

Neutral citation number: [2022] EWFC 93

IN THE FAMILY COURT SITTING IN MANCHESTER
IN THE MATTER OF THE CHILDREN ACT 1989
AND IN THE MATTER OF A CHILD "A" (a Minor)

CIVIL JUSTICE CENTRE
BRIDGE STREET
MANCHESTER

Dated 4 July 2022

Before :

RECORDER HESFORD

Between :

The Father

Applicant

- and -

The Mother

1st Respondent

- and -

"A" (A Child) via his guardian Ms Robertson 2nd Respondent

The father was unrepresented
The mother was unrepresented
Ms Anna White (Counsel) for Bromleys Solicitors for the 2nd Respondent

Hearing dates: 29 June and 1 July

FINAL JUDGMENT

4 July 2022

CHILD ARRANGEMENTS ORDER

I INTRODUCTION

1. I am concerned with A who was born on [.....] 2015 and is now 7 years of age.
2. The father has parental responsibility for A. A lives with his mother.
3. This is the father's application for a Child Arrangement Order issued on 24 November 2020 for an Order that A should spend time with his father
4. A is represented by a Children's Guardian Carol-Ann Robertson and at court for this hearing by Ms White of Counsel.

II THE BACKGROUND AND THE COURT PROCEEDINGS (inserted from the Case Summary prepared by "A" 's Solicitor and Guardian for efficacy)

5. The background is set out in the case summary prepared for this hearing by A's Solicitor. The background section in the case summary is factual and not controversial. I will set it out here:
6. *"The parties commenced a relationship in 2012, with A being born in March 2015. The mother reports that the parents' relationship ended in around March 2016, whereas the father states that it ended around March 2017.*
7. *Upon separation, A remained in the care of his mother. The father had supervised contact with A for a period of time following the parents' separation due to concerns about the father's substance misuse and mental health difficulties. The parents subsequently agreed for contact to progress to take place on an unsupervised basis, with A spending one night a week in his father's care.*
8. *On 28.01.2019, the father was taken to [.....] Hospital by Police under Section 136 of the Mental Health Act. He was*

subsequently admitted to [.....] Hospital where he was assessed and received treatment for an overdose. The following day (29.01.2019), the father was transferred to [.....]Hospital and discharged two days later. He was to receive follow up from the [.....] Drug and Alcohol Team and the Home Based Treatment team.

9. *A referral was made to [.....] children's services by an Adult Mental Health social worker and the local authority completed a CAF assessment. The outcome of the assessment was that a safety plan was formulated around the father's future contact with A (detailed at D10-D13) and for such contact to be supervised by the mother, or another appropriate extended family member/friend. The case was closed with no further action at the end of February 2019.*
10. *The mother reports that she supervised A's contact with his father following the CAF assessment however this was stopped by her in December 2019 due to concerns around the father's behaviour. Following this, the mother reports that the father then contacted her a few months' later (March 2020) when video calls were facilitated on a few occasions.*
11. *A has not spent any time with his father in person since December 2019.*
12. *A s.7 report completed by CAFCASS dated 04.05.2021 [E6 – E23] confirmed the parents' respective positions at that stage as being:
 - a. *The father seeking supervised contact with A and ultimately, for a shared care arrangement;*
 - b. *The mother was not in agreement with direct contact and wanted the matter to be considered by professionals.**
13. *The s.7 report was considered at a hearing on 18.05.2021. Indirect contact was recommended by CAFCASS as an interim measure at a frequency of once per month, which was agreed by the parents and an*

order made by consent [B10 – 14]. Recommendations had also been made in the s.7 report for hair strand testing and expert assessment.

14. *The matter was referred to DJ Entwistle following the hearing on 18.05.2021 who directed enquires be made with CAFCASS in respect of the appointment of a children's guardian for A under Rule 16.4. This was accepted by CAFCASS and Ms Robertson was allocated to the case. The matter was listed before DJ Entwistle for further directions on 05.07.2021.*
15. *On 30.06.2021, an application was made on behalf of the guardian for expert assessment of the father by consultant psychiatrist, Dr Nadeem [B16 – B36]. This was lodged with the Court together with the guardian's position statement [E18 – E23].*
16. *The application and proposed directions were discussed with both parents in advance of the Teams hearing on 05.07.2021 with the mother agreeing to the guardian's proposals. The father however was hesitant and his detailed position is recorded on the face of the Order made by the Court that day [B38, paragraphs (F) and (G)].*
17. *The Court granted the guardian's application for expert assessment and hair strand testing and the matter was timetabled through and listed on 22.10.2021 for DRA/early final hearing.*
18. *On 03.08.2021, an application was made on behalf of the guardian for an urgent hearing in view of the father having only provided consent to limited medical information being obtained. There was liaison with Dr Nadeem who had indicated that not having the father's medical records would be a major limitation and he would prefer not to complete an assessment if that were the case [full details as to the issues are set out in the C2 application at B51 – B52]. There were also issues in respect of the hair stand testing (also addressed within in the C2 application).*
19. *Subsequent to the filing of that application, the father confirmed his agreement to full information being obtained and an order was made by*

consent on 15.09.2021 for directions and for the re-timetabling of the case [B56 – B57].

