

MISS RECORDER HENLEY

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Before:

MISS RECORDER HENLEY

IN THE FAMILY COURT

Case No. NE18C00114

SITTING AT NEWCASTLE UPON TYNE

In the matter of the Children Act 1989

In the matter of

T (born September 2017)

BETWEEN:

LA

Applicant

-and-

(1) M

(2) F

(3) T

(A Minor, acting through his Children’s Guardian, Jacqui Knott)

JUDGMENT

Representation

Applicant – Miss Woolrich (Counsel)

Respondent Mother – Mr Banks (Solicitor)

Respondent Father – Miss Choudhury (Counsel)

Respondent Child – Miss Gibson (Counsel)

Another LA – Mr Allerton (Counsel)

Introduction

1. This is an application for Care and Placement Orders brought by LA.
2. The Court is concerned with T (born September 2017) now aged 20 months old. T resides in local authority foster care on a voluntary basis pursuant to s.20 Children Act 1989.
3. The Mother is M, (born July 1980) aged 38 years old. The Mother originates from the West Yorkshire area and is of mixed heritage. Her Mother was White British and her Father Iranian.
4. The Father is F (born June 1983) aged 35 years old. Paternity was confirmed by DNA testing on 1st May 2018. The Father is a Pakistani National who lives in West Yorkshire. He has been residing in the UK for the last 10 years on a work visa, which is due to expire in May 2019.
5. The child is represented by his Children’s Guardian, Jacqui Knott. Ms Knott is T’s second Guardian in these proceedings, his original Guardian was Rebecca McIntyre.
6. These proceedings were issued on 15th February 2018, the 26 week timetable for this case expired on 15th August 2018. The proceedings have been delayed at

least in part as a consequence of the local authority's non-compliance with Court directions and poor care planning procedures. They have also been delayed as a consequence of the Mother's dishonesty in respect of her drug use.

7. This matter first came before me on 2nd April 2019 on the Mother's application for repeat hair strand testing by a second laboratory and to instruct Dr Rushton (a Trichologist) pursuant to Rule 25 Family Procedure Rules 2010. Having listened to submissions, I granted permission for repeat hair strand testing to be carried out in respect of the Mother by Alphabiolabs on the basis that she disputed the results of the hair strand testing that had been carried out by Lextox and that a second hair strand test in August 2018 had been negative for methadone notwithstanding the Mother putting forward a case that she is on a methadone programme and that she takes a supervised prescription of methadone on a regular basis. Such apparent anomalies in the tests persuaded me that it was necessary for those tests to be repeated by a different laboratory given that the central issue was the Mother's drug use and that the care plan was one of adoption. I did not permit expert evidence to be adduced from Dr Rushton in light of the observations about his evidence by the then Mr Justice Peter Jackson in the matter of **Re H (A Child - Hair Strand Testing) [2017] EWFC 64** which supported my concerns about the evidence that he may be able to give having considered his CV. I was not satisfied that his evidence was required for me to make a decision in this matter and I gave a full ruling dismissing the application on the basis that I was satisfied that in order to determine the disputed facts relating to alleged drug use I would need to balance all of the evidence in the case, drawing from 'the broad canvass' of available evidence which would include hair strand tests carried out by two laboratories, professional observation of the Mother over the relevant time period, the lay evidence of the parents, the urine testing of the Mother and a video of the Mother that she placed on social media which the local authority invites me to accept demonstrates that the Mother was under the influence of an illicit substance at the time it was made. I made clear that it was open to the Mother to

- challenge the hair strand test results by cross-examining the toxicologists from the laboratories who undertook the testing.
8. The matter had already been time tabled through to a final hearing, listed before me by HHJ S Wood. I did not interfere with that time table which provided for the LA to file its final evidence and care plan by 5th April 2019, the parents to file final evidence by 12th April 2019 and the Guardian to file her final report by 25th April 2019 in respect of both applications. I was contacted by the Father's solicitor on 16th April 2019 to inform me that the local authority's final evidence had been filed late – after business hours on 12th April 2019 – and therefore the parents could not respond on time.
 9. On 26th April 2019 I heard an IRH in this matter. The repeat hair strand tests arrived during the course of the hearing and I stood the matter down to allow the parties to be informed of the outcome of the tests. The parties had paid an additional fee to expedite the results because the Mother had not submitted a hair sample on the day that she had originally been scheduled to which had held up the production of the report. In light of the delayed test results, the Guardian requested further time to file her report, which I granted.
 10. Following receipt of the repeated hair strand tests the Father indicated on 26th April 2019 that he had separated from the Mother and now advanced a case to care for T as a primary carer.
 11. On 1st May 2019, the Mother changed solicitors. Although her legal aid certificate was transferred to allow her new solicitors to act for her, this was only achieved three working days before the final hearing was due to commence but no work could be undertaken due to a difficulty with the costs limit on the certificate. I was informed of this situation that evening and informed that consequentially an Advocates Meeting had not taken place, the Mother had not confirmed her position or witness requirements and had not filed final evidence. I contacted the

Legal Aid Agency myself two working days before the final hearing was due to commence and am enormously grateful to the Senior Case Worker that I dealt with who was able to resolve the difficulty that day. I am also enormously grateful to Mr Banks who met with the Mother over the weekend to take instructions from her. It is testament to his hard work, out of hours, that this hearing has been able to proceed.

