

Chapter 30: Guidance on answering the self-test questions

Question 1: You work as a solicitor at Longtown City Council and you have received a telephone message from a paediatrician working at Longtown Royal Hospital concerning a child with non-accidental injuries whose mother wishes to remove the child from the hospital. The injuries are quite serious and include a deep cut to the head and a broken arm. The paediatrician is concerned that the child is being seen with injuries on an increasingly regular basis with ever more serious injuries and the child is afraid of her mother and is showing disturbed behaviour.

(a) Do you think that the grounds for an EPO are met?

The grounds for application are found in s44(1) Children Act 1989 and are that the court is satisfied that there is reasonable cause to believe that the child is likely to suffer significant harm if:

- he is not removed to accommodation provided by or on behalf of the applicant; or
- he does not remain in the place in which he is then being accommodated.

In this case, the child has suffered physical injury and there appears to be suspicion that the injuries have been inflicted by the child's parent. Under s44(1) the court only has to be satisfied that there is reasonable cause to believe that the child is suffering significant harm. Here, there does seem to be reasonable cause to believe that the child is likely to suffer significant harm if the child is allowed to be removed from the hospital.

(b) If an EPO is applied for, what steps will be taken?

If an emergency protection order is made, the child can be removed to local authority accommodation (probably foster parents) or can remain in the hospital. The local authority (the presumed applicant for an EPO) will gain parental responsibility for the child for the duration of the order. As the child in this case is injured, the court may be asked to give a direction under s44(6) Children Act 1989 for a medical examination of the child.

(c) Do you think that you should apply for an EPO without notice? Justify your decision with reference to *X Council v B (Emergency Protection Orders)*.

In *X Council v B (Emergency Protection Orders)* [2004] EWHC 2015 (Fam), the court gave a set of guidelines for without-notice emergency protection orders. It is worth reading the case in its entirety.

In this case it must be recognized that 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 family proceedings court (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'. In this case, it would have to be shown the child is in imminent danger, which is quite a high burden on the applicant.

Any order must provide for the least interventionist solution consistent with the preservation of the child's immediate safety. The court will have to be satisfied that an EPO is the only way in which to secure the child's immediate safety.

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 child assessment order under s43 of the Children Act 1989. The court would have to be convinced that only a without-notice EPO would be sufficient to secure the child's safety in the short term.