in November 1998 after the Pursuer's suggested that they served no purpose. The Second Defenders continue to advise the Pursuer in writing at significant developments in the children's care. The Pursuer is invited to attend care review meetings. The Second Defenders continue to promote direct contact between the Pursuer and the children to the extent that that remains consistent with the children's welfare. The provision of information, invitations to review meetings and contact will be unaffected by the outcome of the present action.

PLEAS-IN-LAW FOR SECOND DEFENDER

1. The order craved by the Pursuer being unnecessary and not in the best interests of the children, this action should be dismissed.
2. The Pursuer's averments being irrelevant, this action should be dismissed.

IN RESPECT WHEREOF

Solicitor
21 City Square, Dundee
Solicitor for Second Defender

SHERIFFDOM OF TAYSIDE CENTRAL AND FIFE AT DUNDEE

OPEN RECORD

In causa

DAVID HENDERSON TARBETT
Residing at 7D Bormethill Court, Dundee
PURSUER

Against

LINDA SIM GRANT ARCHER
Residing at 164 Alexander Street, Dundee
FIRST DEFENDER

And

DUNDEE CITY COUNCIL
City Chambers, 21 City Square, Dundee
SECOND DEFENDER

The Pursuer respectfully craves the Court:-

- orders in terms of Section 11(2)(b)(i) and (ii)*
1. To make ~~a specific issue order in terms of Section 11~~ of the Children (Scotland) Act 1995 in respect of Michael Lee Tarbett born 22nd June 1983, Linda Marie Tarbett born 23rd November 1989, and William Tarbett born 9th July 1991 granting to the Pursuer the right to control, direct ~~defined a section 1(1)(d) and section 2(1)(d) viz to act as the children's~~ *and responsible* or guide, in a manner appropriate to the stage of development of the said children, the children's ~~legal representative~~ *opening, or such parental responsibilities and parental rights as the court thinks fit, and to* grant such an order ad interim.
 2. To grant warrant to intimate this action to the said [REDACTED] and William Tarbett, and to dispense with such intimation on the said children in view of their age.
 3. To grant warrant to intimate this action to the Report of City of Dundee Council in terms of Rule 33.7(g) of the Ordinary Cause Rules 1993.

CONDESCENDENCE FOR PURSUER AND ANSWERS FOR
FIRST AND SECOND DEFENDERS

COND 1

The said [REDACTED] and William Tarbett had their habitual residence in the Sheriffdom of Tayside Central and Fife at [REDACTED]

[REDACTED] respectively at the time when this action was raised. This court accordingly has jurisdiction. The Pursuer knows of no other action currently before a court in respect of the said children either in Scotland or elsewhere. Since the raising of this action [REDACTED] has been transferred to Thornbrae Children's Home, Alnmouth Road, Alnwick, Northumberland and [REDACTED] has been placed with permanent carers [REDACTED] but continue to be under the supervision of the Children's Hearing at Dundee.

ANSWER 1

Admitted.

ANSWER 1 (SECOND DEFENDER, hereinafter referred to as 'SD')

Admitted. Explained and averred that William Tarbett now resides with his foster carers at [REDACTED]. For the avoidance of doubt William Tarbett continues to be subject to a supervision requirement.

COND 2

The Pursuer is the father of the said [REDACTED] and William Tarbett, born 9th July 1991. The said children are too young to understand the proceedings and intimation is respectfully requested to be dispensed with. In particular it is not in the children's best interests to be served with intimation copies of this writ containing averments with regard to their mother as condescended to hereafter. The mother of the said children is the First Defender. The parties are not married and never have been married. The Pursuer is named on the birth certificates of the said children as being their father and paternity has never been disputed or denied by the Defender. Extract certificates of birth are produced.

ANSWER 2

Admitted.