12. In the circumstances, the matter came before me on Monday 13th May 2019 for an adjourned IRH. The Guardian's report is dated 10th May 2019. Within that report she indicated her opposition to the local authority's care plan on the basis that the child should be placed with the Father. The local authority's position in light of the Guardian's recommendation was not known and the local authority indicated that it would need to consider whether it maintained its care plan for T. I was informed that the Mother supported a placement with the Father but continued to dispute both sets of hair strand tests (Lextox and Alphabiolabs), and continued to advance herself as a carer if I was not persuaded to place the child in the Father's care. Prior to coming into the Court the parties had accepted Mr Banks' suggestion that the expert Toxicologists from the two laboratories that had carried out hair strand testing were not required to give evidence and those witnesses had been cancelled. I determined that I would need to hear evidence from those witnesses because the local authority invites the Court to make findings about the Mother's drug use and dishonesty about the same, which she disputes. I directed that the full case papers should be disclosed to another LA and that a legal representative and social worker be directed to attend Court on the afternoon on Wednesday 15th May 2019 so that I could, if necessary, hear evidence about the support that may be available to the Father in that area and to enable me to consider whether another LA should be joined as a party and be permitted to make representations about whether I could or should make public law orders in its favour, if I were persuaded that the child should be placed with the Father. I directed that the local authority needed to hold a series of care planning meetings on Tuesday 14th May 2019 whilst the matter proceeded with expert evidence

being taken in respect of the Mother's alleged drug use and directed that a manager from the local authority attend Court on Wednesday 15th May 2019 to inform the Court of the outcome of those meetings. I made clear my expectation that the Agency Decision Maker would need to be consulted, together with the Independent Reviewing Officer.

13. On the morning of Tuesday 14th May 2019, with expert Toxicologists from both laboratories waiting to give evidence about the Mother's hair strand tests, the Mother changed her instructions and admitted through her solicitor that she had in fact used cocaine on a fortnightly basis since around August 2018 on a recreational basis at a low level. I determined that this changed position would need to be put to the experts for them to comment upon whether these admissions were consistent with the hair strand test results and that the Mother would need to reduce her admissions to writing in the form of a signed narrative statement. I was also informed that the local authority was inviting the Court to determine the case and did not agree to the child being placed with the Father. I was informed that the IRO and ADM had been informed of developments and I directed that they each file a brief statement by noon on Wednesday to confirm their positions in respect of the child's care plan.

14. On Wednesday 15th May I heard from Ms Martin who had assessed the parents as a couple and Mr Smith, T's allocated social worker and author of the assessment of the Father as a sole carer. Mr Smith conceded during the course of his evidence that he could no longer advance adoption as the only realistic option for the child and that with support, educative work and measures in place to manage risk, T could potentially be cared for by the Father. He suggested that a further five-week assessment could take place, either written by himself, or a social worker from another LA or both, to address outstanding issues. At midday statements were received from the IRO and ADM who each indicated that they could no longer support an adoption plan for T and therefore the local authority indicated that it was no longer pursuing Care and Placement Orders during this

hearing and that it conceded that further assessment work of the Father was required, in collaboration with another LA. Having heard submissions from the parties and on behalf of another LA, I joined another LA as a party to enable it to have direct input into future case management decisions, assessments and the outcome of the case. I was informed by the Mother's solicitor that the Mother accepted that she was not in a position to care for T, that she would not be able to have anything other than supervised contact with him and that she fully supported the Father caring for him. I directed that she file a further statement to confirm her position in writing before I would hear oral evidence from her.

15. As a consequence of the developments during the hearing I am satisfied that it is necessary and proportionate to adjourn the welfare determination in this matter pending further assessment of the Father as a sole carer. I am however satisfied that it is necessary for me to make factual determinations in respect of the Mother's drug use and dishonesty at this stage as these issues are relevant risks that will need to be managed if T is to be safely cared for by the Father. I therefore produce this written judgment so that it can be immediately available to social workers in West Yorkshire and in Sunderland to enable them to use my factual determinations for the purposes of assessments and care planning.

16. I am satisfied that some further delay is required in this case to give the Father the best prospect of being able to care for T and for the Court to have all of the available evidence to make a long term decision with input from another LA. However, given the length of time that these proceedings have already taken I am satisfied that it is essential that I determine as many issues as I can, using the available Court time that I have at this stage in order to narrow the issues and reduce the amount of Court time that will be required when the case resumes.

