Neutral Citation Number: [2025] EWCA Civ 1362

Case No: CA-2025-001586

**IN THE COURT OF APPEAL (CIVIL DIVISION)**
**ON APPEAL FROM THE FAMILY COURT SITTING IN PETERBOROUGH**
**HHJ Chaudhuri**
**PE24C50198**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/10/2025

**Before :**

**LORD JUSTICE BAKER**
**LORD JUSTICE COBB**
and
**LORD JUSTICE MILES**

- - - - - - - - - - - - - - - - - - - - -

**Re D (Threshold Findings and Final Orders at IRH)**

- - - - - - - - - - - - - - - - - - - - -

**Jay Banerji** and **Joseph Landman** (instructed by **Goodman Ray**) for the First Appellant (**Father**)
The Second Appellant (**Mother**) in person
**Zimran Samuel** (instructed by **Local Authority Solicitor**) for the First Respondent (**Local Authority**)
**Jessica Lee** and **Sapna Jain** (instructed by **Ringrose Law**) for the Second Respondent (**Child**)

Hearing date : 21 October 2025

- - - - - - - - - - - - - - - - - - - - -

# Approved Judgment

This judgment was handed down remotely at 10.30am on 30 October 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

## Lord Justice Cobb:

### *Introduction*

1. Section 31(2) is, I suspect, one of the most referenced provisions of the Children Act 1989 ('CA 1989'). It is pivotal to any application under Part IV CA 1989. Unsurprisingly therefore it has been the subject of considerable judicial analysis over the last thirty-four years, since the CA 1989 came into force. Indeed, no fewer than seven decisions of the House of Lords or Supreme Court[1] are focused on that single provision. There is, in the circumstances, a rich fund of authoritative judgments from which to draw.

2. The statutory test set out within section 31(2) (the 'threshold criteria') is of course designed to restrict compulsory intervention by the state in families' lives only to those cases which genuinely warrant it, while enabling the court to make the order which will best promote the child's welfare once the threshold has been crossed.

3. In this appeal we have considered a short but not unimportant point relating to section 31(2) CA 1989, namely the obligation on the judge considering the threshold criteria at an Issues Resolution Hearing ('IRH') which is being treated as a final hearing (a) to satisfy himself or herself of proof of the same, (b) on what basis, and (c) to make relevant threshold findings. The proposition is not a new one, and seems almost too obvious to state. But in this case, a short form of judgment delivered at the conclusion of an IRH disposing of public law proceedings which were by then effectively uncontested has left the parties, and this court, in a state of ignorance as to the basis on which the judge actually approved the local authority's right to pursue final orders under Part IV of the CA 1989 and under the Adoption and Children Act 2002 ('ACA 2002').

4. It is in this context that we have also considered the common case management practice, adopted at an interlocutory stage during these proceedings and is indeed currently supported by the Standard Form Orders template, of respondents being 'deemed' to accept the threshold criteria in cases where the respondents or any/either of them have filed no response to the statement of proposed threshold filed by the local authority. In this appeal we were concerned that the judge may have treated this 'deemed' acceptance of threshold facts as 'deemed' proof of the same.

5. On 2 June 2025, at the Family Court sitting at Peterborough, and at the conclusion of an IRH, HHJ Chaudhuri (hereafter 'the judge') made a final care order under section 31 CA 1989 and a placement order under section 21 of the ACA 2002 in respect of D, a girl then just over five months old. The parents were not in attendance at that hearing.

6. By Appellant's Notice dated 30 June 2025, D's parents, then both acting in person, appealed against those orders. They raised multiple grounds. On 25 September 2025,

---

[1] *In re M (A Minor) (Care Orders: Threshold Conditions)* [1994] 2 AC 424; *In re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563; *Lancashire County Council v B* [2000] 2 AC 147; *In re O (Minors) (Care: Preliminary Hearing)* [2003] UKHL 18, [2004] 1 AC 523; *In re B (Children) (Care Proceedings: Standard of Proof) (CAFCASS intervening)* [2008] UKHL 35, [2009] AC 11; *In re S-B (Children) (Care Proceedings: Standard of Proof)* [2009] UKSC 17, [2010] 1 AC 678; and *Re J (Children) (Care Proceedings: Threshold Criteria)* [2013] UKSC 9; [2013] 1 AC 680.