20. *By mid-October 2021, a portion of the father's medical records remained outstanding, which meant the expert had been unable to provide a complete costs estimate for the application for prior authority to be made to the Legal Aid Authority. The parties were able to agree directions for extensions of time which were incorporated into a consent order dated 15.10.2021 [B61 – B63]. This order timetabled all matters, including final evidence, with a DRA/Early Final Hearing being listed on 27.10.2022.*
21. *Dr Nadeem interviewed the father on 27.10.2021 and provided his report on 26.11.2021 [E46 – E87].*
22. *On 02.12.2021 Dr Nadeem contacted the child's solicitor following receipt of an email from the paternal grandparents which suggested that they had read the expert's report. An email was sent to the father reminding him of the confidential nature of the proceedings and that documents must not be shared. Examples were provided of persons with whom the father would be permitted to share the report, e.g. his GP for treatment purposes and any legal representative instructed by him within the proceedings.*
23. *Further correspondence took place with the father in respect of issues raised by him regarding Dr Nadeem's report. The father was offered some further time to consider matters and the child's solicitor consulted with Dr Nadeem and agreed an amended timetable within which questions could be put to the expert and for written replies to be received to enable the hearing in January 2022 to go ahead. This amended timetable was agreed by both parents.*
24. *On 16.12.2021, the child's solicitor was contacted by solicitors instructed by the father who provided written questions for the expert. Dr Nadeem provided his responses on 10.01.2022, which were sent to the parties.*
25. *On 13.01.2022, the father's solicitors confirmed they were no longer instructed.*

26. *Statements were filed by the father and mother (on 13 and 14 January 2022 respectively) following receipt of Dr Nadeem's written replies to questions [at C5 – C8 and C9 – C11]*
27. *The guardian's analysis was then filed on 24.01.2022 which proposed further hair strand testing of the father and an expansion to contact to include pre-recorded videos on a monthly basis (in addition to the letters already directed) [B64 – B65, paragraph 4]. The father sought a wider expansion of contact but did not oppose the recommendations and indicated a willingness to provide the expert's report to his GP. The mother expressed some concern in respect of the risk to A however also did not oppose the guardian's proposals. In addition, the Court directed further hair strand testing and made other directions, including an addendum from the children's guardian with the matter being further listed on 08.04.2022 for a repeat DRA.*
28. *The guardian's addendum report was filed on 06.04.2022 [E136 – E151]. This report made a final recommendation that A live with his mother and have indirect contact with his father on a monthly basis to include letters, cards and small gifts as well as pre-recorded messages should the father feel able to manage the same [E150].*
29. *The father confirmed at the hearing on 08.04.2022 that he did not agree the guardian's recommendations and his position remains that he seeks direct, supervised contact with A. The mother agreed the guardian's recommendations"*
30. The case was listed for final hearing before me on 29 June and 1st July 2022. Dr Nadeem had been warned for the second day and on the morning of the first day I gave permission for him to attend remotely at the request of the father. I had received questions for Dr Nadeem from the father.
31. Directions were made for the father and mother to respond to the guardian's addendum report by written statement, which appear in the bundle at C18 – C30 and C31 – C32 respectively. The father has also filed

a number of other documents following receiving permission to file third party reports [C33 – C38].

32. The guardian was directed to file a position statement, served 27 June.

III THE ISSUES

33. The issues in this case relate to the father's substance misuse and mental health difficulties. The father has self-harmed in the past including attempts at suicide and he has been Sectioned under the Mental Health Act on 3 occasions. His issues with drugs/substance abuse have involved alcohol, heroin, cannabis, crack cocaine and Ketamine.
34. There has been drug testing of the father undertaken by AlphaBiolabs during the proceedings in September 2021 and March 2022 (E24-45 and E114-135). On the first occasion the hair sample, limited to 3.5 months, was tested for Cocaine, Cannabis and Opiates. The father tested negative for the identified drugs but positive for Ketamine in the medium/high range. The second tests gave similar results.
35. The father has recently raised some issues about the mother's past use of drugs and her lifestyle but this is historic and there is no evidence of any recent concerns. There is no evidence that A is at risk in her care and she was also assessed by [.....] Local Authority in 2019.

