

**IN THE FAMILY COURT                      Neutral citation No: [2023] EWFC 152**  
**BEFORE HER HONOUR JUDGE HESFORD**  
**IN THE MATTER OF THE CHILDREN ACT 1989**  
**IN THE MATTER OF THE ADOPTION AND CHILDREN ACT 2002**  
**AND IN THE MATTER OF “JOE” (DOB - a date)**  
**BETWEEN:**

**A Local Authority**

**Applicant**

**AND**

**Mother**

**1<sup>st</sup> Respondent**

**AND**

**Father**

**2<sup>nd</sup> Respondent**

**AND**

**“JOE”**

**(A child, by his Guardian KM)**

**3<sup>rd</sup> Respondent**

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**APPROVED JUDGMENT**

**Dated 12 May 2023**

**(Hearing dates: 14 April and 2 – 5 May 2023)**

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This judgment was handed down on 12 May 2023. It consists of 56 pages. 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 adult 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 and the child 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.

**Her Honour Judge Hesford:**

## **1 INTRODUCTION**

- 1 In these proceedings I am concerned for a little boy who I shall call “Joe”, although that is not his real name. Joe, a boy, born [a date], who is therefore just over [an age] years old. I will call his parents Jane and Jack although those are not their real names. Father’s other two children reside with their mother, he has regular contact.
- 2 On [a date] the court made Joe the subject of an interim care order. Initially he was placed with his mother in [the first residential assessment unit] but he was removed from her care on [a date] when the placement broke down. He has had several moves since then as I will address later. He is presently in foster care, and despite the moves he has thankfully been able to return to the same foster placement during the proceedings.
- 3 There have been a number of C2 applications within the proceedings and the timetable has been extended on several occasions. At the time of this final hearing, we are at week 106.
- 4 References to “the assessment unit” refer to the second assessment unit unless otherwise stated and to “The ISW” as the second ISW unless otherwise stated
- 5 Only Joe’s mother holds Parental Responsibility for him. I am aware that both of his parents dearly love him.
- 6 The key issues at the time proceedings were commenced were identified as:
  - Mother’s significant social care history as a child where she experienced abuse and neglect.
  - Mother’s poor mental health and history of self-harm and suicide attempts.
  - Mother’s complex needs as a result of her diagnosis of Autistic Spectrum Disorder, ADHD, OCD, and Irlen’s Syndrome.
  - Mother’s forensic history with a violent offence in [a date] (a stabbing) and suffocation of a cat in [a date].
  - Domestic Abuse within the parents’ relationship.
  - Father’s mental health and how this affects his presentation and ability to manage his emotions.
  - Instability in father’s housing.
  - Father’s violence towards ex partners.

- Father's substance misuse.
- 7 The Local Authority applies for final care and placement orders in respect of Joe.

The Guardian supports the local authority.

The parents are no longer in a relationship, it having ended before the birth of Joe following a domestic abuse incident. They oppose the plan and making of a placement order although the threshold for making care orders was not opposed. The mother seeks gradual rehabilitation to her under a care order. The father has barely engaged with this final hearing.

- 8 This judgment is structured as follows:

Section 2: The representation

Section 3: The background and concerns of the Local Authority

Section 4: The evidence and the parties' positions

Section 5: The Threshold

Section 6: The nature of the hearing

Section 7: The issues and the evidence

Section 8: The timeline and assessments overview

Section 9: The written evidence with analysis

Section 10: Live evidence

Section 11: Findings on disputed matters and the threshold

Section 12: The legal framework and relevant guidance

Section 13: The Welfare Checklist

Section 14: Additional exploration of evidence and options

Section 15: Contact

Section 16: Decision

## **2 REPRESENTATION**

- 9 Mr Ponniah appeared for the Local Authority  
Ms Kajue appeared for the Mother

Ms Edwards appeared for the Father

Ms Milne appeared for Joe via his Children's Guardian KM

### **3 BACKGROUND AND CONCERNS OF THE LOCAL AUTHORITY**

- 10 I have read the Written Opening Note prepared by Mr Ponniah which set out most of the factual matters, much of which is not in dispute although there is challenge by the mother to how assessments have been undertaken, interpreted and applied to the mother and father and to welfare issues.
- 11 The parents met around [a date] when the mother had recently been released from an in-patient treatment facility and was staying with the maternal grandmother. The father reports them first meeting at a pub, but the mother suggests they first met at a party at the maternal grandmother's home. Both agree that they went to a number of parties together in the early stage of their relationship. They both also report that the relationship turned toxic fairly swiftly and they split up shortly after Joe was conceived. Both parents allege domestic abuse against each other following the breakdown in their relationship.
- 12 The mother is a Care Leaver (from [a council]) with a significant history of neglect, emotional abuse, substance abuse, mental health issues, domestic abuse relationships, self harm attempts and significant childhood and early adulthood trauma including grooming.
- 13 She has a diagnosis of Autistic Spectrum Disorder, Attention Deficit Hyperactivity Disorder and Psychotic illness, with previous diagnoses being Obsessive Compulsive Disorder, Generalised Anxiety Disorder and Emotionally Unstable Personality Disorder. Mother also has Irlen's Syndrome (Perceptual Processing Disorder). She is prescribed medication but has not always been compliant with this medication. She has made several attempts to hang and kill herself throughout the years. She is stable from a mental health viewpoint presently, but she still experiences difficulties in managing her emotions.
- 14 In [a date] mother stabbed her boyfriend in the stomach with a kitchen knife after he stated he was going to leave her. She received a two-year Community Order and was deemed to be at medium risk of harm and re-offending, low risk to children but risk to herself due to self-harming. Her involvement with Probation ended on [a date].

- 15 It is reported that mother has killed two cats on separate occasions. In [a date] she suffocated a neighbour's cat whilst she was on bail for stabbing ex-partner. She accepts this. She disputes cutting a cat open with a knife in [a date].
- 16 On [a date] mother disclosed to Police that she was being regularly subjected to domestic abuse from father both physical and emotional.
- 17 Following a referral in and request for support from mother on [a date], an Initial Child Protection Conference took place on [a date] and the unborn baby was made the subject of a child protection plan under the category of neglect. The pre-proceedings process commenced on [a date].
- 18 There have been a considerable number and variety of assessments during the proceedings. I will list these and address the most relevant issues later in this judgment.

#### **4 THE ISSUES AND THE PARTIES POSITIONS**

- 19 In preparing for this hearing, I have read the full bundle of papers provided to me in this matter, together with the proposed final Threshold Document.
- 20 I shall consider each of the parties' cases in turn.
  - The Local Authority seeks a final care and placement order for Joe. The Local Authority relies on the plethora of evidence in the bundle, including in particular the variety of social work assessments and addendums of both parents, the information from [the assessment units], the psychological assessments and addendums, the drug/alcohol testing results and they also accept the Guardian's analysis.
  - They state that the key issues are:
    - Threshold concerns relate to the mother's significant mental health difficulties, her cognitive difficulties, and her management of her emotions. Threshold concerns with respect of the father relate to his domestic abuse background, his mental health, his substance usage, and his criminality.
    - Welfare concerns relate to the mother's ability to provide stable and consistent care to Joe notwithstanding significant

support and intervention. There are also great concerns about her ability to work with professionals. Welfare concerns with respect to the father relate to his ability to provide safe care for Joe, particularly given an incident in the course of proceedings where he was convicted of drug driving while Joe was in his care.

- The parents have historically adopted a unified position despite their separation. They opposed the plan of adoption and sought for Joe to be returned to the mother's care, under a care order if necessary, over a planned period of time.
- The Father's position at the final hearing was unclear as he had not filed a final statement. His counsel had received an emailed "statement" at 9pm the day before the hearing commenced but again this was not clear. He chose not to attend and refused to attend court until he gave his evidence. Via his counsel, on the first morning of the hearing he sought an adjournment and the opportunity to challenge alternative witnesses to those who were planned via cross examination, including for example the police officer who dealt with his drug driving. None of these witnesses were pertinent to the issues to be dealt with at the final hearing. I refused the application for an adjournment as being wholly unmeritorious.
- Whatever his position in relation to who should care for Joe or the type of order it has been clear that father was opposed to the making of a placement order and I have approached this matter on that basis.
- The mother had requested permission to make some minor amendments/correction of typos and errors to her final statement following the live evidence of the Independent Social Worker [a name]. I was assured that the changes were minor and mainly typographical or correcting mistakes. I allowed this but when the amended statement arrived it went far beyond that remit with additional evidence and commentary being inserted throughout and extending by 3 pages an already very lengthy and detailed statement.

I indicated that I would allow the amended statement but set out the following information in an email to all the parties on [a date]:

*"The amendments to the statement are considerably greater than was suggested at the start of the final hearing. I was informed it*

*was a few extra points and typos. This contains considerable additional evidence. Technically we are part heard and this should not be permitted.*

*However, please note the following and advise the parties:*

- 1 I will allow the amendments on this occasion only.*
- 2 There will be no further amendments or additions by the mother (or indeed any party).*
- 3 The statement will stand as evidence in chief in accordance with FPR 22, particularly 22.2 and 22.6. This applies to ALL witnesses. Proportionality is appropriate and this approach will be applied.*
- 4 The mother will not be permitted, as she suggests in her statement at para 59 for example, to adduce any additional evidence”.*

- I have read and carefully considered all of mother’s statements.
- Mothers case, in simple terms is that “the evidence before the court is tainted by “Chinese whispers”; she has been “prejudged” by the social worker whom she also accuses of “lying” in her final statement; [the first assessment unit’s] assessment was “biased”; [the second assessment unit’s] assessment was “rushed”; [the second assessment unit’s] second assessment should effectively be ignored; [the second assessment unit’s] staff have also prejudged her and were biased. She relies upon her own evidence and the father’s support. In short, everything done to date is unfair.
- The Guardian’s final analysis is dated [a date] and strongly supports the Local Authority and the making of a final care and placement order. It is a very comprehensive and balanced report, and her conclusions and reasoning are detailed, clear and justified.

## **5 THRESHOLD**

21 The draft Final Threshold facts are set out here:

1. *As at the relevant date, the criteria within s.31(2) Children Act 1989 were satisfied because:*
  - a. *The child concerned was likely to suffer significant harm;*  
*and*

- b. The likelihood of harm was attributable to the care that had been given, and was likely to be given to the child, not being what it would be reasonable to expect a parent to give them.*
  - c. The nature of the harm likely to be suffered is physical and emotional harm.*
- 2. The relevant date, at which the threshold criteria fall to be considered, is [a date], that being the date on which the child was born.*
- 3. The child has suffered, or was at risk of suffering, significant physical and emotional harm due to the following facts:*
  - a. Jane had significant social care involvement as a child being removed from her mother's care in [a date], experiencing placement moves and suffering significant abuse and neglect.*
  - b. Jane has a history of very poor mental health which has included her being hospitalised on several occasions due to being unable to keep herself safe. Jane is diagnosed with Generalised Anxiety Disorder and Emotionally Unstable Personality Disorder. Jane has a significant history of self-harm and has made a number of deliberate attempts to end her life.*
  - c. Jane has complex needs relating to her learning. She is diagnosed with Autistic Spectrum Disorder, ADHD, Irlen's syndrome, and OCD as well as being very sensitive to noise.*
  - d. Jane has been in relationships where she has been the victim of domestic abuse.*
  - e. Jane has had an inability to regulate her emotions leading to violence and aggression namely;*
    - i. In [a date] Jane was convicted of causing grievous bodily harm after stabbing her ex-partner in the abdomen with a knife.*
    - ii. In March [a date] Jane killed a cat by suffocating it.*
  - f. There is a history of domestic abuse within Jack's significant relationships.*



- g. Jack has struggled with his mental health and previously expressed suicidal ideations.*
- h. Jack has a long-standing history of substance and alcohol misuse.*
- i. Jack has 17 convictions for 28 offences including matters relating to drugs, dishonesty, and failing to comply with court orders.*

### **Welfare findings**

- 4. On [a date], Jack was arrested by police, subsequently charged and convicted of drug driving, whilst Joe was in his sole care. The driving involved him driving on the wrong side of the road, putting Joe at risk of harm. He subsequently lost his driving licence. Jack sought to conceal the fact of this offending from the Local Authority. (C183)*
- 5. On [a date] Jane reported a physical assault, from her then partner of one month, to the police. (F993)*
- 6. Around [a date] Jane and Jack were spending time together and did not tell the Local Authority (C163 and C182). They also refused to allow their phones to be analysed so that the extent of their association could be assessed.*
- 7. During Jane's residential placement with [the first assessment unit] (parenting assessments for all) there were a number of occasions where she came into confrontation with the staff running the placement, in the presence of Joe. (Para 24 of Mother's most recent statement).*

## **6 THE NATURE OF THIS HEARING**

- 22 This hearing has taken place as a fully attended hearing over 5 days commencing on [a date] when the Independent Social Worker [a name] gave evidence. Her evidence was taken early and out of turn as she was unable to attend the listed four-day final hearing due to holidays. Everyone agreed that her evidence could and would be taken out of turn.

