

**IN THE FAMILY COURT AT KINGSTON-UPON-HULL**

Lowgate  
Humberside HU1 2EZ

Friday, 12 February 2021

BEFORE:

**HIS HONOUR JUDGE WHYBROW**

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BETWEEN:

**“FA”**

Applicant

- and -

**(1) “MA”**

**(2) THE CHILD, “A” (by their Children's Guardian)**

Respondents

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(Official Shorthand Writers to the Court)  
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**MS G SESSI** appeared on behalf of the Applicant Father under the Direct Access Scheme  
**MS ADAMS** (solicitor) appeared on behalf of the Child, through their Children's Guardian  
The First Respondent Mother appeared in person

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**JUDGMENT**

*This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.*

1. JUDGE WHYBROW: This is the judgment of the court in a case that concerns A, who is 3 years old. A's parents are MA, who represents herself, and FA, who is represented by Ms Sessi in these proceedings, instructed under the Direct Access Scheme. A is represented by a guardian from CAFCASS and by Mrs Adams, who is the instructed solicitor.
2. The parents are both in their early 30s. MA is married to "MH". She lives in Scotland and they there look after both A and their own child, who was born a little over a year ago, "B".
3. FA only has one child, that is A, but he has during these proceedings, in the last year, begun a cohabitational relationship with "FW". FW has her own child, "C" (who is 5) by a previous relationship. C lives with FW and FA. They have lived together for around ten months. They have been in a relationship for about a year. They have a baby who is due next month.
4. The issue before the court is what kind of contact is appropriate between A and their father. Apart from the fact that the parents have had a very difficult personal relationship over the last four or more years, there is a huge geographical problem by virtue of the distance between the couple. So it is not an easy situation in which to arrange contact between young A and FA.
5. The practicalities which arise have been part of the problem. The bigger part of the problem is the poor relationship between the parents. Very unusually this case has come before the court for over three years. Ordinarily a case like this will be resolved within around six months, so it is an extraordinary length of time.

6. I have had the benefit for most of the time of the being the judge in the case, so the background to the family dynamics are well-known to me. However, this is the first time at length there has been evidence given by both parents and the guardian and the first time I have had to come to give a judgment. Today was going to be listed as the final hearing. It was listed as such, but there has been an application by the guardian for further psychological assessment. The primary reason for that is because the guardian is concerned that the only way in which A will be able to grow up with a relationship with both their parents is if the court considers transfer of residence so A would move from their mother's home to live with their father. The guardian rightly recognises that that will be an enormous change for A. MA herself has described such a proposition as "preposterous". The guardian is uncomfortable about making any such recommendation without there being psychological advice about the impact of that on A, and indeed the pros and cons of doing so, plus then some advice as to, if this is going to happen, how would it be done in a way to minimise the damage to A.
7. All parties have accepted, that this assessment is necessary and I have endorsed that, so today could not be the final hearing. Instead, there is going to be another adjournment to a hearing in late spring when the report of Dr Spooner, which will be an addendum report, has come in. The issue between the parties today and yesterday has been, in that situation, what kind of contact should take place and that is what this judgment will address.
8. I have read all of the evidence filed by the parties within the court bundle. There are a number of statements from each parent and I have read the CAFCASS report and the report of Dr Spooner. I have heard evidence from both parents and from the guardian.
9. A very brief overview of A's life to date has been that they were born in 2017. A's parents had been together since December 2013. They were cohabiting, but they separated when A was a baby. MA went back to Scotland, which is where most of her family is based. She came back for a brief reconciliation with FA. She came back to the home they shared in England and then they separated again for the final time in September 2017 when she went back to Scotland.

