When may an interim order be made?

[1416]

Where, in any proceedings on an application for a care order or supervision order, the proceedings are adjourned, the court may make an interim care order or an interim supervision order with respect to the child. 1855 An interim order cannot be made in an application to extend a supervision order. 1856

Interim orders may be made in any other proceedings where the court gives a direction 1857 to the local authority to investigate the child's circumstances. 1858

Where one level of judiciary in the Family Court refuses an application for a care order, and does not make an order pending appeal, 1859 the appellate level in the Family Court has jurisdiction to make an interim order under CA 1989, s 38, pending the hearing of any appeal. 1860 The Court of Appeal does not have jurisdiction to make an interim order pending appeal. 1861

In *Re G (Minors) (Interim Care Order)*, 1862 the Court of Appeal held that an interim care order was an impartial step to preserve the status quo pending the final hearing and did not give a tactical advantage to the local authority. The question of whether an interim care order should be granted requires an assessment of the child's welfare and need for protection during the interim period based on the information then available. 1863 An interim care order may be justified where the child's safety makes it necessary to remove him temporarily in order to assess the mother's capacity to care in the longer term. 1864

[1416A]

One impact of the HRA 1998 is that the court should abstain from premature determination of the case unless the welfare of the child demands it. 1865 Where the effect of an interim care order is to remove a child from his lifelong parents, such a separation should only be contemplated if the child's safety demands immediate separation. 1866 In this context 'safety' is not confined to physical safety, but includes emotional safety or psychological welfare. 1867 In cases where the circumstances do not amount to a '999 emergency' it is not wrong to make an order that has the effect of removing a child from his home, but if an order is made in such a case the judge at first instance should be encouraged to grant a reasonable stay of a few days so that an application for permission to appeal may be made.

It is a mistake to confuse the threshold for an interim order ('reasonable grounds for believing' that s 31 threshold is satisfied) with the question of what interim order, if any, should be made. 1868

Even where the interim threshold criteria are met and there is a need for an interim order, the court must be careful to give separate consideration to the question of whether removing a child from parental care is justified at an interim stage; the interim decision must necessarily be limited to issues that cannot await the final hearing and must not extend to issues that are being prepared for determination at that hearing. 1869

[1416B]
Where both parents are in the pool of potential perpetrators of past abuse, prior to a fact-finding hearing, the court should approach all potential perpetrators on an equal basis in determining what interim orders should be made. 1870

In unusual circumstances, an interim care order may be granted solely to authorise a single and specific intervention to meet the welfare needs of a child; in *Re M (Children Abuse: Disclosure)* 1871 the Court of Appeal held that Hedley J had been justified in making an interim care order solely to vest a local authority with power to disclose to three children information about the history and conviction of their father for abuse of his children from his previous marriage.

In *Nottingham City Council v LM and Others* 1872 Keehan J set out the following principles of good practice in relation to applications for interim care orders brought in respect of newborn babies, in circumstances where the local authority's failings had effectively deprived the parents of a fair hearing because of the need for the court to sanction removal as a 'holding' position:

- (1)Any birth plan should be rigorously adhered to by social workers, managers and local authority legal departments;
- (2)A risk assessment of the parents should be commenced immediately upon the social workers being made aware of the mother's pregnancy, with the assessment completed at least four weeks before the expected date of delivery and updated to take account of relevant pre- and post-delivery events and the assessment should be disclosed forthwith to the parents and, if instructed, to their solicitors;
- (3)The social work team should provide all relevant documentation to the legal department no less than seven days before the expected date of delivery; the legal department must issue the application on the day of birth and, in any event, no later than 24 hours after birth (or, as the case may be, after the date on which the local authority is notified of the birth);
- (4)Immediately upon issue, if not before, the application and supporting document should be served on the parents and, if instructed, their solicitors;
- (5)Immediately upon issue, the local authority should seek an initial hearing date on the best time estimate that can at that point be provided.