- 23 I made it clear to the advocates that for the sake of efficacy and proportionality, as threshold was factually conceded by mother, it would not be proportionate to address all of the historic evidence in cross examination save for where it related to the remaining issues of threshold, the welfare outcome, the decision making of the Local Authority and the parents' current positions.
- 24 The mother applied in [a date] for an adjournment of the final hearing for further assessment in home by [an assessor] which would have been for an initial period of around 8 weeks. In addition to that, of course, there would have been further time for likely assessment in the community without 24/7 support or very significant support and then final evidence and a delay to a new final hearing for many months. I refused the application as being wholly without merit and gave a short ex-tempore judgment which is contained in the bundle. That decision was not appealed.
- 25 Ground rules to enable mother's best participation were established and applied during the proceedings with the support of the mother's intermediary.
- 26 As I have already stated the father failed to attend and sought an adjournment at the start of the final hearing. This was refused. At the end of the first day, I directed that he be informed (via his representatives) that if he did not attend the following day, he would not be permitted to give evidence. He did not attend the following day despite informing his solicitor and the mother that he would be attending and demanding that his barrister meet him at 9am. He informed the mother that he would be telling the court all about her.
- 27 The following day, father emailed his solicitors stating that he would not be attending and additionally that he was unwell. It was not clear to his counsel whether he was again requesting an adjournment and attempts were made to contact him, but he failed to answer his phone save for one occasion when it was immediately disconnected. The father had failed to attend the IRH, the first separate day of the final hearing and any day of the final hearing. He had also disconnected from contact, professionals and his solicitors. I am satisfied that Ms Edwards acted fully in accordance with the father's instructions so far as they could be ascertained with his failure to communicate. An adjournment would not have been granted to the father even if he had attended to ask himself formally in person. Such application would be wholly unmeritorious.

- 28 Ms Edwards, for the father, was placed in a difficult position due to the father's non-attendance, non-engagement, non-filing of a final statement and his changes of position being indicated via email coupled with not answering his phone. Despite this I am satisfied that she represented the father's position as well as possible in the circumstances.
- 29 I am entirely satisfied that the hearing has been fair in accordance with Article 6; all appropriate and necessary steps to enhance participation have been implemented.

## **7 THE ISSUES AND THE EVIDENCE**

- 30 I have read the whole bundle.
- 31 The father failed to file a final statement. His first statement sought to care for Joe as sole carer as he did not believe that his best interests could be maintained long-term in the care of his mother. His last statement on [a date] confirmed that he does not seek to care for Joe as primary carer. My understanding is that he has vacillated between supporting the mother and for him to be considered as primary carer. Despite this he did not attend the hearing at all despite concerted efforts by his legal representatives to secure his attendance.
- 32 Before the hearing commenced, I discussed with the advocates (and they in turn with the mother's intermediary) the nature of judgment which would be most appropriate to assist her to understand my decisions and reasons. I was informed that a full detailed judgment with headings would be appropriate. This is actually somewhat counter to the information in the intermediary's report which states that a short simple summary of the decision and reasons why should be given although this I assume pre-supposed an oral judgement at the conclusion of the hearing. There was insufficient time to proceed with an oral judgment and in any event, I am of the opinion that a written judgement should be prepared for the sake of both parents and indeed Joe. I am aware from the intermediary assessment that short sentences are better for the mother, she has a "4 key word level" but it is simply not possible to produce a full written judgment on that basis. I will therefore rely on the mother's advisers / intermediary / an advocate to go through the full judgment with mother if she wishes them to do so.
- 33 It is clear that the mother requires things to be done thoroughly (her words to the intermediary) and she needs to "expand in great deal on

matters in an attempt to ensure her thorough understanding” ([the psychologist]). It is important for the mother to note that is not the role of the court to deal in great detail with every single issue or point raised in full. The court must be proportionate, and it is not possible in this judgment to refer to all of the evidence and all the arguments advanced. I have given careful consideration to all of the material placed before me, but only refer herein to that which is necessary to resolve the key issues. Mother should be aware that just because I have not mentioned a particular point does not mean that I have ignored it. I have considered all of the evidence, both oral and written, and it has been taken into account in coming to my decision.

- 34 Despite the President’s guidance in relation to time management, this is a very lengthy judgment to reflect the substantial amount of time of the proceedings, the evidence and the size of the bundle. It has taken a significant amount of time to prepare. I have not undertaken a long and detailed recital of all of the evidence, but I have set out and analysed the most pertinent matters. I have deliberately done a far more detailed assessment of the written evidence within this judgment than usual for the benefit of the mother. I considered that this would be helpful to her even if she does not agree with or accept my decision, as I anticipate will be the case. Nothing in this judgment should need any further comment or explanation and unless it is a significant and relevant error of law or fact, I will not provide clarifications or deal with additional areas. This judgment is amply detailed.
- 35 In short, the various assessments by the Local Authority and independent experts were overwhelmingly negative overall for both parents with the likelihood of risk to Joe remaining high. The evidence as a whole, including evidential statements or position statements is very thorough, giving praise where due and noting positives and negatives appropriately.
- 36 In my judgment there is no lacuna, or gap, in the evidence. I have more than sufficient evidence to come to a decision, indeed far much more than in many of these cases.

## **8 TIMELINE AND SUMMARY OF DECISION MAKING AND PARENTAL ASSESSMENT WITHIN COURT PROCEEDINGS**

- 37 I have not been provided with a formal Local Authority court timeline or chronology of applications/assessments etc within the bundle. That

would have been most useful in view of the number and the history of this matter. In order to be clear about the approximate timeline, I have therefore prepared my own summary of the progression of assessments and decisions and I will address this generally here before expanding on each later in this judgment.

- 38 Following mother's notification of pregnancy to the Local Authority and prior to Joe's birth, the pre-proceedings process was initiated which led to assessment by [the psychologist] and the recommendation of a Mother and Baby Foster Placement with full supervision. The Local Authority's initial plan was for the baby to be moved to foster care whilst further assessments took place. They were concerned that there were significant risks relating to the post-natal period and the impact this could have on mother's mental health. Mother gave birth unexpectedly. I was not the judge initially allocated to the case and did not deal with the Interim Care hearing and it is not clear from the papers how the plans developed and what was the position of the Guardian.
- 39 In any event, Joe was made the subject of an ICO on [a date], which was not opposed by the parents, with time permitted to allow for a residential assessment unit to be identified for mother and Joe to avoid the need for separation. A placement at [the first assessment unit] in [an area] was identified (I understand that this was the only possible placement available at the time) and Joe was discharged from hospital to the care of his mother whilst assessments were completed which included a cognitive and psychological assessment of mother. This placement sadly broke down and Joe was placed with foster carers on [a date]
- 40 In [a date], the ISW [a name] filed her Parent Assess based parenting assessment of the mother. The conclusion was negative.
- 41 The father then sought to care for Joe himself and following assessment by a psychologist, drug testing and an assessment by an Independent Social Worker, the ISW ultimately recommended a plan of transition to his care. This commenced [a date] and the transition plan was to run for around 2 months but was delayed for several reasons including mother's and the Guardian's opposition to the plan. Mother also sought further assessment for herself and the timetable was extended whilst additional expert evidence was sought in relation to both mother and father. The mother made an application for an ISW assessment in [a date].

- 42 In [a date] the father indicated that he would be returning to work with immediate effect for 4 full days per week and he sought to care for Joe outside those times, using family to assist with care. Contact was extended to include overnight stays. The Local Authority's final plan was finely balanced but ultimately for placement with the father under a care order, this on the basis that the extended contact had worked well, father had a support network and his drug and alcohol usage had reduced over the assessment period according to the assessments. They concluded that the mother was unable to care for Joe safely. This was contained in their final statement dated [a date].
- 43 Joe's placement with his father ended abruptly when father was arrested for drug driving whilst Joe was in the car with him on [a date], which he did not disclose to the local authority.
- 44 The case was reallocated to me (having suffered from lack of judicial continuity) in [a date] and the IRH and Final Hearing listed in [a date]. The Local Authority plan was for adoption.
- 45 In [a date] the mother sought to be further assessed on the basis that her parenting assessment was out of date, ([a date]), she had undergone therapy and there had been changes to her presentation. All parties supported further assessment. The timetable was extended yet again and an ISW Parent Assess parenting assessment was ordered to be prepared by [a name].
- 46 When completed on [a date], this recommended a gradual increase in contact and phased plan to further assess mother's ability to meet Joe's needs. It was also established that the ISW needed to see mother's medical records and the further police disclosure was outstanding. There were gaps in the evidence and a number of local authority concerns. An addendum was required to consider future planning including the extension of contact.
- 47 In addition, at the same time, the Local Authority received information that the parents were still in a relationship. This was denied by the parents. The Local Authority applied to court for CYFOR to analyse the parents' communications with each other following a message sent by the mother to the father which was inadvertently sent to the social worker instead. This message to the father was instructions from the mother as to how to leave her home address and avoid the social worker. The mother and father accepted that he had stayed at her property overnight on [a date], the mother reporting this was a one-off and the father reporting that he often goes to the mother's property

and informing the social worker that he does as the mother tells him to do and says what she tells him to say. The application was initially sought without notice to the parents and then made at an existing review hearing, without notice to the parents.

- 48 Both the mother and father refused to surrender their telephones to the Local Authority for 2 weeks for analysis. They both stated that they needed them for personal or work reasons; fuller information is set out in the order of [a date]. They were offered alternative (not smart) phones. The Court invited the parent's legal representatives to consider with their clients whether they would be prepared to hand their telephone to their solicitors or the Local Authority so that the messages between the parents could be downloaded with their phones being returned within 24 hours so they were not disadvantaged by not having their telephones for two weeks.
- 49 The Court indicated that the application by the Local Authority for forensic analysis was one which was appropriate in the circumstances of a message being sent in error by the mother which may be evidence of deceitful behaviour and an ongoing relationship. The request to both parents to give their phones to their respective solicitors was also reasonable and proportionate. The Local Authority sought for and the court indicated that it may draw an adverse inference in light of their refusal to both requests.
- 50 The Intervention / Transition Plan with an extension to mother's contact commenced in November and [a name], social worker filed a statement dated [a date] which highlighted progress. There were problems immediately on the first outing when Joe was returned to foster care "drenched through with wee, food around his waistband, vest and T shirt...". The supervising social worker [a name] stated that the mother had not changed Joe's nappy. The assessment continued with a review originally scheduled for December but this did not take place.
- 51 In her final evidence the mother states "I do not understand why the local authority withdraw this assessment opportunity because there were no issues with regards to my engagement with it. The local authority took it upon itself to dismiss the progress of this assessment". She also proceeds to accuse the social worker of misleading her about the nature of the [assessment unit], failing to make any effort to get a compatible assessment, setting her up to fail and never wanting her to succeed as well as dismissing positive assessments and generally deliberately making things difficult for her. These are wholly

unsubstantiated allegations and are not evidenced or accepted by the court. [A name]'s evidence praises positives where appropriate and the real issue is that the mother disagrees with her evidence as indeed she disagrees with most of the evidence, preferring her own narrative. She also shows a significant lack of insight into and / or significant minimisation of the day-to-day concerns of all of the professionals about her ability to cope with care of Joe with all of her own difficulties. Of course this lack of understanding is sadly not unusual in these matters.