ANSWER 2 (SD) Admitted that the children are too young to understand these proceedings and that intimation to them should be dispensed with. Admitted that it is not in the children's best interest to be served with intimation copies of the Initial Writ containing averments with regard to their mother as condescended upon therein. Admitted that the First Defender is the children's mother. Admitted that the other parties are not married and never have been married. Admitted that the Pursuer is

named on the birth certificates of the said children as being their father. Believed to be true that the Pursuer is the children's father. Not known and not admitted whether the First Defender has ever disputed or denied the Pursuer's paternity of the children.

COND 3

The said [REDACTED] and William Tarbett were made the subject of a Supervision Order on 15th June 1993 naming the Pursuer's home as place of residence. The children remained there until the Pursuer asked the Social Work Department to take the children into care for a period of respite for two weeks in January 1994, after which the said children continued to reside with the Pursuer. The Pursuer during this time attempted to adhere to the requirements of the supervision requirement, namely that the children would attend at the Polepark Family Counselling Centre and Lilybank Family Centre and the Pursuer attended for counselling at St Matthews Family Centre on a regular basis. During this time the First Defender has supervised contact with the said children.

The First Defender's averments in Answer are denied except in so far as coinciding herewith. Explained and averred that the Pursuer took the two younger children to Lilybank Family Centre daily to nursery and that the Pursuer was also helping out part-time on a voluntary basis at the Centre during this period.

Admitted that on 14th October 1993 the children's supervision requirements were varied to remove the condition that the children only had supervised contact with the First Defender. Not known and not admitted that in early July 1993 the Pursuer was permitting the First Defender to stay overnight at his home. Not known and not admitted that from 13th July 1993 approximately the First Defender resided with the Pursuer and continued to do so until 20th January 1994. The Second Defender's averments in Answer are denied except in so far as coinciding herewith.

ANSWER 3

Admitted that the parties separated and reconciled on several occasions during their relationship. Admitted that the Defender gave birth to a child [REDACTED] who is not the Pursuer's child. Admitted that the said [REDACTED] is not the subject of the present cause of action, and is presently in the care of Foster carers in Perth. Admitted that the said [REDACTED] and William Tarbett were made the subject of a Supervision Order on 15th June, 1993 naming the Pursuer's home as a place of residence under explanation that at this time

and in subsequent months until January 1994, when the children were received into care, the Pursuer and Defender continued to reside together and both exercised care and control over the children. Admitted that the three children continued to reside with the Pursuer for a period after January 1994. *Quoad ultra* denied. Explained and averred that during the period of January 1994 until September 1994, the Pursuer refused to adhere to the requirements of the Supervision Order namely that the children would attend at the Polepark Family Counselling Centre and Lilybank Family Centre and that the Pursuer would attend for counselling at St. Matthews Family Centre on a regular basis. Explained and averred that the Pursuer refused to cooperate with the Social Work Department and also denied the Defender contact with the children. As a result of this intransigent behaviour a Place of Safety Order in respect of the children was granted on 22nd September 1994.

ANSWER 3 (SD)

Admitted that the children were made subject to supervision requirements on 15th June 1993. Admitted that in terms of these supervision requirements the children were to have only supervised contact with the First Defender. Admitted that the children resided principally with the Pursuer during the period 15th June 1993 to 20th September 1994. Admitted that the Second Defenders provided respite care for the children for approximately two weeks from 21st January, 1994 at the Pursuer's request. *Quoad ultra* denied. Explained and averred that it became apparent to the Second Defenders in early July 1993 that the Pursuer was permitting the First Defender to stay overnight at his home. From 13th July 1993 approximately the First Defender resided with the Pursuer and continued to do so until 20th January 1994. On 14th October 1993 the children's supervision requirements were varied to remove the condition that the children only had supervised contact with the First Defender. During the period 15th June 1993 to 20th September 1994 the Pursuer's cooperation with the Second Defenders was limited and grudging.

