

INHERENT JURISDICTION (INCLUDING WARDSHIP) PROCEEDINGS

This Practice Direction supplements FPR Part 12, Chapter 5

The nature of inherent jurisdiction proceedings

- 1.1** It is the duty of the court under its inherent jurisdiction to ensure that a child who is the subject of proceedings is protected and properly taken care of. The court may in exercising its inherent jurisdiction make any order or determine any issue in respect of a child unless limited by case law or statute. Such proceedings should not be commenced unless it is clear that the issues concerning the child cannot be resolved under the Children Act 1989.
- 1.2** The court may under its inherent jurisdiction, in addition to all of the orders which can be made in family proceedings, make a wide range of injunctions for the child's protection of which the following are the most common –
- (a) orders to restrain publicity;
 - (b) orders to prevent an undesirable association;
 - (c) orders relating to medical treatment;
 - (d) orders to protect abducted children, or children where the case has another substantial foreign element; and
 - (e) orders for the return of children to and from another state.
- 1.3** The court's wardship jurisdiction is part of and not separate from the court's inherent jurisdiction. The distinguishing characteristics of wardship are that –
- (a) custody of a child who is a ward is vested in the court; and
 - (b) although day to day care and control of the ward is given to an individual or to a local authority, no important step can be taken in the child's life without the court's consent.

Transfer of proceedings to county court

- 2.1** Whilst county courts do not have jurisdiction to deal with applications that a child be made or cease to be a ward of court, consideration should be given to transferring the case in whole or in part to a county court where a direction has been given confirming the wardship and directing that the child remain a ward of court during his minority or until further order.
- 2.2** The county court must transfer the case back to the High Court if a decision is required as to whether the child should remain a ward of court.
- 2.3** The following proceedings in relation to a ward of court will be dealt with in the High Court unless the nature of the issues of fact or law makes them more suitable for hearing in the county court –

- (a) those in which an officer of the Cafcass High Court Team or the Official Solicitor is or becomes the litigation friend or children's guardian of the ward or a party to the proceedings;
- (b) those in which a local authority is or becomes a party;
- (c) those in which an application for paternity testing is made;
- (d) those in which there is a dispute about medical treatment;
- (e) those in which an application is opposed on the grounds of lack of jurisdiction;
- (f) those in which there is a substantial foreign element;
- (g) those in which there is an opposed application for leave to take the child permanently out of the jurisdiction or where there is an application for temporary removal of a child from the jurisdiction and it is opposed on the ground that the child may not be duly returned.

Parties

- 3.1** Where the child has formed or is seeking to form an association, considered to be undesirable, with another person, that other person should not be made a party to the application. Such a person should be made a respondent only to an application within the proceedings for an injunction or committal. Such a person should not be added to the title of the proceedings nor allowed to see any documents other than those relating directly to the proceedings for the injunction or committal. He or she should be allowed time to obtain representation and any injunction should in the first instance extend over a few days only.

Removal from jurisdiction

- 4.1** A child who is a ward of court may not be removed from England and Wales without the court's permission. Practice Direction 12F (International Child Abduction) deals in detail with locating and protecting children at risk of unlawful removal.

Criminal Proceedings

- 5.1** Where a child has been interviewed by the police in connection with contemplated criminal proceedings and the child subsequently becomes a ward of court, the permission of the court deciding the wardship proceedings ('the wardship court') is not required for the child to be called as a witness in the criminal proceedings.
- 5.2** Where the police need to interview a child who is already a ward of court, an application must be made for permission for the police to do so. Where permission is given the order should, unless there is some special reason to the contrary, give permission for any number of interviews which may be required by the prosecution or the police. If a need arises to conduct any interview beyond the permission contained in the order, a further application must be made.
- 5.3** The above applications must be made with notice to all parties.
- 5.4** Where a person may become the subject of a criminal investigation and it is considered necessary for the child who is a ward of court to be interviewed without that person knowing that the police are making inquiries, the application for permission to interview the child may be made without notice to that party. Notice should, however, where practicable be given to the children's guardian.

- 5.5** There will be other occasions where the police need to deal with complaints, or alleged offences, concerning children who are wards of court where it is appropriate, if not essential, for action to be taken straight away without the prior permission of the wardship court, for example –
- (a) serious offences against the child such as rape, where a medical examination and the collection of forensic evidence ought to be carried out promptly;
 - (b) where the child is suspected by the police of having committed a criminal act and the police wish to interview the child in respect of that matter;
 - (c) where the police wish to interview the child as a potential witness.
- 5.6** In such instances, the police should notify the parent or foster parent with whom the child is living or another ‘appropriate adult’ (within the Police and Criminal Evidence Act 1984 – Code of Practice C for the Detention, Treatment and Questioning of Persons by Police Officers) so that that adult has the opportunity of being present when the police interview the child. Additionally, if practicable the child’s guardian (if one has been appointed) should be notified and invited to attend the police interview or to nominate a third party to attend on the guardian’s behalf. A record of the interview or a copy of any statement made by the child should be supplied to the children’s guardian. Where the child has been interviewed without the guardian’s knowledge, the guardian should be informed at the earliest opportunity of this fact and (if it be the case) that the police wish to conduct further interviews. The wardship court should be informed of the situation at the earliest possible opportunity thereafter by the children’s guardian, parent, foster parent (through the local authority) or other responsible adult.

Applications to the Criminal Injuries Compensation Authority

- 6.1** Where a child who is a ward of court has a right to make a claim for compensation to the Criminal Injuries Compensation Authority (‘CICA’), an application must be made by the child’s guardian, or, if no guardian has been appointed, the person with care and control of the child, for permission to apply to CICA and disclose such documents on the wardship proceedings file as are considered necessary to establish whether or not the child is eligible for an award plus, as appropriate, the amount of the award.
- 6.2** Any order giving permission should state that any award made by CICA should normally be paid into court immediately upon receipt and, once that payment has been made, application should be made to the court as to its management and administration. If it is proposed to invest the award in any other way, the court’s prior approval must be sought.

The role of the tipstaff

- 7.1** The tipstaff is the enforcement officer for all orders made in the High Court. The tipstaff’s jurisdiction extends throughout England and Wales. Every applicable order made in the High Court is addressed to the tipstaff in children and family matters (eg ‘The Court hereby directs the Tipstaff of the High Court of Justice, whether acting by himself or his assistants or a police officer as followsā Ĩ’).
- 7.2** The tipstaff may effect an arrest and then inform the police. Sometimes the local bailiff or police will detain a person in custody until the tipstaff arrives to collect that person or give further directions as to the disposal of the matter. The tipstaff may also make a forced entry

although there will generally be a uniformed police officer standing by to make sure there is no breach of the peace.

- 7.3** There is only one tipstaff (with two assistants) but the tipstaff can also call on any constable or bailiff to assist in carrying out the tipstaff's duties.
- 7.4** The majority of the tipstaff's work involves locating children and taking them into protective custody, including cases of child abduction abroad.