

1 **THE FAMILY COURT SITTING AT OXFORD**

2 **BEFORE HER HONOUR JUDGE OWENS**

3

CASE NO: OX19C00166

4 **25TH SEPTEMBER 2020 TO 2ND OCTOBER 2020**

5

6

OCC v P

7

Mr Forbes, Counsel, for OCC

8

Ms Bonnefoy-Jenkinson, Counsel, for the First Respondent Mother, M

9

Mr Jones, Counsel, for the Second Respondent Father, F

10

Ms de Freitas, Counsel, for the Third Respondent A acting through their

11

Children's Guardian

12

13 This judgment is being handed down [in private] on (21st October 2020). It consists of
14 50 pages and has been signed and dated by the judge. The Judge has given permission
15 for the judgment (and any of the facts and matters contained in it) to be published on
16 condition that in any report, no person other than the advocates or the solicitors
17 instructing them (and other persons identified by name in the judgment itself) may be
18 identified by name, current address or location [including school or work place]. In
19 particular the anonymity of the children and the adult members of their family must
20 be strictly preserved. All persons, including representatives of the media, must ensure
21 that these conditions are strictly complied with. Failure to do so will be a contempt of
22 court. For the avoidance of doubt, the strict prohibition on publishing the names and
23 current addresses of the parties and the child will continue to apply where that
24 information has been obtained by using the contents of this judgment to discover
25 information already in the public domain.

26 **Introduction, Background and Evidential Summary**

27

28 This is the final hearing of the Local Authority's applications for care and placement
29 orders in relation to A, a 10-month old boy. A's parents are M and F.

30

31 In 2014 M was diagnosed with Emotionally Unstable Personality Disorder, said to
32 have been in remission in 2017. She has a chronic history of drug misuse. M has two
33 older children from previous relationships. B, aged 10, resides with his maternal
34 grandmother under a Special Guardianship Order. C, aged 2, resides with her father
35 under a Child Arrangements Order. F has no previous children. He is an Albanian
36 national who moved to this country in 2013. He has subsequently secured a 30-month
37 visa, though there were discrepancies in the information that he provided to the Home
38 Office.

39

40 M and F had been in an on/off relationship for several years but started living together
41 in 2019. On 21st July 2019 whilst pregnant with A, M was admitted to hospital with
42 vaginal bleeding. She was concerned that she was at risk of miscarrying. Hospital
43 staff were told at the time that she had been accidentally punched in the abdomen
44 whilst caught in a scuffle; M has subsequently alleged that it was F who pushed her in
45 the stomach causing her to fall (C187b & C377).

46

47 A was born 3 weeks prematurely on 8th December 2019. Whilst in hospital M
48 displayed erratic behaviour, and it is alleged she prevented urine samples being taken
49 from A for the purposes of a toxicology report. It is also alleged that she failed to
50 follow advice not to walk around the ward with A in her arms due to the risks posed

51 by her history of seizures. A displayed symptoms consistent with drug withdrawal
52 (C1).

53

54 The application for a care order was issued on 16th December 2019. The Local
55 Authority sought removal of A from the care of his parents. At the first hearing on
56 17th December 2019 the District Judge hearing the application declined to sanction
57 interim separation (AAI), instead making an interim supervision order. M and A were
58 discharged from hospital. A tight written agreement was put in place, which included
59 provision for M's care of A to be supervised either by F or by D (a neighbour).

60

61 On 7th February 2020 M reported a serious incident of domestic violence perpetrated
62 by F. She described F pulling her hair and punching her in the face several times
63 before grabbing her around the neck (PD77). M set out in her police witness statement
64 that F had been violent to her on multiple occasions (PD78). These occasions are set
65 out in the final threshold document appended to this judgment (items 3 (1) to (9) –
66 A153-A160 Bundle) and in M's second statement (C187a - 187d). F denies the
67 allegations that he was violent to M, and asserts that on 7th February 2020 M, "*began*
68 *hitting herself on her face and body with her hands repeatedly in a (sic) aggressive*
69 *manner.*" (C126).

70

71 On 10th February 2020, the court granted an interim care order, sanctioning A's
72 placement in foster care, where he has remained to date. A displayed further
73 withdrawal symptoms following his placement in foster care (C95). Hair strand
74 testing has been undertaken of both parents on multiple occasions. The results are
75 contained in section E of the Bundle. In summary, they show varying levels of

76 cannabis and cocaine use throughout the testing periods, save that F's results are
77 negative since June 2020.

78

79 A psychiatric assessment of M was completed in March 2020 (E67-E84) by Dr
80 Adshead. She concluded:

81 i. M has suffered with significant mental health problems since she was 13.

82 The main symptoms have been mood disorder and self-harming
83 behaviours; which would be consistent with a diagnosis of borderline (or
84 emotionally unstable) personality disorder (E76).

85 ii. She agreed with Dr Yousif in that, to some extent, her BPD is in
86 remission. However, it could be argued that her return to drug taking after
87 the birth of her son is evidence that she is still struggling with mood
88 regulation (E77)

89 iii. There is no evidence base that would allow her to provide a reliable
90 opinion on the question of whether M is able to sustain an alcohol and
91 drug free lifestyle at this stage; *“the answer to the question will emerge if
92 and when M attempts to lead and sustain an alcohol and drug free life
93 style... I suspect she is at significant risk of relapse (E78)”*

94 iv. M would benefit from engagement with Turning Point, Talking Space and
95 the Complex Needs Service (E79). Dr Adshead did not feel able to
96 comment on prognosis or timescales (E80).

97

98 Parenting assessments of each parent were undertaken by an ISW and her initial
99 report of 23rd March 2020 (E85-E143) recommended:

- 100 i. There is some ambiguity in the status of the parents' relationship. It would
101 not be safe or appropriate for the parents to co-parent A (E143).
- 102 ii. M could not care for A on her own (E145). Concerns include her mental
103 health (she has a diagnosis of emotionally unstable personality disorder), a
104 history of inconsistent parenting, and continued drug misuse.
- 105 iii. F could provide good enough care as a sole carer (E145) and there are no
106 concerns about his basic care (E128). He would need to prioritise A over
107 his relationship with M (E128). A transition by way of a parent/child foster
108 placement was recommended (E147).

109

110 The ISW was provided with the up to date HST results for F and asked if these altered
111 her opinions in any way. Her addendum report concluded that F appeared to have
112 been dishonest in a key area of his initial assessment in respect of his drug use. She
113 concluded that F had likely lied and put his own interests above the best interests of
114 his son, and therefore his commitment to parenting A should be questioned and as to
115 whether it would be safe to leave A in his sole care in any event (E184).

116

117 An initial viability assessment was undertaken of M's neighbour, D, which was
118 positive. D subsequently withdrew from the assessment process.

119

120 A full connected persons assessment was undertaken of the paternal grandparents.

121 This was negative, and no party has sought to challenge its outcome.

122

123 A full connected persons assessment was undertaken of the paternal uncle and aunt, E
124 and G, which was negative (C240). F seeks to challenge the outcome of this
125 assessment.

126

127 This final hearing has proceeded as a hybrid hearing given the ongoing difficulties
128 caused by Covid-19. Both parents and their legal representatives have been present in
129 court, with all other advocates, parties and witnesses participating remotely via CVP.
130 M became ill overnight on the penultimate day of this final hearing so, with her
131 consent, she participated remotely for the final day. F has had the benefit of an
132 Albanian interpreter throughout, though it was not possible to source an interpreter
133 able to attend court physically. The interpreter therefore participated remotely and,
134 since F confirmed that his basic understanding of English was such that he did not
135 require all of the proceedings to be translated, the hearing proceeded on the basis that
136 he only required translation as and when he indicated that he did not understand the
137 English concerned. When it came to his evidence, however, he quickly failed to
138 answer the question he had been asked, even in evidence in chief, so for that part of
139 the proceedings all of the questions put to him and his answers were translated. Since
140 it only became apparent on day one of the final hearing that F's phone did not enable
141 him to connect separately to the interpreter, all translation for him was of necessity
142 conducted sequentially. The timetable for the case had already envisaged that I may
143 have to reserve judgment since evidence had been timetabled up to the end of day 5,
144 and this turned out to be the case in light of the further delay caused by sequential
145 translation and despite advocates' initial optimism that time estimates had been overly
146 generous.

147

148 In the course of this final hearing I have read the evidence contained in the four
149 Bundles that have been produced (contrary to the normal expectations of PD 27A) –
150 the Court Bundle, Checklist Bundle, Police Disclosure and Placement Bundle. I have
151 also heard evidence from the allocated social worker, the ISW, the author of the
152 connected persons assessment of E and G, M, F, E (also with the assistance of an
153 Albanian interpreter), and the Guardian.

154

155 **Parties' Positions**

156

157 The Local Authority seeks findings regarding threshold as set out in Appendix A to
158 this judgment, and care and placement orders in respect of A. The Local Authority
159 does not support any further delay in making decisions about permanency.

160

161 M alleges domestic abuse as set out in the final threshold document and would like A
162 to be returned to her care and opposes the final care plan of adoption.