IV THE POSITIONS OF THE PARTIES

36. The father seeks direct regular contact with A, leading to a shared care arrangement. He would agree to the contact being supervised either professionally or ideally by his family. He does not agree with the psychiatric assessment.
37. The mother accepts the recommendation of the guardian.

38. The guardian recommends indirect contact only at this stage. The guardian encourages the father to seek support to abstain from illicit substance misuse and continue to engage in therapeutic work.
39. The guardian is very concerned that the father has indicated his intention to reapply at the earliest opportunity if these proceedings do not yield the result he seeks. This would mean that A is subjected to further litigation immediately and this could have a negative impact upon him especially given the protracted nature of these proceedings which commenced in 2020. The guardian would encourage the father to seek support from substance abuse and therapeutic services in accordance with the recommendations of Dr Nadeem and in her report before making any further application to the Court. The guardian has stated that she would likely feel unable to recommend reassessment by an expert (preferably Dr Nadeem, if possible) if the father has not progressed with the recommendations which have already been made. If, however, the father accepts the recommended support and is able to make progress then there would certainly be a strong argument for reassessment by an expert. This, in turn, would then feed into being able to consider there being a progression of the arrangements around A's relationship with his father.

V THE HEARING

40. The hearing took place over 2 days as an attended hearing, save for the expert who attended remotely. Neither parent was represented. Both had the assistance of Mackenzie Friends and special measures were in place. These were arranged by the allocated judge and included screens and preparation of advance questions. In addition to the supplied questions, I allowed time for further questions after evidence. I did not ask questions which were not appropriate or not directly relevant to the issues but I did ask additional questions to clarify / expand some questions to assist the parents with their evidence and the fair examination of the other parent / guardian / expert. I am satisfied that the hearing has been fair.

41. For the purpose of this hearing and judgment I have read and considered the complete bundle of papers. I have heard oral evidence from the mother, father, guardian and the psychiatrist Dr Nadeem. Save for Dr Nadeem, the oral evidence was not lengthy and I do not propose to summarise the whole of it as it was consistent with the written evidence. I will address the evidence mainly where it is particularly relevant to my analysis and decision. Even if issues which have been raised by the parties are not specifically addressed in this judgement they have nevertheless been taken into account in my global and holistic consideration of the matter.

VI THE LEGAL FRAMEWORK

42. I have of course in mind throughout my consideration of this case the applicable provisions of the Children Act and in particular Section 1 and the Welfare Checklist: When a court determines any question with respect to the upbringing of a child.... the child's welfare shall be the court's paramount consideration. I will address the welfare checklist later in this judgement.

43. Section 1(2A) of the Act confirms that there is a presumption that the involvement of a parent in the life of a child will further the child's welfare unless the contrary is shown. I stress that "involvement" means "involvement of some kind, either direct or indirect, but not any particular division of the child's time".

44. Section 1(2) confirms that delay is likely to be harmful to a child.

45. I must also bear in mind the Human Rights Act, including under Article 8 Right to respect for private and family life – for all parties not just the applicant and respondent and indeed I take into account A's rights too.

46. I am satisfied that the hearing has been Article 6 compliant as stated earlier.

VII MY IMPRESSION OF THE WITNESSES AND ASSESSMENT OF THE EVIDENCE

47. The Guardian: Ms Robertson gave evidence confidently. She considered the questions which were put to her including those on behalf of the father carefully and provided detailed clear, sensible and appropriately considered answers. Not only is she clearly a highly competent and organised Guardian, but I found her to be a moderate, careful and thoughtful witness with a clear focus upon A's best interests.
48. Her oral evidence was in line with her written evidence. She confirmed that she had considered all the evidence and conducted a careful balancing exercise concerning the potential risks to A of seeing his father against the potential emotional harm of not seeing him. At this time, the balance was against direct contact, any emotional harm could be alleviated by indirect contact for the foreseeable future. She stressed that she was not closing the door to father for ever but she agreed with the recommendations of Dr Nadeem at this time.
49. She confirmed that her enquiries and meetings with father were conducted entirely appropriately and were sufficient to make her recommendation, together with the totality of the evidence. It was not necessary for her to meet the father's extended family at this time as the matter was not in a position where supervision of direct contact would be relevant, this could be something to consider in the future. Before family though, professional supervision would need to take place and that would only be after the therapy and reassessment etc in accordance with Dr Nadeem's recommendation.
50. She was concerned about 2 of the recorded video contacts which she considered to be inappropriate for A to receive and also by the father's reaction to her feedback. He struggled with this, did not like to be challenged and said that being so controlled in the video contacts was making him concerned about his mental health. His appearance and

demeanour was variable – sometimes forceful and sometimes apologetic, but it was unpredictable.

