

Neutral citation number [2023] EWFC 91

CASE NO: OX22C50074

IN THE FAMILY COURT SITTING AT OXFORD

HEARD ON 22<sup>nd</sup> & 23<sup>rd</sup> May 2023

HANDED DOWN ON 12<sup>th</sup> June 2023

Before

HER HONOUR JUDGE OWENS

Between

A Local Authority

Applicant

- and -

The mother

First Respondent

-and-

The father

Second Respondent

-

-and-

A

Third Respondent

**Representation:**

For the Applicant: Mr Perry

For the mother, First Respondent: Mr Walthall

For the father, Second Respondent: Miss Sparrow

For A, Third Respondent acting through their Children's Guardian: Dr Gatland

1. This judgment is being handed down [in private] on 12<sup>th</sup> June 2023. It consists of 29 pages and has been signed and dated by the Judge. The Judge has given permission for the judgment (and any of the facts and matters contained in it) to be published on condition that in any report, no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name, current address or location [including school or work place]. In particular the anonymity of the child and the members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court. For the avoidance of doubt, the strict prohibition on publishing the names and current addresses of the parties will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain.

## **INTRODUCTION, BACKGROUND AND EVIDENTIAL SUMMARY**

2. These proceedings concern A, who is 12 years old and will be 13 at the end of August this year. A's mother is the first respondent, and A's father is the second respondent.
3. I wish to say at the outset that it is abundantly clear to me that A loves both the mother and the father and that they in turn love A. Both the mother and the father have clearly worked hard within these proceedings, and I appreciate that this is because they are prioritising A's welfare. I also appreciate that neither of them will have found either the proceedings or the assessments and engagement with professionals to be easy.

4. Until 9<sup>th</sup> May 2022, A had been living with the father, though prior to this A had moved between both the mother and the father at times. On 9<sup>th</sup> May 2022 A moved to live with the mother and has remained there since. A wants to continue to live with the mother but to spend time with the father. All parties agree with this overall outcome for A.
5. The family has been known to social services since November 2016.
6. The applicant Local Authority (A Local Authority) commenced the Public Law Outline pre proceedings process in August 2021. Relevant aspects of the issues as far as this final hearing is concerned included the mother's alcohol misuse, instability in living arrangements for A with multiple moves between the parents, poor school attendance, and the impact upon A of parental acrimony.
7. The Local Authority applied for a supervision order or care order on 19<sup>th</sup> May 2022.
8. Both parents have been subject to parenting assessments in the proceedings and have engaged with the proceedings, as well as the Local Authority and professionals around A. The outcome of both parenting assessments is positive.
9. There was a pre-proceedings psychological assessment of the father which made some recommendations around communication with, and provision of support to, the father in light of the father's vulnerabilities (E1-E55). There were also two addendum reports by that psychologist to address clarification questions during these proceedings (E73-E74 and E77-E84).
10. This was the final hearing, during the course of which I heard evidence from the former allocated social worker and a team manager, and submissions on behalf of all the parties. I have also considered the evidence supplied in the bundle, though note that this did not include two recordings exhibited to the father's final

statement, but which are in a format which is not accessible on judicial or court equipment and which have not been provided in a format that can be viewed by me despite alerting the father's solicitors to this prior to the start of the hearing. However, it is not clear that either recording is relevant evidence required to determine the remaining issues in this case, something that I will return to later in this judgment when clarifying the scope of this final hearing and the various case management decisions which have led up to it.

11. It was not necessary to hear evidence from the father, despite the father wanting to give evidence because the father has filed evidence and no party sought to question the father about that. It is clear (and has been from the outset) that the father feels very strongly that the father has been treated unfairly by various public bodies. However, as I will cover later in this judgment, those issues are Human Rights Act and discrimination issues which I do not have jurisdiction to determine. The issues in this final hearing were not issues of fact finding that would require evidence from the father, the burden of proof in relation to threshold is in fact on the Local Authority not the father, and the question of whether largely accepted facts meet threshold is a submissions point. Miss Sparrow submitted in closing that somehow it had been suggested by some that the father was being unreasonable in challenging aspects of whether threshold was met and whether the proposed supervision order support plan was adequate. I have never suggested that and made the point that it was for the court to determine the scope of the final hearing and that, for A, accepting that threshold was crossed solely on the basis of the mother's alcohol use was not necessarily sufficient to enable the court to determine any risk of future harm to A and hence what support either parent may need to mitigate this.