163

164 F does not accept that he has perpetrated domestic abuse as alleged by M, nor does he
165 accept that he has misused drugs, though he does not seek to challenge the hair strand
166 test results. He seeks the return of A to his care, or if that is not found to be in A's
167 best interests then he would like A to be placed with E and F in France. In relation to
168 the latter option, he asks me to consider delaying a decision so that E and F can be
169 further assessed. He opposes the final care plan of adoption.

170

171 The Guardian supports the making of care and placement orders as being in A's best
172 interests and does not support any further delay in making a determination about this.

173 **Relevant legal considerations**

174

175 In addition to considering section 31 (2) of the Children Act 1989 regarding threshold,
176 I have considered the welfare checklist in section 1(3) of that Act and had regard to
177 the article 8 rights of the parents and the children. I have also had regard to the article
178 6 rights of all concerned, particularly the parents, not least in relation to the hybrid
179 hearing that I undertook to conclude this case.

180

181 I was reminded by advocates and had reminded myself of the need to consider that a
182 witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and
183 distress, and the fact that a witness has lied about some matters does not mean that he
184 or she has lied about everything (*R v Lucas [1981] QB 720*).

185

186 I have also considered the options for the children applying the considerations set out
187 in *Re B-S (Children) [2013] EWCA Civ 1146*. As there is a placement order
188 application for A, I have also had regard to the welfare checklist set out in section 1 of
189 the Adoption & Children Act 2002. I have had regard to the guidance in *Re B (A*
190 *Child) (Care Proceedings) [2013] UKSC 33* to the effect that adoption is a draconian
191 outcome of last resort and such orders should only be made where necessary,
192 proportionate and where all other realistic options have been ruled out.

193

194 I have been mindful of the fact that before I can make placement orders, I must be
195 satisfied that the welfare of A requires the consent of his parents to be dispensed with
196 (s51(1) Adoption and Children Act 2002 (and also *Re P (Placement Orders: Parental*
197 *Consent) [2008] EWCA Civ 535*).

198 **Findings**

199

200 The threshold findings sought by the Local Authority are appended to this judgment.

201 The first item relates to M's mental health. Both parents accept her diagnosis of

202 Emotionally Unstable Personality Disorder, and that when her mental health is poor

203 this will mean that she is unable to provide consistent and stable parenting to A.

204 However, M denies that she has not been able to engage with professionals to improve

205 her emotional availability and denies that her mental health remains poor. As noted

206 earlier, she was assessed by Dr Adshead during these proceedings.

207

208 Dr Adshead had, as is usual, had access to M's GP notes as well as the papers in the

209 case and had appointments with M. Her conclusions were not challenged by M as she

210 was not required to give evidence. Dr Adshead in answering the question put to her

211 about whether M has a mental illness or disorder (E76-E77), was of the opinion that

212 *"M has suffered with significant mental health problems since she was 13. The main*

213 *symptoms have been mood disorder and self-harming behaviours; which would be*

214 *consistent with a diagnosis of borderline (or emotionally unstable) personality*

215 *disorder...People (sic) BPD often turn to substance misuse as a means of managing*

216 *their mood and arousal problems...People with BPD often exhibit compulsive self-*

217 *harming behaviours; such as eating disorders, overdoses, impulsive suicidal*

218 *behaviours and social rule breaking. However, I note that none of these behaviours*

219 *appear to be recent or current for her; and I would therefore agree with Dr Yousif*

220 *that to some extent, her BPD is in remission. However, it could be argued that her*

221 *return to drug-taking after the birth of her son is evidence that she is still struggling*

222 *with mood regulation (which may have been exacerbated in the post-natal period). M*

223 *gave a clear account of the function of cocaine in her life to help her with chronic*
224 *feelings of psychological pain and (I suspect) symptoms of depression such as lack of*
225 *energy” (E77). The picture in relation to her mental health is therefore a complex one*
226 *and, I find, it is not as simple as saying that she is wholly in remission as Dr Adshead*
227 *notes. She has clearly continued to use drugs as the unchallenged hair strand test*
228 *results show and, on her oral evidence to me, has only just begun to take steps to*
229 *address her drug misuse and seek help from Complex Needs as recommended by Dr*
230 *Adshead. She told me that she has only just sought a referral through Talking Spaces*
231 *to Complex Needs and has only just sought assistance again from Turning Point, and*
232 *that this was at best only the very beginning of what she needed to do in order to*
233 *address her issues. She has not produced anything from Talking Spaces, Complex*
234 *Needs or Turning Point to back up her assertion of seeking further assistance from*
235 *them. I am mindful of what the ISW told me about her tendency to say what she*
236 *thinks that people want her to say. At the very least her oral evidence to me did*
237 *indicate a willingness to start to address her issues since acknowledging that she needs*
238 *help is a necessary first step. However, it follows from her oral evidence to me that*
239 *she has not fully addressed her mental health needs or engaged with professionals to*
240 *improve her emotional availability to A. The finding that I therefore make in relation*
241 *to item 1(i) on the threshold is that M has been diagnosed with an emotionally*
242 *unstable personality disorder and has been unable to address her mental health or*
243 *engage with professionals to improve her emotional availability to A. Whilst her*
244 *mental health needs remain unaddressed through recommended treatment, she is*
245 *likely to be unable to provide consistent and stable parenting to A and he would be*
246 *likely to remain at risk of emotional harm in her care (emphasis in italics is mine to*

247 show the subtle difference in wording between my finding based on the evidence and
248 the original finding sought).

249

250 Item 1(ii) relates to the impact of M's emotionally charged responses upon A and her
251 inability to recognise this. The Local Authority rely upon two factual allegations as
252 illustrative of this, namely aggressive outbursts in the hospital shortly after A was
253 born and the volatile relationship with F. M denies all of this allegation including the
254 aggressive outbursts at the hospital and F's response is that he only became aware of
255 'disruptive' behaviour at the hospital during these proceedings. The entries in her
256 medical records following birth provide ample evidence of M becoming aggressive at
257 the hospital as well as her being inconsistent about whether a urine sample could be
258 taken from A. These entries are summarised in the report provided by Caroline
259 Jackson from the NHS Trust at C76-92), but include noting that M became 'angry'
260 and 'spoke in an aggressive tone' when spoken to about a urine sample from A on 10th
261 December 2019 (C77), that she became 'hostile' on 9th December 2019 (C80) when
262 spoken to about the same topic, and that she became 'very annoyed' about this again
263 on 10th December 2019 (C81) and that it was difficult to discuss "*any part of her and*
264 *her baby's care with M as she gets very angry and upset very quickly and is very*
265 *combative*" (C81 again). Based on this credible and compelling evidence, noted by
266 professionals at the hospital at the time, I am satisfied on balance of probability that
267 M was aggressive towards professionals at the hospital. The second factual allegation
268 relates to the incident on 7th February 2020. Both parents accept that there was an
269 incident then, though the precise facts are in dispute. They also both accept that on
270 either account given by them, this was a volatile and distressing situation for A, which
271 meant he was directly exposed to this volatility and hence at risk of emotional and

272 physical harm during the incident. This acceptance was only really apparent during
273 their oral evidence to me and in response to cross examination by Mr Forbes for the
274 Local Authority and Ms de Freitas for the Guardian. To some extent, it was a
275 grudging acceptance, in my view, since both also sought to blame the other for the
276 incident overall. M's oral evidence to me about having now sought help from the
277 Freedom Programme is also relevant to this issue, since she indicated that she does
278 now understand that she needs such help to avoid being in relationships that involve
279 domestic abuse in the future. Based on this, as well as her acceptance that she has a
280 history of forming relationships with partners who are abusive to her, it seems clear
281 that she does lack insight into the impact that her emotional volatility will have upon
282 A. She also told me that she has only just sought a referral through Talking Spaces to
283 Complex Needs and has only just sought assistance again from Turning Point. I find
284 this threshold criterion to be met on balance of probabilities.

285

286 The next threshold items relate to drug misuse by both parents. 2(i) relates to M's
287 drug misuse and the allegations that she interfered with urine samples being taken
288 from A at the hospital and prevented him from receiving appropriate medical care.
289 Item 2(ii) alleges that M continued to use cocaine after birth and whilst breast-feeding
290 A, thereby exposing him to significant harm through ingestion of cocaine in breast
291 milk. Item 2(iii) is that M has failed to engage with drug services, has failed to
292 achieve abstinence and has failed to prioritise A's needs over her need to consume
293 drugs. Most of this is undisputed by M, though she does now say that she is
294 motivated to engage with drugs services and denies that she refused or tampered with
295 the urine test for A at the hospital. F also does not dispute these items, though he does
296 indicate that he was unaware of M's drug use until the hair strand test results came

297 back in February 2020. A was documented as suffering from possible drug
298 withdrawal symptoms both whilst in hospital and after his removal from his parents'
299 care (C84 possible drug withdrawal symptoms noted; GP advised showing signs of
300 withdrawal C95). As the social worker noted (C69), medical opinion was that if M's
301 milk contained cocaine at a medium to high level, then A was at high risk of seizures.
302 The evidence of significant actual and risk of significant harm to A is therefore clearly
303 made out, I find.

