Appendix 1

Separation of Children from their Parents: A brief overview

Introduction

1. The approach that the courts have taken to the removal of children has changed over the last few years and the purpose of this talk is to provide a brief overview of current relevant case law. This paper is by no means a comprehensive review of either the relevant case law or the issues that may need to be considered in a particular case, but I hope it serves as a useful introduction.

2. The Children Act 1989 provides the bare bones of the law governing the removal of children from their families. The statutory framework is interpreted by the courts when deciding disputed cases. In matters of legal interpretation, the higher courts' decisions bind the lower courts. Case law provides guidance for the application of the law to individual cases. Court rules govern court procedure [Family Proceeding Rules 1991 and Family Proceedings Courts (Children Act 1989) Rules 1991]. Practice Directions from the President of the Family Division and the Lord Chancellor provide further directions (which must be followed) about procedural matters, including for instance the Public Law Outline.

3. The European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 also applies; statute must always be interpreted to give effect to and be consistent with Convention rights particularly Article 6, the right to a fair trial and Article 8, the right to family life. There is a long line of European case law which binds the domestic courts in interpretation the Children Act 1989. It goes beyond the remit of this talk to discuss them in detail. The right to a fair trial is the right to a fair trial before an independent and impartial tribunal. The purpose of Art 8 is to protect the individual from arbitrary interference by the state in their family life, and it provides a positive obligation on the State to ensure the enjoyment of the right is effective. A fair balance must be struck between the interest of the child and the parents, but the court conducting the balancing exercise will attach particular importance to the best interest of the child which depending on their nature and seriousness may override those of the parent. In particular the parents cannot be entitled under Art 8 to have such measures taken that would harm the child's health and development.

4. The court deciding an application must be satisfied that any interference in family life is lawful, proportionate to the legitimate aim pursued and is necessary to protect and promote the health and welfare of the child.

5. I would recommend reading the Department for Children, Schools and Families' (DfSCF) booklet " The Children Act Guidance and Regulations Volume One" , which can be downloaded from www.dcsf.gov.uk. It is aimed at practitioners and has been updated to take into account the PLO.

Children Act 1989 - General Principles

6. S.1. sets out general principals to be applied to decisions by the court:

S.1(1) (a) states when a court determines any question with respect to the upbringing of a child the child's welfare is the paramount consideration of the court.

S.1 (2) requires the court to have regard to the fact that delay in determining issues relating to the upbringing of a child is likely to be harmful to him

s. 1(3) sets out the " welfare check list":

a) the ascertainable wishes and feeling of the child concerned (considered in the light of his age and understanding)
b) his physical, emotional and educational needs
c) the likely effect of any change of his circumstances
d) his age ,sex, background and any characteristics of his which the court considers relevant
e) any harm which he has suffered or is at risk of suffering
f) how capable each of his parents , and any other person in relation to whom the court considers the question to be relevant , is of meeting his needs;
g) The range of powers available to the court under this Act in the proceedings in question.

This is the court's tool for analysing the facts of a particular case for the determination of a welfare issue. It applies where the court is considering whether to make or vary or discharge an order under Part IV (i.e. care /supervision and s.34 contact orders but not EPO's).

s. 1(5) states that when a court is considering whether or not to make one or more orders under this Act with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all.

Significant Harm

7. The Children Act introduced the concept of "significant harm" as the threshold that justifies compulsory intervention in family life and is referred to in s.44, s.46, s47, s31 and s38, although the tests that must be satisfied for each intervention or order varies depending on its purpose.

8. The Act defines the nature of harm that may be suffered but not the necessary degree that amounts to significant harm. S.31 (9) defines "harm" as including "ill treatment" or "impairment of health or development", including the impairment suffered from seeing or hearing the ill treatment of another. "Development "means physical, intellectual, emotional , social or behavioural development. "Health" means physical or mental health and "ill treatment" includes sexual abuse and forms of ill treatment which are not physical.