10. It appears there were some visits that took place soon after that, with the mother coming back to England, but in December 2017 she went on a trip outside of Europe, ostensibly for a family trip. FA was concerned about her having gone in breach of terms of an agreement which he thought he had reached with her. He started proceedings in this court to look into the arrangements for A and with a view to obtaining their return to this country. MA did return (in the end voluntarily) in March 2018.
11. Contact then took place and that was the first time I met the family, in March 2018, soon after the return home. MA arranged for some contact between A and their dad in England before she went back to live in Scotland, where she has been based ever since.
12. There have been episodes of contact which have taken place since then, a handful of contacts have taken place in 2018 and 2019 and 2020. The last time FA saw A face to face is thought to be March 2020, so nearly a year ago. Prior to that he saw A briefly in January of that year and in December 2019, but prior to that, I think he did not see A for the best part of a year, back in February 2019. I have asked counsel to draw up an accurate chronology, but the picture overall is that there were several contacts at the turn of 2020, some contacts at the end of 2019 and some contacts in early 2018.
13. Apart from face to face, there has been provision for video calls and telephone calls. This has been in operation under court orders for most of the time the case has been before the court, with variable success. I am not going to dwell on the problems that have arisen in relation to that now, suffice to say that at the moment the arrangements are taking place reliably and they are productive for A, twice a week video calls of around 10 or 15 minutes on average. So, whilst A is growing up with MH carrying out the parenting role alongside MA, FA is still known to A. A knows that he is their 'daddy' insofar as they can understand what that concept means, and A, to all intents and purposes, refers to having two daddies.

14. In deciding what is best for A now, the law I have to apply is in section 1 of the Children Act. I must do what is best for A and I should not make an order unless it is better for A than not making it. There is what is called the welfare checklist in section 1(3) of the Children Act which lists six factors that I must particularly look at in deciding what is best for her, and I will come to that checklist in a moment. But there is also a need to take into account Practice Direction 12J, which is in the Family Procedure Rules, and that relates to the right approach when there are allegations of domestic abuse.
15. I have said that these proceedings are still at an interim stage. We have not got to a final hearing. In that situation it is inappropriate for the court to make any findings about what happened where events are disputed, unless absolutely necessary. There are a number of contentious issues between these parents, predominantly to do with how FA behaved towards MA, but also about her behaviour in some respects, in particular as to why certain orders have not been complied with. The Practice Direction, paragraph 25, advises that the court, when faced with disputed allegations of domestic abuse, should not make an interim child arrangements order unless satisfied it is in the interest of the child and would not expose the child or the other parent to an unmanageable risk of harm.
16. Paragraph 26, the court should consider the effect on the child and the effect on the care given to the child by the parent who has made the allegations of any contact that is ordered. The court should consider any risk of harm. Paragraph 27, requires the court to have regard to what arrangements are required to ensure any risk of harm to the child or to the other parent is minimised, and that the safety of the child and the parties is secured. The court should specifically consider whether contact should have to be supervised and whether contact is of benefit to the child. The Practice Direction goes on to give guidance as to what should happen after findings have been made and I will not dwell on that now.
17. I will then mention that where domestic abuse has been established, either by an agreement or an acceptance, the court would focus on what should happen next. What

kind of treatment, if any, or intervention, is thought to be appropriate to deal with the previous behaviour. Should that be a precondition of any contact? There is a well-known course called the Domestic Violence Perpetrators Programme, which is sometimes used in these sorts of proceedings to try to effect change.

18. I should say before I go to the welfare checklist that Ms Sessi has questioned to what extent the court should rely on allegations made by MA in the absence of findings, and I want to put her mind at rest that I am not going to make any findings in these proceedings now. I have already decided that a separate fact-finding hearing is not necessary and I remain of that view for the reasons previously expressed in an order made in November. To have a fact-finding hearing now would cause more delay and, for the reasons given in that order, I do not think it is necessary or appropriate to do that. But that does not mean that certain of the things that MA has talked about as her concerns about FA are not live matters within the litigation and they may be matters that the court has to go back to in making a final decision at a final hearing.
19. What is clear from the investigations which have been carried out by the Guardian last summer is that another woman or women who have been spoken to by MA, who may have said things that are critical of FA, are not willing to come forward to give evidence and as such their evidence is not going to enable the court to make any finding. There is certain hearsay documentation within Facebook messages but there is nothing within such documentation which is sufficiently clear or cogent to enable the court to make any findings. That is the primary reason why I steered away from a fact-finding hearing last autumn.
20. But that does not mean that MA cannot rely upon aspects of behaviour if they are relevant to the contact issue, and I am sure that is something that she will continue to raise at times.
21. The parties' positions as to the interim contact order which I am being asked to make is this. FA's final proposal is an amendment of what he started the proceedings with. It is a further amendment of what he started with this morning. I do not criticise that at