304

305 In relation to the urine test at the hospital, M says that she did not refuse it and did not
306 tamper with the collection bags. Medical notes completed at the time on 9th
307 December 2019 show a recording that "*M declined baby having a urine bag attached*
308 *for toxicology*" (E4). Later, on 10th December 2019, the notes again show her
309 refusing to allow a third urine sample because she said that two samples were
310 collected the day before (E4 again). However, earlier samples were not obtained
311 according to the notes which show that on 9th December 2019 M disposed of the urine
312 collection bag (C80), and later on that same day was seen by a maternity support
313 worker to be trying to remove the bag (C80 again). She also refused to allow a
314 medical professional to apply a urine bag on 10th December 2019 (C81). She was
315 noted to have been inconsistent in agreeing to, then refusing, then requesting testing in
316 the period 14th to 15th December 2019 (C82) and was found by a member of the
317 nursing staff to have A's nappy open and to be looking at the urine bag which was
318 coming away from the baby on 15th December 2019 (C82). There then followed
319 another instance of the bag apparently becoming detached, resulting in a failure to
320 obtain a sample before a maternity support worker was able to obtain a urine sample
321 in a pot on 15th December 2019. M told nursing staff at the time that other nursing

322 staff had taken the bag off, but there is no evidence of this in the notes and this would
323 represent a significant failure of professional standards if this had occurred. In
324 addition, I find that it is significant that M also said to the staff at the hospital on 10th
325 December 2019 that there was no need for the test as her drug tests and hair strand
326 tests were all clear during pregnancy (C81-C82). This was not only untrue; it was
327 hiding the fact that (as her February 2020 hair strand test results and her own evidence
328 would later confirm) she had continued to take drugs during pregnancy and
329 afterwards. In her oral evidence to me M said that the urine sample bag would not
330 stay stuck on such a small baby. She did not say this at the time and no such
331 difficulty was noted by any professional at the hospital. On balance, I find the
332 professional records more credible and consistent than M, who I find was also clearly
333 attempting to hide the evidence of her drug use at the time since she had told staff at
334 the hospital that she had been tested and was negative, and I therefore I find items 2(i)
335 to (iii) proved on balance of probabilities.

336

337 Item 2 (iv) on the threshold relates to F's drug use, and item 2(v) relates to his
338 knowledge of M's drug use. He accepts that he has had three positive hair strand test
339 results during the course of these proceedings and, despite asking questions in
340 clarification about possible contamination of the samples and receiving responses that
341 refute such a possibility, he did not seek to question any of the experts about their
342 reports. He told me, as he set out in his written evidence, that he has never consumed
343 drugs apart from on one occasion three years ago when he took cocaine. His oral
344 evidence to me was that he had been exposed to cocaine somehow, specifically "*the*
345 *positive test results explanation is the contact that I had with M, and then since that*
346 *contact stopped the tests show negative*". He has provided no other explanation than

347 this and nothing at all in his written evidence (beyond as I have noted one admission
348 of consumption of cocaine three years ago). He did not, contrary to the submissions
349 from Mr Jones on his behalf, allege that somehow he had been unknowingly made to
350 ingest them and nothing of this was put to M at all in cross examination by Mr Jones.
351 In any event, both the proffered explanation of ‘contact’ with M or the submission of
352 unknowing ingestion are both inherently unlikely in my view. The former because of
353 the expert evidence about the presence of metabolites and the latter because he would
354 have been likely to feel the effects of ingestion and noted them, particularly given the
355 levels recorded in the hair strand test results. Contamination is the only other issue
356 raised by him in the questions asked of the experts. The expert evidence about this is,
357 frankly, overwhelming. At E21i, E156, E158, E162 and E196 the expert evidence
358 sets out in some detail the testing methodology and unlikelihood of contamination
359 accounting for the positive test results. In addition, as I have noted, the presence of
360 metabolites and cocaine above the recommended cut off level by the Society of hair
361 Testing and the European Workplace Drug Testing Society *“is a high indication of*
362 *consumption of cocaine...In the case of F, the concentration of cocaine and cocaine*
363 *metabolites detected in the hair shaft is unlikely to suggest one off*
364 *encounters/exposure with cocaine. It is more likely that cocaine has been consumed*
365 *repeatedly over the monitored period” (E163).*

366

367 I also have the evidence in relation to M’s drug use. Her hair strand test results were
368 also positive for consumption of cocaine and cannabis at the same time as the F’s
369 positive test results. F accepts the positive hair strand test results in relation to M (as
370 was put to him by Mr Forbes for the Local Authority) and seems to have done so from
371 the outset. M also told me in her oral evidence that, whilst she and F would not

372 consume drugs together, they would take them at the same times and that F would
373 supply them to her. She gave credible and compelling evidence about cocaine
374 consumption separately by each of them and did seem genuinely fearful when she
375 realised the implications of having named F as the person who purchased drugs for
376 her. One trying feature of this case has been delays on the part of both parents in
377 filing final evidence. In F's case, this has included attempts to file documents at the
378 last minute and during the hearing, including a significant number of text messages
379 between him and M, some of which were already appended to his final statement but
380 he wanted to produce many more in the middle of hearing her evidence. The Local
381 Authority then sought his permission to examine his phone not just in relation to the
382 additional text messages but also for any other relevant data. He was given an
383 opportunity to take legal advice about this and the implications if he were to refuse
384 but declined to permit this examination. It seemed from this that he was keen to
385 produce any evidence that he thought might paint M in a negative light, but equally
386 may have had something on his phone that was not positive about him and this went
387 beyond the text messages with M. On balance, it is simply not credible that he had
388 not consumed drugs regularly as shown by the hair strand test results, and I found M
389 to be the more credible of the two about their drug use. The fact that both tested
390 positive for precisely the same types of drugs over a similar timeframe when they
391 were together corroborates this conclusion as Mr Forbes pointed out in his closing
392 submissions. F also said in his threshold response that M was able to go out on her
393 own at times during her pregnancy and after A was born (A156). He also put this in
394 his first statement (C124). However, it is simply not credible that he did not notice on
395 any occasion when she returned that M was under the influence of drugs if she had

396 consumed them when away from him as he alleged. I therefore find these two
397 threshold allegations proved on balance of probabilities.

398

399 The next set of threshold allegations relate to domestic abuse. Item 3(i) is that “*M has*
400 *a history of volatile relationships and has alleged domestic violence in her previous*
401 *relationships (F42; C10-11). M has not undertaken any work to recognise a volatile*
402 *relationship and she would likely place herself and A at risk of both physical and*
403 *emotional harm by entering into similar relationships”.* F accepts this, but M
404 response is that this is “*denied. I did ask for referral but did not get any help*”. It is
405 not clear from her response what precisely she is denying. The fact of her previous
406 allegations is clear on the paperwork and she herself talks about her previous abusive
407 partners (C49, C368 in her statements), though she appears to have minimised or
408 denied this to Dr Adshead and the ISW when they spoke to her for their assessments.
409 Her oral evidence to me was that she has now completed a preliminary step in
410 accessing the Freedom Programme but has not yet commenced the programme itself.
411 She accepted, when asked by Ms de Freitas about this, that this was in the very early
412 stages. It therefore seems abundantly clear that M has a history of volatile
413 relationships, has alleged domestic violence in her previous relationships and has not
414 yet undertaken any work to minimise the risks of this to her and A. I also find item
415 3(i) proved on balance of probability.

416

417 Item 3 (ii) and the allegations listed thereunder at 1-9 relate to the specific instances of
418 domestic abuse that M alleges were perpetrated against her by F. All of these are
419 denied by F. M has made allegations about this to the police and has withdrawn them,
420 something she does not dispute. She is also somewhat of an unreliable narrator in the

421 past as the evidence from Dr Adshead notes (E79), and this is supported by the
422 evidence of the ISW who told me that she had a sense that M tried to tell her what she
423 thought she wanted to hear. The ISW was also very clear that M's apparent
424 recollection of a visit by the ISW to her house during the assessment was wholly
425 incorrect. However, this and her dishonesty about tampering with and refusing the
426 urine test for A in hospital, her dishonesty about the relationship with F continuing
427 until May of this year, and her dishonesty about her drug misuse whilst still
428 breastfeeding A do not necessarily mean that she is lying about the domestic abuse
429 allegations. As Mr Forbes submitted, the matters that she has been dishonest about
430 can be seen as different to the domestic abuse allegations. The former involve her in
431 culpability for the acts involved, whereas it is alleged that F perpetrated the domestic
432 abuse on her. As is well known, reasons for lying can vary widely depending on the
433 individual facts and circumstances. That is precisely what R v Lucas reminded judges
434 to be careful about. I have therefore examined the evidence about each of these
435 allegations carefully.