9. S.31(10) provides that where the question of whether the harm suffered by a child is significant turns on the child's health and development, his health and development shall be compared with that which can be reasonably expected of a similar child.

10. " It must be something unusual; at least something more than commonplace failure or inadequacy, since is not the provenance of the state to spare children all the consequences of defective parenting". Hedley J. in Re L (Care: Threshold Criteria)[2007] 1 FLR 2050.

11. S. 105 confirms that when “harm”, “ill treatment” and “development” appears in any part of the Act, they have the same meaning as defined in s 31(9).,

Police Powers under s.46

12. The police can remove a child from his parents without sanction of the court for a period of 72 hours by exercising their powers under s 46 Children Act 2010. The power can be exercised either on their own behalf or to support the courts or the local authority.

13. The power is entirely within the discretion of the police but must be exercised by a police officer in accordance with the provisions of the Act. The exercise of police powers goes beyond the remit of this talk. There is very useful Home Office Circular, 017/2008 which gives guidance as to the exercise of these powers.

14. The test set out in s. 46 is

(1) Where a constable has reasonable cause to believe that a child would otherwise be likely to suffer significant harm, he may--

(a) remove the child to suitable accommodation and keep him there; or

(b) take such steps as are reasonable to ensure that the child's removal from any hospital, or other place, in which he is then being accommodated is prevented.

Removal by Local Authorities

15. In most circumstances, it is unlawful for a local authority to remove a child from his parents’ care without their consent unless the removal is sanctioned by the court. In R(G) and Nottingham City Council [2008] EWHC 152, Munby J was very critical of the social work team who directed the hospital staff to remove a new born baby from the mother without having any court order allowing it to so.

16. (There are two rare exceptions which Munby J. discusses in the case. The first is to intervene to protect a child from immediate violence at the hands of a parent, not through a specific power but the general principal that anyone present in such circumstances would be able to do so, but once the emergency is over there is no continuing right to keep the child away from the parent. The second is under s 3(5) of the Act which permits a person who has the care of the child but not parental responsibility to do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child’s welfare. However, Munby J indicated that this might be relied on by a hospital in a case of medical necessity, but was not relevant to the facts of the case as the new born child was not in the local authority’s care).

17. Where a local authority believes it is necessary to remove a child from his parents care, it must apply for either an EPO or a care order, including an interim care order.

Emergency Protection Orders :

18. s. 44 (1) (a) states that :

Where any person ("the applicant") applies to the court for an order to be made under this section with respect to a child, the court may make the order if, but only if, it is satisfied that--

(a) there is reasonable cause to believe that the child is likely to suffer significant harm if:

(i) he is not removed to accommodation provided by or on behalf of the applicant; or

ii) he does not remain in the place in which he is then being accommodated;

19. There are two leading cases on the issue of EPOs.

20. The first is X Council v. B (Emergency Protection Orders [2005] 1 FLR 341 (X Council v. B), which establishes that the necessary test is whether or not there is an "imminent danger" which must be "actually established" in order for removal to be justified. Munby J. describes the order as "a "drastic and terrible remedy" which engages Art 6 (Right to a fair trial) and Art 8 rights Right to family life) under the European Convention. (It is particularly draconian in that there is no appeal against the making of an EPO and an application can only be made by the parent to discharge the order 72 hours after it has been made). He identifies fourteen points about EPO's that must be drawn to the attention of the court hearing any such application. (See Appendix 1).

21. In the second, Re X (Emergency Protection Orders) [2006] 2 FLR 701 (Re X), McFarlane makes clear that an EPO should only be made in a genuine emergency and, an EPO, particularly one issued without notice to the parents, would rarely be justified for the purposes of achieving some sort of investigation or assessment. Instead, in these circumstances an application for a Child Assessment Order or a care order, including directions and/or an interim care order, should be made. He gives a good practice guide to the making of EPOs. (Appendix 2).

