Neutral Citation Number: [2026] EWCA Civ 748

Case No: CA-2026-001360

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE CENTRAL FAMILY COURT
Recorder Anderson
ZC2650085

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 June 2026

Before :

LORD JUSTICE BAKER
LORD JUSTICE POPPLEWELL
and
LADY JUSTICE ELISABETH LAING

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B (A CHILD) (INTERIM SEPARATION)

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Paula Diaz (instructed by **TV Edwards LLP**) for the **Applicant by his children's guardian**
Sam Wallace (instructed by **Local Authority Solicitor**) for the **First Respondent**
Nairn Purss (instructed by **Cartwright King**) for the **Second Respondent**
Judith Pepper (instructed by **Hopkin Murray Beskine**) for the **Third Respondent**

Hearing date: 11 June 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 17 June 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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LORD JUSTICE BAKER:

1. Last Thursday, 11 June 2026, we heard an appeal against an interim care order ("ICO") authorising the separation of a 6-year-old boy, hereafter called B, from his parents. The appeal was brought by the children's guardian representing B. It is supported by the parents but opposed by the local authority. At the end of the hearing, we told the parties that we would allow the appeal and remit the local authority's application for an ICO for rehearing. This judgment sets out my reasons for coming to that decision.

2. The order was made by a recorder sitting in the Central Family Court twelve days earlier on 29 May 2026. Following the hearing, B was taken to a foster placement. Later that evening, however, the guardian filed a notice of appeal and applied for an immediate stay of the order. Following a hearing via Teams out of hours, Cockerill LJ granted the stay and ordered that B be returned to his father's care pending determination of the application for permission to appeal. On 31 May, B was placed in the care of his father. On 4 June, I granted permission to appeal and extended the stay until the appeal was determined. Thus B has remained in his father's care for the past ten days.

3. The background to the appeal can be summarised briefly. When the mother was pregnant expecting B in 2019, she and the father came to the attention of the local authority due to concerns around the mother's mental health, alcohol and substance misuse and domestic abuse in the home. As a result of those concerns, the local authority made the baby subject to a child protection plan prior to birth. In March 2020, however, the mother, who comes from Finland, returned to that country and gave birth to B there. At that point, the child protection plan was terminated.

4. After a few weeks, the mother and B returned to England. So far as I am aware, she and the father have not lived together, but the father was frequently present in the mother's home and involved in the day-to-day care of the child. Up to now, however, he has not had parental responsibility for B.

5. Over the next five years, the local authority was involved with the family intermittently, after referrals from B's nursery, school and neighbours reporting ongoing concerns about the mother's mental health, the father's excessive drinking, and allegations of domestic abuse. There were reports that B was being neglected and exposed to unsafe and unhygienic conditions with a large number of cats in the mother's property. On occasions he was said to have been left alone and on other occasions seen running outside the property naked. There were also reports that he had been physically chastised by his father. Attempts to engage with the family were frequently frustrated by the mother's dismissal of professional advice and offers of support. In 2025, B's school reported a deterioration in his emotional wellbeing and behaviour. His basic care was inconsistent. In June 2025, he was placed under a child in need plan.

6. In November 2025, there were two reported incidents of arguments between the parents and an allegation of domestic abuse. On 2 January 2026, a neighbour reported seeing B outside the house in cold weather wearing only a T shirt and with a burn on his hand. When social workers attended, the mother initially refused them access to the home to see the injury. Later that day, she telephoned in a hysterical state saying

that she could not find B. She later said that she had told him to go and hide because he would be taken away. The police were contacted and B was found at a neighbour's property. The police told social services that they were concerned about the condition of the property, describing it as dirty, cluttered and unsuitable for a child.

7. On 16 February 2026, the local authority started care proceedings seeking B's removal under an interim care order. At a hearing before HHJ Marin on 23 February, the court concluded that the threshold criteria for an interim order under section 38 of the Children Act 1989 were satisfied. But the local authority had not identified a foster placement where B could be accommodated. The judge therefore made an interim supervision order on the basis that there would be a written agreement with the parents with a provision that the mother would work with a family support worker. The court made a series of case management directions, including parenting assessments, a psychological assessment of the family, a psychiatric assessment of the mother, and hair strand testing and alcohol testing of the father.