436

437 The first is that early in 2019 F kicked M in the stomach causing her to bleed whilst
438 pregnant. C189b gives her primary account of this in her written evidence for these
439 proceedings. It is not disputed that M was admitted to hospital in July 2019 with
440 concerns about vaginal bleeding whilst pregnant with A, nor that there appear to have
441 been concerns about this on at least one other occasion as the medical records and
442 both parents' statements show. M described an incident in her oral evidence to me
443 when they were at a nightclub, F had been drinking and was involved in some sort of
444 altercation with some other men and M 'got in the way of it'. She described him
445 giving her a 'push slash shove' with contact being made hard low down in her

446 stomach and she could not say if his hand was closed or not. One of the striking
447 aspects of her evidence about this to me was her repeated attempts to minimise what
448 she was describing F as having done, saying more than once that she ‘put herself in
449 the firing line’, though also clearly describing him telling her to move or get out of the
450 way before pushing her hard enough to cause her to fall down. This is largely
451 consistent with what she appears to have told professionals at the hospital at the time
452 (Checklist Bundle HN271-HN443, especially HN306), though there is a discrepancy
453 about the stage of pregnancy which is noted to be 15 weeks as opposed to the 4 weeks
454 that M’s evidence suggested. The other key apparent inconsistency in her account of
455 this incident is the reference to a kick being involved in her statement at C187b. This
456 is at the same point in her statement where she refers to it being about 4 weeks into
457 the pregnancy (C187a). There is also evidence from the police about F being stopped
458 for drink driving in July 2019 at the nightclub where M said the assault took place. M
459 said that this was the same night as the blow to her abdomen. F does not dispute that
460 he was convicted for drink driving as M described, nor that when stopped by the
461 police he gave his brother’s name and date of birth initially, until M corrected him.
462 She gave very credible and extremely compelling evidence about F ‘shooting her a
463 look to shut up’ when she corrected him. In addition, I have noted that the conviction
464 for drink driving was sentenced with a community order and a 26th month
465 disqualification, suggesting a significant alcohol reading, which is also consistent with
466 what M told me about him being very drunk and scaring her by his erratic driving in
467 attempting to drive out of the nightclub car park.

468

469 The second specified incident of alleged domestic violence is on 29th December 2019
470 when M alleges that F slammed her head into the wooden bedframe in her bedroom,

471 causing her a split to her head. She gave credible evidence about this, describing (like
472 the incident in July 2019) F being significantly in drink. F simply denies that this
473 happened at all.

474

475 The third and fourth allegations are that on 11th and then 22nd January 2020 F
476 punched M causing a black eye, something which again F denies happened. The fifth
477 allegation is that F pulled a lump of M's hair out on 23rd January 2020. The final
478 allegations all relate to the 7th February 2020. All of these are denied by F.

479

480 What is notable about the split to her head, the January black eyes and the black eye
481 on 7th February 2020 is that there are photographs of injuries to M and of a lump of
482 hair said to have been pulled out by the F contained in the police disclosure (PD77-
483 PD78). When asked about these, both at the time of police interview and during cross
484 examination in this hearing, F has given a range of responses and explanations, none
485 of which are consistent, I note. He initially told me that the black eyes could have
486 been caused by make-up (though I have to say they look pretty convincing on the
487 photographs) but gave no explanation for the split to her head. He gave no
488 explanation for the quantity of hair photographed in the sink (which does appear to be
489 more than one would normally expect to come out as a result of washing or brushing
490 hair, in my experience). He then went on to say (in answer to questions from Mr
491 Forbes) that the black eyes had been caused by M hitting herself during a seizure
492 when visiting her daughter for contact, a detail that he significantly failed to mention
493 anywhere in any of his previous evidence.

494

495 The split to M's head was also independently witnessed by the community midwife
496 (C118), though M apparently told her that she had tripped over the dog and 'whacked
497 her head on the mantelpiece'. Clearly, M gave a conflicting account about this to the
498 midwife, but it is significant in my view that this was whilst she was under the intense
499 scrutiny of child protection with A in her care and before she had made any of her
500 other allegations about domestic abuse from F. She already knew from the previous
501 proceedings involving her two elder children how seriously professionals and the
502 court would view domestic abuse whilst a child was in her care, I also note.

503

504 F's evidence made much of the fact that M had continued to remain in contact with
505 him even after they apparently split up in February 2020 (this is now accepted by both
506 parents to have been untrue as they accept continuing their relationship until May of
507 this year), that she has withdrawn her allegations to the police and that she has
508 previously lied and misled professionals. However, this overlooks that he has also
509 been manifestly dishonest (as I have found) in relation to his drug use, when stopped
510 by the police for drink driving, and (as I will come onto later) with the authorities in
511 relation to his application to the Home Office. M's withdrawal to the police in
512 relation to the 7th February 2020 allegations did not say that nothing had happened,
513 simply that she had exaggerated (though without any details of where) and that she
514 wanted to focus on re-building their relationship for the benefit of A (PD82). Her
515 accounts of what is said to have happened on 7th February 2020 are also broadly
516 consistent, from her initial complaint to the Police (PD67), to her first police
517 statement (PD75-76), as well as being consistent with the photograph of the injuries
518 she says she sustained (PD78) as a result. They are also consistent in her statement of
519 evidence to the court (C187b-C187c) which, coupled with her oral evidence, shows

520 me that there were in fact two incidents of bleeding caused by blows to her abdomen,
521 one at about 4 weeks into the pregnancy which involved a kick and the one that is on
522 the threshold document and occurred at about 15 weeks into the pregnancy and arose
523 at the nightclub in July 2019.

524

525 F, on the other hand, was wildly inconsistent in his various accounts, especially in his
526 oral evidence to me and, at times, seemed unwilling to answer the question he had
527 been asked and especially when it touched upon the issue of domestic abuse. I've
528 already noted some of his inconsistencies. In addition, for example, his evidence
529 varied in terms of whether he had ever seen M hit herself before. He said in his final
530 statement at C349 he had seen her do this before more than once. He did not mention
531 this to the police before. He contradicted himself in his evidence to me when
532 questioned about this by Mr Forbes, saying that he hadn't seen her hit herself before
533 and he meant instead that he had seen her behaviour such as reacting emotionally. My
534 comment about him seeming unwilling to answer questions is particularly relevant
535 here because at this point in his evidence he simply stopped answering Mr Forbes and
536 instead said that he did not understand where Mr Forbes was trying to get at with his
537 questions. This was despite being initially requested and then told several times
538 during his evidence by me and Mr Forbes that he did need to answer the questions he
539 was asked. Instead, he frequently deflected his answers as I have just noted, or tried to
540 refer to the text messages between him and M, pointing out the frequency and number
541 as if this somehow explained why (on his case) she would be making up allegations of
542 domestic abuse.

543

544 Mr Jones tried to make much of these text messages and of M's reaction when shown
545 them in the witness box. I am not clear what relevance the messages have to the
546 disputed issues since the ones that were produced all relate to the period before the
547 couple separated in May 2020 and they agree that they continued their relationship
548 between February 2020 and May 2020 without telling any of the professionals
549 involved and when they knew they should have done so.

550

551 M's reaction to the production of the text messages, when she said she had not read
552 them before (they were produced late in the proceedings), and when they were
553 provided in a format that did not immediately make it clear what period they related to
554 was perhaps predictable. She initially did not recognise them all, was given time to
555 read them, and then accepted that the ones she had not recognised before were ones
556 sent between her and F. She had earlier questioned whether F had somehow made up
557 the messages she had not recognised, but did not pursue this when she had had a
558 chance to read the messages. Mr Jones submitted that this was in itself something that
559 undermined her credibility and noted her answer in cross examination "those were
560 before", submitting that she was 'clearly trying to suggest that they related to before A
561 was born'. I did not understand her to be suggesting that, rather that the text messages
562 were before they finally separated in May 2020. This fits more logically with the
563 actual dates of the messages themselves and the questions that she was being asked at
564 the time, in my view. Further, I could see how messages suggesting that they
565 remained in a relationship after they separated would be of concern to either M or F
566 given the admitted concealment of their ongoing relationship from February to May
567 2020.

568

569 F also provided a very strange description of his conduct during the incident on 7th
570 February 2020: “ *I tried to calm her down, she began walking up the stairs and I*
571 *followed after her, I tried to stop her from going up the stairs as I was worried she*
572 *would lock herself in the room with the baby and do something to herself or our son.*
573 *Whilst she was walking up, I used my hand to touch the side of her face, I did this in a*
574 *gentle manner as I was trying to console her and trying my best to calm her down”*
575 (C125). On his account, M was behaving in a way that gave him significant concerns
576 that she would harm herself or the baby and was shouting repeatedly at him.
577 Touching her face gently whilst in the middle of a heated argument and while she was
578 walking up the stairs (presumably with F behind her as he said he was following her)
579 is just not a plausible account and wholly unlikely as Ms de Freitas for the Guardian
580 noted in her closing submissions. I did not find F to be a credible witness at all about
581 this aspect of the case. On the other hand, M was credible about these allegations,
582 with some compelling and convincing details such as her initial reluctance to reveal
583 the domestic abuse until she sought advice in January 2020 from someone else who
584 told her to document her injuries, the look that F gave her when she corrected his
585 information to the police during the drink driving incident, her descriptions of his
586 drinking and subsequent erratic and violent behaviour, and the fact that (as she told
587 me) there had been a number of incidents during their relationship so sometimes she
588 did get some of the details mixed up. This all had the ring of truth about it, unlike the
589 evidence of F.

590

591 In addition, there was the troubling detail of F ringing his solicitor in the middle of the
592 incident on 7th February 2020. That he did this is not in dispute. What is troubling is
593 why he rang his solicitor rather than the police or social worker if, as he alleged, M

594 was behaving so strangely and threatening to leave with A in breach of the written
595 agreement and in circumstances that (on his account) caused a serious concern for the
596 safety of A. He gave no credible explanation for this to me. Mr Forbes submitted that
597 it was the action of someone who thought they might be in trouble and I tend to agree
598 that this is what appears more likely. In addition, F's contention that M caused the
599 injuries to herself (as he said in his police interview and in his evidence to this court),
600 lacked credibility. He was asked to demonstrate how she did this (bearing in mind
601 some of the injuries photographed on the differing occasions included black eyes) and
602 he demonstrated hitting himself on the side of the head with his hands, nowhere near
603 an eye. I do find all the domestic abuse allegations detailed in the threshold document
604 proved on balance of probabilities.