Background

17. The Mother has a significant history of drug misuse, including heroin and cocaine addiction, benzodiazepine and alcohol dependence, mental health difficulties including suicidal ideation and her previous relationships have been characterised by domestic abuse and substance misuse. The Mother was a looked after child in the West Yorkshire area as a consequence of suffering physical abuse. She was sexually abused for a number of years by a family friend during her childhood. She has four older children who have been permanently removed from her care: Z (born June 2004) and triplets K, D and L (born June 2005).

18. There has been longstanding local authority involvement with another LA in respect of the Mother's older four children. This involvement commenced when the Mother was pregnant with her first child, Z in 2004. Both the Mother and Z's Father were drug users and his father was in prison during the pregnancy. Z was born with signs of withdrawal from heroin addiction as a consequence of exposure in utero. He was discharged from hospital into the care of the Mother and the local authority closed its case as the risks posed to him by the parents were assessed to be low.

19. [redacted]

20. [redacted]

21. [redacted]

22. In July 2010 Z returned to the care of the Mother. By December 2010 he was made the subject of a Child Protection Plan as a consequence of his father assaulting the Mother. This assault led to the Mother being hospitalised and his father receiving a custodial sentence. In February 2012 Z was removed from the care of the Mother and placed in foster care under the auspices of an Interim Care Order. He then moved to the care of his paternal uncle and has had several subsequent changes of placement. At the present time he lives with his maternal

- uncle, R in the West Yorkshire area. He has regular unsupervised contact with the Mother.
23. On 13th May 2015 the Mother was discovered to have in her possession a quantity of Class A drugs whilst visiting Z's father in prison. She was convicted of offences related to this incident on the basis that she had taken them into the prison with the intention of supplying them to Z's father. She was sentenced to 8 months imprisonment in November 2015.
24. On 19th January 2017 the Mother informed her substance misuse key worker that she was pregnant with T and that he was F's child. She had been released from prison in July 2016 and was on a methadone programme but reported daily use of heroin, crack cocaine and diazepam.
25. The parents presented as a couple and worked well with Another LA, health services, substance misuse services and Probation. The Father completed a six-week parenting course with positive feedback. The Father was considered to be a protective factor. Another LA concluded its pre birth assessment work with recommendations that the parents could co parent together, residing in the same property. T was made the subject of a Child Protection Plan by Another LA as an unborn child on 28th August 2017 under the category of Neglect.
26. On 6th September 2017 T was born at St James's Hospital, West Yorkshire and discharged from hospital into the care of the parents. In October 2017 the Mother was hospitalised as a result of a groin infection. It was suspected that this had been caused by intravenous drug use. The Father cared for T at MGM's home in Sunderland for one week. Another LA supported the parents to obtain a tenancy in Sunderland for the Mother to live in with T. It was agreed that the Father would visit from West Yorkshire several times per week and reside there at weekends. The Mother was submitting clean urine samples and was on the methadone programme.

27. On 13th December 2017 T's Child Protection Plan was transferred to LA on the basis that the Mother was residing with T at her Mother's home (MGM) in Sunderland.
28. On 20th December 2017 the Mother produced an irregular sample, which tested positive for cocaine and heroin. It was reported that this sample had been "spiked" with methadone. A safety plan was implemented whereby M and T would reside at the home of MGM and her partner who would supervise M's care of T and ensure that she was not using illicit substances.
29. On 9th January 2018 the Mother presented T to the GP with a subconjunctival haemorrhage. Further medical investigations revealed a suspected skull fracture. Following a strategy meeting held on 11th January 2018 T was accommodated in LA foster care on a voluntary basis where he remains to date.
30. These proceedings were issued on 15th February 2018.
31. On 12th March 2018 the Mother admitted that she had used heroin twice and cocaine once following T's removal from her care.
32. On 1st May 2018 Lextox reported the results of the Mother's first set of hair strand tests.
33. On 23rd July 2018 the case was re-timetabled as the LA had reached a decision to place T for adoption without having served parenting assessments or other evidence on which a decision could be based. The court granted an extension of seven weeks to enable the LA to instruct Ms. Vicki Martin, a social worker not otherwise associated with this case, to carry out a parenting assessment. The LA acknowledged that its failure to provide a parenting assessment and other evidence in advance of a decision making meeting on 3rd July 2018 would

- inevitably lead to a loss of confidence in the fairness of its procedures. The adoption plan had been ratified by T's IRO.
34. On 14th August 2018 the second set of Lextox hair strand tests were received in respect of the Mother.
35. Repeat CT scans failed to confirm the presence of a skull fracture. The Mother put forward an accidental explanation for T's subconjunctival haemorrhage, which could not be excluded by Mr Newman, Consultant Paediatric Ophthalmologist, who was instructed as a single joint expert. On the basis of his opinion the LA confirmed on 31st August 2018 that it was not pursuing findings of non-accidental injury against either of the parents in connection with this injury.
36. The LA's case proceeded on the basis of the Mother's drug use and the risks associated with it.
37. On 17th January 2019 the third Lextox report was received, it confirmed the presence of cocaine in all five samples, methadone in all five samples, heroin in two samples from the period end of September 2018 to end of November 2018 together with cannabis in two samples from end of July 2018 to end the end of September 2018 although use of cannabis could be confirmed – it could be due to exposure to an environment in which cannabis was being used.
38. In answer to questions posed on behalf of the Mother, on 22nd January 2019 Lextox confirmed that mascara would not account for the finding of dye in hair in the samples given by the Mother on 26th April 2018
39. On 2nd April 2019 I permitted the Mother's application for repeat hair strand tests to be carried out by Alphabiolabs.