12. This had been listed as an attended hearing with permission to the mother to attend remotely as a special measure in light of the allegation of parental acrimony. However, on the afternoon of the last working day before this hearing was due to commence, the court received an application to permit the father to attend wholly remotely from the father's solicitor's offices with counsel for the father present at the same location. It is not clear why such an application was left until the last minute, nor why there was a sudden change in the father being able to cope with a remote hearing. Previously the father had been very clear that the father could not cope with a remote hearing. However, no party had any objection and Miss Sparrow for the father was very clear that the father had given instructions and Miss Sparrow was satisfied that the father would be able to participate effectively if remotely connected. On that basis, I permitted the father and Miss Sparrow to participate remotely. At the conclusion of day one, the Local Authority and the other parties also sought to participate remotely, which assisted with availability of the previously allocated social worker who was one of the witnesses required to give evidence. Given the narrow scope of the issues in this final hearing, that the father was participating remotely and had no objection to others doing the same, I granted that request and continued with the remainder of the hearing as wholly remote.

13. I mentioned case management and the relevant issues in this case above. This case has taken over the statutory 26 weeks, partly because of the positive progress being made by both parents in working with professionals, but partly also because of the need to carefully ensure that the father's vulnerabilities were catered for and to give the father a proper opportunity to obtain legal representation. Thus I have directed wholly attended hearings at the request of

the father in the early stages when the courts were still grappling with the aftermath of Covid 19 and struggling to accommodate a surge in workload in limited physical courtrooms. Hearings have been listed for far longer than is standard in public law proceedings to allow for the extra time that the father has been assessed as requiring to process information, as well as to accommodate the fact that the father can become overwhelmed and upset in hearings, resulting in outbursts and hasty retreats from the courtroom. Inevitably given the strength of sense of grievance that the father has, additional time to keep the focus of the proceedings on A was also required, and the impact on the mother who has also been visibly distressed in hearings at times when the father has become upset has also had to be allowed for. Initially the father was a litigant in person and the potential for an independent intermediary was also explored at my direction to try to assist the father and in light of what was then known about the father's needs, though this has not been pursued by those who represent the father.

14. I have taken the time to produce an anonymised written judgment in this case, despite the narrow focus of the final hearing itself, because of the needs of the father so that there can be time for the father's solicitors to go through the draft written judgment carefully (and have allowed far longer than the 1 hour for this that Miss Sparrow requested as I have allowed 2 weeks for consideration of the draft judgment). It has also enabled me to deliver what I hope is a clear written judgment on the two case management aspects that were dealt with at the outset of the final hearing. Perhaps most importantly, this judgment is potentially then available for A to read when A is old enough and gives me an opportunity to repeat that, although some aspects of the judgment necessarily refer to issues

raised by the father, overall A has been and remains my paramount concern and even in dealing with the issues that the father raises this has been the context.

15. When the father was a litigant in person in previous hearings I tried to explain the general legal considerations that a Family court has to apply in these sorts of proceedings including the processes under the Family Procedure Rules (FPR) and Practice Direction (PD) 12A, and the boundaries between the jurisdiction of the Family Court and other jurisdictions such as the European Court of Human Rights, the High Court and the Civil Court. This was necessary because much of what the father has consistently sought to argue before the court, both before and after obtaining legal representation, has focused on the way in which the father feels the father has been treated by various public bodies, with the father seeking to raise arguments around the Human Rights Act, the actions of public bodies in relation to the performance of their public duties, and arguments around discrimination. As the father has been repeatedly advised, applications under the Human Rights Act (HRA) seeking particular redress require a specific application to be made under the appropriate process and fall outside of my jurisdiction in the Family Court (they are in fact applications which must be made to the High Court). Equally, the father has been repeatedly advised that applications under the Disability Discrimination Act fall outside of the Family Court jurisdiction (such applications are Civil and must therefore be made to a Civil court). Applications seeking a form of redress under Administrative law are also not part of my jurisdiction in the Family Court - those would be applications for Judicial Review to the High Court. The father seemed initially to be operating under a misapprehension that simply raising these sorts of issues in various documents submitted as intended evidence directed for specific purposes in accordance with

Part 22 and PD 22A of the FPR was sufficient to require the Court to conduct some form of inquisition into the actions of, for example, a Local Authority. Whilst HRA considerations may form part of the overall evidential aspects of a court considering public law proceedings such as these, they are only part of the picture, and only if they are relevant to the issues that the Court needs to determine.

16. The father also seemed initially to think that the Court must summarily determine threshold allegations at the outset, probably as a result of the father's vulnerabilities failing to understand or accept initially that what a Local Authority may plead as initial threshold may be revised once further and better evidence is before the Court. In this case, one aspect of the initial threshold in particular seems to have caused the father understandable anxiety, namely that *"A [was] at risk of emotional harm through confusion of [A's] own identity as a result of [the father's] strong views in relation to ... personality and gender traits"* (A2). However, by the time of the Issues Resolution Hearing on 18<sup>th</sup> April 2023 it was clear that this was no longer a threshold finding that the Local Authority sought to pursue and the amended final threshold at A72-73 is considerably slimmed down with only 4 specific allegations which are: that A's school attendance between October 2021 and May 2022 was well below expected levels; that A has been exposed to the mother's alcoholism and the erratic behaviour of the mother when intoxicated; that A has been exposed to the parents' acrimonious relationship with each other; A has experienced multiple unplanned moves between the mother's care and the father's care, with no permanence achieved, and that A has suffered and/or was likely to suffer significant neglect and emotional harm, such harm being attributable to the care given or likely to be given to A if the



Order not made, not being what it would be reasonable to expect a parent to give A. It is thus not necessary or proportionate for me to consider or comment further about the original threshold.

