**NOTE OF THE LAW**

**Burden of proof and standard of proof**

1. The burden of proof lies with the Local Authority. It is the Local Authority that brings the proceedings and identifies the findings they invite the court to make. Therefore, the burden of proving the allegations rests with them.
2. The standard of proof is the balance of probabilities*,* **Re B** [**[2008] UKHL 35**](http://www.bailii.org/uk/cases/ukhl/2008/35.html)*.* As Lord Hoffman observed:

*"If a legal rule requires facts to be proved, a judge must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are nought and one."*

**Evidence**

1. Findings of fact in these cases must be based on evidence. Per Lord Justice Munby, as he then was, in**Re A (A child) (Fact Finding Hearing: Speculation)** [**[2011] EWCA Civ. 12**](http://www.bailii.org/ew/cases/ewca/civ/2011/12.html)**:**

*"It is an elementary proposition that findings of fact must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation".*

1. The court must take into account all the evidence and furthermore consider each piece of evidence in context of all the other evidence. Per Dame Elizabeth Butler-Sloss, President **Re U, Re B 9 (Serious Injuries: Standard of Proof)** [**[2004] EWCA Civ. 567**](http://www.bailii.org/ew/cases/ewca/civ/2004/567.html)**, t**he court *"invariably surveys a wide canvas". In* **Re T** [**[2004] EWCA Civ. 558**](http://www.bailii.org/ew/cases/ewca/civ/2004/558.html)**, [2004] 2 FLR 838** *at paragraph 33 she added:*

*"Evidence cannot be evaluated and assessed in separate compartments. A judge in these difficult cases must have regard to the relevance of each piece of evidence to the other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion of whether the case put forward by the Local Authority has been made out to the appropriate standard of proof."*

**Lucas Direction**

1. The Lucas direction was brought into the family law arena by Charles J in **A county Council v K, D & L**. When considering the direction the Court will have regard to Bake J’s comments in **Devon County Council v EB [2013] EWHC 968 (fam*)*** were is was stated:

*“...it is not uncommon for witnesses in these cases to tell lies in the course of the investigation and the hearing.  The court must be careful to bear in mind that a witness may lie for various reasons, such as shame, misplaced loyalty, panic, fear, distress and the fact that the witness has lied about some matters does not mean that he or she has lied about everything:  see R v Lucas [1981] QB 720.”*

1. The Court will also have the words of Lord Justice McFarlane in **H-C (Children) 2016 EWCA Civ 136** at 98-100 where he said:

*100.  One highly important aspect of the Lucas decision, and indeed the approach to lies generally in the criminal jurisdiction, needs to be borne fully in mind by family judges. It is this: in the criminal jurisdiction the "lie" is never taken, of itself, as direct proof of guilt. As is plain from the passage quoted from Lord Lane's judgment in Lucas, where the relevant conditions are satisfied the lie is "capable of amounting to a corroboration". In recent times the point has been most clearly made in the Court of Appeal Criminal Division in the case of R v Middleton [2001] Crim.L.R. 251.*

*In my view there should be no distinction between the approach taken by the criminal court on the issue of lies to that adopted in the family court. Judges should therefore take care to ensure that they do not rely upon a conclusion that an individual has lied on a material issue as direct proof of guilt”.*

1. In **Lancashire v R***(paragraph 8xi)* there is a direction in the following terms:

*“The assessment of credibility generally involves wider problems than mere ‘demeanour’ which is mostly concerned with whether the witness appears to be telling the truth as he now believes it to be. With every day that passes the memory becomes fainter and the imagination becomes more active. The human capacity for honestly believing something which bears no relation to what actually happened is unlimited.”*

1. In [**Hertfordshire CC v Ms T and Mr J [2018] EWHC 2796 (Fam)**](https://protect-eu.mimecast.com/s/A8ilCjnoZTYQQlsRW5es?domain=familylawweek.co.uk)Keehan J gave himself a revised Lucas direction: court should only take account of any lies found to have been told if there is no good reason or other established reason for the person to have lied.  Taking into account the decision of the Court of Appeal in [**Re H-C*(supra)***](https://protect-eu.mimecast.com/s/V2IDCkop8HkzzYFQtrWU?domain=familylawweek.co.uk)where McFarlane LJ (as he then was) said at para.100:

"One highly important aspect of the Lucas decision, and indeed the approach to lies generally in the criminal jurisdiction, needs to be borne fully in mind by family judges.  It is this: in the criminal jurisdiction the 'lie' is never taken, of itself, as direct proof of guilt.  As is plain from the passage quoted from Lord Lane's judgment in Lucas, where the relevant conditions are satisfied the lie is 'capable of amounting to a corroboration.'  In recent times the point has been most clearly made in the Court of Appeal Criminal Division in the case of R v Middleton [2001] Crim.L.R. 251.  'In my view there should be no distinction between the approach taken by the criminal court on the issue of lies to that adopted in the family court.  Judges should, therefore, take care to ensure that they do not rely upon a conclusion that an individual has lied on a material issue as direct proof of guilt'."

**Threshold**

1. In **Re A (A Child)** [**[2015] EWFC 11**](http://www.bailii.org/ew/cases/EWFC/2015/11.html) Sir James Munby P gave detailed guidance in relation to the establishment of the threshold criteria and the need to specify in the case of each allegation how and why it would, if true, give rise to a risk of significant harm to the child. A rigorous approach to the threshold criteria is particularly vital where the care plan is for adoption. The Court of Appeal has expressly approved this guidance in **Re J (A Child).** [**[2015] EWCA Civ 222**](http://www.bailii.org/ew/cases/EWCA/Civ/2015/222.html), Aikens LJ suggested that the *Re A* principles, which were not new but based on statute, the highest authority or both, could be summarised as follows:

‘i) In an adoption case, it is for the local authority to prove, on a balance of probabilities, the facts on which it relies and, if adoption is to be ordered, to demonstrate that “nothing else will do”, when having regard to the overriding requirements of the child’s welfare.

ii)If the local authority’s case on a factual issue is challenged, the local authority must adduce proper evidence to establish the fact it seeks to prove. If a local authority asserts that a parent “does not admit, recognise or acknowledge” that a matter of concern to the authority is the case, then if that matter of concern is put in issue, it is for the local authority to prove it is the case and, furthermore, that the matter of concern has the significance attributed to it by the local authority.

iii)Hearsay evidence about issues that appear in reports produced on behalf of the local authority, although admissible, has strict limitations if a parent challenges that hearsay evidence by giving contrary oral evidence at a hearing. If the local authority is unwilling or unable to produce a witness who can speak to the relevant matter by first hand evidence, it may find itself in “great, or indeed insuperable” difficulties in proving the fact or matter alleged by the local authority but which is challenged.

iv)The formulation of “Threshold” issues and proposed findings of fact must be done with the utmost care and precision. The distinction between a fact and evidence alleged to prove a fact is fundamental and must be recognised. The document must identify the relevant facts which are sought to be proved. It can be cross-referenced to evidence relied on to prove the facts asserted but should not contain mere allegations (“he appears to have lied” etc.)

v)It is for the local authority to prove that there is the necessary link between the facts upon which it relies and its case on Threshold. The local authority must demonstrate why certain facts, if proved, “justify the conclusion that the child has suffered or is at the risk of suffering significant harm” of the type asserted by the local authority. “The local authority’s evidence and submissions must set out the arguments and explain explicitly why it is said that, in the particular case, the conclusion [that the child has suffered or is at the risk of suffering significant harm] indeed follows from the facts [proved]”.

vi)It is vital that local authorities, and, even more importantly, judges, bear in mind that nearly all parents will be imperfect in some way or other. The State will not take away the children of “those who commit crimes, abuse alcohol or drugs or suffer from physical or mental illness or disability, or who espouse antisocial, political or religious beliefs” simply because those facts are established. It must be demonstrated by the local authority, in the first place, that by reason of one or more of those facts, the child has suffered or is at risk of suffering significant harm. Even if that is demonstrated, adoption will not be ordered unless it is demonstrated by the local authority that “nothing else will do” when having regard to the overriding requirements of the child’s welfare. The court must guard against “social engineering”.

