

Neutral Citation Number: [2023] EWFC 174 (B)

IN THE FAMILY COURT AT LEICESTER

Leicester County Court and Family Court
90 Wellington Street
Leicester
LE1 6HG

BEFORE:

HER HONOUR JUDGE NASSERA PATEL

BETWEEN:

Re: Joe (a child) (Long term foster care versus adoption)

LEICESTERSHIRE COUNTY COUNCIL

APPLICANT

- and -

**MOTHER
FATHER**

(1) **RESPONDENT**
(2) **RESPONDENT**
(3) **RESPONDENT**

-and-

Joe

**(A CHILD) (THROUGH THE CHILD'S
GUARDIAN)**

Legal Representation

Miss Jane Bacon (Counsel) on behalf of the Applicant
Miss Emma Burden (Counsel) on behalf of the First Respondent
Mr Stephen Williams (Counsel) on behalf of the Second Respondent
Miss Paula Thomas (Counsel) on behalf of the Third Respondent

Other Parties Present and their status

S B (Intermediary)
SW (Social Worker)
CG (Guardian)

Judgment

Judgment date: 6 February 2023

Reporting Restrictions Applied: **No**

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

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Her Honour Judge Patel:

1. I give this judgment on day seven of a seven-day Final Hearing which commenced on 3rd January 2023 and then went part heard on 6th January 2023 to the 2nd and 3rd February to hear the Guardian's evidence and submissions. Judgment then being handed down today on 6th February 2023.

The Introduction

2. I am concerned with the welfare of Joe (not his real name), he is now four years old. His mother is M. She is aged 29. She has an intermediary supporting her, Miss SB and is represented by Miss Emma Burden of counsel. The mother's support worker from her church has also been in court to support her.
3. His father is F. He is now aged 38. DNA testing on 26th May '21 shows that he is Joe's birth father and on 28th September 2021, the court made an order for parental responsibility in his favour. He is represented, by Mr Williams of counsel.
4. Joe is represented by his children's Guardian, CG who instructs Miss Paula Thomas of counsel. Joe is the only child of these parents together and he is placed in foster care and lives with his foster carer, FC.
5. Joe has an older maternal half sibling, A , who is 12, who mother has contact with and who has met Joe. Joe has 3 older paternal half siblings, B 14, C 8 and D 5. H has never met them and his father has no direct contact with his older half-brothers, who all have different mothers, save for some indirect contact by email with one boy.
6. The Local Authority is Leicestershire County Council, represented by Miss Bacon of counsel, assisted by the social worker, SW, who was allocated the matter pre-proceedings and has known Joe since he was two years old.

The Applications

7. The first interim Care Order was made on 25 March 2021, the Local Authority having issued an application for a Care Order on 24 March 2021. These proceedings currently stand at over 93 weeks, which is over 21 months, and this is the third attempt at a Final Hearing. The previous hearings in March and August 2022 being abandoned for reasons which I will refer to below.
8. Joe remained in his mother's care, in various placements, between his birth until 13 August 2021, from which date he was then placed with his foster carer, FC and so he has been there for the last 16 months. The Local Authority applied for a Placement Order on 14 October 2021.

The Parties Positions

9. The Local Authority seeks final Care and Placement Orders based on a plan of adoption, but in the event that the Court refuses to make a Placement Order, it has filed an alternative plan of long term foster care.

10. The mother seeks the return of Joe to her care with support under a Supervision Order and in the alternative, she supports him remaining with his foster carer under a Care Order and opposes the plan of adoption. The father, very realistically, accepts that he cannot care for Joe and is supportive of him remaining with his foster carer.
11. As I have said, Joe has been placed with FC since the middle of August 2021. There are no concerns about his care and he has progressed well in that placement. At the adjourned Final Hearing in August 2022, it became apparent that Joe's foster carer sought to care for him throughout his minority. In the circumstances, it seemed to me that the court had no choice but to adjourn that Final Hearing. The FC has not sought to become a party to the proceedings and all parties have agreed that that is not necessary. She has, with the assistance of the father's solicitor, filed a statement from herself and from her daughter, F, in support of their position.
12. Ostensibly, Mr Williams has put her case for her, which is totally in sync with the father's. I should say something about FC at this stage. She is a 62 year old lady with no health concerns. She lives a fit and healthy lifestyle. Her daughter, F, who is 25, lives with her. They have a dog and two horses, which they walk and ride regularly. They both regard Joe as being a member of their family and see him as being very attached to each of them. Joe was her first foster care child and in the last 16 months she has also provided some respite care for another child. Through her own independent fostering agency, she has been approved as a long term carer for two children.
13. FC and F have attended this hearing every day and have sat in between the parents. I have watched them closely during the last six days, in the same way that I have watched the parents.
14. Should a Care Order be sanctioned by the Court, both parents and Joe's foster carer agree that bimonthly direct contact between him and each of his parents should take place. The idea being that it is activity based and in the community. Clarity is being sought by the father as to what he needs to achieve for unsupervised contact to be considered.
15. The children's Guardian supports Care and Placement Orders being made and for a number of reasons, to which I will return, she says that what the foster carer is offering Joe, on balance, will not meet his needs for the rest of his life.

The Options

16. The current options before the Court are therefore either the mother, a plan of long term foster care or a plan of adoption.

The Law

17. I have been referred to a schedule of legal principles by Miss Bacon but of course I have considered my own notes on the legal principles to be applied here. The relevant principles of law are not in dispute.

18. In relation to any factual dispute, this is comprehensively detailed by Baker J, as he then was, in *Devon County Council v EB & Ors (Minors)* [2013] EWHC 968. a) the burden of proof is at all times on the Local Authority. The parents do not have to prove anything. The standard of proof is the civil standard, namely the balance of probabilities, and that test does not modify according to the seriousness of the allegations. Findings are binary. If something is proven on the balance of probabilities, then the court will treat it as having happened in all future decisions regarding the child.
19. Any findings must be on the evidence, including inferences that are properly drawn from the evidence, carefully avoiding suspicion and speculation, particularly involving a gap in the evidence. Each piece of evidence must be placed in the context with all other pieces of evidence. Invariably, the court surveys a wide canvas of evidence and appropriate weight should be attached to each piece of evidence when the court is considering its decision.
20. In order to make any Public Law Order, the Court must first be satisfied that Joe is suffering or is likely to suffer significant harm, and the harm and likelihood of that harm is attributable to the care given to him, or likely to be given to him if the order is not made. Not being what it would be reasonable to expect the parent to give. In this case, there is a threshold document that is agreed between the parties and therefore the gateway for the making of Public Law Orders is opened.
21. The first application of the Local Authority is for a Care Order in relation to Joe. The Court must consider all the circumstances and in particular the welfare checklist in section 1(3) of the Children Act. The Court reminding itself that Joe's welfare is the Court's paramount consideration. The Court must bear in mind that it must only make an order where doing so is best for the child than making no order.
22. The Court must take the least interventionist approach that it considers is commensurate with the best interests of the child. The general principle that any delay in determining the question is likely to prejudice the welfare of the child. The Court must also consider and carefully balance the child's and each party's article 8 rights to a private and family life and interfering with those rights, only where it is necessary and proportionate to do so. Where there is a tension between the parents' and the child's article 8 rights, it is the child's right that prevails.
23. The second application is the Local Authority's application for a Placement Order to enable the Local Authority to place Joe for adoption under section 21 of the Adoption and Children Act. The Court will only make a Placement Order if it is justified, again having given paramount consideration to Joe's welfare throughout his life. The Court must have regard to the enhanced welfare checklist that is set out in section 1(4).
24. Placing a child for adoption is a draconian order and the Court must remind itself as to the considerations as set out in *Re B (A Child)* [2013] UKSC 33. It is an order of last resort and where no other compatible order with the child's long term welfare prevails and it must be both necessary and proportionate. In short, where nothing else will do. The interests of the child self-evidently require his or her relationship with his natural parents to be maintained unless no other course is possible in Joe's interests.

25. In the absence of the parents consenting to adoption, the Court may only make a Placement Order if satisfied that parental consent should be dispensed with, pursuant to section 52(1). The Court would need to be satisfied that the welfare of a child requires that consent to be dispensed with. In *Re P (A Child)* [2008] EWCA Civ 535 the word ‘requires’ is clarified as:

“ . . . the connotation of the imperative, what is demanded . . . than what is merely optional or reasonable or desirable.”

26. The Court of Appeal considered the proper application of *Re B (A Child)* [2013] UKSC 33 in the case of *Re B-S* [2013] and re-emphasized the stringency of the welfare test when considering whether to dispense with parental consent. There is a necessity for a global, holistic and multi-faceted evaluation of all the realistic placement options before coming to a decision. In order to avoid a linear process, whereby each option is looked at in isolation to be discounted, leaving only one option remaining.

27. The Court needs to remind itself again about article 8, because that is engaged and both of the parents and the child’s rights, in comparison to the benefits and detriments of each of the options must be weighed against the other. It is also right to remember that in relation to the seriousness of the plan of adoption, that were the Court to go on and make an Adoption Order, an adopted child is treated in law, as if he or she were born of the adopters and so parental responsibility of the birth parents is extinguished, unless in exceptional circumstances.

28. Family ties may only be severed in very exceptional circumstances and everything must be done to preserve personal relations where appropriate to rebuild the family. That is the case of *YC v The United Kingdom* [2012] 92120 55 EHRR 967. It is not good enough for a local authority to just show that a child could be placed in a more beneficial environment for his upbringing. In deciding issues in respect of welfare of children, the Family Court’s task is not to improve on nature, or even to secure that every child has a happy fulfilled life, but to be satisfied that the statutory threshold has been crossed.

29. The starting point is always that the best person to bring up a child is their natural parent, provided that the child’s moral and physical health are not in danger. The Court recognises that there are very diverse standards of parenting. Children will have very different experiences to each other in terms of their parenting and very unequal consequences flowing from it. Some children will experience disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability. The state does not take away the children of all people who abuse alcohol or drugs, or who suffer from physical or mental ill health. The court’s assessment of a parent’s ability to discharge their responsibilities towards their children must take into account the practical assistance and support which local authorities or other services can offer a parent.

30. Equally, the Court of Appeal made it clear in *Re R (A Child) (Adoption: Judicial Approach)* [2014] EWCA Civ 1625 that:

“Where adoption is in . . . [a] child’s best interests, local authorities must not shy away from seeking, nor courts from making, care orders with a plan of adoption, placement orders and adoption orders. The fact is there

are occasions where nothing else will do but adoption and it is essential in those cases that the child's welfare should not be compromised by keeping them within their family at all costs."