## **PARTIES' POSITIONS**

17. The Local Authority seeks a final 12-month Supervision Order for A to remain living with the mother but spend time with the father and for both parents to be supported by a Supervision Order Support Plan (C174-C178). The final threshold document at A72-A73 was further amended at the outset of this hearing to make it clear that para 3 of that document is not pursued as a separate finding because it already forms part of para 4, namely alleged multiple unplanned moves for A resulting in lack of permanence for A. The Local Authority also accepted in evidence from the Team Manager that there could be some additions to the Supervision Order Support plan to assist with support for the father, and as suggested by the Guardian for both parents, and provided an amended plan overnight on 23<sup>rd</sup> May 2023.

18. The mother accepts that threshold is crossed in relation to section 31 as pleaded by the Local Authority at A72-A73 (albeit with para 3 of that document not pursued today as noted above). The mother also agrees with the final care plan for a 12-month Supervision Order with A remaining in the care of the mother but spending time with the father, supported by the proposed Supervision Order Support plan.

19. The father accepts that A should remain living with the mother but spending time with the father, and that item 2 on the final threshold document (the mother's

alcoholism and its impact on B) is made out for the purposes of section 31. The father also largely accepts that A did not attend school in accordance with expected levels between October 2021 and May 2022 and that there have been numerous moves for A between the mother and the father. The father does not, however, accept that this crosses threshold for the purposes of section 3. The father does not accept that the father's care of A was in any way below that which would be reasonably expected and argues that many of these aspects arose due to exculpatory or mitigating factors outside of the father's direct control. The father also takes issue with some of the detail of the Supervision Order Support plan, arguing that more support for the father should be recorded as part of that. As a result, the father does not agree that the proposed Supervision Order Support plan will work and does not therefore agree with a Supervision Order. Miss Sparrow for the father did not address the issue of whether the overall Final Care Plan at D7-D18 was in A's welfare interests. The father has also applied with a notice to admit facts pursuant to rule 22.15 FPR

20. The Guardian agrees with the Local Authority that there should be a 12-month Supervision Order to support A remaining living with the mother but spending time with the father. He has made some suggested amendments to the Supervision Order Support Plan which are accepted by the Local Authority and reflected in their amended plan.

## **RELEVANT LEGAL CONSIDERATIONS**

21. In addition to considering section 31 (2) of the Children Act 1989 regarding threshold, I have considered the welfare checklist in section 1(3) of that Act and

had regard to the article 8 rights of the parents and the children. I have also had regard to the article 6 rights of all concerned, not least in relation to the hybrid and then wholly remote hearing I undertook by consent of all concerned to conclude this case. I have also considered the options for A applying the considerations set out in *Re B-S (Children) [2013] EWCA Civ 1146*. I have considered section 1 of the Children Act 1989 with regard to A's welfare being paramount, the no order principle and the issue of delay, as well as section 32 with regard to the timetable for public law proceedings.

22. I have also had regard to FPR 22.15 in relation to the notice to admit facts.

23. I have also reminded myself of PD 3AA and the provisions of the Equal Treatment Bench Book (ETBB), specifically chapters 1 (litigants in person as the father was in the early stages of this case), 2 (children, young people and vulnerable adults), 4 (mental disability), 6 (gender), 11 (sexual orientation), 12 (Trans people), and Appendix E with regard to remote hearings.

24. This has been particularly helpful with regard to the necessary allowances for the father, special measures for the mother, and acceptable terminology. In terms of the anonymisation of this judgment, I also heard representations about that at the conclusion of closing submissions, which demonstrated the point made in the ETBB that this is a complex area with differences person by person and case by case and something that some feel very strongly about. As a result of those submissions, I have attempted to draft this judgment without any pronouns and removed any geographical identifiers including references to specific Local Authorities to protect A from any risk of jigsaw identification.

25. I have also formatted the version of this judgment that will be distributed to the parties and their legal representatives in a sans serif font in the hope that this also assists the lay parties with processing the written information.

## **CASE MANAGEMENT**

26. I will deal with the notice to admit facts at this point since it is a case management decision and not intrinsically linked to the final hearing determinations.

