**Advice / update as to Interim Separation**

The Court of Appeal on the case of **Re C (A Child; Interim Separation) [2020] EWCA Civ 257** (http://www.bailii.org/ew/cases/EWCA/Civ/2020/257.html) has added an additional part to the test of interim separation within Care Proceedings.

By way of background, this case involved a 5 month old child. The Local Authority (with the Guardian’s support) was appealing against HHJ Sharpe’s decision to reunify the mother and child in a different residential unit after having been separated and the child placed in Foster care following an incident at a previous unit.

This case builds upon another Court of Appeal Case (RE C (A Child) [2019] EWCA Civ 1998) and the well-established authorities for interim separation. Together they clearly sets out the 5 points for interim separation;

*"(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.*

1. *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.*
2. *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.*
3. *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.*
4. *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."*

The Judge then went on to summarise the above as follows:

*‘The test is whether the child's safety is at risk and, if so, any removal should be proportionate to the actual risks faced and in the knowledge of alternative arrangements which would not require separation’*

It is the 5th point which has been ‘added’ to the original test of separation- that all alternatives / available resources which could be put in place removing the need for separation must be fully explained the court.

In order to fully incorporate this test into the social worker’s statements / SWETs, social worker’s should be clearly doing the following where separation is being recommended:

1. All possible options including separation and the alternatives to separation should be considered and specifically addressed

1. What safeguards and arrangements could be put in place to prevent separation and why they would not be suitable for the particular child’s physical, psychological and emotional welfare?

a. Why would they not manage the risk to the child including whether the parent (s) would realistically comply with the requirements.

1. Why separation is necessary and proportionate.

1. How the recommended length of the separation and the likely consequences of separation are proportionate to the risk should separation not be granted.

Through doing all of the above steps, social workers (and indeed team managers when they are reviewing the social workers work) are presenting a carefully evaluated analysis of the options available to the particular child. By doing so they should be able to clearly answer the question of whether separation is really needed or whether the Local Authority can manage the risk in another way?

Social workers and/or team managers should seek further advice from legal if they are unsure as to whether the high test for interim separation is satisfied for a particular child.

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