



## Response to Request for Information

Reference      FOI 0115164  
Date            4 March 2015

### ***Social Services***

**Request:**

**Please will you kindly tell me why your social services department use future harm as a good reason to take constituents children away from them & put them into care when the Supreme court said in the Matter of J (Children) [2013] UKSC 9 that suspicions or possibilities were not enough when local authorities were considering the significant harm threshold & if you agree those who has been effected should use that case to appeal?**

<http://www.ukfamilylawreform.co.uk/court.htm>

Significant harm threshold: Suspicions or possibilities not enough 20th February 2013

<http://www.ukfamilylawreform.co.uk/significantharmthresholdsuspicionsorpossibilitiesnotenough20thfebruary2013.htm>

In deciding whether it is necessary and appropriate to seek to remove a child from the care of his/her parents any Social Worker will seek legal advice as to whether the threshold criteria is satisfied and whether it is necessary and appropriate to seek an order from the Court to remove the child. The Local Authority will need to prove on the basis of evidence to the court:-

- That the child must be suffering, or likely to suffer, significant harm.
- And that the harm or likelihood of harm must be attributable to one of the following:

a) The care given to the child, or likely to be given if the order were not made, not being what it would be reasonable to expect a parent to give; or

b) The child being beyond parental control.

In order to justify making a care or supervision order, the court has to satisfy a two stage test:

**The first stage** – *the threshold stage* – there must be sufficient reasons to justify making a care or supervision order or in other words, the case must cross a

threshold. This threshold can only be crossed if the court agrees that things have happened which have already caused significant harm to a child, or pose a serious risk that significant harm will be suffered in the future.

**The second stage – the welfare stage** – even if the threshold is crossed, it must be in the child's best interests to make an order. It is not inevitable that a care order will be made every time a child has suffered significant harm (but it is likely).

If the Judge cannot pass the first stage – threshold is not met – he or she cannot go on to consider what if any orders to make. The care proceedings will come to an end. It is therefore vital to establish at a very early stage exactly what the LA want to rely on as their threshold criteria and to find out if the parents will agree or not.

The Local Authority will have to prove that things happened on or before the date they applied for a care or supervision order. The LA can rely on information that became available after that date, as long as it is information relevant to what was happening at that time.

The LA will provide further evidence to support their threshold criteria with statements from social workers and other professionals such as teachers or doctors, depending on the facts of the particular case in front of them. But the threshold document should act as a clear and accessible synopsis of the problem and provide a quick 'way in' to understanding what the case is all about.

If the parents agree with the threshold the matter will then proceed to the 'welfare stage' i.e. where the Judge has to decide what if any order is right in this case. This will depend whether or not the parents have accepted they have difficulties and are willing to work at them. If so, no order or a supervision order may be appropriate. However, if the parents are found to have caused their child to suffer significant harm and do nothing to show how they will change for the future, or if the parents refuse to agree that there is anything wrong at all with their parenting, the court is likely to think a care order is the right order to make.

If the parents don't agree with the threshold then the Judge will need to read all the written evidence and hear oral evidence from everyone involved and then make a decision about what did or didn't happen. Sometimes there has to be a separate court hearing to make a decision about an interim care order before the final hearing, but it is perfectly possible to wait until the final hearing to make a decision about threshold.

The most significant and recent case concerning threshold criteria is that of re B in the Supreme Court in 2013 which confirmed that a decision as to whether the threshold conditions for a care order have been satisfied depends on an evaluation of the facts of the case as found by the judge; it is not an exercise of discretion.

Here is what Lady Hale said in paragraph 193 of her judgment in that case:

I agree entirely that it is the statute and the statute alone that the courts have to apply, and that judicial explanation or expansion is at best an imperfect guide. I agree also that parents, children and families are so infinitely various that the law

must be flexible enough to cater for frailties as yet unimagined even by the most experienced family judge. Nevertheless, where the threshold is in dispute, courts might find it helpful to bear the following in mind:

(1) The court's task is not to improve on nature or even to secure that every child has a happy and fulfilled life, but to be satisfied that the statutory threshold has been crossed.

(2) When deciding whether the threshold is crossed the court should identify, as precisely as possible, the nature of the harm which the child is suffering or is likely to suffer. This is particularly important where the child has not yet suffered any, or any significant, harm and where the harm which is feared is the impairment of intellectual, emotional, social or behavioural development.

(3) Significant harm is harm which is "considerable, noteworthy or important". The court should identify why and in what respects the harm is significant. Again, this may be particularly important where the harm in question is the impairment of intellectual, emotional, social or behavioural development which has not yet happened.

(4) The harm has to be attributable to a lack, or likely lack, of reasonable parental care, not simply to the characters and personalities of both the child and her parents. So once again, the court should identify the respects in which parental care is falling, or is likely to fall, short of what it would be reasonable to expect.

(5) Finally, where harm has not yet been suffered, the court must consider the degree of likelihood that it will be suffered in the future. This will entail considering the degree of likelihood that the parents' future behaviour will amount to a lack of reasonable parental care. It will also entail considering the relationship between the significance of the harm feared and the likelihood that it will occur. Simply to state that there is a "risk" is not enough. The court has to be satisfied, by relevant and sufficient evidence, that the harm is likely: see *In re J* [2013] 2 WLR 649.

To summarise the Local Authority must prove their case as to the threshold criteria and it is the Court that decides whether the Local Authority has proved its case, whether that is on the basis of harm suffered or a likelihood of future harm.