all because I think he has been rightly flexible. He would like to suggest that A sees him at a contact centre in England on a couple of occasions to reacquaint with him, and then for a couple of times in England for longer periods, perhaps four hours unsupervised, and then to start having contact at FA's home, overnight, initially for a couple of days and then to extend to longer periods.

22. That recommendation reflects and is largely supported by the Guardian, but FA before lunch told me that he would accept that it would be sensible to delay the implementation of this until after his baby is born, because otherwise his attention may be taken off the contact with A. He may be required at home to help look after the baby and C, such that contact arrangements for A would be disrupted and it would not be good to start A down some contact route to then suspend it for a month or more. So I think he took up my suggestion before lunch that, if we are going down this kind of route, it is better to do it once the baby is born and settled and I commend him for making that change.
23. MA's position has remained firm in the documentation she has filed and during these proceedings. She says that the contact should be supervised at this time, that FA could come to Scotland to have contact in the home area where A lives at any reasonable time. She would be willing to come to England, subject to getting the practicalities resolved, but would do this. It is not easy because of the transport disruptions that come from COVID, particularly in the winter and now that she no longer has access to a car reliably.
24. Nevertheless, she accepts that she would be willing to come to England on occasion. She would not want to see unsupervised contact until she herself is satisfied that A is ready and that it is safe to have such contact. She puts herself in a position that she thinks she, as A's mother, should decide this. She remains to be convinced that the guidance from either Dr Spooner or the Guardian that such contact is safe is right. She goes to the extent of saying that she feels that the authorities, including the court, have either bullied or put her into a corner to make previous offers to arrange unsupervised

contact, offers that she has made and said that she would adhere to, but which largely have not come to pass.

25. She would say, and she said so specifically when I asked her this morning, that when she last made an agreement for unsupervised contact, which was in March 2020, it was against her better judgment but she had been willing to go with this. It was a genuine agreement. It was subsequently discovering that other women had had experiences of FA, which she thought were similar to her own, that she then became unwilling to comply because she considers that the risk of abusive behaviour from FA is one which she cannot take for her child. That risk, she has articulated, is either that the child would witness FA being abusive to a partner in the home where A would be staying (it could be physical, could be verbal abuse), or that he himself could lose his temper in or around the home when A is there, such that A could be directly the subject of abusive behaviour. So her position is that she remains to be convinced that it is safe for A to be alone with their father.
26. She also says that she plans to go to on a trip outside of Europe with A for around four weeks a year. She next anticipates that she might do that towards the end of this year if she is able to arrange that. The background to this being that she went in September 2020, she says that this was for the purpose of a family holiday of around four weeks. She had a booked return flight in October which was cancelled due to the lockdown. Subsequently it proved impossible for her to get a flight which was affordable and practical until January, so that she was actually out of the country with A and MH and B for over three months. She told the court that that was not intended and she does not intend to repeat that.
27. FA's concerns are such that he asks the court to make a prohibited steps order to prevent that happening again and to require the surrender of passports. The Guardian, on balance, supports both of those orders being made as a precaution.
28. MA asked me not to make that order because she thinks that a holiday outside of Europe is very beneficial for the children, that she has no intention of staying away, to



emigrate for example. She understands why the court is concerned about her previous conduct in relation to this and she accepts that she has no immediate plans to go. Her main concern is that she would not want to be hamstrung from going on a trip outside of Europe later in the year rather than now.