vii)When a judge considers the evidence, he must take all of it into account and consider each piece of evidence in the context of all the other evidence, and, to use a metaphor, examine the canvas overall.

viii)In considering a local authority’s application for a care order for adoption the judge must have regard to the “welfare checklist” in *section 1(3)* of *the*[*Children Act 1989*](https://www.bloomsburyprofessionalonline.com/bpro/resolveolink/CA1989) and that in *section 1(4)* of the [*Adoption and Children Act 2002*](https://www.bloomsburyprofessionalonline.com/bpro/resolveolink/ACA2002). The judge must also treat, as a paramount consideration, the child’s welfare “throughout his life” in accordance with *section 1(2)* of the *2002 Act*. In dispensing with the parents’ consent, the judge must apply *section 52(1)(b)* as explained in *Re P (Placement Orders, parental consent)* [2008] 2 FLR 625.’

### **The welfare principle and proportionality**

1. Once the statutory threshold criteria have been established, the court must then go on to consider whether to make an order with respect to the child, and, if so, what order. In determining those matters, the welfare of the child must be the court’s paramount consideration.  Further, the court is required to have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.
2. The statutory welfare check-list contained in [CA 1989, s 1(3)](https://www.bloomsburyprofessionalonline.com/bpro/resolveolink/CA1989s1), applies to this stage of a care application.  The court must have regard to the matters on the check-list in each case.
3. The principle of proportionality must be applied when considering an application for a care order, Hale LJ in **Re C and B (Care Order: Future Harm)**[***[2000] 2 FCR 614***](https://www.bloomsburyprofessionalonline.com/bpro/resolveolink/ID2000_2_FCR_0614), said: *‘The principle has to be that the local authority works to support, and eventually reunite, the family, unless the risks are so high that the child’s welfare requires alternative family care.’*
4. In **Re B (A Child)** [**[2013] UKSC 33**](http://www.bailii.org/uk/cases/UKSC/2013/33.html), the Supreme Court emphasised the need to ensure that a care order where the plan is for adoption is a proportionate response to the harm identified. Lord Neuberger described such an order as *‘a* *last resort’* and expressed the view that ‘*before making an adoption order in such a case, the court must be satisfied that there is no practical way of the authorities (or others) providing the requisite assistance and support*’.
5. Re **B-S (Children)**[**[2013] EWCA Civ 1146**](http://www.bailii.org/ew/cases/EWCA/Civ/2013/1146.html) provides a definitive explanation of what good practice, the 2002 Act and the Convention all demand:
6. *First, there must be proper evidence both from the local authority and from the guardian. The evidence must address all the options which are realistically possible and must contain an analysis of the arguments for and against each option. As Ryder LJ said in Re R (Children)*[*[2013] EWCA Civ 1018*](https://www.bailii.org/ew/cases/EWCA/Civ/2013/1018.html)*, para 20, what is required is:*

*"evidence of the lack of alternative options for the children and an analysis of the evidence that is accepted by the court sufficient to drive it to the conclusion that nothing short of adoption is appropriate for the children."*

*The same judge indicated in Re S, K v The London Borough of Brent*[*[2013] EWCA Civ 926*](https://www.bailii.org/ew/cases/EWCA/Civ/2013/926.html)*, para 21, that what is needed is:*

*"An assessment of the benefits and detriments of each option for placement and in particular the nature and extent of the risk of harm involved in each of the options".*

*McFarlane LJ made the same point in Re G (A Child)*[*[2013] EWCA Civ 965*](https://www.bailii.org/ew/cases/EWCA/Civ/2013/965.html)*, para 48, when he identified:*

*"the need to take into account the negatives, as well as the positives, of any plan to place a child away from her natural family".*

*We agree with all of this.*

1. *The second thing that is essential, and again we emphasise that word, is an adequately reasoned judgment by the judge. We have already referred to Ryder LJ's criticism of the judge in Re S, K v The London Borough of Brent*[*[2013] EWCA Civ 926*](https://www.bailii.org/ew/cases/EWCA/Civ/2013/926.html)*. That was on 29 July 2013. The very next day, in Re P (A Child)*[*[2013] EWCA Civ 963*](https://www.bailii.org/ew/cases/EWCA/Civ/2013/963.html)*, appeals against the making of care and placement orders likewise succeeded because, as Black LJ put it (para 107):*

