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Neutral Citation No: [2023] EWFC 126 (B)

Case No: PL22C50192

IN THE FAMILY COURT (sitting at Torquay)

Date: 5 July 2023

Before :

RECORDER REED KC

Between :

Torbay Council

- and -

M

- and -

F

- and -

Joshua

(a child acting through his Guardian Liza Barry)

Applicant

1st Respondent

2nd Respondent

3rd Respondent

Mr M Whitehall for the **Applicant**
Ms R Parkhouse for the **1st Respondent**
Mr P Bitmead for the **2nd Respondent**
Mr J Hayward for the **3rd Respondent**

Hearing dates: 19-21 June and 5 July 2023

This judgment was handed down remotely on 5 July 2023 by circulation to the parties representatives by e-mail and by release to the National Archives.

Approved Judgment (anonymised for publication)

Recorder REED KC :

1. This is my decision in respect of Torbay Council’s application for care and placement orders in respect of Joshua, who is 5 (Joshua is not his real name).
2. Everybody agrees that Joshua sadly cannot be safely cared for by his parents. The issue is whether the court should authorise his continued placement in foster care for the long term by making a care order, or authorise a plan for adoption by also making

a placement order. A subsidiary but important issue relates to contact between Joshua and his mother.

3. Torbay Council is the Applicant local authority. They bring this application and propose adoption with letterbox contact once a year to the mother and grandmother. They propose a time limited search for up to 12 months, and if by then a suitable adoptive match has not been made their plan will revert to long term foster care (hopefully with Joshua's current carers). If Joshua remains in foster care, Torbay's care plan is for M's contact to gradually reduce to six times a year in school holidays, and I am invited to make an order permitting the Local Authority ('LA') to refuse contact between Joshua and his Father. Torbay are represented by Mr Whitehall.
4. Joshua's mother is M. Her position for some time has been that if Joshua cannot return to her care he should remain in foster care with his current carers if possible, but as of the outset of this hearing M accepted that she cannot look after Joshua at the moment and that a care order should be made. M does not want Joshua to be adopted and wants as much contact as possible. She has attended this hearing throughout even though she has obviously found listening to the evidence very painful. She is represented by Ms Parkhouse.
5. Joshua's father is F. He accepts he cannot look after Joshua and that a care order should be made. He accepts that there is a lot of work he needs to do before contact between him and Joshua could be even considered. He attended on the first day of this hearing but found the stress and distress of hearing the evidence too difficult and absented himself (with my permission) from day 2 of the hearing. I do not know if he will attend today when I will hand down this judgment. He is represented by Mr Bitmead, who has full instructions.
6. Joshua himself is represented via his Guardian Ms Barry. Ms Barry opposes the plan of adoption, and says that direct contact between Joshua and his mother should continue even in adoption, and if Joshua remains in long term foster care as she recommends that he should have contact on a weekly basis (subject to statutory review). Joshua, instructed by Ms Barry, is represented by Mr Hayward.

Summary of my decision

7. M has asked to be told my decision first, with my reasons to follow. I have decided to refuse the local authority's application for a placement order. I do not approve a plan for adoption for Joshua. I think that contact with his mother is so important to Joshua that his care plan should be amended to reflect (in the first instance) a higher frequency of contact than the current proposal for six times a year. I explain why I have reached these decisions below.
8. Before I set out my reasons, I want to commend both parents for taking the difficult but child focused decision not to argue for Joshua to be returned home to M's care.

This hearing has been very painful for both of them and I acknowledge that pain. I also express my thanks to all the advocates for their skilled and focused assistance with this case.

Ground rules

9. The court directed that ground rules should be considered at the outset of this hearing. The only request made was for breaks. This was uncontentious and we took regular breaks as and when requested. As the witness list was considerably shortened by the parents' change of position I have had time to prepare a written judgment.

The background

10. Joshua came to the attention of the LA before his birth. Previous proceedings were commenced shortly after delivery and when Joshua was 5 months old, after a successful mother and baby placement, those proceedings concluded with Joshua in the care of his mother under a 12 month supervision order, and an order which prevented F from coming into the home. That supervision order ran until 18 September 2018. Lisa Barry was the Guardian. I have a selection of papers from those proceedings, and whilst I do not have the final approved threshold it appears that similar issues were raised in those proceedings as are now raised in these i.e. the parents' drug and alcohol use, domestic abuse, and F's extensive criminal history (as recounted in the agreed threshold in these proceedings).
11. Joshua's parents' relationship resumed (or continued), and it is accepted that over time both parents alcohol use and the father's substance misuse increased. The mother reported controlling and abusive behaviour by him which eroded her self esteem and caused and escalation in her anxiety and low mood.
12. It appears this culminated in a serious incident [in the autumn of 2022]. This was the precipitating event that saw a revival of proceedings [approximately a month later].
13. It is convenient here to pause and deal with threshold. The threshold is agreed and, having read the relevant papers, I make the findings sought. I will set out paragraph 8 of the threshold in full:

‘(i) On [date] 2022, Joshua witnessed a significant verbal and physical altercation between M and F. During the incident, the following has been reported:

M alleges F strangled her; M took a kitchen knife from the knife block with the intention of stabbing F; M suffered a large and deep cut to her forearm from the knife; It is reported by health professionals that the cut was 1 inch long and was deep enough to expose fat tissue; M subsequently required 6 stiches at the hospital for the injury; Three out of the four walls in the kitchen were splattered in blood; Joshua was in the property during this altercation and is reported to have said “my mummy is covered in ketchup” and M reports she keeps having flashbacks of Joshua

“shrieking”; M also had multiple other visible injuries which included two lumps and a bruise to the back of her head, a cut and a bruise to her cheek bone, a bruise to her spine, and the bruise around the size of an adult hand on the back of her calf; Upon police attendance, F presented as irate and was shouting and swearing at the police;

F was arrested for causing ABH with intent; At no point during this incident was Joshua removed from the situation by the adults in the home.

(ii) The police log relating to the above incident reports that both F and M were “extremely drunk” and in their view “incapable of caring for Joshua”. F accepts that he had consumed alcohol and cannabis as well as cocaine. M accepts she had been drinking.

(iii) The Local Authority were notified on the [date] 2022 that M had withdrawn her statement against F for the above incident and subsequently the bail conditions which were in place in respect of F were then dropped and the police took no further action due to M’s refusal to pursue the matter.

(iv) Immediately following the incident, despite being offered tangible safety measures to help her separate from F in a way which would keep her and Joshua safe e.g. non-molestation order/move to a refuge, M declined, and indicated a plan for reunification in the future.

(v) F has an extensive criminal record which includes multiple domestic violence incidences. F served a custodial sentence in January 2019 for ABH on his ex-partner.’

14. All accept this was a serious incident that Joshua should not have been exposed to. Joshua has talked about this incident unprompted. He will have suffered emotional harm and could easily have suffered physical harm. The remainder of the agreed threshold makes clear that this was not an isolated incident of domestic abuse (although it may have been the most serious), and that Joshua has been exposed to arguments and physical altercations between his parents on other occasions.
15. It is agreed that ‘Joshua told the social worker on the [date] 2022 that when his mummy and daddy are fighting again when he is bigger, he will stand in the middle and tell them to stop’, that M had ‘not been allowed to comfort Joshua when he has been crying after F has been shouting at him’ and that Joshua had started to mimic behaviour he had seen.
16. Both parents accept that as a result of their alcohol and drug use, Joshua has been exposed to inconsistent parenting and emotional unavailability.
17. I do not need to set out a full procedural history here. I highlight only the key points and developments that are relevant for the issues now before the court.