The Court's paramount consideration remains the child's welfare. What that means then is the Court should not make any order, unless it is satisfied that it is both necessary and proportionate for those orders to be made to secure the child's welfare.

31. I should also add that the parents have filed a series of research papers in this case and I have been asked to consider them, when weighing in the balance the pros and cons of adoption versus long term foster care. Those research papers include the following. Beyond the Adoption Order, Challenges, Interventions and Adoption Disruption. A research report dated April 2014, published by the Department of Education and authored by Selwyn et al.
32. Secondly, Planning and Support Permanence in long term foster care Final Report by the Nuffield Foundation in conjunction with the University of East Anglia. Miss Thomas referred me to Keeping Secrets: how children in foster care manage sigma 2019 by Dansey et al. Further, I have been asked by Miss Bacon to look at Family for Life, The vital need to achieve permanency for children in care. An American research paper that looks at statistics and information regarding adoption in the US, Canada and England.
33. Of note is the following, and I draw these points to, in due course, justify the decision that I have come to. I am not going to deal with every point of dispute in this case, but I confirm that I have considered every point in dispute and all submissions made about them.
34. Firstly, I accept the submission that is made by Mr Williams. Nothing about the future is certain. The Court does not have a crystal ball and it is unreasonable for any case to be put in terms of 'certainty' or 'guarantee.' The essential element of care planning is the balancing of risks and differing options for children. No option of care planning offers certainty and no option is perfect.
35. The court and social care professionals are involved in the balancing of different options with the positives and the negatives of each. The negative impacts of adoption, together with life long legal impacts mean that the impacts are more detrimental leading to the necessity for a higher welfare justification to be met for these orders. That is why section 1(4) of the Adoption and Children Act has a separate consideration of the impact of being an adoptive person on a child. The same does not apply to the consideration of the impact of being a looked after child.
36. Turning to the research, the main conclusion in the Care Enquiry 2013, funded by Nuffield Foundation is this, and that is at R356:

"From all that we have learnt - is that 'permanence' for children means 'security, stability, love and a strong sense of identity and belonging'. This is not connected to legal status, and one route to . . . permanency is not necessarily better than . . . another: each option is . . . right . . . for some children and young people. Adoption, although right for some children, will only ever provide permanence for a small number of children in care."

Notably the report went on to conclude that:

“A core principle of the care system should be that relationships are a golden thread running through a child’s life’.”

37. In 2015, the year the Care Planning and Fostering Miscellaneous Amendments England Regulations 2015, parliament specifically introduced long term foster care as a legally defined permanence option for looked after children. These regulations define long term fostering as meaning:

“... an arrangement made by the responsible authority for C to be placed with F where C’s plan for permanence is foster care. F has agreed to act as C’s foster parent until C ceases to be looked after.”

That may be 21 and beyond 18 due to the staying put provisions:

“And that the responsible authority has confirmed the nature of the arrangement to F, P and C.”

I.e. foster carer, parent and child. There can be therefore no dispute and it is not disputed by the Local Authority that long term fostering is a legal plan for permanence for a child and can bring about such permanence for children, if the option is explored.

38. I accept that this was a key development as the previous guidance and the definition of permanence had been one which appeared to exclude long term fostering, because it referred to permanence being legal permanence where the carer has parental responsibility for the child. The 2015 regulations also provide additional changes to the looked after regime for children who are confirmed to be long term looked after children. These changes are generally all additions to the Care Planning Placement and Case Review Regulations 2010.
39. I just mention a few of those changes, because they are relevant. Regulation 22B, provides that a local authority can only place a child in long term foster placement subject to certain conditions. These conditions include consultation of the independent reviewing officer. The consultation of parents. Confirmation that the carer:

“Intends to act as C’s foster parent until C ceases to be looked after.”

And a determination that the:

“The placement will safeguard and promote C’s welfare.”

40. The amendment of Regulation 28 of 2010, allows for the frequency of visits to a child to be reduced to intervals of not more than six months, after a child has been in a long term looked after placement for at least one year. That is a reduction of the usual statutory frequency of reviews, six weekly or every three months. The care planning and placement care review of July 2021 provides that where a child is placed in a long placement, which has been for a year, the IRO should consider whether it is necessary to hold a meeting as part of that review. Whereas the

guidance ordinarily requires meetings to be held every 12 months, but with the regulation change, this could mean that a midway point would simply be a review process without a meeting.

41. In relation to the Nuffield Foundation document at R343, this quote can be found:

“Research evidence suggests that long term foster care can work well as a permanence option for children, but success relies upon appropriate care planning. Multi-agency support. High quality care giving. Achieving stability and enabling children to feel part of the family.”

Long term foster care is therefore a permanence option for children, crucially alongside adoption and it is no lesser an option to be considered for permanence, albeit it has different advantages and disadvantages.

42. The Nuffield report also refers to some historic studies. A study from Northern Ireland found that 87% of long term foster placements were:

“Very stable.”

After a seven year period, compared to 99% of adoptions. The Biehal report from 2010, noted that 72% of foster placements remain stable after 3 years compared to 87% of adopted placements. The Nuffield report also has some very relevant statistical analysis of data that has been disclosed to the Nuffield Foundation by local authorities since the 2015 regulations.

43. They required local authorities to log certain information about the children they were looking after and I note the following:

“a) as at 2017/18 some 8.4% of the 17,340 children that remained in long term foster care were under the age of 5. This is in the category of carers that are not classified as relatives and friends. For children under the age of five, that were in long term foster care with friends and relatives, that was a figure of 32.6%.

b) from the same data set, 66% of those 17,340 children had never had any placement moves and 86% had only had up to 1 placement move. The average number of moves for all of those 17,340 children was a quarter. 0.26, whilst in their entire care life. This is particularly relevant because the data set generally is skewed by older children with the mean age of being 12. But the number of moves still being relatively low.

c) Children in long term foster care with non-friends and relatives were the group who had the highest proportion of children who experienced no placement changes in the current year, and they have the lowest mean number of placements across their period in care. Whilst the majority of long term foster placement with non-friends and relatives were with local authorities, which is 57.6%, some 42.3% were via independent fostering agencies. That’s despite the

additional bureaucracy of getting approval of independent fostering agency placements.”

44. Turning back to the Biehal report from 2010, that also includes studies as to the breakdown rates for adoptions compared to long term foster care and indicates that the figures are not that dramatically different. What the data suggests is that age is a key factor in breakdowns for long-term fostering, and the emotional attachment is a key reason why placements do not breakdown. As for outcomes for children under long term fostering arrangements compared to adoption, there appears to be little, if any, difference from the data available provided that the placement is a stable one.
45. Finally, during the hearing, Miss Thomas referred the Court to an article entitled Keeping Secrets: How children in foster care manage stigma, dated March 2019 in a Saga Journal by authors, again Dansey et al., who have undertaken work linked through the children in care CAMHS Team in Epsom which focuses on children who have been in care and their feelings of stigma and fears of being bullied, or being bullied when their looked after status is revealed. The article refers to a lot of historical research on the concepts of being in foster care associated with stigma. In particular, there is reference to a review done in 2015 by Silver, Golding and Roberts, which summarises poor psychological outcomes for children in care academically, socially and psychologically with increased mental health problems. This article therefore is looking at how stigma contributes to this and how the current and future wellbeing of children in care can be improved.
46. It seems to me that a key piece of information from the article is that the sample size was small, only 15 children, and the ages of the children were 7 to 15, who had been in foster care placement for a year or more. The information is therefore slightly different for Joe, who has been in foster care since he was 2½ and has had the longest period of stability living with FC. So is fast coming to the point where he will remember little else other than living with her, over and above the time he spent living with his mother in various placements. This research also does not provide information as to whether the children involved in the sample were children with whose parents agreed that they should remain in foster care.
47. I accept overall that there is a potential future risk of stigma becoming an issue for Joe, and it is important to recognise that if he remains a child growing up in foster care, that is an issue to be aware of. The article also emphasizes that children need to be helped to build and develop their resilience and sense of identity and self-esteem to recover from those difficult experiences. Positive relationships with their foster carers, their peers, teachers, therapists and birth families, where possible, will be key in helping children to rebuild their resources, identity and self-esteem, so tells me the article. The article ends by saying that in fact more direct research is needed about this area. I am inclined to agree.
48. Having read this article, I have also asked myself the question, whether there is any less stigma to being a child subject of a Special Guardianship Order or even an adopted child. There does not appear to be any specific research on this point, but if friends at school or peers find out that you live with your grandma, for example and not your mum and dad, the explanation, one way or another, in my view, will still likely involve being asked to explain how you came to be placed with your grandma. Whether she is your real grandma, and what may well lead to a discussion around the fact that there was a period in foster care before this happened.

Background

49. The mother has an older child who was subject of a Child Protection Plan, due to concerns that her needs were not being met. She was removed from the mother's care by her father, after the mother admitted to shouting in her daughter's face and smacking her. The mother was struggling with her daughter's behaviour. This child remains in her father's care following private law proceedings in relation to her, which ended with contact to the mother.
50. Joe was the subject of a Child Protection Plan pre-birth and under the category of neglect in 2018/2019. There was a positive pre-birth assessment and he remained in his mother's care. The Child Protection Plan was stepped down to a Child in Need Plan. In February 2020, Joe was again the subject of a Child Protection Plan under the category of neglect following a third-party referral.
51. During these proceedings, or certainly pre-proceedings, a cognitive assessment has been undertaken by child psychologist, Frank Furlong, in June 2020. This identified that the mother's global intellectual functioning is in the low range, with an estimated full IQ of 72. Her profile is compatible, says Mr Furlong, with an individual who experiences general difficulties with learning. She did not satisfy the criteria for a diagnosis of significant learning disability, and she was able to demonstrate that with support she can understand information that is presented to her, using simplified language where necessary.
52. In June 2020, Joe sustained significant burns to his body when he was not properly supervised by his mother. He had pulled a boiling pot of noodles onto himself. Mother and Joe then moved to stay with the maternal aunt, and a PAMS assessment of the mother was commissioned by the Local Authority, to be undertaken by Sarah Seekins. The assessment was undertaken in the context of Joe living with his mother under the supervision of the maternal aunt. There were ongoing concerns in respect of M's ability to manage Joe's diet, to keep him safe and to ensure that all his basic needs were met.
53. Miss Seekins felt that she could not properly assess M's ability to meet Joe's needs in this environment, because the maternal aunt was intervening to keep him safe. Equally, Miss Seekins could not recommend that Joe be cared for by his mother, on her own, in the community. In her evidence, to which I will refer later, Miss Seekins felt that at the time, although the maternal aunt was supporting the mother and Joe, it created difficult relationships between them, with the mother and her sister, because she felt that her sister was taking over.
54. A psychological assessment and a residential assessment were therefore recommended. During the period of pre-proceedings in November 2020, Joe and his mother moved to a mother and baby foster placement, which endured for approximately four months. This provided an environment as close to normal family life, where parenting can be modelled. The carer indicated that she then sought to serve notice on the placement, as progress was not being made. It was considered that the mother was unable to meet Joe's needs consistently and she was said to be preoccupied with her mobile phone and Joe being given insufficient attention and supervision.