*"the judge … failed to carry out a proper balancing exercise in order to determine whether it was necessary to make a care order with a care plan of adoption and then a placement order or, if she did carry out that analysis, it is not apparent from her judgments. Putting it another way, she did not carry out a proportionality analysis."*

*She added (para 124): "there is little acknowledgment in the judge's judgments of the fact that adoption is a last resort and little consideration of what it was that justified it in this case."*

1. *The judge must grapple with the factors at play in the particular case and, to use Black LJ's phrase (para 126), give "proper focussed attention to the specifics".*
2. *In relation to the nature of the judicial task we draw attention to what McFarlane LJ said in Re G (A Child)*[*[2013] EWCA Civ 965*](https://www.bailii.org/ew/cases/EWCA/Civ/2013/965.html)*, paras 49-50:*

*"In most child care cases a choice will fall to be made between two or more options. The judicial exercise should not be a linear process whereby each option, other than the most draconian, is looked at in isolation and then rejected because of internal deficits that may be identified, with the result that, at the end of the line, the only option left standing is the most draconian and that is therefore chosen without any particular consideration of whether there are internal deficits within that option.*

*The linear approach … is not apt where the judicial task is to undertake a global, holistic evaluation of each of the options available for the child's future upbringing before deciding which of those options best meets the duty to afford paramount consideration to the child's welfare."*

*We need not quote the next paragraph in McFarlane LJ's judgment, which explains in graphic and compelling terms the potential danger of adopting a linear approach.*

1. *We emphasise the words "global, holistic evaluation". This point is crucial. The judicial task is to evaluate all the options, undertaking a global, holistic and (see Re G para 51) multi-faceted evaluation of the child's welfare which takes into account all the negatives and the positives, all the pros and cons, of each option. To quote McFarlane LJ again (para 54):*

*"What is required is a balancing exercise in which each option is evaluated to the degree of detail necessary to analyse and weigh its own internal positives and negatives and each option is then compared, side by side, against the competing option or options."*

1. *McFarlane LJ added this important observation (para 53) which we respectfully endorse:*

*"a process which acknowledges that long-term public care, and in particular adoption contrary to the will of a parent, is 'the most draconian option', yet does not engage with the very detail of that option which renders it 'draconian' cannot be a full or effective process of evaluation. Since the phrase was first coined some years ago, judges now routinely make reference to the 'draconian' nature of permanent separation of parent and child and they frequently do so in the context of reference to 'proportionality'. Such descriptions are, of course, appropriate and correct, but there is a danger that these phrases may inadvertently become little more than formulaic judicial window-dressing if they are not backed up with a substantive consideration of what lies behind them and the impact of that on the individual child's welfare in the particular case before the court. If there was any doubt about the importance of avoiding that danger, such doubt has been firmly swept away by the very clear emphasis in Re B on the duty of the court actively to evaluate proportionality in every case."*

1. The court is also respectfully reminded of the judgment of Peter Jackson LJ in **F (A Child – Placement Order – Proportionality) [2018] EWCA Civ 2761**
	1. *“In short summary, there is no complaint about the judge's legal self-direction, his findings of fact or his conclusion that the threshold for intervention was met. Further, he identified*

*(1) The type of harm that might arise.
(2) The likelihood of it arising.*

*But he did not sufficiently address:*

*(3) The consequences: what would be the likely severity of the harm to Robbie if it did come to pass?
(4) Risk reduction/mitigation: would the chances of harm happening be reduced or mitigated by the support services that are or could be made available?
(5) The comparative evaluation: in light of the above, how do the welfare advantages and disadvantages of Robbie growing up with his mother compare with those of adoption?
(6) Proportionality: ultimately, is adoption necessary and proportionate in this case?*

*Lacking these components, the judge's analysis did not in my view provide an adequate foundation for adoption in a case where the need for such a profound order is not immediately obvious. With the passage of time a rehearing is unfortunately inevitable, and in view of the child's age we have given directions to expedite this.”*