51. I have no hesitation in accepting her evidence. She at no stage appeared to show any bias towards either party and made appropriate concessions.
52. The father: The father clearly loves A, of that there is no doubt. He was thoughtful during much of his evidence but on occasions became quite upset and showed raw emotion. I do not criticise him for that – these are stressful court proceedings and he was certainly aware that the evidence was not in favour of his position. I fully understand and support his wish and right to challenge the same.
53. He clearly holds strong personal views regarding drug use – particularly Ketamine and Cannabis - which are not mainstream views. He is of course fully entitled to hold those views, but I have to take into account the impact of them and the other evidence within this matter and its potential risks to A. It was clear that father, during his evidence, has no intention of stopping taking Ketamine although he submits that it is now less frequent. He does not consider that it is a risk or unethical, but stated that it was a complicated topic with varying views. He pointed out the improvements he has made to his lifestyle – such as stopping heroin and crack cocaine; ceasing to be homeless and obtaining employment. I commend those changes.
54. He submitted that the report of Dr Nadeem was “out of date... cut and paste garbage... on out of date data”. He disagreed 100% with his report. The guardian was “biased and ineffective”.
55. He has undertaken therapy recently – hypnotherapy. In his closing submissions he confirmed that he would now agree to seek support for his drug use – first thing on Monday. He would also undergo the therapy recommended but requested that it only be for 6 months due to the length of time it has already been since he saw A. He didn’t want to but would for A. His desire now was for healing and reconciliation and he regretted any trauma and emotional pain caused to the mother. Aspects of this were

very different to the submissions in his final statement where he attacked and criticised the mother and did not acknowledge the need for any other therapy or support.

56. I will address the father's evidence further in my welfare checklist and general analyses.
57. The mother: The mother was calm, controlled and precise giving her evidence but it was clear that she found the matter to be very stressful. The father had not prepared questions for her so I allowed him time to prepare these. The questions from the father were asked on his behalf by the court, with follow up questions where appropriate.
58. The mother indicated that she did not agree that The father was always a competent father when not under the influence of drugs as he could be angry with mood swings, shouting and would slam doors. She accepted that there were good times too. She had tried to support the father with his addictions but it was a never ending cycle of drugs, relapsing and mental health issues. She admitted that she did not know the father personally now as she had not seen him but she had seen all of the court papers and still considered that contact was too much of a risk.
59. She was agreeable to reconsidering the question of contact in the future if the father underwent the recommended therapy and achieved abstinence and would be guided by professionals. She would also agree to persuade A to respond to communications from his father.
60. Dr Nadeem: Dr Nadeem gave evidence at length on the second day via CVP videolink. The father had prepared a set of questions, most of which the court put to the expert on behalf of the father and the court also asked further questions for clarification and to assist the father. Further time for the father to consider extra questions and to ask them directly. Dr Nadeem confirmed that he had read all of the up to date documentation and there were no changes to his recommendations.

61. He was challenged at length by the father but his opinion did not deviate from the report. He clarified that the specific psychological treatment required by the father would be DBT: Dialectical Behavioural Therapy. Father had severe and protracted substance misuse problems needing to be treated. Father should become abstinent from drugs before commencing DBT therapy as it does not work as well if drugs are taken. The therapy would most likely be 12 months from commencement.
62. When challenged, he confirmed that he had prepared his assessment fully in line with industry professional standards and denied that it was unfair or biased. 2.5 hours was taken for the interview and usually this was 1-1.5 hours so rather than being too short as father stated, it had been much longer. It had been carried out in a standard manner with use of the medical records and full history and fact gathering with routine questions – before deciding what would or would not ultimately be relevant to the assessment.
63. He considered the fathers history to be particularly relevant, including his comments about his own parents, as although they were made when father was in an addiction state, the reality was that he had a very long history of substance abuse and father had never been abstinent for a long period. It was all relevant in a wider context. He had gathered evidence for his opinions and recommendations from the medical records and also based upon his interview with the father as well as the court bundle. He considered that his assessment was fair; he had highlighted the father's achievements and not ignored them as suggested.
64. Father submitted that "Dr Nadeem had not acknowledged that his mental health issues were a by-product of the substance abuse in the past", effectively that the drugs caused or significantly contributed to the mental health issues. Dr Nadeem denied this strongly and stated that the contrary was correct. He had noted that a diagnosis of Emotionally Unstable Personality Disorder had been suggested in the past but he expressed concerns about labelling. It was difficult to give a diagnosis where there was substance misuse, but he was convinced that there were underlying

mental health issues and personality traits, not merely linked to substance abuse.