8. By April, the local authority had identified a suitable foster placement and therefore sought to renew its application for an interim care order. At a further hearing on 23 April before HHJ Marin, the application was adjourned with further case management directions.

9. Following that hearing, the local authority convened a family meeting on 30 April after which a written agreement was drafted stipulating that B would live with his mother from Sunday to Thursday morning and with his father for the rest of the week. It was subsequently alleged by the local authority, however, that the parties had not adhered to the agreement, and that the mother would frequently contact the father and ask him to look after B. This lack of consistency in the care arrangements was likely to be confusing and unsettling for B who needed a stable routine to regulate his emotional state and behaviour. The social workers continued to be concerned about the mother's lack of engagement and co-operation. She missed a number of appointments, including some arranged to facilitate the assessments ordered by the court.

10. As to the father, however, the evidence was in several respects more positive. In an updating statement filed in the proceedings, the social worker, in a passage relied on by the guardian on this appeal said:

> "[The father] has demonstrated consistent engagement. [He] has taken on board professional guidance regarding physical chastisement and there have been no further reports of incidents that we have been made aware of since these discussions took place. [He] recognises that he requires ongoing parental support to develop more effective and appropriate disciplinary strategies.
>
> [The father] has consistently undertaken the school run on his days and helped on days that he wasn't instructed and is meticulous with timekeeping. He regularly attends parenting assessment sessions prepared and arrives early for visits. During observations of the evening routine, [he] has been

> observed to provide a consistent structure, including play time, dinner, showering, and story time, with B in bed by 8:00 pm.
>
> [The father] maintains a clean and orderly home environment. Despite living in a small bedsit, he has created an organised space for B, and his accommodation is maintained to a good enough standard of cleanliness and order. He engages positively and appropriately with all professionals involved."

11. On the other hand, the social worker continued to express concerns about the father's drinking. She was also concerned about the lack of boundaries between the parents, and the degree of influence which the mother seemed to have over the father. In particular, it was thought that, if B was placed with him, the father would be unable to resist the mother's demands for unplanned contact. During meetings between the parents, the father appeared "frustrated and exhausted" by the mother's behaviour. The social worker therefore concluded:

> "While [the father] may presently appear to be the more suitable parent, this alone does not provide sufficient assurance that it is in the child's best interests to remain in his care pending the outcome of these proceedings."

12. Meanwhile, Dr Tosin Bowen-Wright, consultant clinical psychologist, had conducted the psychological assessment of the family ordered by HHJ Marin and filed his report on 8 May. She concluded:

> "3.2 The findings indicate that both parents experience difficulties which impact on their ability to provide consistent, stable and developmentally appropriate care. These include concerns relating to emotional regulation, alcohol and substance abuse, inconsistency in caregiving, and limitation engagement with professional support.
>
> 3.3 B presents as a developmentally able child; however, there are indications of emotional and behavioural impact, including difficulties with regulation and a strong need for control. These are likely to be associated with inconsistency, unpredictability and conflict within his caregiving environment. Whilst there are features which may suggest possible neurodevelopmental differences, the current level of instability makes this difficult to assess with confidence.
>
> 3.4 Overall, the primary concern is that B's needs are not being met in a sufficiently consistent, predictable and structured way. The focus of intervention should therefore be on establishing a stable caregiving environment, with clear routines, appropriate supervision, and consistent adult-led boundaries.
>
> 3.5 Support should be directed primarily towards the adults around B, including parenting support, co-ordinated co-

> parenting arrangements, and appropriate professional oversight…."

13. In addition, hair strand testing revealed that the father was continuing to drink to excess, although he maintained that he only drank in the evenings. The tests also revealed the presence of cocaine metabolites, although the father denied he was still taking drugs.

14. The hearing on 29 May was conducted by the recorder on the basis of the written evidence, written submissions and oral submissions. The parties' respective positions were summarised in his judgment as follows. The local authority asked the court to make an ICO on the basis of a plan that B be removed into foster care. The mother proposed that he should remain in her care "as she has been the only full-time carer B has known". The father's position was that B should live with him under a child arrangements order under section 8 of the Children Act which would provide him with parental responsibility. It was argued that this "would enable and empower him in [a] legal sense to make decisions for B rather than deferring to the mother". The guardian supported the father's proposal but recommended that that the child be placed with his father under a child arrangements order and a supervision order, with the practical arrangements including the division of parenting time to be resolved by agreement or by the court.

