

IN THE BARNET FAMILY COURT

Case No. ZW21C00330

Neutral Citation Number: [2023] EWFC 314 (B)

St Marys Court  
Regents Park Road  
Finchley Central  
London  
N3 1BQ

Friday, 20<sup>th</sup> January 2023

Before:  
HIS HONOUR JUDGE OLIVER JONES

B E T W E E N:

LONDON BOROUGH OF HARINGEY

and

Q  
& ORS

MS J BROWN appeared on behalf of the Applicant Local Authority  
MS J HAYFORD appeared on behalf of the Respondent Mother  
MS S BRANSON appeared on behalf of the Respondent Father  
MR N HOWARTH (Solicitor) appeared on behalf of the Child through their Guardian

JUDGMENT

*This Transcript is Crown Copyright. It may not be reproduced in whole or in part, other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.*

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

HHJ OLIVER JONES:

1. These are care proceedings in relation to a little boy. I have been asked to publish this judgment and I am mindful of the benefits of transparency about the working of the Family Court in general. However, it is important that the identity of the child is kept confidential. For the purposes of anonymity I am going to use a false identity and refer to him as “Joe”. Joe is over 1 year old. The Local Authority that brings the application is London Borough of Haringey, represented by Ms Brown.
2. His mother is represented by Ms Hayford, and she has been supported throughout this final hearing by an intermediary through Communicourt, Sophie Brindley for most of the hearing and Libby McKay today. The father is represented by his counsel, Ms Branson. Joe is represented through his Children’s Guardian, Gosia Rush and by his solicitor, Mr Howarth.
3. I know that the parents are anxious to know what my decision will be. I think it is better that I tell them now rather than make them wait until the end of what is going to be a fairly long judgment.
4. I have decided that it is in Joe’s best interests to live with his father with a supervision order in favour of the London Borough of Enfield. I did not approve the plan for adoption, I am not going to be making a care order, and I will be refusing the application for a placement order.
5. These are long-running care proceedings; they have been afoot almost for the entirety of Joe’s life. The issues that I am asked to determine are the threshold criteria and the welfare decision for Joe. There are three options: for him to live with his mother; live with his father, either under a care order or with a supervision order, and adoption. In addition, I am invited to deal with a declaration of parentage application by the father.

**The evidence**

6. I have read a bundle of 840 pages and a second bundle of contact notes and Jamma Umoja logs of some 741 pages. In addition, I have received a number of further documents that are not in the bundle: a child and family assessment by the London Borough of Enfield in relation to the father’s care of his daughter, who again I will refer to by a false name, “Kate”; the Children’s Guardian’s final analysis; a statement by the service manager of Haringey Ms Hayley Cook which was prepared after the allocated social worker completed

her evidence; the updated record of agency decision dated 26 April 2022 which also contained a further update on 2 September 2022.

7. In addition, I have been provided with a number of extracts from research papers relating to drugs and alcohol testing, and I have been provided with a number of authorities by the advocates to augment their closing submissions.

### **The witnesses**

8. I heard first from Sabiha Tomkinson. She is a social worker who now works for Luton Social Services, but she had been a senior social worker at Jamma Umoja and had case responsibility for the family. Jamma Umoja provided two reports relating to the assessment of the mother's care of Joe at that unit: an interim report of 25 October 2021 and a final assessment on 23 November 2021.
9. Ms Tomkinson was challenged on behalf of the mother as to whether Jamma Umoja had properly taken into account the mother's cognitive needs, and whether the introductory explanations process that was undertaken was adequate. Ms Tomkinson explained that she worked for Jamma Umoja for some two years and had assessed a number of families, but it was in her experience extremely rare at the end of a 12-week assessment period to know very little about a parent. However, that had been her experience of the mother. She formed the view that the mother had not shown any evidence of change or any increase of insight during her time at the unit.
10. The assessment conducted was a PAMS-compliant assessment and had identified that the mother was able to meet Joe's physical needs. However, overall, the assessment was negative and Jamma Umoja raised concerns about the mother's behaviour, her presentation, and her ability to safeguard Joe whilst in the community as well as on the unit. It was Jamma Umoja's view that the mother had not fully engaged with the assessment.
11. Jamma Umoja reported that the mother had been involved in several verbal disputes with other residents, with these disputes taking place in the presence of Joe and other children. It was the mother's view that she was being victimised. Jamma Umoja also reported a concerning incident that whilst being accompanied by a staff member to take Joe to a play group away from the unit, the mother had crossed the road in inappropriate places and walked into the road causing cars to stop sharply on two occasions, with Joe accompanying her. Ms Tomkinson did not see this incident herself but reported on what she was told by colleagues, but it is disputed by the mother who asserts she did nothing dangerous with Joe.

12. I found Ms Tomkinson to be a reliable witness; she gave credit for the positives about the mother's parenting, and she was unshaken in cross-examination.
13. I heard next from Mr Marshall, a psychologist. He conducted a cognitive and a full psychological assessment of the mother. He assessed the mother's full-scale IQ to be 67 and the sub-scores that were also assessed were consistent with that level.
14. In his evidence, Mr Marshall stressed that at the heart of the difficulties relating to the mother is consistency in particular where there are limitations with emotional regulation. He said that the mother had shown at times that she is capable but that does not mean that she can do it all of the time. He was clear that he was not saying that she is or has been devoid of regulation, but the problem is that it remains limited.
15. It was put to him that the mother has a successful history of education, and he said that she is capable of learning but she will have difficulties relative to her peers, and require additional time for new skills and information will need to be presented in a certain way. He said that she does not lack capacity but there are difficulties.
16. In relation to the mother's ability to reflect and think about things, Mr Marshall said that she is able to reflect, but again there are limitations and inconsistency. He gave me the example of the mother's use of cannabis, saying that the mother is believed to continue to be using cannabis despite having explained her insight that she was using cannabis as a form of self-medication; he said that it was one thing to say it, but it is another to be able actually to demonstrate it.
17. I found Mr Marshall to be a balanced and considered witness; he was unshaken in cross-examination and I accepted his evidence.
18. I heard next from Dr McEvedy, a consultant psychiatrist. He also assessed the mother. His opinion was that there are likely features of paranoia or persecutory illness. His view was that it was reasonably likely that the mother has a paranoid illness. He also recorded in relation to her toxicology results that they are positive for cannabis and cocaine for the tested period of February 2020 to August 2021, and that these are inconsistent with the mother's claims to have not used cannabis after the third month of pregnancy and to have not used cocaine since Christmas 2020.
19. He recommended a trial of antipsychotic medication be attempted which if it were effective, in his view, could show some degree of improvement within one or two months. However, he identified that the mother denies having any mental ill health which could be problematic in terms of her engagement with treatment. He told me that the risk of drug misuse and of

exacerbating psychosis because of that misuse remains. He said that the mother's account of being laughed at by the GP when she sought a trial of antipsychotic medication did not sound plausible.