55. Without warning, the mother left the placement and withdrew her section 20 consent on 23 March 2021, and that is why the very next day the Local Authority issued proceedings, with an application for an interim Care Order. Happily, at that stage, the Local Authority were agreeable to exploring a residential placement and so that was the next placement for Joe. I ought to say at this stage that in terms of the reasons why the Local Authority intervened in the lives of Joe and his mother are set out in a threshold document dated 1 April 2022, which appears at A63 of the bundle.

Threshold Criteria

56. The reason the Local Authority intervened in the lives of mother to protect Joe was due to exposure to physical harm, the risk of emotional abuse through the lack of supervision, including falling out of bed, falling out of a cot, without the side guard and suffering burns from the noodle incident. Further suffering 18 bruises on August 2021 apparent on Joe's body, which the mother was unable to be clear about how and when they were sustained. The mother's inability to manage finances. Putting herself at risk of criminal offending by shoplifting and spending a family member's money and not being clear whether this was with their consent. Also failing to maintain home conditions.
57. I am satisfied that the threshold criteria is crossed. As I have said, the doors for the making of Public Law Orders have been opened. The issue for the Court, when considering the welfare of Joe, is whether the risks that emanate from the mother's care are likely to be reduced or ameliorated if she is provided with a full package of support in the community and she engages in therapy. It is clear now that having considered all the evidence regarding welfare and the completion of all the assessments, that one of the significant factors of risk that is ongoing is the mother's complex profile in respect of her mental health.

Assessments

58. The assessment process in this case, particularly for Joe, has been very lengthy and gives some explanation as to why it has taken so long to get to this Final Hearing. As I say, the next placement move for Joe was a move to Dudley Lodge, which happened on 26 March 2021. The focus of concerns to be addressed were about appropriate supervision. The mother's emotional response to Joe. Her ability to act on the advice of professionals, and steady progress was observed with some concerns although, persisting throughout the assessment period.
59. Two PAMS assessments have been completed at the beginning and at the end of the assessment. The latter to determine the impact of the work that was completed at Dudley Lodge. The reality, on the ground, was that there was a cautious conclusion by Dudley Lodge, who formed the view that the mother had made sufficient progress in that supportive environment and therefore that warranted a further assessment of her with Joe in the community.
60. In the meantime, there was a psychological assessment of the mother undertaken by Gillian Merrill, a chartered psychologist and forensic psychologist, who reported on 9 April 2021. She, in her report, set out that the mother was diagnosed with an attention deficit and hyperactivity disorder, ADHD, in December 2019 and unstable emotional personal disorder and learning disability difficult, which impacts upon her psychologically and emotionally. At the time of her report, Miss Merrill advised that

the mother required significant one to one support to care for Joe safely and consistently.

61. At the time, if M did not have a high enough level of continuous support, her view was that there was a risk of unintentional neglect or harm to Joe due to the symptoms of the mother's significant and complex mental health profile. The diagnosis of an emotionally unstable personality disorder was subsequently questioned by the mother's team, based on the information in Miss Merrill's report. That was the reason for allowing the instruction of Dr Pilgrim. His report, I refer to below.
62. Within the context of the support and teaching at Dudley Lodge, M was able to provide good enough care for Joe. Support was stepped down, prior to the final recommendation and the specific recommendations for Dudley Lodge then set out what support should be provided in the community. That was a) regular unannounced visits. Daily for the first two weeks. b) a family support worker to be allocated with ongoing support. c) a nursery placement to be found over at least three days per week. d) a secure new home. e) continued psychological assessment and f) a family group conference to be held.
63. The mother moved into the community with Joe with a support package, including attending nursery placement three times per week. Part of the mother's case in this hearing has been that the support that was given to her was not sufficient and the difficulties that she incurred, could have been avoided had she had a consistent family support worker, rather than being left to care for Joe with different EDT workers doing the visits, including unannounced visits. Sadly, the social worker was on a period of leave and so she did not attend the home. Nursery provision was not provided immediately, until ten days after return to the community and after some bedding in sessions, the only real help, says the mother's team, was short lived help through, a support worker, who helped the mother find the nursery and fill in nursery forms.
64. Miss Burden's case has therefore been that the mother was set up to fail because she was not able to feel that sufficient support was available to her in the community. Very sadly within four weeks, concerns escalated and Joe sustained significant bruising in his mother's care. He had a child protection medical. Several of his bruises could not be explained by the mother's history and the possibility of non-accidental injury at that stage could not be ruled out. The number of bruises to the thighs and shins raised concerns about lack of parental supervision.
65. In the end, findings of inflicted injury have not been pursued by the Local Authority and it is agreed, on balance, that the injuries/bruises were sustained through a lack of supervision. On 11 August 2021, the Local Authority sought an urgent hearing and on 24 August '21, the section 38 direction for the Local Authority to assess Joe with his mother was discharged and he was placed into foster care. As I said that had happened on 13 August and he was placed with FC.
66. At the time of the IRH in November 2021, neither parent accepted the conclusions of their assessments and therefore the matter was listed for a Final Hearing in April 2022. In March 2022, the applications were issued for the updated psychiatric and parenting assessment of the father, and also the same application was made for the mother, because of concerns being expressed about whether or not she has a diagnosis of EUPD. The Final Hearing on 1 April 2022 could not proceed as neither

Gillian Merrill nor the parenting assessor of the father, was available to give evidence due to sickness or long term sick leave. Therefore, those applications were approved on the basis that there was a gap in the evidence and in order to avoid even more delay.

67. The psychiatric assessment undertaken by Dr Pilgrim, who is a consultant, in relation to the mother, was completed on 19 May 2022. He indicates that in his opinion, that whilst there is some evidence for a diagnosis of ADHD, the mother's primary diagnosis are actually emotional unstable personality disorder and complex post traumatic stress disorder. Both of which are rooted in her abusive childhood experiences. These are long term conditions and the difficulties identified in her parenting abilities in the past are likely to continue into the foreseeable future.
68. The treatment that he recommended is trauma-based therapy, in that being cognitive behavioural therapy and he said that:

“She is likely to require a minimum of nine to twelve months of treatment. Her relatively poor insight and borderline learning difficulties are such that the prognosis of engaging in and responding to treatment is not good.”

He said, however, in his addendum report that he was slightly more positive about the impact of the treatment, if the mother can accept her diagnosis. The mother awaits assessment and potential treatment at a local mental health service and has also approached a local therapeutic service, but this therapy would need to be paid for privately. An updating letter from this agency confirms their view that taking money from the mother, who remains on benefits, would be unethical.

69. Sarah Seekins carried out her second PAMS assessment of the mother in July 2022. The assessment considered all the updating information since her first assessment in 2020. In her opinion, despite the significant amount of support, practical guidance and ongoing supervision over the previous two years, she says:

“The mother has not been able to put into practice the knowledge that she has about caring for her son.”

There has been no significant change in her parenting ability and she is assessed as not being able to meet Joe's needs now or in the future, faced with a host of limitations because of her core comorbidity of mental health and neuro developmental diagnosis. In Miss Seekins' view, there is a high chance that Joe would be harmed in his mother's care because of the difficulties that she faces.

70. I am briefly going to refer to the assessments of the father. His psychiatric assessment was also done as an assessment by Dr Pilgrim and the report filed in June 2022. He confirms that F suffers from personality traits of emotionally unstable personality disorder and a social antisocial personality:

“These diagnosis impact significantly”

Says Dr Pilgrim:

“on his ability to cope with stress and his ability to relate to others and on his parenting abilities.”

71. The potential treatment identified for F is psychological treatment using dialectic behavioural therapy. However, the presence of antisocial personality traits is likely to impact on his ability to derive benefit from that treatment and:

“The prognosis for significant change”

Says Dr Pilgrim:

“may not therefore be good.”

72. Because of his personality traits, the father has little emotional resilience and difficulty managing stress without recourse to maladaptive coping mechanics. Any significant stress would be inevitable in parenting a young child and would likely stretch his coping abilities to the point that he experiences a significant dip in mood and/or loss of temper:

“There’s significant risk if in a relationship”

Says Dr Pilgrim:

“of a child being caught in the cross fire of verbal and potentially physical aggression. Without intervention, F’s personality traits”

Says Dr Pilgrim:

“and the impact of them on his relationships with others and his parenting abilities will continue into the foreseeable future.”

73. It is fair to say that F remains on the waiting list at a local mental health service for assessment and potential treatment. His PAMS assessment by Sarah Seekins did not conclude that she could recommend Joe is placed in his care, short term or long term. The reasoning being, due to his chaotic lifestyle, his mental health difficulties and learning needs, which collectively mean that his abilities are limited.
74. As I said, he himself has accepted in the assessment that he has an unstable lifestyle and is living with a friend, after separating from his girlfriend and he finds it difficult to manage his anger, often being triggered and hitting out or becoming inconsolable. I should say that is recorded in the conclusion of Sarah Seekins’ report that there actually is not any evidence on the ground that F has behaved that way in his contact with Joe.
75. In August, at the adjourned Final Hearing, F opposed the Local Authority’s plans and still wanted to explore the prospect of Joe living with him. As I have acknowledged, he has now made a very child centered concession that he is not a realistic option before the court and he gives his full weight of support to Joe remaining in long term foster care with FC.
76. Since the August hearing, both parents have continued to attending contact with Joe and there is a close bond with each of them and he recognises them both as his

parents. The hearing in August was adjourned, as I have said, as a result of the information in the children's Guardian's report that indicated that FC would wish to continue caring for Joe. At that hearing, despite becoming aware of this information, and FC filing a position statement through her solicitor that she was offering to care for Joe for the rest of his minority, the Local Authority invited me to proceed with the Final Hearing, as it viewed that what she was offering was not sufficiently permanent.