22. The following examples are given as ones unlikely to justify an EPO, and which the Magistrates should refuse on the basis that the authority should issue an application for an ICO:

- Lack of information or need for assessment can never of themselves establish the existence of a genuine emergency

- Allegations of emotional harm

- Inchoate and non-specific allegations of sexual abuse where there is no immediate risk of harm to the child

- Allegations of induced or fabricated illness, whether there is no medical evidence of an immediate risk of direct physical harm to the child

23. The DfCSF Children Act Guidance makes plain that an EPO must provide for " the least interventionist solution consistent with the preservation or the child's immediate safety" and that all other options must have been explored first, e.g. accommodation under s.20.

24. The court rules state that notice must be given to the parents at least 1 day before the hearing, but an ex-parte (without notice) application can be made with leave of the Clerk to the Justices. It is accepted that in some cases an ex-parte application may be appropriate as a result of urgency and may be desirable if the parent is the source of the immediate threat and notice would undermine the effectiveness of the order.

25. Munby J , in X Council v. B, fully considers this point and reviews the European case law. He states that even when there is great urgency, some informal notice should usually be given, unless there are compelling reasons to believe the child's welfare will be compromised by giving even informal short notice

26. In Haringey LBC v. C, E and Another intervening [2005] 2 FLR 47, Ryder J criticised the magistrates' decision, saying the parents should have been present and that short notice would have protected against "a supposed risk of flight".

27. The clerks at Inner London FPC are very slow to accept an ex-parte EPO and will either insist on notice or refuse to issue the application indicating an ICO application should be issued instead. Following X Council v. B , the authority would have to present cogent evidence of the imminent danger to the child and of the risk that a warning to the parents would compromise the child's welfare to persuade the court.

28. In Re X, McFarlane J. states that the list of 14 factors set out by Munby in X Council v. B should be drawn to the attention of the court by the local authority's advocate

29. In his guidance, he states that evidence in support of an EPO must be full detailed, precise and compelling. "Unparticularised generalities" will not suffice. Sources of hearsay evidence must be identified. Expressions of opinion must be supported by detailed evidence and properly articulated reasons. The evidential burden is even heavier on those who seek an ex-parte order and the applicant must make the fullest and most candid and frank disclosure of all the relevant circumstances known to them. It should come from the best available source, which usually means the social worker with direct knowledge of the case being present and giving evidence.

30. The court is required to keep a note of the substance of the hearing and the Magistrates must record their reasons and any findings of fact. Where the application is ex-parte the court should, unless it is impractical, record the hearing . Otherwise a dedicated note taker should be present in addition to the clerk.

31. He also points out that an EPO gives permission to remove the child, but the local authority still has to decide whether to do so and remains under an obligation to consider a less drastic alternative. Under s 44(5) the authority is required to consider further the action to be taken after the EPO has been made.

32. S 44(10) (a) and (11) (a) impose a mandatory obligation to return a child removed under an EPO to his parents if it appears to the local authority that it is safe to do so and must be considered day by day to ensure the child is separated for no longer than necessary to secure the child's safety. Munby J. states the local authority is under a duty to exercise exceptional diligence.

33. The authority must also allow contact between the child and his/her parents, unless the court directs otherwise, Munby states the contact must be driven by the needs of the family, not stunted by lack of resources.

34. Although an order can be made for 8 days and extended on notice on one occasion for up to a further 7 days, Munby says these periods are maximums and orders should not be automatically for this time.

35. Where an ex-parte order is made, Munby J. states it is even more imperative that the order is only made for the shortest period necessary for preserving the child's safety, possibly only 24 hours until the parents are given notice.

36. Once an EPO is made the court is able to:

- Give directions for further assessments and examinations of the child
- Make an order for the disclosure of the child's whereabouts against someone who knows where the child is. (Failure to do so is a contempt of court and may amount to an offence punishable by fine or imprisonment).
- Attach an exclusion order may be in certain circumstances.
- Authorise entry to search for a child
- Grant a warrant to allow a constable to assist in the enforcement of an EPO, and for the police officer to use reasonable force, if necessary.