605

606 The final group of threshold allegations relate to lack of honesty with professionals on
607 the part of both parents. I have already made findings about a lack of honesty on the
608 part of both parents around their drug misuse in relation to earlier threshold aspects.
609 M accepted a lack of honesty in her dealings with professionals when she was
610 assessed by Dr Adshead (E70). She has also admitted being dishonest to the ISW
611 about her drug misuse (in her final statement at C367). It is also not disputed that F
612 gave a false name and date of birth when stopped by the police for drink driving as I
613 have noted earlier. His explanation to me about this was wholly lacking in credibility,
614 I note, since he tried to tell me that it was just some sort of mix-up about having
615 similar sounding names as his brother and his brother having bought a car and
616 registered in his name (though I am not sure why his brother, who lives in France,
617 would have gone to the trouble of purchasing and registering a car in the UK). In any
618 event, as Mr Forbes pointed out in his closing submissions, F not only gave a false

619 name but also gave a false date of birth and it was abundantly clear to me that it was
620 only the unexpected correction by M that prevented F from pursuing what could very
621 well have become an attempt to pervert the course of justice. Both parents have also
622 accepted that they lied to professionals throughout these proceedings about remaining
623 in a relationship up until May of this year. M clearly accepted that she lied about this
624 because she knew it would go against her, and particularly considering the domestic
625 abuse concerns about her and her lack of ability to protect herself or A from this. It
626 also, I am afraid, speaks volumes about the lack of priority that either parent gave to
627 A, since they have clearly prioritised their relationship and their drug use over A.

628

629 Finally, on the issue of dishonesty with professionals and those in authority, I have the
630 concerning evidence about F's application to the Home Office for leave to remain in
631 this country. He is recorded on that application (Checklist Bundle ED6-Ed26) at
632 more than one point stating that he has no family left in Albania (and does not
633 disclose his family in France). He did not disclose his conviction for drink driving,
634 either. At the end of the application is a declaration of truth and warnings about the
635 potential for an application to be refused if false information were to be given and a
636 prosecution to be brought. The application was clearly completed by F's immigration
637 solicitors, but they have signed the declaration stating that the contents have been
638 discussed and confirmed (ED26) with F. Despite this, F tried to tell me in his
639 evidence that any mistakes were those of his immigration solicitors and even went so
640 far as to say that the application had not been checked with him, though he did seem
641 to recall having some discussion with the solicitor about it. The solicitor in question
642 has been confirmed as being of Albanian origin and to have had regular contact with F
643 via her mobile phone (ED1) so it seems more likely than not that what F was trying to

644 tell me about not knowing about the content of the application was simply untrue. It
645 also seems more likely than not that the reason for lying about his identity when
646 stopped for drink driving was in fact worry that this may negatively impact upon any
647 immigration application that he may make (the application process having
648 commenced barely a month later in August 2019). Finally, it was only in July of this
649 year that F's immigration solicitors wrote to the Home Office to correct the
650 information about F no longer living with M and A, noting that they had informed the
651 Home Office of the discrepancy about the lack of convictions at F's appointment with
652 the Home Office. F's immigration solicitors' letter (C310a) makes it clear that once
653 an application has been finalised and approved, they close their file, and this took
654 place on 27th January 2020. Any responsibility to notify the Home Office of a change
655 of his circumstances, such as no longer living with M and A and the inaccuracies
656 about lack of family in Albania and no mention of his brother and sister in France,
657 would therefore have been for F to notify. Yet, as he acknowledged in his response to
658 threshold, he did not do so, instead asking his solicitors to do so after the event. He
659 did mention to his solicitor on 13th February 2020 when attending their offices
660 unannounced to collect his passport that his son was no longer living with him, but he
661 did not provide them with full details, no instructions and they had no funds to act in
662 any event (C310a). It seems therefore very clear to me that F deliberately lied in his
663 immigration application about his conviction for drink driving and the fact that he had
664 family in both Albania and France, delayed correcting this, and subsequently
665 deliberately withheld the relevant details about A no longer being in his care after 7th
666 February 2020. It is also clear that it was only because the Local Authority during
667 these proceedings queried what he had done about notifying the Home Office that he
668 then took steps to notify as he was obliged. At this point I think it is pertinent to note

669 that I may disclose a copy of this judgment to be disclosed to the Home Office
670 regardless of the outcome of this case. I find the final threshold allegations about
671 dishonesty on the part of both professionals to be proved on balance of probabilities.

672 I have next considered welfare disposal with regard to A, and have considered the
673 relevant headings under the welfare checklists contained in both the Children Act
674 1989 and the Adoption and Children Act 2002.

675

676 The first relevant heading under both checklists is A's wishes and feelings taking into
677 consideration his age and understanding. At 10 months old, he is too young to be able
678 to articulate these. No doubt he would wish to be safe and brought up in a stable and
679 loving environment, and as the Guardian noted, it can be assumed that he would want
680 to grow up in his birth family if that is safe for him (E218).

681

682 The next relevant headings relate to A's physical, emotional and educational needs.
683 He has the usual needs of a 10-month baby boy, but in addition may have additional
684 needs arising from his exposure to drugs whilst M was pregnant and then whilst she
685 breast-fed him milk which contained cocaine. We know already from the evidence of
686 the Neonatal Outreach Team which the social worker noted in her statement that if
687 M's breast milk contained cocaine at medium to high level this would have meant that
688 A was at high risk of seizures (C69). The potential for A to develop issues as a result
689 of this drug exposure as he grows older is something both the allocated social worker
690 and Guardian have noted in their evidence to me. Future carers will therefore need to
691 be aware of this.

692

693 The next headings relate to the likely effect on him of change in circumstances and of
694 ceasing to be a member of his birth family. A is currently in a foster placement and,
695 since this is not a foster to adopt placement, a change of placement will inevitably
696 follow regardless of the decision that I make about what is in his welfare interests.
697 Such a move is going to be distressing and confusing for him, as both the social
698 worker and Guardian also acknowledged (orally in evidence to me for the social
699 worker, E218 for the Guardian). However, both also note that A has thrived in foster
700 care and settled well. This bodes well for his being able to adjust and attach to any
701 new carers (C322 final social work statement) and for any distress to therefore be
702 short-term. The social work Re B-S analysis (C327-C328) sets out the potential
703 impact upon A of ceasing to be a member of his birth family, namely potential
704 feelings of loss and a potential negative impact upon his sense of identity. This is
705 something the Guardian also addressed in her report at E222. Both the social worker
706 and the Guardian have concluded that, sadly, the risk of harm to A growing up in the
707 care of either of his parents or paternal family is greater than any distress he may later
708 feel at being separated from them. My findings below about the capability of parents'
709 or others to care for A to a good enough standard will also therefore be relevant to
710 this, as are my threshold findings and those under the headings relating to risk of
711 harm. The impact upon A of ceasing to be a member of his birth family can also be
712 mitigated by life-story work as well as by letterbox contact as proposed in the final
713 care plan (D22-D23) and endorsed by the Guardian (E222).

714

715 Age, sex, background and any relevant characteristics are the next headings in both
716 checklists. I have already noted some key details in relation to this, and would also
717 acknowledge A's cultural heritage is mixed Albanian and White British.

718

719 Any harm which he has suffered or is at risk of suffering. I have already made
720 threshold findings and therefore identified the harm that A had suffered and was at
721 risk of suffering at the relevant date (ie 16th December 2020 when the application was
722 made) for the purposes of s31. In relation to risk of harm, the next welfare checklist
723 headings are also inextricably linked to this, so I have considered this further below.

724

725 The next welfare checklist headings are the capability of parents or others to meet A's
726 needs, and A's relationship with other relatives including with any other person in
727 relation to whom the court or agency considers the relationship to be relevant,
728 including—

729

730 (i)the likelihood of any such relationship continuing and the value to the child of its
731 doing so,

732

733 (ii)the ability and willingness of any of the child's relatives, or of any such person, to
734 provide the child with a secure environment in which the child can develop, and
735 otherwise to meet the child's needs,

736

737 (iii)the wishes and feelings of any of the child's relatives, or of any such person,
738 regarding the child.