18. After the knife incident arrangements were made for the maternal grandmother to stay with Joshua and the mother by way of a safeguarding plan. That plan ultimately broke down around the end of 2022 for reasons I need not go into other than to say that it was ultimately concluded that the MGM could not safeguard Joshua and should not be further assessed to care for him. By January 2023 it had become apparent that the parents' assertions that they had separated were untrue. Their phone records comprehensively show their deliberate and sustained efforts to continue their relationship and to conceal that from the local authority and the court until the coast was clear. They accept this dishonesty, which extends to filing untruthful witness statements in these proceedings.
19. In February 2023, primarily as a result of the breakdown of the safeguarding plan coupled with the parents' serious dishonesty, the court sanctioned interim removal and Joshua was placed in foster care.
20. Joshua spent a couple of weeks with short term carers before moving to his current foster placement. By all accounts it has been very successful so far, although it is early days. All agree Joshua has settled well and is doing well and making progress. He has expressed that he loves his carers and wants to stay forever. They have committed to care for him long term if he remains in long term foster care. They have indicated they are open to considering other forms of order such as a Special Guardianship Order ('SGO') in due course – in a couple of years perhaps and after legal advice. They are experienced carers who are currently caring on a long term basis for two teenaged foster daughters, as well as their own child (and from time to time respite or short term foster children). Joshua has been able to remain at his same school and would continue to do so if he remained in their care. They have repeatedly affirmed their long term commitment to Joshua albeit they are not able to commit to options such as SGO or adoption at present. I would not expect them to go further than that given the placement is in its comparative infancy, and appreciating the significance of such a decision both for Joshua and for them, and for the other children in their care.
21. Joshua continues to have contact with his mother three times a week. She is consistent in attendance, presentation and in ensuring contact is of good quality and safe for Joshua. It is accepted that Joshua really enjoys contact and looks forward to it. The relationship is described in various places as 'warm' – for example, the final care plan [D42] tells me 'There is an observable warmth between M and Joshua which is lovely to see'. Other aspects of contact are more contentious (set out below). The contact logs show no concerns that I can identify. The mother and foster carers use a contact book (which I have seen) and the contents of it are appropriate, cordial and mutually supportive.
22. On 27 April 2023 the Torbay Agency Decision Maker ('ADM') approved the LA plan for adoption. The care plan was for letterbox contact on an annual basis to the mother and grandmother, and possibly the father in due course. On 26 May 2023 the

court conducted an IRH. The Guardian's analysis had been recently made available. That did not support the plan of adoption and made a number of proposals for clarification of the plans for a reduction in contact and amendment of the Child Permanence Report ('CPR'). Directions were made for the LA to file a statement dealing with those issues. In addition, the Guardian's analysis recommended weekly contact if Joshua were to remain in foster care and twice annual face to face contact between Joshua and his mother post adoption, in addition to twice annual letterbox contact.

23. On 12 June 2023 the LA complied with that direction by filing a statement by the allocated social worker Ms X. Ms X had also completed the CPR (under supervision from her TM as she is not authorised to prepare a CPR without such supervision), and the final evidence and care plan. That statement said the LA would amend its care plan to provide for direct contact post-adoption on an annual basis. No analysis of why that was now considered to be in Joshua's best interests was offered. The plan also set out an alternative care plan (if a placement order were not made or an adoptive placement could not be found, which was that Joshua would remain in his current placement with gradually reducing contact with M, coming to rest at 6 times annually.
24. On 13 June 2023 family finding evidence was filed. That statement was silent as to post-adoption direct contact. Arrangements were made for the attendance of the family finding witness Ms Walton to deal with issues such as any potential impact of the revised plan for direct contact between Joshua and his mother post-adoption. It was subsequently confirmed that the family finding statement was based on the plan for letterbox contact only. In fact, Ms Walton's oral evidence was that in this case a care plan involving direct contact would not materially affect the viability or timescales of a plan for adoption.
25. Just before the evidence commenced, the LA's position reverted to one of letterbox contact only and the mother conceded that it was not realistic to put herself forward to care for Joshua. The father confirmed he did not seek any orders for contact. Thus the issues and options narrowed.

The law

26. Having found the s31 Children Act 1989 'threshold' criteria met, I must go on to consider what if any public law orders should be made. Here it is accepted a care order should be made. Having read the papers and heard the evidence I accept that a public law order is necessary.
27. Section 1 Adoption and Children Act 2002 requires me to make Joshua's welfare *throughout his life* the paramount consideration. I must consider the checklist criteria set out in that Act as well as the similar but different checklist in the 1989 Act.

28. Any order I make must be both necessary and proportionate. Either option will represent an interference with Joshua's (and his parents') Article 8 ECHR rights, in each case a material interference. I have to try and identify the least interventionist order consistent with Joshua's lifelong welfare. And I must try to assess as best I sensibly can how the various risks to Joshua might play out in future years if I choose this or that option, whilst avoiding speculation.
29. Specifically considering adoption, this is an irreversible and profound step in a child's life with lifelong consequences. I must not make orders sanctioning adoption unless I am satisfied nothing else will do i.e. that other less interventionist options will not meet Joshua's welfare needs throughout his life.
21. In Re B [2013] UKSC 33 the justices of the Supreme Court considered the approach the Court should take where the local authority's application is for adoption. Lord Neuberger said at paragraph 82 of his judgment:

'What the Strasbourg jurisprudence requires (and, I would have thought, what the rule of law in a modern, democratic society would require) is that no child should be adopted, particularly when it is against her parents' wishes, without a judge deciding after a proper hearing, with the interests of the parents (where appropriate) and of the child being appropriately advanced, that it is necessary in the interests of the child that she be adopted.'

At paragraph 104 he said:

'... adoption of a child against her parents' wishes should only be contemplated as a last resort – when all else fails. Although the child's interests in an adoption case are 'paramount' (in the UK legislation and under article 21 of UNCRC) a court must never lose sight of the fact that those interests include being brought up by her natural family, ideally her natural parents, or at least one of them.'

22. Baroness Hale said at paragraph 198 of Re B [2013] UKSC 33:

'Nevertheless, it is quite clear that the test for severing the relationship between parent and child is very strict: only in exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short, where nothing else will do. ...'

'Intervention in the family must be proportionate, but the aim should be to reunite the family where the circumstances enable that, and the effort should be devoted towards that end. Cutting off all contact and ending the relationship between the child and their family is only justified by the overriding necessity of the interests of the child.'

30. The senior courts are clear that a global, holistic analysis of all realistic options is essential in order both to reach the right decision and to demonstrate how that

decision has been reached (Re B-S (2013) EWCA 1146). A generalised assertion of the benefits of adoption or foster care is insufficient. I must carry out an analysis that is specific to this child and his circumstances. To borrow from another line of ECHR based caselaw, I must apply an ‘intense focus’ on the specific factors.

31. See Re G [2013] 3 FCR 293, at paragraph 44 where the President of the Family Division said:

'We emphasise the words "global, holistic evaluation". This point is crucial. The judicial task is to evaluate all the options, undertaking a global, holistic and multi-faceted evaluation of the child's welfare which takes into account all the negatives and the positives, all the pros and cons, of each option. ...

"What is required is a balancing exercise in which each option is evaluated to the degree of detail necessary to analyse and weigh its own internal positives and negatives and each option is then compared, side by side, against the competing option or options."

32. S31(3A) CA 1989 provides that:

‘A court deciding whether to make a care order –

(a) is required to consider the permanence provisions of the section 31A plan for the child concerned, but

(b) is not required to consider the remainder of the section 31A plan, subject to section 34(11)’.

33. S34(11) provides that

1) Before making, varying or discharging an order under this section or making a care order with respect to any child the court shall –

(a) consider the arrangements which the authority have made, or propose to make, for affording any person contact with a child to whom this section applies; and

(b) invite the parties to the proceedings to comment on those arrangements.

34. In this case permanence and contact are interlinked and I am invited, subject to my conclusions to request some reconsideration of the care plan before finalising my decision. Authority makes clear I can direct the local authority to file a care plan that meets a particular formulation or assessment of risk even though that plan does not reflect the position of the local authority (Re W (Care Proceedings: Functions of Court and Local Authority) [2014] 2 FLR 431, CA). Further, as per Re T (A Child) (Placement Order) [2018] 2 FLR 926, CA, while a court cannot dictate to a local authority what the care plan should be and cannot maintain supervision or control after a final order is made, it is not open to a local authority to decline to accept a

court's assessment of risk and welfare, which assessment is sovereign within proceedings.

The evidence

35. The bundle runs to 2638 pages due to the inclusion of phone extraction reports and past papers. I have read most of the bundle, including in particular, the evidence of the expert Dr Pritchard, the social work evidence, including the parenting / risk assessments and family finding evidence, the parents statements including responses to threshold, the Guardian's report, the CPR and ADM Decision making records, the case summary and mother's position statement. I have considered elements of the phone records and have also surveyed the foster care logs and contact records.
36. I have heard evidence from the social worker Ms X, from the family finding social worker from Adoption South West Ms Walton, and from Liza Barry the Guardian. By agreement in light of the parents' position, the expert psychologist was released and neither parent was required to give evidence.
37. The social worker **Ms X** qualified as a social in another jurisdiction in 2019 and worked there before coming to the UK. She has been working in the UK as a social worker for Torbay since April 2022. She has been Joshua's social worker since October 2022. This is her first adoption case in the UK.
38. The written evidence of the LA says this under the heading 'Reason why adoption is the preferred and proposed placement option' [C231]:

“Long term foster care was also considered; however, this would mean Joshua would need to constantly balance a relationship between his parents and his carers which means he will not fully settle into his placement. Due to possible placement changes, particularly given Joshua's young age, this option does not offer stability to Joshua.