27. The notice to admit facts (A81-A82) is dated 17<sup>th</sup> May 2023, though I cannot trace when precisely it was filed with the Court, and it was only uploaded to the Bundle on the morning of day 1 of this hearing so it is not clear at what point the respondents to that notice were served. If it was filed and served on 17<sup>th</sup> May 2023, then this still does not accord with the provisions of rule 22.15(2) which require that it must be served no later than 21 days before the final hearing. I have heard no reasonable explanation for this failure to comply with the requirements of rule 22.15(2), and the notice is not agreed by the Local Authority and the mother. In the latter case, it was noted by Mr Walthall for the mother that one of the items that the notice sought to adduce related to professional conduct and would, if admitted, potentially necessitate a change in representation for the mother. That aspect alone highlights the importance of compliance with the timescale set in rule 22.15(2), and the potentially disastrous consequences for a listed final hearing when such notices are not served in good time to enable respondents to respond and, if need be, for the matter to be considered at an

urgent further case management hearing. Given the absence of reasonable explanation for this notice being served so late, the narrow issues that now fall to be considered at this final hearing, and the potential for adjournment of the final hearing if the facts sought to be adduced result in professional embarrassment for the mother's legal representatives, I will dismiss this notice to admit facts.

## 28. THRESHOLD

29. The nature of the test that a Family court must apply in determining whether threshold is met for the purposes of section 31 is objective and is to be approached from the perspective of the child not the parents (*Re D (Care Order: Evidence)* [2011] 1FLR 447 and *Re HL (Children: Summary Dismissal of Care Proceedings)* [2019] EWCA Civ 704). The relevant date for considering whether a child was suffering or likely to suffer significant harm is either the date of the care order application or the date when temporary protective arrangements were initiated (*Re M (A Minor) (Care Order: Threshold Conditions)* [1994] 2 FLR 577). The burden of proof is on the Local Authority to the civil standard, ie on balance of probabilities. The level of harm required is not defined other than by use of the word "significant" in the statute but must be significant enough to justify the intervention of the state and disturb the autonomy of the parents (*Re MA (Care Threshold)* [2010] 1 FLR 431). It must be something more than commonplace failure or human inadequacy and to be considerable, noteworthy or important (*Re B (Care Proceedings: Appeal)* [2013] 2FLR 1075). It must be attributable to care that is not reasonable but does not have to be intentional or deliberate. A deficiency in parental care rather than character is required, although character will remain relevant to the extent that it affects the quality of parental care (*Re B*

(*Care Proceedings: Appeal*) *ibid*). The Adoption and Children Act 2002 section 120 extended the definition of harm to include “*impairment suffered from seeing or hearing the ill-treatment of another*”.

30. In relation to threshold, my findings are as follows:
31. That A has been exposed to the mother’s alcoholism and the erratic behaviour of the mother when intoxicated. This is not disputed by any party, it is greatly to the mother’s credit that this is accepted, and that the mother has engaged extremely positively with necessary help and support to address this.
32. The mother accepts the remaining threshold allegations as far as they relate to the mother’s parenting of A. The father generally accepts the factual aspects of the remaining threshold allegations but disputes that they can be necessarily linked to the father’s care of A not being that which it is reasonable to expect a parent to provide A. I therefore make the remaining threshold findings (excluding para 3 as noted earlier) in so far as they apply to the mother, though subject to the finding in relation to instability that moves from the mother to the father arose solely as a result of the mother’s issues with alcohol and are not made out in relation to the mother in relation to moves back to the mother’s care in light of the findings I make later in this judgment about this in relation to the father.
33. Turning to consider the disputed threshold allegations in relation to the father in more detail, the first one is that A suffered neglect and emotional harm and would remain at risk of this continuing if an order were not made because A’s school attendance between October 2021 and May 2022 was well below expected levels. It is not disputed by the father that A’s school attendance during this period when in the father’s care was around 40%. The father’s case, in essence, is that the low school attendance was authorised, arose as a result of difficulties

with transport to and from school, was as a result of A's anxiety about attending school due to the mother being in rehab at the time, and that the poor school attendance was beyond the father's control because neither the father nor the social worker could get A to school. The father also asserted at A47 in the father's response to threshold that the father did ask the school to provide work for A to complete at home, the school suggested a service provider, but nothing came of this despite the father signing the papers concerned.