40. On 26th April 2019 the results of those hair strand tests were received – they were positive for cocaine in all but one of the samples over a nine-month period. The Father indicated on the day that these results were received that he no longer wished to be in a relationship with the Mother and that he sought to parent T alone.

Threshold Criteria

41. Both parents accept that the threshold criteria for the making of public law orders pursuant to s.31 Children Act 1989 are crossed by virtue of the following concessions:

1) In 2007 M had 4 children removed from her care as a result of:

(a) Drug/alcohol misuse

(b) Failure to prioritise the children's needs above her own.

(c) Her use of drugs and or alcohol

(d) Association with inappropriate adults including drug dealers.

2) In 2010 M misused drugs and alcohol whilst Z was in her care.

3) M used heroin and cocaine whilst pregnant with T. Her case is that on realising she was pregnant, she reduced her heroin use, notified authorities and began a methadone programme.

4) 20.12.2017 M tested positive for heroin and cocaine whilst T was in her care placing him at risk of harm.

42. On the basis of these admissions I am satisfied that the threshold criteria for the making of final public law orders pursuant to s.31 Children Act 1989 is crossed

on the basis that T is at risk of suffering significant harm in the form of neglect, physical harm and emotional harm as a consequence of the Mother's significant history of cocaine and opiate dependency.

Welfare Findings Sought

43. The local authority seeks welfare findings against the Mother in respect of her drug use and dishonesty, which are not accepted. I have used this hearing to resolve these disputed facts.

44. The local authority indicated at the outset of this hearing that it sought the following welfare findings against the Father:

- (1) That the Father does not understand and accept the risks that the Mother poses to T.
- (2) That there is a risk that the parents will reconcile.
- (3) That the Father will be unable and or unwilling to protect T from the risks posed by the Mother.

I am satisfied that these findings are issues that need to be the subject of further assessment work and that the Father should be given educative work to assist him to understand the risks that the Mother poses to T both from a suitable drug agency and support group for partners or family members of those who are drug dependent.

The Law in respect of Factual Determinations

45. The law to be applied when considering the issues before the court is well settled. When considering the findings sought by the local authority the court applies the following well established principles:

46. The burden of proving the facts pleaded rests with the local authority.

47. The standard to which the local authority must satisfy the court is the simple balance of probabilities. The inherent probability or improbability of an event remains a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred: **Re B [2008] UKHL 35 at [15]**. Within this context, there is no room for a finding by the court that something *might* have happened. The court may decide that it did or that it did not: **Re B [2008] UKHL 35 at [2]**.
48. Findings of fact must be based on evidence not on speculation. The decision on whether the facts in issue have been proved to the requisite standard must be based on *all* of the available evidence and should have regard to the wide context of social, emotional, ethical and moral factors; **A County Council v A Mother, A Father and X, Y and Z [2005] EWHC 31 (Fam)**.
49. In determining whether the local authority has discharged the burden upon it the court looks at what has been described as ‘the broad canvass’ of the evidence before it. The role of the court is to consider the evidence in its totality and to make findings on the balance of probabilities accordingly. Within this context, the court must consider each piece of evidence in the context of all of the other evidence: **Re T [2004] 2 FLR 838 at [33]**.
50. The evidence of the parents and carers is of utmost importance and it is essential that the court forms a clear assessment of their credibility and reliability. The court is likely to place considerable reliability and weight on the evidence and impression it forms of them.
51. I also however, must bear in mind the observations of Macur LJ in **Re M (Children) [2013] EWCA Civ 1147** “It is obviously a counsel of perfection but seems to me advisable that any judge appraising witnesses in the emotionally charged atmosphere of a contested family dispute should warn themselves to guard against an assessment solely by virtue of their behaviour in the witness box and to expressly indicate that they have done so”. I make clear that in this case I

have not assessed the Mother solely upon the basis of her presentation in the witness box.

