

Where a child is beyond parental control to what extent is it necessary or desirable to also find culpability and to 'blame' carers for this?

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R (A Child) [2009] EWCA Civ 358 Wall LJ at para 124:

Philip Larkin 'These be the words'

"They f**k you up your mum and dad, they don't mean to but they do"

In the case you need a citation for a truism within family law Wall J in this case provides his own critique of Larkin's poem.

Q. What is the state of the law when it comes to attributing parental culpability when a child is beyond parental control? (With thanks to Adrian Pidduck)

"Some early cases suggested that lack of parental control involved parental culpability. For example **Re O (A Minor) (Care Proceedings; Education) [1992] 4 All ER 905** and **M v Birmingham City Council [1994] 2 FLR 141**.

In **Lancashire County Council v Barlow [2000] UKHL 16**, Lord Nicholls stated that:-

"The phrase "attributable" in s 31 (2) connotes a causal connection between the harm or likelihood of harm on the one hand and the care or likely care of the child being beyond parental control on the other" and that "the connection need not be that of a sole or dominant or direct cause and effect, a contributory causal connection suffices".

This passage was quoted in the Re P below.

In **Re K (Post Adoption Placement Breakdown) [2012] EWHC 4148 (Fam)** HHJ Bellamy sitting as a Deputy High Court Judge, was dealing with a case of adoption breakdown involving a child with significant mental health issues (both also aspects of the Re P case below).

Applying a Court of Appeal decision **Re L (A Minor)** (below) he held that it is *not* necessary to prove parental fault to establish that a child is beyond parental control.

This decision was approved by Recorder Howe QC in Leeds, **T (A Child: Care Order; beyond Parental Control; Deprivation of Liberty; Authority to Administer Medication) [2017] EWFC B1** in which he stated at paragraph 74):

“When addressing the meaning of “beyond parental control” HHJ Bellamy, at 152 of his judgement, referred to an unreported decision of Butler-Sloss LJ on 18th March 1997, the neutral citation being Re L (a Minor) [1997] EWCA Civ 1268. Within her judgement, Butler-Sloss LJ said the following:-

it is suggested most attractively by Mr Jubb in a long, careful, comprehensive skeleton argument and short, succinct oral argument to us that in order to show that a child is beyond parental control you must show some misfeasance by the parents. There is almost no authority on the phrase “beyond parental control” and certainly no authority to support the proposition, bold proposition as Mr Jubb is prepared to accept it as, that he makes to us today. We are asked to look at the useful Guidance to the Children Act, Volume 1, under “Court Orders”, which says at paragraph 3.25:

*“... The second limb is that the child is beyond parental control.....It provides for cases where, whatever the standard of care available to the child, he is not benefiting from it because of lack of parental control. It is immaterial whether this is the fault of the parents of the child. Such behaviour frequently stems from **distorted or stressed** relationships between parent and child”.*

That seems to me to be a useful summary of how those who put the Act together saw the use of what is a long-standing part of the previous child legislation of “beyond parental control”.

*I consider that we should be very careful not to look at the words of the Children Act other than broadly, sensibly and realistically. I am much encouraged by the words of wisdom of Sir Stephen Brown P in **Newham London Borough Council v AG [1993] 1 FLR 281, [1993] Fam Law 122** in which he said (and I paraphrase) that the court should avoid an unduly restrictive and legalistic analysis of section 31. Quite simply this child is beyond the control of his parents. It is extremely sad. It is not a case of apportioning blame”.*

As I have already remarked upon above, there is very little case law upon the subject. Whilst only a decision from a Family Court Circuit Judge and therefore not a binding authority, there is a reported case **Re P (Permission to Withdraw Care Proceedings) [2016] EWFC B2** which provides helpful guidance, but also which takes issue with HHJ Bellamy in **Re K** above. It was another sad case.

The Local Authority's care proceedings related to an adopted child whose placement had broken down (unfortunately not her first placement breakdown). Agreement had been reached that the proceedings should be withdrawn, but there was disagreement between the Local Authority and the parents as to whether threshold was established.

The child who was aged 16 (cases under the "beyond parental control" limb, almost always relating to teenage children) suffered significant mental health issues including a diagnosis of emotionally unstable personality disorder. There were instances of self-harm and she had been compulsorily detained.

The issue that the court was considering related to the question as to whether, the child having suffered significant harm *and* being beyond parental control (as was clearly the case in both respects) this required a causal link or whether it was sufficient for the court to be satisfied that establishing significant harm and being beyond parental control without that causal link was sufficient for threshold to be found.

