**Threshold**

At risk of significant harm: harm alone is not enough. See case or Re L below.

Significant harm can be actually suffered (past harm) or likely to suffer (future harm).

Must relate to at least one of the 4: Physical harm, emotional harm, neglect or sexual abuse.

Test for removal is a separate legal test.

**Two cases on threshold – Re A and Re J**

Re A (A Child) 2015 EWFC 11 is a decision of Munby J, president of the Family Division, made on 17 February 2015.

Re J (A Child) 2015 EWCA Civ222 is a decision of the CA, made on 19 March 2015, in which Re A is endorsed.

The key points made by Munby J in Re A are as follows:

1. **Findings of fact must be based on evidence and not suspicion or speculation.** SW chronologies often contain second or third hand hearsay; if this material is challenged and the LA is unable to produce the witnesses who have firsthand knowledge of it, then the LA may find itself in great difficulties if the parent denies the matter in the witness box.

Further, threshold documents should not contain phrases such as ‘X appears to have lied’, or that people have ‘reported’ that something has happened. The relevant allegation, if there is evidence to support it, is that ‘X lied’ or that ‘Y happened’.

1. **It is necessary for the LA to establish the link between the facts it relies on in a threshold document and its conclusion that the child has suffered, or is at risk of suffering, significant harm.** Sometimes the link is obvious, as e.g. with physical harm; sometimes it is less obvious, as with the risk of emotional harm or neglect. In the present case an important element of the LA case was that F “lacked honesty with professionals”, “minimized matters of importance” and “is immature…” This did not naturally feed through to a conclusion that A (the child) was at risk of neglect.

The LA’s evidence and submissions must set out the argument and explain explicitly why it is said that the conclusion follows from the facts.

1. **The temptation of social engineering and the need to recognize the diverse and unequal standards of parenting**. The president reminds judges of the words of Hedley J in Re L (Care: Threshold Criteria) 2007 1FLR 2050

“*society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience*

*disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the state to spare children all the consequences of defective parenting. In any event, it simply could not be done.*”

He also approves the judgment of HHJ Jack in N.E. Lincolnshire Co V G and L 2014 EWCC B77 (Fam):

“*the courts are not in the business of providing children with perfect homes. If we took into care and placed for adoption every child whose parents had had a domestic spat and every child whose parents on occasion had drunk too much then the care system would be overwhelmed and there would not be enough adoptive parents. So we have to have a degree of realism about prospective carers who come before the courts*.”

The facts of Re A

A was conceived during a brief relationship and M was in prison when she gave birth to him. By then the parents’ relationship was over. The LA appointed an inexperienced SW to work the case, which made a lot of negative assumptions about F which were not underpinned by evidence. (A was accommodated at birth and proceedings were not issued till he was 8 months old.) F wanted to care for A and challenged the SW’s thinking, and in particular her claim that due to his immaturity, A would be at risk of neglect in his care. Munby comments in his judgment that the LA was too willing to believe the worst of the F, adding that the LA’s case was ‘**a tottering edifice built on inadequate foundations’.**

The Applications

The LA sought a CO and PO. The only contender for care of A was F. The LA asked the court to reject him on the basis of his having been dishonest with professionals, his immaturity and his having had relationships with family and past partners characterised by violence. The SW was particularly concerned that in the past F had dabbled in the English Defence League.

Munby goes through very carefully each of the LA’s allegations against F (including a number which have been abandoned by LA counsel in the course of the hearing), analyses them and is able to dismiss or reduce the significance of all of them. He makes it clear that while F is by no means perfect, the LA has failed to establish that he is so problematic as a potential carer for A that ‘nothing else will do’ except adoption. Both the LA applications are dismissed and the child is placed in F’s care.

Munby makes stringent criticisms of the use of S20 in this case, calling it an ‘abuse’ of the provision. He is also highly critical of the SWs and CG. The second SW and the CG had both spent only minimal amounts of time with F. He gives reasons for not naming the SW team as follows:

“*ultimate responsibility for such failings often lies much higher up the hierarchy, with those who, if experience is anything to go by, are almost invariably completely invisible in court… Why… should the hapless SW1 be exposed to public criticism and run the risk of being scapegoated when, as it might be thought,* ***anonymous and unidentified senior management should never have put someone so inexperienced in charge of such a demanding case****. And why should the social workers be pilloried when the* ***legal department****, which reviewed and presumably passed the exceedingly unsatisfactory assessments, remains, like senior management, anonymous beneath the radar?* ***It is Darlington Borough Council and its senior management that are to blame…*”**

Re J

The facts

M appealed against a decision to make a CO and PO in respect of her 8 month old baby boy, J. M was 16 when J was born and had been in LA care from 13. She was placed in a M and B foster placement but it broke down shortly after J’s birth. The LA case against M and her 19 year old partner was some fairly minor alleged incidents of DV combined with their inadequate engagement in assessment and failure to demonstrate motivation and insight into the LA’s concerns.

On appeal, the first instance judgment was found to be deficient in that (a) there was no reference in it to the oral evidence, which had been heard over 3 days; (b) the judge had not referred to the fact that M herself was a child in care at the time of the birth and final hearing and (b) the judge failed to refer to the welfare checklist. The judge placed heavy reliance on the LA’s claims that the parents were poor role models, dishonest, had failed to engage, and were immature. He did not identify what significant harm he found J to have suffered, nor what type of significant harm he was likely to suffer.

Endorsing Re A, the CA reiterated that it is necessary for the LA to link the facts it relies on with the conclusion that the child has suffered, or is at risk of suffering, significant harm, and that this is particularly important when the link is not so obvious, as in cases of neglect or emotional harm. The question of whether this young, immature couple was likely to cause significant harm to their baby required a far greater degree of analysis than it had received from the LA or judge. Even if it were concluded that threshold was met, there should also have been a similarly thorough and clear analysis of the evidence to determine the welfare outcome. The judicial analysis in the case was wholly inadequate. The appeal was allowed and the case remitted for hearing by a different judge.