COND 4

On 22nd September 1994 a place of safety order was made in respect of the said three children and the children have been in placements with the Social Work Department ever since. The First Defender returned to the Pursuer the day after the place of safety order was made, although this attempt at reconciliation did not last and the parties finally separated approximately six months later. At no time during the period from 15th June 1993 to 22nd September 1994 when the children were taken into care did the First Defender have care and control of the said three children. The Pursuer was working during this period and listed the help of his daughter [REDACTED] who was living with them, to help in the day to day care of the children until she gave birth to her

own child in the summer of 1994. Prior to this time when the First Defender was still living with the Pursuer, the First Defender never took proper care of the said children when she was at home. The said [REDACTED] would be left to look after the children when the First Defender would go out at night [REDACTED]. The First Defender was convicted [REDACTED] when the said child William was around nine months old. The children were not fed or dressed properly in her care, and were out playing on one occasion at 4am, on their own. On more than one occasion the children were returned to the Pursuer by the Social Work Department.

Admitted that during the period of January 1994 until 22nd September 1994 when the children were taken into care, the Pursuer and the First Defender were not cohabiting. Not known and not admitted that from the period 15th June 1993 until January 1994 the Pursuer and First Defender were cohabiting. The First Defender's averments in Answer are denied except in so far as coinciding herewith.

Admitted that while the children lived with the Pursuer, the Pursuer had a responsibility to do whatever was reasonable in all the circumstances to safeguard the children's health, development and welfare. Not known and not admitted that the First Defender has admitted to the Second Defenders that she has engaged [REDACTED] but has alleged that she did so at the Pursuer's instigation. The Second Defender's averments in Answer are denied except in so far as coinciding herewith, and specifically denied that the Pursuer instigated the First Defender [REDACTED]. Explained and averred that during the period between January 1994 and September 1994 when the children were living with the Pursuer he arranged for his sister [REDACTED] to come over from Glasgow to help look after the children when he was working in addition to the assistance given from [REDACTED] his daughter, and did everything he could to safeguard the children's health, development and welfare.

ANSWER 4

Admitted that on 22nd September 1994, a Place of Safety Order was made in respect of the said three children and the children have been in placements with the Social Work Department ever since. Admitted that the Defender returned to the Pursuer the day after the Place of Safety Order was made under explanation that the Pursuer advised the Defender that the children would be returned to their care if they reconciled. Admitted that this attempt at reconciliation did not last and the parties finally separated approximately six months later. *Quoad ultra* denied. Explained and

averred that from the period of 15th June 1993 until January 1994, the Pursuer and the Defender were cohabiting. Explained and averred that during this time the Defender continued to have care and control over the said three children. Explained and averred that during the period January 1994 until 22nd September 1994 when the children were taken into care, the Pursuer and the Defender ceased cohabiting. Explained and averred that during this period the children resided sometime with the Defender and sometime with the Pursuer. Explained and averred that during this time the Defender exercised care and control of the said children.

ANSWER 4 (SD)

Admitted that on 22nd September 1994 Place of Safety Orders were made in respect of the children and that the children have been in placement with the Social Work Department ever since. Admitted that the Second (?) Defender returned to the Pursuer after the Place of Safety Orders were made and that the attempt at reconciliation did not last. Admitted that during the period 15th June 1993 to 22nd September 1994, the Pursuer enlisted the help of his daughter [REDACTED] or [REDACTED] to help in the day to day care of the children. Admitted that when the First Defender was still living with the Pursuer, the children were not properly cared for. Admitted that [REDACTED] would be left to look after the children. Admitted that the children were not fed or dressed properly while living solely with their mother. Admitted that on 13th or 14th February 1993 when the children and the Second Defender were not living with the Pursuer, [REDACTED] were found out playing at 4am on their own. Admitted that on more than one occasion the children were returned to the Pursuer by the Social Work Department under explanation that on at least two of these occasions the Pursuer was responsible for the children's welfare at the time. Believed to be true that for some time during the period 15th June 1993 to 22nd September 1994 the Pursuer was working. Not known and not admitted the nature of the Pursuer's employment, not the duration and hours of it. Not known and not admitted whether the First Defender went [REDACTED] Not known and not admitted whether the First Defender has been convicted of any offence connected with [REDACTED] or whether [REDACTED] when the child William was nine months old. *Quoad ultra* denied. Explained and averred that while the children lived with the Pursuer, the Pursuer had a responsibility to do whatever was reasonable in all the circumstances to safeguard the children's health, development and welfare. The Pursuer failed to fulfil that responsibility with the result that support had to be provided by the Social Work Department and, eventually, the children were taken into care on a compulsory basis. The First Defender has admitted to the Second Defenders that she [REDACTED] in the past but has alleged that she did