Joshua is of an age where he is fortunate enough to be able to form attachments with new carers, and adoption would offer an opportunity for him to have a fulfilling family life. It is vital that adopters are found at the earliest opportunity as any delay could impact on his ability to form new attachments with any prospective adopter/s and that adopters are aware of Joshua's individual needs.

The Local Authority is mindful that decisions regarding the care of Joshua must be made within his timescales. He needs consistent, safe, and emotionally attuned parenting. He needs to know where his permanent home is within a stable family environment so he can settle, continue to thrive, and receive emotional support for the experiences he has been through.”
39. Ms X did her best to assist the court and underwent robust but necessary questioning. However, I am bound to say I found her evidence difficult to understand in places, and difficult to reconcile with the local authority's own written evidence in places.

40. Ms X did not know what ‘Re BS’ was, and did not appear to be familiar with the concept of caselaw. She told me however, that she had read the Adoption and Children Act 2002. Social workers do not need to be experts on the law, but they do need to understand the legal framework sufficiently to be able to present evidence that is sufficient to meet the legal test and will assist the court. Ms X was aware of the phrase ‘nothing else will do’ and that the court had to balance the pros and cons and adopt the ‘least interventionist’ solution consistent with the child’s welfare, but I did not think that she fully appreciated the central importance of the BS checklist as a tool to aid *and then* record the social worker’s analysis, and to assist the court to properly balance the pros and cons of all realistic options in a meaningful way.
41. I set this out not to criticise Ms X but to identify for the local authority a potential training, supervision and staff development need. A relatively inexperienced social worker with limited experience in this jurisdiction is entitled to expect proper orientation, training, support and supervision in embarking on this difficult and challenging work. The checklist that she presented in her final evidence was overseen by the TM who signed off the CPR, and that was subsequently the basis of the ADM decision.
42. Ms X was unable to articulate the welfare rationale for the local authority’s changing position as regards direct contact post adoption. Although she had initially happily accepted how positive contact was for Joshua, Ms X increasingly emphasised a number of concerns about contact that had not been foreshadowed fully in the written evidence.
43. To set out those positives, she accepted that Joshua has a good bond with his mother, she is important in his life, that she has attended all but one contact, he is happy to see her, looks forward to contact and enjoys his time with his mum, there are many examples of emotional warmth, that M engages and is responsive to Joshua’s needs, there is lovely play, and that this contact is important to Joshua – though Ms X specifically caveated her agreement to state that she did not agree it was important throughout his life. Much of this is a reiteration of the Local Authorities’ own evidence e.g C213:
- “Joshua's behaviour suggests a sense of happy anticipation on arrival and pleasure in being with his mother. Joshua looks forward to family time and said he enjoys spending time with his mother.... engaging and responding well to Joshua’s needs during family time.”
44. The local authority’s final evidence had indicated that ‘contact may result in Joshua being retraumatised as he is constantly reminded of his lived experiences as evidenced by how he would occasionally bring up the stabbing of toys during play time with his mother and him hitting his mother during play time’ [C222]. In the parenting assessment it was suggested a return to the parents’ care might be retraumatising, but there was no equivalent suggestion about contact. However, in oral evidence these

issues acquired greater prominence, with Ms X emphasising that foster care would mean that Joshua would be continually re-traumatised by ongoing contact if in long term foster care, which she contrasted with adoption where he would be spared this retraumatising experience. Thus, what had been accepted as good quality contact was presented as a negative factor and one which weighed in favour of adoption rather than against it.

45. Having accepted that Joshua is settled in his placement, the social worker later asserted that Joshua's behaviour after contact indicated that ongoing or at any rate frequent contact with his mother would prevent him from settling. Asked about that behaviour she described incidents of the mother giving Joshua sweet food at contact that then blunted his appetite on return to foster care (this is briefly referenced at C214), and that items she was bringing to contact were in some way causing issues back in the foster placement. She told me (in effect) that the mother had not been responsive to guidance on this. Questioned further she stated that she had not told the mother that this was causing issues at placement, but that the foster carer had done so via the contact book. I have considered the contact notes and the contact book (which was produced overnight on request). Neither support the proposition that the mother was given guidance that she failed to act on. Neither support there being any issue at all, quite the opposite.
46. It was suggested Joshua could be challenging to his female carer after contact. It is apparent this is relatively low level behaviour which has been managed by the foster carer, which has not prevented her and her partner from expressing and reaffirming their long term commitment to Joshua. It is quite commonplace for a child to be unsettled or somewhat different or difficult before or after contact before settling back into their placement. Joshua is having contact three times a week with his mother. It is unsurprising this causes temporary ripples. That is a situation that cries out for management through active social work (and, as proposed a sensible contact reduction plan once final decisions are made). It is not a justification for the cessation of overwhelmingly positive contact. Nor is it evidence that Joshua is not settled as had previously been accepted.
47. A portion of the questioning of Ms X was taken up by debate over whether or not Joshua is a child who is displaying behavioural difficulties. Notwithstanding her evidence as regards his responses in contact to his mother and after contact to his female carer, and the adoption medical which describes emotional and behavioural issues and potential issues (such as a predisposition to ADHD), Ms X insisted in response to questions relating to adoption that Joshua was a child who did not have behavioural difficulties. The local authorities' own case and Ms X's own evidence was that Joshua is a 5 year old boy who has experienced trauma and is mimicking inappropriate adult behaviour. I do not understand why she was reluctant to accept he has some level of behavioural difficulty.

48. The social worker repeatedly compared the percentage chance of placement breakdown for foster care (said to be 30%) with adoption (said to be 2-9%). I agree with the submission that this is a red herring. It was eventually established that the source of the 30% figure was in fact a drawn from DfE statistics for England over the last 5 years, which show the percentage of looked after children who have had multiple placements in a given year, for whatever reason (not in fact a figure specific for placement breakdown at all)¹. I think comparison of a generalised percentage of placement breakdowns in foster care versus adoption is comparing apples with pears. The cohort of children in foster care is not the same as the cohort of children in adoption. Percentages tell me little about the comparative risks and benefits to Joshua, particularly since many of the risk factors associated with foster placement breakdown do not apply to him.
49. The social worker was asked about the relevance of Joshua's age in care planning for him. Somewhat surprisingly she said his age (5) was a factor in his favour in terms of adoption and against foster care. 13 years is indeed a very long time to be in foster care, but at 5 Joshua is of an age where achieving adoption is becoming harder and where ensuring a good outcome through adoption is beginning to become more challenging.
50. Ms X's evidence was that she viewed foster care as the *more* interventionist option compared to adoption because of the stigma that Joshua would experience as a looked after child. This seems to me to confuse ongoing statutory *intervention* in the form of LAC reviews and medicals and all the things which come with having a corporate parent and shared parental responsibility, with the more profound and enduring *interference* of permanent termination of family connections. Ms X's repeated assertion that the family ties would not be severed by adoption was troubling. Annual letterbox is valuable and important but it does not negate the fact that relationships are terminated in both law and in everyday reality by adoption.
51. Ms X suggested that adopters would be better able than foster carers to deal with unforeseen life events such as divorce, death or ill health of one of the carers, by reliance on extended family. I do not understand or accept this proposition. There is no evidence before the court that adopters are either less susceptible to changes in their circumstances or that their networks are more robust. There may be a difference in the responses to a life crisis but I don't think there is any proper basis for suggesting that foster carers have less resources around them to support them to cope if things change in their household. If anything they may be better equipped in the sense that they are already hooked into services via their agency or local authority.
52. I am afraid I formed the view that Ms X did not fully understand the legal and broader significance of adoption for a person, in particular in relation to the identity

¹ Reporting year 2022, Children looked after in England including adoptions, <https://explore-education-statistics.service.gov.uk/find-statistics/children-looked-after-in-england-including-adoptions/2022>

challenges any adopted person faces as an adolescent and into adulthood. Her response to questions significantly minimised those impacts and repeatedly reverted to focusing on the short term impacts on Joshua as a young child and how he would adapt and settle. I was unable to get any sense of proper consideration of the impact on Joshua as an adolescent and adult (throughout his life) of being an adopted person, of being adopted away from a mother who he continues to have a positive relationship with (notwithstanding her flaws and the harm he has suffered), and who he will not be able to simply forget.