20. Dr McEvedy in his written report stated that the mother's self-presentation about her education and achievements, and her work as a waitress, a sales assistant, and more recently as a chef, are not consistent with a diagnosis of a learning disability.
21. I found Dr McEvedy to be a balanced and reliable witness, and I accepted his evidence.
22. I heard next from Mr Peters, an independent social worker. He conducted a risk assessment of the father in May 2022, and then an addendum parenting assessment dated 25 August 2022. He was sensible, considered, and thoughtful; he gave credit where it was due.
23. However, he did not shift on the key points in relation to the father's use of substances. His view was that the father's explanation for his cocaine use did not account for the results that had been received. Further, that because of the father's denial of ever knowingly using cocaine, the Court is left without an understanding of the nature of his usage, whether it was simply use while socialising, or something else.
24. Mr Peters' ultimate recommendation was negative. For him, the decisive factor was the father's substance misuse, although he did fairly in his report quote the NSPCC learning 2022 document:

“Living in a household where a parent or carer misuses substances does not mean a child will experience abuse, but it does make it more difficult for parents to provide safe and loving care. This can lead to abuse or neglect”.
25. He set out in his report the ways in which substance misuse can impact on caring for a young child, with an elevated risk of poor supervision which can result in serious accidental injury, with the risk of ingesting substances which can be seriously harmful or even fatal for a small child. Also, with the risks applying during periods of drug use but also during comedown periods after use where the parent can be suffering from disturbed sleep or routine, mood swings, depression, anxiety, or feelings of shame and guilt.
26. Mr Peters' report does incorporate a common misunderstanding about the way in which hair strand testing results are presented. He described the father as having hair strand test results “which confirmed a high level of cocaine use”. The toxicology reports and Ms Read, who I will deal with in a moment, made it clear that this is not what the references in the reports to high, medium, and low ranges mean.

27. I found Mr Peters to be a fair and balanced witness. I found him to be reliable notwithstanding that last point about misunderstanding the test results.
28. I heard from Ms Fern Read; she is a scientist from DNA Legal, one of a number of toxicology testing companies that had been used in this case. She gave her evidence in a clear way; she recognised the limitations of the scientific knowledge in relation to testing. She did not appear to be overly dogmatic and, when appropriate, she indicated if she was unable to answer a question as a result of the limitations of the science. I found her to be reliable.
29. I pause to comment briefly about the use of different companies for the purposes of hair strand testing. In this case, there have been a variety of different laboratories undertaking hair strand testing analysis. What this means is a deterioration of the quality of the evidence overall, because making direct comparisons between different laboratory results is not feasible: they use different techniques, in some cases they treat hair differently. For example, DNA Legal combs out dreadlocked hair, whereas the other laboratories appear simply to test a section of matted hair. DNA Legal tests the washes relating to the hair sample as well as the hair itself which the other companies used in this case do not do. However, it does mean when looking at the testing results, it is not possible to put the results from different companies alongside each other and make a direct comparison to see how change has occurred over time as the variations in testing can bring about differences. Although, I do recognise that despite these limitations, it is still feasible for the court to discern trends particularly where the differences are marked.
30. I would in future cases urge wherever possible that only one testing laboratory should be used throughout. Frequently the court makes a generic direction for hair strand testing and the legal representatives arrange which laboratory is used. However, there should only be a change between laboratories where it is necessary to do so and a change of testing company ought to be a judicial decision.
31. I heard next from Jennifer Morgan, the allocated social worker. She has been allocated to this case since 3 May 2022. There were gaps in the final evidence put forward by the Local Authority. For instance, the plans for reducing contact had not been thought through or set out adequately. Ms Morgan was frank about shortcomings within the Local Authority's practices. For example, she told the Court that when she took over the case, the handover that she received made no mention of the mother's learning difficulties.

32. That sort of oversight is poor practice because during the period when the new social worker was trying to establish a relationship with the parent, she was without the knowledge she needed to give the mother the best opportunity to succeed.
33. Ms Morgan explained in her evidence that her concerns relating to the mother were not confined only to the drug issues but also the mother's emotional regulation. She described trying to assist the mother with housing but that the mother was in her words, "upset and difficult, became verbally abusive and then hung up the phone". At that point in the social worker's evidence the mother interrupted and called out, "that's a lie". She quickly apologised and Ms Morgan then went on to explain that subsequently to that call, the mother had also apologised for what had happened.
34. Ms Morgan told me that she was entirely reliant on the previous social worker's analysis to justify the care plan for adoption. That care plan was prepared many months before, in April 2022. She told me that she did not consider that there were any gaps at that stage other than the independent social worker's addendum report.
35. She accepted that in relation to the father this is a single issue case relating to his drug use. She struggled in her evidence about the absence in her statement of a *Re B-S* analysis. She appeared to have little awareness of the obligations on Local Authorities to prepare an analysis of the pros and cons of each realistic option.
36. The way she described the Local Authority's thought process was indicative of a linear approach having been taken. She said: "There was not anyone else we could have added to the assessment in order to keep Joe in the family". When I asked her whether the negatives of adoption had been discussed, she said that that, "might have been missed".
37. She accepted that placing Joe with his father under a care order was a realistic option, but that it had not been considered. She accepted that the Local Authority's analysis had not been properly evidenced. She accepted that the final evidence did not include the support that could be provided if Joe were to remain with his father; she said that that had not been considered when they were considering the care plan for adoption.
38. She agreed that given the results of the nail testing suggested abstinence from drugs by the father for a period of six months, it was not possible in this case to say that nothing else will do apart from adoption. She agreed with Mr Peters that what is important is to look at the impact on parenting rather than just at whether a parent has used drugs. Further, she agreed that she had dealt with other cases where parents whose drug users was managed under a child protection plan, that those parents were given a chance and the child was only removed

if there was evidence of that child suffering significant harm. She agreed that Joe's case was far away from being able to say nothing else will do but adoption.

39. Ms Morgan's evidence was problematic: on the one hand, she should be given credit for her frankness, but on the other, she acknowledged significant failures in the Local Authority's thinking and analysis which is something that she and more widely the Local Authority were responsible for.
40. In the aftermath of Ms Morgan's evidence, the Local Authority indicated its wish to file further evidence and potentially to call a further witness. A statement from Hayley Cook, the service manager, was provided. That statement restated the Local Authority's plan for adoption, and clarified that the Local Authority relied on the *Re B-S* analysis prepared by the previous social worker Ronnie Chakanyuka dated 29<sup>th</sup> April 2022.
41. Ms Cook's statement included an analysis of the pros and cons of the realistic options, including that of Joe being placed with his father under a care order, and factored in the support network that the father has. It restated from Mr Chakanyuka's statement the proposal for supportive monitoring if a supervision order was made, namely, four weeks of weekly visits with a view to reducing frequency of visits to monthly; child in need meetings every six weeks; health visitor visits every month; that they would seek for Joe to attend a local children's centre each week; and that the referrals will be made for support services, for example, drugs services.
42. No party applied for Ms Cook to be called to give evidence.
43. It is clear that the Local Authority's presentation of its final evidence is not good enough. The need for a proper *Re B-S* analysis is now well-established, and that analysis of the pros and cons of each realistic option needs also to take into account the support that will be available for each of those options. It was disappointing to hear an experienced social worker, who apparently was not fully cognisant of those requirements.
44. With the patching up of the Local Authority's case by Ms Cook's statement, I am satisfied that the Local Authority's plan was choate. However, the piecemeal approach that the Local Authority took to its analysis and its thinking about the case means that I can place less weight on their analysis than I would have been able to do had there been a full analysis of all of the evidence.
45. I also have to factor in the social worker's professional view which she gave in evidence that when all of the pros and cons of each option were spelt out to her, she agreed that this case did not meet the test for adoption.