- 52 The social worker's statement dated [a date] (information via [another social worker]) was that whilst mother could provide safe care of Joe in the contact centre and at home for a few hours she needed additional support. The Local Authority believed that mother required a high level of contact with Joe to evidence that she can meet his needs consistently. For this to happen she would need to be able to have Joe in her care most days and some evenings to demonstrate her ability to care, on a time increasing basis. This would require several workers coming in and out of her home day and night to be able to demonstrate her ability to care and include overnight stays for Joe. It would likely have to be outsourced by the Local Authority. The Local authority could not guarantee that the same workers would be able to support mother or that they would be trained to support mother with her own current needs. The social worker had had discussions with mother regarding this and they both did not feel that this would be manageable for mother. Mother told the social worker herself that she would be too fixated on making sure that the contact workers would be comfortable in her home, that she had food for them, that she had space for them, and she would become very overwhelmed. It was the Local Authority's position that this plan would indeed set mother up to fail and this would not be a fair or realistic option.
- 53 Mother needed a second opportunity to demonstrate her parenting abilities and positive change in her own presentation in a mother and baby placement, where she would have the care of Joe 24 hours a day in a safe and supported environment. The Local Authority was mindful that previously mother had struggled to manage in such a placement, but they were acutely aware of the positive changes to both mother's physical and mental health since then. As noted by mother, she was in a lot of pain having just give birth and felt that her mental health was low at the time of entering [the first assessment unit]. The Local Authority noted that those barriers were no longer evident and felt that within the correct setting mother could be supported in evidencing her parenting abilities.



- 54 It is recorded in the evidence that there were no Parent and Baby Foster placements available locally.
- 55 A specialist residential placement for the mother at [a placement unit name] was then identified and considerable work and detailed planning took place to ensure that the placement would meet the mother's needs including specific ASD training, a contract of expectation and a carefully staged transition plan including time for mother to settle in herself before Joe's arrival. This plan was supported by the Guardian and by the ISW [a name]. It would also allow continuity of social worker for mother as [a name] was one of the social workers who complete assessments for [the second assessment unit]. The recommendation was that [the second assessment unit] would provide the support in two ways, firstly in the residential placement where she would receive support and monitoring and then, all being well, a move into the community with outreach support. Full details of the support and timescales were set out in the statement dated [a date].
- 56 There were difficulties within this placement. Sadly, all professionals were of the view that the placement could not continue as the mother's needs and behaviour were such that they were having a negative impact on Joe and his needs which had been neglected and he had been exposed to emotional harm.
- 57 The [the second assessment unit] placement ended on around [a date] and Joe returned to foster care.
- 58 An addendum report from the ISW was obtained dated [a date] following the breakdown of the placement. This did not support Joe being placed in his mother's care and did not support any further attempts at placement/testing out or any further assessment of the mother.
- 59 Mother applied for a further community-based assessment which was heard on [a date]. This proposed in home 24/7 assessment at a cost of around £4000 per week. I refused this application; the transcript of my brief ex tempore judgment is within the bundle.

## **9 THE WRITTEN EVIDENCE WITH ANALYSIS**

### **ASSESSMENTS & REPORTS CONCERNING MOTHER**

60 Residential placement assessment at [the first assessment unit] [a date] – [a date] This placement broke down due to safeguarding concerns owing to mother's aggression and her inability to accept guidance from support staff. [The first assessment unit] raised their concerns with the mother and also spoke to the emergency duty section at [A Local Authority's] children's services. The placement broke down the following day.

61 Mother considered [the first assessment unit] to be unsuitable – “restrictive and controlled”. She was not given the “freedom to care for Joe in [her] own way”. She was also concerned about the different approaches of different staff (an issue she complained about later at [the second assessment unit] too). She agreed to the placement ending on the basis that she considered it not to be suitable to her needs (again, her same opinion regarding [the second assessment unit])

62 Cognitive and Psychological Assessment of Mother [a date] by [the psychologist].

The psychologist opined that mother has low-average levels of cognitive ability, having a presenting weakness in her working memory ability. She further opined that mother's risks to Joe are considered to consist of physical and emotional neglect, the risk of exposure to domestic abuse, and physical harm, all considered to be to a medium degree. Factors such as poor mental health, systemic pressures, perceived rejection, being in a caring role, and her diagnosis of Autism may increase the likelihood of the risks, with factors such as being in an appropriate placement, perceived social support, and on-going mental health support acting as factors that would reduce such risks. [the psychologist] stated that mother would benefit from Dialectical Behavioural Therapy (DBT), to support her with emotional regulation, distress tolerance, interpersonal skills, and mindfulness in a very structured way catered also to her personality disordered traits. However, the timing of such therapy was significant, and was better started at a later date when the mother had the opportunity to settle into parenthood. It was advised that a further follow up assessment was completed once Joe is [a number] months old, which would allow for psychological parental adaptation.

63 FTS drug testing of Mother [a date]

The testing considered various prescription drugs that mother was taking at a time when she was also breast feeding. The results were as follows:

- Tramadol: likely to have been at least several days during each of the months around [a date] and [a date]. Her use is likely to have stopped around [a date] and she is likely to have abstained or predominantly abstained from the use of tramadol during the approximate 4-week period prior to sampling. Mother declared the use of prescribed tramadol on mostly a daily basis from around [a date] to [a date], with no other use of tramadol during the 12 months prior to sample collection.
- Promethazine: these findings are more likely than not to represent the use of promethazine on what is likely to have been at least several days during around [a date] and [a date], and on a daily basis during around [a date]. Mother declared the use of prescribed promethazine on a daily basis during the 12-month period prior to sample collection.
- Methylphenidate: In our opinion, these findings are more likely than not to represent the use of methylphenidate on what is likely to have been a frequent basis during each of the months from around [a date] to [a date]. Mother declared the use of prescribed 'xaggitin xl' (methylphenidate hydrochloride) on a daily basis during the 12-month period prior to sample collection.

64 ISW Assessment of Mother by [the first ISW] [a date].

The assessment highlights many of mother's positive features but for the following risk factors, it concluded negatively:

- Mother's apparent propensity towards violent and aggressive behaviours when she was faced with challenge, exposing Joe to the same.
- Mother became overwhelmed while caring for Joe at [the assessment unit], which resulted in staff needing to care for Joe at times.
- Mother had been unable to reflect on professional criticism and refused to accept professional advice and support.
- Mother had a significant (recent) history of mental health difficulties resulting in self-harming behaviours.
- Mother's ability to manage her and Joe's routines concurrently.
- Mother had reported to be engaging in binge drinking on occasion.
- Mother's support network was limited.

65 The assessment was undertaken at the instruction of the Local Authority following the breakdown of the placement at [the assessment unit] and involved, amongst other matters, 7 home-based sessions of assessment of the mother. These were tailored to the mother's needs including the emailing of plans, visual aids, breaks and feedback.

- 66 The mother criticised this assessment on the basis that it was not “fresh and unbiased” but used historical data from [the assessment unit] and [the psychologist]. She considered it to be biased. In my judgment it is not biased, and it not appropriate to deprive any assessor of selective historical data. It is entirely appropriate and proper for all data to be provided and for assessors to consider the opinions of others but formulate their own opinions. Assessments are not undertaken in isolation. In my judgment there is no suggestion of bias, it is a comprehensive and detailed document which sets out both the mother’s and her own observations and opinions.
- 67 Addendum Report of [the psychologist] [a date].  
This recommended that the mother would benefit from Dialectical Behavioural Therapy (DBT), to support her with emotional regulation, distress tolerance, interpersonal skills, and mindfulness in a very structured way catered also to her personality disordered traits. Such support would also need to incorporate attachment focused work, therapy to increase her emotional awareness of Joe’s emotional needs and increase her ability to develop insight into her defensiveness. Such work should start as soon as possible, and prior to any care duties of Joe being resumed in future if this was decided.  
It also advised that the mother should have an intermediary or advocate to support her in any legal meetings and court hearings, to support her communication with others and monitor her mental health and stress levels.
- 68 Intermediary Assessment [a date]  
The application was made in [a date] as the mother’s NYAS worker who had previously supported her was unable to attend the final hearing.
- 69 Addendum Report of [the psychologist] [a date].  
After reviewing the report of [the health visitor] which provided an overall encouraging and positive view of mother’s parenting practices, her recommendations made in her addendum report remained unchanged. Most significantly, in her view, the therapy would increase the chances of such positive progress continuing in the face of stress (which is inevitable and usual in parenting). That was the reason for her recommendation of therapy, despite mother’s stability and progress to date.
- 70 Mother considers that the assessment of [the psychologist] was rushed but accepts that the overall conclusion was fair. She has

implemented several of the recommendations including DBT and engaged with her therapist.

71 Progress Report from Mother's Therapist [a date].

Mother had engaged well with Dialectical Behaviour Therapy attending nine therapy sessions, with more sessions planned, which would address further DBT skills training on emotion regulation and interpersonal effectiveness. Mother appeared to have had little opportunity for therapeutic support to date to help her process her negative life experiences and further develop a positive identity. She would benefit from Narrative Therapy work to do this. He suggested 6-8 sessions.

72 ISW Assessment of mother by [the ISW] [a date].

The recommendations were as follows:

- It was her professional view that Joe's placement into mother's care would not be without risk, but she was optimistic as to the likely success of a cautious graded transition.
- However, it was her professional view, that for there to be a realistic prospect of security being achieved in his mother's care, a cautious and extended plan of testing and transition, would be required.
- Joe required permanence and stability, at the earliest opportunity.
- She considered that this was proportionate and sensible, when considering the prospect of Joe having the opportunity to live within his family of origin. The recommendation was subject to:
  - Extended supervised family time.
  - Mother continued to engage with her psychotherapist on a weekly basis.
  - 1:1 parenting teaching and support regarding appropriate parenting strategies, and safe coping strategies when Joe tested the boundaries of his environment and presents challenging behaviour (as is typical for all toddlers).
  - Mother to remain compliant with her prescribed medication and attend fortnightly GP reviews to support her mental health.
  - Any permanent transfer of care should be subject to a gradual increase in contact time between mother and Joe. This will allow for relationships to further strengthen and opportunity to further test mother's ability to meet Joe's needs for increased intervals.
  - The Local Authority should consider what support can be provided to mother in identifying suitable housing.

- The Local Authority to convene a Family Group Conference to include the support network identified. Open discussions should be held, regarding perceived risk and safety planning. There should be regular multi-agency review meetings, as contact times increase, to review progress.
- There would need to be a clear plan regarding Joe's time spent with his father, and his transition between his parents.
- Unsupervised time, subject to the above being successful, with 'drop-in / monitoring' professional visits during such time (announced and unannounced).
- If Joe transferred to his mother's care, it was her professional view that there would need to be a continued role for the Local Authority in supporting and monitoring Joe's placement in his mother's care.

