

To what extent is the court tolerating diverse standards of parenting, "including the eccentric, the barely adequate and the inconsistent", as per Hedley J in Re L (Care: Threshold Criteria) [2007]?

By Poonam Bhari

1. It is a privilege to lead the discussion on the above topic before the delegates, who are very experienced practitioners, at this advanced level Public Law Children conference.
2. In *Re L*, Hedley J cites the words of Lord Templeman in *In re KD* [1988] 1 AC 806 that **'It matters not whether the parent is wise or foolish, rich or poor, educated or illiterate, provided the child's moral and physical health are not in danger. Public authorities cannot improve on nature'**. Hedley J continues that **'society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent ... it is not the provenance of the state to spare children all the consequences of defective parenting'**. Hedley J then cites the words of Lord Nicholls of Birkenhead in *Re H* [1996] AC 563 that **'threshold may be comparatively low. However it is clear that it must be something unusual; at least something more than commonplace failure or inadequacy.'**
3. The above familiar words of Hedley J have been repeated in a number of subsequently reported authorities.

Threshold Criteria

4. A key principle is that ideally children should be brought up by their parents and the state must not intervene save in exceptional circumstances and only when a court is satisfied that a child is at risk of significant harm per s 31 (2) Children Act 1989. However, the court and social services have wide ranging powers under the 1989 Act and the 'threshold may be comparatively low' per Lord Nicholls in *Re H*.
5. In *Re B (A Child)* [2013] UKSC 33, the Supreme Court considered the justification for a child being taken into care, without the parents causing any actual physical abuse or neglect. Undoubtedly the parents each had a concerning history but the commitment and care of their child since her birth was reported to be exemplary.

6. The first instance decision, upheld by the majority, with Lady Hale dissenting, found that the trial judge was right to make a care order. The decision was based on risk of future harm that may not have materialised. It was enough for the court that such harm may be ‘possible’, notwithstanding that the harm may never actually happen and could perhaps have been ameliorated with support.
7. This brings into issue the concept of ‘better families’. Is it enough to remove a child in a neglect case because another carer is ‘better’ than the natural parents? This goes back to the words of Hedley J and whether the role of the state is to spare children all the consequences of defective parenting. Could the provision of support enable a child to remain within the natural family? This is more problematic, where a parent is unwilling and unable to accept support and assistance. A careful analysis is needed regarding support that can be provided for the parents and child. The availability of resources cannot be ignored where these are limited or do not exist, but that is not a reason to separate children from their parents and leads to the need for wider discussions about policy considerations.
8. As Baroness Hale said in *Re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33, [2013] 2 FLR 1075:

*“We are all frail human beings, with our fair share of unattractive character traits, which sometimes manifest themselves in bad behaviours, which may be copied by our children. But the State does not and cannot take away the children of all the people who commit crimes, who abuse alcohol or drugs, who suffer from physical or mental illnesses or disabilities, or who espouse antisocial political or religious beliefs.”*

### Better than good enough parenting and social engineering

9. This is an often-used phrase in cases to rule out the natural parents as long-term carers for their children. The key point is that each child needs a carer that can meet his/her specific individual needs. Parents whose intellectual functioning is at the level of mild learning disability may with high levels of support be able to care for a child without very complex needs and with proper support may be able to provide good enough care for a child with some challenges.

10. Anecdotally, undertaking public law cases in various care centres in England I have not experienced a consistency of judicial approach to similar issues and concerns about parents. I have been involved in a case where a mother with mild learning disabilities, who had been struggling to care for her baby, was granted a residential assessment at 'Symbol', where she made good progress, showed commitment and learned through modeling. This case had a positive outcome and the mother was able to keep her baby.
11. In another case concerning a mother with learning disabilities, represented through the Official Solicitor and a child of 7 years old, the mother was fully assessed by an ISW. A recommendation was made for the work to be undertaken to enable the mother to build her parenting skills and confidence through Evaluation of Video Interaction Guidance (VIG) Service. The Local Authority funded the VIG work, which was approved by the court. The VIG work was positive and enabled the child to remain with his mother as an outcome to the proceedings.
12. In *Re A (A Child)* [2015] EWFC 11, the Munby P reminded judges and practitioners of the words of Hedley J in *Re L* and cautioned against the temptation of social engineering and the need to recognize the inevitable diverse and unequal standards of parenting. The President expressly approved the judgement of His Honour Judge Jack in *North East Lincolnshire Council v G & L* [2014] EWCC B77 (Fam) where he said,
- "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."*
13. The President was critical of the social worker and children's guardian for the absence of a proper assessment of the father and analysis of the facts the Local authority relied on to support its case. There had also been significant delay in the case being issued.

### Learning-disabled parents

14. In *Re D (A Child) (no 3)* [2016] EWFC 1, Munby (P) set out key principles to consider in cases concerning learning-disabled parents. The issue was whether a package of support could enable the child to remain with his parents long-term.
15. The President highlighted the key points of principle identified by Gillen J in *Re G and A (Care Order: Freeing Order: Parents with a Learning Disability)* [2006] NIFam 8.

### Delay, 26 weeks and proportionality

16. The objective is that cases will only come to court once the PLO process, which came into force on 1 April 2008, has been completed, although this is not always the situation in some care cases that come before the courts. It is envisaged that assessment of the parents will already have been undertaken before the case comes to court. The issue is whether this front-loading is leading to decision-making by 'experts', without the inevitable scrutiny of the court process.
17. There are inevitable arguments at the start of a care case that all the evidence is before the court and there is no further need for assessment. Early and detailed analysis of the work undertaken is key to identifying gaps and issues that have not been addressed or considered.
18. During the discussion related to this topic it will be interesting to learn whether practitioners are finding that courts are finding residential assessments to be 'necessary' in cases or has there been a perceived downturn in the sanctioning of residential assessments.

### FDAC

19. A problem-solving court solution, such as FDAC can support parents to overcome substance misuse, mental health and domestic problems.