15. At the outset of his judgment, the recorder described the case as "finely balanced". He summarised the background and the local authority's involvement with the family. He recorded the issues with the mother's parenting, including her chronic mental health problems, alcohol abuse, chaotic lifestyle, the unsanitary conditions in her home and her missed appointments. He described the impact of these problems on B:

> "His needs are not being met and he has been left to fend for himself and burnt himself and gone missing from the house. The mother can't collect him on time and the school have collected him from home. His clothes are often dirty and ripped and his clothes and bag often smell of cat urine".

16. With regard to the father, the recorder identified four evidential features on which the local authority relied in support of its case that B should be removed from his care. The first was his substance misuse during the course of the proceedings. The recorder stated that in testing he had tested positive for cocaine and cannabis metabolites as well as for excessive alcohol consumption. The father denied taking drugs. As to his drinking, the recorder noted that "this is an issue the father is trying to remedy and he is engaging with services". He added, however, that tests in the last week had continued to show excessive consumption, adding that "the social worker says that the father does not view his alcohol use as problematic and continues drinking daily in B's presence." The second issue was his abusive conduct towards the mother and earlier reports of physical ill-treatment of B. The third issue was the relationship with the mother. The recorder noted that the local authority described the relationship as "toxic" and that it manifested itself not only in domestic abuse

> "but also their difficulties in communicating and putting B's needs first. I understand that the father finds it difficult to

> challenge the mother, not only her presentation and also he doesn't share parental responsibility."

The fourth issue was the father's complex mental health needs which were said to include personality disorder and depression, alongside his substance abuse.

17. The recorder noted that the father was living in a multi-occupation property and worked as a cleaner. He added:

> "He can work around school hours and has managed this and for 10 days leading up to this hearing when B was living with him."

Save for this brief observation, the recorder made no other reference in the judgment to the positive features identified by the social worker in her updating statement.

18. At this point the recorder summarised the legal framework. He noted that it had already been found at the first hearing that the threshold criteria for making interim orders under s.38 were satisfied. The question for him was therefore what order to make to meet welfare needs and in particular whether the test for interim removal was satisfied. About this he said (para 37):

> "The approach I should take is agreed as set out in Ms Hudson's position statement and in particular *Re C (A Child: Interim Separation)* [2019] EWCA Civ 1998, paragraph 2 set out number of points I have to take into account. I do not burden this ex tempore judgment by setting out that paragraph but I have it well in mind. A plan for immediate separation is only to be sanctioned by the court where the child's safety or psychological/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."

19. The recorder then analysed B's welfare by reference to the relevant factors in the statutory checklist. He noted that it was common ground that B would wish to live with his parents. He also noted, however, that "physical emotional and educational needs are not currently being met". As to the likely effect on B of a change of circumstances, the recorder said:

> "42. This is important as the plans put forward by the father and the local authority represent a significant change for B and both are steps into the unknown. The father's proposal would put him as primary carer, albeit he could return to stay with his mother if agreed.
>
> 43. The local authority's plan is that B will move to live with new carers. Both plans are untested but my assessment is based on the evidence and is that the father's plan is untested and overly optimistic. Whilst his proposal will allow B to remain with his parents, I have no reassurance beyond optimism that

> the risks associated with substance misuse, the father's mental health conditions, the parental toxicity and the risk of physical harm would act to B's benefit and my assessment is that B living with his father at this stage without further evidence may well be a negative change in circumstances due to these risks.
>
> 44. I acknowledge absolutely that moving to foster care also represents a significant and potentially harmful change but it seems to me that the risks in staying in foster care are less and can be managed."

20. As to the harm which B had suffered or was at risk of suffering, the recorder said:

> "46. I accept the guardian's analysis that at present B is suffering harm and will do so in the future if he stays with his mother as she is simply not able at present to offer good enough care at present.
>
> 47. I look to the future and my concern is that the father's plan also leaves B at risk of suffering harm as a result of the fourfold problems identified by the local authority and summarised above."

21. The recorder concluded that there was "insufficient evidence to show that either parent can offer good enough care" and that "the local authority's application must succeed."

22. We were told that, following the judgment, counsel then acting for the local authority pointed out to the recorder that he had not dealt with the issue of the support that could be provided to mitigate the harm in the parents' care. The recorder responded that he did have that in mind but could not address every issue. He added that he had no doubt that the local authority would keep it in mind.

