

Public Law Case Law Update

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Appeal brought by the children's guardian against an interim care order authorising separation of B, a 6-year-old boy, from his parents. The appeal was supported by the parents and opposed by the local authority. Lord Justice Baker, Lord Justice Popplewell and Lady Justice Elisabeth Laing unanimously allowed the appeal and remitted the local authority's application for a rehearing.

[B \(A Child\) \(Interim Separation\) \[2026\] EWCA Civ 748](#)

Background – Risks

The mother, who comes from Finland, came to the local authority's attention when she was pregnant in 2019 due to concerns around her mental health, alcohol and substance misuse and domestic abuse in the home. When B was born, he was placed on a child protection plan (CPP) however this was terminated because the mother returned to Finland. The mother returned to the UK some weeks later.

The father did not have parental responsibility for B, and was not living with the mother, however, he was attending her property regularly and providing day-to-day care for B.

Concerns continued for the next five years with intermittent local authority engagement arising from the previously held concerns regarding the mother, and the father's excessive drinking. Furthermore, there were reports that B was neglected and living in unsafe and unhygienic conditions with animals in the property, with occasions where he was reported to be left alone in the property or found running outside the property naked.

In November 2025, 5 months after B was placed on a child in need plan (CIN plan), two arguments and one instance of domestic abuse were reported in regard to the parents.

In January 2026, B was seen outside of the home in cold weather wearing only a T-shirt with a burn on his hand, which mother did not initially allow social workers to see. Later that day the mother contacted the local authority hysterically stating that she could not find B, which she then later told professionals that she had told him to hide because he would be removed. B was found at a neighbour's property by the police.

Background – Proceedings

On 16 February 2026 the local authority issued proceedings, seeking an interim care order (ICO). It was determined at a hearing on 23 February 2026 that threshold was crossed, however the court made an interim supervision order (ISO) as no foster placement had been identified by the local authority.

In April, the matter came before the same judge with a renewed application for an ICO as the local authority had identified a foster placement, however the court adjourned the matter with further case management directions.

The local authority convened a family meeting at which a written agreement was drafted where B would live with each parent for part of the week. The local authority alleged that this was breached, with the mother asking the father to care for B during her period of care, leading to a lack of consistency for B.

The father received positive reports in this time including that he was taking on board guidance regarding physical chastisement, consistently undertaking the school run even on days he wasn't instructed to, attending parenting sessions prepared and early, and providing consistent and structured care for B. Further, he was said by the social worker to be maintaining an orderly and clean home environment for B. However, the social worker remained concerned about the father's drinking and the influence the mother had on him, especially in regard to her having unplanned contact.

A clinical psychologist did not share the positive views of the local authority, and hair strand testing revealed that the father was still drinking to excess, which he maintained he only did in the evenings, and the presence of cocaine metabolites, which he denied he was taking.

Hearing

At the ICO hearing on 29 May 2026, the local authority sought an ICO with a plan for B to be removed into foster care. The mother sought for B to be returned to her care, as she submitted that she had been his primary carer. The father sought for B to be placed in his care, under a Child Arrangements Order (CAO) such that he would gain parental responsibility. The guardian supported the father's position.

Evidence

The recorder hearing the matter, in his ex-tempore judgment, relied on the following factual matters:

- That the matter was finely balanced;
- That B's needs were not being met, referencing him going missing and being burnt, not being taken to school on time and living in a dirty house with dirty and ripped clothes smelling often of cat urine;
- The father continues to struggle with substance abuse which he is trying to remedy however the social worker said that he does not view his alcohol consumption as problematic and drinks daily in B's presence;
- The father struggles to challenge the mother and does not share parental responsibility;
- The father has complex mental health needs;
- The father managed the care of B around his work hours.

The recorder made no further mention of the positives relating to the father's care identified by the social worker in their statement.

Legal framework

The recorder referred to the following legal framework:

- Re C (A Child: Interim Separation) [\[2019\] EWCA Civ 1998](#), which the Court of Appeal considered properly summarised;
- The statutory welfare checklist;
- Whether the care of the parents was good enough.

Decision

The court concluded that the change to father's care would put him as the primary carer, which was an "untested" and "overly optimistic" plan given the risks associated with substance misuse, the father's mental health, the parental toxicity and the risk of physical harm to B. Further, there was "insufficient evidence to show that either parent can offer good enough care" such that the local authority's application "must succeed".

Following judgment, the local authority raised that the court had not addressed the support that could be provided to mitigate the risk of harm to B if placed in his parents' care, to which the court responded that they had it in mind but could not address every issue.

The order was made on 29 May 2026 by a recorder and B was taken to a foster care placement following the hearing. On that evening, the guardian filed a notice of appeal and applied for an immediate stay which was granted, and B was returned to his father's care.

Appeal

The guardian raised seven grounds of appeal as follows:

- 1) *The judge failed to apply the correct test in sanctioning the immediate removal of the child from his parents.*
- 2) *He characterised placement with the father as recommended by the guardian as 'untested' despite the fact that the shared care arrangement had been in place for many weeks, was embodied in a written agreement between the parents and the local authority and that the child had been in the father's sole care for a period of 10 days in the period leading to this hearing, without any concerns being raised about his care.*
- 3) *He failed to consider sufficiently or at all the positives identified by the local authority with the father.*
- 4) *He attached undue weight to the results of hair strand testing without considering it as one piece of evidence within the broad canvas of evidence.*
- 5) *He failed to address whether any steps could be taken or support provided to mitigate any of the harm identified.*
- 6) *He failed to consider adequately or at all the harm that will be occasioned to the child of being removed as against the potential harm of remaining in his parents' care.*
- 7) *He failed to explain why he rejected the recommendation of the guardian save to say that he characterised her proposals as 'optimistic'. The guardian had recommended that the child be placed with his father with a clear schedule setting out how and where he should spend his time between his parents.*

The submissions in support were as follows:

- The court had failed to apply Re C in that the interim test for separation was whether the child's safety and welfare required immediate separation from the family, but the court had referred to “good enough parenting”;
- The court failed to refer to the positive features of the father’s care acknowledged by all parties and it was insufficient to dismiss the father’s proposals as simply “untested” and “overly optimistic”;
- The court had failed to address the measures that could be taken to avoid the need for removal.

The Court of Appeal concluded that the recorder had “failed to apply the principles established by case law” and allowed the appeal agreeing with the guardian’s submissions.

The Court of Appeal did not otherwise criticise the recorder’s handling of the case, in fact referring to the way he conducted the hearing as “evidently conscientious” and acknowledged the considerable pressures under which judges must make these decisions.

Rehearing

The Court of Appeal concluded that it would be fairer to remit the matter before another judge for a full rehearing, rather than deciding the merits of the application for an ICO themselves, as the parties sought to rely on evidence not adduced at the previous hearing, including new evidence which was disputed.

Namely, the local authority alleged that the father had self-harmed following the previous hearing. The Court of Appeal, without expressing a view as to the weight attached to this evidence, considered that this was an aspect of the case which may have to be taken into consideration when determining how best to ensure B’s safety and welfare.



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