46. I heard next from the mother. The Court took additional measures in the course of the mother's evidence to try to assist her with the process. Additional breaks were taken. There was concern at times about how the mother was managing the process; after one of the breaks she was yawning and appeared quite tired by the process. More breaks were provided and she was kindly given some coffee as well by one of the advocates. Overall, despite those issues and with the assistance of the intermediary, I formed the view that she was given a fair opportunity to present her case and tell her side of the story.
47. At the outset of her evidence, she was taken to her written statements. They had not been signed, and she did not appear initially to recognise the statements. She then said that she did but disagreed with a part of it, but when I asked what that was she said primarily it was the psychological assessment report - she disputes some parts of that. Also, she felt that the psychiatric report was not fair because the assessment meeting was not face-to-face, and that he had recommended antipsychotic medication based on 30 minutes of a WhatsApp call. After being further queried, she said that she accepted her statements and she signed them.
48. She spoke lovingly about Joe. She called him a really beautiful child, a sweet boy who is very caring and giving, and easy to love. She told me that it breaks her heart that he is growing up without her, and that she feels completely destroyed and incomplete as a human being. She told me that she was always happy with the option of Joe going to his father. She told me that she works as a chef at a hotel.
49. When she was asked about her relationship with the father, she said that she would see him regularly, and everything was all right at the beginning of the pregnancy, that he was nice and advising but at the same time she felt that he was not being truthful to her. She felt as soon as the intimacy within the relationship reduced she did not see him as much to the point where she felt he was purposely being difficult, and she described them as "drifting apart" after the baby.
50. She told me that Jamma Umoja had made up their minds about the outcome as soon as she had arrived. She said that the Court's decision to make an interim care order was based on incorrect or fraudulent information. She said that Social Services had been accusing her of being a sex worker, and when she tried to tell Jamma Umoja that she had a job, that that was not acknowledged.
51. She told me she had last used cocaine "way before" her pregnancy, she said she does not drink alcohol much, and that a bottle of wine could last more than two weeks for her. She said that she predominantly smokes "high-grade weed", but does not smoke skunk. She said

- she had not undergone the last hair strand test that was directed because she was really scared, and she felt that she had a right to some form of privacy as a human being, but also on the other hand she was scared and ashamed because she had smoked weed.
52. She said that if Joe was with the father she would want to visit the house, but that if the father said to stay away, she would have to. She said she was not really agreeing to see Joe in a contact centre but would agree to having someone from the father's family supervise contact. She said that she would want to see Joe every day but did not know if she could do that. I took that to mean that she did not know if that would be allowed. She said that if the Court said her contact had to be supervised, she would have to go along with it.
  53. She told me that the GP laughed at the idea that she would need antipsychotic medication, and she told me that one of the doctors had said, "Don't worry, we are not going to put you in the mad ward". The mother's behaviour during her evidence was unusual. There was a marked change after one of the breaks, and she yawned very expressively on a number of occasions.
  54. I do not doubt that the mother loves Joe.
  55. The mother remained constant in her denial of any problems relating to her mental health. In regards to her use of drugs, she did make an admission about cannabis use, but she could not provide a credible explanation for her cocaine test results which were positive.
  56. I did not find the mother particularly reliable. She made strong claims about issues like her substance misuse which were not borne out, and indeed were entirely contradicted by the toxicology tests.
  57. I was concerned about the way her written evidence had been presented; the statements had been prepared by her previous solicitors. They were not signed at the time when they were prepared. I was concerned that she had not been given an opportunity to read it again prior to the hearing, which surprised me given that an intermediary had been arranged. As a result, I cannot place much reliance on the inconsistencies contained within those documents because I am not certain that they were fairly reflecting her evidence.
  58. The father gave evidence next. He told me that he had never met the service manager, Hayley Cook, and that he had only met Ms Morgan twice: once when she supervised contact at the contact centre, and once when she provided him with a prepaid card for travelling to contact. He told me that none of the concerns that the Local Authority were citing about his insight had been discussed with him by Ms Morgan.

59. He explained that he did not know about the mother's vulnerabilities until he had received the expert reports relating to her, and he was adamant he had not dismissed the Local Authority's safeguarding concerns.
60. He told me that he had lived with the mother of Kate after Kate was born but had moved out when Kate was four, and then when Kate was five he had taken on her care because her mother had become sick. Nonetheless, during that year he maintained his relationship with Kate and continued to do the school run. He has three older children: a son, who is 22 and lives abroad, and two daughters; my note says one is 18 years old, and I am not sure of the age of the other.
61. He was frank about his past experiences, that he had served time in prison for drug offences in 2008, which meant that he did not see his older children for a period of time as they did not know that he was in prison. He described recent problems with one of his daughters after she had failed her GCSEs and that they had argued, and that he has had less contact with her since then. He was upfront and frank about these sorts of issues.
62. He denied that Kate spends time with her mother and with his cousin so that he can have time to socialise. He explained that Kate does so because she loves her mother and her older brother, and it was important for her to have those relationships.
63. He said he wanted the mother's contact with Joe to be professionally supervised until there are changes in the mother's situation, and that he would listen to the social worker's advice about any changes.
64. He said that at the moment he does not have a plan about new relationships, that he had made a decision to prioritise Kate, and he did not want others to come and go as Kate gets easily attached, so it is his choice to stay single.
65. In the course of cross-examination, it became clear that the father had commenced his relationship with the mother towards the end of a relationship with a previous partner. He said that when he had met the mother he wondered about how she would react to people and situations, that she would get cross and agitated if he had contradicted her, and "accuse you of being in league with them". However, he knew nothing about her mental health issues; he thought that that was normal and that she was just "being ignorant", and he would deal with it by hanging up the phone or walking away when she accused him of things.
66. He accepted, and it was slightly contradictory with his indication that he had intended to be single, that he is seeing a woman, but described it as "nothing serious". He said he cannot

determine what will happen in the future, but if the person is the right person, and if it continues, it continues.

67. He was really cagey about where he met this woman, answering simply that he had “met her” and on a couple of occasions saying it was “in England”, he then questioned why it was important where he met her. He said he did not want to say how old she is, but said she has two children in their thirties. When asked if this woman has met Kate, he was again cagey and said she “knows Kate”, but later he explained that Kate does not know she is his girlfriend, and that it takes time to let a child know certain things.
68. He said he smoked cannabis before the proceedings but when he had become involved he reduced his usage significantly and then stopped. He was taken to his final statement, which was prepared in November 2022 but was not signed until he was at court, where he wrote: “I have also reduced the amount of cannabis that I take, but I acknowledge that I have not stopped completely”. He said that this was wrong and that he had stopped completely a long time ago. He sought to give the impression in his evidence that he had broken with the associates who used to be involved with drugs. However, by the end of his evidence he had watered that down, saying that he has the same friends and associates going to the same bars and clubs, but not all of them are still his friend; some of them are, but not all.
69. The father presented with a calm and laidback demeanour. I was not persuaded that he was open about his use of substances. As I say, he was cagey about the involvement of his new girlfriend for reasons that are not immediately obvious to me. It may be that the presence of the mother in the room was a factor that he was taking into account, not wanting to upset her or enflame difficulties. However, there was an element of contradiction and his evidence about his intention to protect Kate from being introduced to new people, was undermined as it appears that Kate does know his girlfriend.
70. That said, when he was talking about his relationships with Kate and with Joe, I formed a real sense of the positive relationship that he holds with them, and the significance that he holds them in his mind.
71. I heard next from the Children’s Guardian, Gosia Rush. The Guardian was clear in her views throughout her evidence that she supported the care plan for adoption. She insisted that she kept an open mind and considered all the options properly. She said that there were gaps in the social worker’s oral evidence, that she did not agree with the social worker’s conclusions, and preferred to rely on the Local Authority’s written evidence.