53. In light of Ms X's evidence as to contact, I was puzzled why the local authority had ever advanced a plan of direct post-adoption contact. It is frankly inconsistent with the rest of their case. The change in stance was not explained in the 12 June statement or oral evidence. Ms X was asked a number of times about the rationale for this position, but would not be drawn on why it had been proposed, responding on each occasion by referring to the Guardian's report and to the local authorities' current position on contact. The rationale behind the reversion to the original plan at the door of court is equally opaque.
54. I am driven to conclude that the internal inconsistencies in Ms X's evidence and the LA position were driven by a determination to secure a placement order, rather than any evolution or flexibility in the local authority's welfare analysis as to what might work best for Joshua. I was unable to get any sense from the social work evidence that the local authority had reflected on or taken on board the points made in the Guardian's analysis. For the avoidance of doubt I have reached this conclusion only after considering the evidence generally, and in particular analysing the detail of the LA's own analysis and stated rationale below. No party has sought to suggest bad faith on the part of the local authority – the social worker and local authority is motivated by a wish to secure the best outcome for Joshua. But I think that they have become so focused on the 'right' outcome that they have been unable or unwilling to really take on board alternative perspectives or to acknowledge factors pulling against their preferred plan.
55. Before I move on to the other witnesses I pause to note that in submissions for the LA it was suggested that the recency of M's change of position increased the risks associated with foster care option, because (I assume) the mother could not be relied upon not to disrupt the placement. This did not feature in the LA oral evidence at all. In any event all the evidence is to the contrary. The mother has for months explicitly supported foster care as the fallback position if she could not secure Joshua's return. It is neither surprising nor unusual that she was unable to fully accept that her wish for Joshua to return home was unrealistic until she was at the door of court, and for many months she has been consistently attending contact and ensuring that Joshua has a lovely time. She has been putting regular cheerful and constructive messages in the contact book in support of Joshua and his placement.

56. **Ms Walton** is a family finding social worker from Adoption South West. Her evidence was helpful and clear. She explained the Link Maker platform and the searches she had carried out and was able to offer clarification that even with a plan for direct contact she was confident that ASW would be able to find a match for Joshua within six months or so. She had read Joshua's CPR and adoption medical which indicated behavioural difficulties, and was clear that the level of emotional or behavioural difficulties displayed by Joshua is not out of the ordinary for the cohort of children of Joshua's age bracket being placed with adopters, so those prospective adopters who are willing to accept a 5 year old know this comes with the territory and are unlikely to be put off. I accept that evidence. Joshua's emotional or behavioural difficulties exist, but they are not at a level that is either surprising or unusual for children who have been exposed to adult behaviour that is sufficient to justify removal into foster care and adoption.
57. Ms Walton's evidence supported the proposition that direct contact for children adopted at around Joshua's age and upwards could be supportive of the placement rather than undermining. It was something she told me she would be 'keen to explore', subject to the care plan.
58. **Ms Barry**, Joshua's Guardian, is an experienced Guardian. She is very experienced both as a social worker, and over a longer period as a professional working in various different guises with children. She has known this family since Joshua's birth, though of course was not involved for a number of years between proceedings. Her written analysis is comprehensive and thoughtful and her oral evidence was clear and responsive. She was able to articulate why she held a particular position, to acknowledge the complexity and nuance in the case and understood her role within the broader legal framework. Ms Barry's answers in response to challenge and in articulating her position were backed by examples from both research and experience. Her evidence was of great assistance to the court.
59. Ms Barry in her evidence was able to assist the court in thinking through the potential impact upon Joshua of the proposed decisions around contact reduction, cessation, and adoption where the local authority evidence did not.
60. Ms Barry explained that Joshua had not to date been given any explanation of why he was in foster care and that his difficulty understanding why he was seeing his mum and then returning to his foster carer may account for some of his reported shifts in behaviour after contact. She considered that rather than being interpreted as signs of re-traumatisation, any issues around contact might be 'signals of a boy struggling to ... reconcile the differences in two homes'. She told me that 'If he is not given a narrative why he is in foster care and is [not] fed that on a consistent basis he will go to contact enjoy time and go back to placement feeling really insecure and anxious and angry, [thinking] I had a lovely time why am I back here, with no frame of reference to understand what is going on'. She considered that some direct work with Joshua to explain what was happening and why would go some way to mitigating

these issues, that is to say that the issues around contact that had been raised were something to be managed rather than factors that should lead to a conclusion contact was not beneficial.

61. Ms Barry's evidence was that the violent play that had been observed by Joshua was developmentally appropriate and not unusual. She told me that,

'I'm not minimising [trauma] but in the wider context of a 5 year old child making sense of the wider world as well as trauma, when consider together it is not abnormal to see a child wanting to explore things in a way that appears violent to an outsider looking in. Because of the trauma is very easy to assume it all relates to trauma without taking into account what is normative play child developmentally looks like - especially for boys - this type of play.'
62. She reminded me that the much referenced making of a knife with play doh was not spontaneous but in the course of direct work about the precipitating incident. Ms Barry observed with some force that if Joshua was being retraumatised by contact she would have expected to see the local authority attempting to reduce contact sooner.
63. Ms Barry's explanation of why, in her professional opinion, Joshua's play was not overly concerning or evidence of the retraumatising effect of a continued relationship with M was compelling, and I accept it.
64. Ms Barry was asked about the likely impact on Joshua of the alternative explanation about adoption and a cessation of direct contact. She was clear that this would be 'devastating' for Joshua and that he was likely to experience confusion, loss, trauma and anger. She considered that the local authorities plan for adoption built in layers of additional trauma that in her view were neither necessary nor justified: loss of attachment to foster carer, loss of place attachment (change of school and loss of peers), loss of relationship with mother etc. A failure to find a placement and a reversion to a plan for foster care would add a further layer of trauma for Joshua, who would first struggle to understand why he could not see his mummy and then why a new forever family could not be found for him.
65. Ms Barry's evidence (written and oral) emphasised the profound importance of Joshua's relationship with his mother, now and in the longer term, and specifically the value of maintaining that relationship even if he could not be in her care.
66. Her recommendations for post-adoptive direct contact twice a year in addition to letterbox contact twice a year are, in my experience, unusual. But they were backed by a clear explanation of why that would benefit Joshua and would be supportive of his placement rather than undermining of it. The same applies to the recommendations for weekly contact post final care order if Joshua remains in foster care. Again, a frequency unusual for long term foster care scenarios, but which on Ms Barry's evidence was justified by the specific needs of Joshua and the high quality

and benefits of contact as evidenced over time. The guardian was able to give a clear explanation of why she supported such frequent contact for Joshua, appropriately acknowledging this would need to be kept under review to ensure it met Joshua's needs over time.

67. On the question of stigma or ongoing social work intervention associated with being looked after, Ms Barry told me that statutory visits were usually to home not school and that whilst children in care are the subject of termly Personal Education Plan ('PEP') meetings, these are often carried out remotely and a high proportion of children in this area (not just those in care) are taken out of lessons to attend PEP or EHCP (Education and Health Care Plan) meetings, so this would not be out of the ordinary. Ms Barry pointed out that even in adoption many children continue with some form of social work intervention in order to access the adoption support fund or other services, which I acknowledge but do not think is on a par with regular mandatory statutory visits and meetings. Ms Barry rejected the suggestion that a care order would mean DBS checks had to be carried out or the LA authority sought before every sleepover, in her experience LAs were able and willing to delegate authority to foster carers to exercise judgment, thereby minimising stigma and barriers.
68. Finally, Ms Barry explained the significance of Joshua's recent remarks to his foster carer, telling her he loved her and wanted to stay forever. This was significant not simply because it was Joshua's expressed wishes and feelings, but because it demonstrated Joshua had felt secure and trusting enough to be able to articulate that love – something which is unusual for a child with Joshua's past experiences. The thrust of Ms Barry's evidence was that this trust was not something that should be disrupted without very good reason (as it would be by telling Joshua he was not going to stay), and that Joshua might be less able and willing to build that attachment in future having had the experience of being moved after investing.
69. Overall, I found Ms Barry's evidence helpful and compelling.