so at the Pursuer's instigation. The First Defender's averments in answer are denied except in so far as coinciding herewith.

COND 5

Since the said children have been taken into care the Pursuer has persistently tried to get all three children back into his care and control. The Pursuer always believed that it is in the children's best interests to live with him and has opposed almost every decision to continue or vary the supervision requirements in respect of the said three children. The Pursuer continues to have supervised contact with each of the said children separately.

The First Defender's averments in Answer are denied except in so far as coinciding herewith.

Admitted that successive Children's Hearings have consistently held that it better serves the children's interests for them to be accommodated by the Second Defenders rather than be returned to live with the Pursuer. Admitted that the Pursuer has appealed against decisions of the Children's Hearings on no less than six occasions since September 1994. Admitted that only one of these occasions was he successful. Admitted that on that occasion the Pursuer appealed against a decision on 2nd August 1995 to continue the supervision requirements in respect of the children and to restrict their contact with the Pursuer. Admitted that the Sheriff held that the Hearing of 2nd August 1995 had taken irrelevant considerations into account in reaching their decision. Admitted that the Sheriff remitted the matter back to the Hearing for reconsideration. Admitted that upon reconsideration the Hearing confirmed their original decision. The Second Defender's averments in Answer are denied except in so far as coinciding herewith. Explained and averred that when the Pursuer appealed the decision of the Children's Hearing of 1st April 1998 to restrict the Pursuer's contact with William, the Sheriff heard the Pursuer with regard to the favouritism afforded the First Defender by the Second Defenders with regard to contact in that she had been permitted contact outside the Family Centre at Kirkton on several occasions and provided transport to and from locations where contact was exercised, and only on the Sheriff's instigation did the Second Defenders thereby agree to similar latitude in respect of the contact exercised by the Pursuer. This, in spite of repeated prior requests for contact to be exercised outwith the small room at the Family Centre at Kirkton by the Pursuer and confirmation that the quality of contact would be improved at alternative locations by the Report submitted by Children First. Further explained and averred that since contact has had to be arranged for [REDACTED] at Thornbrae it has been of much higher quality as the Pursuer has a good relationship with the staff there and he feels he has been

given more assistance and encouragement to have contact than he has been afforded by the Second Defenders.

ANSWER 5

Not known and not admitted that the Pursuer has persistently tried to get all three children back into his care and control. *Quoad ultra* denied.

ANSWER 5 (SD)

Admitted that the Pursuer has always believed that it is in the children's best interest to live with him and has opposed almost every decision to continue or vary the Supervision Requirements in respect of the said three children. Admitted the Pursuer continues to have supervised contact with each of the children separately. *Quoad ultra* denied. Denied in particular that it is in the children's best interests to live with the Pursuer. Explained and averred that when the children were living with him, the Pursuer failed to do whatever was reasonable in all the circumstances to safeguard the children's health, development and welfare. The children were taken into care by the Second Defenders as a result. Since that time the Pursuer has failed to work with the Second Defenders and other agencies to improve his parenting skills. Successive Children's Hearings have consistently held that it better serves the children's interests for them to be accommodated by the Second Defenders rather than be returned to live with the Pursuer. The Pursuer has appealed against decisions of the Children's Hearings on no less than six occasions since September 1994. On only one of these occasions was he successful. On that occasion the Pursuer appealed against a decision on 2nd August 1995 to continue the supervision requirements in respect of the children and to restrict their contact with the Pursuer. The Sheriff held that the Hearing of 2nd August 1995 had taken irrelevant considerations into account in reaching their decision. He remitted the matter back to the Hearing for reconsideration. Upon reconsideration the Hearing confirmed their earlier decision.