Interim Care Orders

37. S. 38 states that the 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).

s. 31(2) states a court may only make a care order or supervision order if it is satisfied

a) that the child concerned is suffering, or is likely to suffer, significant harm; and

b) that the harm, or likelihood of harm, is attributable to

i. the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or

ii. the child's being beyond parental control.

38. The general principals in s 1 apply, and the court must have regard to the welfare checklist. So when dealing with an application under s.38 for an interim care order wit a plan for removal, the court must consider the following issues:

- Are the threshold criteria for an interim order satisfied?
- If so, scrutinise the care plan and consider:
- welfare test in s1(1), including whether separation at an interim hearing is justified based on an assessment of the child's welfare, having regard to the factors in the checklist under s.1 (3) including the arrangements the local authority has made or proposes to make for contact
- is it better to make an order than no order at all
- is the proposed intervention lawful, necessary and proportionate

39. The current cases relevant to removal under interim care orders are as follows:
Re G (Minors) (Interim care Orders) [1993] 2 FLR 839 The Court of Appeal held that an interim order was a neutral and effective way of preserving the status quo, and that the court maintained strict control over the local authority's actions. It is an impartial step favouring neither one side nor the other and affording no one an opportunity for tactical advantage.

39. Re H (A Child)(Interim Care Order) [2003] 1 FCR 350. (Re H). Here the Court of Appeal held that the rights of parents under Art 6 and 8 of the European Convention required a judge to abstain from premature determination of the case, unless the child's welfare demanded it. Since removal of the child from life-long parents to foster care would have been traumatic, and open to further upset if the parent's case ultimately succeeded, that separation was only to be contemplated if the child's safety demanded immediate separation.

40. It is important to note that the interim removal hearing took place in December when the final hearing was listed in April. The child had been placed in a residential assessment unit with his parents at 10 days old and a plan for rehabilitation in the community was about to be implemented. The application to remove the child was made after the mother told staff at the unit she wanted to separate from the father and his controlling attitude. She left for a Women's Refuge with the baby but returned after 24 hours. The authority then changed its plan and sought interim removal with a plan for the child to be adopted.

41. The judge found in favour of returning the child to the parents until the hearing in April, on the basis the interim hearing had strayed to consider the long term issues and the local authority had scant evidence that the child's safety demanded removal. The worst incident alleged by the mother was the father slapping her face while they were driving and the child was a passenger. The argument that risk of exposure to emotional abuse justified removal did not impress the judge as he said continued exposure to his parents' unstable relationship for a further 4 months until the final hearing did not justify the draconian conclusion. Finally the authority relied on the mother's allegation that the father demonstrated irritation and frustration when tested by the child. The judge concluded that this accounted for little in the face of the parents' record of performance at the residential unit (which had been generally good).

42. In Re M (Interim Care Order; Removal)[2006 1 FLR 1043, (Re M), the Family Proceedings Courts made interim care orders approving the local authority's care plan for removal from home of the four youngest of 6 children aged 15, 14,12,11,9,2 in the absence of the parents who say later said they did not have notice. The baby was placed in foster care but two of the other three children refused to leave home and the third was removed but absconded and returned home. The parents applied for the baby's return home which was refused by the County Court. The judge relied on the guardian's evidence detailing his concerns which he said justifying continued removal without notice to the parents.

43. The timing was again relevant. The appealed hearing took place in May 2005, but the final hearing was listed in March 2006. The appeal judge found this was a very long period in the life of a two year old and if he remained separated from his parents until then, it would inevitably impact on the parents prospects of securing his return.

44. The appeal judge, accepted the long-term effect of volatility and violence in the home of a very young child, but found it was hard to see the risk of short term harm unless by the possibility of the child being caught in some physical cross fire. Given that there was no evidence of that in the past, he concluded it was a relatively insignificant risk in the remaining period of 4 months between the appeal and the final hearing. He also raised concerns that the guardian had expressed speculative concerns and that there was no concrete evidence of the risk of harm in returning the child. Finally he considered the failure to remove the older 3 as diminishing the strength of the authority's case

45. He therefore concluded that the very high standards that must be established to justify the continuing removal of a child from home were not made out, nor was the potential risk of the extended separation sufficiently reflected in the County Court judge's judgment.