Discussion

70. To borrow from the closing submissions of the LA, the parties are united in agreeing that Joshua's 'primary need is for a primary stable home for the remainder of his childhood. The issue and the dispute is: what is the best mechanism for achieving that'.
71. The local authority's balancing analysis in the CPR and final evidence has been criticised by each of the other parties (to varying degrees) for being flawed, incomplete and lacking balance. The local authority in closing submissions specifically adopted the Guardian's list of pros and cons in the balancing analysis set out in her report, albeit that they do not accept the conclusions (and it was said the analysis of the risks of foster care is lacking). The advocates have all rightly identified

that ultimately, I must take the professional analyses and factual evidence I have, I must attach such weight to each piece of information and to each factor as I see fit, but I must in any event carry out my own independent analysis. I am ultimately responsible for deciding where the balance falls and what is the best fit for Joshua's lifelong needs. There are valid elements in each analysis, and whilst overall I have found the Guardian's analysis to be more thorough and useful, I must still do the work of setting out my own thinking and rationale.

72. The local authority submitted that the increasingly stark disagreement between professionals in this case was borne of genuinely held professional views on each side. I accept that entirely. The local authority genuinely considers adoption is best. The Guardian genuinely considers foster care is best. What has concerned me at times in this case is whether the analysis presented to the court has been the route through which the recommendation has been reached, or whether it has been constructed or revised to justify or shore up the conclusion. I am afraid that in the LA's evidence, and particularly in its unexplained changes of stance, I detected an element of dogmatic adherence to the idea of adoption as better and a sense that evidence was being recruited in support of that decision and deployed defensively in response to appropriate challenge. That has inevitably meant that I have treated the LA evidence with some caution. It has made my decision harder, because I am robbed of the analysis I ought to be able to expect from the LA. However, that does not mean I have disregarded the LA evidence. I have given it proper consideration and weight where warranted. Nor does it mean I have simply adopted the Guardian's perspective or position. I have given that proper consideration and weight where warranted.
73. I am tasked with making a decision between two courses of action each of which carries with it some risk and some advantage over the other. The Guardian did not see this case as finely balanced at all. I have not found it so easy to decide. The idea of leaving Joshua where he is based on the currently positive outlook for his foster placement is attractively presented and alluring, but there is potential for that placement to come to a premature end at some point over the next 13 or so years, and that would obviously be to Joshua's detriment. Every family court judge is familiar with the harm that a succession of placement moves can cause to children in care, and the way in which such moves can escalate out of control for some children.
74. Likewise, it would be easy to say that adoption is safer and best because it offers more 'permanence' (whatever that means) and is cleaner. But the evidence I have heard makes clear to me that a *plan* of adoption (which is all I can approve – a placement order merely approves the idea of adoption in principle and authorises an *attempt* to identify a suitable placement) is not a neutral step. I accept the Guardian's evidence that if Joshua is told he is to leave his current carer, will stop seeing his mummy and will be given new parents, he will be devastated. I accept that if he is later told a placement cannot be found that will be a further blow to his self esteem. In the meantime he will be unable to fully cement the emerging attachment with his foster

carers because he will be in limbo, and will view their care as temporary. It is not a neutral step. Being more optimistic, if a placement is found there is a nonetheless a risk it will break down. That risk is higher for a child of Joshua's age (i.e. a child of school age who is verbal and who will retain established memories of his parents and life in foster care) than for a pre-school child or baby, particularly given the difficulty he may have understanding or coming to terms with the disappearance of his mummy from his life, as is proposed. So, there are serious risks associated with both options.

75. The Guardian told me she thought that the local authority viewed the idea of adoption through rose tinted glasses. In *Re V (Children)* [2013] EWCA Civ 913, a case involving children aged 9 and 5, the same phrase came up. Black LJ said this at paragraphs 95-6:

‘The judge thought she may have been given a rosy tinted view of adoption and not told that long term fostering could provide the same security. My difficulty with that is that I do not think that fostering and adoption can, in fact, be equated in terms of what they offer by way of security. I do not intend to embark on a comprehensive comparison of the two arrangements, merely to highlight some of the material differences. What I say should not be taken as a substitute for professional advice to the court from social services and/or the guardian in any case in which this is a significant issue.

“i) Adoption makes the child a permanent part of the adoptive family to which he or she fully belongs. To the child, it is likely therefore to “feel” different from fostering. Adoptions do, of course, fail but the commitment of the adoptive family is of a different nature to that of a local authority foster carer whose circumstances may change, however devoted he or she is, and who is free to determine the caring arrangement.

ii) Whereas the parents may apply for the discharge of a care order with a view to getting the child back to live with them, once an adoption order is made, it is made for all time.

iii) Contact in the adoption context is also a different matter from contact in the context of a fostering arrangement. Where a child is in the care of a local authority, the starting point is that the authority is obliged to allow the child reasonable contact with his parents (section 34(1) Children Act 1989). The contact position can, of course, be regulated by alternative orders under section 34 but the situation still contrasts markedly with that of an adoptive child. There are open adoptions, where the child sees his or her natural parents, but I think it would be fair to say that such arrangements tend not to be seen where the adoptive parents are not in full agreement. Once the adoption order has been made, the natural parents normally need leave before they can apply for contact.

iv) Routine life is different for the adopted child in that once he or she is adopted, the local authority have no further role in his or her life (no local authority medicals, no local authority reviews, no need to consult the social worker over school trips abroad, for example).”

76. I bear all that in mind. But again, I note Black LJ’s clear warning that the general propositions she made were not a substitute for proper social work and judicial analysis. I think I have to guard against rose tinting or over optimism in respect of *both* foster care and adoption. The way to avoid falling into error is to go back to the checklists and the balancing analysis.

The balancing analysis

77. I take as my starting point the balancing analyses of the local authority and Guardian adding my own observations.

78. In favour of adoption, the local authority says:

- i) ‘Joshua will be protected from the risks associated with being in his parents’ care’. I agree. This factor applies equally to foster care.
- ii) ‘Joshua will have long term permanent carers (a forever family) who will have been stringently assessed as being able to meet his needs throughout his childhood and into his adult life.’ I agree. The increased risk of adoption disruption, breakdown or poorer outcomes with older placed children must be acknowledged though.
- iii) ‘Joshua will be able to settle into, and feel he belongs to, a family unit. Adoption will afford Joshua legal and practical certainty, which will afford him a greater sense of security and stability for the remainder of his life.’ I hope Joshua will be able to settle. The evidence I have received is mixed on that. I accept the Guardian’s evidence as regards the importance of Joshua’s relationship with his mother to him now, and in broader terms to his sense of self. I accept the guardian’s evidence that the loss of that relationship will be difficult for him to understand or bear and it is not possible to say with certainty that Joshua will settle. I specifically do not accept the proposition from the social worker that because Joshua has settled quickly in two foster placements he will therefore be able to settle in adoption, and will get used to not seeing his mother. Each time Joshua is moved his trust in adults will be depleted. He will be less likely to invest. Moreover, Joshua will not forget his mother. He will remember her and he may seek her out as he gets older. I am concerned that there is a risk that even if Joshua settles initially his placement may disrupt later on. I cannot quantify that risk. In my judgment having considered the evidence of ASW and the Guardian the risks of adoption

disruption are probably higher on the LA's plan of letterbox contact only, not lower as the LA contends for.

- iv) 'Adoption will afford Joshua a more robust plan of permanence when compared to long-term foster care. Adoption poses a far lesser risk of breakdown and of Joshua having to move between carers in the future. This is particularly important for Joshua, given his very young age.' Joshua is not 'very young'. I do not agree with the generalised propositions made here. To achieve a successful adoption Joshua will have to manage the news that he is not going to see his mum again, he will have to re-establish another new attachment, he will have to find a way to accept the ending of a relationship which for him is (in its current form) very positive.
- v) 'Adoption offers Joshua a less interventionist form of permanence. He would not remain a Cared for Child and therefore would not experience the ongoing involvement of the Local Authority in his care. This involvement could cause Joshua to feel different from his peers and experience stigma'. I cannot accept the proposition that adoption is in any way less interventionist. That is simply wrong – it is the most serious intervention in a child's family life possible. The ongoing interference in private and family life that comes with being a looked after child is relevant and can be stigmatising, which I do not minimise, but it is not in any way comparable to the degree of interference that comes with adoption, where the child's entire existing family life is ended. As per the guardian's evidence I do not think that the LA's statutory role would impact on Joshua as extensively as suggested if managed sensitively. Moreover, regular meetings and visits will ensure that Joshua has access to support and services suitable to his needs over time, and that his care plan will be adjusted to suit those needs.
- vi) 'Adoption will be the best plan for Joshua because no one from the family or friends' network was able to provide care for Joshua. Joshua's paternal relatives are not known and there is no one else that was considered able to care for him.' This is not a reason for adoption per se. It is a reason why Joshua cannot be cared for by family.
- vii) 'The adoptive family will have access to professional support to guide them through Joshua achieving best outcomes in his life. Joshua will have access to adoption support fund'. I have dealt with this above. In foster care Joshua will have access to appropriate services via the statutory framework. In adoption he would have access to appropriate therapeutic services via the ASF (and potentially through his adoption support plan). On the guardian's evidence Joshua will have additional needs as an adopted child, as a result of the additional layers of trauma that the plan entails.