COND 6

On 17th October 1997 the Pursuer appealed a decision of the Children's Hearing to make a place of safety order with regard to [REDACTED] and the Court deemed the Pursuer not to be a "relevant person" under section 93(1) of the Children (Scotland) Act 1995 and he was thereafter refused invitation to the Children's Hearing. The First Defender is automatically defined a "relevant person" under the said section of the said Act and continues to be allowed to be present at the Children's Hearings in respect of the said children. The First Defender has never opposed the

decisions of the Children's Hearings and has never made any attempt to get the said three children back into her care. The First Defender is unable to look after the said three children and has no desire to have them returned to her care. The First Defender has already consented to the adoption of her son [REDACTED] and the Pursuer is concerned that she will consent to any such order for adoption in respect of the said three children who are the subject of this action. As an unmarried father with no parental rights the Pursuer would not be required to consent and it is not in the children's best interest that the Pursuer has no right to object if such an order were sought.

The First Defender's averments in Answer are denied except in so far as coinciding herewith.

Not known and not admitted that the Second Defenders envisage that [REDACTED] placement at Thornbrae will remain open to him until he reaches adulthood. Not known and not admitted that if he leaves Thornbrae [REDACTED] will be placed with long term foster carers. Not known and not admitted that [REDACTED] is presently with foster carers who have expressed a willingness to care for her until she reaches adulthood. Not known and not admitted that the Second Defenders envisage that Linda's carers will require considerable support and that her placement will therefore remain a foster placement. Not known and not admitted that any move towards [REDACTED] adoption will be prompted entirely by [REDACTED] wishes and those of her carers. Not known and not admitted that the Second Defenders are currently seeking permanent substitute care for William. Not known and not admitted that it is not clear at the present time whether the Second Defenders would determine that adoption would best meet William's needs. The Second Defender's averments in Answer are denied except in so far as coinciding herewith.

ANSWER 6

Not known and not admitted that the Pursuer appealed the Decision of the Children's Hearing to make a Place of Safety order with regard to [REDACTED]. Not known and not admitted that the Court deemed the Pursuer not to be a relevant person under Section 93(1) of the Children (Scotland) Act 1995 and that he was thereafter refused invitation to the Children's Hearing. Not known and not admitted that the Defender is automatically designed a relevant person under the said Section of the said Act and continues to be allowed to be present at the Children's Hearings in respect of the said children. *Quoad ultra* denied. Explained and averred that the Defender has been working closely with the Social Work Department in order to increase contact with the children with a view to having the children returned to her care. Explained and averred that the Defender believes that the best interests of the children are paramount and that the process of the children

being released from care should be taken slowly and under the supervision of the Social Work Department

ANSWER 6 (SD)