739

740 To address this aspect of welfare, it is necessary to look at the evidence about
741 parenting capability. Both M and F were assessed by an ISW, as I noted earlier. The
742 ISW's conclusions in relation to M were "*In my opinion M is unlikely to have made*

743 *sufficient sustained changes to her current life-style choices, or to have managed (sic)*
744 *her mental health sufficiently well within A's timescales that would enable her to*
745 *resume care of A either as a single parent or as a shared care parent with F...I do not*
746 *consider that M currently has the capacity to meet the developing and presenting*
747 *needs of A to a good enough standard or to safeguard him sufficiently well" (E139-*
748 *E140). Throughout the assessment the ISW did note some real positives about M's*
749 *parenting – she was able to meet his basic needs in contact, her warmth with A in*
750 *contact, her ability to prioritise A's needs over her own when she was upset about not*
751 *knowing about his immunisations, and her efforts to provide a positive home*
752 *environment for A (though as the ISW noted at E111 she had been unable to visit to*
753 *see this for herself, but clearly did not doubt what M was saying about this). The*
754 *concerns about M's parenting capability are not about her ability to meet A's basic*
755 *needs or generally to be able to have a warm and loving relationship with him,*
756 *though. As noted by the ISW, as well as by the social worker and Guardian, M has*
757 *not addressed her drug misuse, has not addressed her mental health issues as*
758 *recommended by Dr Adshead, has not addressed her tendency to form relationships*
759 *that put her and A at risk of harm and has demonstrated a chronic inability to work*
760 *openly and honestly with professionals. M accepted in her evidence to me that she*
761 *has only just started to address her drug misuse, mental health and engage with the*
762 *Freedom Programme as part of starting to address the concerns around domestic*
763 *abuse. She also accepted that this was likely to involve a long process and a timescale*
764 *that was therefore too long for A to wait. The evidence therefore amply supports a*
765 *conclusion that M is not currently capable of protecting A from the impact of drug*
766 *misuse, her mental health issues including the potential to expose A to unregulated*
767 *emotional outbursts or volatility, nor to ensure that he is not yet again exposed to*

768 domestic abuse. It also follows from this that A remains at risk of significant harm if
769 in her care whilst this is the case. Sadly, therefore, I must conclude that M is not
770 capable of safely parenting A to a good enough standard.

771

772 In relation to F, the initial conclusion of the ISW was that he could potentially be
773 capable of parenting A to a good enough standard (E122 & E139), but this would
774 need to be supported by placement in a parent and child foster placement. In early
775 June, the ISW was asked to revisit her conclusions in light of the further hair strand
776 test results which continued to show that F had consumed drugs (E166-E180 hair
777 strand test results dated 3rd June 2020). The ISW was also asked to reconsider the
778 issue of domestic abuse. As she said in her addendum, and confirmed in her evidence
779 to me: *“Having re-read my report, I see I justly deserve the criticism of the report and*
780 *respectfully, would say here that I can see I had not provided appropriate and proper*
781 *analysis of F’s alleged violence towards M; or in respect of his hair strand test*
782 *results” (E812).* She went on to note the sequence of events with regard to what was
783 or wasn’t known at the time of the assessment, and to conclude *“in my professional*
784 *understanding, in many cases the most sever (sic) and abusive behaviours can occur*
785 *when a couple have separated. Therefore, it would be imperative that there was*
786 *evidence that these parents were no longer in a relationship that posed any risk,*
787 *before A could be safety (sic) placed with either” (E183).* She was deeply concerned
788 about the hair strand test results for F, noting that they showed actual consumption of
789 the drug and that the denials F made to her about this were in fact lies (E183). She
790 also noted that the results also showed an apparent reduction in drug use which may
791 be evidence of efforts to abstain on F’s part, and considered whether F should
792 therefore be further assessed in respect of his usage and parenting through admission

793 to a specialist unit. This was something that F had raised earlier in the proceedings,
794 but his positive test results meant no unit was prepared to take him. The ISW
795 concluded that any lengthier period of assessment “*would need to be considered in*
796 *relation to A’s own timescales and his need for permanency; consistency of care and*
797 *safety and security in relation to his own development and developmental milestones.*
798 *Sadly, in my opinion, F appears to have been dishonest in a key area of his initial*
799 *assessment in respect of his drug use. As it appears, he has likely lied and put his*
800 *own interests above the best interests of his sone, and therefore his commitment to*
801 *parenting A should be questioned as to whether it would be safe to leave A in his sole*
802 *care in any event” (E183-E184). She reiterated this conclusion in her oral evidence to*

803 me.

804

805 F’s own evidence to me was striking in his lack of acceptance of the concerns about
806 the risks he may pose to A, I find. Also of note was the absence of any clear plan of
807 how he would care for A on a practical level as the cross examination by Ms de
808 Freitas revealed. He told me that he would be able to live in one of his uncle’s
809 properties in Essex, but beyond this had clearly not thought about what this might
810 mean in terms of how he would provide for A financially (since he has no access to
811 public funds by virtue of his immigration status), nor what practical support he may
812 have from friends and family there to assist with caring for a young baby. I find that
813 he is not capable of parenting A to a good enough standard due to the unaddressed
814 risks that he would pose in terms of future drug misuse or exposure to domestic
815 violence, and his lack of honesty with professionals means that I can have no
816 confidence that he would comply with any protective measures put in place to secure

817 A's safety if placed with him and there is a real risk that, just as he has done before,
818 he will prioritise his own needs above those of A.

819

820 Mr Jones questioned the social worker who completed the kinship assessment of E
821 and G about an email that the Local Authority legal representative had sent to ICACU
822 (the International Child Abduction and Contact Unit who act as the UK central
823 authority in respect of requests for social work to be conducted abroad and liaison
824 between jurisdictions in matters relating to child protection). That email is dated 30th
825 June 2020 and forms part of a chain of emails between the Local Authority legal
826 department and ICACU (C310d-C310p, with the 30th June 2020 email at C310g).
827 The email said, "*subject to any outstanding checks, that the assessment of E and G to*
828 *care for A is likely to be successful*". As the social worker noted, the email was not
829 sent by the social worker or the social work team so it was not really something that
830 she could give any useful evidence about. In addition, I note that it was written before
831 the assessment was completed on 11th July 2020 and the sentence in question is
832 heavily conditional in that it uses the word "likely" as well as saying "subject to any
833 outstanding checks". Of course, as I will go on to look at in more detail, the fact that
834 necessary checks could not be completed formed part of the basis for negative
835 conclusion of the assessment.

836

837 Mr Jones submits that I should consider further exploration of E and G as potential
838 carers for A. He notes, as is not disputed, that the assessment report at C240-C310
839 notes many positives in relation to them. He also notes that they have produced,
840 during the final hearing, many of the documents which the assessment noted were
841 required and not provided at the conclusion of the assessment. Mr Jones accepts in

842 his closing submissions that this documentation was not promptly provided, and notes
843 the evidence of the social worker assessor and Guardian to me about the apparent
844 adequacy of the identity documentation. However, the issue about provision of
845 information by E and G is much more complicated than this.

846

847 The summary and recommendation of the connected persons assessment of E and G
848 concluded: *“There are many strengths in the couple's personal characteristics, their
849 lifestyle, and their capacity to look after their nephew. Their motivation to care for A
850 is supported by a strong belief that A should be raised within his birth family. There
851 are also potential concerns for A if he was placed with his uncle and
852 aunt...Unfortunately, this assessment is incomplete. There are critical gaps in the
853 information required, and the assessment does not meet statutory requirements for
854 Fostering or Special Guardianship. The missing information has been requested since
855 April 2020, but unfortunately it has not been forthcoming. In addition, despite verbal
856 reassurances from the Applicants that they understand the timetable and the urgency
857 of this work, the couple have disengaged intermittently and missed several critical
858 assessment appointments”* (C240-C241). The assessor noted in her report at C303
859 what information was outstanding when she completed the assessment. The
860 documents produced during the course of this hearing appeared to be identity
861 documents (I say appeared to be because, in the case of what may well have been
862 French passports only photographs of one page was produced and not photographs of
863 the front and other pages of the document which, as the assessor pointed out, she
864 would normally expect to see). The photograph of something entitled Titre de Sejour
865 for E was also produced without any translation and without any context as to what
866 this may mean in immigration or citizenship terms, apart from what E told me about

867 this and his expectation that his passport, which expires on 17th October 2020, will be
868 renewed then for another 12 months. In her statement dated 24th September 2020
869 (C382-C385) and in evidence to me, the author of the connected persons' assessment
870 detailed that it wasn't simply a concern about missing information from E and G, but
871 more what it says about the couple's commitment to being carers for A.

872

873 Several times in her assessment and in evidence to me, the assessor noted that she felt
874 the couple were actually ambivalent about caring for A and were perhaps offering to
875 do so more out of a sense of family loyalty than anything else. At the end of an
876 appointment with the assessor on 14th May 2020, G told her that they were unsure
877 about caring for A and that it may be better for him to be cared for by his paternal
878 grandparents, citing that E and G wanted to have more children, they were worried
879 about the financial implications of caring for A as well as the practical implications if
880 she returned to work as planned leaving E to care for two young children on his own,
881 and because of the immigration situation they would be unable to send A to stay with
882 his grandparents in Albania (C290). On 15th May 2020 the assessor met with the
883 couple and initially E said he agreed with G's comments the day before, but the
884 couple then changed their view after the assessor explained about the potential for A
885 to be adopted outside of the family if there were no family placement available for
886 him (C291). By 8th and 11th June 2020 when the assessor met the couple again, she
887 noted that she felt there had been "*a shift in the tone of the assessment which was*
888 *heading towards a positive conclusion*" (C291). That may well have fed into the
889 email of 30th June 2020 which I noted earlier. However, despite this, the couple then
890 went on to continue to miss or be significantly late to scheduled appointments, which
891 had been arranged to suit their availability. A complete schedule of the remote

892 appointments and contacts for the assessment is at C386-396 and shows some 34
893 appointments or email or other contacts from the assessor to E and G. Of these, 15
894 were appointments with E and G with the assessor. E and G were late attending five
895 of these, and for nine of the 15 appointments either the couple did not attend at all or
896 only one attended or both were there but the other was only in the background for a
897 very limited period. In addition, they missed two scheduled contact sessions with A
898 and it is not in dispute that, as a result, they have only seen A when he has had remote
899 contact with F whilst F was staying with E and G in August. The assessor told me that
900 she was given no real explanation for the missed and late appointments beyond what
901 was noted in the assessment and the schedule, namely that a couple of times their
902 daughter was sick or they had prioritised work.