52. The court must always bear in mind that a witnesses may tell lies in the course of an investigation and the hearing. The court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress. The fact that a witness has lied about some matters does not mean that he or she has lied about everything: **R v Lucas [1982] QB 720**. I make clear that in reaching my conclusions in these matters, I have given myself this direction in respect of the evidence of the Mother.
53. It is also important when considering its decision as to the findings sought that the Court take into account of the presence or absence of any risk factors and any protective factors which are apparent on the evidence. In **Re BR [2015] EWFC 41** Peter Jackson J (as he then was) sets out a useful summary of those factors drawn from information from the NSPCC, the Common Assessment Framework and the Patient UK Guidance for Health Professionals.
54. I have been assisted in this matter by the guidance given in respect of hair strand testing by Mr Justice Peter Jackson in the matter of **Re H (A Child - Hair Strand Testing) [2017] EWFC 64**.

Evidence

55. During this hearing, I have heard from the legal representatives on behalf of each party. I have read the bundle of documents filed for this hearing. I heard oral evidence over the course of three days from: Kate West, a Toxicologist from Alphabiolabs, Professor Gilvarry a psychiatrist and expert in addiction, Vicki Martin social worker and author of the parenting assessment of the Mother and Father as a couple, James Smith T's allocated social worker since August 2018, Angharad John, a Toxicologist from Lextox and from the Mother.

Toxicological evidence – the Hair Strand Tests

Summary of Lextox evidence

56. First report covering the period mid October 2017 to mid April 2018:

- (a) Drugs and metabolites within the Benzodiazepine, cannabis, cocaine, methadone and opiate drugs were tested for by Lextox in segments covering a six months period.
- (b) M had declared that she had not dyed her hair. Dye was found in all six segments.
- (c) Methadone was found, which was prescribed.
- (d) M had declared heroin but it was not detected, possibly due to use of an insufficient amount to show above the cut off level.
- (e) Morphine at a low level was detected in the most recent section. Could be related to use of codeine.
- (f) Constituents of cannabis were found in the two older sections but actual use could not be confirmed.

57. Second report covering the period end April 2018 to end July 2018:

- (a) No evidence that M has used cannabis, cocaine, methadone or any of the drugs within the benzodiazepine or opiate drug groups in the approximate time period from the end of April 2018 to the end of July 2018.

58. Third report covering the period end of July 2018 to the end of December 2018:

- (a) Hair dye: M declared use of hair dye in December 2018. A visual inspection of the hair sample showed no distinct point of colour change along the length of the hair; however there was a difference in colour between different hair strands along the length of the hair. In addition, during the laboratory extraction process colour was observed indicating that dye was present in all five sections.

- (b) The results are therefore likely to have been lowered due to the use of dye. It was also declared that M had not used any hair products.
- (c) M tested positive for cocaine, heroin and methadone use, and a constituent of cannabis.
- (d) Cocaine: M tested positive for the cocaine metabolite benzoylecgonine in all five hair sections analysed, which cover approximately from the end of July 2018 to the end of December 2018.
- (e) In addition, cocaine has also been detected in the three oldest hair sections analysed.
- (f) More likely than not, due to the use of cocaine. The levels of cocaine detected are in the low range.
- (g) Methadone: M tested positive for methadone in all five hair sections analysed. M declared using methadone. The levels of methadone detected are in the low range.
- (h) Heroin & morphine: Morphine and the heroin specific metabolite 6-acetylmorphine have been detected in the 1-2 cm and 2-3 cm hair sections analysed, which cover the approximate time period from the end of September 2018 to the end of November 2018.
- (i) The detection of 6-acetylmorphine indicates the use of heroin. The levels of 6-acetylmorphine and morphine detected are in the low range.
- (j) M declared last using heroin in February 2018. This disclosed use of heroin would not account for the results obtained
- (k) Cannabis: M tested positive for a constituent of cannabis, delta-9-THC, in the two oldest hair sections analysed, covering the approximate time period from the end of July 2018 to the end of September 2018. No metabolites. Either low level / in infrequent use of cannabis during the time period or passive exposure from frequently being in the presence of people who are smoking cannabis. It is not possible to determine which of the above scenarios is more likely.

Summary of Alphabiolabs evidence

59. Alphabiolabs tested for amphetamine, methamphetamine, cannabis, cocaine, methadone and opiates. The date of sampling was 18.04.2019. M declared that she had used cosmetic hair dye used in December 2018 and that she uses methadone and mirtazapine on a daily basis. She denied the use of any illicit drugs.
60. M's hair was segmented into 9 x 1cm samples covering the period beginning July 2018 to beginning April 2019. Eight of the nine samples were positive for cocaine.

Urine drug screening

61. The Mother was the subject of unsupervised urine testing on a monthly basis through Wear Recovery who provides her with support to address her drug addiction.
62. On 26th April 2019, 5th March 2019 and 3rd January 2019 urine samples were collected from the Mother with urine creatinine levels below 0.3.