Macur LJ granted permission to appeal, but on two grounds only (see §25 below). The father has since obtained representation. The local authority and the Children's Guardian oppose the appeal.

7. At the conclusion of the hearing of the appeal we informed the parties that we would allow the appeal. We discharged the care order and placement order, and substituted an interim care order. We remitted the applications to the Family Court at Peterborough for urgent case management.

8. Coincidentally, this appeal raises some similar issues to those considered in *Re H (Final Care orders at IRH)* [2025] EWCA Civ 1342 in which this court recently handed down judgment. Useful cross-reference can, and indeed should, be made to [28]-[36] ibid. (making the best use of the IRH) and [46]-[47] ibid. (judgment at the end of an IRH, making final orders).

***Outline background facts***

9. D was born in late December 2024. She is now aged ten months. She is the mother's second child. Her older half-sister B was born in 2019. On 25 April 2025 B was made the subject of a care order and was placed in the care of the local authority. This appeal does not affect B. It is unclear whether the parents are still in a relationship.

10. Proceedings under Part IV of the Children Act 1989 were issued shortly after D's birth, and the application was listed for an urgent hearing on 24 December 2024.

11. Within its initiating paperwork, the local authority produced a document entitled 'Initial Threshold' setting out the facts on which it asserted that grounds for making an interim care order (sections 31(2) and 38 CA 1989) would be established; that document focused on the mother's mental instability, her lack of engagement with professionals, and her lack of insight. On that day, the judge expressed himself to be satisfied as to the interim threshold and made an interim care order. Both parents had been legally represented at the hearing; the father had been in attendance but the mother had not.

12. On 10 January 2025, a case management hearing took place; both parents attended and were represented. The judge gave a range of directions, including a requirement on the local authority to file a statement of proposed threshold; in turn, the parents were required to file a 'response to threshold'. The order continued:

> "… [5] If the parents fail to comply with this direction [for the filing of the response to threshold] they shall be taken as not disputing threshold criteria as set out by the local authority".

13. The proceedings were timetabled to an IRH, with an express indication that the IRH may be used as a final hearing, and that "if the parents fail to attend the hearing without good reason the court may make final orders including care and placement orders".

14. On 4 February 2025, the local authority filed the second version of the statement of threshold ('Initial Threshold (2)'); this expanded the grounds of the first version and included specific factual allegations against the father, including his criminal offending and his use of proscribed drugs.

15. A further case management hearing was held on 13 February 2025, specifically listed for the judge to consider the mother's application for an independent social worker assessment; neither parent attended, although they were represented. The mother's application was refused. The order made on that day contained recitals which encouraged the parents to engage with the parenting assessment which had been ordered. The order re-stated the consequences for the parents of failing to comply with the direction for the filing of responses to threshold, namely "they shall be taken as not disputing threshold criteria as set out by the local authority". A recital was added to this order:

> "The Court highlighted that in the absence of engagement by the parents and in light of no alternative carers being proposed, the parents should be aware that the local authority is likely to formulate a care plan for adoption".

16. On 25 February 2025, the father filed a written response to Initial Threshold (2); in that document, he accepted some of the allegations, rejected some, and challenged the relevance of others to the threshold test.

17. A further hearing was held on 25 April 2025; a final care order was made in relation to B. The court also considered the local authority's application pursuant to section 34(4) CA 1989 in relation to the mother's contact with B and D; this was granted, giving permission to the local authority not to offer contact between the mother and B and D. The father had by then stopped attending contact and no order was sought in respect of him. Neither parent attended that hearing, nor were they represented. The parents, then both acting in person, sought to appeal these decisions; King LJ refused their application for permission to appeal. In giving her reasons for refusing permission it was made clear to the parents how important it would be to attend the IRH on 2 June 2025 given that the local authority would be seeking care and placement orders. King LJ specifically pointed out on the face of the order that by disengaging from the court process the parents had denied themselves the opportunity to put their case or to challenge that of the local authority.