903

904 E was asked about this by Mr Forbes and Ms de Freitas in cross examination and
905 again gave very little explanation for the missed appointments etc and late or missing
906 documentation beyond the fact that he and his wife both had very busy lives working
907 and looking after their daughter. Appointments and communications were dealt with
908 via an interpreter and with translation, so this was not a question of lack of
909 comprehension of instructions or communication, I find. Mr Jones did submit that
910 assessment should be undertaken by a French social worker because it could then be
911 undertaken in French, a language that E and G certainly speak well because France is
912 now where they live and work. However, as I noted when he asked the assessor about
913 this, French is not their first language, Albanian is and the translation provided by the
914 Local Authority in its dealings with them was in Albanian and therefore their first and
915 presumably most easily understood language. E in any event said absolutely nothing
916 in his statement or during evidence to me about difficulties with understanding what

917 was communicated to him by the Local Authority. What was striking about his
918 evidence was a real lack of concern about what this meant for the assessment. I did
919 not get a sense from him at all that he understood and regretted that he had perhaps
920 prioritised other things over the assessment and that this would now change in the
921 future so as to be genuinely committed to any further assessment.

922

923 Mr Jones is also critical of the assessment process limitations given the Covid-19
924 restrictions. However, I do not find that this is a valid criticism. E and G were clearly
925 able to participate in remote sessions on a practical level as the successfully attended
926 and completed appointments show. E himself raised no criticism of this in his
927 evidence, or about the level of contact with the Local Authority, in fact commenting
928 in answer to questions from Ms de Freitas that he felt he had had rather too much
929 contact from the Local Authority and would have preferred much less, for example
930 one or two emails per month. The sheer number of appointments and attempts to
931 make contact detailed in the schedule at C386-C396 is exceptional, in my experience
932 of such assessments both pre and post Covid, and I am very clear that the negative
933 conclusions reached in the assessment are not as a result of the assessment process
934 denying E and G a proper opportunity to participate.

935

936 G, despite being directed to file a statement, had not done so because she did not
937 attend the appointment with F's solicitor and also, despite arrangements being made
938 for her to give evidence remotely and potentially be allowed to give oral evidence in
939 chief despite the absence of a statement, was present for only the first few minutes of
940 E giving evidence. She then left to take their daughter for a medical appointment,
941 before returning briefly only to leave again for work. This was precisely the sort of

942 behaviour that had given rise to the assessor's concerns about engagement and
943 commitment, I am afraid. It is also perplexing behaviour because (as is noted at C362
944 in the assessment) E had at times expressed frustration at what he perceived as delays
945 and the lengthy process of care proceedings.

946

947 I noted earlier that the assessor's concerns and negative conclusion were not solely
948 limited to the absence of documentation and lack of engagement with the process by
949 E and G, however. Other concerns noted were a lack of acceptance of the risks posed
950 to A by F, withholding significant information about the paternal aunt joining them as
951 a family and a lack of willingness to consider any additional needs that A may have.
952 In relation to the lack of acceptance of risks posed by F, Mr Jones cross-examined and
953 made submissions on the basis that E and G had only had access to limited
954 documentation and information from these proceedings. However, this was not
955 something that E himself raised in either his written or oral evidence, nor was it
956 something that was raised with the assessor during the assessment. E in fact said that
957 he had had a lot of information and was clearly fully aware of the drug test results
958 even though he had not been sent those because he referred to them more than once in
959 his evidence. The assessor also told me (and this is noted in the assessment itself
960 C294) over the course of the assessment the couple have not only had access to the
961 translated documents provided but information shared in the assessment. The
962 translated documents were also disclosed to E and G following a consent order, ie one
963 to which all parties including F agreed, dated 19th May 2020. That same order (B159)
964 made provision for not just disclosure of the translated documents specified at 1(a)-(h)
965 but allowed for "any further documents as agreed by the parties" so there was scope
966 for F to ask for additional translated documents to be sent to E and G and for these to

967 be provided quickly if everyone agreed. No such request was made, and, during this
968 hearing, there does not appear to be anything that E was saying he needed to have
969 seen nor any evidence about this from F. Nor has Mr Jones identified in his
970 submissions what should have been sent and why it would have been relevant to the
971 issue of E and G's understanding and acceptance of the risks posed by F.

972

973 In hearing evidence from E, it was also striking that whilst he described M as an
974 *"irresponsible mother"*, his language about F was much less critical as Ms de Freitas
975 noted in her closing submissions. E described F as simply having made *"mistakes"*,
976 the same term that F used in his oral evidence to me, I note. I agree with the
977 assessor's conclusions that there is a real concern about the lack of insight into the
978 risks posed by F to A on the part of E (of course G gave me no opportunity to assess
979 her oral evidence about this). In turn, it seems more likely than not that if A were to
980 be placed with E and G they would simply not be able to adequately protect A from
981 the risk of harm posed by F because they do not understand or accept that risk which
982 is wider than simply use of drugs given the issues around domestic abuse and lack of
983 honesty with professionals and others. It seems that F has also not been honest with
984 his brother about other things as well as his use of drugs, as is noted in the assessment
985 at C295 in relation to the drink driving conviction. In addition, when this was
986 discussed with the assessor, she noted that E continued to defend his brother and *"In*
987 *addition, E has said on several occasions that he does not feel that F would act in any*
988 *way that would harm his son. Even in the latter stage of this assessment E said to me*
989 *'Even now, I know that he loves his baby and he would take care of him as I am*
990 *taking care of mine"* (C295 again). E and G's ability to protect A from risk of future
991 harm is of critical importance given my findings earlier about the harm he has already

992 suffered and would be at risk of in the future. That risk in relation to F is
993 compounded by the fact that there is absolutely no explanation given or insight shown
994 in relation to his drug misuse or domestic abuse and hence it is not possible to say
995 with any certainty that those issues will not arise again. F's dishonesty with not just
996 professionals but his own family also does not bode well for their protective capacity
997 if they struggle to accept that he poses a risk in the first place, I find. This finding
998 further strengthens my conclusion that it would not be in A's welfare interests for
999 there to be further assessment of E and G as potential carers, no matter how ostensibly
1000 willing they are to undertake this and despite their protestations that they do want to
1001 care for A. I say their protestations because, of course, as the assessor noted there is a
1002 concern about the discrepancy between what they have said about their desire to care
1003 for A and their actions.

1004

1005 Further evidence about this discrepancy which leads to a conclusion that they are
1006 perhaps ambivalent about wanting to care for A is in relation to their failure to
1007 disclose that they planned for A's juvenile paternal aunt to join their family in France
1008 in July of this year. This only came to light when the assessor contacted the only
1009 personal referee provided by E and G, that personal referee having disclosed the
1010 information (C285). The assessor was of the clear view that this information had been
1011 withheld from her by the couple (C306 and in oral evidence to me), a conclusion that
1012 is one I have also reached. E's evidence to me about the practicalities of their living
1013 arrangements was also rather vague, suggesting that E and G would share their
1014 bedroom with their daughter and A and his paternal aunt would share the other
1015 bedroom (it seems that they have 2 bedrooms but in evidence he referred to 3 rooms,
1016 though I took that to include their living room when read in conjunction with the

1017 assessment report). In addition, the missing information from them includes details
1018 about their financial situation (C302 and C303) so it is difficult to work out how they
1019 would be able to financially support A in addition to their own child and E's sister.

1020

1021 The assessment of E and G is a very thorough and balanced assessment despite the
1022 absence of key information from them, I find. It clearly notes positives about them
1023 (see for example C241). However, it is also clear that (for reasons that they have still
1024 not adequately explained to anyone, let alone me) they have failed to take up the
1025 opportunity of having remote contact with A so have no real relationship with him
1026 and no apparent desire to do anything about starting to build that relationship as they
1027 have not sought any other contact as the social worker told me. This further
1028 underlines my concerns about their apparent ambivalence in wanting to care for A, I
1029 find.

1030

1031 I am asked by Mr Jones for F to consider adjourning these proceedings further to
1032 allow further assessment of E and G, but against the background of missed
1033 appointments, partial engagement with appointments and late or partial provision of
1034 documentation, it is very hard to be confident that the same would not happen again
1035 and it seems more likely than not to me that any further assessment would again
1036 conclude negatively. The findings I have made above also note the concerns about E
1037 and G's ability to safeguard A from risks posed by F considering the absence of their
1038 insight to and acceptance of those risks. In addition, the absence of key information
1039 from E and G has also meant that the statutory requirements for a Special
1040 Guardianship Report have not been met, making any assessment in relation to this a
1041 longer process even if I had been persuaded that E and G would comply with this

1042 process. I am not so persuaded as I have said, but also I am not persuaded that A can
1043 wait any longer for further assessment of E and G to be attempted when there are
1044 valid concerns that such assessment would be likely to result in only partial
1045 engagement at best and in any event ultimately a negative conclusion as a result.