The relevance of that distinction, which on the face of it might initially appear as being academic, was that if a causal link was necessary, then at least some blame could or might be imputed to the parents.

The judgment, by HHJ Redgrave, referred to the passage from Lord Nicholls in the **Lancashire v B** case above regarding the phrase "*attributable*" in **s 31(2) (b)** connoting a causal connection between the harm or likelihood of harm on the one hand and the care or likely care of the child is being beyond parental control on the other.

HHJ Redgrave said

"Under the Children and Young Persons Act 1969 the court had the power to remove the child from the care of his/her parents if it was satisfied that the child in question was beyond parental control. It was not necessary to show serious harm, or likelihood of harm. The Children Act 1989 changed the law and required harm/likelihood of harm to be proved and for it to be attributable to either the care given by the parents, or the child being beyond parental control. In my judgement the ordinary grammatical construction of the section requires the establishment of a causal connection by evidence, however slight. That is lacking in the documents filed in this case and with respect I cannot agree with paragraph 149 of HHJ Bellamy's judgement in Re K above. Therefore, I give the Local Authority permission to withdraw

these proceedings on the basis that it is unlikely in the current evidence to be able to prove threshold”.

She went on to say “There is no evidence of any kind that either the mother or the father are culpable in any way for the behaviour of their daughter and the harm she has suffered or is at risk of suffering in the future. They have fought tirelessly for her to receive the treatment she needs and my judgement this proceeding should never have been issued”.

Redgrave confirmed her view that in care proceedings where the local authority is pleading that the threshold criteria is met on the grounds of the child being beyond parental control, there needs to be an evidential connection with the parents' care.

The state of the law currently therefore is that, as set out in the Judgment of Recorder Darren Howe QC, sitting as a section 9 High Court Judge, parental culpability is not required to find that a child is beyond parental control.

Q. Why does this matter?

I observe that anecdotally Social Workers and to an extent Guardians are reluctant to accept a finding that a child is beyond parental control for a number of reasons:

- Where a child is beyond parental control a finding to this end may make the child feel responsible for the breakdown of their family and home.
- A finding that a child is beyond parental control ignores the ‘Phillip Larkin’ point noted above. Parents may not mean to exacerbate the trauma that a child has originally experienced before being placed with them but they can do. If they do its important to say so.
- A failure to robustly analyse why an older child’s care arrangements have broken down does not assist in assessments going forward.
- Any recommendations for family therapy of other types of support require acceptance by the carers of the part they have played in the breakdown.

Common features in respect of a child when pleading beyond parental control:

- i. Criminality
- ii. Criminal exploitation
- iii. Sexualised behaviour / exploitation (risk thereof)

- iv. Suicidal Ideation / self harming
- v. Anger / rage / withdrawal / depression
- vi. Physical abuse from the child
- vii. Attention seeking behaviours
- viii. Soiling / wetting
- ix. Running away
- x. Avoidance
- xi. Substance / alcohol misuse
- xii. Developmental delay
- xiii. Mental health issues / diagnoses

Common responses to this behaviour

- a) Abandonment / section 20
- b) Sense of overwhelm
- c) Fixed expectations of the child
- d) Collusion
- e) Physical Restraint
- f) Punitive parenting
- g) Lack of warmth
- h) Poor insight
- i) Shifting of 'blame' to LA / adoption services "We did not sign up for this"
- j) Respite sought

The issues tends to be to what extent is it necessary to establish for welfare reasons that culpability should be apportioned beyond simply accepting that a child is beyond parental control.

In some cases it is easy enough to do so. Practitioners should not shy away from seeking finding in addition to those that show a child is beyond parental control where this is relevant and shown by the evidence.

The obvious point to make is that is that punitive parenting, physical abuse, domestic abuse and neglect may all lead to a situation where the child is beyond parental control. If it's important to say so.

However, where the issue is related more to the psychological effects of parenting that are ultimately harmful a more nuanced approach is likely to be more productive. In the case of **Re K** the expert psychologist instructed, Dr Richter, was clear that it would be cruel to blame the adoptive parents in the case for parenting strategies that might work with other children not working

with the subject child. It is worth reading Re K is you are seeking to defend against a punitive approach being taken by a LA in pleading threshold.

This advocate has found some assistance in the phrase 'distorted and stressed' noted above. The fact that the carers could not put boundaries in place lead to the child being beyond their control. This in turn resulted in a 'distorted and stressed' relationship between carer and child. This formulation allows a lot to be read between the lines without having to find that the carers have caused the child significant harm. Most practitioners will be able in any event to read between the lines with such a formulation.