18. On 2 May 2025, the local authority filed its final 'Statement of Threshold'. It is a short, four paragraph, document, and it referred to:

    i) The mother's history of poor mental health, and its impact on her relationship with professionals; it was said that she was "unable to demonstrate an ability to prioritise D's needs when dysregulated";

    ii) The father's history of criminal offending, specifically in relation to drug use and drug dealing; it was said that the father was still using drugs and that D "would be exposed to drug use if in his care"; that the father was not honest about his drug use; in this paragraph it was said that "in August 2024 the police reported that [the mother's] home smelt of cannabis when [the father] was present";

iii) The father's history of depression and anxiety; the father's pursuit of "a course of conduct against professionals within the local authority and externally in which he has threatened to report them to their regulatory body, initiate a media campaign about his grievances, and to pursue civil litigation against them";

iv) A range of findings made against the mother which founded the basis for the care order in respect of B: "exposed B… to risk of sexual harm; [failure] to prioritise the educational needs of B…. B was exposed to neglect".

19. Pausing there, the final threshold statement filed by the local authority in this case is to my mind defective in two material respects:

i) it includes "reports of" alleged facts (see (ii) above); in a later paragraph ([16] see §24 below) the judge refers to "the evidence from the professionals are [sic] that if [D] were to be returned to her parents' care she would be at risk of significant harm"; however "this form of allegation, which one sees far too often in such documents, is wrong and should never be used" (see Sir James Munby P in *Re A (Application for Care Orders: Local Authority failings)* [2015] EWFC 11 at [10]: '*Re A*');

ii) it fails clearly to link the facts relied upon by the local authority with the statutory threshold grounds. It is essential for an authority to demonstrate why certain facts justify the conclusion that the child has suffered, or is at risk of suffering, significant harm. A case based on a lack of honesty with professionals (see §18 (i), (ii), and (iii) above) must feed through into a conclusion that the child is suffering or likely to suffer a particular type of significant harm. In this case, as I regret in many others of its type, "the conclusion does not follow naturally from the premise" (see generally *Re A* at [12]).

20. The IRH took place on 2 June 2025; the local authority and Children's Guardian were present and represented. The parents were neither present nor represented. The father had issued applications for strike out of the proceedings, and for the judge to recuse himself; he had further made plain to the local authority that neither he nor the mother would attend the hearing, taking a deliberate and principled stand against a process that had, in their view, been "tainted by judicial unfairness and breach of ECHR rights".

***Judgment***

21. The short judgment is set out in nineteen paragraphs over 2½ pages. The judge first dismissed two preliminary applications:

i) the father's application for strike out "on the grounds of procedural abuse, jurisdictional conflict, unresolved judicial recusal, and constitutional misconduct during live judicial review [sic] proceedings";

ii) the father's application for the judge to recuse himself. The judge indicated that "there is nothing before me to suggest any form of judicial bias"; it was pointed out that the father had been a poor attender at court hearings, and "so it

> is difficult to know really on what basis this court has been biased and he certainly does not provide any examples of bias as far as I can see which could even legitimately be made out".

The judge then addressed the non-attendance of the parents at the hearing, and provided a short resumé of the litigation, including the local authority's application for a penal notice in relation to the prohibition on publication of information relating to these proceedings.

22. The judge then turned to the application itself. Crucially for present purposes, at [9] he addressed the issue of the threshold criteria:

> "[9] With regards to the care and placement application, in terms of the legal position, I have to first of all consider whether the threshold for the making any orders as set out in section 31 of the Children Act is made out. In this case the father has disputed threshold. The mother has not responded. I have considered the threshold document. As I say, there has been a total lack of engagement on the part of the parents. The threshold document is relatively short and I am satisfied on the balance of probabilities that the threshold is met out [sic] in this case".

23. The judgment continues:

> "[10] As threshold is crossed the court then has to consider what orders should be made having regard to all the circumstances of the case and with particular reference to section 1(3) of the Children Act 1989, but as the local authority are seeking a placement order the factors set out in section 1(4) of the Adoption and Children Act 2002 come into play. I remind myself that Article 8 of the European Convention of Human Rights is in check and I must ensure that as the making of a care and placement order is a radical intervention, the court should only do so if it is necessary to do so when nothing else will do. I have *Re B, Re B-S*, firmly in mind and when I consider [D]'s welfare interests I apply the welfare checklist within sub-section 2 of that Act and make my focus her welfare throughout her life rather than during her minority.
>
> [11] It is quite clear having considered all the papers in this case and the Guardian's report that really the court is only faced with two options; either a return of [D] to her parents' care, or care and placement orders as sought by the local authority and supported by [D]'s Guardian.".