72. In any event, she told me she had conducted her own analysis. She said that she had not noticed the absence of a *Re B-S* analysis in the social worker's final evidence, and suggested that she had in her head combined the last two statements.
73. In relation to the father's use of drugs, she said she concluded that he had not been honest and open with the professionals. In her written report, she said that the father has not even started to address his substance misuse issues. She said that she felt he had only attended substance misuse services because the proceedings have driven him to, rather than doing it meaningfully. She was concerned that the father had lied about drug use and the impact of that on Joe.
74. She said that it is clear that Kate is cared for by a number of people and not solely by the father, but she accepted that Kate is doing really well at school, and she accepted that the father is Kate's primary carer. I pause to note that I do not know the basis on which the Guardian said, "It is clear that Kate is cared for by a number of people", because while it is accepted that she spends time with her mother and with the father's cousin, the evidence does not really set out the extent to which Kate spends that time and the impact of it.
75. The Guardian told me that her view was that even if the Court decided, on considering the evidence, that the father had achieved abstinence it was now too little and too late.
76. She told me that the difference between Joe and Kate is that Joe is fully dependent whereas Kate is older, can speak and express how she feels, and do a lot of things herself. Whereas Joe is fully dependent on his father. If the father was under the influence of substances, Joe would be at risk of physical harm, or were if Joe woke in the night with an illness or something like that, the father might not wake up to see to him.
77. She said the only option that would be sufficient to support a supervision order would be for someone to be living with the father for 24 hours a day, particularly in the evenings and monitoring how he is. The point she kept going back to was that the father was not admitting to his drug use. She said if he was admitting and saying what his pattern was then it would be more workable to think about the support services, and the professionals could work on appropriate safeguards.
78. The Children's Guardian in her evidence justified the conclusions that she had reached, but I at times had a sense of her having made up her mind and then making the case for adoption, rather than keeping an entirely open mind and revisiting issues as they arose.
79. I did not hear from Ms Watson. She is an assessing social worker from the Maya Angelou Centre who completed a parenting capacity report of the father; it is dated 6 April 2022.

That report identifies a number of positives about the father's care, in particular his bond with Joe, his good support network, and his ability to meet Joe's needs during contact. Ultimately, however, despite those strengths, Ms Watson's recommendation was negative. She reported that the father had been expressing views about hoping to meet a partner to support him with Joe's care, and that the hair strand test results raised concern about cocaine use. Ms Watson's view was that it was a finely-balanced but negative assessment.

### **The threshold criteria**

80. The threshold criteria is disputed by the mother, although she does accept some elements of it. The threshold falls to be considered at the date of which proceedings were issued; namely, 16 August 2021.
81. The Local Authority sets out that the test under section 31 of the Children Act 1989 is established on the basis of a number of facts. The first that is pleaded is that Joe is likely to suffer significant harm from being exposed to neglect and emotional harm due to the mother's mental health and issues, and learning difficulties.
82. The mother does not accept that. She accepts that she has some issues with mental health in the form of anxiety and depression, but does not accept the additional diagnoses of the experts. She does not accept that she has cognitive issues but does accept that she has learning difficulties.
83. I queried what was meant by the distinction between having cognitive issues and learning difficulties. Ms Hayford explained to me that the mother has some learning needs and needs things to be reiterated. Further, intermediary-type support is useful to her, but that she had been in mainstream education and that those needs are not to such an extent that they affect her ability to care for a child.
84. Mr Marshall, who had assessed the mother prior to Joe's birth, gave his expert view that: "Ms Anjou has a number of difficulties that are pervasive and there is a considerable overlap as to the degree to which this can be explained from a personality, attachment or long-term response to trauma. In combination of Miss Anjou's extremely low level of cognitive functioning, in my view, she is likely to present as an individual who experiences difficulties with distress tolerance and responding adaptively including asserting boundaries effectively and regulating herself emotionally."

85. I accept Mr Marshall's formulation that the mother is likely to experience difficulties relative to her peers in conducting certain daily tasks, and adapting to new and novel situations, including the changing needs of a child in her care.
86. I am satisfied the mother has attended contact regularly, and during the contact she has shown her ability to meet Joe's needs and to regulate her emotions. However, in terms of the relevant date, I am satisfied on the basis of the evidence of Dr McEvedy, Mr Marshall, Jamma Umoja, and the mother's own evidence, that they support the finding being sought.
87. For example, during the course of the final hearing, on a number of occasions the mother was unable to stop herself from calling out during the evidence, and during submissions when things were said that she disagreed with. I should add that the mother did not do so in an unpleasant or aggressive way, that she was always very apologetic immediately afterwards, but nonetheless she was unable to contain herself in those moments.
88. I am satisfied on the basis of Mr Marshall's report, which is to some extent corroborated by the Communicourt assessment as well, that the mother does function in the extremely low range of adult intellectual ability, and is likely to suffer from a mild learning disability. Further, I am satisfied on the basis of Dr McEvedy's assessment, which I have accepted, of the mother's likely paranoid illness.
89. As a result of these, I am satisfied that at the relevant date Joe was likely to suffer significant harm arising from exposure to his mother's mental health and her learning difficulties.
90. The second paragraph is that Joe was likely to suffer neglect and emotional harm due to the mother's use of illicit drugs and alcohol, and the impact this will have on her ability to meet the needs of a baby and respond to his cues.
91. The mother did not accept, at least in her response to threshold, drug and alcohol abuse. The midwifery service at the Royal Free London NHS Trust made a referral after the mother had reportedly said she smokes tobacco, weed, and skunk daily, around five to seven times a day, and until a few months ago had been adding cocaine to her joints and that the mother at that time said she drinks alcohol during the day and evening.
92. In her response the mother did not accept this. She said that she added cocaine to a joint on one occasion only. She said her use of cannabis is minimal, with a maximum usage of two to three joints a day, but not since she was aware that she was pregnant when she reduced her intake to a maximum of half a joint a day. She denied using alcohol in the way described, and said that she would only drink occasionally, with a bottle lasting three to four weeks.

93. The mother provided hair strand tests covering the period from February 2021 to August 2021. Those were positive for cannabis and cocaine use, but did not indicate excessive alcohol use. Later tests from September 2021 through to March 2022 were also positive for cannabis and cocaine as well as their metabolites. The Court directed a further hair strand test of the mother to be reported in September 2022, and later extended time for that, but the mother decided not to provide a sample for that test to be carried out.
94. Even when I consider the potential arguments in relation to different types of hair, resting or telogen phases of hair, and growth rates, the hair strand test results that the mother has returned demonstrate that her account in relation to her substance misuse cannot be accurate. She denies any ongoing usage of cocaine, whereas the hair strand tests evidence points to that being the case. The mother has at times denied ongoing cannabis use, whereas again the testing results indicate that she was using cannabis and in her oral evidence she accepted ongoing cannabis use.
95. The evidence in relation to alcohol misuse at the relevant date is insufficient for the Local Authority to discharge the standard of proof, and I do not make any finding about excessive alcohol use.
96. I prefer the account contained in the midwife service referral in relation to the mother's use of drugs compared to her later accounts of having ceased earlier in the pregnancy.
97. I am satisfied that at the relevant date the mother was using cocaine and cannabis, and as a result Joe was suffering and was likely to suffer significant harm from exposure to those substances in utero, as well as potentially the impact on the mother's ability to meet his needs, and in particular the risk that those substances could have a harmful effect on her mental health.
98. Paragraph 3 of the threshold is that Joe was likely to suffer neglect and emotional harm due to the mother's lack of family and social support, and her inability to work meaningfully with the professionals. I accept the mother was isolated and without effective support from her family, and at the time the father was not involved.
99. However, I am not satisfied that lack of support is sufficient to demonstrate Joe was likely to suffer significant harm at the relevant date, although I recognise that this is a relevant consideration when it comes to welfare. Similarly, the mother's lack of engagement with social work professionals is not a matter that immediately concern threshold although I consider it to be relevant to welfare.