34. Looking at the social work chronology at C9, there is an entry dated 12<sup>th</sup> October 2021 when A was living with the father, did not attend school and it is noted *"school have not heard from father"*. At C10, in connection with provision of additional support for A at school, it is recorded on 5<sup>th</sup> January 2022 that *"School has not yet had the paperwork from Rise back from father"*. By April 2022 it is recorded (C10 again) that more than one attempt has been made to make contact with the father by the newly allocated social worker and that social services were considering an unannounced visit *"due to the length of time since [A] has been seen by professionals or school"*. Then on 4<sup>th</sup> May 2022 there is an entry recording contact with social services from the school stating that *"The father will not engage with staff there and there is an ongoing investigation about allegations made by the father about a member of staff. School are concerned A has not been seen since March"*. On a factual basis these entries do not seem to be disputed by the father, though it seems that the father seeks to justify the father's actions by reference to the alleged discrimination and failure to accommodate the father's needs that the father says characterised interactions with both A and B Local Authorities.

35. In the psychological assessment of the father, the issue of school attendance was explored with the father:

*“Regarding concerns about A’s low school attendance: the father was aware of these concerns and referred to A’s anxiety and [the father’s] own difficulties in helping the child overcome [A’s] anxiety but stated that A was home schooled during that period of time. In my view, it is possible that the father’s anxiety and coping through avoidance colluded with A’s anxiety and avoidance, which had left the parent-child dyad stuck in a cycle of maladaptive coping. It is important to note that background reports indicated that A witnessed potentially traumatic situations involving parental conflict, which may have impacted on [A’s] ability to self-regulate emotions; avoidance is adaptive in the presence of a real threat and becomes maladaptive in the long-term, or if it is extended to a variety of life situations. I understand from the case documents that A was assessed by the neurodevelopmental team, and that support has been put in place by the educational setting (access to Link project and Safe Space). I believe that the father acted in a manner that the father believed it was in the child’s best interest at that time, and that the father struggled to understand the professional perspective or to challenge the father’s own inflexible beliefs and the father’s own coping through avoidance.” (E83)*

36. Although, as was accepted by the two social workers who gave me evidence, the school absences were authorised, the prior allocated social worker was very clear in oral evidence that a child missing approximately 60% of schooling would be at risk of suffering significant harm through not having their educational needs



met. Thus, whether authorised or not, A missing such a high level of schooling is capable of amounting to significant harm, and there is no credible evidence to discredit the Local Authority evidence that adequate home schooling was not provided as an alternative to meet this need. In fact, on the father's own evidence as noted at A47, the father accepts that school work at home for A was not in place at the relevant date. I appreciate that the response to threshold at A46-A47 is not a formal witness statement for the purposes of the FPR, but it seems clear that the father wishes this to be taken as such given the lengthy detail. I find that therefore A was both suffering and at risk of suffering significant harm as a result of A's schooling needs not being met arising from the low level of school attendance and lack of suitable alternative provision and thus the first limb of the threshold test is made out in relation to this allegation.

37. The second aspect of the threshold test is whether the Local Authority have proved, on balance of probability, that this harm can be attributed to the parenting being provided to A by the father. This does not require the Local Authority to show that the father's parenting was solely responsible, or even to demonstrate to what extent the father's parenting was responsible as a defined amount of attribution as would be the case in relation to, for example, Civil liability. The legislation and subsequent case law simply requires the Family Court to consider whether this arises from some deficiency in parental care as I have noted earlier.

38. The case that was put on behalf of the father seemed to be that A was in fact beyond any parental control in relation to addressing low school attendance because neither the father nor the social worker could get A to school as I noted earlier. It was accepted by the former allocated social worker, when questioned by Miss Sparrow, that even with the Local Authority providing transport to and

from school (as requested by the father) and the social worker attending at the family home to try to persuade A to get in the car to go to school, this did not result in A attending school. Miss Sparrow submitted that a higher level of parenting should not be expected of a lay parent, and this is in accordance with the legislation and case law which emphasises that the issue is, objectively, what it is reasonable to expect a parent to provide by way of parenting. I fully accept that, as seems to be acknowledged by all concerned, that the issue of school attendance for A involved a host of complex factors and, by the time the allocated social worker was involved in trying to persuade A to go to school, had been an issue for a significant period. Based on the evidence of the psychological assessment at E83 noted above, and the recordings I have noted on the social work chronology, it does seem that A did not receive the sort of parenting from the father that it would be reasonable to expect be provided because a) the father's own anxieties are more likely than not to have contributed to any anxiety that resulted in A having authorised absences; and b) the failure to engage promptly and, at times, at all, with the school will have contributed to a lack of resolution of the issue for A. I therefore find that this threshold allegation of significant harm both being suffered and likely to be suffered by A in relation to low school attendance was attributable at least in part to the parenting provided to A by the father. In saying that, I wish to make it clear that this does not rule out other contributory factors, but it is not necessary for me to delve into those because I do not have to carry out any determination of the extent to which other factors may or may not have also played a part. I am also clear that the Local Authority has never put its case in relation to this on the basis that the father was solely or mainly responsible for this either.