24. The judge went on to consider the lack of any assessment of the father because he "has not engaged in these proceedings whatsoever", and he referenced the "failed" parenting assessment of the mother: "The father has refused to engage in these proceedings and the mother's engagement has been limited". Later he said:

> "[16] In terms of harm which [D] has suffered or is at risk of suffering, I have found threshold proved and the evidence from the professionals are [sic] that if [D] were to be returned to her parents' care she would be at risk of significant harm".

The judgment concludes:

> "[18] Having considered all the realistic options in this case I am satisfied that the care order is the most appropriate order to make in this case.
>
> [19] I endorse the care plans I have read and for the reasons I have given, [D]'s welfare requires the placement order the local authority seeks and as such I am compelled to dispense with the parents' consent to that order. In my view, both orders are necessary and proportionate."

### *Grounds of Appeal and arguments*

25. The appeal has proceeded on two complementary grounds identified by Macur LJ as:

    i) insufficiency of threshold findings under section 31 CA 1989;

    ii) inadequacy of judicial reasons for the orders.

26. When granting permission to appeal, Macur LJ observed:

> "The judge does not indicate the evidence to which they had regard. It is arguable that the judgment gives the impression that [the parents'] deliberate absence from the proceedings and [their] apparent wilful intransigent resistance to engage with the local authority establishes the threshold without further analysis. This is regrettable in the context of the draconian nature of the orders sought and made. I am satisfied that this is a procedural irregularity which provides a compelling reason for me to give permission to appeal on the grounds indicated above".

27. She later (on ground 2) expressed the view that:

> "Whilst brevity is a virtue and although the judge patently identified the relevant legal principles to apply, … the judgment is inadequately reasoned".

28. Mr Banerji presented the appeal for the father; the mother, in person, associated herself with his arguments. Mr Banerji highlighted the brevity of the judgment, drawing attention to the fact that more care and detail appears to be offered by the judge in dealing with the 'strike out' application, and the application for judicial recusal than on the issue of threshold. The overall impression given by the judgment,

he argued, is that erroneous or irrelevant factors weighed more heavily with the court than the evidence which went strictly to proof of the threshold criteria. He relied on the judgment of Sir Andrew McFarlane P in *Re B (A Child) (Adequacy of Reasons)* [2022] EWCA Civ 407; [2022] 4 WLR 42 at [16]/[17] ('*Re B (Adequacy of Reasons)*'), which repays reproducing here:

> "The task of evaluating threshold goes to the core of the judicial exercise in every case. It is, in essence, what the case is about. Unless the court has a clear and detailed understanding of the basis upon which it finds, if it does, that a particular child 'is suffering or is likely to suffer significant harm', substantial difficulties will be encountered when the court then moves on, as it must, to evaluate future risk of harm at the welfare stage. Public law proceedings under CA 1989, s 31 are engaged in the business of 'child protection'. Unless a court has made detailed findings as to what it is that a particular child is to be protected from, in terms of significant harm, it is unlikely that the court will be able to undertake a focussed and bespoke evaluation of any plan to protect the child from that harm".

29. He observed that the judge gave the impression of relying on the parents' absence as the basis for proving the threshold criteria. In a case in which draconian orders are sought, such as the final care and placement order in the instant case, 'rigorous justification' is required for the orders and this was lacking in this case: *Re B (A Child)* [2013] UKSC 33*; Re B-S (Children)* [2013] EWCA Civ 1146.

30. He further argued that a party's failure to respond to a threshold document can not or should not be construed as acceptance of threshold facts; any implied reasoning that failure to respond to threshold would discharge the burden of proof must be wrong. At most, it may be taken as neutrality. The court must still make findings based on evidence, not based on assumptions or procedural silence.

31. He emphasised that judicial determination of threshold is always required even in short form, reinforcing the point that the burden lies on the local authority to prove the facts: *Re B (Children) (Sexual Abuse: Standard of Proof)* [2008] UKHL 35; [2009] AC 11 at [2] and [3]. The mere presence of a threshold document does not satisfy the statutory requirement under section 31(2) CA 1989.

