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| **Local authority  social work evidence** |  | In the Family Court sitting at |
|  | In the matter of the Children Act 1989 |

**The children**

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| **Names** | **Gender** | **Date of Birth** |
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| **1. Introduction** |
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| **2. Family composition** |
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| **3. Background** |
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| **4. Circumstances leading to the application for an EPO** |
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| **5. Current situation** |
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| **6. Why an EPO is needed** |
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| **7. Local Authority’s proposals** |
| Set out any additonal evidence and analysis. |
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| **8. Any other relevant matters** |
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| **10. Signature** |  | |
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| Print full name |  | |
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| Role/position held |  | |
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|  | **The facts in this application are true to the best of my knowledge and belief and the opinions set out are my own.** | |
| Signed |  | |
|  |  | |
| Date |  |  |

64. In *X Council v B (Emergency Protection Orders)* [2004] EWHC 2015 (Fam); [2005] 1 FLR 341, Munby J undertook a review of the law and practice relating to EPO's. I gratefully adopt his masterful summary of both the domestic and European jurisprudence on the topic as a result of which (at paragraph 57) he drew the following conclusions:

"The matters I have just been considering are so important that it may be convenient if I here summarise the most important points:

(i) 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'.

(ii) 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.

(iii) Any order must provide for the least interventionist solution consistent with the preservation of the child's immediate safety.

(iv) 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.

(v) 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.

(vi) 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.

(vii) 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.

(viii) 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.

(ix) 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.

(x) 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.

(xi) 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.

(xii) 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.

(xiii) 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.

(xiv) 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.