

Family Matters: Should the Threshold Criteria be Re-Written? – Part 1

By Arlene Small

Section 31 of the Children Act 1989 sets out the legal basis on which a Family Court can make a Care or Supervision Order to a local authority in respect of a particular child. To meet the criteria, the concerns surrounding a child must demonstrate:

- 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.

I recently had a case when I had to advise a learning disabled parent on the threshold criteria. The parent was not so impaired as to require the intervention of the Official Solicitor, but sufficiently so that the parents' capacity to parent was adversely affected. This was a parent who clearly and unequivocally loved the children who were the subject of the proceedings. Through no fault of the parent, the disability had gone undetected for decades. And now, here we were in proceedings and the parent was asked to accept that the children had been and were at risk of harm because of what the parent had done and failed to do over the preceding years.

This is where I question the obvious inflexibility of the existing threshold criteria, which tars all parents with the same brush. Those that willfully and intentionally harm children, or are lazy and neglectful, and those who have some cognitive or other mental impairment, which prevents them from functioning as a 'reasonable parent' would.

It is this last category that I am most concerned about. How do you explain to a parent that they are a risk to their child at the best of times, let alone to those who in their mind have not deliberately done anything wrong. I am still pondering how the threshold criteria could be amended to include those types of parents. I know that the threshold is set out in this way to assist in making decisions about the welfare of the child, which is paramount, but there must be a way of doing that which does not set out to alienate these types of parents' from the start.

As a parent there can surely be nothing worse than being told that your care, or lack of it has placed your child at risk of significant harm. With that in mind I am considering whether the existing threshold should be expanded upon to address this issue. Any contributions to the debate will be gratefully received, and be included in Part 2 of this discussion next month.

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