32. Mr Banerji argued, in relation to ground 2, that the judgment is so short and inadequate that it cannot safely stand. Moreover, the deficiencies are so grave that they could not be remedied by a request for post-judgment clarification. Mr Banerji responded to Mr Samuel's charge that his client did not seek such clarification, by pointing out that neither of the parties who had attended the hearing – the local authority and Children's Guardian – who could have done so there and then, and who have now tried in this appeal to uphold the patently deficient judgment, did so.

33. Mr Samuel accepts (I quote directly from his skeleton argument so as to reflect faithfully his concessions) that it "would have been preferable" if the judge had "explicitly" addressed each finding arising from the threshold document, and had

offered a "fully reasoned and more meticulously presented" review of threshold. He accepted that this aspect of the judgment was "not set out as well as it might be" but he argued that "it is implicit within [the judgment] that the judge considered all the matters in the short threshold". He added: "had [the judge] found certain matters in the threshold not found on the balance of probabilities, the judge would have said so".

34. On the second ground, Mr Samuel conceded that the judge's "reasoning is indeed short and lacking in detail" but argued that it is nonetheless "adequate". As I indicated above, he suggested that the parents should have sought clarification of the judgment before appealing in line with the guidance offered in *English v Emery Reimbold & Strick Ltd* [2002] EWCA Civ 605. He referenced the pressures on the family justice system, and on the Family Court judges; finally, he reflected (with some justification it seems to me) that the judgment makes "unfortunate reading" for the local authority social work team which has "worked hard" in this case.

35. Ms Lee emphasised the fact that the judge had significant evidence available to him, together with detailed analysis prepared by and on behalf of the local authority and Children's Guardian. Like Mr Samuel, she accepted that the judgment was "succinct" but disputed that it was "flawed"; she invited us to accept that the judge must have had all of the relevant points in mind when formulating and delivering his short judgment, given his knowledge of the case over the four previous hearings. She invited us to read the judgment "as a whole… a judge's explicit reasoning can be fortified by material to be found elsewhere in a judgment" and that if we did so, it would prove to be adequate (see *Re S (A Child: Adequacy of Reasons)* [2019] EWCA Civ 1845 at [34]: per Peter Jackson LJ).

36. Again, in an echo of the submissions of Mr Samuel, she argued that this is not a case where the deficiencies in the judge's reasoning are on a scale which could not have been fairly remedied by a request for clarification.

***Discussion***

37. Case management of these proceedings had for some time been complicated by the parents' almost complete lack of engagement; the mother had attended court only once since the application was issued, and neither parent had attended court since 10 January 2025. They had refused to be assessed by the local authority in relation to their parenting; the father failed to attend many contacts with his daughter. Following the hearing on 13 February 2025 they dismissed their lawyers. This presented unusual challenges for the judge, particularly at the point at which he wished to bring the proceedings to a conclusion.

38. The parents had proper notice of the hearing on 2 June, but they had chosen not to attend; for those reasons, it is entirely understandable that the judge considered that he could conclude the proceedings at the IRH. Due warning had been given to the parents of this possibility more than once; it is an outcome which is, in any event, contemplated within the Public Law Outline (see PD12A Family Procedure Rules 2010).

39. However, the ultimate resolution of the proceedings had to be done in a fair and just way; if final orders were to be made, they needed to be clearly – even if briefly – reasoned, and those reasons laid out in a judgment (see my comments in *Re H* (at

[46]-[47])). Sadly, the judgment under review falls far short of what is expected. Taken as a whole, it shows relatively little judicial engagement with the issues raised in the evidence; indeed, it is not possible to identify even the general nature of the allegations, let alone any findings made. The judgment has the appearance of a quasi-administrative act, in which the judge nods through the local authority's proposals.

40. It is as well to remember *why* a judge needs to identify the basis on which the threshold criteria are established in any given case, and expressly confirm judicial endorsement of the same, even where the process is essentially uncontested. This point has been canvassed in the courts many times in recent years; it is unnecessary for me to rehearse the anthology of the latest caselaw. That said, useful reference can of course be made to *Re A* (above) and the passage cited from *Re B (Adequacy of Reasons)* (at §28 above).