Admitted that on 17th October 1997 the Pursuer appealed a decision of the Children's Hearing to make a Place of Safety with regard to [REDACTED] and the court deemed the Pursuer not be a "relevant person" under Section 93(1) of the Children (Scotland) Act 1995. Admitted that the First Defender is automatically defined as a "relevant person" and continues to be allowed to be present at Children's Hearings in respect of the children. Admitted the First Defender is unable to look after the children. Admitted that as an unmarried father without parental rights, the Pursuer's consent to an Adoption Order would not be required. Believed to be true that the First Defender's son, [REDACTED] has been freed for adoption on the application of Perth and Kinross Council. Not known and not admitted whether the First Defender has any desire to have the children returned to her care. Not known and not admitted whether the First Defender consented to the freeing for adoption of her son [REDACTED]. Not known and not admitted whether the First Defender would agree to any Order leading to the children's adoption. Not known and not admitted whether the Pursuer is concerned whether she will consent to any such Order. *Quoad ultra* denied. Explained and averred that the Pursuer did not appeal further the Court's determination that he was not a "relevant person" for the purpose of the Children's Hearings. Further explained and averred that the children are unlikely to return to the Pursuer's care and control. The Second Defenders envisage that [REDACTED] placement at Thornbrae will remain open to him until he reaches adulthood. It is expected that if he leaves Thornbrae [REDACTED] will be placed with long term foster carers. [REDACTED] is presently placed with foster carers who have expressed a willingness to care for her until she reaches adulthood. The Second Defenders envisage that [REDACTED] carers will require considerable support and that her placement will therefore remain a foster placement. Any move towards [REDACTED] adoption will be prompted entirely by [REDACTED] wishes and those of her carers. The Second Defenders are currently seeking permanent substitute care for William. It is not clear at the present time whether the Second Defenders would determine that adoption would best meet William's needs. *Esto* applications were to be made for the children's adoption or freeing for adoption, it is likely there would be grounds for dispensing with the Pursuer's agreement. The Sheriff's duty to ensure that any adoption or freeing for adoption order is likely to safeguard and promote the welfare of the children throughout their lives is identical whether or not the Pursuer's agreement is required. The Second Defenders have no plans to return

the children to their mother's care at the present time and the First Defender's averments in Answer are denied insofar as they suggest otherwise.

COND 7

The Pursuer is very concerned about the welfare of the three children, the said [REDACTED] having been placed in a Local Authority unit, his placement with foster carers having broken down and having been excluded from school; the said [REDACTED] having been placed with her sixth placement with foster carers and her fifth school; and the said William Tarbett having been separated from his brother in February 1997, all causing confusion and instability in the children's lives.

ANSWER 7

Admitted that the said [REDACTED] has been placed in a Local Authority Unit, his placement with foster carers having broken down and his having been excluded from school. Admitted that the said [REDACTED] has been placed with her fifth placement with foster carers and her fourth school. Admitted that the said William Tarbett was separated from his brother in February 1997. Not known and not admitted that the Pursuer currently has a two bedroomed local authority house. *Quoad ultra* denied.

ANSWER 7 (SD)

Admitted that the said [REDACTED] has been placed in a local authority unit, his placement with foster carers having broken down and having been excluded from school. Admitted that [REDACTED] has been placed with her sixth placement with foster carers and her fifth school. Admitted that William Tarbett was separated from his brother in February 1997. Admitted that these changes have all caused confusion and instability in the children's lives. *Quoad ultra* denied.

COND 8

It is averred that it is in the children's best interests that the Pursuer has some degree of control over any assessment being carried out and to be able to attend the Children's Hearings regularly as he has always done, and it is accordingly just and equitable that a specific issue order vesting parental responsibilities and parental rights be made in his favour thus allowing him the opportunity to attend and appeal any decision in respect of his said children that is made by a Children's Hearing. It has been held by the European Court of Human Rights in *McMichael v. UK*, ECHR 24 Feb 1995 (1995) Fam Law 478, that procedural rules in the hearings' system denying a parent (including a

cohabiting unmarried father, which the Pursuer was both before and after the children were taken into care) access to social work reports, constituted a breach of the Article 8 right to respect for family life.

The First Defender's averments in Answer are denied except in so far as coinciding herewith.