23. As noted above, following the grant of a stay of the order, B was returned to his father's care where he has remained for the past twelve days. On the day before the hearing of the appeal, the local authority filed an application to adduce further evidence on the appeal, in the form of a statement from the social worker which provided updated information. At the start of the appeal hearing, we informed the parties that we had read the statement *de bene esse* and would consider whether to admit it after hearing the parties' full submissions. Suffice it to say at this stage that the statement contained a number of assertions which were not accepted by the parents.

24. The guardian puts forward seven grounds of appeal.

    (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.

These grounds were developed in a skeleton argument prepared on the guardian's behalf by Ms Kate Hudson, who had appeared before the recorder. Ms Hudson was unable to attend the appeal hearing and her place was taken by Ms Paula Diaz who supplemented the argument with oral submissions. The guardian's case was supported by Ms Judith Pepper on behalf of the father. On behalf of the mother, Mr Nairn Purss stressed that his client's primary case remained that B should be in her care but at this stage supported the guardian's proposal.

25. The oral submissions in support of the appeal focused on three factors in particular. First, whilst it was acknowledged that the recorder had rightly identified the principles as being those set out by this Court in *Re C*, it was submitted that he had failed to apply them when making his decision. Although he had not set out the principles in full in the judgment, he had correctly summarised the principal test at this interim stage as being whether the child's safety and welfare required immediate separation from the family. It was submitted, however, that later in the judgment the recorder had failed to apply that test when going through the relevant factors in the welfare checklist. Ms Diaz relied in particular on the references to "good enough parenting". It was argued that in using this phrase the recorder had demonstrated that he had not in fact applied the high standard required by case law for authorising a child's removal under an ICO.

26. Secondly, Ms Diaz focused on the fact that the recorder failed to refer to the positive features about the father's care which had been acknowledged by all parties. This point was taken up by Ms Pepper in succinct but effective submissions. She pointed out that, although the recorder had described the case as "finely-balanced", his failure to refer to the positive aspects of the father's care of the child left the father, and this Court, in the position of being unable to understand the reasons for his conclusion that the balance came down in favour of removal of the child. It was not sufficient for the

recorder simply to dismiss the father's proposal, supported by the guardian as "untested" and "overly optimistic".

27. The third matter on which Ms Diaz focused was the recorder's failure to address the measures that might be taken to obviate the need to remove the child. Ms Pepper observed that this component in the principles set out by Peter Jackson LJ in *Re* C was a crucial element in ensuring that the removal of the child at an interim stage was proportionate, particularly in a finely balanced case.

28. In reply, Mr Sam Wallace (who had not appeared at first instance) correctly observed that the social worker's updating statement had set out in detail the positives about the father's care of the child alongside the concerns. In explaining his reasons for making the ICO, the recorder had cited the negatives identified by the local authority as the factors which tipped the balance in favour of interim removal. In the circumstances, it could safely be assumed that the recorder had had all the factors identified by the social worker in mind when delivering his ex tempore judgment.

Discussion and conclusion

29. At paragraph 2 of his judgment in *Re C*, Peter Jackson LJ summarised the principles derived from earlier authorities, in particular *Re L-A (Care: Chronic Neglect)* [2009] EWCA Civ 822, in these terms:

> "(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.
>
> (2) 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.
>
> (3) 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.
>
> (4) 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.
>
> (5) 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."

30. The recorder was rightly referred to this authority and cited it in his judgment. It might be argued that this Court, exercising due restraint before interfering with a judge's analysis, should proceed on the basis that he had all of the principles in mind when reaching his decision, particularly where the judgment was delivered ex tempore. This was in many respects a well-structured and thoughtful judgment. But ultimately, I concluded that we could not proceed on that basis.

31. The recorder himself described his decision at the start of the judgment as "finely balanced". The social worker had set out in detail a number of positive features about the father's care of the child. The fact that the local authority had ultimately concluded that these factors were outweighed by the disadvantages and concerns about the father's care did not obviate the requirement for the recorder himself to conduct that analysis. The guardian had reached the opposite conclusion. I agree with the submission that simply dismissing her view as "overly optimistic" was insufficient. He needed to explain why the positive features identified by the professionals were insufficient to protect B's safety and welfare in the interim and why the balance came down in favour of immediate removal into foster care.

