

# 1GC | Family Law

## Interim Care Hearings & Interim Separation – Tips for Juniors

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# Public Law Outline

- PD 12A FPR 2010 – Flowchart:
- Pre-proceedings: Initial Referral – Child Protection Plan – Legal Planning Meeting.
- Stage 1: Issue & Allocation – Allocation Directions – if required, contested ICO or ISO or urgent CMH.
- Stage 2: CMH – not before day 12 & no later than day 18 – expert instruction, FFH, dirs.
- Stage 3: IRH & Final Hearing – as directed.

# Annex Documents

- PD 12A FPR 2010 – Pre-Proceedings Checklist:
- Annex Documents – must be attached to application:
- Social work chronology and genogram;
- Social work statement and interim care plan;
- Any current assessments relating to the child;
- Index of Checklist Documents.

# Checklist Documents

- **Evidential documents:** previous court orders or judgments; any assessments (s.7 or s.37 reports); any single, joint or inter-agency materials (on health or education, or Home Office or Immigration docs).
- **Decision-making Records:** minutes of strategy or professionals' meetings; social work case notes; discussions with family; pre-existing care plans (CIN, CPP).

# Service of the LA's Application

- PD 12C FPR 2010, paragraph 2.1 – time for serving an application
- Para 2.1(2) – Public law proceedings = at least 7 days prior to hearing.
- Para 2.1(3) – Applications for ICO's & ISO's = at least 3 days prior to hearing.
- But – rule 4.1(3)(a) – court may extend or shorten time for service.

# Relevant Authorities

- *Re NL (Appeal: Interim Care Order: Facts and Reasons)* [2014] 1 FLR 1384, FD
- *Re N (Children) (Interim Order/Stay)* [2020] EWCA Civ 1070
- *Re B (Children) (Remote Hearing: Interim Care Order)* [2020] 2 FLR 330

# Range of Possible Orders

- Interim Care or Interim Supervision Order
- Child Arrangements Order (but not with a care order – s.91(1) CA 1989)
- Section 34 order for reasonable contact
- Family Assistance Order
- Order for parental responsibility (s.4 CA 1989)
- No order

# Typical Issues

- Is interim threshold crossed? Are there reasonable grounds for believing the child is at risk of significant harm?
- Is interim separation justified or not?
- Which order is necessary and proportionate?
- PD 12A FPR 2010, para 2.4 – issues justifying an urgent CMH: jurisdiction or request to Central Authority, parentage, party status, capacity to litigate, disclosure.



# Test for ICO's & ISO's

- Section 38(2) Children Act 1989:
- *“A court shall not make an interim care order or interim supervision order under this section unless it is satisfied that there are reasonable grounds for believing that the circumstances with respect to the child are as mentioned in section 31(2)”*.
- Welfare as Paramount (s.1(1)); Delay Principle (s.1(2)); Checklist (s.1(3)); No order (s.1(5)).

# The Nature of Interim Orders

- ICO & ISO will have effect for such period as may be specified in the order or until the disposal of the application.
- An ICO will confer PR on the LA. An ISO will not.
- Object of an interim order should normally be to hold the balance so as to cause the least possible harm to the child.
- Exclusion Clauses can be attached (s.38A)

# Interim Separation

- *Re C (A Child) (Interim Separation)* [2019] EWCA Civ 1998, paragraph 2:
  - “(1) An interim order is inevitably made at a stage when the evidence is incomplete. It should therefore only be made in order to regulate matters that cannot await the final hearing and it is not intended to place any party to the proceedings at an advantage or a disadvantage.
  - (2) The removal of a child from a parent is an interference with their right to respect for family life under Art. 8. Removal at an interim stage is a particularly sharp interference, which is compounded in the case of a baby when removal will affect the formation and development of the parent-child bond.

# Interim Separation

- (3) Accordingly, in all cases an order for separation under an interim care order will only be justified where it is both necessary and proportionate. The lower ('reasonable grounds') threshold for an interim care order is not an invitation to make an order that does not satisfy these exacting criteria.
- (4) A plan for immediate separation is therefore only to be sanctioned by the court where the child's physical safety or psychological or emotional welfare demands it and where the length and likely consequences of the separation are a proportionate response to the risks that would arise if it did not occur.
- (5) The high standard of justification that must be shown by a local authority seeking an order for separation requires it to inform the court of all available resources that might remove the need for separation."

# Principles on Removal I

- The court should not equate satisfaction of the interim threshold criteria with satisfaction of the case for removing a child.
- *Re H (A Child) (Interim Care Order)* [2002] EWCA Civ 1932 – the two propositions.
- *Re B (Interim Care Order)* [2010] 2 FLR 283, CA – removal must be proportionate to risks.
- *Re G (Interim Care Order)* [2011] 2 FLR 955, CA – safety and proportionality.

## Principles on Removal II

- *Re L (A Child)* [2013] EWCA Civ 489 - purpose is safety until full consideration.
- *Re K (Children)* [2019] EWCA Civ 2264 – separation only when welfare demands it.
- *London Borough of Barking and Dagenham v A (Therapeutic Residential Placement)* [2019] 2 FLR 1102 – continuity of care is important.

# Oral Evidence or Submissions

- *Re W (Interim Care Order)* [2012] 2 FLR 240, CA - it is open to the court to refuse to hear oral evidence at an interim hearing.
- However - *Re N (Care Proceedings: Adoption)* [2013] 1 FLR 1244, CA - the court should be careful not to truncate procedure to a point where the hearing becomes unfair.
- Most recently - *Re N (Children) (Interim Order/Stay)* [2020] EWCA Civ 1070 -

# Oral Evidence or Submissions

- [31] “Understandable that the judge did not feel able to deal with the issue before her on submissions only and that she needed to hear some evidence. However, once she had decided to do that, fairness required that in this situation she should hear from both the accuser and the accused. ... The investigation was a factual one into events where the parents were primary witnesses. It is no answer to say that the court would not have been helped by hearing their denials. They were not making bare denials but giving possible explanations for much of the evidence brought against them and, at least on paper, those explanations were not self-evidently implausible and deserved proper consideration.”
- [30] “Depending upon the case and the issues to be decided, the decision may well be properly taken without hearing any oral evidence: the question will be whether it is necessary to hear some, probably limited, oral evidence to enable a fair and effective evaluation to be made”.



## Authorities applying Re C

- *Re B (Children) (Remote Hearing: Interim Care Order)* [2020] 2 FLR 330, [2020] EWCA Civ 584 – telephone or video hearing & time for guardian’s enquiries.
- *Re DD (a child) (removal under interim care order)* [2021] EWCA Civ 36 – risks did not justify removal.
- *Re N (Children: Interim Order/ Stay)* [2020] EWCA Civ 107 – paras 36-39 on stays.

Any thoughts or questions?

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