77. I was not prepared to allow that to happen as I considered this to be contrary to the interests of justice and Joe's right to have all the realistic options explored. Since the August hearing, the social worker has provided an assessment of Joe's current carer, FC. Up until the hearing in August, the social worker's understanding had been that she was prepared to care for Joe as long as she was required to. Obviously since then, FC has confirmed that she would wish to continue caring for Joe under the Care Order. There being no application for a Special Guardianship Order nor is an Adoption Order sought.
78. The father's case is that the Local Authority had already ruled out FC as a foster carer and a realistic option, even before the social worker did her assessment, because of the approach that the Local Authority took at the hearing in August. The Local Authority says that both FC and her daughter hold the belief that more permanent orders should be considered when Joe's views can also be explored, so when he is eight or nine years old. That Joe's carer takes the view that:

“Joe may come to resent her should she make any application now.”

Says the Local Authority. She expressed concerns that as the parents have ADHD and learning difficulties and mental health diagnosis, that this potentially does not bode well for Joe in the future and he may need extra support in being able to ensure that he can learn and develop.

79. The Local Authority records that FC feels that Joe has separation anxiety when she drops him off at nursery. The Local Authority says though, that the same level of concern is not expressed by the nursery to the social worker. What is agreed is that contact would be promoted with the parents and that one of the geographical issues has been that the parents live relatively close to where FC's home is. But that she, FC, does not consider that to be problematic as she would avoid shopping locally and has chosen a different school to the feeder school from Joe's nursery.
80. There has been no concern about the day to day care of Joe. The Local Authority was really concerned about the view expressed by FC and the impact on Joe of being a looked after child, with all the uncertainty and potential instability of long term foster care, given his age. The Local Authority's submissions, in this case, has been that:

“He has experienced significant harm by neglect, instability, frequent changes of home, albeit with his mother, during his early life. His age, taking a holistic analysis of his needs”

Says the Local Authority:

“means that his best interests are served by identifying a family who can be committed to him now and for the rest of his life under a plan of adoption.”

81. The Local Authority has also pleaded in its evidence that it is concerned that given the level of attachment between the carer and Joe, that this is getting in the way of the foster carer seeing what is in his best welfare interest long term, and she is subjugating those because of her own inability to ‘let go’ given the affectionate bond that has been built between them since he was placed in her care. The social worker, in her final statement at C213, says that she actively views the foster carer’s attachment to Joe is the focus of her motivation and she sees this as a negative, because it is preventing the foster carer from showing the insight that a commitment to a more permanent order would be in fact in Joe’s best interests.
82. There have been, as I have said, statements from FC and her daughter and there has been statements from the Permanence Team provided by the Local Authority, which sets out encouraging information that as a result of anonymous searches a number of families have been approved locally, regionally and nationally that would be able to take a child of Joe’s age and with his profile of needs. As it happens, it was agreed by all parties that live evidence from the permanency workers was not necessary. All parties accept that an adoptive placement is likely to be found by the Local Authority for Joe, if he is to be matched with prospective adoptive carers and within the proposed timescales.
83. The children’s Guardian provided a combined final report for welfare and Placement Order applications in three separate reports. The last but one is dated August 2022, and is the one within which she sets out her reasoning why a Care and Placement Order is the only realistic option to ensure Joe’s needs are met throughout his life. This analysis was revisited by her in her final report dated 30 September 2022.
84. Her analysis evaluates the two realistic options for the Court to consider. Adoption versus long-term fostering, and it remains her recommendation that a Care and Placement Order is the most realistic option for Joe in ensuring his needs are met throughout his life. Both parents have argued that the social worker and the children’s Guardian’s analysis suffer from the same flawed and simplistic approach as to the benefits of long term fostering for Joe and unquestioningly emphasizes the benefits of adoption, without weighing appropriately the significant losses that Joe will experience with such a plan.

Summary of the evidence and assessment of the witnesses

85. Turning therefore to the summary of the evidence and my assessment of the witnesses.

Sarah Seekins

86. The focus of her evidence was her assessment of the mother. She very readily acknowledged that the mother is a likeable, friendly woman, who has remained committed to Joe throughout this process and loves him very much. She has a strong bond with him. She has co-operated with all of her assessments and engages well with professionals and wants to be a better parent. She wants to undertake therapy

and she believes that that will make her a better parent. She wants to learn how to improve herself.

87. Miss Seekins, despite all of those positives, stood firm in her recommendation that it would not be safe for Joe to be returned his to mother's care. In her oral evidence she said that she was struck by the level of one to one parenting support and teaching that the mother has had over the period of all her assessments, which she was able to put in practice, but only where there were high levels of intensive support at Dudley Lodge, which was a placement that she really invested in and thrived in. But once in the community with Joe, she was not able to maintain this and resorted back to default parenting.
88. Without an intensive support network, Miss Seekins felt that the mother was not able to process the information that she had learnt and failed to continue to put this into practice in caring for Joe. Therefore, resulting in a lack of safe and adequate parenting. That a similar pattern of concerns were emerging, as were seen pre-proceedings with bruising and lack of supervision.
89. Miss Seekins was clear that in her view, Joe is still at risk of significant physical and emotional harm in his mother's care. Not because M would intentionally hurt him, but because she lacks the ability to provide consistent adequate care and that her complex PTSD, EUPD and ADHD mean that she is fighting against all of these symptoms, so that unless there was another adult there helping her to focus on Joe all of the time, she will lose focus and become distracted. It is going to be a challenge for her to meet her own needs and meet all of Joe's needs at the same time:

“Until”

Said Miss Seekins:

“the mother can meet all of those challenges of her needs, like the ADHD, which is not going to change, until they can be fully addressed it is difficult to assess whether she can move forward.”

90. With what Dr Pilgrim has said about PTSD and the level of counselling required, Miss Seekins said that we are looking at another timeline, which is different to Joe's. Also it would be a two-stage process, even after therapy, and a concern would remain that there is delay in the meantime to Joe.
91. In respect of her levels of insight into concerns, Miss Seekins said that:

“The mother understands why the Local Authority is involved but she believes that she has done everything she can to parent Joe. She is very aware of her childhood experiences and these have given her the PTSD and that this impacts on her parenting.”

Miss Seekins is not sure how deep the mother's understanding is. Whether she understands the full implications on her and the full diagnosis and how that impacts on her parenting, Miss Seekins was not sure that the mother does. In fact, she was not sure that any parent, with her complex mental health profile, would and that was her

considered view, having known this mother for a long time, since Joe was two years old.

92. Her view remained that the mother is not a realistic option before the Court, but it was not through the mother's own fault. In cross-examination, she accepted that having left Dudley Lodge the mother would have benefited from the full recommended package of support, with a constant support worker to help her feel reassured and supported. Miss Seekins' view was that in the early stages of a return home, given the length of time she spent in Dudley Lodge, she would have expected the mother to be able to put her learning into practice and maintain levels of care of Joe for the ten days between returning home and starting nursery.
93. She did not agree that having different workers would have increased the mother's anxiety, because she does have the ability to work with different professionals and is very amenable. The main issue remained, that when on her own, she makes poor decisions. She did not think that there was a package of support that could be replicated with what Dudley Lodge had provided and Miss Seekins did not think that such high levels of support were in Joe's interest, because he would not be being parented by his mother.
94. Miss Seekins was also concerned that the mother would struggle with high levels of support in the community and be dogged by a sense of another adult taking control. Somewhat similar to the situation, when she and Joe were living with her sister and the placement broke down.
95. Her view about both parents' contact was that at this time it should remain supervised. The mother, because she continues to need guidance and support, to make this positive and a safe experience for Joe. For the father, this was because he still needs to address the issues relating to his mental health and lifestyle choices, which are intertwined and until they are addressed, in her view, he remains a high risk.
96. I found Miss Seekins to be an impressive witness. She was clear, balanced and reasoned in her recommendations.

The Social Worker

97. SW has made a number of statements in this case. In respect of the mother, she also remained of the view that, aligned with Sarah Seekins, there is no package of support that could currently bridge the deficit in the mother's parenting capacity and sadly she is not a realistic option before the Court.
98. As I have said above, she undertook the recent assessment of the foster carer's ability to care for Joe. It is fair to say that the assessment itself is very positive. FC is offering to care for Joe for the rest of his minority as a foster carer and she is not ruling out an SGO or adoption in the future. She wants him to be included in the decision making process and is concerned that Joe might resent her for taking him away from his parents, if she were to pursue those other options now. SW frankly admitted in her evidence that if FC were agree to applying for an SGO or for an Adoption Order now, then the Local Authority would be wholly supportive of Joe remaining in her care.

99. The main issue preventing the Local Authority from agreeing to Joe remaining in her care comes from the firm view that it is not in Joe's best interest, given his age, to be subject to a care plan of long term fostering when this will mean continued Local Authority intervention in his life for the next 12 to 14 years, and will not give him the legal permanency that he deserves by FC becoming his special guardian or his adoptive parent.
100. The disadvantages of Joe staying with FCs, in the social worker's view, are that she is newly approved foster carer. She has not yet faced any significant challenges caring long term for a foster care child. She is struggling to face the idea of him moving on and there is no guarantee that she will remain his foster carer for the next 15 years. Equally, she lives in close proximity to the parents, so there is always a chance of bumping into them impacting on Joe and further and ultimately, what she is offering is not the legal permanence that Joe needs.
101. In her evidence, SW was able to accept, in answer to Miss Burden's questions, that there are positives of such a plan, that this decision for Joe is also a finely balanced decision. Something which she had not said in writing and that the pros and cons tip slightly in favour of adoption, because of the lifelong permanency that this will offer Joe. SW had to accept that she had not described the balancing exercise in this way in any of her written evidence. On the contrary, she had used terms such as foster care not being able to 'guarantee permanence' and that the plan 'of adoption' comes with 'no risk' of having to change placements.
102. In her assessment of FC, she refers to a Care Order not being a plan of permanency for a child as young as Joe, who needs the security of a forever family through to adulthood. I found SW to be a good and reliable professional. She is a conscientious and hard-working social worker. I have no doubt that she has tried to present before the Court a plan that she believes is in Joe's best interests, and she has been extremely helpful to the Court by considering, in the second care plan, what the alternative plan of long term fostering in placement with FC would look like.
103. However, I was troubled by a number of areas of her evidence and concerned about her approach in undertaking her analysis of the benefits to Joe of a plan of long term foster care with this care plan given that in her evidence she does in fact accept that what FC is offering is permanence for Joe, because she is offering to care for him for the rest of his minority and potentially beyond. This flies in the face of the principle that the Local Authority, and local authorities across the country, accept that long term fostering is a plan of permanence for many children who have come into the care system.
104. I was troubled by the use of the word 'guarantee', because it appears to have slipped into the social worker's terminology with the result that there is an expectation that the foster carer needs to be held to some higher account of having to demonstrate that she can 'guarantee permanency for Joe', instead of the social worker stepping back and employing a fair and more practical analysis of the pros and cons of both options and applying the actual test, which is whether the evidence supports a finding that nothing less than adoption will do for Joe.