29. The arrangements which were ordered last time in March 2020 provided a potential springboard to concluding this case. It is extremely disappointing for FA, for the guardian and also for the court that it failed to come to pass. Initially the problem was entirely related to COVID. Transport was cancelled, which prevented any kind of interaction between father and child face to face for months. Subsequently, although MA had agreed that she would implement the March arrangements as soon as practicable, she in fact travelled outside of Europe in September 2020 and then did not return for over three months. That meant that these proceedings have been delayed to a degree by that. So has the chance of reinstating the contact arrangements which were made in March last year. Whilst to a degree the failure of the order of March does not involve blame of anyone, in fact what has happened is that MA has become more firm, more strident, in her objection to unsupervised contact because of the domestic abuse concerns that she raises. She has also put A beyond reach of the court and contact because of the prolonged stay outside of Europe.
30. To use a phrase, "the win/win" in this case for A, and I think also for their parents, is something like what was envisaged last March, such that A would remain living, thriving in their mother's care but have staying contact with their father in England, which is safe and enjoyable for A. That is the aim of any court order in these proceedings, combined with the ability for A and their mother to go on trips outside of Europe. There is no reason why that should not happen periodically, the kind of plan which MA has would both enrich A's life and be a fair arrangement for A and the rest of the family. The Guardian I think emotively puts it in her report, there is potential for A to have a "wonderful life" because they have two loving parents, loving extended family and a very rich variety of experiences. There is Scotland, there is England and there are trips outside of Europe. The aim would be that she can enjoy all these aspects of her life safely.

31. To achieve this, some further work needs to be done and I have already talked in the hearing about the need for the parents to consider what they can do to build bridges between each other, including by way of an apology for some of the things they have done or said; that there should be work done with father's partner, FW, to assess the suitability of A visiting that home and A's safety there. There needs to continue consistent and frequent video contact, which is 100 per cent reliable and, just like the video contact which appears to be bearing fruit now it has been consistent, there needs to be face to face contact between father and child over a relatively concentrated period to build the relationship back up. What this case does not need is more hostility, more disrespect or more deceit.
32. I consider, and I am not at the stage of making particular findings, but I think it is a matter of common sense but, also based on my knowledge of these parents, it seems to me that neither is entirely without blame for the position we are in now. There are wrongs on both sides and there is a need for each parent to behave more respectfully towards the other than has happened in the past and there is a need to ensure that both parents stick to the orders of the court.
33. The mother's concerns relates chiefly to the father's hostile behaviour to her at times, his temperament; the father's concerns relate in part to the mother's words towards him I think, but also about her non-compliance with certain court orders, the fear that he has had of A being abducted and the delay of the proceedings.
34. I am going to look briefly at the welfare checklist aspects of the case. The first of the criteria in the checklist are the wishes and feelings of the child. It is the guardian who would normally report to me about A's wishes and feelings. The guardian has had limited ability to interact with A because of the history of the case which I have outlined already. It is clear to me, and I do not think it is really in dispute, that A recently has had good interaction with FA by video contact and, if asked, it is likely A would say that they would like to have continuation of their loving home where they live with their mother and that they would like to have contact with their father, FA.

35. MA says at times A has been reluctant to go off with their father and has come back from contact somewhat disturbed by it, that A has taken a couple of days to settle again and get back to their old self. A has suffered from diarrhoea. Overall, the picture that MA has given is that A has been quite a stressed child when they have returned.
36. It is not unusual for the court to hear this. A is trying to settle into different arrangements. The advice from Dr Spooner about the pressure on A is such that it may well be the case, and again I am not making a particular finding, that A struggles at times with making the journey from mother's home to father's or from mother's care to father's care. Dr Spooner talks about the child experiencing what is called a 'virtual cliff'. He talks about an experiment that has been carried out with very young children, how they pick up so readily and profoundly on the non-verbal cues of one parent. Whilst I can accept that MA has told me that she has said nothing adverse about FA to A and that she tries to portray a positive, amicable relationship in A's interests, and I can take that at the moment as being a true reflection for the purpose of today's judgment, that does not mean that A does not pick up on the non-verbal cues, atmosphere, looks on faces, just reading people's eyes and expressions. A may well have picked up negativity which MA inevitably feels about FA, and it may well have translated and put some difficulty on A. It may well be, and in time A will probably be able to explain this themselves, that A has a similar experience when they are with their father. It may well be that there are non-verbal or even verbal cues which are critical of the mother's home or the mother's actions which A picks up on in their father's care. I do not know. These things are not uncommon and they are bound to influence a child of A's age. They are influences which both parents need to work very hard to avoid for A's sake.
37. The second part of the checklist is the needs of A, including their emotional and psychological needs and their physical needs. To the best of my knowledge from what I have read, she appears to be a child who is thriving. A is achieving above their milestones, their development is excellent. A appears to be very well cared for. A has a developing knowledge of their father and what their relationship means to them. It is very important that this carries on without interruption for A to develop a good and