79. In her evidence, when asked how she viewed Joshua's age in the balancing exercise, Ms X listed Joshua's age in the positive column for adoption. I do not understand this. Joshua's age is one of the reasons the local authority has developed a care plan for a time limited search. The fact that he is not yet 6, or not yet a teenager does not take away from the fact that he is of an age and stage of development, with enduring memories and connections that mean it will be harder to match him, harder for him to adjust, and that the risks and challenges of adoption will be greater. Joshua is not of an age where, when combined with his profile, it is likely to be impossible for him to be matched with adopters – but it seems to me that his advancing age is a complicating factor which elevates risk rather than reducing it.
80. In favour of adoption the Guardian sets out four points, which align with some of the points above, and with which I agree:
- i) Joshua would be raised as part of a permanent family.
 - ii) Adoption would allow Joshua to form long-term relationships within an adoptive family and they will invest in Joshua emotionally.
 - iii) This investment is likely to offer Joshua a positive sense of belonging, which will allow him to develop good self-esteem and increase his chances of becoming an emotionally literate and healthy adult. This is also likely to reduce the risk of placement breakdown compared to long-term foster care.
 - iv) Joshua would have a secure legal status and would be free from the stigma of being a child in care.
81. Against adoption the local authority flag three factors:
- i) 'Joshua would initially be living with people unfamiliar to him and possibly in an area that he does not know.' I agree with this but consider it significantly minimises the impacts of a move and a change in every domain of Joshua's life, from education to peers, to family to carers and geographically.
 - ii) 'Joshua will have no direct contact with his biological family which may affect his feelings around identity in the years to come.' I agree with this but consider it significantly minimises the loss and lifelong and inevitable impacts upon Joshua.
 - iii) 'Joshua will require significant support to understand the decisions and events that led to his adoption.' I agree. I think he will also need significant support to understand why he had to be adopted rather than remaining in foster care with a positive relationship with his mother.
82. A fourth in evidence was the statistical information that I have dealt with above. It would be wrong to proceed on the basis that foster care for Joshua has a 30% chance

of breakdown and adoption a 2-9% change of breakdown. There are risks of placement disruption with both options. Here I think the risk of breakdown in foster care are lower than they might be in many cases, and higher for adoption than they might be for a younger child without the established beneficial relationship with his mother through contact.

83. The Guardian says that against adoption are the following factors:
- i) 'Joshua would experience a significant reduction in contact with his birth parents. Joshua may experience the severance of ties with the birth family.' On the LAs revised care plan he will see a complete cessation of direct contact. Letterbox contact is proposed between Joshua and his mother and grandmother. The plan for letterbox contact is not a guarantee it will happen. Even if the LA had continued with its plan for direct contact in adoption, it is far from certain that this contact would actually happen.
 - ii) 'Joshua will experience a change of placement and primary carer. Joshua may struggle with feelings of loss, abandonment or guilt. This may be reduced if letterbox contact is maintained.' I agree. In the short to medium term I am not sure how much reduction in difficult feelings letterbox contact will offer Joshua. If the mother is unable to manage letterbox contact it will not offer Joshua any support at all.
 - iii) 'Joshua will lose the opportunity to be raised within his birth family network.'
 - iv) 'Joshua falls into the category of more risky children to place for adoption, due to a small risk of adoption breakdown associated with children who are five or older at placement for adoption'. I accept this evidence. It is important to acknowledge this risk.
84. To these factors I add the following: there are risks associated with the process of getting from A to B. These are not hypotheticals, they are integral to the plan and necessary precursors to achieving the goal of adoption. The plan I am being asked to endorse is an attempt at finding an adoptive placement. It has to be found, Joshua prepared, a match made, successful introductions etc. There is a risk it will not go well or will stall or fail. The family finding evidence reassures me that the chances a match will not be found are low, but how well Joshua will 'take' to the idea of adoption remains to be seen. If the local authority cannot achieve adoption for Joshua will not be a simple question of switching to plan B. Pursuit of this plan is not a neutral act. By virtue of the plan for adoption, for up to 12 months (hopefully less based on the family finding evidence) Joshua will be expected to adjust to the idea of adoption, to wait until a placement is found, perhaps 'stepping back' from developing his bond with his current carers all the while. At the same time he will be adjusting to a reduction in contact. The permanence that all agree he needs will be delayed. If adoption does not happen (which the very fact of the local authority's plan for a time

limited search at the suggestion of ASW demonstrates is a realistic possibility), Joshua will be worse off.

85. On the pros of foster care, the local authority says :
- i) 'Joshua would be protected from harm.' Although the oral evidence at times tended to suggest that frequent continued contact was or was potentially harmful, the Local Authority does propose it should continue, albeit at a reduced frequency. I agree that Joshua would be protected from the sort of harm that he has experienced in his parents' care by placement in foster care and the evidence suggests that positive contact between Joshua and his mother will continue. I do not accept the submission that the recency of the mother's change of position and the parents unresolved issues is a basis on which to view foster care as unable to protect him from that harm.
 - ii) 'Joshua would be in the care of skilled and experienced carers who have undergone a rigorous process of assessment to ensure they can meet his needs.' This applies to both foster care and adoption. The carers Joshua is with are known to have substantial experience of caring for children who cannot be with their parents in the short and long term. That might or might not be the case for adopters.
 - iii) 'Joshua would continue to have ongoing support from the Local Authority, including financial support upon reaching maturity as per the Cared for Child processes.' I have dealt with this above. This is the flip side of the 'stigma' coin.
 - iv) 'Direct contact with birth family members, including his parents and grandparents could continue if in Joshua's best interests'. This is a significant advantage to foster care. I accept the Guardian's view that contact is very important to Joshua.
86. In the 'reasons why adoption is the preferred and proposed placement option' section [C231] the LA also say: 'Long term foster care was also considered; however, this would mean Joshua would need to constantly balance a relationship between his parents and his carers which means he will not fully settle into his placement. Due to possible placement changes, particularly given Joshua's young age, this option does not offer stability to Joshua.'
87. Joshua is settled. It is early days and the relationships are new and still forming, but all the signs are extremely positive. If properly managed through direct work and communication between adults (which is eminently doable) I do not see that Joshua would feel a need to 'constantly balance' his relationship between his mother and carers. Joshua is well placed as a settled, bright and articulate 5 year old to respond well to an explanation of what is going to happen and that his current carers will

continue to look after him and he will carry on seeing his mummy, even if that is a bit less often.

88. I acknowledge the risk of placement changes. If the placement comes to an end for any reason this will be difficult for Joshua. There is no guarantee any subsequent placement will be as good a fit as this one appears to be and as indicated above I am very alive to the spiral that placement breakdown can contribute to. However, based on the available contextual information, it seems to me that the risk of this placement breaking down is comparatively low. By contextual information I mean the information about the carers and Joshua's responses to them set out above, along with the fact that Joshua's education has not been disrupted, his links to peers and family are maintained. In addition, the foster carers position as expressed through the Guardian is a prudent and realistic balance between their clear commitment and emotional connection to Joshua and the fact that it is still early days.
89. The Guardian lists the following pros which I endorse:
- i) Joshua would receive safe, nurturing and predictable care.
 - ii) Joshua would be protected from the risks of domestic abuse, poor parental mental health, aggression, neglect, and parental substance misuse Joshua would be able to form a long-term relationship with foster carer/s.
 - iii) Joshua would be able to maintain frequent direct contact with his parents in order to preserve a link to his birth family, which would support the development of good identity.
 - iv) Joshua would receive support from the Local Authority as a child in care and would be eligible for leaving care services in the future.
90. The local authority lists the following cons of foster care:
- i) 'Joshua would not be cared for within his birth family, and this could impact his identity.' Sadly, there is no option that will allow Joshua to be cared for within his birth family. Foster care will however preserve that relationship through regular contact, and in my view this will reduce the potential identity issues compared to adoption.
 - ii) 'Foster care provides significantly less stability than adoption in permanency planning, due to the greater possibility of the need for a placement change. Joshua is only 4 years old [sic] and therefore he needs consistent care until he is at least 18 years and then into his adulthood. As he is so young, there is therefore more time when placement changes could happen.' I agree that there is a long period ahead for Joshua in foster care. The potential for change is real. I am reassured by the known facts about his current placement. Hypothetical scenarios about life events such as illness death or divorce do not

greatly assist, save that I acknowledge that in times of crisis a foster carer may fall back on the ability to give notice, where an adoptive family might (perhaps) find that emotionally and practically more complicated. I do not think it is helpful to try and predict what these foster carers might do or what an hypothetical adopter might do in such a situation.