Foster Carer

105. In giving evidence, FC told me that she loves Joe and that she is absolutely committed to him 100%. She was clear in her opinion that long term fostering will work for Joe because of how he has progressed and developed in her care so far. She regards her home as his forever home. She described Joe as fitting in with her family from the outset and described him as a happy go lucky little boy who loves everyone and everything. He likes getting up early and walking the dog and grooming her horses. He is an active boy who likes being outdoors, which is also the life that she prefers. He even helped her choose their dog and name him.
106. As far as she is concerned, she sees his relationship with her and her daughter and her wider family enduring with Joe beyond him being 18. She rejected the assertion that she is emotionally naive or is struggling to let him go and told me that if the Court approved a plan of adoption, that she would fully support him in transitioning. She rejected the assertion that the children's Guardian makes about her not being able to make 'tough decisions'. She makes difficult decisions all of the time and will make all Joe's day to day important decisions.
107. When Joe was first placed with her, he had just been removed from his mother and was exhibiting tantrums and biting himself. He would hit and slap himself until she bought him some sensory toys for him to bite instead. He is so much more calmer now and better behaved and happier. During her evidence, she talked about how when he came he had some bruises and they did not look like smacking or hitting bruises, but they were like fingertip print bruises.
108. She knew about some of the incidents of harm that Joe had experienced, like burning himself with the pot of noodles, but she did not know about everything that had happened. She described Joe as bruising like a 'peach' and at that time having no voice and being wild, but she was conscious that the mother was ill and on medication at that time. She thought that the bruises looked like grab marks. I pause here to say that the Local Authority threshold does not even go that far, as the injuries Joe sustained have been accepted to have been occasioned through a lack of supervision.
109. When talking about what future needs Joe might develop, because of his parents diagnosis, she said that she did not know what she was allowed to say in evidence, but that it was something that remains a concern for her in the interests of Joe. It would not worry her that she could not cope, because she would be able to access lots of the right support, but she would want to be in a position to achieve that for him and as a looked after child, he would be seen quicker, by professionals than if he were a child of her own.
110. She describes Joe's relationship with F, as if they were 'Siamese twins'. He waits for her to come home. His eyes light up when she arrives. They play together. She reads to him:

"You could not say they were any closer than if they were brother and sister."

She said.
111. FC talked about her life as a carer for end of life patients in her previous role and her passion for animals and horses. It is clear that she holds in high regard her ability to

parent and care for Joe and her own family, which comes from a core strength of being passionate, caring and patient. She has been approved as a long term foster carer for two children, but said that she would only pick another child if she felt that that child would fit in with Joe.

112. Her network of support consists of her daughter, wider family and friends. She has two grandchildren, six and twelve who also have a very positive relationship with Joe. She did not consider her age to be a barrier to caring for Joe long term, because she is in good health and she is active and in any event she can rely on her network of support, which as far as she is concerned, would step in if she suddenly experienced unexpected ill health:

“Respite in foster care would have to be exceptionally a last resort.”

She said.

113. Her daughter has already filed paperwork with the same IFA to become an approved foster carer, and the issue of whether she would be able to maintain that status without caring for any child in her own right would have to be clarified. In respect of the reasons why FC was not willing to say adoption or an SGO now? Her reasons really centred around her genuine belief that she is better enabled to help Joe, as he may develop any of the difficulties exhibited by his parents, and she would be able to access effective support much quicker as a foster carer under a Care Order.
114. In terms of the loss he would experience if he were moved from her care, she considers that this would have a huge implication for his emotional wellbeing. Whilst he could settle into another family, her strong feelings are that he will not and he will miss his family. By that she means his parents and that he would miss her and her daughter, who he screams for, and her evidence was that given their bond, such a move would be cruel for him, given his level of attachment to them and how invested she is in caring for him.
115. She did describe him as having separation anxiety and whilst he is happy to go to nursery, which is the same nursery he was going to, even before he was placed with her, he does not like to leave her and he does not like it when F has to go away, like when she went to Manchester for a few days. FC said that she and F spend a lot of time reassuring Joe and explaining things that are going to happen outside of his routine to help him regulate his emotions.
116. I was very impressed by FC. It is clear to me that she is a deeply emotional person. Her attachments, her deep sense of connection, high levels of compassion and integrity to commit to what she feels is her responsibility of everything in her life shone through as hugely admirable traits in her.

Foster Carer's Daughter

117. F described Joe as a loveable child with a big heart. She was also very passionate about Joe being part of their forever family. She confirmed that although she is only 25, she has no plans to move out of the family home, which they have been living in for 3 generations and a place that she is very attached to. It is the only home which she has ever known and if she were to get married, she would want to continue staying with her mum. She confirmed that in terms of registering as a foster carer,

she has in fact done all the training her mother has, because she has attended the courses online with her. She also confirmed that if anything happened to her mother, she would be the one to step up and care for Joe.

118. Her evidence was that at the moment Joe does not know any different about being in foster care, and she and her mother have explained to him that he is 'extra loved' which is why he lives with them, but sees his mum and dad, but does not live with them. She was very clear in her evidence that if he was adopted, she felt that he would lose his current sense of self. He would lose his name. He will not have with him the carers that have raised him for the last 16, 18 months. She felt that the questions he would have about being looked after can be managed and that he will ask questions because he is a curious little boy.
119. She also accepted that having conversations with him when he is eight or nine about his legal status will be difficult, but she felt that when he was older, the question of 'why cannot I be a [surname]' is likely to come from him. I was struck by F's insight when she also raised that at some point Joe would be having the conversation with any adopter about why he did not live with his mum or dad and why do I have your name? In her view, she and her mother will manage Joe's feelings in a sensitive and supportive way.
120. She was firm in her view that moving Joe now would traumatise him and her rationale for wanting to talk to him about his legal status was to give him a voice in the decision making about himself, so he will not be so traumatised in the long term from being removed from his parents care. She did not see that as Joe 'calling the shots', but she saw it as him being involved in important decision making about his life. I found F to be an impressive witness also. Why would she not be? She is a product of her mother's parenting. A well balanced, thoughtful, kind and sensitive young woman who clearly loves Joe.

The Mother

121. I heard from M. It is clear that she loves Joe very much. She enjoys attending contact with him. She has gained much support through her local church, through L who helps her and has done some courses with her. Whilst she would like Joe to return to her care, she considers that FC and F deeply love Joe and that they have made him part of their family.
122. In cross-examination, by the Local Authority, she said that historically despite her diagnosis of ADHD in December 2019, she was not on the right dosage of medication. This means that she is now better able to regulate herself.
123. She was candid about what went wrong when she and Joe were placed with her sister. She said that she did not really like her sister giving her advice, because she does not like other people putting words into her mouth, because she has her own mind and she knows that sometimes she does not make the right decision. Equally, she did not like living at the foster carer's because of her own childhood experiences, but also because she found it very difficult with the foster carer telling her what to do. Especially things that she thinks she already knows how to do.
124. She accepted that she left the placement with Joe and did not tell the social worker. She felt that at Dudley Lodge she did have more support. She accepted that there

were issues like Joe still getting bumps, letting him play with the iPhone plug and socket. Letting him play with a real knife and fork and sitting him on a cooker induction hob and letting him play with a screwdriver. She also accepted, in the community, that Joe sustained multiple bruises, some of which she could not explain. She accepted that an area of concern was her being distracted by being on her mobile phone.

125. She did not really seem to accept that she would need a lot of help to care for Joe on her own:

“No help with his diet or routine, just some bits.”

She said. L from [*Charity*] helps her, as does her friend A. In terms of therapy, she did not think that this would be hard, but then said:

“It probably will be hard.”

But she thinks that she would be able to deal with it. She agreed that she cannot look after Joe whilst this takes place, because some parts will be very upsetting and her mindset would not be on Joe during these periods.

126. If Joe cannot return to her care then she would like him to stay with FC:

“Because she will get more help caring for him, rather than him being placed for adoption.”

She was very grateful to FC for Joe’s care so far. I found the mother to be a likeable and loving person. She clearly wants what is best is for Joe and has a positive relationship with FC.

127. On her own parenting abilities, I found her to be somewhat naive and limited in self awareness. On one hand in caring for Joe she accepts that she has made many mistakes, but then seemed to suggest that this is just the way she parents and it is because Joe is such a helpful boy, so him having a knife and fork to make his own sandwich or a screwdriver or a charger is part of him helping her - rather than at the time recognising that this is an inappropriate expectation of a little boy who is 2½.
128. She at least has the awareness that she herself is vocal person and she is capable of saying if she disagrees with something. This creates a problem, because she would not always listen to her own sister or even to professionals. I recognise her desire to undertake therapy to effect change. I am not really sure whether she understands how hard or how long this therapy is going to take for her to address and manage her complex mental health profile.

The Children’s Guardian

129. The children’s Guardian also remained firm in her professional assessment that Joe cannot return to his mother or his parents’ care, because this would not be safe for him and would not result in all of his needs being met. The children’s Guardian’s overriding concern about FC, along with her daughter is:

“They are not offering Joe certainty for the rest of his life, which is what he needs.”

B273. The Guardian tells me in her final report that she:

“Is certain that he would prefer the permanence of an adoptive family. Unfortunately, this is not what FC is offering.”