profound relationship with FA. A also needs to be safe and free from any risk of physical or emotional harm. A must not be exposed to any kind of domestic abuse.

38. I have said that MA complains about verbal abuse and some violence, including smashing items in the home, verbal abuse and disrespectful terms being used. There is no place for this around A. That applies to wherever the child is staying.
39. The third feature in the checklist is the effect on A of a change in circumstances. At the moment the change would be to introduce face to face contact again. A needs to have this to rebuild their relationship with their father. I think all parties, including FA, accept that A has to get to know him again face to face first and this needs to be done sensitively. For it to be forced through too quickly would not be in A's interests and could cause them distress and it could well adversely affect the longer-term contact arrangements. We must get this reintroduction right.
40. There are also changes in FA's household which are imminent, the birth of a new baby. That has the potential for disruption in a good way, but potentially also in a highly disruptive way, depending on how easily the birth goes and how easily the baby fits into the household. It is going to stop FA being able to travel, particularly long distance. He says there is no way he can go to Scotland now until after the baby has been born. He wants to be there around the birth and I can understand that.
41. I appreciate also that for A to take the journey at this time of year, with the limited train service that exist, is an arduous journey. The Guardian says in effect it is a price worth paying, but I still think there are serious questions that need to be asked about the right timing of this. As I have said earlier on in this judgment, I think it is very much to FA's credit that he has accepted that it is better to put the date of face to face contact back to after the birth of the baby. Then we will be into better weather, longer days, and hopefully an easier situation with COVID. At the moment, for example, we do not know the basics about the ability to stay over, either in Scotland or in England and the opening of any contact centre.

42. The fourth factor in the checklist is the age, the sex and the background of the child. I have said that A is three years old. A has experienced overall very little face to face contact with their father so far. A's father is about to develop his own new family in England. Their mother has done the same already in Scotland. A has little knowledge of FW and C, having seen C in particular on three or four video calls. It is very likely that the two children will be able to play together well. There will be ups and downs but, as A is a sociable child, it is likely that having C around will make the contact with FA even more enjoyable.
43. The fifth factor in the list is the risk of harm. The opinion of Dr Spooner is that the greatest risk of harm to A comes from the hostile relationship between the parents. His report is eloquent about that and the need to get things improved. I cannot see that anything has happened since that report to achieve improvement.
44. There is also a risk of harm from a lack of relationship with FA and potentially, if there were to be this transfer of residence, from separation from their mother. The mother alleges that there is a risk of harm from domestic abuse from the father's behaviour. It is undeniable, and he accepts, that he has a conviction for battery of a former partner. His police record is known to the court and there has been obviously regrettable verbal abuse as exhibited within the text messages between the parties, showing a lack of emotional regulation, bad temper at times. MA goes further, as I have said, and says that she is the only person who knows what it is like to live with FA. The risks are both to A and around A. She does not think it is necessarily safe for FA to be around C.
45. She wants to be reassured herself that he has changed sufficiently, she said in evidence before me. She will not just accept the professional view. She would not comply with an order if she thought it was not safe. There would obviously be potential consequences then if there were to be breaches of court orders which were punished by the court, potentially causing more difficulties between the relationship between MA and A, for example if she was to be found to have been in contempt of court.