Oral evidence

63. Ms West confirmed her reports and confirmed that the Mother's admission that she had used cocaine recreationally on a fortnightly basis since August 2018 could be consistent with the hair strand test results submitted by Alphabiolabs. She also highlighted that dying hair significantly affects the results of a hair strand test in that it reduces the presence of drugs and so the results must be treated with a degree of caution. It is possible that the samples of hair taken from the Mother covering the period from the beginning of July 2018 until the beginning of January 2019 have been affected by the use of hair dye so that the levels of drugs recorded are reduced. This is because it reduces the hair shaft's capacity to absorb drugs. I found her to be a clear, careful and helpful expert witness and I accept her evidence.

64. Professor Gilvarry confirmed her reports but indicated that the updated information received since writing them had slightly changed her opinion. She continued to stress the positives in the Mother's case but stated that overall the hair strand test results indicate that the Mother has used cocaine and heroin during these proceedings. She indicated her concern at the Mother's lack of honesty and her very late admission of cocaine use. She stressed that insight is important and although a relapse is not surprising given the Mother's history it is her inability to be open about that and the fact that the Mother has hidden her use that is the issue. If she hides her use she lacks insight. She confirmed that the Mother had a very very significant dependence on opiates and cocaine and in her opinion has certainly continued to abuse cocaine and probably heroin. She opined that finding the heroin specific metabolite 6-acetylmorphine "6MAM" in a hair strand test is reliable and "very very significant" evidence of heroin. Heroin is a completely different drug to methadone and this metabolite is only found when the body breaks down heroin. She confirmed that the Mother's urine tests included three tests containing a reading of creatinine below 0.5 which she would get "significantly suspicious" about because it indicates that the sample may have been diluted or tampered with – the laboratory cut off for this being anything below a reading of 1.8 is of concern and should be repeated. If the Mother has used hair dye and lied about it then that would also raise the risks. She stated that the Mother is aware of the importance of honesty about her drug use. In her opinion the Mother would need to demonstrate at least 12 months of abstinence from now in respect of opiate and cocaine use to give confidence that she was not going to relapse but stressed that there is a high risk that drugs will remain a feature of her life for some time to come. Urine samples can be tampered with because they are not supervised and although a temperature check is an added safeguard it is not entirely reliable. The use of hair dye can reduce the results of drug use in a hair strand test by up to 80%. Although she would expect occasional use for a person in recovery from this sort of background using cocaine every two weeks would worry her. She would advise that the Mother's contact with T should be supervised. Professor Gilvarry was an impressive witness with a

wealth of expertise in her field. Her evidence was balanced and fair but unequivocal about the Mother's drug use during these proceedings. She gave cogent evidence about the Mother's need for total abstinence for 12 months before the Court could have confidence that the risks of relapse had reduced. I accept her evidence.

65. Both Vicki Martin and James Smith confirmed their written evidence in respect of the Mother and were not challenged by the Mother about her ability to care for T. I accept their assessments of the Mother, their evidence in respect of her ability to care for T and the risks that she poses to him.

66. Angharad John confirmed that the Lextox reports were accurate. She confirmed her opinion that the Mother's hair had been dyed in all six sections of the sample submitted for testing and that the discoloration could not be attributed to mascara because that would be external to the hair shaft and would be removed prior to analysis, along with any other contaminants, during the laboratory's washing procedure. The presence of dye in all six sections meant that it is likely that the hair had been dyed close to the collection date because it had been present from the root. She confirmed that the segments of the Mother's hair covering the period end of September until end of November 2018 contained "6MAM" a metabolite of heroin and that the level was above the cut off level to show use, indicating use on more than one occasion and which would require "quite a lot" of heroin to be taken. She stated that it is well documented that the use of hair dye lowers the amount of drugs that would be detected in the hair although it is not possible to quantify by how much. She confirmed that the Mother's admissions as to cocaine could be consistent with the test results in that the results demonstrate repeated use. I found Ms John to be a helpful expert witness who gave clear and cogent evidence. I accept her evidence.

The Mother

67. The Mother is an attractive and vulnerable woman who has presented many positives in these proceedings when compared with her past. She has undoubtedly made significant progress in her recovery from drug addiction for which she is to be commended. Her previous lifestyle was a chaotic one. She now attends appointments with professionals, her commitment to contact is exceptionally good, the quality of her contact with T is excellent, she is well presented and she has sensibly moved away from the network of drug users and associates that she knows in West Yorkshire. I give her credit for all of these matters.
68. In forming my assessment of the Mother's credibility my starting point is the **R v Lucas** direction. Clearly the Mother has lied and lied repeatedly during the course of these proceedings. She now admits as much. She has lied about her continuing cocaine use, not only to all of the professionals in this case, but also to the Court. She accepts that the witness statements that she filed prior to this hearing are false. However, her admissions are limited and come very late in the day. She accepts using cocaine but only at a low level and only once every two weeks. She denies that she lied about dying her hair. She denies dying her hair just before the sample was taken – she states that she did so up to two months beforehand and that she told her solicitor as much. She denies the hair strand test results for heroin use are correct. She denies the hair strand test results for cannabis are correct. She denies being under the influence of substances in a video that she posted to Facebook.