1046

1047 The above findings all therefore mean the following in relation to placement options
1048 for A:

1049

1050 Placement with M, F, or E and G would have the advantage for A that he would be
1051 brought up within his family and this would help him preserve his sense of self and
1052 identity, as well as avoid him potentially feeling rejected in later life. The
1053 disadvantages of any one of these placements are that A would continue to be at risk
1054 of harm in the future and that harm may be physical, emotional or psychological given
1055 the risks that his parents' drug misuse and inability to protect him from domestic
1056 abuse would pose. In addition, as I have already noted, placement with E and G
1057 would require a further delay in a case that has already taken more than the statutory
1058 26 weeks and such assessment is unlikely to conclude positively. An adoptive
1059 placement will bring some disruption to A because of the need to move from his
1060 current placement (though the same would apply if he were to return to the care of
1061 either parent or E and G as I have also noted earlier in this judgment). It would also
1062 potentially mean that he will have questions about his identity and potentially feelings
1063 of being rejected by his birth family when he is a bit older as both the social worker
1064 and Guardian acknowledge. Balanced against this are the positives of a secure, stable
1065 and safe placement and the potential for his identity needs and any concerns about
1066 feelings of rejection to be dealt with by life-story work and post-adoption support. On

1067 balance, the risks to A of being returned to the care of either parent or placed with E
1068 and G outweigh the potential negatives of adoption for him. The only realistic option
1069 that therefore remains to meet A's welfare needs in light of my findings is adoption
1070 and, sadly, I am forced to conclude that there are no other realistic options remaining
1071 apart from adoption for him and that a care order with a plan of adoption is necessary
1072 and proportionate in this case. Accordingly, it is also my finding that A's welfare
1073 requires that I dispense with his parents' consent to the making of a placement order
1074 for A.

1075

1076 **Conclusions**

1077

1078 I know that M and F clearly love A, and this has also been acknowledged by the
1079 social worker, the ISW and Guardian. However, A cannot be safely returned to the
1080 care of either of M or F as I have explained above, and there are no other alternative
1081 carers who could safely care for him either. M has told me that she has started to
1082 address her issues and I really hope that this is the case, not least because of what this
1083 could mean in terms of her relationship with her other children. F has yet to even
1084 begin to acknowledge his issues, but I hope that he will reflect on my findings and
1085 maybe can begin the process of accepting that he has problems that he needs to
1086 address. I also note that, in my view, E and G have been in a difficult position where
1087 it was clear that they wanted to support F as a member of their family, but equally
1088 have been torn by the difficulties of juggling this with their own lives and
1089 responsibilities.

1090

1091 I will grant a care order to the Local Authority, endorse the final care plan of adoption
1092 as being in A's best interests and will dispense with the consent of the parents to the
1093 making of a placement order, and also grant a placement order to the Local Authority.

1094

1095

1096

1097

1098

APPENDIX A

1099

SCHEDULE OF THRESHOLD FINDINGS

1100

1101 The Local Authority asserts that at the time protective measures were taken, that
1102 being on the 17th December 2019, A was suffering and/or was likely to suffer
1103 significant harm. This harm being attributable to the care likely to be given to him,
1104 that care not being what it would be reasonable to expect a parent to give him.

1105

1106 The Local Authority asserts that the Threshold Criteria for the making of final Orders
1107 is met on the following factors: -

1108

1109 1. M's Mental Health

1110

1111 i. M has been diagnosed with an emotionally unstable personality disorder
1112 (E2) and has been unable to address her mental health or engage with
1113 professionals to improve her emotional availability to A. Whilst M's mental
1114 health remains poor, she will be unable to provide consistent and stable

1115 parenting to A and he would likely remain at risk of emotional harm in her
1116 care (E99).

1117

1118 ii. M has been unable to recognise the impact that her emotionally charged
1119 responses to situations have upon A(C90). For example, M exposed A to
1120 aggressive outbursts when in hospital following A's birth (and has since
1121 exposed him to her volatile relationship with F). A would be emotionally
1122 damaged by witnessing this.

1123 2. Drug Addictions:

1124

1125 i. M has a history of poor mental health and self-harm (E2) together with
1126 an extensive history of drug use which began in her teenage years (E81). M
1127 exposed A to drugs in utero and prevented him from receiving appropriate
1128 medical care to assess the same following his birth by refusing and interfering
1129 with urine for samples (E4; E9). A has suffered physical harm by not receiving
1130 appropriate medical care

1131

1132

1133 ii. M continued to use cocaine post birth as established via hair strand test
1134 results on 02.02.2020 (E28-47). A has been exposed to physical harm through
1135 M breastfeeding him with milk containing cocaine. A was noted to be
1136 displaying symptoms of drugs withdrawal when removed from her care (C97).
1137 A is at risk of further physical harm as it is not known how the exposure to
1138 drugs will affect his health long-term.

1139

1140 iii. M has failed to sustain her engagement with drugs services and has
1141 been inconsistent in her engagement with Turning Point and has not committed
1142 towards abstinence (C172-173; C177-178; C240-242). M has not been able to
1143 prioritise A's needs over and above her own need to consume drugs and has
1144 therefore continued to expose A to physical and emotional harm through her
1145 drug use.

1146

1147 iv. F is a medium user of cocaine and cannabis, as evidenced through hair
1148 strand tests received on 04.02.2020 (E27a-t); 21.04.2020 (E150-166) and
1149 03.06.2020 (E167-171). F has not been honest with professionals around his
1150 drug use and lifestyle and disputes that he has consumed cocaine (C186),
1151 despite the hair strands being conducted by two separate companies and being
1152 confirmed as accurate and not contaminated (E68-72; E167-171; E192). F is
1153 likely to expose A to physical and emotional harm through exposure to drug
1154 use.

1155

1156 v. F states that he was unaware of M's drug use, despite this use being
1157 extensive and despite him being responsible for supervising her care of A
1158 (C185). F has failed to ensure that A was protected from the risk of harm from
1159 drug exposure and this has led to him suffering physical harm during
1160 withdrawal.

1161

1162 3. Domestic Violence

1163

1164 i. M has a history of volatile relationships and has alleged domestic
1165 violence in her previous relationships (F42; C10-11). M has not undertaken any
1166 work to recognise a volatile relationship and she would likely place herself and
1167 A at risk of both physical and emotional harm by entering similar relationships.

1168

1169 ii. M has reported physical abuse perpetrated by F (C189a-189d; PD67).
1170 M was unable to protect A from F's volatility and thus placed A at physical risk
1171 of harm by being caught in the cross-fire of their domestic incidents.

1172

1173 M has alleged the following specific incidents:

1174 1. Early 2019, F kicks M in stomach causing her to bleed whilst pregnant
1175 (C189b);

1176 2. 29.12.19, F slams M's head into the bedframe in her bedroom using his
1177 hands, causing her a split to the head (C189b).

1178 3. 11.01.2020, F punched M, causing a black eye (C189b);

1179 4. 22.01.2020, F punched M, causing a black eye (C189b);

1180 5. 23.01.2020, F pulled a lump of M's hair out (C189b);

1181 6. 07.02.2020, F grabbed M's hair in a fist full from behind on the stairs
1182 and pulled her head back, causing hair to be pulled out and leaving a lump
1183 (C189b);

1184 7. 07.02.2020, F punched M several times with a closed fist to her left eye
1185 and nose (C189b);

1186 8. 07.02.2020, F grabbed M around the neck in a head lock and used his
1187 forearm against her throat (C189c).

1188 9. M alleges that F tried to forcibly remove A from his baby carrier
1189 (C189c)

1190

1191 4. Lack of Engagement and Honesty with Professionals

1192

1193 i. M was dishonest with professionals around her drug use prior to and
1194 following the birth of A (C45) which placed him at risk of physical harm from
1195 drug withdrawal and lack of medical intervention.

1196

1197 ii. M has not worked openly and honestly with professionals seeking to
1198 support her in her children's care both past and present and has thus placed A
1199 at risk of emotional and physical harm (E99)

1200

1201

1202 iii. F has not been honest in respect to his drug use and has continually lied
1203 about his drug consumption (E189) which has been evidenced by three hair
1204 strand tests. F's failure to address his drug use placed A at direct risk of
1205 physical and emotional harm as a result of drug exposure.

1206

1207 iv. F has not been honest in respect of his immigration application (C171e)
1208 which has been approved on the basis of his family life with his partner and
1209 child (E313).

1210

1211 v. To date, F has not notified the Home Office that his relationship with M
1212 had ended in February 2020 and that he has not had the care of A since that

1213 time. This is despite there being a requirement for him to do so under the
1214 terms of his visa (ED4). F has prioritised his own lifestyle needs and wish to
1215 remain in the UK over the needs and welfare of A.

1216

1217

28th September 2020

1218

A handwritten signature in black ink, appearing to read 'A. Jones' or similar, written in a cursive style.

1219

1220

21st October 2020