65. When asked about his opinion as to whether if addicted once, you were always addicted even if you free yourself, Dr Nadeem said that there were various school of thought. AA for example considers that you cannot be cured and complete abstinence is necessary. He preferred to focus on the individual person, as everyone had a unique journey to improve, achieve and sustain total abstinence. In the case of the father, given the severe and protracted nature of his substance abuse, this meant that total abstinence would be required. The father had previously switched from one substance to another, one addiction to another but had never achieved total abstinence, neither had he dealt with the underlying psychological issues.
66. He was concerned at the father's reference to his "recreational use" of Ketamine He would not call it "recreational" with the father's protracted history. Standard practice for people with the father's history was to recommend no "recreational use" at all it as it was simply too risky.
67. Mother asked one question which was whether the hypnotherapy which the father was undertaking now would be sufficient. He replied that it was not something he would prescribe, not within the guidelines and there was no specific evidence backing it.
68. I am satisfied that Dr Nadeem's assessment was balanced and fair. I accept his oral and written evidence, it was cohesive and detailed. His oral evidence reflected his written evidence and he was reflective and insightful when giving evidence. He was happy to praise the father for the improvements made but it was clear that he was concerned about the underlying issues and the risk of relapse without professional support. There are many more aspects of the report which I could address in this judgment but I do not need to do so. The report is accepted by the court and cross examination did not damage it's credibility. It can be referred to and disclosed to any professional therapist/support worker who assists

the father in due course. Dr Nadeem agreed to set out in a letter the precise information about the therapy, ideally with suggested therapists and father agreed to accept and utilise this.

69. I prefer the opinions of the professional expert on issues of mental health and substance abuse to those of the father. I do not do this simply because he is an expert appointed by the court, but as a result of the very clear and persuasive way he presented his evidence, both in the report and orally. It is also important to note that he is a very experienced and practising expert and a specialist in general adult and substance misuse psychiatry. There is no evidence, save for the father's opinions, to challenge his conclusions and I accept them. The same is true for the Guardian, another experienced professional.

VIII THE WELFARE CHECKLIST

70. I have had regard in particular to the criteria of the welfare checklist which I will now consider
71. (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);

In an ideal world, A would want to have a good relationship with both of his parents and would want good communication between them, less acrimony and not to be caught in the middle or subjected to any arguments. He would want a secure, stable and supportive home and safe and beneficial time with the other parent. He would not wish to be exposed to or put at risk of any harm, whether emotional, psychological, or physical as a result of his father's difficulties. Indeed he is not aware of his father's substance abuse and mental health difficulties.

A was not keen to proceed with direct discussions about his wishes and feelings with his guardian. He has limited memories of his father but says that "it would be good to know what daddy is doing". He was supported by

his mother to watch the video sent by his father but did not wish to respond. There is no evidence that he has been subjected to any parental alienation by the mother or that his wishes and feelings have been deliberately influenced.

72. (b) his physical, emotional and educational needs;

A has the usual physical and emotional needs of a young boy. His physical needs are being met by the mother as are his emotional needs. He attends school regularly and has a safe and secure home and support from his mother. He would certainly benefit from having a relationship with his father as he grows up if this could be managed safely, without putting him at risk of any harm.

The issue for me is to decide how this can be best managed now and in the future and if appropriate, developed over his childhood until he is in a position to make his own decisions.

At this time, A's needs cannot be met directly by his father but it is important that A knows that his father loves him and is committed to him. It may be in A's best interests to be told when he is older and when appropriate and accurate, a very simplified and limited history of his father's problems and then, hopefully, that his father has given up all substance abuse and sought therapeutic support - for A's benefit as well as his own. Sadly, we are not there yet. Father has started to make changes for the better such as reducing use of illicit drugs and I praise him for this, I encourage him to continue but additionally to seek professional help and support.

73. (c) the likely effect on him of any change in his circumstances;

There would be a substantial change in A's circumstances if I was to accede to the arrangements suggested by father. A seems resilient and he has suffered various changes in his life over the last few years. He seems to have coped with these so far, but he needs stability and certainty and regular settled arrangements. Any future direct reintroduction to his

father would have to be done sensitively and at a pace suitable for A and at a time when he and his mother as primary carer can be assured of his emotional and physical safety.