130. Sadly, the Guardian does not, in making this comment, analyse the context of harm to Joe from being removed from FC’s care and the impact that this would have on him immediately, and she really provides no evidential foundation for reaching this conclusion. Her criticism of FC is that she does not want to make the decision for Joe about what arrangement he should live under now and she does not want to be responsible for taking him away from his family.

131. The Guardian says that:

“Whilst I understand this is her mindset, it shows that she just wants to protect herself, rather than thinking of what Joe needs.”

At B275 CG goes on to add that in her view, Joe would always know that this is only his family until he is 18, which can be unsettling and he may feel a constant loss, wishing he had a ‘proper family’ to live with like his friends:

“He would still want to belong.”

Says CG at E277.

132. The Guardian’s analysis came over as rather a simple one. FC is not ultimately the right option before the Court, because given Joe’s age and the fact that at a stage where he has no obvious additional needs, means that he should benefit from a plan of adoption or at least a Special Guardianship Order. Neither of which FC agrees to. During her evidence, she then introduced three areas of further concern, having heard FC give evidence that the FC;

- i) does not understand the internal stigma on Joe of being a looked after child and likened this to bullying, as if it will go away;
- ii) she minimised his bruises which he had when he went into her care, because she said they were fingertip bruising which she said was understandable because of Mother’s lack of supervision;
- iii) her relationship with the parents is too close. There seems to be no boundaries. She based this on how they have interacted with each other during the hearing. I will return to these points in my analysis below.

127. Her view of FC’s evidence was that it made her so concerned that the Local Authority/social worker should be thinking about whether Joe should even stay there, and he might have to be removed on an interim basis. At least the social worker would need to do some training with the foster carer about her concerns before there could be an approach to the matching panel, if the Court rejected the plan of adoption. She told me that her opinion as to FC’s evidence is because she says that she will not speak to Joe about permanency until he is in an emotionally stable

position and aged to do so. That therefore that means she may never speak to him about this.

128. I asked the Guardian whether FC had actually said this to her and she confirmed that this had not been said to her, but this is her conclusion. This conclusion was drawn in the absence of the children's Guardian talking to or speaking to FC since the August 2022 hearing. Even after the Local Authority filed its updated assessment and before she filed her final report, she did not speak to FC again to clarify what her case was. This, I found, to be very surprising, given the draconian nature of the Local Authority's plan for Joe and the fact that it was the children's Guardian herself that had raised the fact that FC had initially told her she would want to care for Joe longer term.
129. In short, having heard the children's Guardian, I am equally troubled that the children's Guardian has fallen into the same approach as the social worker, failing to step back and see on the ground, the reality of the benefits of long-term fostering for Joe and the potential detriments of an adoption for him. Only emphasizing those negatives, as a result of long term foster care, and then only highlighting the positives of adoption. I am careful in my assessment of CG, because she is an experienced children's Guardian who has worked in this court for many years.
130. However, I was struck by her not really appreciating that permanency is and can be achieved through long term foster care for children. I was worried about her insistence on using terminology like 'certain' and 'certainty'. Further, that she had not discussed in detail with FC what she was offering and what that would mean for Joe, if it was taken away.

Discussion, Findings, Analysis and Decision

131. I have had regard to both welfare checklists and Joe's welfare has been my paramount consideration. I have also taken account of his and his parents right to a private family life. I have considered the bundle in this case of four lever arch files and I have looked at the reports and 500 plus pages of research that is relied on by the parents as to the benefits of long term foster care versus the research about adoptive placements, risks of breakdowns and the further articles that I have been referred to.
132. Joe is four years old. He is too young really to verbalise his wishes and to understand what his care plan would mean at this stage. I accept that he has the right to be brought up in a safe, nurturing environment and if that were possible, that should be with his birth family. I also anticipate that Joe would want to grow up in a home where he is stable and secure. Where he can grow up with parents or carers whom he can refer to as mum and dad or grandma and auntie, safe in the knowledge that he is loved. That he is a full integral part of family life.
133. He is developing well and there are no current concerns about him showing actual signs of a neurodevelopmental disorder. However, professionals do and are mindful that he has parents with mental health difficulties, learning difficulties and a mother with the diagnosis of ADHD. It is not clear, at this stage, what his emerging needs may be in the medium to long term future. That being said, there is nothing significant in his characteristics which would lead me to find that he could not be

placed for adoption fairly swiftly, as there are lots of families that he could be matched to him and he matched to them, even if he did develop those needs.

Long Term Foster Care as an Option

134. This option generally always has positives of a child being able to have a relationship with their parents through contact and avoids severing birth ties. Generally, the Court is always reminded that there are inherent risks involved in such a plan for a child as young as this and I have taken judicial notice of them, which includes having a social worker for the rest of your minority. Having a corporate parent. The risks of placement breakdown or placements ending at short notice. Being subject to regular LAC reviews. PEP meetings. Social work visits and potentially not knowing that your carers have committed to look after you as your parents for the rest of your life.
135. I also accept, as I referred to earlier, argued by the Guardian, that for a child as young as Joe, there is a future risk of emotional harm in that he may experience, as a child growing up in care, the potential stigma of knowing that he is treated differently to his peers, because he is a looked after child. That might result in him internalising feelings of stigma or the fear of being bullied at school. Knowing that he is a foster child may cause him to feel embarrassed and internalise feelings that he is not good enough.
136. There is a risk of placement breakdown, which is statistically likely to be higher than if he were adopted. However, the actual evidence in this case from the social worker was at this time, there is no risk of placement breakdown for Joe with FC. She wants to care for him. She is committed to caring for him as his foster carer until at least he reaches his majority and possibly beyond. If she was offering to pursue an SGO or adoption, then her age or any other factors referred to by the social worker would not be relevant, like her perceived motivation of FC not wanting to let go or of her wanting to seek his further opinion on legal orders when he is older. I find myself asking, why are they relevant factors in her offering to care for him as his long term foster carer?
137. The level of intervention of the Local Authority could be kept to a minimum by the Local Authority delegating exercise of parental responsibility to the foster carer but, of course Joe would still need to have a social worker to visit him and be subject to some level of LAC reviews and have an IRO and at least an annual medical. Being in foster care, I accept, is different to being an adopted child.

Adoption

138. Adoption is an option. An Adoption order is a life changing draconian order and if one is made, it would have the significant impact on Joe throughout his life as his relationship with his parents would be severed, particularly where he is used to seeing them regularly and has a strong bond with both of them. Joe will likely need ongoing support to help him understand the decisions that have been made for him as he grows and becomes more aware of his family's circumstances. Prospective adopters would need to be aware of his circumstances and the history leading to his adoption and his sense of belonging will be essential to reduce these risks.
139. In my judgement adopted children can suffer from the same level of internal stigma or insecurity as foster children, but in a different way. Sometimes creating a fantasy

image of their birth parents, or conversely demonising them. Not knowing where they fit in. Feeling rejected, and feelings of insecurity. Identity issues may come into the fore in adolescent years and the feeling of being rejected. Potentially meeting their birth parents and then suffering another period of loss in them not being what the child thought they might be. Adopters generally are prepared to understand these feelings and are trained and are provided with guidance of how to support a child through those complex emotions.

140. Adoptive placements can break down and do break down and should this be the case, that would be emotionally damaging for Joe. Adoption is not a panacea and it cannot guarantee a successful placement for Joe, particularly given that he is four, so the window for him to be able to transfer his attachment to a new carer has also already been impacted.
141. The Family Court is often presented with the argument that a child has a positive attachment to their foster carer and this therefore bodes well for transfer attachment to a new carer. For Joe, given that he is four, he will have memories of his foster carer. I am satisfied that moving him from her will mean he will suffer a great deal of loss, compounded by a loss of losing seeing his parents.
142. I am not satisfied, on the evidence before me, that for Joe it is a straightforward finding that because he has an attachment with FC, that he will attach to a new carer in the deep and meaningful way that he has attached to FC. On the contrary, there is going to be a risk of breakdown, because he is an older child that is being asked to start again in terms of investing in his placement and having to consolidate the existing losses and trauma that he has already experienced. It seems fairly obvious to me that one of the factors in the welfare checklist is the likely effect of change on a child and the reason for that is that the longer a child is stable and feels safe in a placement, the more difficult it becomes to justify moving the child and causing a level of disruption that could be wholly detrimental to the stability that is actually trying to be achieved in the longer term.
143. If he is adopted, his relationship with his parents would cease throughout the entirety of his childhood and I accept this will be a loss to him because he knows who his parents are, and he will lose the identity that he has known for four years. Positively, of course adoption could provide Joe with the opportunity to make new attachments and wider supportive family ties in an adoptive placement that can offset the impact of adoption into his adulthood and offer him the chance of permanency now without the need to be subject to any further litigation in the event that FC, four to five years down the line, is in a position to apply for a more permanent type of order.

The mother as an option

Harm in Mother's Care

144. The mother agrees that the threshold is crossed and as I have already found, Joe has suffered significant harm in her care. In terms of her parenting capacity, it is very clear to me and I make the following findings, on the balance of probabilities, that there are a number of advantages to Joe being placed in his mum's care. i) she loves him and she has been wholly committed to him. ii) she has co-operated with assessments of herself and wants to be a better parent. iii) she engages with professionals and wants to be supported to care for him. iv) staying with his mum

would allow Joe to maintain his identity, continue seeing his dad and may be even his foster carer; v) the mother is open and friendly with professionals and recognises that she needs treatment to address her longstanding trauma, which is not her fault, which she has not been able to achieve, despite her efforts. vi) if therapy had continued from Dudley Lodge and she had a family support worker, she may have been further forward at this stage. vii) I am satisfied that she has tried her best for Joe; viii) she has committed to this hearing and engaged very well. ix) she can also see that what might benefit Joe is, if his placement does not lie with her, that he should stay where he is because he is settled and he is happy.