100. Paragraph 4 is that Joe was likely to suffer physical and emotional harm due to being exposed to domestic abuse, and that the mother is vulnerable to abuse in her relationships.
101. The mother partially accepts this. She says she has always been open and honest about her previous relationship which had put her at risk, and that she sought assistance about getting a relocation but no help was forthcoming. The mother asserts that she is not in a relationship and not looking for one.
102. Secondly, it is said that the mother's ex-partner was violent towards her and he used to physically and emotionally abuse her, that he was controlling, and that since separating the mother reported that he was using "flying monkeys", that is, people who carry out abusive behaviour on behalf of an abuser to physically assault her. One such attack involved her being choked by the attacker which resulted in her calling the police; the mother accepted that allegation.
103. When I consider all of the evidence, and in particular the mother's own account of her previous relationship where she was a victim of domestic violence, I need to factor in that although the mother points out there was only one abusive relationship of this sort, and that she ended it some years ago, it was a lengthy and enduring relationship: the longest relationship of her life. Furthermore, it is a relationship that has continued to be abusive because the accounts of ongoing incidents given by the mother, including attacks arranged by her ex-partner, are far more recent than the ending of that relationship.
104. The Local Authority has submitted that the relationship between the parents was abusive, that the mother was vulnerable, and the father engaged in a casual relationship with her and took no steps to avoid her becoming pregnant. I am not persuaded that a casual relationship or a relationship in which insufficient responsibilities is shown about birth control, even given the mother's vulnerability, is per se "abusive".
105. Nonetheless, I am satisfied on the basis of the mother's prior relationship that there was a likelihood of significant harm to Joe, owing to a risk that he may be exposed to domestic violence either because of the actions of the mother's abusive former partner, or because of the risk that she might in the future enter into another abusive relationship.
106. As to the remaining subparagraphs on threshold, the Local Authority did not press the Court to make those findings, and I do not consider it necessary to do so.
107. On the basis of the admissions that have been made by the mother and the findings that I have made in addition, I am satisfied that the test under section 31 of the Children Act 1989 has been made out. In so doing, that opens the door to consideration of the making of public

law orders, namely a care order or a supervision order. However, I must turn to the welfare stage and I must consider all the realistic options.

### **Joe's welfare**

108. Because there is a care plan for adoption, I need to consider Joe's welfare throughout his life as my paramount consideration, and I have regard to the Welfare Checklist under section 1 of the Adoption and Children Act 2002. I need to consider the realistic options, factoring in the support that is available to each option, and balance the advantages and disadvantages of each so as to conduct a global holistic evaluation.
109. Joe is too young to be able to ascertain his wishes and feelings. He is in many ways a typical boy of his age; he is a toddler. He has a mixed heritage. The parents practise different faiths. The mother wishes for Joe to be brought up in the same faith as her. His father was raised in that faith but now practises a different religion. He would wish for Joe to be able to make up his own mind as to what faith he would wish to be part of when he is old enough to do so. However, the father does not mind Joe attending services in keeping with the mother's faith.
110. Joe needs to have a stable, loving home where his needs are met. He needs love and affection. He needs to be given stimulation, consistency, and boundaries. He is at a stage now where he will be developing rapidly and gaining language skills. He is reliant on his carers for all of his needs.
111. Joe has now been living for a considerable amount of time in foster care. He is described as "thriving and developing well". There are no medical concerns, save that he has a small umbilical hernia which needs only observation at this stage, but it may need attention when he is 12 if it has not resolved on its own. He is meeting all of his developmental milestones.
112. Joe was exposed to substances in utero; that can have an impact on a child's development, and it can lead to some deficits, including some behavioural issues, potentially. Thus, Joe will need to have some monitoring as he gets older of his wellbeing, and his development, and his behaviour, so that if issues do arise they can be supported and hopefully addressed.
113. If Joe ceases to be a member of his birth family and becomes an adopted person, that will mean that the legal ties between him and his parents, and indeed his extended family, will be terminated. He would move into the care of strangers, people who he does not know and who are not related to him who would then raise him as part of their family. He would

probably not remember his parents or his sister, and so his identity needs will only be met through life story work and through letterbox contact.

114. Adoption would bring about a lifelong change of status. For some people, the knowledge that they were adopted sits comfortably with them, and they feel fully part of their adoptive families. However, other adopted people struggle to come to terms with knowing that they are not related by blood to the people that have raised them as parents, and that there is a birth family out there who they do not know.
115. On the other hand, if Joe were to become an adopted person, he would gain the security of being placed in a family where his needs will be met, where he will be kept safe, where he will not be exposed to substance misuse, mental health issues, or domestic abuse.
116. Joe has a good relationship with his mother; contact is an enjoyable experience. If Joe were to live with his mother or maintain regular contact with her, that would help him to develop his sense of identity as well as enable him to develop that important relationship.
117. Joe also has a good relationship with his father; they also have been seen to have good, enjoyable contact sessions. In the same way as with his mother, Joe will benefit from developing that relationship as he gets older, and that can be done either if they were to live together or through regular contact.
118. However, the father is also Kate's primary carer. If Joe were to live with either of his parents, he would have the benefit of growing up knowing his older half-sister. If he were to live with his father, then he would have the benefit of growing up alongside his older sister. He also has three older half-siblings on his father's side who he has the potential to get to know, albeit there is a significant age gap between him and them.
119. However, with Kate he is closer in age, and they are both young enough that they would have shared experiences as they grow up together. Sibling relationships, particularly those which are close in age, are hugely important relationships because those are relationships that can be sustained throughout a person's life, unless something tragic happens. Furthermore, those relationships typically continue even after parents have passed away.
120. The mother dearly wishes to care for Joe. She plainly loves him and wants the best for him. Her case is that she is perfectly able to care for Joe. However, the parenting assessment of her by Jamma Umoja was negative, and identified shortfalls in her parenting which the mother makes no acknowledgement of. She does not accept that there are any mental health or learning difficulties that could affect her parenting; she does not accept that her misuse of substances could affect her parenting.

121. I have formed the view that the mother's denial of these issues reduces the potential to manage the risks that could result for Joe as a result of those issues.
122. In the circumstances, in my judgement the mother would not be able consistently to meet Joe's needs, or consistently provide him with a stable and secure environment in which he can grow up and develop. There would be occasions, in my judgement, where it is likely if Joe were placed with his mother that he would be exposed to her substance misuse or to her paranoia, and it would not provide him with the safe and consistent environment that he needs to develop.
123. In relation to his father, the father also loves Joe and wants the best for him. The father has significant strengths to his case: he is not mentioned in the Local Authority's threshold criteria. The parenting assessments of him contain many positives that I have already mentioned in the course of this judgment, save for the concern about substance misuse.
124. The father is currently the primary carer for Kate; he has been her primary carer since 2019. The London Borough of Enfield has been involved with Kate after London Borough of Haringey made a referral, and they conducted a child and family assessment. That recent assessment indicates that the London Borough of Enfield has no concerns for Kate. Despite that, in these proceedings, this Local Authority says that the issues that arise relating to Father are so serious that nothing else will do but apart from adoption.
125. The Local Authority has made reference to allegations relating to Father's previous relationship with a former partner. The allegation is denied, and the Local Authority has not sought to pursue any findings. The Court operates a binary system in respect of allegations; the value, therefore, is zero, and it is something that I cannot take into account.
126. The Local Authority has submitted that the father has made bad relationship choices and that there is a level of instability about his relationships. The father's evidence was not reassuring about his involvement with women in his life. Having indicated his intention to remain single to the independent social worker, to prioritise the needs of the children, he then revealed in evidence that he is in a relationship, albeit a casual one, but not ruling out the possibility that it might develop.
127. However, I have to bear in mind the realities of life: society does not have just one type of family. There are many different approaches and types of relationships, including single parents who maintain casual relationships or have a series of partners. It would be social engineering if the state were to set about separating children from those single parents who

introduced their children to a series of partners, no matter how unwise or inadvisable that that may be.