39. The next threshold allegation that is disputed by the father is that A has been exposed to the parents' acrimonious relationship with each other. It seems to be accepted by the father that there were arguments between the mother and the father, and that these were often abusive towards the father (A50). The father's case seems to be that the father did not in any way expose A to such arguments, was never abusive to the mother and that any conflict between the parents was solely attributable to the mother's behaviour and drinking. That A was present for some of the incidents between the parents referred to in the social work evidence does not appear to be disputed. This includes two incidents in the chronology at C7 and C8 when the former allocated social worker accepted being present part of the time when giving evidence to me. One of those on 21<sup>st</sup> May 2021 seems to have resulted in the father accepting that the father locked the mother in the house to enable the father to leave the house with A. The social worker was very clear in evidence to me that both parents have a responsibility to protect A from any parental conflict. I can also take judicial notice of the fact that a child does not need to be physically present to be potentially aware of and/or harmed by parental conflict. It also seems clear, even on the father's evidence, that the relationship between the mother and the father was extremely fraught and characterised by arguments between both and abuse from the mother towards the father.

40. In the psychological assessment, the issue of parental conflict was also explored, and it is interesting to note that the father *"accepted these concerns. The father recognised that the father becomes distressed when the mother is under the influence of alcohol and abusive to the father"* (E83). A good enough parent would ensure that A was not exposed to such parental conflict, and the

acceptance in the psychological assessment at E83 that the father should manage the risk of becoming upset by the mother through avoiding direct interactions with the mother if the mother relapsed does seem to point to an acknowledgement on some level by the father that perhaps the father could have done more to protect A from this.

41. I have used the term 'conflict' rather than acrimony in considering this threshold allegation because a) that is actually often used fairly interchangeably within the papers in this case despite the dictionary definitions being different as Miss Sparrow noted, and b) because, in my view, from A's perspective conflict between the parents would be potentially harmful regardless of whether that could be categorised as including bitter and angry words from the father. Again, looking at the two stages of the test and the evidence in this case, I am satisfied that a failure to protect A from the parental conflict in this case would mean that A was likely to suffer significant emotional harm. In terms of whether this was attributable to the parenting of the father etc, on the limited admissions of there being arguments between the mother and the father when A was either present, or not present but whereby those arguments would be likely to affect either or both parent and for A to become subsequently aware of those effects, and the father's acceptance of becoming distressed and needing to minimise direct contact with the mother, I find that this was in part attributable to the father failing to protect A as A should be able to expect a reasonable parent to do. As with the earlier disputed threshold allegation, I do not need to go further into apportionment of responsibility between the parents.

42. Finally in relation to threshold, the father does not accept that, attributable to the father's parenting, A has experienced multiple unplanned moves between the

mother's care and the father's care, with no permanence achieved and that this either caused A to suffer significant harm or would be likely to cause A significant harm. That A has had multiple moves between the parents, and that some of these have taken place at very short notice due to the mother's alcohol issues is not in fact in dispute. The father takes issue with the use of the word 'unplanned', Miss Sparrow exploring in cross examination that some of the moves were actually in accordance with safety planning that the Local Authority had put in place to deal with lapses in sobriety by the mother. This was accepted by the Local Authority witnesses, though the former allocated social worker did tell me that A had suffered significant instability and some moves were not part of safety planning. It was also accepted by the social workers that A wanted to live with the mother and that the father may well have been trying to act in accordance with A's wishes and feelings in returning A to the mother's care.

43. In relation to the first limb of the threshold test, the level of instability that A experienced would clearly be capable of causing A to either suffer significant harm or be at risk of suffering the same, I find. It links to the first threshold criterion in relation to school attendance, I find, because it must have had the potential to exacerbate A's anxieties and moving to live with the father also added considerably to journey times to and from school as the father set out in evidence. However, I am not clear why the Local Authority seems to have allowed this to happen repeatedly and to have endorsed some level of safety planning whereby A moving to live with the father was part of the protective measures to be deployed if the mother relapsed. The former allocated social worker accepted that some of the instability experienced by A was therefore at the instigation of the Local Authority.

44. In the psychological assessment, it is again interesting to note that the father accepted the concerns that A had experienced multiple unplanned moves between the mother's care and the father's care, with no permanence achieved and *"The father was in agreement with this and that decisions need to be made in the child's best interest"* (E84).