69. On her behalf, Mr Banks submits that she has no reason to lie about anything now. She has accepted that she cannot care for T now or for the foreseeable future and has accepted that her contact with him must be supervised. He argues that she has nothing to lose by telling the truth. I disagree. The Mother has told me that she hopes to maintain a friendship with the Father in future for the benefit of T, she also hope to have “as much contact as possible” with him. I am satisfied that she is concerned that the more lies that are exposed the less likely it is that this will happen.
70. The Mother has undoubtedly made significant progress with regards to her drug addiction and has been commended and supported in that progress by a range of loyal supporters. One of whom was the Father; others are from the drug service, Wear Recovery. Her admissions are consistent with the minimum findings of the Alphabiolab test results. They only came after I insisted that live evidence from the Toxicologists would need to be called and I informed the parties that I was not prepared to allow the Mother to challenge the Toxicological evidence on the basis of submissions. Moments before the Toxicologists were due to start their evidence she presented a change of instructions. Crucially, the Mother still does not go so far as to admit that the Lextox results are accurate. Those are the results that she had campaigned were false throughout the proceedings and had drawn the Father in to believing were false. Together they staunchly argued that there were anomalies in those results and that the science was wrong. Nor does she accept that she deliberately contaminated samples – urine or hair – to conceal her use.
71. When I consider the findings sought in this case I must survey the totality of the evidence. It is correct that the Mother has presented well during appointments and at meetings with professionals and in contact, and that these have led to her being seen by a range of professionals on a regular and frequent basis. Her lifestyle is not a chaotic one. She has attended Court appointments. She is punctual and reliable in her attendance. However, as a minimum she has done this whilst taking cocaine on a regular basis over the course of the last eight

months. She states that her cocaine use has been recreational, and limited to “a couple of lines” every other Saturday. She used cocaine despite knowing that the stakes could not have been higher for her. She was under the spotlight of these proceedings and the care plan for T was adoption. She was subject to regular urine tests and hair strand tests in these proceedings during the period that she admits using cocaine.

72. I consider it no coincidence that she submitted suspiciously dilute urine samples during this period and that her hair strand samples were found to contain dye. I do not accept that she is unaware of how to contaminate drug test results. She has used drugs for over 20 years. I find it highly unlikely that in that period of time she would remain oblivious of the ways to cheat drug testing, particularly since she has been subjected to urine tests for years and there are reports of her “spiking” her samples with methadone throughout the papers. The effect of hair dye on hair strand tests is widely known and easily accessible from the Internet. She was warned not to dye her hair by the Court. The Mother clearly uses the Internet as she has a social media presence. She was also informed by her solicitor not to use hair dye before the sample was taken. I accept the Toxicological evidence that the dye was found throughout all samples and from the root of the hair and that this means that the Mother dyed her hair shortly before the sample was given and after the Court and, on her account, her solicitor had warned her not to dye it. I am satisfied that she dyed her hair deliberately to attempt to mask her drug use. I am also satisfied that she deliberately diluted some of her urine samples to the same end (those three samples with creatinine levels below 0.5).

73. The lengths that the Mother has gone to in order to conceal her use of hair dye is indicative of her dishonesty. She repeatedly denied using hair dye, concocted a story about using mascara on her hair and had this put to the experts on her behalf on two occasions. She failed to declare the use of hair dye when the sample was taken. She must have recognised the significance of the question. If she was

unaware that hair dye reduced the levels of drugs that could be detected in hair strand testing then she would have simply admitted what she had done. I am satisfied that her actions were calculated and designed to mislead. This was a deliberate attempt to conceal her use of drugs.

74. I am satisfied that it is likely that the presence of hair dye has reduced the findings of illicit drug use in her hair strand test and that they are not a true reflection of the amount of drugs that she has taken. I am satisfied that her actual use of illicit is likely to be higher than the tests reveal. I accept the Lextox evidence, supported by Professor Gilvarry that the Mother has misused heroin. I reject any suggestion that this has been accidental. The Mother is well aware of the difference between cocaine and heroin and the effect that each drug has upon her. The amount of heroin that she has taken is probably more than the results reveal due to the presence of hair dye. The amount of heroin revealed by the test results indicates use on more than one occasion. The amount taken would need to be more than a trace. I accept the evidence that “quite a lot” of heroin is required to produce these results and therefore I consider it unlikely that her cocaine would be contaminated with enough heroin to create this result, at least without her realising it. I am satisfied that the true explanation for the hair strand test results is that the Mother has misused heroin and that that use has been deliberate, rather than accidental.

75. The Mother could give me no explanation for the cannabis results from her hair strand testing. I am satisfied that those results are also accurate and that the Mother has either used cannabis or been exposed to an environment that is laden with cannabis smoke.

76. I am satisfied that the hair strand test results are valid and that the trace readings of methadone are as a result of the Mother’s low dose of methadone and the presence of hair dye which has reduced the amount detected in the hair.