128. I have to consider the father's circumstances more widely. His immigration status is an issue. He does not have leave to remain in this country, and he currently has no recourse to public funds. The evidence before the Court is that he has good prospects of regularising his status in this country, although there is no doubt going to be a period of time before that can be achieved. In any event, he has now for very many years been able to sustain living in London through a combination of working in spite of his immigration requirements, and through family support.
129. I have also considered the father's criminal history. He was jailed for three years in 2008 for two counts of possession of a controlled drug with intent to supply, the drugs being cocaine and crack cocaine. The father has explained that he was drawn into criminal activity by his inability to work legitimately due to his immigration status. He states that since his release from prison, he has not been involved in criminal activity, and there is no evidence before me that suggests otherwise. Certainly, he has had no further convictions since that date.
130. When I consider those other issues, I agree with Ms Branson that the key issue that relates to the father's ability to care for Joe is substance misuse, and so I am going to analyse the evidence in relation to substance misuse with some care.
131. The father has undergone a number of tests. Lextox provided a hair strand test dated 17 February 2022 that covers four months from mid-September 2021 to mid-January 2022; it was positive for cocaine but did not detect cannabis. The levels of cocaine show a steady reduction month by month from 17.6 to 14.6, to 11.6, and then 9.93. The levels of benzoylecgonine were 2.98, 2.46, 1.9, and then 1.47; norcocaine, another metabolite, was only detected in the earliest September to October sample.
132. The conclusion of that report on the balance of probabilities is that it is more likely than not that those findings are because cocaine has been used. The father did not declare cocaine usage but did declare cannabis, a drug that was not detected.
133. The father then had a report provided by Cansford Laboratories dated 4 May 2022. Again, head hair was tested. The father declared codeine and alcohol use, and the report states, "Guinness daily, bottle & brandy on weekends, socially (2-6 glasses)". The sample covers the approximate period between 23 January 2022 through to 24 March 2022 in monthly segments again, cannabis was not detected, and again, cocaine was detected.

134. Cansford make it clear that the hair sample they tested was dreadlocked, which meant that the section of hair contained strands from previous or earlier times. They also report that the proportion of telogen, or resting hair, in dreadlocked hair can be higher than in comparison with Caucasian hair. Further, they say that the information provided only covers whether or not the individual has used any substances over an unspecified period of time. Their report in fact gives the same value for cocaine and for benzoylecgonine for each of the three months sampled: >1.22 in relation to cocaine and > 0.61 in relation to benzoylecgonine.
135. This unusual presentation of results was queried and an email reiterated the effect on the testing process of the sample having been dreadlocked. Nonetheless, the specific results for each of the three sections was provided: the most recent, the first being cocaine at 2.1, then 2.7, then 3.1, and benzoylecgonine levels at 1.03, 1.21, and 1.30, which again illustrates a reduction over time.
136. On 15 August 2022, a third testing laboratory was used, DNA Legal. They again tested head hair as well as blood samples which were collected on 29 July 2022. Three months of hair was tested covering mid-April to mid-June 2022. Again, the test was negative for cannabis and cocaine was detected.
137. Their summary stated that: taken in isolation, these findings are more likely than not to indicate that cocaine has been consumed repeatedly by the donor of the sample at high levels over the three-month period before the hair sample collection. It detected cocaine and its metabolites under different levels:
  - a. cocaine was 9.78, 8.58, and 6.34;
  - b. benzoylecgonine was 6.16, 4.2, and 1.58;
  - c. norcocaine, went up and then down again, with the results of 0.018, 0.030, and 0.019.
  - d. Also detected in this sample was anhydroecgonine methylester, which is the specific marker associated with crack cocaine. That was detected in two of the samples at 0.21 and 0.10. The last was below the cut-off level.
  - e. Also, the test was undertaken for cocaethylene, which is associated with alcohol and cocaine being consumed at the same time, but that was not detected.
138. The same sample was tested for alcohol and identified that it was more likely than not that alcohol had been consumed excessively. The EtG result was that 48.6 picograms per milligram, which was above the cut-off level of 30 picograms per milligram. The FAEE

result was 0.07 nanograms per milligram, which was below the cut-off level of 0.45 nanograms per milligram.

139. In addition, a PEth test was conducted on the blood sample which indicated alcohol consumption at a level of 49 micrograms per litre during the recent two weeks and up to four weeks before the sample was collected. That sample fell within the “social-moderate” range, which was described as being in-between 35 and 210 micrograms per litre. I note that that is very much towards the bottom end of that range for social and moderate drinking.
140. The DNA Legal laboratory also tested the solutions that were used to wash the hair samples, and they wrote that:

“Due to concentration detected within the wash compared to within the sample, external and environmental contamination cannot be excluded as a potential contributor to the level of drugs detected in the sample itself. However, external contamination is unlikely to be the sole reason for the detected drugs in the sample itself”.

DNA Legal then provided answers to questions dated 12 September 2022.

141. The next set of testing was conducted by Cansford Laboratories on 16 November 2022. This was a different form of testing, and so justified a change of laboratory because nail testing was carried out. A sample was collected of 0.3cms length on 14 November 2022, and that, they report, represents a time period of up to six months prior to the sample collection.
142. Cocaine was detected in the sample, what was described as being “low levels”, but was tested at 1.0 nanograms per milligram; the cut-off being 0.5 nanograms per milligram. The test for cannabinoids and EtG, the alcohol marker, were negative. That test was also repeated, and again, detected alcohol consumption but not at excessive levels.
143. I asked for some clarity to be obtained about some ambiguity in the wording of Cansford’s replies to questions, in particular the phrase: “The result of the nail sample would suggest that the cocaine detected could be due to the use of the drug at an earlier time”. It was not clear to me whether this meant early within the tested period or whether it was referring to prior to the testing period.
144. The answer from Cansford was received by email; it was unambiguous. They wrote:
- “In my opinion, the presence of cocaine in the nail sample is most likely due to the use of the drug at an earlier time than the period represented by the nail sample. However, due to the fact that the nail analysis is performed as an integrated average, it is not possible to determine if some drug use took place during the earlier period 1-2 months within the period of time covered by the nail sample. If there

had been more recent use of the drug, I would have expected a higher level to have been detected, in addition to cocaine's main metabolite, benzoylecgonine”.

145. There is further information relating to the more recent period obtained by Enable, the substance misuse agency that the father has worked with. They confirmed that the father underwent urine and breathalyser tests on 1 and 26 September 2022 which were negative for all drugs, including cannabis and cocaine, and also negative for alcohol use.
146. There has been an issue raised by the father about the impact of the testing of hair that has undergone the dreadlocking process. There are differences depending on the laboratory used. I have already mentioned DNA Legal is the only laboratory of those that were used that separates the dreadlock and tests the individual strands of the hair. Ms Branson has produced to the Court research material that identifies differences between rates of hair growth which are attributable to different hair types and ethnicity.
147. I have had the benefit of hearing from Ms Read, the scientist from DNA Legal. She told me and I accept a number of key points about the differing types of testing:
  1. For alcohol, PEth is the most accurate form of testing albeit it is more limited in time.
  2. The father's alcohol results are in line with social drinking.
  3. The elevated EtG result for April to June 2022 is the only evidence suggested of chronic excessive use of alcohol by the father.
  4. You have to be careful about any test results taken in isolation: they have to be looked at in the context of all the other evidence.
  5. Individuals with darker hair have a higher melanin content which more readily combines with EtG. However, the impact of these differences cannot be accurately measured, and the impact on hair strand testing is not known.
  6. There is a research paper that presents the hypothesis that the heat treatment of darker hair may result in elevated EtG levels being detected. I pause to comment that the father's hair was heat treated as part of the dreadlocking process.
  7. EtG on the hair is only mildly affected by sweat.
  8. The absence of FAEE detection does not invalidate the detection of EtG because EtG is a superior marker, and FAEE is a very unstable marker which can be easily affected by washing, hair products, or combing out. However, you would



have greater confidence if both markers were elevated. I pause to note that the father's hair rarely undergoes washing, and it certainly does not undergo combing out because of the dreadlocks.