- iii) ‘Continued involvement from the Local Authority, including regular social work visits and Child in Care reviews, would be intrusive into Joshua’s family life.’ Dealt with above – I agree to an extent but I agree with the Guardian this can be minimally intrusive, and the intrusion is purposeful – for example to keep under review whether contact and contact levels are working for Joshua.
- iv) ‘As Joshua gets older, he would likely become more aware of being a Cared for Child, and this could set him apart from his peers. This may impact on how Joshua perceives himself and he may experience stigma from others, such as his peers’. Joshua will in any event be aware as he grows up that he is a child who is not cared for by his birth parents. He will be aware that he is adopted or that he is in foster care. Again, I think the key to these issues is sensitive management of them through life story work and through practical day to day arrangements that do not emphasise Joshua’s difference. I do not underestimate the potential for stigma or teasing from peers, but sadly it is also the case that lots of children have unusual care arrangements and family set ups, and many will be being cared for by someone other than their parents. Compared to the benefits for Joshua of being able to continue his relationship with his mother I do not think this is a particularly weighty factor.

91. The Guardian says:

- i) ‘Joshua would be prevented from being raised as part of a “permanent” family.’
- ii) ‘Joshua would grow up in the care system, with the stigma of being a child in care. Due to Joshua’s young age, there is risk of future changes of placement as his needs change as he grows and develops, or placement availability changes. This would be highly destabilizing for Joshua.’
- iii) ‘There is no absolute guarantee of permanence for a child through fostering.’

92. Again, I accept all of these as ‘cons’ of fostering (though Joshua does retain the prospect of a different kind of permanence through special guardianship in due course). It is important to weigh these in the balance.

93. In addition, there is I think some risk of discharge or contact applications causing disruption. Ms Barry suggested that there are ways of insulating a placement from the disruption and pressures such applications bring. I agree that efforts can and should be made to limit the impact of any such application, but I cannot discount this

completely. That said, it would be wrong to assume that only unmeritorious applications would be made. Parliament has permitted applications for discharge of care orders precisely to cater for the eventuality that things change and that what is best for a child may change. At present the prospect of any discharge application is hypothetical. I add it as an equivocal ‘con’ of foster care.

94. I cross check my analysis against the checklists. Here, Ms Barry’s analysis is helpful in considering each factor (the SWET is not broken down in this way). I adopt it, but also set out my own analysis and highlight the following:

The ascertainable wishes and feelings of Joshua regarding the decision relating to adoption (considered in the light of his age and understanding)

95. Joshua’s expressed wishes are to stay where he is. He shows his wish to continue his relationship with his mother through his enjoyment of contact. Joshua has said he does not wish to see his father and has expressed fear of him. Joshua has no idea of the plans for his future and will likely have no understanding of adoption. If I approve a placement order both the concept and the reality will be something he will have to absorb and cope with. He is likely to be distressed and upset in the short term.

The child’s particular needs

96. The Guardian says, and I accept:

‘Joshua is currently within a foster placement where he needs are being met by carers who are aware of his history and trauma and they are able to skilfully meet these needs with reparative care and empathy, meaning Joshua has already settled in their care and has acclimatised (to a degree) to being apart from his mother. A future move to any adoptive placement may undermine the progress that has already been made as well as risking adding another layer of trauma through the loss of the (multiple) positive relationships Joshua has built whilst in foster care.

Joshua needs understanding carers who can appreciate that the past will have an impact on Joshua, but this can be overcome through reparative parenting. In my view Joshua is already benefitting from such a placement and is settled there.’

97. Joshua’s primary need is for stability of care throughout his childhood. He also has a need to continue his relationship with his mother. I agree with the guardian adoption and the cessation of contact would represent a significant loss. In my judgment the continuing of that relationship will promote rather than undermine placement stability.
98. Joshua needs adults to make arrangements for his care that do not add further layers to his trauma. Adoption guarantees further layers, the impact of which is difficult to predict. Foster care gives Joshua a good prospect of being able to remain where he is and to work through the trauma he has suffered without that trauma being added to.

99. In the event that the foster carers apply for special guardianship, that will offer Joshua a sense of greater permanence without severing his relationship with his mother. That is only likely to happen once the carers are confident that Joshua's needs can be met without continuing statutory involvement. It is also possible that these carers will continue to commit to Joshua long term but conclude that it is better to do so under the auspices of a care order, with all the support that will bring them and Joshua. It would be unwise to try and guess which is the more likely outcome.

The likely effect on Joshua of having ceased to be a member of his original family and becoming an adopted person:

100. The Guardian reminds me that 'Research shows that some adopted people may experience difficulties when they are at an age where they truly understand what being adopted means. Some adopted children experience difficult feelings about adoption and need to explore these feelings. It is difficult to know whether this will be relevant for Joshua but should be kept in mind.'
101. I have set out above why I think that this is a particular issue in this case. In the course of her evidence the Guardian set out why it would be particularly difficult for Joshua to understand the ending of his relationship with his mother when contact has been so positive. Many children in Joshua's situation are having inconsistent or contact of mixed quality, or no contact at all, and can be helped to understand why they need a new family. For Joshua, his traumatic experiences in the care of his parents have been followed by a period of what in my view will ultimately be reparative calm and positive contact with his mother that the local authority accept should continue if Joshua is not adopted.
102. To find a foster placement where carers child and other household members are so mutually connected and committed after only four months is, sadly, a rarity. The value to Joshua of maintaining this rather than trying to improve on it is not in my view to be underestimated. I am concerned about the risk of Joshua losing what he currently has in real life, in the well intentioned endeavour to do better by reference to the idea of what adoption can offer in principle.

Joshua's age, sex, background and any of Joshua's characteristics which the court or agency considers relevant, including Joshua's religious persuasion, racial origin and cultural and linguistic background.

103. I have dealt with Joshua's age above. It is materially important and it is one of the reasons (in combination with his background, circumstances and options) which has made this so difficult to decide.

Any harm (within the meaning of the Children Act 1989 as amended) which Joshua has suffered or is at risk of suffering

104. The harm suffered is set out in the threshold document. It will continue to impact Joshua. My decision must do the best with the available material to try and protect Joshua now and in the course of his life from further harm. Neither course of action is risk free. Placement breakdown or a failure to find an adoptive placement having told Joshua he is to be adopted would compound the harm. Foster placement breakdown after Joshua has built up trust would compound the harm. Not being able to see his mum would compound the harm.

The relationship which Joshua has with relatives, and with any other person in relation to whom the court or agency considers the relationship to be relevant including the likelihood of any such relationship continuing and the value to Joshua of it doing so.

105. The relationship between Joshua and his mother is strong and very important to Joshua. There is immense value to Joshua in it continuing if it can. Joshua also has a relationship with his maternal grandmother, which can continue in foster care (and via letterbox in adoption). Joshua is not having contact with his father and even in foster care will not have contact with his father unless his father undertakes substantial work and Joshua's own views change. However, if his father can make those changes Joshua may be able to see his father or receive some reparative communication from his father at some stage. Sadly, that is not likely to happen in the near future, but it would be to Joshua's benefit if it did.
106. The likelihood of direct contact between Joshua and his mother post-adoption given the LA's plan and evidence, and the fact that ultimately contact is up to the adopters, means that in reality direct contact is very unlikely to happen. Letterbox contact, whilst important, is not equivalent to direct contact which allows Joshua to build positive memories and share positive experiences with his mother.
107. There are a number of half siblings who Joshua may be able to form a relationship with in due course.

The ability and willingness of any of Joshua's relatives, or of any such person, to provide Joshua with a secure environment in which he can develop, and otherwise meet his needs.