73 [The second assessment unit's] Assessment – Weekly Reports [dates] and Statement [a date].

The conclusion of this assessment by [the assessment unit's] Manager/Social Worker [a name: BL] was: *"It is considered therefore that the continuation of this placement is not in Joe's best interest, and it is evident from the observations and difficulties experienced, that sadly, this environment and mother having full time care of Joe is too overwhelming for her.*

*It is my professional opinion that mother is either not capable or not motivated to make the positive changes she needs to in order to offer consistently positive and safe care to Joe as his main carer.*

*The timeframe for her achieving these changes is not conducive to Joe's needs and stage of development as he requires and deserves a caregiver whom is able to offer safe and consistent care now.*

*It is my professional opinion that the threshold for interim removal is met, and that Joe requires a plan of permanence.*

*With deep regret I do not believe that he can be safely cared for by mother and when Joe becomes older and more challenging, the issues raised are likely to intensify further. Whilst it is accepted that removal from parents causes developmental trauma, it is considered that protective factors in terms of receiving consistent care, love, and protection with one's forever family, paired with informative life story work can be mitigating factors.*

*Time is of the essence for Joe, he will be [a number] years old in [a date] and the first 3 years are the most detrimental in terms of his attachment development, identity and relationship needs".*

- 74 Mother's response to the assessment is effectively to dismiss it entirely as being not suitable to her needs. She has set out her thoughts in detail in two statements and I have considered these carefully. She

uses strong language such as “manipulation” and “coercion”. She argues that the following were issues which were not appropriate for her: the planning process, the environment, the speed of the move, vague documentation, staffing, placement reporting was biased, poor communication, inconsistency, too controlled, her parenting was over-ruled, not listening. In short, practically everything.

- 75 She accepts poor behaviour only that she was on occasion aggressive by shouting and swearing.
- 76 She attempts to explain away all the poor behaviour set out in the reports by stating that “the environment in placement was a false [sic – incomplete]. I tried very hard to de-escalate situations, it took a lot before I lost my patience. I genuinely do not believe that I would react in that way had I been in my own home with Joe.” She also commented “The environment in placement was extremely controlled with very many rules and restrictions. It seemed to me that the assessment was more about my ability to adapt than whether I could actually care for myself and Joe. Of course one of the concerns of the professionals is the mother’s ability to adapt to circumstances when caring for Joe, this is in issue in the proceedings. Sadly the relevance of this concern simply passes the mother by, she appears oblivious to its relevance.
- 77 She insists that the assessment was not appropriate for her and should have been done at home with live in support. She went on to say “I am confident that I could have been positively assessed to meet Joe’s needs in my home environment, where I was not battling with procedures and policies, which were incomplete, poorly communicated and inconsistent”. It is not accurate to state that the assessment was as described by mother although I accept that this may be her perception. Considerable efforts were made to ensure that it was as suitable as possible for her very specific needs.
- 78 The Guardian stated in her report “... *a placement at [the assessment unit] was identified as the most appropriate resource. The Local Authority adapted and tailored a plan to support mother’s needs at [the assessment unit]. This was in the form of the choosing of a placement where staff have an abundance of experience supporting multiple families with complex needs, staff received additional training in ASD and there was a gradual transition for Joe to join his mother in the placement. The placement lasted for three weeks before it was terminated by the Local Authority with the agreement of myself and the independent reviewing officer and with the endorsement of the court. The placement was terminated due to ongoing safeguarding concerns,*

*mother's inability to accept and act upon advice from professionals alongside her inability to manage her own needs alongside those of Joe. During the period of the placement Joe was not provided with a consistent routine and his overall needs were not consistently met (mother disputes this). In addition, he was exposed to daily conflict between mother and staff members as well as conflict between his parents during telephone calls".* The Guardian had been involved throughout the planning for [the assessment unit] and remains firmly of the opinion that it was appropriate.

- 79 In the words of the ISW, "it is accepted that [health matters such as the mother's] should not preclude a parent from caring for a child, however, in this case, it is imperative and crucial that mother is able to work alongside professionals to make the changes, prioritise Joe and learn from professionals". Sadly comments such as "professionals thought that they knew best" is an indicator of the mother's refusal or reluctance to accept guidance and learn from professionals. This is echoed throughout all of the assessment and reflected in the opinion of the Guardian.
- 80 In summary she says "*I believe that staff had pre-judged me before I arrived in placement based on what they had read. They had made assumptions about me and their outlook was biased before I had even arrived.*"
- 81 This is a constant and recurring theme in the mother's evidence – it is clear that she believes that everyone who thinks different to her, including many professionals who have filed evidence - is biased and pre-judges her. In my judgment there is no evidence whatsoever to support this.
- 82 Put simply, in my judgment - and indeed this echoes the comments in my previous ex-tempore judgment too, it appears that mother will only accept an assessment which she deems suitable for herself and where she is allowed to dictate the terms. This is wholly unrealistic and takes none of the concerns expressed by professionals into account.
- 83 ISW Addendum Report of mother by the ISW [a date].
- This concludes: "*Unfortunately, I believe that at week 96 of care proceedings, there is no further support available to teach mother the required skills. There remain concerns around a history of domestic abuse / unhealthy relationships, poor decision making resulting in neglect, poor support network (with a falling out between mother and*



*the lady to whom was previously her main support person, with a repeat reliance on Joe's father for emotional support), difficulties attuning to Joe and meeting his needs consistently, vulnerabilities around a consistent routine, boundaries, guidance and mood instability / unpredictability. The cause of mother's behaviour cannot be determined, and there is likely a combination of factors such as trauma, neurodiverse difficulties and / or personality traits, however, most significantly, Joe would be at risk of harm in his mother's care, and testing out further support, will necessitate continuing delay. I cannot support any further delay for Joe aged [a number]-months-old, with proceedings standing at week 96."*

- 84 The mother simply asks me to effectively ignore this assessment and prefer the original assessment. There is no justification for me to do this.

#### ASSESSMENTS AND REPORTS CONCERNING FATHER

- 85 Lextox drug and alcohol testing of Father [a date].  
This confirmed that the father had consumed chronic excessive levels of alcohol between mid [a date] to end of [a date]. It was also positive for cannabis use at low levels, between end [a date] to the end of [a date] and was positive for cocaine use, medium level.
- 86 Lextox drug and alcohol testing of Father [a date].  
Father tested positive for cannabis and cocaine use from [a date]. He also consumed chronic excessive levels of alcohol in the approximate time period from the end of [a date] to the middle of [a date]
- 87 Psychological Assessment of Father by [father's psychologist] [a date].  
The conclusion of the report can be summarised as follows:
- Father presented as having anxious personality traits. He also stated that he worked full time and that a lack of work had historically increased the severity of his depressive symptomology.
  - Father stated that he would prefer to co-parent Joe or to have contact with Joe at the weekends, similar to the contact arrangements he has with his older children. He understood that this may not be possible and it was a reason for wanting to provide full care/custody of Joe and to prevent him from being adopted.
  - It was likely that should he have full care of Joe, his work would be affected by the demands of parenting. Father accepted that he would be less able to work if he had full care of Joe but was unable

to connect to the range of challenges that this may present. Father had stated that he would require financial, emotional and practical support in order to care for Joe full time but did not give detail of what this would look like.

- Father minimised the challenges of parenting for a young child referring to his past and current experiences of 'successful' parenting of his older two children. Minimising significant events could be a product of his personality traits. An example of this minimisation in interview was father stating that his attempts to kill himself by jumping from a bridge and taking an overdose were 'little things,' trivialising them. He also described his previous convictions as 'minor things'. Yet his PNC record details 17 convictions for 28 offences. This puts into context his statements.
- Furthermore, he presented with a somewhat misguided view in regard to his decision to "binge drink", stating that this felt more acceptable to him, as he would engage in this behaviour when he did not have the children. As such, he was not considering the needs of the child. Binge drinking would have an impact on his overall mental health and parenting functionality.
- Father must address the psychological factors causing him to continue misusing drugs as maladaptive coping strategies. Should father's contact time with Joe be increased the level of care and time required to look after a young child would likely place additional demands on his coping. It is therefore important that any underlying trauma/difficulties associated with past relationships and methods of coping with anxiety were addressed. Also, seeking support for and understanding his use of alcohol and drugs from specialist services would be advised.

88 ISW Assessment of Father by [father's ISW] [a date].

The recommendations of the social worker were in summary:

- The risks outlined are longstanding, complex and in many senses were linked to one another. In short, risks of parental mental health, parental substance misuse and domestic violence are identified. There is a significant amount of history relating to each of these risk factors.
- After a great deal of careful consideration, He was unable to recommend that father was presently suitable to provide full time care for Joe. Whilst there remained several risk factors, there were significant positives to father's parenting capacity as set out within his assessment and as a result he made the following recommendations:

- Up to date drug and alcohol testing should be completed given father maintained that he has since significantly reduced his alcohol and substance use further.
- Father should engage with direct work in respect of healthy relationships (He understood that this had already been co-ordinated by the Local Authority).
- Father's contact with Joe should be increased and unsupervised contact be considered (with a handover to ensure his suitability to care for the children, e.g., he was not under the influence of any substances). This would assess father's wider capacity to meet Joe's care for prolonged periods of time.
- An addendum to his Parenting Assessment should deal with updates from the above recommendations to consider if, at that time, father would be suitable to care for Joe.

89 Lextox drug and alcohol testing of Father [a date].

Father tested positive for cannabis in the medium range in the period [a date] to [a date] and tested negative for cocaine in the same period.

90 Addendum ISW Assessment of father [a date].

The executive summary of the assessment showed:

- Father had demonstrated a good capacity to engage with [a name], family intervention worker, to complete the recommended direct work covering certain topics. Positively she reported father's engagement and insight had been good, and she continued to work with him currently.
- Father continued to share the care of [his other children] with [their mother] and cared for them at points throughout each week within an informal agreement with her.
- Since Joe's birth, father has had contact with Joe which has increased from supervised contact in a contact centre to periods of contact then taking place at father's home. The quality of that contact had consistently been observed to be positive. Father was assessed to be a confident and capable father within periods of extended contact who could meet the needs of his children without intervention from supervisors. His commitment to contact had been generally good (although his work commitments had impacted arrangements at times). He ensured that he was well prepared for contact and demonstrated high levels of emotional warmth and love for the children. He was child-centred, nurturing and demonstrated good insight into Joe's needs and next stages of

development and his need for stimulation. To date the risk factors which had been identified; father's mental health, illicit substance and alcohol misuse had not had a detrimental impact upon his contact with the children.

- Direct work recommended within the Psychological Assessment had been completed and father's engagement and insight within this work had been highlighted positively.
- The parenting assessment dated [a date] made several key recommendations. Positively, clear progress had been made against those recommendations. Contact had been progressed and continued to be of good quality, direct work had been completed and was ongoing with positive feedback noted in respect of father's engagement and insight which also evidenced his ability to work with professionals from the Local Authority which had been identified as a potential area of risk. Risks of illicit substance misuse remained although his use could be low level, and this would need consideration within future planning. The main risk factor at this time was father's alcohol use and whilst his latest drug and alcohol report concluded positively in respect of no recent excessive alcohol use, they were reliant upon blood sample analysis which was not ideal as it can only analyse shorter periods. However, observations from professionals and the fact that father maintained employment did act to offer some reassurances in that respect and whilst caution must be exercised, he held the view that risks factors could be managed under a comprehensive risk management plan. This would ideally take the form of a Home Placement Agreement under a Care Order should Joe be placed within father's care or within a period of transition / increased contact. He felt that such a plan could be considered if ongoing drug and alcohol testing was in place to measure use, reduction, or abstinence over a longer period.