46. Re K and H [2007] 1 FLR 2043, a Court of Appeal case, restates that the removal of children at an interim stage is not to be sanctioned unless the child's safety requires interim protection.

47. The High Court case of Re L (Care Proceedings: Removal of Child) [2008] 1 FLR 575, again involved an interim decision shortly before the final hearing, in a case where the mother's care had been assessed during the proceedings.

48. Ryder J criticised the authority and the guardian for an error in law in assuming that all that had to be demonstrated to the court was the fact that the interim threshold was satisfied. He emphasised the question of removal must be considered separately from the interim threshold and the need for an order.

49. He also referred to Re H as requiring "an imminent risk of really serious harm such that the child's safety demands immediate separation". He also relied on Re G to conclude that the question of whether Mother could provide long term care was a matter for the final hearing, not to be litigated at an interim hearing.

50. He was critical of the social worker's and guardian's analysis of risk and concluded that the interim application was based almost entirely on the probability that the mother 's relationship with the father would continue, in the absence of more cogent reasons. He found that the state of the local authority's knowledge did not affect the actual risk faced by the child, merely the perception or assessment of that risk and that the authority had not considering whether the consequences of any risk could be protected against. If she were to remain at the foster carers or the proposed residential unit until the final hearing, no immediate harm would be caused to the child. He therefore granted Mother's application for a residential assessment of the mother and child.

51. Following this case, some lawyers took Ryder's comment out of context and argued that the test for interim removal was now higher in that local authority had to prove " an imminent risk of really serious harm"

52. This issue was considered by the Court of Appeal towards the end of last year, in Re L-A (Children) [2009] EWCA Civ 822 The Court of Appeal put this argument to rest by concluding that Ryder J did not intend to alter the approach that appears from the two Court

of Appeal cases (Re H and Re G) and raise the bar against the applicant local authority as was suggested by the judge at first instance. It also confirmed that an interim hearing the court is limited to issues that cannot await the fixed final hearing and must not extend to issues that are being prepared for determination at that hearing and that the test for separation at an interim stage is as set out in Re H, i.e. separation is only to be ordered if the child's safety demands immediate separation.

53. It is possible to draw some general principles from the case law in respect of interim removals:

- There need to be extraordinary compelling reasons for removing a baby at birth. The evidence must set out the facts alleged and explain why they justify removal

- The local authority must consider whether a less intrusive interference into family life of the parents would sufficiently protect the child | and explain in evidence why it is not possible in the particular case

- The court and the local authority must recognise the purpose and limits of an interim hearing. The authority should make it clear the plan is only an interim position pending further assessment (so it can not be suggested that the authority has prejudged the parents and likely outcome)

- The evidence must make clear that the issue removal has been considered separately to the interim threshold and the need for an interim order (and is explained within the consideration of the welfare check-list).

- The evidence should show that the authority has looked at "both sides of the coin" i.e. balancing the risk in removing the child in the short term of emotional harm (and it should be assumed likely to be traumatic unless there is clear evidence it will not be) against the risks of the child remaining in the parents' care in the short term and explaining where the authority says the balance falls.

- What are the nature and extent of the risks. Can the consequences of any risks be adequately protected against or can they be sufficiently ameliorated by any other plan (and explain what alternatives have been considered and why the risks cannot be sufficiently ameliorated).

- Separation is only to be contemplated if the child's safety demanded immediate separation, so the evidence must set out why the particular facts satisfy the test

- Explain how any identified risks in removal may be ameliorated e.g. by contact arrangements .