9. Nail testing for EtG is a robust marker derived from EtG in the blood after the consumption of alcohol, and it is not affected by hair products or treatments.
10. If there is concern about the possibility that an alcohol hair test has derived a false positive from treatment, a fingernail test is advisable.
11. Fingernail tests are as accurate as hair tests for drugs, but hair is more porous than fingernail and so more vulnerable to external factors.
12. There are controlled studies from the United States that suggest that drug metabolites bind more readily to melanin, thus darker hair can show higher results than blonde hair for the same quantity of drug consumed.
13. The cut-off levels used in hair testing are based on a wide range of population and hair types.
14. The "high", "medium", and "low" indicators are comparing that individual result with the laboratory's internal library of results: the lowest 25% of results tested is described as "low"; 25-75% is described as "medium"; and 75% and above is described as "high". It is not comparable with other laboratories as they reference their own library of data rather than there being shared information between laboratories.
15. There is no dosage relationship between the ranges indicated and the doses of substances ingested. The extent to which a drug or its metabolites are incorporated into hair can differ between individuals.
16. Research shows that Afro-Caribbean hair tends to grow at slower rates compared to Caucasian hair, but nail growth rates are approximately the same for those groups.
17. In Afro-Caribbean hair, there is a slightly increased proportion of the hair in the telogen, or resting phase, when compared to other groups.
18. Ms Reed was unable to answer, and was unaware of any studies that could answer the Court's question that if hair grows at half the normal rate, would a 1cm sample show a greater concentration because it is testing two months' worth of consumption of drugs, but analysing it on the basis that it was only one months' worth?

19. There is research that shows that the use of thermal hair straightening can result in elevated detected levels for AEME, the marker for crack cocaine, but that there would have to be crack cocaine present in the hair to start with, but heat treatment does not transform other markers for cocaine into AEME.
148. The father's case about his drug use is that he accepts smoking cannabis but denies ever knowingly having used cocaine or crack cocaine. The father proposed a hypothesis that he had been smoking joints of cannabis rolled by associates, and it is possible that they had been adulterated to include cocaine without his knowledge.
149. When I consider all of the testing evidence, and factor in the evidence of Ms Read as well as the research papers that have been made available to me, I reach the following conclusions. Firstly, the father's test results indicate that his use of drugs includes the presence of cocaine, benzoylecgonine, and on occasions norcocaine in a number of the samples to indicate that this has taken place. The father does not seek to dispute that aspect of the tests.
150. As to the father's account that he unwittingly smoked cocaine within his cannabis, while it is possible that this could have occurred, that in effect his cannabis could have been spiked. If dealing with the same associates, it is possible that this could have happened on more than one occasion. However, if that is the case, it is difficult to fathom how this situation has been sustained over as long a period as it was.
151. It is difficult to understand how the father allowed himself to be exposed to the potential that he has unwittingly smoked cocaine after his first set of test results had alerted him to the possibility that that could have happened. The father was aware of his positive cocaine results since February 2022, however his hair samples continued to be positive up until mid-June 2022, and thereafter a nail test was taken as well for up to six months up to November 2022, which was also positive. However, the reply from Cansford that I have already mentioned suggests the result was likely to have been due to cocaine consumption prior to that period or in the early part of that tested period, so that is around May 2022.
152. Another aspect of the father's account of being spiked that I struggle with is that while he blames his cocaine results on his cannabis usage, he has been returning test results that were negative for cannabis but positive for cocaine. It seems counterintuitive that the spiked substance should be detected when the substance he claims to have been using was not.
153. In my judgement, I am satisfied the father had been using cocaine and he was aware of it. That is the likeliest explanation for his positive test results and the fact that the results were positive for cocaine but negative for cannabis. I do not know why the father felt unable to

be frank with the Court and professionals about this. He does have a criminal history involving cocaine, and perhaps that influenced his ability to make those admissions. It is a substance that still attracts a different level of attention in criminal law, whereas cannabis, while still illegal, is increasingly a substance that is tolerated by society.

154. In relation to the result for crack cocaine, that is an even more concerning substance than cocaine, as is a drug that can have the most serious effect on its users, and is particularly undermining of a person's ability to parent a child safely. However, the results for the father appear to be a one-off rather than indicative of habitual usage.
155. The evidence before the Court shows, and I am satisfied, a general decrease over time of the levels of cocaine and its metabolites that have been detected. Further, the nail testing results from Cansford alongside the urine test conducted by Enable in September 2022 suggests that around the summer of 2022, the father's usage of cocaine was likely to have ceased.
156. I have considered the evidence in relation to his cannabis use. The testing results suggest abstinence from cannabis had been achieved. However, that was returned following periods when the father says he was continuing to use cannabis. There is also the unfortunate sentence in his last statement where he says he continues to use cannabis, but subsequently disowned it.
157. The conclusion that I derive is that the amounts of cannabis that the father was using were sufficiently low that it was not detected in his hair, nail, and urine tests over an extended period.
158. In that context, I am not persuaded that his use of cannabis provides a reason why he could not be able to care for Joe.
159. I have also considered the evidence in relation to his alcohol use. The evidence suggests that his consumption of alcohol typically is moderate. There is one test result that suggests chronic excessive alcohol use, but that conflicts to some extent with the PEth test that partially overlapped with it and the majority of the subsequent tests do not show excessive alcohol use. On that basis, I am not persuaded that the father's use of alcohol is such that it would provide a reason why he could not care for his son.
160. It is not enough simply to identify that drug use had taken place; the Court needs to consider its impact and its potential impact on care for a child.
161. It is unhelpful that the father has not been forthcoming about his use of drugs. It would be better if he had been open and provided information to the professionals. That way, he would be able to get support to be able to maintain abstinence, and Joe would have the

benefit of having structures in place to maximise the safeguarding of him around any use of drugs by the father.

162. However, I have to factor in the evidence before me from the London Borough of Enfield and their assessment of the father in relation to Kate, his nine-year-old daughter. That referral to Enfield was made by Haringey because of the father's positive drugs tests, and the assessment was completed in October 2022.

163. The assessment reports that there are no safeguarding concerns raised about Kate: she is healthy, her immunisations are up-to-date, she is reported to be an excellent student with an attendance level of 99.4%. That is an impressively high level of attendance, particularly in the context of recent health issues with Covid. The school reports that the father is attentive and communicates well with them. He has been Kate's main carer since 2019. The London Borough of Enfield reports Kate has a good positive relationship with her father and he is well-supported by close family, as well as by Kate's mother.

164. The report contains a scoring system for overall safety and wellbeing. It marks scores out of 10 with 10 being that "everyone knows the children are safe enough to close the case" - the best that could be achieved. Kate was scored a 10 out of 10 for her health, education, emotional, behavioural, social skills, and stability. The only scores that dropped below was contextual safeguarding and marked as 9 out of 10. That is the measure that includes considerations about substance misuse. As a result, the overall score for safety and wellbeing was marked at 9 out of 10.

165. The assessment states:

"Father is more than able to meet the basic needs of Kate. During my assessment I have observed no concerns for Kate's welfare or have had any safeguarding concerns for her. She is a happy child who is more than able to express her feelings and wishes, and she has been open about her relationship with her father, and states that it is excellent, that she loves him, and she feels well taken care of".

166. Later, it writes:

"There was observed to be a good interaction between Kate and her father, where there is a loving, strong relationship, and positive bond".

167. The father's care of Kate since 2019 includes periods of times when, in my judgement, I am satisfied he has misused substances. However, the evidence in relation to Kate suggests that his care for her has been good enough, or better than good enough. Further, I note that markers such as not getting a child to school because you are coming down from drugs, or

something of that nature, or not engaging with the teaching staff, were absent, and the school reported positively about their interactions.