77. I am satisfied that it is likely that the Mother has been associating with other drug users, firstly to acquire the drugs that she has taken and, if she has not deliberately taken cannabis, secondly to expose her to the use of cannabis. I am satisfied that she is minimising her drug use. I do not accept her account of drug use.
78. I am satisfied that the reason that she continues to lie is out of a sense of shame. I also consider that she is hopeful that if the bare minimum is admitted she may be viewed more favourably by the Father, professionals and the Court for the purposes of securing more contact with T. I found the Mother to be deliberately vague during her evidence in so far as her drug use was concerned. There was very little free narrative and it took repeated questions and my intervention to clarify her account. Her demeanour was markedly different when discussing other topics. She began her account by seeking to rely on her handwritten confessional statement, which is minimalist in the extreme. She struggled to give details about her use of cocaine and the circumstances of it. I consider it likely that she had assumed that her admission of use would be viewed as simply recreational and that it was designed precisely to account for the test results. I do not accept that she is telling the truth about the full circumstances and extent of her drug use or how she acquired drugs.
79. I am deeply troubled by the Mother's isolation in the North East. She told me that she spends much of her time alone. She has recently lost her mother, who was a valuable source of support. She has no social network in this area. She has lied to her drug workers who remain unaware of her relapse. There is a significant risk that she will relapse further and that she will seek to return to the West Yorkshire area as a consequence of her vulnerability. She is desperately in need of help and I hope that she rapidly secures it. There is a danger that she will attempt to turn to the Father for support. He has plainly performed that role for many years. Whether he can distance himself from the Mother, prioritise T and withstand the emotional pressure he may feel to help her needs to be tested. The Father will be placed in a difficult position in the coming weeks and months given his

background of resolute loyalty and feelings for the Mother. He has been a devoted partner to her for many years and his commitment was such that they planned to marry this year. He must demonstrate his ability, however difficult, to distance himself from her and focus on T. The Mother must now find other sources of support.

80. I accept Professor Gilvarry's opinion that the Mother needs to demonstrate that she is clean of illicit drugs for at least 12 months before the Court could have any confidence that her risk of relapse is reduced. I am not satisfied that the process of abstinence has commenced. I also consider that she is likely to seek to contaminate samples in future with the aim of improving her contact with T. Very sadly her addiction drives her to behave in a dishonest and manipulative way.

81. I make the following findings:

- (1) That the Mother has used cocaine during these proceedings and at a time when she was asserting to professionals that she was abstinent.
- (2) That the Mother has used heroin during these proceedings and at a time when she was asserting to professionals that she was abstinent.
- (3) That the Mother has either used cannabis or been exposed to protracted cannabis use by others during these proceedings and at a time when she was asserting to professionals that she was abstinent.
- (4) That the Mother continues to be dependent on illicit substances.
- (5) That the Mother continues to associate with other drug users and those who supply drugs.
- (6) That T would be placed at risk of continued instability, emotional harm, physical harm and neglect should he reside with the Mother, as a consequence of her drug misuse and that those risks will be ever present until and unless she has demonstrated total abstinence from cocaine and opiates for at least 12 months from now.

- (7) That the Mother has been dishonest with professionals and with the Court about her drug misuse.
- (8) That the Mother used hair dye prior to the first hair strand tests being conducted on 26th April 2018, despite agreeing that she would not do so and then maintained a lie that she had not done so for many months during these proceedings, asserting that she had used mascara to colour her hair. Only after this explanation was rejected by experts did she accept that she had used hair dye.
- (9) That the Mother has submitted diluted urine samples to mask her drug use on at least three occasions.
- (10) That the Mother poses an on going risk of significant harm to T as a consequence of her continued drug misuse and associations with drug users and suppliers which requires her contact to be supervised for the foreseeable future. Only if the Mother submits at least 12 months' worth of unequivocal, uncontaminated clean hair strand tests should consideration be given to supervision of her contact being removed.
- (11) The Mother's dishonesty has contributed towards the delay in these proceedings and has resulted in T being placed in short term foster care for an unacceptable length of time. This delay has not been in his best interests.

82. During the course of this hearing, the Mother filed a statement confirming that she accepts that she is not in a position to care for T either now or for the foreseeable future. I commend her for reaching this sensible and no doubt difficult decision. I am satisfied that the minimum requirements that she would need to demonstrate to enable her to safely care for T are outwith his timescales and that he needs to have a determination about his care arrangements at the earliest possible opportunity. This need is all the more acute; given the lamentable delays that have already plagued this case.

83. The realistic care options that now need to be considered are a placement with the Father or adoption. I make that clear at this stage so that the parents are aware

that should a placement with the Father fail, then the only realistic care option for T will be adoption. It is imperative that the Mother does nothing to undermine a placement with the Father and that she finds other sources of support. It is equally imperative that the Father prioritises T above all others and that he manages to distance himself from the Mother. I wish him well.