Appendix 1

Re X v.B Munby J.'s 14 points about EPOs

1. An EPO, summarily removing a child from his parents, is a "draconian" and "extremely harsh" measure, requiring "exceptional justification" and "extraordinarily compelling reasons". Such an order should not be made unless the FPC is satisfied that it is both necessary and proportionate and that no other less radical form of order will achieve the essential end of promoting the welfare of the child. Separation is only to be contemplated if immediate separation is essential to secure the child's safety: "imminent danger" must be "actually established"
2. Both the local authority which seeks and the FPC which makes an EPO assume a heavy burden of responsibility. It is important that both the local authority and the FPC approach every application for an EPO with an anxious awareness of the extreme gravity of the relief being sought and a scrupulous regard for the European Convention rights of both the child and the parents.
3. Any order must provide for the least interventionist solution consistent with the preservation of the child's immediate safety.
4. If the real purpose of the local authority's application is to enable it to have the child assessed then consideration should be given to whether that objective cannot equally effectively, and more proportionately, be achieved by an application for, or by the making of, a CAO under s 43 of the Children Act 1989.
5. No EPO should be made for any longer than is absolutely necessary to protect the child. Where the EPO is made on an ex parte (without notice) application very careful consideration should be given to the need to ensure that the initial order is made for the shortest possible period commensurate with the preservation of the child's immediate safety.
6. The evidence in support of the application for an EPO must be full, detailed, precise and compelling. Unparticularised generalities will not suffice. The sources of hearsay evidence must be identified. Expressions of opinion must be supported by detailed evidence and properly articulated reasoning.
7. Save in wholly exceptional cases, parents must be given adequate prior notice of the date, time and place of any application by a local authority for an EPO. They must also be given proper notice of the evidence the local authority is relying upon.
8. Where the application for an EPO is made ex parte the local authority must make out a compelling case for applying without first giving the parents notice. An ex parte application will normally be appropriate only if the case is genuinely one of emergency or other great urgency - and even then it should normally be possible to give some kind of albeit informal notice to the parents - or if there are compelling reasons to believe that the child's welfare will be compromised if the parents are alerted in advance to what is going on.

9. The evidential burden on the local authority is even heavier if the application is made ex parte. Those who seek relief ex parte are under a duty to make the fullest and most candid and frank disclosure of all the relevant circumstances known to them. This duty is not confined to the material facts: it extends to all relevant matters, whether of fact or of law.

10. Section 45(7)(b) of the Children Act 1989 permits the FPC to hear oral evidence. But it is important that those who are not present should nonetheless be able to know what oral evidence and other materials have been put before the FPC. It is, therefore, particularly important that the FPC complies meticulously with the mandatory requirements of rr 20, 21(5) and 21(6) of the Family Proceedings Courts (Children Act 1989) Rules 1991. The FPC must "keep a note of the substance of the oral evidence" and must also record in writing not merely its reasons but also any findings of fact.

11. The mere fact that the FPC is under the obligations imposed by rr 21(5), 21(6) and 21(8), is no reason why the local authority should not immediately, on request, inform the parents of exactly what has gone on in their absence. Parents against whom an EPO is made ex parte are entitled to be given, if they ask, proper information as to what happened at the hearing and to be told, if they ask: (i) exactly what documents, bundles or other evidential materials were lodged with the FPC either before or during the course of the hearing; and (ii) what legal authorities were cited to the FPC. The local authority's legal representatives should respond forthwith to any reasonable request from the parents or their legal representatives either for copies of the materials read by the FPC or for information about what took place at the hearing. It will, therefore, be prudent for those acting for the local authority in such a case to keep a proper note of the proceedings, lest they otherwise find themselves embarrassed by a proper request for information which they are unable to provide.