32. A central feature of the concerns about the care provided to B has been the impact on him of the "toxic" relationship between his parents. The evidence so far suggests that the mother has been unable to provide him with stability, boundaries and routine which his emotional development requires. There are signs that his father is able to meet those needs, but his capacity to do so is seemingly undermined by his difficulty withstanding the interventions of the mother whose behaviour leaves him, in the social worker's words, "frustrated and exhausted". The guardian's proposal was that this could be addressed by placing him in the father's care for the bulk of the time, with a carefully defined schedule of contact with the mother under a child arrangements order, which would have the effect of granting him parental responsibility. In the guardian's view this was a proposal which removed the need for separation. In accordance with the principles summarised in *Re C*, it was necessary for the recorder to consider it carefully and, if he concluded that this would not be sufficient to protect B's safety and welfare, explain his reasons for so concluding.

33. It is of course the firm rule that this Court will not interfere with a judge's findings and evaluation of facts and inferences to be drawn from them unless compelled to do so. In this case, however, the circumstances compel such a course. Any proposal to remove a child from their parents under an interim order before full consideration of the evidence can only be justified where it is both necessary and proportionate. It is a serious step which requires a careful and rigorous analysis. I recognise that judges have to take these decisions under very considerable pressures in the family court. But that is why we have an appellate process. In this case, despite the evidently conscientious way in which the recorder conducted the hearing, I concluded that in deciding that B should be removed from his parents he failed to apply the principles established by case law.

34. Having concluded that the recorder's decision could not stand, the question arose whether we should reach a decision on the merits of the application for an ICO ourselves or remit the application for re-consideration by the family court. Whilst it

might have been open to us to determine the issue, I concluded that it would be fairer to remit the matter so that another judge could hear full submissions on whether B should be removed under an ICO. One reason for taking that course was that the parties wished to rely on matters that have occurred since the hearing before the recorder. On the one hand, the father seeks to rely on the positive evidence of how he has been caring for B over the past week or so. On the other hand, the local authority wishes to rely on matters set out in the social worker's statement on which the local authority sought to rely on appeal, some of which are not accepted by the parents. Amongst a number of observations in that statement, it was reported by the social worker that, on 1 June, she had seen the father with a bandage on his wrist and that he had told her that, following the hearing before the recorder, he had cut himself. In the statement, the social worker added that at an earlier stage in the proceedings, after the initial hearing on 23 February, the father had also reported attending hospital after harming himself. We were told that there had been a reference to this earlier incident in the papers put before the recorder but it had not at that stage featured as a relevant factor in the local authority's argument. Neither parent accepted the latest statement so it would not be possible for this Court to determine the weight to be attached to it. I note, however, that in Dr Bowen-Wright's report (at paragraph 5.92) the father is said to have reported a history of self-harm.

35. Although I express no views about the weight to be attached to this evidence, it seems to me that this is an aspect of the case which may have to be taken into consideration in deciding whether B's safety and welfare require that he be removed from his father's care at this interim stage.

36. For all these reasons, I concluded that the better course was to remit the local authority's application for an ICO to the family court, and I am grateful to HHJ Sapnara, the designated family judge for Central London, who has indicated that she can accommodate the case in her list on the afternoon of Wednesday 17 June.

37. After announcing our decision, we heard submissions on the interim arrangements pending the rehearing. It was not contested that B should remain with his father, but by consent we agreed that this should be under a child arrangements order. A consequence of making a child arrangements order that B is to live with his father until the next hearing is that, pursuant to section 12 of the 1989 Act, we are required to make a further order under section 4 giving the father parental responsibility for the child. After hearing submissions, we further ordered that, pending the rehearing of the ICO application, the father should make B available for contact with the mother on Tuesdays and Thursdays after school for two hours, and from 12.30 to 2.30 on Saturday afternoon. We ordered that such contact should take place in the community and not at the mother's home.

38. In approving those orders, I was not seeking to indicate any view as to the outcome of the rehearing of the local authority's application to remove B under the ICO. As the recorder noted at the start of his judgment, this is a finely balanced decision, and it will be for Judge Sapnara to determine, on the evidence and submissions put before her, where that balance falls.

LORD JUSTICE POPPLEWELL

39. I agree.

LADY JUSTICE ELISABETH LAING

40. I also agree.