1. In **W (A child)** **[2014] EWCA Civ 1625** the proper constriction of “nothing else will do” was *provided by Munby P*

*44.* *I wish to emphasise, with as much force as possible, that Re B-S was not intended to change and has not changed the law. Where adoption is in the child's best interests, local authorities must not shy away from seeking, nor courts from making, care orders with a plan for adoption, placement orders and adoption orders. The fact is that there are occasions when nothing but adoption will do, and it is essential in such cases that a child's welfare should not be compromised by keeping them within their family at all costs*

*59.I emphasise the words "realistically" (as used in Re B-S in the phrase "options which are realistically possible") and "realistic" (as used by Ryder LJ in the phrase "realistic options"). This is fundamental. Re B-S does not require the further forensic pursuit of options which, having been properly evaluated, typically at an early stage in the proceedings, can legitimately be discarded as not being realistic. Re B-S does not require that every conceivable option on the spectrum that runs between 'no order' and 'adoption' has to be canvassed and bottomed out with reasons in the evidence and judgment in every single case. Full consideration is required only with respect to those options which are "realistically possible".*

*60.As Pauffley J said in Re LRP (A Child) (Care Proceedings: Placement Order) [[2013] EWHC 3974 (Fam)](https://www.bailii.org/ew/cases/EWHC/Fam/2013/3974.html%22%20%5Co%20%22Link%20to%20BAILII%20version), para 40, "the focus should be upon the sensible and practical possibilities rather than every potential outcome, however far-fetched." And, to the same effect, Baker J in Re HA (A Child)*[*[2013] EWHC 3634 (Fam)*](https://www.bailii.org/ew/cases/EWHC/Fam/2013/3634.html)*, para 28:*

*"rigorous analysis and comparison of the realistic options for the child's future … does not require a court in every case to set out in tabular format the arguments for and against every conceivable option. Such a course would tend to obscure, rather than enlighten, the reasoning process."*

*"Nothing else will do" does not mean that "everything else" has to be considered.*

*61. What is meant by "realistic"? I agree with what Ryder LJ said in Re Y, para 28:*

*"Realistic is an ordinary English word. It needs no definition or analysis to be applied to the identification of options in a case."*

**Grounds for a placement order**

1. The court may not make a placement order unless:
	1. the child is subject to a care order; or
	2. the court is satisfied that the threshold conditions in [CA 1989, s 31(2)](https://www.bloomsburyprofessionalonline.com/bpro/resolveolink/CA1989s31) are met; or
	3. the child has no parent or guardian;

and each parent or guardian has consented to the child being placed for adoption with any prospective adopters who may be chosen by the local authority and has not withdrawn consent, or the parent’s consent should be dispensed with under [ACA 2002, s 52](https://www.bloomsburyprofessionalonline.com/bpro/resolveolink/ACA2002s52).

1. S1(2) ACA makes it plain that the child’s welfare will be the paramount consideration in determining the issue of dispensing with parental consent. Despite the fact that welfare is brought expressly into the test for dispensing with consent, the consent issue remains separate from the welfare issue, thus the question under s 52(1) is *not* ‘does the child’s welfare require a placement/adoption order’, it is *‘*does the child’s welfare require that the parental consent be dispensed with*’*.
2. The welfare checklist at s1(4) ACA must be applied in determining the consent issue.  The factors that may indicate that adoption is in the child’s best interests, must be balanced against those that may point away from adoption, for example s 1(4)(c) (likely effect of ceasing to be a member of the original family) or s 1(4)(f) (relationship with relatives and others).
3. In **Re P (Placement Orders: Parental Consent)** [***[2008] EWCA Civ 535***](http://www.bailii.org/ew/cases/EWCA/Civ/2008/535.html), the Court of Appeal gave guidance upon the interpretation of the word ‘requires’ in [ACA 2002, s 52(1)](https://www.bloomsburyprofessionalonline.com/bpro/resolveolink/ACA2002s52)(b). Having reviewed the issue in the context of ECHR jurisprudence, where adoption is a measure that should only be applied in exceptional circumstances and can only be justified if it is motivated by an overriding requirement pertaining to the child’s best interests, Wall LJ (giving the judgment of the court) said:

*‘This is the context in which the critical word “requires” is used in section 52(1)(b). It is a word which was plainly chosen as best conveying, as in our judgment it does, the essence of the Strasbourg jurisprudence. And viewed from that perspective “requires” does indeed have the connotation of the imperative, what is demanded rather than what is merely optional or reasonable or desirable.*

1. In **E (A child) (refusal of placement order) [2019] EWCA Civ 1557** the Court of Appeal allowed an appeal against a refusal of a placement order where the trial judge had permitted postponement of a final decision to allow the opportunity for the parents to demonstrate change. Lord Justice Baker observing at

*45.Finally, having regard to well-established legal principles and the evidence in this case, the judge's proposal to postpone a final decision concerning the child's future for up to 18 months to allow the parents an opportunity to demonstrate change was, in my judgement, plainly wrong. As all children should wherever possible be brought up within their birth family and, as a result, adoption is the option of last resort, it is absolutely right that, in appropriate circumstances, parents should be given every reasonable opportunity to make changes sufficient to allow a child to be returned to their care. For my part, however, I find it difficult to envisage any case where it would be appropriate to wait as long as eighteen months before making a decision about whether a seven-month-old child should be placed for adoption. The judge expressed the view that a two-year-old child is "adoptable", but it is widely recognised that a child makes crucial attachments in the first two years of life and to postpone a decision about whether or not to place child for adoption until she has reached that age increases the difficulties of achieving a successful placement. As recognised in s.1(2) of the 1989 Act and s.1(3) of the 2002 Act, any delay in coming to a decision is likely to prejudice the welfare of the child. I do not say that a delay of 18 months could never be justified, but I find it difficult to envisage circumstances when it would be appropriate.*

*46. In this case, however, I am quite satisfied that the judge was wrong to find that there was anything like sufficiently solid evidence before him to conclude that the parents were committed or able to make and maintain the necessary changes within the child's timescale.*

**In summary**

1. Mr Justice Keehan in **Re C (A Child: Adoption) [2020] EWFC 66** has summarised the principles as follows:

*5. In considering the application for a care order, my paramount consideration is the welfare of C under s.1(1) of the Children Act 1989. Since the care plan recommends adoption, I also have regard to the provisions of s.1(2) of the Adoption and Children Act 2002. I have regard to the provisions of the welfare checklist set out in s.1(3) of the 1989 Act and those set out in s.1(4) of the 2002 Act.

6. I have particular regard to the paramountcy of C's welfare throughout her whole life. I may not make a placement order, in the absence of the parents' consent, unless I am satisfied that C's welfare requires me to dispense with their consent, s.52 of the 2002 Act.

7. I have regard to the Article 6 and Article 8 rights of C and of the parents and remind myself that where there is a tension between the Article 8 rights of a parent on the one hand and the child on the other, the rights of the child prevail:*Yousef v The Netherlands*[2003] 1FLR, 210.

8. I also take into account a number of authorities. The principal ones are as follows:*[Re W (A Child)**[2017] EWHC 829 Fam**](https://www.familylawweek.co.uk/site.aspx?i=ed177281)*, the then President of the Family Division, Sir James Munby said as follows:*

*"There are many illustrations of this principle in the books: J v C is at one and the same time, the classic formulation and the classic application of the principle. I was also referred by Mr Feehan to some words of Lord Templeman in re KD where, shortly after the famous and much-quoted passage beginning, 'The best person to bring up a child is the natural parent.'"*

9.  *In Re W (A Child)*[**[2016] EWCA Civ 793**](https://www.familylawweek.co.uk/site.aspx?i=ed162144site.aspx?i=ed162144)*, McFarlane LJ, as he then was, giving the judgment of the Court said at paragraph 71:*

*"The repeated reference to a 'right' for a child to be brought up by his or her natural family, or the assumption that there is a presumption to that effect, needs to be firmly and clearly laid to rest. No such 'right' or presumption exists. The only 'right' is for the arrangements for the child to be determined by affording paramount consideration to her welfare throughout her life (in an adoption case) in a manner which is proportionate and compatible with the need to respect any Art 8 rights which are engaged."*