46. MA has previously agreed overnight contact, as I have said, and she has allowed unsupervised contact for periods in the past. She has said that she at times has felt that she has been bullied into agreeing these arrangements. I do not to seek to make any findings one way or the other about this particular allegation, although I would have to say that I would find it hard to conceive that the Guardian's work in March 2020 could be characterised in that way. To her credit, MA told me today that she intended to go ahead with that contact, which she had agreed. In other words, she was taking the Guardian's advice, even if it was against her better judgment. She said in evidence this morning, "I had my doubts but I was prepared to ignore my instincts. I felt I had been made to do this. I thought I would see how A was when they came back."
47. It was hearing from the FP, who was the partner after the relationship with MA, which confirmed her fears about continuing abusive behaviour. I should just say about that in relation to the risk of harm, what of course I do not have any information about is the relationship between father and FW. I do have some knowledge of this in the sense that there has been a referral to Children's Services. The Local Authority carried out some checks last summer and they came away, it appears, with no further action. FA assures me the relationship is, he used the word, "lovely". He says there has been no involvement of the police. I believe there have been some safeguarding checks carried out by CAFCASS, but I have asked the guardian to look at this again, for an up to date picture of how FA has presented in the relationship over the last year with FW, combined with confirmation of how he has treated C as his de facto stepchild.
48. In many respects the risk of harm to A in this arrangement is speculative, not based upon found facts at this time and there is a lot of denial about the underlying allegations. These matters remain somewhat unresolved at the moment.
49. The last factor in the checklist is the capacity of the parents to meet the needs of the child and I would say that it seems to me to be obvious, I do not think it is in dispute, that MA's care of A is good. What I am less clear about is her ability to promote contact. In some ways it appears that she has been proactive during indirect contact. It appears she has prompted and guided A constructively. That is very good to hear. But

on the other hand, it is clear that she certainly now, if not before, only wants to agree to contact on her own terms.

50. There are some positive signs. She said she is open to an apology from FA, although she said that, if he denies things that she knows to be true, this would make it worse. She feels that if he could apologise, by which I am sure she means more than just by giving lip service to an apology, "it would go a long way" is how she put it. She said it would also help her to know from FW how things are and to get to know FW herself. She said it would help to be able to talk to FW and I encourage that to take place as well.
51. It would also be fair to say that I have great concerns about some of MA's behaviour in relation to the plans of going abroad. It is clear that she has broken several court orders, specifically in relation to going abroad. I have said that there was a previous prohibited steps order against A being taken on a trip outside of Europe. It may be that this was forgotten, as no party has mentioned that to me themselves in this hearing, but I noticed it on reviewing this case before coming back to the case myself. It was an order made whilst I was not the case management judge. In any case the child arrangements order for A to live with their mother says that A cannot be kept away out of the UK for more than a calendar month, and in fact what happened was that A was abroad for over three months.
52. It also appears to now be clear that there was some deliberate non-communication by MA with FA about the plan to go on the trip outside of Europe. He said he only found out when his video contact became difficult because of the time difference between the two countries. On questioning by Ms Sessi, MA accepted that she did not tell FA in September until after she had gone. She was initially very coy when asked about this. She also said, which I found somewhat startling, that she cannot think of "what I have done which might raise tension". She referred to how she, as she put it, "bigs up" the video calls for A and she works hard not to upset A over FA. She tries hard to keep things amicable because the only person who would get hurt is A. I applaud those sentiments.