74. (d) his age, sex, background and any characteristics of his which the court considers relevant;

A is a young 7 year old boy. He has no particular characteristics which differ him from any other young boy of his age.

75. (e) any harm which he has suffered or is at risk of suffering;

I was concerned by many aspects of the father's evidence both written and oral. He indicated that he would tell A, if asked, that it was his mother's fault (as well as some of his own problems) that they hadn't seen each other and "be completely honest". He accepted that A may suffer emotional upset but stated that he was not scared of total honesty it would be "unethical and disingenuous to hide the truth"; children couldn't be "wrapped in cotton wool". When I suggested that at A's age it may be thought better to shield him from such information, he replied that he was unsure and after some reflection he said that maybe when he was older... but that "we sweep everything under the carpet... leading to a sick society".

This causes me considerable concern as to the father's understanding of how his behaviour could cause A emotional harm. A has been shielded from much of the father's problems and history and is far too young to have any complex or detailed discussions about these, indeed he will be too young for quite a few years to come. It is also not appropriate to blame the mother, this could have a negative effect upon the relationship between A and his mother, particularly when the reality of the situation is that the mother has been following the guidance of professionals including social services, CAFCASS and indeed the court. It is the decision of the court not to allow direct contact since the proceedings were issued, not of the mother.

When questioned about how A would feel about seeing his father when he was angry, lonely, or upset he refused to accept that it may not be an appropriate thing for A to see. "To hide normal feelings from A is unhealthy. He needs to know the whole picture of the world". He stated that "I don't think anyone has the right to tell me how to talk to my son". If A saw his father arguing or being challenged by professionals due to his behaviour his comment was "he'd hear that I was sticking up for him and our relationship". There were other examples of where father seemed unable to consider how his behaviour could affect A, including the 2 video messages (which were not delivered) which were addressed in the guardian's evidence and which she considers to be inappropriate – such as saying "see you soon" and referring to A's cousin seeing the father. He could not comprehend how A could receive any negative affect at all. In his oral evidence he stated that he considered that the video messages were absolutely appropriate.

Such comments highlight what both the guardian and I see as a lack of understanding of risk and how adult behaviour can adversely affect children's emotional and psychological health. In evidence, father stated that he didn't understand much of the basis for the guardian's recommendation of no direct contact but could identify his use of Ketamine and being inconsistent in his presentation as being 2 points. He accepted that they could theoretically be risks but stated that he would not use Ketamine with A or in the days before. He held liberal views about ketamine use and said that this was a difficult area to navigate as it depended on your personal beliefs. Ketamine, he said, helped you to be introspective and to philosophise. He denied "needing" the drug and said it wasn't a question of needing it, the use of Ketamine was not unethical in his opinion.

He pointed out that many parents drink wine when looking after children, it is not black and white. Ketamine, he says, helps him in the same way as someone else choosing to have a glass of wine.

He stated that the whole thing (by which I assume he meant the court process and denial of direct contact) is “immoral, unethical and difficult to rationalise. Justice has not been done so far and it’s been a waste of public money”

In my judgment there are fundamental differences between a parent having a glass of wine and a parent taking Ketamine. The father seeks to minimise his habit or addiction. Ketamine is an illegal Class B drug. Longer term effects of ketamine use can include flashbacks, memory loss and problems with concentration and regular use can cause depression and, occasionally, psychotic symptoms such as hallucinations. Ketamine can also make existing mental health problems worse. This was confirmed in the report of Dr Nadeem which father wholly dismissed. Possession of Ketamine can lead to a penalty of up to 5 years in prison, an unlimited fine or both.

The father does not understand or accept the risks of continuing to take such a drug – recreationally, as he said, or that it could be a risk to A unless taken at a time when there is contact. These risks include mental health difficulties but also the possibility of relapsing to high levels of drug and alcohol use (E81, Dr Nadeem). At E83 Dr Nadeem continued: “The father has good insight into the devastating impact of his dependence on heroin and cocaine on his health and life in general. ...however he has limited insight into the adverse effects of his on-going drug and alcohol use and he believes strongly that he does not require any further help from services. He is unlikely to engage with psychological treatment for mental health problems or treatment through substance misuse services. I think that this is likely to delay his recovery from his mental health and long-term addiction problems.

“I think he is at very high risk of relapse to higher level drug or alcohol use. If he relapsed, then this is very likely to have a marked adverse impact on his mental health, relationships and ability to function. If he relapsed to higher level drug and or alcohol use then the risks are markedly increased,

including risk of verbal or even physical aggression to others, risk of self-harm and risk of accidental or intentional self-harm and suicide”

The father has sought help and undertaken drug rehabilitation previously, on 5 occasions according to his oral evidence but it is clear that he has sadly relapsed. The longest he has been abstinent from illicit drugs and alcohol is about 1 year in 2016 (E55 Dr Nadeem). He has certainly made improvements over the last 2 years, acknowledged by Dr Nadeem.