41. First, section 31(2) CA 1989 places the obligation squarely on "the court" to be "satisfied" of the threshold criteria; the section is explicit that the court can "only" go on to make an order under Part IV if it is so satisfied. This means that the threshold cannot be determinatively resolved by agreement between the parties, nor by default; the court *must* scrutinise the documents and satisfy itself of proof of the same and say why it is so satisfied. This is, as Mr Banerji rightly put it, "non-negotiable". The court must make threshold findings.

42. Secondly, it is important that the judge exercises discipline in scrutinising the statement of proposed threshold. In this case, for the reasons which I have set out at §19 above, the final threshold statement was defective, in that the local authority was seeking to rely in part on witnesses' 'reports' and 'evidence from [witnesses]' in place of established facts, and had failed to link some of the pleaded facts with the statutory threshold grounds. The judge should therefore have rejected the threshold as it was presented to him. The judge is not required of course "slavishly to adhere to a schedule of proposed findings", and can reach a conclusion other than that sought (see Wall LJ in *Re G and B (Fact-Finding Hearing)* [2009] EWCA Civ 10, [2009] 1 FLR 1145 at [15]); in this case, he plainly could – on the evidence – have done so. It is worth remembering in this context what Henry LJ said in *Flannery v Halifax Estate Agents* [2000] 1 WLR 377 ('*Flannery*') at p.381G-H:

> "…a requirement to give reasons concentrates the mind; if it is fulfilled, the resulting decision is much more likely to be soundly based on the evidence than if it is not".

43. The case management orders made in this case (see §12 and §15 above) which 'deemed' the parents to have accepted the threshold facts, coupled with their almost total disengagement from the legal process, may well have caused the judge to lower his judicial guard, and distract him from the important duty which he owed under the CA 1989 in this respect.

44. Thirdly, the judge rightly identified that the father had filed a document in which he "disputed threshold" (in fact the Interim Threshold (2) document) (see §16 above). Having identified the dispute on threshold, the judge plainly needed to determine it.

45. Fourthly, and importantly, it has long been recognised that the threshold criteria operates as the "bulwark" against too ready an interference by the state in family life

(see Lord Nicholls in *In re O (Minors) (Care: Preliminary Hearing)* [2003] UKHL 18, [2004] 1 AC 523 at [14] and [17], and Baroness Hale in *Re J (Children) (Care Proceedings: Threshold Criteria)* [2013] UKSC 9;| [2013] 1 AC 680 at [20]). In an earlier decision of the House of Lords (*Re B* [2008] UKHL 35) Baroness Hale had spoken of the importance of judicial scrutiny of the alleged threshold facts (at [54] and [58]):

> "[54] The threshold is there to protect both the children and their parents from unjustified intervention in their lives".
>
> …
>
> "[58] The local authority make the application for a care or supervision order under section 31(1) and the local authority will be responsible for carrying out any order which the court may make. The task of the court is to hear the evidence put forward on behalf of all the parties to the case and to decide, first, whether the threshold criteria are met and, second, what order if any will be best for the child. While the local authority may well take preliminary or preventive action based upon reasonable suspicions or beliefs, it is the court's task when authorising permanent intervention in the legal relationship between parent and child to decide whether those suspicions are well-founded." (emphasis by underlining added).

She returned to these points in *Re J* at [44] when she spoke of the need for "a clearly established objective basis for such interference".

46. The "objective" check referred to in the quote from *Re J* (immediately above) is self-evidently offered by the judge. Thus, a mere judicial acknowledgement of the local authority's statement of threshold facts and an indication of judicial agreement gives the appearance of an administrative act, all the more so if the parents have been 'deemed' to accept the threshold facts by reason of a case management default or mis-step.

47. Finally in this regard, the court owes a duty to the parties to set out the basis on which the orders are being made; justice must not only be done but be seen to be done. This is true in any case, as recent well-known caselaw has underlined (see for example Baker LJ in *Re T & Others (Children: Adequacy of Reasons)* [2023] EWCA Civ 757; [2024] 1 FLR 303 at [35].) Fairness requires that the parties, especially the "losing party", should be left in no doubt why they have "won or lost" (*Flannery* again, at 381G). The duty will be all the greater if the orders which the judge proposes to make are of the draconian nature of care and placement orders.