53. However, to say she cannot see how she has increased tension is disingenuous. It is obvious that by going on a trip outside of Europe without consultation or knowledge, and then without providing ongoing evidence to the court as directed about her attempts to come back, she is bound to fan the flames of FA's fear of abduction. He is understandably going to think that she may decide to live abroad and he is bound to fear this if she keeps him out of the plans and she then breaks court orders. So that is plainly a source of tension that she has caused for which I consider an open apology is justified.
54. As to FA, he has been consistently committed to these proceedings. MA has said that she believes that he is doing this out of spite towards her rather than out of genuine interest in A. Again, this is something more for the final hearing, but it would appear to me from what I have seen in evidence from FA that he has a genuine love for A. He spoke warmly of contact in the video calls yesterday and how proud he was when they said, "I love you daddy" at the end of the call on 10 February. He appears to be genuine in his presentation of being a proud family man with FW and C and he was pleased that the contact was now going better. He thought it was going a lot better by video. MA herself accepted that it was a lot better in the last couple of months. She said that about one in four calls were good, every other one was quite good, it depended on A's moods. But she accepted that the father being more consistent in dialling in was helping A to warm to the contact more quickly. She said he has done a lot better, she accepted, in the last four to five weeks.
55. MA, I think fairly at times, has been critical of FA's failure to stick to indirect contact. This will have been baffling to MA. At times I found it difficult myself to understand the reasons why FA would not dial every time on time. He was quoted in the last order as having 'college commitments', but it is very difficult to see why 15 minutes twice a week cannot be set aside for A's video contact and I would expect as near as possible 100 per cent compliance in the future.
56. He has also been criticised by MA for the lack of items sent to A for Christmas and birthdays, the lack of child maintenance and not coming to Scotland to see A. MA



would say this shows he is not as proactive or focused as many fathers would be.

I think these features are concerning. I have not heard evidence about maintenance and it is not something particularly before the court, but to be able to send nothing when he is working is a concern. I am not making a finding to the effect that that has been the case but, if it is true, it is a concern. The lack of sending items for A at Christmas and birthday may reflect his character, it may be he is more closed and less effusive character than many fathers.

57. When it is A's birthday, I would like to see FA doing what most fathers would do in relation to that, not only through video call but also through sending items for A. That would be reasonable to expect.
58. I know the journey to Scotland is not easy. It appears from his evidence, although again I do not have the corroboration to make a finding about this, that he has been to Scotland on at least one occasion and been disappointed through A not being presented. It is hard to think, if that is the case, of a more cruel outcome for FA, if he went all that way and no contact happened. I would have to see more about that at the final hearing, if I need to do so, if that is relevant. But I do think that it is reasonable to expect a father in his position to be able to find some time, at least every year, to be able to go to see his child in Scotland for periods of time. I do not think that is an unreasonable request or expectation to have.
59. I am concerned about FA's failure to have apologised for some of his conduct previously. It is something I have raised with him before. I am told he may do so tonight. I hope he does, but I hope he does so in a meaningful way, otherwise it will simply be words and it may not actually help. We need there to be a genuine connection between the two parents to have any real impact.
60. I agree that he should try to rebuild the relationship with MA for the sake of A. For him to sit in a non-communicative way is simply going to make things worse, make things solidify as they currently are. FA, in particular, I think, has the power to make this a lot better than it is. I would say that, from seeing his evidence, both today and on

a previous occasion, that there has been limited remorse shown. I do not know how FA feels inside, I probably would never know that, but I would like to see a more open and more fulsome position from FA about his regret for things that were said and done wrongly. As I have similarly said for MA in relation to some of her mistakes. It is not sufficient to say, "It is both our fault". If you have done something wrong, you should apologise, particularly when you are asking the other parent to trust you with the child. Every day that this is not worked on is wasted because the solution to this family, FA wanting A to go to his wedding in July, is for him to invest more effort to make things better between himself and MA; he is far more likely to achieve that in a quicker timeframe than otherwise.

61. It appears that his general level of care of A when he has had them has been good. The short times he has been observed by the guardian have been positive. FP has said in her messages to MA that there was no difficulty about how he treated A. MA, as I have said, is concerned about the effect on A, but it may well be that A's difficulties relate to other things than FA not being a good parent during the contact time.
62. It is fair to say that FA's involvement with A has been for relatively short times on his own. He said "75 per cent" of the time he has seen A has been with his mother present. That was partly because that was the arrangement to give some reassurance to MA and maybe to A too. He now thinks A would be confident to be with him alone.
63. He talked very generously about "our [child]", meaning A, and "our" meaning himself and MA. He talked about engaging FW and trying to do that in a sensitive way "for our [child]". There is really scope to get this right and to make improvements between these two parents.
64. The result of all of this, in my view, at the interim is as follows. The initial reintroductions of A to their dad has to have some element of supervision. There has to be some helping of A to get familiar with their father again, to feel secure around their father. Fundamentally, because MA is going to be the person bringing A, it falls to her to be the person to ensure that A will go to this contact in the right frame of

mind and be happy to be with their father as far as they can. The main support which has to be given for this contact, and it is more about supporting it than actually supervising it, is to enable A to get familiar again with their father.