91 Addendum ISW Assessment of father – Response to additional questions [a date].

There was now evidence that father had used cannabis either whilst caring for Joe or shortly before assuming care of Joe. The level of substance misuse raised the suspicion of Police and had been confirmed within a drug swipe. Father had outlined that observations of him driving on the wrong side of the road were the result of him looking for a map, it could be argued that his use of cannabis has had a detrimental impact upon his focus and capacity to drive his car safely and make suitable decisions (i.e. to drive whilst under the influence of cannabis or to look for a map whilst driving, with Joe in the car) and

therefore would impact his capacity and decisions with regards to his parenting of Joe.

There were also indicators that father was not working openly and honestly with professionals given his account that he was allowed to drive after the incident where PC [a name] outlines that father was arrested, within his declarations in regard to drug testing and in not reporting the incident to professionals.

However, the information at hand was highly concerning and unfortunately represented some very disappointing decision making on father's part which in reality compromised the safety of Joe.

Given the circumstances within the incident, continued drug and alcohol use (albeit reduced) remained a significant risk factor at that time. There were links made between substance misuse, father's Social Anxiety and Stress Disorder / history of mental health needs and the ISW recommended the Local Authority considered seeking the updated views of [father's psychologist], who had completed the Psychological Assessment in respect of this.

When considering these issues cumulatively, he urged caution in progressing the rehabilitation home plan further at this time as he held the view that this would compromise Joe's safety and wellbeing. The Local Authority would need to have evidence of father's reduction of alcohol and substances before this could be considered. He was aware that care proceedings were progressing and this delay could be considered to not be in line with Joe's needs. Father had consistently stated that he had been reducing his alcohol and substance misuse since they began working together in [a date]. As such, as time had progressed there was decreasing confidence in father's capacity to work towards a sufficient reduction in use or abstinence.

- 92 The father has not commented on or challenged the addendum assessment. He has subsequently been convicted of the offence and his driving licence has been revoked for a period of time. Substance misuse therefore remains a significant risk factor in respect of father.
- 93 The father has not challenged any of the evidence concerning him at this final hearing. I record that I find it all proven and I accept it.

#### ASSESSMENT OF THE GUARDIAN

- 94 KT has been the Guardian throughout. She has had extensive involvement with the mother throughout in providing support, advice

and general discussions. She has been actively involved in all decision making and filed a final report dated [a date]. She fully supports the Local Authority.

- 95 In relation to the mother, she addresses the concerns at length and also her impression of the mother. I have already addressed some of her comments. In relation to the mother's ability to work with and learn from professionals she states "*Within her statement and throughout the time that I have engaged with mother she has had significant difficulties in accepting assessments or views of professionals that challenge her own views. When she does not agree with professionals, she will often become challenging and is unable to take on advice and guidance. Whilst my engagement with mother has been largely positive, I note that on the times that I have not agreed with her or offered a different opinion she becomes challenging and does not listen to an alternative viewpoint. In my opinion her insight into her own behaviours and the impact they have on Joe is significantly lacking*". I accept this, it reflects the opinions of all the other professionals and is sufficiently evidenced through the matter.
- 96 Of concern too is the comment made by mother to the Guardian in relation to support: "*I have asked Jane what support she would need from social care if he were to be placed in her care and she was unable to identify anything other than a listening ear and someone to bounce ideas off*".
- 97 She is very concerned that Joe would be caused harm if cared for by his mother: "*The evidence in the life of this case would suggest that when this is the case mother can become angry, frustrated and behave in a manner that would be harmful and frightening to Joe. Additionally, her negative responses to professionals role models negative behaviours as acceptable to Joe. Continued exposure to these issues is likely to cause emotional and mental health problems for Joe as he develops and could lead to poor identity or behavioural difficulties.*"
- 98 In summary, the Guardian is satisfied that the mother has been properly and fully assessed but "*the risk factors remain significant in respect of her emotional regulation, ability to manage the challenges of everyday life alongside parenting a young child and their ever changing and developing needs, her limited support network and dependence upon professional support which she struggles to engage consistently and positively with... I am of the opinion that mother, despite her best intentions and motivation would not be able to*

*prioritise Joe's needs on a consistent basis and he would be exposed to periods of neglect and emotional harm."*

- 99 In relation to the father the Guardian accepts the assessments of the ISW and the psychologist and opines that Joe would be at significant risk of emotional harm and neglect if placed in his care. The father himself has struggled to work with professionals and indeed on an open and honest basis at times. He has also not demonstrated an ability to prioritise Joe's needs over his own such as the drug driving incident. His position of wishing to care for Joe has also vacillated throughout these proceedings and he failed to file any final evidence confirming his position.
- 100 The Guardian is satisfied that the parents either together or separate must be ruled out as carers for Joe.

## OTHER ASSESSMENTS

- 101 There has been ongoing involvement and assessment of the mother and father by the Social Worker throughout the matter and of course the Guardian has also prepared an analysis relating to them. The Social Worker has prepared and filed numerous statements throughout the matter.
- 102 A negative viability assessment of father's ex-partner was completed. In an email dated [a date], she indicated that she wished to challenge the assessment. Despite providing her with details as to how to challenge, no such application was received. [father's former partner] recently asked to be reassessed as the previous assessment was [a date]. The local authority further assessment of her dated [a date] was negative and she has not sought to challenge this assessment.
- 103 There are no other family members or friends who wish to be assessed.

## **10 LIVE EVIDENCE**

### THE LOCAL AUTHORITY EVIDENCE

- 104 I have heard evidence from two of the Independent Social Workers and the allocated social worker.
- 105 The ISW: The ISW had filed 2 assessments, the first one was dated [a date] and the addendum report was dated [a date]. Her initial report

recommended that mother should be provided with another opportunity to care for Joe with a period of testing but her second report, following the failure of the placement at [the assessment unit] confirmed that she no longer supported rehabilitation and supported the local authority's application for a final care and placement order. Her oral evidence was consistent with her written evidence.

- 106 She was cross examined on behalf of the mother and pressed as to whether she considered that the [assessment unit] assessment was appropriate at all given her initial recommendations for assessment in the community. This recommendation was for a gradual increase of contact in the community, but she stated that she considered that the [assessment unit] assessment was appropriate as it provided a true reflection of the present circumstances. She was fully aware of all of the support which had been set up and planned for the mother and which she considered to be very different to the setup at [the assessment unit]. In her opinion the [the assessment unit] assessment was fully structured to mother's needs and the workers did their utmost to work with her.
- 107 She confirmed that there may have been different approaches taken by different workers, but it was simply impossible to guarantee consistency and that everybody worked in different ways. However the workers all had an agreed remit, protocol and experience and mother needed to adapt too. It was also beneficial for the workers to see the whole holistic situation which included close supervision of mother for the first week in basic care tasks. Whilst challenging for the mother, she had been well informed and in her opinion the mother was given the best opportunity, and all support to enable her to engage was in place. She also confirmed that from when her initial assessment took place, the situation had moved on and more evidence was available which suggested that the [the assessment unit] assessment was more appropriate. She was adamant that it was the right placement and that mother was given full support.
- 108 When informed that mother claimed that the ISW had told her that [the assessment unit] was not the right place for her and that she was not happy with the assessment, she stated that this was not true. She was aware of [the assessment unit], having worked within [the assessment unit] herself, she knew the environment and she was satisfied it was the right plan. Additionally, while she had not been in the planning meetings she had been involved in discussions and fully stood by her decision to support the plan.



- 109 BL from [the assessment unit]: BL was confident that [the assessment unit] had offered mother a good opportunity to demonstrate that she could care for Joe. She had thought long and hard about mother's complexities and what [the assessment unit] could offer before accepting the placement. [The assessment unit] had 4 placements. She considered the existing two residents to be calm and the mother had the choice of the other two bedrooms to choose from; she visited in order to choose. They planned to keep the fourth placement free so as not to make matters more complicated for the mother. They undertook planning to ensure a "perfect" placement for the mother, accommodating her needs and at her pace. It was a bespoke placement. They had arranged the support services so that mother was not overloaded and everything was clear for her planning. Mother knew what to expect and when. When mother arrived the first week was difficult but manageable but when Joe arrived it became much more difficult.
- 110 She knew and agreed that mother was good with basic care, but [the assessment unit] still had to see her demonstrate this for themselves to sign it off due to OFSTED rules, they couldn't simply accept her word. She did not consider it to be intense monitoring as mother submitted, nor was it a pressurised environment. It was mother's own actions that changed the environment. They tried very hard to maintain staff consistency, there were up to 23 staff members but usually one on the floor for each mother. The workers had tried to work with the mother, but she was abusive and used bad language on occasions. They tried varying the staff working with mother to get the right fit - to younger, to older, to more nurturing staff to try to get the best out of mother and was satisfied that they had done everything they could. Mother had issues and refused to work with staff due to them having a scouse accent, allegedly due to them being "funny" with her – there was something wrong with everybody it seemed. She confirmed that there were a few workers who mother was comfortable with. She did not accept that there were, as mother said, lots of people coming in and telling her different things, there were usually 2 staff at most including the key worker. They also did not give mixed messages or demands, all staff followed OFSTED guidance and the same advice was given.
- 111 She had viewed the CCTV concerning when Joe had his "seizure/febrile convulsion" and had not seen mother wave at the camera to get attention as she claimed, and she was certain that mother kept covering Joe up when he was already too hot.

- 112 She was adamant that the placement was the best possible, they had looked at the best ways to support the mother, limited numbers, kept the environment calm and had had planning meetings to arrange the placement including the Reporting Officer, Guardian and the Health Visitor. They wanted as much support as possible. Sadly, the placement deteriorated when Joe arrived.
- 113 She considered that a community assessment was not appropriate as the mother would have the same problems in the community, would not work with professionals or do what was expected and Joe would be isolated. In her firmly stated opinion, [the assessment unit] was the best available option and was properly planned. She was clearly an experienced social worker and her commitment to trying to make the placement work was evidenced by her concerted efforts to find ways to work with the mother. In my judgment it was balanced and comprehensive evidence.
- 114 The Social Worker: The Social Worker had filed numerous statements, set out in the bundle. She was the second social worker. She accepted that the mother has complex needs and that she herself had not had any specialised training until a couple of months ago. She admitted on cross examination that she was out of her depth, but she had had a handover meeting with the previous social worker where they shared information on how to work with the mother. Despite finding the work difficult, The Social Worker could not say if anyone else would be better placed within the whole team. She used the strategies recommended by her predecessor. She confirmed that the mother had a significant need to clarify matters and that she was aware that gaps in knowledge or misunderstandings made the mother anxious. Changes were communicated by phone, text and email, with weekly meetings where needed. Despite this the mother was very demanding, with more and more requests for information including about sometimes non-relevant information, including requests from herself, solicitor and advocate. The relationship became strained.
- 115 She denied pre-judging the mother or being biased. She stated that she wanted mother to succeed throughout and she was not negative. She did not initially support community-based assessment as she considered that there were gaps in the ISW assessment and evidence. She had on no occasion told the mother that she was not “doing well”, nor did she compare her unfavourably to the father. She absolutely denied the suggestion that she never gave mother credit, stating that she regularly praised her. Mother had called her a liar on occasion, preferring to believe something the father had said instead.