Admitted that it is important that any person with parental rights and responsibilities in respect of the children maintains a reasonable relationship with the children's social workers. Admitted that the Pursuer was convicted and fined on or about 7th February 1996 in relation to his threatening behaviour towards social work staff. Admitted that the Pursuer is invited to attend care review meetings. Not known and not admitted that it is likely that the children will continue to be looked after by the Second Defenders until they reach adulthood. The Second Defender's averments in Answer are denied except in so far as coinciding herewith. Explained and averred that the Pursuer's conviction for threatening behaviour followed on a challenge to fight with the Pursuer by the Social Worker involved the previous evening, and that the Pursuer has since apologised to the Social Worker involved for his conduct over the telephone. Explained and averred that the Second Defenders have failed to maintain a good relationship with the Pursuer and that their attitude on occasions has been unhelpful and not in the best interests of the children, given that the Children's Hearing held that it was in the best interests of the children to continue to have contact with the Pursuer.

ANSWER 8

Denied. Explained and averred that it is not in the children's best interests that the Pursuer has some degree of control over the upbringing of the children. Explained and averred that the Pursuer has no real understanding of the children's needs and circumstances and fails to identify the children's needs as being separate to his own. This was identified by Phillip McGill, Social Worker for Dundee City Council in his report in terms of section 11 of the Children (Scotland) Act 1995 on the said children, at page 25 which is lodged in process and is referred to for its terms. Explained and averred that the Pursuer is kept sufficiently informed about the children by the Social Work Department. Explained and averred that the Social Work Department have been sending fortnightly letters to the Pursuer regarding the children. Explained and averred that the Pursuer has been invited by the Social Work Department to all Social Work Review meetings concerning the children although the Pursuer has failed to attend these meetings on numerous occasions.

ANSWER 8 (SD)

Denied. Explained and averred that the Pursuer has no real understanding of the children's needs and circumstances and fails to identify the children's needs as being separate to his own. Further explained and averred that it is likely that the children will continue to be looked after by the Second Defenders until they reach adulthood. It is therefore important that any person with parental rights and responsibilities in respect of the children maintains a reasonable relationship with the children's social workers. Since July, 1998 the Pursuer has refused to communicate with the Second Defenders except through his solicitors. This causes difficulties, especially in arranging the Pursuer's contact with the children. Furthermore, the Pursuer was convicted and fined on or about 7th February 1996 in relation to his threatening behaviour towards social work staff. The Pursuer's contact with social work staff continues to be characterised by his aggressive and intimidating behaviour. Despite these difficulties the Second Defenders attempt to keep the Pursuer informed about the children. They send him fortnightly letters. He is invited to attend care review meetings. The Second Defenders continue to promote direct contact between the Pursuer and the children to the extent that that remains consistent with the children's welfare. The provision of information, invitations to review meetings and contact will be unaffected by the outcome of the present action.

PLEAS IN LAW FOR THE PURSUER

It being in the best interest of the said children that a specific issue order in terms of crave 1 should be made, vesting parental responsibilities and parental rights in the Pursuer, decree

should be granted as craved.

IN RESPECT WHEREOF

Enrolled Solicitor
1 Bank Street
Dundee

Solicitor for Pursuer

PLEA IN LAW FOR FIRST DEFENDER

The Specific Issue Order First Craved by the Pursuer being unnecessary and not being in the best interests of the said children, should not be granted as craved.

IN RESPECT WHEREOF

Graham Harding
Messrs Thorntons WS
5 Charlotte Street, Perth
Solicitor for Defender

PLEA IN LAW FOR SECOND DEFENDERS

1. The order craved by the Pursuer being unnecessary and not in the best interests of the children, this action should be dismissed.
2. The Pursuer's averments being irrelevant, this action should be dismissed.
3. The Pursuer's crave being lacking in specification, this action should be dismissed.

IN RESPECT WHEREOF

Solicitor
21 City Square, Dundee
Solicitor for Second Defender

CHILDREN 1ST

ROYAL SCOTTISH SOCIETY FOR
PREVENTION OF CRUELTY TO CHILDREN

ASSESSMENT REPORT for Dundee City Council, Social
Work Department, Dundee.