108. Sadly, none of Joshua's relatives can provide him with care. His mother can contribute to the security of his placement by maintaining the consistency and quality of her contact and continuing to work constructively with the foster carers and local authority (as it is accepted she has done throughout, bar the serious dishonesty about her relationship).
109. S 1(4)(f) requires me to consider 'any other person in relation to whom the court or agency considers the relationship to be relevant'. The foster carers are relevant. I have set out why, on the specific facts of this case, I consider their position to be important. Even though for reasons I understand they cannot commit to adoption or special

guardianship and even though they must know it is early days, and there is some uncertainty around contact going forwards, they have been willing to commit long term. They are providing (as all accept) better than good enough care which is meeting Joshua's needs. They are experienced long term carers of children who have entered the care system.

The wishes and feelings of Joshua's relatives, or of any such person, regarding Joshua:

110. Both parents oppose adoption. Both parents support foster care. Their support is important. In time, if M can be supported to communicate that support to Joshua it will support his placement.

Conclusion

111. In In Re F (Adoption: Welfare of Child: Financial Considerations) [2003] EWHC 3448 (Fam) Black J (as she then was) acknowledged that, as a general principle, adoption has more to offer children, and particularly younger children, in all sorts of ways than long-term foster care; although in that case she decided it was not in the interests of the particular children to abandon the loving foster family they were living in and to step into the unknown in pursuit of as yet unidentified adopters. That dilemma of resolving tension between the general and the specific resonates strongly with this case.
112. Considering all the pros and cons of both options I am not persuaded that 'nothing else will do' but adoption. I consider that when properly scrutinised, the risks for *this* child of pursuing a plan for adoption outweigh the potential gains. Not only is there a less intrusive option i.e. foster care available, that option is in my view better suited to Joshua's needs in that it is more likely (as far as the court is able to predict) to meet his overall needs for stability. It is the only option which will preserve to any meaningful extent his relationship with his mother, a relationship which I consider important for his stability and wellbeing now and throughout his childhood.
113. I have concluded that there are a number of very real risks which the LA overlooked in its analysis and did not acknowledge, which I have set out above. In my view, knowing what I do about the individualised facts, the various risks associated with foster care for Joshua are lower than the risks associated with adoption for him. Moreover, if Joshua is able to remain in his current excellent placement he will have something he can not achieve in adoption – a relationship with his mother as well as stability of placement, i.e. the best of both worlds. Nothing is certain, but that opportunity is not something I consider should be taken from Joshua because of a dogmatic view that adoption is best. I don't think a plan to pursue adoption would be best in this case, and I don't think it is the right route for Joshua.
114. I cannot sanction a plan for adoption. I will dismiss the application for a placement order.

115. The proportionate response to Joshua's needs now and going forwards is a care order. It will represent a not insignificant interference in his life, but it is a necessary interference.

Contact and care plan

116. There is a dispute about contact. The parents and Guardian suggest I should invite the local authority to reconsider their plan for contact reduction before making a final care order. No party seeks a contact order, recognising (rightly in my view) that an order would be too inflexible to meet Joshua's evolving needs.
117. The LA say that contact should be gradually reduced to six times annually (in the school holidays). The Guardian says contact should be weekly. The mother seeks as much contact as is possible.
118. I accept, as did the Guardian in evidence, that weekly contact in a long term foster placement is comparatively unusual. Whatever the LA's plan it will be subject to statutory CIC reviews and scrutiny by the IRO.
119. In view of my conclusions about the quality and importance of contact, and in line with the Guardian's experienced view that this is probably about right in the circumstances of this case, it seems to me that in the first instance the evidence supports a gradual reduction to weekly contact. Once weekly contact is established for a period, it can be reviewed. If that frequency is working well for Joshua and manageable for the carers it can continue. If it is not, it can be further adjusted downwards.
120. In view of the review process, I can see no reason why the care plan ought not to reflect that weekly contact will be trialled, subject to review. I do invite the local authority to reflect on that element of the care plan, and to amend it to encapsulate my proposal before I make final care orders. Ultimately it is a matter for the local authority, but I hope that the local authority will reflect on my conclusions and act accordingly.
121. The care plan needs in any event to be amended to reflect the reduction plan set out in the statement of 12 June 2023 (subject potentially to the above tweak).
122. I am also invited by the LA to make a s34(4) order in respect of the father's contact, permitting the LA to refuse contact. This was initially proposed by the Guardian but only taken up by the LA in final submissions. Mr Bitmead was unable in the absence of his client to formally consent, but the father is not seeking contact and accepts that he has a long road to travel before he could do so. He understands that the LA will need to risk assess any request for contact before it could start. I will make the order, noting that it is permissive only and does not prevent the local authority from permitting contact if, at the time, it is in Joshua's best interests.

Other matters

123. I want to say that Joshua sounds like a charming cheeky young man. I have seen his picture in the CPR and have looked at it often during the hearing. He looks like a lovely young man. The fact that he has settled well in foster care and his continuing warm relationship with his mother must in part be attributable to the care he was given in his early days by his mother and her attention to building a positive attachment (about which the Guardian told me).
124. M needs to understand that she has made the right decision for Joshua, painful as it has been. I encourage her to undertake work around her issues, for her own sake and for Joshua's. He will need her in the coming years.
125. F has also made a painful but child focused decision in adopting the position he has. I agree with the Guardian in encouraging him to make a start on the work he has identified with her, knowing it will not be easy. Again, that is for his benefit and for the benefit of his children.
126. It is important that Joshua understands as he gets older that his mum and his dad both love him very much but knew they could not look after him and that they agreed he should be looked after by others because they wanted the best for him. I record that here so that when the time is right that message can be conveyed to Joshua in an appropriate way, for example via life story work.
127. The foster carers are to be commended for their commitment to Joshua and their excellent care. It is imperative that they are not placed under undue pressure whether through contact or requests to take an SGO etc. Their current position is entirely appropriate.
128. The parties have asked me to produce a written judgment or transcript so that my findings, my decision and the reasons for it can be captured and placed on Joshua's file and passed on to professionals and adults who will be responsible for Joshua's care and wellbeing. Those people will include Joshua's IRO and his carers.

Practicalities

129. I will hear from the LA as to how long it would like to amend the care plan and to consider the further proposed adjustments I have suggested above, but in the first instance suggest 4pm Monday 26 June 2023 (if not before). I will amend this judgment by adding a postscript (as / if necessary) once I know the local authority's position.
130. In the meantime, any typographical errors in this judgment can be sent to me by counsel.

131. I will consider whether an anonymised version of this judgment should be sent to The National Archives before making such amendments – any representations should be made either at today’s hearing or by email by 4pm 26 June 2023. In the first instance I would propose to redact the name of the social worker (who I have accepted has made her best efforts but probably needs more support), the specific date of the precipitating incident, and of course the names of the parties and Joshua’s precise date of birth. Subject to representations, I do not think that there is any other obvious need for redaction.

Post script – 5 July 2023.

132. I handed down the above judgment on 21 June 2023 and adjourned until today to enable the local authority to adjust its care plan in light of the dismissal of the placement order application, and to consider the appropriate plan in respect of the mother’s contact.
133. The local authority has filed a revised care plan which provides for a gradual reduction of contact between Joshua and his mother to weekly contact, which will be kept under regular review. It also records the fact that the local authority will keep the father’s contact under review, notwithstanding the current position. All parties now agree that plan. I am happy to endorse it and to make the care order as requested. I am grateful to the local authority for undertaking that work.
134. F has confirmed that he does not oppose the making of a s34(4) order, being reassured by the explanation that the order is permissive rather than mandatory, and that contact will be kept under review. I was told today that in fact when Joshua was told about the plans for him to continue in foster care by his guardian and social worker, to assist with his life story, he expressed some interest in seeing pictures of his father. It may be that in due course he begins to ask about him and then the local authority will need to weigh the risks and potential benefits of contact very carefully. The local authority should be empowered however to withhold contact unless and until Joshua is open to the idea, and any reintroduction has been assessed as safe and beneficial. I will make the s34(4) order.
135. No party has objected to the publication of the judgment in anonymised form, and no party has sought particular anonymisation other than the ‘usual’ anonymisation of names of parties and Joshua’s date of birth. The advocates have helpfully agreed to assist with checking anonymisation, for which I am grateful.
136. I have weighed up whether it is appropriate to publish this judgment and have concluded that it is. The anonymisation will protect the Article 8 rights of the family, and the publication of the substance of my judgment will further the open justice principle. Whether or not the court agrees with the local authority and sanctions a plan for adoption at the end of a particular case, the public should be able to understand the workings of the court whenever it is making decisions about such serious

applications, insofar as that is compatible with the administration of justice and the Article 8 rights of the family concerned.

137. That is my judgment.

Recorder Lucy Reed KC

5 July 2023