65. I agree that it would be good if FA would go to Scotland when he can to visit A there and there is potential in the long run for that to happen. I can see it is not going to happen immediately. I think what A needs is to have around four sessions in England, at a contact centre. Ideally, I think this would be over a period of a couple of sessions on consecutive days so that A would see their father on, say, a Saturday and a Sunday, having stayed overnight in-between. Then do the same in either two or three or four weeks' time, depending on what can be practically arranged, so that A gets familiar with their father. Initially, at a contact centre, but even then it would need MA to be there to help A to go to their father, because it is unlikely that they would simply be left with strangers. It may be that A will take to this easily. I do not know how confident A would be.
  
66. As soon as A is confident, they should be left alone with their dad for these relatively short periods, be it one, two, three or four hours, depending on what can be done, but it has to be flexible to A's own ability to cope with this. If the goal is four hours after the initial couple of visits at the contact centre, it may have to be cut short if A was not ready. The parents should try and arrange this to take place after the birth. This is a reasonable expectation in England with MA to be around to try and make sure that it is successful. She should be willing to let A go off with their father as soon as they are able to do that, either within the contact centre initially for the first couple of sessions, or after that in the community if that is where the contact is to be.
  
67. The second thing which I think should happen is that CAFCASS need to assess the relationship which FA has with FW and her ability to protect a child in their care at that household. The Guardian should also try to assess the ability of the maternal grandparents to be involved in any handovers.

68. Thirdly, I think there should be a review in May rather than in June once we have had these four sessions of contact in England to enable us to look at the result of those and the report of Dr Spooner, even if questions then have to be asked of Dr Spooner later on. I am suggesting that there should be a hearing maybe the second week of May once Dr Spooner's report is in. I do not think there should be any contact overnight in England until we have had the report of Dr Spooner, the assessment of the home life with FW and C and the first four contacts. That is a balance to enable there to be safe contact, father and A being reintroduced to each other over a relatively concentrated period.
69. The costs involved are going to be considerable, both in terms of transport and potentially for a hotel or somewhere to stay. Obviously, it depends on COVID as to what is available, so I ask the parties to work out the travel arrangements and the hotel arrangements. I cannot fix that in an order. I cannot give you dates yet, because I do not know what can be achieved, but that should be the goal of any contact arrangements going forward.
70. I do not necessarily say that MA should have to pay towards the contact centre costs. At this stage what I would say is that I would look back at the next hearing or at a subsequent hearing to see if she should be expected to contribute. I do not know enough about the global finances of the trip, how much a hotel is going to cost her to stay with A. I think I need to take a global view in deciding whether there should be any recompense to FA.
71. Fourthly, I think at this stage there should be a prohibition on MA taking A out of the United Kingdom without the leave of the court or agreement with FA, there should be a prohibited steps order to that effect. Passports of herself and A should be surrendered until leave is given. I do not envisage this is actually going to cause her any difficulty in the long run because I would expect to be able to release passports to enable there to be a holiday towards the end of the year as she already plans. But at the moment I think it is reasonable for there to be complete clarity that A is not to be taken out of the country at this stage in the proceedings.

72. Finally, I would say that it is important that the parents liaise with each other, be it through Facebook messenger or talking over the phone or in a video call, to try to build some bridges and to make sensible arrangements that are going to work for A.
73. That is my decision and the reasons for it. I will look to find a hearing date in May to look at the situation again.

HHJ WHYBROW

12 February 2021