- 116 She supported the [the assessment unit] assessment. The plan for mother's original community-based assessment was a staged plan of increasing time with Joe but may have ultimately led to 24 hour support in the home. The team undertaking the nurturing programme were concerned that they did not have the resources to support the plan after the first month or so and they would have to outsource it and "buy in" service. This could mean a lot of people being involved and going to the mother's house and she was concerned that the mother would not cope with this. She stated that she discussed this with the mother and mother stated that she would find this overwhelming. She was satisfied that she had fairly and accurately explained this and the option of [the assessment unit] to the mother and had not coerced her into choosing the [the assessment unit] option. She had had many conversations with the mother about [the assessment unit], explaining the detailed plans but this was not in itself unusual. Mother was anxious, constantly needing reassurance about everything and needing to know the details. It was correct that if mother refused the [the assessment unit] option this would mean returning to court and there was no other option for assessment proposed. She maintained that the mother chose to do [the assessment unit] as she was adamant that the home assessment with the outsourced support would be overwhelming in her own home. The Social Worker was adamant that community-based assessment would not have been better for the mother.
- 117 She understood and accepted the draconian nature of the adoption plan but confirmed that it was a balance of identity versus safety. Mother could do practical matters for Joe. Mother was good at showing affection to Joe but was not necessarily in tune with his needs. There was no doubt that mother loves Joe and wants to do well but for her, given the mother's needs, the additional support she needs and a year and a half of supervised contact, day to day care was not the issue. For her the issue was about mother coping with the stresses and strains of everyday life as well as Joe's needs. In her view, sadly "she just can't."
- 118 I do not criticise The Social Worker for feeling out of her depth in assessing and working with the mother. Many of the workers who have worked with the mother have found it to be an exceptionally difficult task and mother's profile is so complex that even the social workers equipped with extensive training, additional specific training and experience with parents with complex needs at [the assessment unit] found it almost impossible to work with the mother. Sadly, being unable

to work with professionals has been a theme for the mother throughout, things must be done on her terms or only on terms which she finds acceptable. Jane does not like criticism and becomes abusive and hostile according to many of the professionals.

- 119 The mother at times interrupted and challenged her barrister during the cross examination and referred to “miscommunications” between them, clearly getting anxious and heated. The court had to rise on several occasions where the mother was clearly frustrated so that they could discuss matters. This in my judgment was likely frustration caused by the mother’s personality profile and her tendency for misunderstanding and misinterpretation. At one point I had to reassure the mother that her counsel was certainly conducting appropriate cross examination in accordance with the mother’s statement and representing her best interests in an entirely proper manner. Sadly the mother was unable to see that this was the case and she clearly did not like the social worker’s evidence being unchanged upon challenge; she appeared to be frustrated with her barrister being unable to secure the answers which she wanted to hear or considered to be appropriate. I am satisfied that the mother has been properly and professionally represented by experienced legal advisers and advocates.

#### THE MOTHERS EVIDENCE:

- 120 Mother clearly found giving evidence difficult and emotional. Her intermediary was sat next to her throughout to assist her and indeed the advocates with the cross-examination questions. The questions had been prepared beforehand and reviewed by the intermediary, for which I am very grateful. It was not a straightforward part of the hearing and indeed the issues raised by professionals and the mother with regard to communications, misinterpretations and misunderstandings were apparent.
- 121 During cross examination of various witnesses on behalf of the mother, questions had been put that alleged that they had misled the mother or stated things which were contentious or not appropriate. Examples of these were with the Guardian – that the Guardian had said to her something like “if [the assessment unit] doesn’t work out it will be because it wasn’t right for you” and “I’d struggle too if it was me” and with the social worker she accused her of saying how well father was doing in comparison to how poorly she herself was doing. There are other examples. These were all denied by the respective professionals and I do not think the mother was being untruthful, it is clear that these were related to her communication issues and misunderstandings.

Having the opportunity of seeing mother in the witness box it was clear how she can misunderstand and needs frequent clarification. It is simply part of her make up and in my judgment, she has misunderstood or misinterpreted many things said to her. This has likely triggered her accusations to some professionals of lying.

122 She set out that she had undergone DBT and narrative therapy and was happy to do anything else, she accepted that she would need further therapy particularly in relation to communication and this leading to misunderstandings. I express the hope that the mother does get the opportunity for further therapy and that her advocate and indeed the Local Authority can help her to source this. It is clear that she is an intelligent young woman with lots to offer and I express the hope that sustained appropriate therapy will help her with her difficulties. She is still very young and there is much time for her to get the support she needs to achieve her best potential in the future.

123 Mother found it hard to say what support she thought she needed. This was possibly partly due to communication issues, as the nature of the questions were to elicit from the mother what she herself thought she needed, rather than ask her if she agreed specific named support types would be needed. The Intermediary suggested target questions but I advised the intermediary that this would effectively be leading the mother rather than asking for her own views or insight.

124 She was able to say that she would need some help from professionals who were better at matters such as choosing schools and helping her to communicate [with such authorities] and avoid misunderstandings. She also said she would benefit by having professionals who knew how to properly communicate with her and others on her behalf, again mentioning schools as an example. She did not need help with basic practical matters. She had various family members who would help her too.

125 She felt that she could multitask some things such as taking a phone call whilst caring for Joe but not with two conversations at once or people saying different things. She could cope with changes to things if they were explained fully to her – why and what – and fully clarified. She only gets overwhelmed if no-one explains what and why things are changing and her requests for clarification are not dealt with.

126 In reality, such changes are frequent and a fact of everyday life and there will not necessarily be anyone present with the mother to explain and to help her deal with and understand changes when they happen,

as they surely will. This would mean that she will become overwhelmed, potentially frequently.

127 Her explanation for raising her voice and shouting on occasion, including in front of Joe, was that she had tried quietly to clarify information but if she hadn't got anywhere, she would raise her voice. This simple explanation does not reflect the evidence, but I accept that the mother's loss of control is likely at least partly linked to frustration and misunderstandings.

128 Mother stated in evidence that she does not have any routines in her life. The reality is that she does. For her to cope, she has very carefully arranged and confirmed routines and plans and it is the changes to these which can cause her to feel overwhelmed. She cannot cope easily with change – she must know what she has to do and when, or she becomes overwhelmed. Sadly, her insight is such that she does not appreciate this.

129 She also told me about Joe and gave me a handwritten description of him and his likes and dislikes and his personality. It is clear from that the note that she truly loves him and knows him well. She is very concerned for his future as well as how my decision affects herself. She outlined some of her concerns about foster care from her own experience in some very heartfelt evidence and is clearly aware that adoption is not without its own risks.

130 She genuinely believes that she can care for Joe, I think she was very open and honest with her evidence and she believes everything she says.

#### THE FATHER'S EVIDENCE

131 The father did not attend and did not give evidence.

#### THE GUARDIAN'S EVIDENCE

132 The Guardian: Her evidence was entirely in line with her final analysis and her recommendation had not changed after hearing all of the evidence. She praised mother's efforts to care and to improve herself with therapy. She could see that mother loved Joe and was committed to him, very nurturing and caring at the contact centre.

133 She explained that she had been consulted about [the assessment unit] and believed that it was certainly the best placement for the mother. She was clear that the arrangements at [the assessment unit] had been explained to the mother, she herself had discussed them, it

was not true to say mother was misled. There may have been some timing issues but before mother commenced the therapy, she knew she would have to spend the first week evidencing basic care to be “ticked off” – the Guardian specifically remembers telling mother it was just one week of her life. She was heavily involved in the planning of [the assessment unit] and dealing with issues of mother’s needs and communication.

134 The other option of home-based assessment with many workers going into mother’s house would not have worked for this mother. The workers would be untrained in mother’s specific needs and communication style and the Local Authority could only go so far without outside support; mother ultimately would need to be assessed 24/7. She stated that mother works well with you until you challenge her or suggest an alternative and that’s when she escalates.

135 In her last conversation with the mother prior to filing her report, she had asked mother what help she would need and mother stated that she didn’t need any, she was confident in her ability. She was concerned that the mother would not ask for help until she reached a point of crisis. Mother was very distrusting, cannot work with professionals and lacked insight, so she would be reluctant to ask.

136 Her position remained that although there were always risks with adoption and severance from the birth family, it was the only option which would provide for Joe’s security.

137 I heard final submissions on behalf of all parties.

## **11 FINDINGS ON MATTERS IN DISPUTE INCLUDING THE THRESHOLD**

138 In view of the lack of full agreement it has been necessary for me to consider and make appropriate findings in relation to the threshold.

139 It is agreed by the mother that the facts set out in the threshold are not disputed but the conclusions drawn therefrom are.

140 The father, having failed to engage with this final hearing or file a final statement, has not commented upon the final draft threshold. I do have the benefit of the father’s initial response statement dated [a date]. The final amended threshold takes into account the challenges and admissions/partial admissions made by the father in response to the initial threshold. Having carefully considered both thresholds and the

father's statement as well as all of the other evidence I am satisfied that if father had engaged, he would likely have conceded this final threshold. Alternatively if he had not taken that step, I am satisfied that the evidence supports making the findings against him.

- 141 Given that the threshold facts for making an order under S31 CA have been conceded by mother and father failed to engage, it was not necessary to hear oral evidence to satisfy this. The mother's challenge to the conclusions was dealt with in her statements and in the evidence called before the court with cross examination on the welfare issues.
- 142 I make the findings on the basis of the parents qualified acceptance/ agreement, supported by the evidence in the bundle.
- 143 In finding the threshold proven, I assessed the evidence in the bundle before me, direct oral evidence of all of the social workers and professionals, mother, father and Guardian and made the findings in accordance with the civil standard and burden of proof which is applicable in all Children Act proceedings.
- 144 The burden of proving the facts pleaded rests with the person making the allegation.
- 145 The standard to which the Local Authority must satisfy the court is the simple balance of probabilities. The inherent probability or improbability of an event remains a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. Within this context, there is no room for a finding by the court that something might have happened. The court may decide that it did or that it did not – see *Re B* [2008] UKHL 35 where at [2], Lord Hoffman said *"In our legal system, if a judge finds it more likely than not that something did take place, then it is treated as having taken place. If he finds it more likely than not that it did not take place, then it is treated as not having taken place. He is not allowed to sit on the fence. He has to find for one side or the other. Sometimes the burden of proof will come to his rescue: the party with the burden of showing that something took place will not have satisfied him that it did. But generally speaking, a judge is able to make up his mind where the truth lies without needing to rely upon the burden of proof."*
- 146 The legal concept of proof on the balance of probabilities must be applied with "common sense" (*The Popi M*, *Rhesa Shipping Co SA v Edmunds*, *Rhesa Shipping Co SA v Fenton Insurance Co Ltd* [1985] 1 WLR 948).