145. However, a placement of Joe with his mother continues to carry risk. There is a risk that he will be exposed to the same level of emotional and physical harm he was pre proceedings and as he was in August 2021 because of the following. i) the mother has a long way to go in addressing her complex mental health profile and the symptoms of her diagnosis which is multi layered. ii) she is yet to start any therapy and I am told that the NHS waiting list is three to five years. iii) even if she managed to access therapy privately or the Local Authority paid, Dr Pilgrim says that this will require nine to twelve months of CBT to bring about significant change.
146. iv) I also find that she tends to minimise, as found by Dr Pilgrim and Sarah Seekins, the difficulties that she had in her parenting, so whilst she might accept that she needs treatment for her mental health, she does not necessarily accept that her parenting needs to change. v) her mental health difficulties, compounded by her processing difficulties and poor memory, with her somewhat ambivalence regarding her need to change, means that the overall prognosis for change remains poor. vi) she has been unable to demonstrate an ability to retain learning and consistently apply such learning in respect of her parenting.
147. vii) on balance, I am not satisfied that even with a package of support, that she would always take advice and take support on board. She finds it difficult to do this, because she perceives this as a criticism and has a different opinion as to her own ability to parent. viii) I do find that even at this stage, 21 months down the line, in order to keep Jo safe she would need a round the clock package of support, which is unrealistic and for Joe he would remain at likely risk of further injuries, due to lack of supervision and the mother becoming distracted.
148. Over the last 21 months, therefore I remain concerned that the mother has not been able to demonstrate the kind of change that would evidence her abilities to care safely and adequately for Joe. I therefore question whether she is a realistic option before the court as Joe would continue to be at risk of physical and emotional harm in her care.

Impacted of being an adopted person

149. I have also considered the impact on Joe of being separated from his parents and becoming an adopted person. Separation from his parents through adoption will have a long term emotional impact on Joe, especially where they have been committed to contact. I do not minimise the implication of severing those birth family ties and I do not minimise the consideration of a plan of adoption, which I would have to make in the face of strong opposition by both of his parents. They argue there is an alternative plan, in a placement in long term foster care with FC and invite the Court to say that it is not in a position to say that nothing less than adoption will do.

150. I am acutely aware that not only do I have to be satisfied that nothing else will do, but I also have to be satisfied that the parents are unreasonably withholding their consent to Joe being placed for adoption. Equally, if Joe stays with FC, on the ground the situation for him is that he is already in his final placement with his new family and will experience no further loss. For Joe, I find, on balance, that the impact of being an adopted person, where there is an alternative plan that could meet his needs for the rest of his minority and possibly beyond, is a huge consideration. I have to be satisfied that the decision that I am making is one that he will understand when he is an adult. I have to be really clear as to my reasoning for rejecting a plan that could meet his needs and sanctioning his removal from a placement that is offering him permanency, just not the kind of legal permanence that the Local Authority and the Guardian prefer.
151. Having considered the options and all of the evidence, I make the following further findings; a) there is no current risk of Joe's placement breaking down with FC; b) as time passes he is no more at risk of suffering a breakdown with her than with any other carer in long term foster care; c) she loves him; d) she understands his needs; e) there are layers of honesty to her proposal. She has shown insight and sensitivity into the issues that might emerge as he develops, given his parents' difficulties; f) she wants to see him develop, learn and grow into a successful young man and is concerned that he might need to be supported due to his experiences of neglect; g) she is invested in him and already considers him to be part of her family; h) he is strongly and positively attached to her and F, who is and will be her back up carer; i) he is thriving in her care; j) if he is moved from her, he will inevitably suffer a huge amount of distress and upset and is likely to feel that she rejected him; k) in meeting his future needs, she has the added advantage of knowing and understanding his parents' needs, having met them and known them now for over 16 months.
152. l) Equally in terms of the potential future stigma that Joe may experience growing up as a child in care, it seems to me that the key to avoiding this developing as a negative is the importance of the 'golden strand of relationships' between Joe and his foster carer and her family, and him knowing that they wanted to keep him in their family because they love and support him. They both describe him and tell him that he is 'extra loved' and this bodes well for him continuing to have self-esteem and confidence; m) both of his parents strongly support and agree with this placement continuing; n) neither has done anything to undermine this placement; o) if Joe stays here, he will suffer no more losses; p) if FC speaks to him at the age of eight or nine about permanent orders to secure his placement by an SGO or adoption, this would be done in a context of him maintaining a relationship with his parents who he will continue to recognise as his mum and dad, so any change to his legal status would change little on the ground for him; q) if he stays in this placement, he will not have to experience the distress of being moved for the purposes of being prepared to be placed for adoption; and r) he can maintain his legal name and his current identity, which is already formed, as he recognises his parents and sees himself as Joe [surname].
153. If I make a Care Order only, I accept that there is no firm or final position that he can stay in this placement. He would still need to be matched by the Local Authority's panel and this is something that will take months to do. In the meantime all he will be told is that the Judge says that you can stay in foster care, but staying with FC will not have been finally decided, because it is in the gift of the Local Authority's

matching panel. If Miss Bacon, for the Local Authority, is right, then the social worker will still want to do some more work with the foster carer about boundaries with the parents and concerns about whether or not FC minimised Joe's injuries. There is a question mark as to whether FC will be approved by this Local Authority as a long term foster carer for Leicestershire.

154. At aged four, Joe still would not be given legal security of knowing that being in foster care with FC will be his forever home. He might not be told that for another four years, which means potential uncertainty. If and when he is asked the question about whether he would like FC to be his special guardian or for her to adopt him, he might start to feel confused and question why it has taken so long. Or what those conversations mean for him and he might not be able to tell his carer what he really thinks because of the concern about upsetting her or her saying that she does not want to look after him anymore.

My Decision

155. I have considered the pros and cons of each realistic option before the Court, having regard to Joe's welfare and that being my paramount consideration. He is a lucky boy because both his parents love him very much and he is loved by his foster carer and her family. However, in respect of his mother, I am satisfied that there remains significant risk to Joe's welfare if he were returned to her care, because of her complex mental health diagnosis and because it remains untreated and unaddressed, despite her best efforts.
156. She struggles to show that she can safely and adequately care for Joe. Not because she would hurt him intentionally, on the contrary, I accept that she loves him a great deal and the fact is he enjoys seeing her in contact. However, the deficits in her parenting, in my view, cannot be bridged with any additional supports at this time, as Joe would need virtually round the clock monitoring and support from the Local Authority and this is a level of intervention that is unrealistic and not practically possible or even available. In my judgment, in any event, would not be in Joe's best interests or the mother's interests because the risks are that she would become resentful and feel wholly undermined by a number of professionals in the community constantly telling her what to do.
157. In the circumstances, I find that the evidence supports a finding that each of Joe's parents would need a significant amount of support and professional oversight, if he was placed with either of them. Furthermore, the mother is at the very beginning of her therapeutic journey and although I could sanction some delay, if there was an obvious merit in the proceedings continuing and some real prospect that a different decision would be reached if a further assessment was undertaken and therapy was on the horizon. However, in my judgment, there can be no such optimism because the long-standing significant concerns the mother needs to overcome cannot be overcome in a short adjournment period. She needs at least a further nine to twelve months just to focus on herself and this would mean open ended delay for Joe, because even after therapy there would need to be a further assessment of her parenting capacity.
158. I am therefore satisfied that there are no gaps in the evidence regarding the mother's capacity to parent Joe, and sadly I have concluded that the mother does not have the

ability to provide the emotional or physical care to a good enough standard and cannot gain the possibility of achieving that within a timescale that is suitable for Joe's needs. I cannot find that the mother is a realistic option before the Court and I accept the unanimous analysis of three social workers in this case, in that regard. Supported by the evidence that the mother gave herself, which persuades me that she has a long way to go.

159. For the same reasons, at this time, her contact needs to continue to be supervised in order to support her implementing boundaries and ensuring Joe's safety. He is at an age where in contact he wants to run around and he wants to be active. It seems to me that the supervision of contact at this stage remains essential to ensure his safety.

Long Term Fostering Versus Adoption

160. In terms of the other realistic options then. I have asked myself, as a first instance judge, whether it is my role to consider huge swathes of research about the pros and cons of long term fostering versus adoption. I am of the opinion that it is part of my role in order not to make generalisations about the difference between the two options without great and careful consideration as to the impact of those two options for Joe. Therefore, I have referred, as above, to the notable points of the research that I have felt influenced my decision making and it has reminded me about the importance of really scrutinising the evidence and making specific findings as to what the pros and cons are of each option for this child, when considering his welfare for the rest of his life.
161. That being said, the bottom line is this, in order to make a Placement Order and give the Local Authority permission to place Joe for adoption, I have to be satisfied that nothing else will do for him. Adoption has to be the option of last resort and I have to assess whether it is the least interventionist option that might secure a plan of permanency for Joe in the face of his parents saying that they would support him staying in long term foster care with FC. Their acceptance as to the frequency of contact, if he remains in her care and their firm opposition to him being placed for adoption.
162. In respect of these two options, I make the following further findings. i) I reject the social worker's assertion that long term fostering will deny Joe a sense of security from a young age and will not allow him to grow up feeling secure in a family placement. There is no evidential basis for this assertion for Joe and therefore her analysis is flawed. It is a general assertion. ii) I am satisfied that what FC is proposing is to do the exact opposite and that Joe is already considered a part of her family, in the same way that he feels part of this family.
163. iii) I reject the social worker's assertion that growing up as a looked after child will place a burden on him that may effect his attachments and sense of security. Again this is not a conclusion that I can find based in any evidence before me. iv) on the contrary, I am satisfied that Joe has already developed a secure attachment to his foster carer. There is no reason to conclude that this would become any less secure because of the type of legal order regulating his placement. I accept and find that stable foster placements can replicate what is seen in adoptive placements, with a sense of stability and security. Long-term fostering, when it is a stable placement, is permanence.