He admitted in evidence that he still uses Ketamine now, “not weekly and not for 6-8 weeks now” but states that he is not addicted but uses it only “recreationally”, “it helps me”. He has had positive and negative experiences with Ketamine and when asked if it was a risk, he suggested that it was as much a risk as such things as shopping or crossing the road. It is clear he has very limited insight to the risks and of concern that he considers that he knows more about the drugs impact than the expert psychiatrist.

Dr Nadeem recommends that the father should commit to a plan to engage with support services and to be totally abstinent from drugs and alcohol for at least 12 months, with the same period of sustained stability of mental health (E85). This would include psychological treatment to develop better coping strategies (E80). In his oral evidence he clarified that there should be complete abstinence before Dialectical Behavioural Therapy commenced or it would be less likely to succeed. This was not a generic approach but specifically for this father with his long history of substance abuse and his underlying mental health condition and personality profile.

Sadly, the Fathers approach to personal support to date has not been positive. This includes his complete dismissal of input from the medical profession such as his GP: “an absolute waste of time”; NHS Talking Therapies: “an absolute waste of time”; his dismissing using prescribed medication such as anti-depressants and sleeping tablets: “Cannabis is a much safer and beneficial option”, together with his complete rejection of

the evidence of Dr Nadeem (“cut and paste garbage”) and attacking his credibility; “He manipulated me... He lulled me into a false sense of security and then when I was honest and open with him, he then weaponised everything I said to him and used it against me. Disgusting and unprofessional”

I am entirely satisfied from the evidence in this case that the father presently presents a real risk to A of emotional and psychological harm due to the issues I have just addressed and to the fathers almost complete lack of insight into how his behaviour could affect A. If the father’s mental health or drug use relapses that could become a physical risk. I do not suggest that the father would deliberately harm A, but his indications of wanting to tell A what he sees as “the truth” would potentially be very harmful.

It is for these reasons that I consider that there should be no direct contact between father and A. I also consider that there should be no unplanned/unscripted indirect contact between A and his father. A Facetime (or similar) call, with the risk of father being unpredictable, or becoming distressed, suffering a relapse, or telling A his opinion of the history or other inappropriate comments such as blaming mother – no matter if unplanned – would cause harm to A. Comments once made could not be taken back and A is simply too young to understand.

76. (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;

The mother is presently capable of meeting A’s daily needs and she has shown in the past that she is capable of doing so. The mother has also shown historically that she is capable of meeting A’s needs in promoting indirect contact with his father. The guardian is satisfied that the mother is supporting A in the indirect contact and there is no evidence to suggest otherwise.

77. (g) the range of powers available to the court under this Act in the proceedings in question.

I have the options of making various orders under the Children Act – Child Arrangement Orders in relation to A including an order that he should live with mother / father and / or an Order that he should spend time with mother / father and I remind myself that making no order at all is an option.

IX MY DECISION AND ADDITIONAL ANALYSIS

78. The central issue which I have to decide in in relation to A's future is whether he should spend time with his father directly including face to face contact and Facetime/Phone calls etc. In determining that issue I bear firmly in mind that A's welfare is my paramount concern. I have considered the provisions of the welfare checklist at section 1(3) of the Children Act and I have also weighed up the possible "pros and cons" or positives and negatives" of not allowing direct contact to take place, as has the guardian. The development and progress of contact is almost always an unknown. Children's needs change as they grow older. Flexibility is usually the best approach, with both parents working together. Sadly, that cannot occur in this matter at this stage
79. Like the guardian and expert, the court does not discount how much progress the father has made with both drug addiction, his mental health and his stabilisation of his lifestyle. However, he continues to use illicit substances, specifically ketamine. There is a serious risk of relapse. His ongoing need to use to "self-medicate" is apparent in his use, his comments to the guardian and within his own oral evidence. (E140). By his own admission, his use of ketamine increases when he stops drinking and using cannabis – it "keeps him on a level", soon as he stops he gravitates to use other substances – self medicating. The father absolutely believes that he is correct and that there is no problem with his drug use. He does not see his use of ketamine to be in any way harmful to A nor impact upon his own mental health.