12. Section 44(5)(b) of the Children Act 1989 provides that the local authority may exercise its parental responsibility only in such manner "as is reasonably required to safeguard or promote the welfare of the child". Section 44(5)(a) provides that the local authority shall exercise its power of removal under s 44(4)(b)(i) "only in order to safeguard the welfare of the child". The local authority must apply its mind very carefully to whether removal is essential in order to secure the child's immediate safety. The mere fact that the local authority has obtained an EPO is not of itself enough. The FPC decides whether to make an EPO. But the local authority decides whether to remove. The local authority, even after it has obtained an EPO, is under an obligation to consider less drastic alternatives to emergency removal. Section 44(5) requires a process within the local authority whereby there is a further consideration of the action to be taken after the EPO has been obtained. Though no procedure is specified, it will obviously be prudent for local authorities to have in place procedures to ensure both that the required decision-making actually takes place and that it is appropriately documented.

13. Consistently with the local authority's positive obligation under Art 8 to take appropriate action to reunite parent and child, s 44(10)(a) and s 44(11)(a) impose on the local authority a mandatory obligation to return a child who it has removed under s 44(4)(b)(i) to the parent from whom the child was removed if 'it appears to [the local authority] that it is safe for the child to be returned'. This imposes on the local authority a continuing duty to keep the case under review day by day so as to ensure that parent and child are separated for no longer than is necessary to secure the child's safety. In this, as in other respects, the local authority is under a duty to exercise exceptional diligence.

14. Section 44(13) of the Children Act 1989 requires the local authority, subject only to any direction given by the FPC under s 44(6), to allow a child who is subject to an EPO "reasonable contact" with his parents. Arrangements for contact must be driven by the needs of the family, not stunted by lack of resources.'

Appendix 2

Re X; McFarlane's J. good practice guidance for emergency protection orders:

1. The 14 key points made by Munby J in *X Council v B* should be copied and made available to the justices hearing an EPO on each and every occasion such an application is made;

2. It is the duty of the applicant for an EPO to ensure that the *X Council v B* guidance is brought to the court's attention of the bench;

3. Mere lack of information or a need for assessment can never of themselves establish the existence of a genuine emergency sufficient to justify an EPO. The proper course in such a case is to consider application for a child assessment order or issuing s 31 proceedings and seeking the court's directions under s 38(6) for assessment;

4. Evidence given to the justices should come from the best available source. In most cases this will be from the social worker with direct knowledge of the case;

5. Where there has been a case conference with respect to the child, the most recent case conference minutes should be produced to the court;

6. Where the application is made without notice, if possible the applicant should be represented by a lawyer, whose duties will include ensuring that the court understands the legal criteria required both for an EPO and for an application without notice;

7. The applicant must ensure that as full a note as possible of the hearing is prepared and given to the child's parents at the earliest possible opportunity;

8. Unless it is impossible to do so, every without notice hearing should either be tape-recorded or be recorded in writing by a full note being taken by a dedicated note taker who has no other role (such as clerk) to play in the hearing;

9. When the matter is before the court at the first 'on notice' hearing, the court should ensure that the parents have received a copy of the clerk's notes of the EPO hearing together with a copy of any material submitted to the court and a copy of the justices' reasons;

10. Cases of emotional abuse will rarely, if ever, warrant an EPO, let alone an application without notice;

11. Cases of sexual abuse where the allegations are inchoate and non-specific, and where there is no evidence of immediate risk of harm to the child, will rarely warrant an EPO;

12. Cases of fabricated or induced illness, where there is no medical evidence of immediate risk of direct physical harm to the child, will rarely warrant an EPO;

13. Justices faced with an EPO application in a case of emotional abuse, non-specific allegations of sexual abuse and/or fabricated or induced illness, should actively consider refusing the EPO application on the basis that the local authority should then issue an application for an interim care

order. Once an application for an ICO has been issued in such a case, it is likely that justices will consider that it should immediately be transferred up for determination by a county court or the High Court;

14. The requirement that justices give detailed findings and reasons applies as much to an EPO application as it does to any other application. In a case of urgency, the decision may be announced and the order made with the detailed reasons prepared thereafter;

15. Where an application is made without notice, there is a need for the court to determine whether or not the hearing should proceed on a without notice basis (and to give reasons for that decision) independently of any subsequent decision upon the substantive EPO application.