48. There is no less a duty upon the judge to express clearly their findings and reasons if any of the parties (the parents in this instance) are absent from the hearing at which these crucial decisions are being made, even if absent by their own choosing. Moreover, it should be remembered that the child herself may as an adult wish to know more about the history of her childhood and early life, and in particular the reasons for her separation from her parents and the permanent severance of her family

ties. In this regard, it is distinctly possible that she will seek access to the judgment which gave effect to her permanent placement away from parents; if D were to read the judgment under review, she would I regret be left none the wiser.

49. In circumstances such as these (i.e., at the conclusion of an IRH, on submissions only, where there has been no attendance of the respondent parents) there is no expectation that a judge will need to rehearse every argument or recite all the evidence; far from it. Indeed, as Sir James Munby P observed in 2013, "it is not necessary" when the court concludes Part IV CA 1989 proceedings at any stage "for the court to find a mass of specific facts in order to arrive at a proper threshold finding" (*View from the President's Chambers: 2013*). But the judge in this case did not address *any* of the evidence in the case, nor did he even identify the alleged facts to support the threshold. There is no reference to the burden of proof. There is no record of what he actually decided. In this case the judge did not even append the statement of threshold facts to the order, contrary to common and expected practice.

50. To compound the deficits in the judgment, the judge gives the impression (by his reference to the parents' 'total lack of engagement' – see [9] cited at §22 above) that the "deliberate absence of the parents from the proceedings and their apparent wilful intransigent resistance to engage with the Local Authority establishes the threshold without further analysis". This was (see §26 above) Macur LJ's observation when granting permission to appeal, and I concur with it. The parents' lack of engagement with the proceedings could not, as a bald fact, establish a ground for proof of the threshold criteria, and it had no place therefore in this section of the judgment.

51. I turn to the second ground of appeal. In my judgment, this ground succeeds for at least two reasons.

52. First, the judge's compliance with the fundamental jurisdictional requirement for the making of a care order and/or a placement order (i.e. judicial satisfaction of proof of the threshold criteria) has been shown to be wholly deficient. The consequential orders which depend upon satisfaction of threshold must necessarily fall away; Sir James Munby P graphically described an equivalent final order based on a flawed threshold statement in *Re A* at [11] as "a tottering edifice built on inadequate foundations".

53. Secondly, there is almost no reasoning for the making of the final care and placement orders. I accept, as Ms Lee urged on us, that the judge probably knew the case well having case managed it from the start, and it is reasonable to assume that he had much of the compelling evidence in mind when he made his decision. However, the thought processes of the judge cannot be assumed; nor can they be ascertained, let alone analysed, from the judgment. As Peter Jackson LJ observed in *Re B (Adequacy of Reasons)* at [57]:

> "The court's task is not accomplished by handing down a decision that happens to be correct if it is not also properly explained".

54. While Ms Lee was also right to draw our attention to *Re S* (at [34]) (see §35 above), I did not find that if I read this judgment "as a whole" I could ascertain any or any adequate reasoning for the final orders. While Sir Andrew McFarlane P accepted that

"[it] is permissible to fill in pieces of the jigsaw when it is clear what they are and where the judge would have put them" ([34]), in this case, and on this judgment, I would find myself having "to do the entire puzzle itself." For this reason, I reject the argument raised by the respondents to this appeal that this was a case in which it would have been appropriate for the parents to seek clarification of the judgment. This was a case which falls to be considered much more closely in line with the situation discussed by Baker LJ in *Re O (A Child) (Judgment: Adequacy of Reasons)* [2021] EWCA Civ 149 at para. 61:

> "… where the omissions are on a scale that makes it impossible to discern the basis for the judge's decision, or where, in addition to omissions, the analysis in the judgment is perceived as being deficient in other respects, it will not be appropriate to seek clarification but instead to apply for permission to appeal."