80. Sadly, he has no insight into how and why such self-medication through illicit substance misuse would be a risk to A nor to his own well-being. In his evidence the father believed that by Dr Nadeem advising him to stop taking drugs, Dr Nadeem was breaching the father's human rights, being his right to choose to take drugs. That is quite a startling indictment of father's addiction or reliance on drugs (or however he chooses to term it, he not being able to become abstinent) and his unwavering belief in his own liberal views being correctly held.
81. On questioning Dr Nadeem, several of the questions prepared by father suggested that Dr Nadeem's report was unfair, false, biased against him and that he had been "profiled in a negative way". At no stage did the father seem to even consider that the report was accurate or a true opinion and representation of the father in the eyes of the expert or others. It is clear he sees himself in very different ways and with much more positivity than other people involved in this matter.
82. Sadly, in my judgment, the risk of harm to A is present and unmanageable at this stage.

X CONCLUSION

83. Section 1 (5) of the Children Act 1989 provides: 'where the Court is considering whether or not to make one or more orders under this Act with respect to a child, it shall not make the order ... unless it considers that doing so would be better for the child than making no order at all.' This provision does not create a presumption one way or the other. It merely demands of the court that it asks itself the question whether to make an order would be better for a child than making no order at all.
84. I note the comments of Dr Nadeem when he states the father's 'underlying psychological problems/personality traits can continue to affect him' including his 'anger problem which can be provoked by what he might perceive as unfairness or injustice' and how this could manifest given his

strong emotions about the mother. I was pleased to hear the father's final comments when he expressed his regret for the emotional pain he had caused and stated that he now wants healing and reconciliation. I express the hope that hearing the live evidence and having had the opportunity to challenge it he now accepts more of it than he did previously and that this is a genuinely expressed emotion.

85. I am entirely satisfied that this is a case where an order is justified. In summary, I accept the evidence of the mother, the guardian, and Dr Nadeem that until such time as the father has accepted the need for and actively sought help for his drug issues and mental health issues; and thereafter been stable, drug free and undergoing the recommended therapy for at least 12 months, contact between him and A should remain on an indirect basis only with communications supervised.
86. The father in his summing up asked the court to shorten the period to 6 months from 12 due to the length of time it has been since he saw A. It is important that the father recognises that the suggested 12-month time was not set as a random arbitrary target but rather as an indication from an experienced professional of how long the therapy would be likely to take to be effective and show sustained improvement and acceptance. Cutting it short to save time would undermine its effectiveness. Therapy is a sustained treatment, with time to reflect as well as active sessions. It is not a quick fix, particularly with such a long history as the father has. Often therapy can be needed for a much longer period than 12 months: it depends on proper engagement, acceptance and genuine open progress. It would be in A's best interests for the father to accept this and work as directed by the therapist rather than seeking any short cuts.
87. It was clear from the guardian's evidence, and I wholly agree, that the father should resist making any further applications to court until he has undertaken the therapy, ceased to take any illicit drugs and shown evidence of sustained change and resilience. Any earlier application would be likely to fail and would simply cause both parents and A stress, worry and possibly emotional harm.

88. There has been no application for a S.91(4) barring order in this case and it is not appropriate that I should make one without proper notice and consideration. I would, however, urge the father to resist the temptation to issue a new application without proven change.
89. I consider that the totality of the evidence, supported by the guardian, is clear that there should be a “live with” order for the mother. This will give A the security he needs whilst he grows up.

XI CONSEQUENTIAL ISSUES

90. I do very much hope that the father will be able to bring himself to accept the decision of the court and the need for professional support. He has started to make progress and has a supportive family but there is a very significant history. The guardian and indeed the mother were clear that if positive change can be proven and sustained, then the door is open to direct contact in the future. This is likely to be a long process, however, of at least 12 months duration followed by reassessment and patience is required. The father should record the “videos” monthly and send small cards and presents; the mother will encourage responses.
91. The father would be wise to spend his time seeking and accepting support rather than delaying matters further by making another application. In the absence of proof of acceptance of professional advice and of positive engagement and change, the outcome is likely to be the same.
92. In the event that this positive change occurs, then the guardian has confirmed that at that stage the father’s extended family could be considered for supervising contact at some point. It is likely that professional support would be required at first.

XII ORDERS

93. I make the following orders.

- a. A shall live with his mother
- b. A shall have indirect contact with his father on a monthly basis (plus special occasions such as Christmas and Birthdays) by way of pre-recorded videos, letters, cards and small gifts. It will be recorded in the order that the mother agrees to actively support and encourage A to respond.
- c. There shall be no direct contact between father and A.
- d. Permission is granted for the father to disclose the psychiatric report (and addendum) and this judgment to any treating therapist or other related professional.