164. v) I reject the assertion that the fact that FC will not commit to a placement that is legally permanent is of concern. What she is offering is permanency. She is just not committing to the preferred plan of the Local Authority, but neither is she ruling it out in the future. vi) I also do not accept the social worker's confusion that long term fostering does not guarantee a placement in a particular home. For Joe, I am satisfied that what is being offered is permanency and that Joe will be able to enjoy a strong and stable placement with FC and F, because that is what they are both offering for the rest of his life. They said for example that they would want to be at his wedding.
165. vii) I also find that the level of intrusion that is pleaded as a reason for long term fostering, not being the preferred option, is something that can be reduced in due course and the impact significantly minimised on Joe's day to day life by the delegation of the exercise of day to day decision making to the foster carer which is entirely in line with Leicestershire County Council's own policy, with the foster carer having a significant say in the majority of decisions relating to Joe's life, but save for a possible consent that would be required for a general anesthetic.
166. I have to say in making those findings, it has been quite hard and at times unattractive, to listen to a Local Authority pleading the negatives of long-term fostering as a plan for permanency, when there are so many children around Joe's age, or aged five, six and seven, sometimes older, for whom this plan is agreed, by this Local Authority.
167. In so far as the children's Guardian is concerned, again i) I reject the Guardian's suggestion that by staying with FC Joe will lose the chance of a forever family. There is no reason to think that having raised him until he is 18, that FC or her daughter would suddenly not consider Joe as part of their family anymore or vice a versa. ii) furthermore, the children's Guardian's analysis is entirely flawed in the assertion that FC is being 'indecisive' because she does not want to make any tough decisions which is what being a parent is about.
168. This conclusion is wholly unjustified and is not based in any evidence. On the contrary, FC has bought up her own two children, with no local authority involvement. As I have already found, there were layers of honesty in her thinking and she is doing what she believes is the best planning for Joe's future. She has not asked Joe whether she should fight for him during these proceedings. She has fought so because of her love for him and her conviction that his placement with her will meet his needs.
169. iii) Equally, whilst I accept that because FC is 62, she is statistically more likely to be at an age where health difficulties may arise. The evidence before the Court, however, is that there are no concerns about her medical health. She is fit and active and the fact is, as I said earlier, if she was applying for an SGO now, this would not be an issue at all. iv) I reject the children's Guardian's conclusion that FC and F are not offering Joe permanency. Her repeat use of the word 'certainty' is wrong legally and is wrong in reality. No one can offer this nor can it be promised and neither is this what is expected from adopters.
170. v) I find that the children's Guardian has made the same mistakes as the social worker has and has misunderstood that long term fostering does offer permanence and she has failed to acknowledge and weigh in the balance the benefits to Joe of long term fostering in this placement. Her analysis, I am afraid, was not careful and

considered. She did not even go back to speak to FC after the hearing in August and she certainly did not speak to them again before filing her final report, nor before we started this Final Hearing.

171. I simply fail to understand why she would not do this, if she was willing to conduct a fair and reasoned balancing exercise. I accept the submission of Mr Williams. There is paucity in her analysis of the pros and cons of long-term fostering versus adoption in her final report. vi) in particular, I find that there was a lack of analysis in respect of the impact of moving Joe from FC and the emotional harm that that would bring, and further a lack of analysis as to whether the parents are unreasonably withholding their consent, given that there is another realistic option which, but for the nature of the order being sought, she would have supported as an alternative plan.
172. In so far as the three new areas of concern that the children's Guardian relied on, to suggest that Joe may have to be removed from the care of FC on an interim basis - I entirely disagree with her analysis of FC's evidence because of the following: a) the reference/comment to FC being too close to the parents was withdrawn and in any event the Local Authority supervising contact under a Care Order would maintain a boundary. b) I reject her assertion that FC does not understand the stigma of being in care and I will return to this point below, but she drew an analogy with bullying. I found FC's evidence to be considered and realistic in that children suffer many types of stigmas in a school environment, and it is about how such stigma is managed and how Joe can be supported. I am satisfied that FC understands that there is a risk of this externally and internally for Joe.
173. c) I reject the assertion that FC minimised matters when talking about Joe's injuries. The Local Authority accepted that these were not inflicted. They were as a result of lack of supervision. If anything, when FC was talking about fingertip bruising and grabbing, it made me concerned about the nature of the bruising that she saw on Joe and that whilst she was trying to be understanding of the mother's difficulties, she was worried that this might have been something more than just him bumping into things as a result of being unsupervised. I am satisfied that FC fully understands her safeguarding duties to protect Joe, and I have no doubt that if he ever suffered any injuries during his contact with his parents, she would report this immediately. She does not need any training about this issue.
174. In my judgment, and considering the totality of the evidence, sadly both professionals, social worker and children's Guardian, have failed to demonstrate a proper understanding of what permanence might look like for Joe on each option. It appears to me that they closed their minds to the permanence that long term fostering can offer Joe and its consequential benefits. They each failed to remind themselves that the Court has to be satisfied that nothing else will do, resulting in each of their evaluations being flawed.

Stigma

175. Much was said by the Local Authority and the Guardian's team about this. I have accepted that there is a risk of this for Joe, but I do not see that there is necessarily, for him, any less stigma between him being identified in the playground as a looked after child, or as a child who is subject to an SGO or as an adopted child. Because if he is asked the question of why he lives with his 'grandma', who is not his real grandma, then the answer will still involve a conversation about the fact that he has

spent time in care, or of how he became an adopted child. I am very conscious that for Joe he has known nothing else at this point, other than being in foster care with a carer who he calls grandma and an Auntie F, who are loving, nurturing and caring and really gentle and attuned to him.

176. On the evidence I have heard from both of them, there is no reason for me to think that he will feel the 'stigma' of being a looked after child. On the contrary, they have already been telling him that he is extra loved, because he lives with them, but he gets to see his parents. I also do not accept that he might be more identifiable, because he has a carer who he calls grandma in the playground. In the current world of mixed and blended families, there are so many issues that might cause a child to feel stigmatised and lots of children live with families of many different makeups and have different surnames to their carers, or even their parents, especially step-parents.
177. What struck me about FC and F is that I am satisfied that they both have high levels of emotional availability and emotional maturity to help Joe through this potential feeling and enable him to feel secure and loved and to have self-esteem. Again, an analysis that the social worker and children's Guardian wanted to use as a negative, without really assessing the reality on the ground for Joe.
178. Having conducted my analysis of the pros and cons and considering Joe's welfare as my paramount consideration. Having applied the enhanced welfare checklist factors, I am more than persuaded that there is an alternative plan for permanency that can meet Joe's needs for at least the rest of his minority and in my judgement, likely beyond.
179. I am not satisfied that nothing less than adoption will do because of the further following a) FC has constantly said that she wishes to care for Joe until he is 18. She is willing to commit to the central plank of long term fostering and is willing to make that a serious long term commitment with Leicestershire County Council. She is offering him a permanent placement and there is no reason for me to find that there is a risk of placement breakdown in her care, given that I accept what she says about her commitment to Joe.
180. b) The commitment is demonstrated through everything she has done in the lead up to this hearing, and I am more than satisfied that this is how she has shown and will continue to show her commitment. c) She has shown love and attachment to him, which is reciprocated by him. He is already an inclusive part of her family network, with a sense that her home is his home. She describes him as a 'member of our family'. He has a relationship with the wider family members and the family pets. She has support in caring for him.
181. He knows that his parents love him and in terms of his placement with her, he will know that she is his carer and that she loves him, and I am satisfied that the risks of him feeling rejected in the future in a plan of adoption are greater than the risk of stigma of being a looked after child because of the quality of the attachment he has to FC and how she cares for him. d) her motivations to care for him are entirely genuine. I accept her evidence that he fits into her family. She is seeking to care for Joe because she wants what is best for him, rather than seeing her role as a foster carer as an ongoing career for her.

182. e) I also accept her wishes for wanting to retain a Care Order. They are because of her wish to have support from her supervising social worker. Support that she can get Joe, were he to need it, and for him to be involved in the decision making as he gets older. These are objectively reasonable justifications for the position that she has taken. They are not focused on any form of financial motivation and I cannot see how these aspects can be a negative, which is how both the social worker and the Guardian see them.
183. I cannot and I will not criticise her for following through on her genuine belief that Joe would be getting the best of both worlds. A forever family with her, with ongoing support from the Local Authority, which she does not envisage as being intrusive to him, but at this stage aiding her to assist him, should he develop needs that are over and above any other child of his age, given his parents' difficulties. I cannot help but wonder that if she really was his grandma, this Local Authority would not have fought so vociferously against her proposal.
184. e) Save for not agreeing to either adopt or seek an SGO, there is no justified criticism at all of the care that she has provided for Joe. Indeed, the backup proposal from the Local Authority is that Joe would remain with FC. Her care is clearly of a high standard and in any event she does not even rule out the other permanency options in the future. In my judgment, it is highly likely that any matching panel will approve her in the circumstances.
185. f) Her daughter has said that she will progress to seek approval to be a foster carer. In any event, she is the backup. This provides a stable and alternative option should something unforeseen occur and in any event this could also be done on a private law basis. It does not have to be as a foster carer. g) There have never been any attempts to destabilise the placement by either parent. Both have behaved entirely appropriately throughout the proceedings and despite their apparent proximity to the placement. The fact is that they have cried together at the back of court. In my view, that is entirely natural, given their collective love of Joe and collective opposition to the Local Authority and Guardian's case for adoption.
186. h) It is clear to me that FC is a clear advocate for Joe and is a carer who will fight for everything he needs to make his life a success and to be there for him long after her obligations as a foster carer have come to an end. i) By staying with FC, Joe can see his parents, maintain his identity and suffer no more loss and trauma. He has the opportunity to have a relationship and knowledge of his siblings. j) If and when FC is ready to speak to Joe about his legal status, I have little doubt that this will be done in a sensitive, supportive and positive way.
187. k) Finally, I am satisfied that she will do everything she can to minimise the impact of him being a looked after child on his day-to-day life and when in a position to do so, will seek an agreement to reducing the number of reviews and statutory visits. The level of intervention from the Local Authority that Joe will be exposed to, as a looked after child, does not tip the balance in favour of placing him for adoption. Long term fostering, in the circumstances, will do for Joe and will meet his needs more than adequately. The Local Authority wants permission to look for an adoptive placement and find a family that can provide Joe with a stable life and a family life. In my judgment, he already has that with FC.

188. I therefore refuse to make the Placement Order and I reject the Local Authority's care plan of adoption. I invite the Local Authority to change its final Care Plan to the alternative plan as drafted and I make final orders. i) I find that threshold for the making of a Public Law Order is crossed. ii) bearing in mind all of the welfare factors and recognising the interference with the right to family life of the mother, of the father and Joe under article 8, it is both necessary and proportionate for me to make Joe the subject of a Care Order in favour of Leicestershire County Council.
189. iii) I approve the Local Authority's contact plans. I am satisfied that each of the parents contact should remain supervised and finally, I will be directing a transcript of this judgment and when the Local Authority has it, it will be served on the independent reviewing officer and it will be made available to the matching panel in due course. I thank all the advocates for the way that they have prepared this case. That is my judgment.

Postscript

190. There was a delay in reporting this judgment which has allowed time for the child to settle and for any application to be made arising out of the judgment. The live issue in the case of long term foster care as an option for permanence is arising more frequently in the Family Court and for the sake of transparency it is important that this judgment is published.

This Transcript has been approved by the Judge.

The Transcription Agency hereby certifies that the above is an accurate and complete recording of the proceedings or part thereof.

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