55. Finally, it has to be remembered that the orders under appeal are of the most serious kind; the test for severing the relationship between a parent and child is rightly strict. Judges need to explain properly why permanent substitute care is required. These orders, after all, are made:

> "… only in exceptional circumstances and where motivated by *overriding requirements* pertaining to the child's welfare, in short, where nothing else will do." (Baroness Hale in *re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33, [2013] 1 WLR 1911 (emphasis by italics in the original).

***Deemed acceptance of threshold: Standard Form Orders***

56. At §12 and §15 above, I have set out the case management orders which spelled out for the parents the consequences of them not filing a response to the statement of threshold facts. Those orders were modified versions of paragraph [148] of the compendious 'Precedent Library of Public Law Case Management Directions and Orders' in the Standard Form Orders Volume 2 (Order 8.0: May 2024). Family lawyers and Family Court judges are widely encouraged to use these orders, albeit that they are permitted to adapt them to such extent as may be appropriate. Paragraph [148] of the Standard Form Orders references back to [89] and [90]; together they read as follows:

> "[89] The local authority shall by 4.00pm on [*date*] file at court and serve on the parties a schedule of the findings they seek at the finding of fact hearing and any evidence not already served upon which they rely.
>
> "[91] [*Names*] shall by 4.00pm on [*date*] file at court and serve on the parties their statement (and those of their witnesses, if any) in response and their replies to the schedule[s] of allegations.

> "[148] If [*name*] fails to comply with paragraph [*para number of parent's response direction*] of this order they shall be deemed to accept the threshold allegations made by the local authority and to not be putting forward any alternative carers unless this paragraph is varied upon application." (emphasis by underlining added).

57. I am troubled about the provision in paragraph [148] of the Standard Orders by which respondents are "deemed" to accept the "threshold allegations made by the local authority" (i.e., the allegations advanced in support of the threshold criteria) in the absence of a document filed in response. This is not in my view a safe basis on which a court should proceed on a matter of such importance; such an order may well have the effect (as shown by this case) of reducing or discouraging judicial engagement in conducting analysis by reference to the burden of proof of evidence necessary to establish the threshold facts. The effect is all too easy to see – that the determination of threshold becomes more of an administrative than a judicial act. The standard form formula has some of the characteristics of a default judgment under Part 12 of the CPR (esp. rule 12.3), which would be wholly inapt in proceedings concerning children. Moreover as Mr Banerji suggested with some force, this provision may have the unintended effect of reversing the burden of proof in a public law case – the parent who has failed to file a response document may find that they need to demonstrate why the threshold criteria is *not* satisfied.

58. While I recognise that Family Court judges need to have at their disposal practical means to promote compliance with their case management orders, a more appropriate form of words may, I suggest, be:

> 'If the parents fail to respond [to the schedule of findings in support of the threshold criteria], the court may proceed to consider [at the next hearing / at the IRH / at the final hearing] whether the section 31(2) Children Act 1989 threshold criteria are established by reference to the written evidence filed by the local authority.'

In the circumstances, I would invite the Lead Judge of the Standard Orders Group (Peel J) to consider this point, and to decide whether amendments to [148] of the Standard Orders compendium Order 8.0 should be made.

***Outcome***

59. I should make clear that this appeal has *not* been concerned with the merits of the substantive application for a care and placement order in relation to D; in that regard, the parents must recognise that they face a range of evidential and other difficulties, plainly exacerbated by their lack of engagement with the court and local authority over a prolonged period of time. Mr Banerji has advised us that the father fully intends to engage with the court process going forward. In allowing this appeal, this court is explicitly making no comment upon the likely ultimate outcome of the applications under the CA 1989 and ACA 2002.

60. However, for the reasons set out above, the judge was wrong to conclude these proceedings, and make these life-changing orders, with such limited explanation. As

earlier indicated, we have allowed the appeal, and set aside the orders which were made on 2 June 2025. For the time being, D will be subject to an interim care order. At the conclusion of the appeal hearing we gave a number of directions in order to set up a case management hearing at the Family Court in Peterborough (to be allocated or case managed by the Designated Family Judge) within the next two weeks.

**Lord Justice Miles**

61. I agree.

**Lord Justice Baker**

62. I also agree with the reasons given by Cobb LJ for allowing this appeal, and with his proposal that the Lead Judge for the Standard Orders Group should be invited to review the wording of paragraph 148 of the Standard Form Orders.