*10. In the case of Re A and O* [**[2017] EWHC 1293**](https://www.familylawweek.co.uk/site.aspx?i=ed177921)***,*** *the then President of the Family Division, Sir James Munby, said as follows:*

*"The task of the family court will be, a) to decide whether adoption is in the best interests of A and O, judged by the test in s1(2) of the 2002 Act, of the child's welfare throughout his life, having regard to the various provisions in the welfare checklist in s1(4) of the 2002 Act and applying the principles explained in*[Re B (A Child) (Care Proceedings: Threshold Criteria) [2013] UKSC 3**3**](https://www.familylawweek.co.uk/site.aspx?i=ed114409)*and*Re W (A Child)*[2016] EWCA 6793; and, b) to decide whether the welfare of A and O requires their parents' consent to be dispensed with in accordance with s52(1)(b) as that word was explained in*[Re B, Placement Orders: Parental Consent [2008] EWCA Civ 535*,*](https://www.familylawweek.co.uk/site.aspx?i=ed1222) *see also*Re W (A Child)*[2017] EWHC 829."*

1. *In*YC v the United Kingdom*[2012] 55 EHRR 967 at paragraph 134, the European Court said as follows:*

*"Family ties may only be severed in very exceptional circumstances and everything must be done to preserve personal relations and, where appropriate, to 'rebuild' the family…It is not enough to show that a child could be placed in a more beneficial environment for his upbringing."*

1. *In*Re P (Placement Orders: Parental Consent*) [2008] EWCA Civ 535, the Court of Appeal, considering the word 'requires' in s 52(1)(d) of the 2002 Act said:  "It has the connotation of the imperative, what is demanded than what is merely optional or reasonable or desirable."*
2. *The stringency of the test when considering the adoption of a child against parental consent was underlined by the Supreme Court in*Re B (A Child) Care Proceedings: Threshold Criteria*[2013] UKSC 33 and by subsequent judgments of the Court of Appeal in*Re P (A Child)*[2013] EWCA Civ 963 and* Re G (A Child) [2013] EWCA Civ 965*. As the Supreme Court made plain in*Re B*, the test that must be applied is that nothing else will do in the welfare best interests of the child.*
3. *Finally, I have regard to what the then President, Sir James Munby, said in* Re B-S (Children)[2013] EWCA Civ*, namely that a Court, when considering making an adoption order, must undertake a global and holistic assessment of all the realistic options and consider those against the test for proportionality and must not undertake a linear assessment.*

Hedley J Re L (Care: Threshold criteria) [2007] 1FLR 2050 he observed that *"society must be* *willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent*" and "*significant harm is fact- specific and must retain the breadth of meaning that human fallibility may require of it" but that it is clear that it must be something unusual: at least something more than the commonplace human failure or inadequacy*".

In Re L-W (children) [2019] EWCA Civ 159, King LJ said that the local authority must prove the causative link between to the harm alleged:

[40] In re J (a child) [2015] EWCA Civ 222, the Court of Appeal approved guidance earlier given in by Sir James Mumby P (as he then was) in Re A (application for care and placement orders: local authority failings) [2015] EWFC 11,

(v) It is for the local authority to prove that there is the necessary link between the facts upon which it relies and its case on threshold. The local authority must demonstrate why certain facts, if proved "*justify the conclusion that the child has suffered or is at the risk of suffering significant harm*" of the type asserted by the local authority. "*The local authority's evidence must set out why it is said that, in the particular case, the conclusion [that the child has suffered or is at risk of suffering significant harm indeed follows from the facts proved*]

(vi) It is vital that local authorities, and even more importantly, judges, bear in mind that nearly all parents will be imperfect in some way or other. The state will not take away the children of "*those who commit crimes, abuse alcohol or drugs or suffer from physical or mental illness or disability, or who espouse antisocial, political or religious beliefs*" simply because those facts are established. It must be demonstrated by the local authority, in the first place, that by reason of one or more of these facts, the child has suffered or is at risk of suffering significant harm.