168. While this Court does not condone the use of drugs, I have to be realistic: the use of drugs by parents can and often does have a really damaging effect on children in their care. However, it is possible that there are functional drug users who can maintain the care of their children despite their use of drugs.
169. I have been asked to approve a plan of adoption for Joe; that is the most draconian step that this Court can take. It is arguably the most powerful and extreme interference with the right to private and family life that in this country the state ever carries out. Such a step should only be taken as a last resort and where nothing else would do, and I must be satisfied that it is justified and proportionate.
170. In this case, notwithstanding the father's drug use, I am not persuaded that adoption is the only option commensurate with Joe's welfare. In my judgement, the father has demonstrated his ability to provide good enough parenting to Kate even around times when he was abusing drugs. In addition to that, I am also satisfied that he has reduced his use of drugs significantly to the point that the evidence suggests that he is now abstinent and has been since about the summer of 2022.
171. I have also factored in the differences in Joe's situation compared to Kate. In Kate's case, she moved into her father's care due to her mother's mental health problems. Subsequently, however, she has been able to maintain regular contact with her mother, including regular stays, and she has the benefit of an older half-sibling in that household.
172. The relationship between Joe's parents has never been a stable and secure one. It appears to have been a casual relationship with a mismatch of expectations as to what each of the parents hoped from it. If Joe is in the father's care, he is going to need contact with his mother. The mother's mental health, her learning needs and substance misuse, combined with previous relationship issues between the parents may lead to disagreements and conflict. There is also a risk that the father may be insufficiently protective, and simply make Joe available to spend time with his mother without proper measures being put in place to ensure his wellbeing.
173. I have given careful consideration to the views of the independent social worker and the Guardian. They were concerned that the age of Joe renders him more vulnerable than Kate, who moved into her father's sole care when she was either five or six years old; accounts

vary. I accept that Joe is much more vulnerable than Kate, who is able to express what is going on at home and is able to do many tasks for herself.

174. However, I depart from those experts because I am not satisfied that the additional risk is sufficient to establish that nothing else will do. If Joe were to be adopted and later was made aware of the sort of childhood that Kate had experienced in her father's care, I cannot help but think that Joe will struggle to understand why it was felt necessary to keep him away from her rather than growing up together.
175. In this case, the risks that arise from the father's substance misuse and from difficulties in the relationship between the parents are not, in my judgement, sufficient to outweigh the harm that would be caused by the loss of family ties and the loss of Joe's relationships with his father his sister, his older siblings, and his mother. I am satisfied that in this case the father is able to provide good enough care for Joe with the support of his network and from the Local Authority.
176. I depart from the recommendations of the independent social worker and the Guardian because I have had the benefit of analysing the substance misuse tests in the context of hearing evidence from Ms Reed as well as from the father, and I form different conclusions about the father's drug usage. For example, Mr Peters wrongly describes the tests as showing a high level of usage by the father, and he was not aware of the conclusions I have reached about reduction and subsequent abstinence.
177. Insofar as I depart from the Guardian's recommendation, it is because while I accept her views about the difficulty derived from the father's lack of transparency about his drug use, I do not accept that such lack of honesty is necessarily fatal to the ability to parent.
178. In my judgement, the evidence suggests that despite the father's use of drugs, it did not significantly undermine his care of Kate. That, combined with my finding that he has now significantly reduced and stopped his use of cocaine and cannabis, means that I cannot be satisfied that nothing else will do apart from adoption. I note that in reaching this conclusion, I am agreeing with the view of Ms Morgan in her oral evidence.
179. I have found this to be a difficult and finely-balanced decision, but for the reasons I have set out I am going to refuse the Local Authority's application for a care order and its application for a placement order.
180. I am in due course going to make a child arrangements order in favour of the father so that Joe will live with his father. I am satisfied that this is in Joe's best interests as he will be able to grow up within his family, with his father, and his older sister. I am satisfied that the

father is able to provide good enough care for him. However, while I appreciate that there are risks arising from substance his misuse and the lack of transparency, I am satisfied that those risks are not so great as to outweigh the positives that Joe will derive from growing up in his father's care.

181. I do consider that it is necessary that Joe and his father receive support from the Local Authority. I know that in relation to Kate, the father declined support from the early help service, but Kate's situation is very different to Joe's. There is a greater level of vulnerability for Joe, the father's use of substances still needs to be monitored and support given with that, and the father will be taking on the sole care of a much younger child. He will, in my judgement, also need the support of the Local Authority to manage the mother's contact with Joe.
182. In the circumstances, I consider that a supervision order for a period of 12 months is in Joe's best interests.
183. I have given consideration to the possibility of making a care order with a plan for Joe to be placed at home with his father. However, I do not consider that that is the most appropriate way forward in this case. I consider that that would be an unnecessary interventionist level. In this case, given my analysis of the risks, it would be disproportionate and in any event likely to meet with resistance from the Local Authority who have not committed to agree to place under a care order in these circumstances.
184. I note that the London Borough of Enfield, in whose area the father resides, have filed a position statement that indicated up until 12 September it had accepted the designation of a supervision order. However, having reviewed the updating evidence, in particular the Guardian's analysis, Enfield no longer accepts designation as "there are grave concerns in relation to the father's drug and alcohol use at high levels". I note that that is a misstatement of the substance and alcohol use given my findings.
185. While I have taken into account Enfield's position, I am satisfied that I should designate them as the Local Authority to hold the supervision order on the basis that the father lives in their area and Joe will be living in their area. However, I am prepared to defer those final orders for a period of time so that a proper plan can be made for Joe to transition to his father's care.
186. Joe's primary attachment is currently with his foster carer. He will need some support with making a move into his father's care. I am going to invite the parties to consider directions to prepare for a transition so the matter can be returned to me. Final orders can then be

finalised at a point when proper structures have been in place to assist Joe, and there is clarity also about the support and services that will be put in place going forward.

187. As to contact, the Local Authority has proposed that the mother's contact continues at a level of twice a week. In my judgement, contact will need to be kept under review; it is important that the mother is able to respect boundaries around contact. Joe is going to go through a significant period of change as he gets used to being separated from his foster carer and adapts to being in the full-time care of his father with the presence of his sister.
188. I want to make it clear, because I think it is only fair to the parties that I do, that in my judgement the mother's contact at this stage does need to be supervised. The mother was clear about her wish to care for Joe, but the mother's behaviour at times has been problematic, including when Joe was present, and it is important particularly during these early stages that he is not exposed to any harmful or worrying situations. I consider supervision to be a sensible precaution to manage that risk, and I consider it to be in Joe's best interests.
189. Another aspect of the further work that needs to be conducted is how that will be carried out. I know that for the mother, having a family member present would be easier and preferable; I do not know whether there is a family member willing and able to do that, or whether the Local Authority would be minded to support such an arrangement. However, I am going to throw that ball into the Local Authority's court to work out and suggest how it is to be conducted going forward. The supervision plan will need to also set out what the proposals are for any further drugs testing, for visits to the father's home, for the health visitor's role, and also whether a nursery place, or something like that, is intended for Joe or attendance at children's centres.
190. Lastly, I deal with the application for a declaration of parentage. I am not going to defer that; I will make the order today. Joe's father is not named on his birth certificate, and the DNA testing has proven that he is the father. In accordance with section 55A of the Family Law Act 1986, I make a declaration that he is Joe's father, and I will ask that the *pro forma* template is completed in relation to that.

**End of Judgment.**



Transcript of a recording by Ubiquis  
291-299 Borough High Street, London SE1 1JG  
Tel: 020 7269 0370  
legal@ubiquis.com

Ubiquis hereby certify that the above is an accurate and complete record of the proceedings  
or part thereof