45. As noted by the former allocated social worker in evidence, there are indeed one or two other moves recorded in the social work chronology which don't seem to have been directly linked to safety planning. On 18<sup>th</sup> March 2021 A moved to live with the father appropriately due to concerns about the mother's drinking (C6). However, by 6<sup>th</sup> April 2021 A had returned to the mother's home despite the Local Authority having concerns about the mother's alcohol use and limited engagement with services. On 23<sup>rd</sup> April 2021 at C6 it is recorded that the father had concerns about the mother drinking but had still returned A to the mother's care. Whilst this does indeed evidence significant instability for A, I am not satisfied on balance of probabilities that when the father removed A from the care of the mother due to concerns about the mother's drinking, that this was anything other than a parent acting reasonably to protect a child. Viewed from A's perspective, A would no doubt want a balance to be struck between honouring A's wishes to remain in the care of the mother, but also to be kept safe from any harm likely to arise from the mother being under the influence. It is curious that, in pursuing this threshold allegation, the Local Authority has not explicitly addressed the point made on behalf of the father by Miss Sparrow that safety planning under the proposed Supervision Order continues to include the father providing what is effectively respite care if the mother relapses. I accept that this

is not solely dependent on the father, as there will be others including the mother's partner who will be potentially able to assist with this too.

46. I think that part of the father's case, based on the questions put by Miss Sparrow, is that the Local Authority should also have supported the father to apply for a Child Arrangements Order. The former allocated social worker accepted in evidence that the possibility of the father applying for a Child Arrangements Order was believed to be explored by the father during the PLO process. The social worker also acknowledged that, with the benefit of hindsight, when allocated to the case it was a complex situation, things were quite chaotic at the time and it was not one parent or the other but the situation itself that was challenging, and that at times the social worker's responsibility to challenge a parent led to a very challenging relationship with the father. The team manager's evidence to me when asked by Miss Sparrow about whether a Child Arrangements Order would meet A's welfare needs was unequivocally that this would not meet A's welfare needs.

47. Taking a step back, as the Court must, when viewed objectively, the moves from the mother to the father that were undertaken because of the mother's alcohol issues were either planned as part of safety planning or simply the father acting as a reasonable parent to protect A, I find. The moves back to the care of the mother also seem to have been an attempt by both parents to honour the wishes of A to remain living with the mother. I can see no evidence of moves prompted by anything else, which is unusual in the context of parental conflict but not unheard of. I do not find this threshold allegation made out beyond the extent noted earlier in relation to the mother's alcoholism, therefore.

## 48. WELFARE

49. Having found threshold to be crossed for the purposes of section 31 as noted above, the next stage in public law proceedings is to consider what disposal, if any, is in the welfare interests of the child concerned. This involves consideration of the relevant aspects of the welfare checklist set out in s1 of the Children Act 1989.

50. Everyone agrees that A wants to remain living with the mother and spend time with the father. It is also agreed that A is of an age, nearly 13, where A's wishes and feelings carry more weight than those of a younger child. A is also agreed to be a very bright and mature child, as the Guardian noted, and has therefore clearly and eloquently articulated those wishes and feelings.

51. There is no dispute that A's physical, emotional and educational needs must be met, and these are being met in the care of the mother and whilst spending time with the father. In particular, A's school attendance whilst living with the mother has improved to over 95% which is a huge achievement by both A and the mother and for which they both to be congratulated.

52. In terms of age, sex and background for A, there are no particular features to add to those already noted in this judgment.

53. Any harm which A has suffered or is at risk of suffering is the next relevant heading. Given my findings in relation to threshold above, if A were to be exposed to further parental conflict, relapses in the mother's sobriety, or were to fail to attend school to such a low level again, A would very clearly suffer harm.

54. Parenting capability of A's parents or any other person the court considers to be relevant is the next heading. It is not in dispute that the parenting assessments



of the mother and the father both amply demonstrate that they are capable of parenting A to a good enough standard. There is also no argument that those who may be required to provide emergency care for A, namely the mother's partner and other family members, are also capable of providing parenting to A if required.

55. The final relevant heading is the range of powers available to the Court under this Act in the proceedings in question. As I noted in relation to the parties' positions, the Local Authority, the mother and Guardian all agree that an order is necessary despite the no order principle and endorse the Final Care Plan for a Supervision Order for 12 months, underpinned by the amended Supervision Order Support plan. The father accepts that an order may be necessary, I think, but does not accept that the support proposed under the Supervision Order support plan will ensure that the plan works and thus does not agree to a Supervision Order. The father does not appear to be seeking any other order, and Miss Sparrow's closing submissions focused instead on asking me not to endorse a final plan that was, in the father's view, doomed to failure.

56. The Guardian provided an enhanced position statement at A68-A71 in readiness for the IRH on 18<sup>th</sup> April 2023. The Guardian acknowledged that the family and professionals had a good working relationship and were working collaboratively in A's best interests to maintain the safety plan, and that it was important that this continued (A68). I don't think any party takes issue with this. The Guardian acknowledged the hard work that the mother has done to address the mother's issues, but *"makes [this] recommendation with the expectation that continued relapses are inevitable and abstinence is unlikely"* (A69). It is apparent from that position statement that A has been very clear in wanting to remain living with the

mother and that this includes the mother's partner and the mother's partner's child, all of whom are clearly important to A. The Guardian also acknowledges the commitment and support shown by the father and the importance to A of maintaining this relationship, particularly if the mother does prove unable to address alcohol issues. Overall, with the inclusion of some other details in the Supervision Order Support plan, the Guardian recommends the proposed 12-month Supervision Order as being in A's welfare interests.