Subjects: William Tarbett d.o.b. 09.07.91
[REDACTED]
[REDACTED]

Mother: Linda Robertson
Father: David Tarbett

Introduction:

In October, 1997 the parents were referred to CHILDREN 1ST to assess the possibility of the children returning to their care. It was agreed this would be an initial assessment and the children should not be involved.

Ms Robertson:

In January, 1998 Mrs Robertson was contacted by phone in order to arrange a meeting to discuss the assessment. She was not keen to meet and was confused about the purpose of the assessment. She was in the process of moving house and was therefore unsure when she could meet. I advised her the assessment was time limited and therefore we would need to meet soon if she wanted to get involved. We therefore agreed she should discuss her participation in the assessment with either Phillip McGill or Margaret Leslie. As far as I am aware Ms Robertson did not do this. It is however my impression Ms Robertson did not make her self available for the assessment because she viewed it was realistically not feasible to consider the children returning to her care at this point in time.

Mr Tarbett:

We met with Mr Tarbett in January, 1998 and he agreed to participate in the assessment. With his agreement the sessions were video recorded so there could be no dispute about what either party said. There were six sessions arranged and Mr Tarbett was provided with these dates. Mr Tarbett did not attend two sessions and we had to cancel one session. There was therefore only 3 sessions but, in our opinion enough information was gathered to complete the assessment.

In the first session using the HMS DOH Comprehensive Assessment we looked at the Causes for Concern and The Children. Mr Tarbett was unable to acknowledge there was any valid reason why the children were originally removed from his care. His view was that any difficulties the children now had were not his responsibility. He blamed the Social Work Department and the childrens mother. He seemed to believe any problems with the childrens behaviour would stop if they were returned to his care. His knowledge of the three children was fairly limited and he found it difficult to describe them.

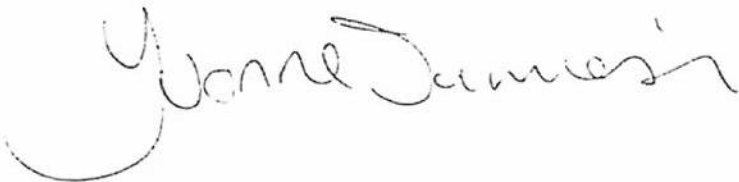
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In the second session again using the DOH Comprehensive Assessment we did the Individual Profile. Mr Tarbett was very positive about himself and his past. He viewed himself as a happy person who gets on with everyone and has no real weaknesses. He describes his own childhood as pretty good and he thought he had a good relationship with his parents. Mr Tarbett was in Balgowan Residential School for a few years -he could not recall how many. It was significant to him he was at the school because he committed an offence. He thought it was because he stole a bicycle.

In the third session we tried to explore how Mr Tarbett could care for and manage the three children if they were returned to his care. Unfortunately he had a very simplistic view of how things would be and was not able to discuss the possibility of their being any difficulties. In an attempt to open the subject up I asked why his 5 other children had been in the care of the Social Work Department. He did not accept responsibility for this. He claimed his wife had left him, the house was destroyed, and because he was working he would not look after them. He apparently did not object to his older children being in care because he was working and he had control and could see them whenever he wanted. I asked if he would be happier if he could see the children more often but he claimed to really want the children home.

Conclusion:

It is my view that it is not feasible to consider a rehabilitation programme for any of the children to return to the care of either parent at this point in time. Ms Robertson choose not to take part in the assessment at all therefore deselecting herself. Mr Tarbett has attended three sessions but during that time gave no indication that he understood why the children were originally taken into care. He presented as a man who has a limited ability to understand concepts and because of that was unable to accept the children's needs were any different from his own. Unfortunately until Mr Tarbett can begin to understand the children require more from him than he is offering at present no progress can be made.


Yvonne Jamieson
Practitioner CQSW
CHILDREN 1st
Laurelbank Family Resource Centre
2 Dudhope Street
DUNDEE
DD1 1JU

14th April, 1998