- 147 Findings of fact must be based on evidence not on speculation. The decision on whether the facts in issue have been proved to the requisite standard must be based on all of the available evidence and should have regard to the wide context of social, emotional, ethical and moral factors (*A County Council v A Mother, A Father and X, Y and Z* [2005] EWHC 31 (Fam)).
- 148 In determining whether the local authority has discharged the burden upon it the court looks at what has been described as 'the broad canvas' of the evidence before it. The court takes account of a wide range of matters including its assessment of the credibility of the witnesses and inferences that can be properly drawn from the evidence. The role of the court is to consider the evidence in its totality and to make findings on the balance of probabilities accordingly. Within this context, the court must consider each piece of evidence in the context of all of the other evidence (*Re T* [2004] 2 FLR 838 at [33]).
- 149 The evidence of the parties is of utmost importance and it is essential that the court forms a clear assessment of their credibility and reliability. The court is likely to place considerable reliability and weight on the evidence and impression it forms of them (see *Gestmin SGPS SA v Credit Suisse (UK) Ltd Anor* [2013] EWHC 3560 (Comm) at [15] to [21] and *Lancashire County Council v M and F* [2014] EWHC 3 (Fam)).
- 150 I remind myself that it is not uncommon for witnesses in cases of this sort to tell lies during assessments and in the course of the hearing. The court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress, and the fact that a witness has lied about some matters does not mean that he or she has lied about everything (see *R v Lucas* [1981] QB 720). I also bear in mind that memories can fade or change with the passage of time particularly in respect of events which were traumatic or distressing at the time.
- 151 When considering the evidence, I additionally give myself a revised Lucas direction, namely, I should only take account of any lies found to have been told if there is no good reason or other established reason for the person to have lied. I also take into account the decision of the Court of Appeal in *Re H-C* [2016] EWCA Civ. 136 where McFarlane LJ (as he then was) said at para.100:

- 152 'One highly important aspect of the Lucas decision, and indeed the approach to lies generally in the criminal jurisdiction, needs to be borne fully in mind by family judges. It is this: in the criminal jurisdiction the 'lie' is never taken, of itself, as direct proof of guilt. As is plain from the passage quoted from Lord Lane's judgment in Lucas, where the relevant conditions are satisfied the lie is 'capable of amounting to a corroboration.' In recent times the point has been most clearly made in the Court of Appeal Criminal Division in the case of R v Middleton [2001] Crim. L.R. 251. 'In my view there should be no distinction between the approach taken by the criminal court on the issue of lies to that adopted in the family court. Judges should, therefore, take care to ensure that they do not rely upon a conclusion that an individual has lied on a material issue as direct proof of guilt.'
- 153 I entirely accept that the mere fact of a lie being told does not prove the primary case against the party or the witness should they have been found to have lied to the court. I also bear in mind that there is no obligation on a party to prove the truth of an alternative case put forward by way of defence and the failure by the party to establish the alternative case on the balance of probabilities does not of itself prove the other party's case, Re X (No 3) [2013] EWHC 3651 Fam and Re Y (No 3) [2016] EWHC 503 Fam".
- 154 I find the threshold proven, for the reasons which I have already addressed.
- 155 I make no further findings; I do not need to. Additionally I do not draw any inferences in relation to the phones and the text mistakenly sent to the social worker. Again, I do not need to.

## **12 THE LEGAL FRAMEWORK AND RELEVANT GUIDANCE**

- 156 In considering this application, I start with the principles in the Family Procedure Rules 2010 ['FPR'] and specifically the overriding objective at FPR r1.1, which includes ensuring that the case is dealt with expeditiously and fairly, proportionately, and with fair allocation of resources.

FPR r1.1 states:

- (1) These rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly, having regard to any welfare issues involved.

- (2) Dealing with a case justly includes, so far as is practicable –
- (a) ensuring that it is dealt with expeditiously and fairly;
  - (b) dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues;
  - (c) ensuring that the parties are on an equal footing;
  - (d) saving expense; and
  - (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

157 I have been very conscious preparing this judgment that the requirements explained by the Court of Appeal for a fully reasoned judgment mean that this court must be frank and clear in its analysis. That involves saying things which this mother and father will undoubtedly find difficult and distressing. I regret that very much. It is, however, unavoidable that the court has to set out in full its reasons for making this decision.

158 If a Care Order is to be made the court first has to make finding[s] that the threshold set by s.31(2) Children Act 1989 is satisfied in respect of the children i.e.

31(2)(a) that the child concerned is suffering, or is likely to suffer, significant harm and

31(2)(b) that the harm, or likelihood of harm, is attributable to

- i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him: or
- ii) the child's being beyond parental control.

159 In addition, Section 1(1) provides that when the court determines any question with respect to the upbringing of a child, the child's welfare shall be the court's paramount consideration.

160 In determining what is in a child's best welfare interests the court must have regard to each of the factors set out in the welfare checklist in s.1(3).

161 Section 1(5) provides that when a court is considering whether or not to make an order under the Act with respect to a child, it shall not make the order unless it considers that doing so would be better for the child than making no order at all.

162 The Court must also have regard to the Article 8 rights of each of the parents and of the child and must endeavour to arrive at an outcome that is both proportionate and in the child's best interests. In public law cases this means that the level of State intervention should be no greater than is necessary in order to secure the child's welfare.

163 It is important to underscore the particular importance in every case of the requirement to have regard to the general principle, set out in s.1(2), that any delay in concluding these proceedings is likely to prejudice the welfare of this child.

164 The local authority also seeks placement orders pursuant to s.21 Adoption and Children Act 2002. Section 22 makes it clear that:

‘A local authority must apply to the court for a placement order in respect of a child’ if it is ‘satisfied that the child ought to be placed for adoption’.

The court may only make a placement order if either the child’s parents consent to the order being made or if the court dispenses with the parents’ consent. Section 52 sets out the grounds upon which a court is entitled to dispense with parental consent:

The court cannot dispense with the consent of any parent or guardian of a child to the child being placed for adoption or to the making of an adoption order in respect of the child unless the court is satisfied that:

- (a) the parent or guardian cannot be found or is incapable of giving consent, or
- (b) the welfare of the child requires the consent to be dispensed with.

165 In addition, when making a placement order the court is required to consider what, if any, contact the child should have with his birth family.

Section 27 (4) ACA 2002 provides:

Before making a placement order, the court must –

- a) consider the arrangements which the adoption agency has made or proposes to make for allowing any person contact with the child, and
- b) invite the parties to the proceedings to comment on those arrangements

- 166 As to the making of a placement order, whether to dispense with parental consent and the Court's consideration of the contact proposals, the court's approach must be governed and informed by s.1 of the 2002 Act.

This provides that:

The paramount consideration of the court or adoption agency must be the child's welfare, throughout his life.

The court or adoption agency must at all times bear in mind that, in general, any delay in coming to the decision is likely to prejudice the child's welfare.

The court or adoption agency must have regard to the matters in the welfare checklist.

### **13 THE WELFARE CHECKLIST (ACA 2002)**

- 167 I will briefly address the most pertinent issues; I have taken them all into account nevertheless:
- 168 (a) the child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding),

At age [an age], Joe is not of an age or understanding to comprehend the nature of these proceedings, but it has to be assumed that he would wish to be placed with one of his parents if it were safe for him to do so, where he could develop a true sense of his identity. It must also be assumed that Joe would wish to be placed with carers who can meet all his needs and provide him with safe and consistent care so that he can reach his full developmental potential.

- 169 (b) the child's particular needs,

By virtue of his young age Joe is entirely dependent on his carers to meet all his needs and he requires a safe, consistent and stable home environment with carers who can afford him attuned and consistent parenting, including love and affection, stimulation to promote his development, and protection from potential harm. He needs to live where he can continue to thrive.

Joe is meeting all of his developmental milestones. He is an active, bright and happy little boy with beautiful curls and a lovely smile. He is reported to be developing appropriately and has coped remarkably well having experienced a number of significant changes throughout his young life.

Joe has developed a close bond with his foster carer and her family. He is provided with stability and security with clear routines and lots of nurture and opportunities to develop. He clearly views his foster carer as his primary attachment figure and a move from her care at this stage in his life is likely to be difficult for him and will need to be managed sensitively and carefully. There is no reason to suggest that this attachment cannot be replicated to potential adoptive carers, if plans are made to secure permanence for him as soon as possible, and the transition to an adoptive placement takes place within his timescales. Time is crucial and any delay will certainly impact upon this given his age.

- 170 (c) the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person,

The plan of adoption will sever Joe's relationship with the parents which is likely to cause him distress as he becomes older and is able to comprehend his circumstances. Life story work and later in life good quality indirect contact with his birth family will ensure that Joe's identity needs are met and will enable his adoptive parents to give him an appropriate child centred understanding of why he could not remain in his parents' care.

- 171 (d) the child's age, sex, background and any of the child's characteristics which the court or agency considers relevant,

Joe is an [age] baby boy of white British heritage.

- 172 (e) any harm (within the meaning of the Children Act 1989 (c. 41)) which the child has suffered or is at risk of suffering,

Joe has been afforded protection from harm by his foster carers and thankfully seems to have coped remarkably well with the number of significant changes throughout his young life. There have been periods where he has sadly been at risk of suffering harm when in the care of his parents during the transition planning as set out in the evidence and this judgment.

173 (f) the relationship which the child has with relatives, and with any other person in relation to whom the court or agency considers the relationship to be relevant, including—

- (i) the likelihood of any such relationship continuing and the value to the child of its doing so,
- (ii) the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs,
- (iii) the wishes and feelings of any of the child's relatives, or of any such person, regarding the child.

In relation to Joe's half siblings, the Local Authority proposes that sibling contact should be reduced following the conclusion of these proceedings. The current contact is fortnightly for 2.5 hours with their father's contact. It is proposed that if a Placement Order is made, from the onset the contact should be reduced to once per month until a placement match is made.

Following this [half siblings] should be included in their father's farewell visit so they can say goodbye to Joe together,

174 I also accept and adopt the welfare (child impact) analysis of the Guardian in her report and of the Social Worker in her final statement dated [a date].

175 In placing the child for adoption, the adoption agency must give due consideration to the child's religious persuasion, racial origin and cultural and linguistic background.

176 The court or adoption agency must always consider the whole range of powers available to it in the child's case (whether under the 2002 Act or the Children Act 1989); and the court must not make any order under the Act unless it considers that making the order would be better for the child than not doing so.

177 It is important also to have regard to the many authorities in which guidance has been given by the Senior Courts. In particular the decisions of the Supreme Court and the Court of Appeal in *Re B (Care Proceeding: Appeal)* [2013] UKSC 33, *Re B-S (Children)* [2013] EWCA Civ 1146, *Re W (A Child)* [2013] EWCA Civ 1227, *Re R* and *Re A* [2015] EWFC 17. I have had such regards in coming to my conclusions.

- 178 The language used in Re B is striking. Different words and phrases are used, but the message is clear. Orders contemplating non-consensual adoption – care orders with a plan for adoption, placement orders and adoption orders – are "a very extreme thing, a last resort only to be made where all else fails", to be made "only in exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short, where nothing else will do".
- 179 The fact is that there are occasions when nothing else but adoption will do and it is essential in such cases that a child's welfare should not be compromised by keeping them in their family at all costs.
- 180 In *Y v United Kingdom* [2012] 2 FLR 332 the court considered the fundamental question of the severance of family ties and the fact that
- "Everything must be done to preserve personal relations and where appropriate to rebuild the family... However, where the maintenance of such ties would harm the child the parent is not entitled under Article 8 to insist that such ties are maintained."
- 181 Worthy as this objective is it does not always sit comfortably with the child's timetable and the need to avoid delay. The court is entitled to take into account the case history as to what options may be realistically available and how realistic it is to expect a positive outcome.
- 182 Behind all this there lies the general principle, derived from the no order principle under 1(5) of the 1989 Act, to be read in conjunction with s 1(3)(g) as to the range of powers available to the Court, and now similarly embodied in s 1(6) of the 2002 Act, that the court should adopt the 'least interventionist' approach'; also confirmed in *Re O (Care or Supervision Order)* [1996] 2 FLR 755.
- 183 There must be proper evidence both from the local authority and from the guardian. The evidence must address all the options which are realistically possible and must contain an analysis of the arguments for and against each option. My task then is to evaluate all the options in the light of Joe's welfare and consider all the negatives and the positives of each option.
- 184 I have reminded myself of the guidance in *Re A* [2015] EWFC 17 under the heading of "Some Fundamental Principles" which were helpfully



summarised by Lord Justice Aikens in *Re J (A Child)* [2015] EWCA Civ 222.