57. The father's concerns about inadequacies in the proposed Supervision Order Support plan, as identified in the Position Statement filed by Miss Sparrow for this hearing, are as follows:

- a) It needs to include the assurance in the final social work statement that A will be able to have discussions with a health professional with regard to issues of personality traits and gender.
- b) The parenting assessment of the father recommended that an advocate is used to support the father.
- c) The psychologist recommended independent living support for the father.
- d) Practical plans to ensure the practicalities of the father caring for A are not set out in detail.
- e) There is a lack of detail around the safety planning for A if the mother were to relapse.
- f) The plan relies heavily on support from the mother's partner and what will happen if they are no longer in a relationship is not clear.

58. The Local Authority has amended the plan to record that a referral will be made in relation to support for the father from an advocacy service who specialise with working with parents who are on the autistic spectrum. As the team manager told

me in evidence, although Ward Andrews, who conducted the parenting assessment of the father and made this recommendation, can offer this service, the practice of A Local Authority is to use another service. It is not within my jurisdiction to compel a local authority to use a particular advocacy service, and the main concern, which is that there should be a referral for such a service, has been addressed by adding this to the plan, I find.

59. The team manager was not asked about a) above, though the former allocated social worker (who is not actually responsible for the plan since that social worker's involvement in the case ended in March 2022) did confirm that nothing in the plan would prevent this and it does not appear to have been ruled out by the Local Authority if A needs this as a result.

60. c) and d), based on the evidence of the team manager, will be dealt with through the provision of a child practitioner, and exploration of other forms of parenting support for the father. This is also dealt with in the final care plan at D9 and D10 and requires some further work with the father to understand the father's parenting style and the support needed and that *"as part of the safety planning and ensuring that A's needs will be met when in the father's care, the support that the father will need will be explored with and the father will be supported in the areas that the father needs support"* (D9). The evidence of the team manager reinforced this.

61. In terms of the safety planning details if there is a relapse, it is clear again in the final care plan that A is quite aware of the safety plan and will be able to call upon those family members identified as able to support in those circumstances (D8-D9), so I am unclear why the father feels that more details need to be provided. It seems to acknowledge A's growing maturity that A should be given some

autonomy and thus input to who to call if the mother has a relapse, I find. It was also put to the team manager by Miss Sparrow that there was effectively no contingency if the mother's relationship with the mother's current partner were to end. The team manager was very clear that the safety plan does not rely solely on the mother's partner but also other family members. I'm also not clear why the father fears that the relationship may end since there is no current evidence of any issue and they have been in a relationship for over three years at this point.

62. No plan can cater for every eventuality, nor it is necessary or proportionate to require a local authority to detail absolutely every single aspect of work that may be undertaken with a family under a Supervision Order. Such plans can and do change depending on the circumstances of the family in any event. The question for the court is whether a Supervision Order is in A's welfare interests and necessary and proportionate, and whether what is proposed in terms of the support under that order for A and A's parents to enable them to meet A's needs is sufficient to mitigate any identified risks for A. It does not have to entirely remove risk and cannot cater for unforeseen eventualities. Based on the evidence before me, I am satisfied that a 12-month Supervision Order is in A's welfare interests and necessary and proportionate to mitigate the risks to A from any repetition of the harm that A has previously suffered. The amended support plan does now address the legitimate professional concerns of the Guardian, and it is clear from both the plan and final care plan that in fact the local authority is intending to provide the sort of support that the father agrees may be necessary to enable the father to parent A to a good enough standard. It is not necessary to require the local authority to provide more detail about this since it is clear that

further work needs to be done with the father to help tailor that support more appropriately. That does not, however, necessitate the continuation of these proceedings and is something that can be achieved under the auspices of a final Supervision Order, I find.

63. I will therefore grant a 12-month Supervision Order for A to A Local Authority as necessary and proportionate and will endorse the final care plan at D7-D18, coupled with the amended supervision order support plan, as being in A's welfare interests.

## **CONCLUSIONS**

64. I began this judgment focusing on A and A's welfare being my paramount concern. I have also noted how positively both parents have worked with A Local Authority in the best interests of A, and how clear it is that A loves them both very much and they love A. A is clearly a delightful, articulate, intelligent and mature child, which must also be a reflection of the mother and the father as A's parents despite the issues that have affected all three. The outcome of these proceedings for A overall was not in dispute and both parents also deserve great credit for this, and I wish all of them the best for the future.



HHJ Eleanor Owens  
12<sup>th</sup> June 2023