185 I have given consideration to the mother's vulnerability/special circumstances. Mother has had an advocate at court throughout this hearing and ground rules have been agreed and applied. It is also understood that, while the mother in this matter does not have a learning difficulty, she is neuro-divergent, and I have considered *Re H (Parents with learning difficulties: Risk of Harm)* [2023] where at (65) Baker LJ said the following;

*As the case law makes clear, there is an obligation on a court to enquire carefully as to what support is needed to enable parents with learning difficulties to show whether or not they can become good enough parents. A local authority cannot press for a plan for adoption simply because it is unable or unwilling to support the child remaining at home. A judge must therefore be rigorous in exploring and probing the local authority's thinking in cases where it may be affected by resource issues. Support for parents with learning difficulties may have to be long-term, extending throughout the child's minority, in part because parents with cognitive difficulties, even if they understand the information they have been given, may find it difficult to retain it or to apply it as the child gets older, but also because, as the child gets older, [her] needs will evolve and the range and level of support and guidance required by the parents must evolve alongside. Judges need to be wary of arguments based on the concept of "substituted parenting". They should carefully scrutinise the evidence adduced by the local authority that the level of support required by the parents would be on a scale that would be adverse to the child's welfare and should look for options for ameliorating the risk of harm that might result from the high level of support. It is all encapsulated in the simple sentence in paragraph 1.4.4 of the Guidance quoted above – "every effort should be made to support not supplant the parents".*

#### **14 ADDITIONAL EXPLORATION OF EVIDENCE AND OPTIONS**

186 I am satisfied that there is no lacuna in the evidence that would cause me to delay a decision.

187 I am satisfied that delay is not in Joe's best interests. Additional time for further assessment is unnecessary and would cause delay and harm to Joe.

- 188 In accordance with Re B I now turn to a consideration of the options available to me. I have already throughout this judgment considered the strengths and weaknesses of each party's case and indicated my assessment of the evidence and indeed the potential options available to me.
- 189 I approach the Local Authority's applications on the basis that the best place for any child is within his family of origin unless there are clear welfare grounds to prefer an alternative. My task is to consider whether Joe could be cared for by a member of his family to a satisfactory standard within an appropriate timescale, not whether he might be "better off" being adopted.
- 190 The local authority does not seek for Joe to be placed in long term foster care. Their plan for him is adoption. The Guardian supports this position. It is not an appropriate option for a healthy young boy. It provides too many risks and uncertainties.
- 191 There is no evidence to support the propositions of the parents either that the mother has not been given the opportunity to be properly assessed or that either of them is able to care for Joe at home, whether under a care order or any other order.
- 192 Mother's case remained that she has not been provided with the opportunity to demonstrate that she can care for Joe in her home environment where she feels most comfortable and that the two residential assessments have not been appropriate to meet her individual needs. I accept that she genuinely believes this.
- 193 The guardian stated *"In fact, mother does not agree with any of the assessments completed of her other than the initial assessment of [the ISW] that recommended she be provided with the opportunity to have increased contact with Joe to further demonstrate her parenting capacity. Within her statement and throughout the time that I have engaged with mother she has had significant difficulties in accepting assessments or views of professionals that challenge her own views. When she does not agree with professionals, she will often become challenging and is unable to take on advice and guidance"*.
- 194 I fully accept and agree with this proposition. The issues with her personal behaviour whilst caring for Joe have been strikingly similar for each assessment.

- 195 It is clear that the Local Authority and Guardian have, in my judgment, bent over backwards to try everything suitable and appropriate that they could to support and properly assess the mother. She has had the benefit of assessment over a period of 2 years, far longer than most parents. None of them have been ultimately positive. It has been seemingly almost impossible to work with the mother in a manner where Joe's safety would be secured. She does not like to listen to professionals' advice where she disagrees with it, she does not like rules and structures unless they are her own and becomes challenging when she is criticised.
- 196 The mother has had extensive support and interventions to support her parenting capacity since Joe's birth including support from contact centre staff to support her with family time and support in caring for Joe's needs. She has been supported by intervention workers and completed several parenting programmes. She has received advice, guidance, and support by various professionals and has engaged in Dialectic Behavioural Therapy and Narrative Therapy both organised and funded by the Local Authority. In addition, she has been provided with two separate opportunities to parent Joe in mother and baby assessment units. Sadly, the high level of supportive interventions provided to the mother over the course of these proceedings have not provided any consistent evidence that she can make the required changes to her functioning to provide any confidence that she could provide Joe with a consistently good enough level of care throughout his life.
- 197 The same applies to the father, the assessments do not support placement with him, and he too has had ample opportunities including an attempted rehabilitation.
- 198 I have no doubt that these parents love Joe and genuinely believe that they can care for him safely. They have engaged with these proceedings and have been committed to contact which is very pleasant.
- 199 The professionals disagree with their suggested ability to care and protect him. Despite intensive support being provided to each parent over the course of two years the risks in respect of their individual parenting remain significant although nonintentional and there is no support or interventions that could be provided to allow Joe to reside with either parent that would mitigate the risk factors. Having considered the written evidence in this case and heard challenge and the oral evidence, sadly I cannot not see any possible way in which

either parent could be appropriately supported to enable them to safely parent Joe given the significant risk factors.

200 The mother cannot care for Joe owing to the fact that she is unable, without considerable support and assistance, to adapt to the uncertainties and unpredictability's that come with parenting a young child and indeed with daily life in general. She is sadly unable to react and adapt quickly and appropriately and there are no guarantees that she would seek appropriate help. Indeed the Guardian was concerned that she would not seek help until crisis point and this certainly would not be in Joe's best interests.

201 I have no doubt that Joe's parents would dearly wish to care for him. They have both tried their best to achieve this during the last two years of these proceedings and assessment. Father has been unable to achieve stability and maintain reduction in drug use to enable him to care for Joe and I understand why he found it difficult to attend the final hearing. He has stopped attending contact on the basis that he considers it is not in Joe's interests. That suggests to me that he was coming to terms with the likely outcome of this matter as it related to him. Mother has had so many difficulties in her life that it has been simply impossible for her to properly look after herself at times let alone a wholly dependant child, reliant upon her for everything. It is a very unfortunate situation and I have tremendous sympathy for the mother.

202 The risks to Joe of being placed in the care of his parents are simply too high and too risky. There is no effective support which could be put in place which would protect him and overcome the risks. I am entirely satisfied that the evidence does not support placement with them and that the Local Authority and Guardian have evidenced that I must rule out that option. Given Joe's age, it is imperative that a placement is identified quickly as delay could adversely affect his attachments and future wellbeing.

203 I rule out rehabilitation to the parents as a potential option for Joe due to the overwhelming evidence against this. The risks are simply too high. This is a sad case and I do this with a heavy heart as I do not consider that mother or father would ever deliberately harm Joe and I know that they truly love him.

204 There are no relatives who can care for Joe.

205 That therefore leaves me with only the option of Adoption for Joe.

- 206 There is of course a balance of positives and negatives for adoption. The negatives include ceasing all contact with his natural family including his half siblings and this potentially affecting his identity but there are more positives. These include him ceasing to be a looked after child subject to corporate parenting, being placed with carers who have effectively chosen him and will care for him throughout not only his childhood but also the rest of his life and the possibility of having his own new family and family unit. This is the only option that offers Joe the option of secure and safe family life according to both the Local Authority and the Guardian and I accept that assessment.
- 207 I fully accept and endorse the comments of Black LJ in Re V. Joe's immediate needs are for stability, security and permanence. In my judgment this can only be achieved by way of adoption and his welfare requires this, and accordingly I dispense with the consent of his mother and father. I accept that this interferes with the rights of Joe and his parents to a family life together but in my judgment the making of such an order and the interference are proportionate given that there is no alternative which would meet his needs.

## **15 CONTACT**

- 208 Joe has had contact with his parents throughout the last two years although his father has ceased attending around 6 weeks ago. They have attended to his needs at the contact centre and it has been described as lovely. Joe has had some ongoing contact with his extended family including his two half siblings. If I make an order approving adoption as the plan, it is unlikely that he will have any further contact with them.

Contact between Joe and his parents is planned to reduce following the making of any final orders in line with the Local Authority plan. The detailed plan is for the parents to have separately supervised contact:

Week one – two 90-minute family time sessions

Week two – two 60-minute family time sessions

Week three – one 60-minute family time

Following the 3rd week of reduction in family time, the local authority proposes that if it is the case that Joe is not matched, there will be a

fortnightly family time arrangement of 60 minutes for a one-month period, which will then reduce further to monthly, if still not matched.

Following on from this, a farewell visit would be planned with parents (separately) once the adoption matching process match has been completed.

- 209 Thereafter the Local Authority plan indirect contact only. It is the opinion of the Social Worker that Joe is unlikely to benefit from ongoing direct contact with his parents. She also states that *“any plan for ongoing direct contact is likely to also limit the availability of suitable adoptive family matches if the local authority’s final care plan is approved by the Court. There are other variables to consider too, for example, the parents’ inability to support or accept a plan of adoption, the reasons which have led to this being the proposed final care plan for Joe, their inability to support Joe in an adoptive family, and the potential to undermine and disrupt any future placement. Consideration would need to be given to how Joe might respond to this and whether arrangements would undermine the sense of security that would be hoped for in an adoptive placement. The views and skills of prospective adopters would also need to be considered. In my view I think it is likely that Joe’s parents would seek to undermine Joe’s placement once a final decision has been made by the Court. In terms of risk, there are concerns about the parents’ relationship, ability to regulate their emotions and behaviour. Regarding Jack, there are concerns about substance misuse, and negative lifestyle features that would likely impact upon stability for Joe and his adoptive placement should direct contact be maintained. It is felt the risks relating to Joe’s parents could therefore not be managed should direct post-adoption contact take place”*.
- 210 The Guardian’s only comments regarding post adoption contact are *“Good quality indirect contact with birth family will ensure that Joe’s identity needs are met”* and *“Indirect contact with parents and his half siblings will serve to promote a positive sense of identity for him.”*
- 211 I do not consider that it is appropriate for me to make an order for direct contact post adoption as I accept that this is highly likely to reduce the availability of adoptive placements for Joe. However, this is a mother, and indeed father, who at no stage of these proceedings have sought to undermine the foster placement or caused trouble in that regard. They clearly adore Joe and would not, as I have stated in this judgment, deliberately cause him harm. It remains to be seen how they accept and adapt to the outcome of these proceedings but as yet, there

is no evidence, which has been brought to my attention, that they would seek to undermine or seek to disrupt any adoptive placement. I have more concern about the father due to his recent drug driving conviction and his failure to engage with Joe and the proceedings thereafter but the mother has conducted herself well and with dignity in what to her must be terrifying and difficult circumstances throughout this final hearing despite the special measures in place.

212 I would therefore recommend that the Local Authority invite prospective adoptive carers to keep an open mind about direct contact at some point in the future, particularly with the mother. There are benefits of direct contact within adoption, as well as risks, and these include maintaining important relationships between the child and birth relatives; providing reassurance to the child and birth relatives; helping the child with issues of identity and loss; and helping the child to deal with their dual connection to the birth and adoptive family. It can help a child to make sense of the past. Social media has changed the landscape for closed adoptions, as children grow older and curious. It is often better for any such direct contact to take place in a controlled and supported manner rather than at the child's own volition. Letterbox contact cannot, in my judgment, ever be considered to be truly "good quality" as it is so limited in nature, but I accept that it is often the only way to maintain any links.

## **16 DECISION.**

213 I make the following orders:

1. I record that I find the threshold criteria at section 31 of the Children Act met and that I approve the Local Authority's care plan.
2. I make a care order.
3. I record that I dispense with the consent of the parents.
4. I make a placement order.
5. I give leave for any relevant documentation to be disclosed to prospective adopters
6. I make all the usual orders in relation to costs.

7. Permission is granted for the Judgement to be disclosed to [the assessment unit] and the ISW with strict instruction that they must not onward disclose it. The parents of course may disclose the judgment to any treating physician/therapist but again, no onward disclosure.
8. I thank all of the advocates for the very skilful and sensitive way in which they have dealt with this matter. It has not been an easy week for everyone but the matter has been undertaken with considerable kindness and dignity whilst still dealing with all of the issues appropriately and fully.

**HHJ HESFORD**

**12 May 2023**