

# N<sup>o</sup> 18

## CHAMBERS

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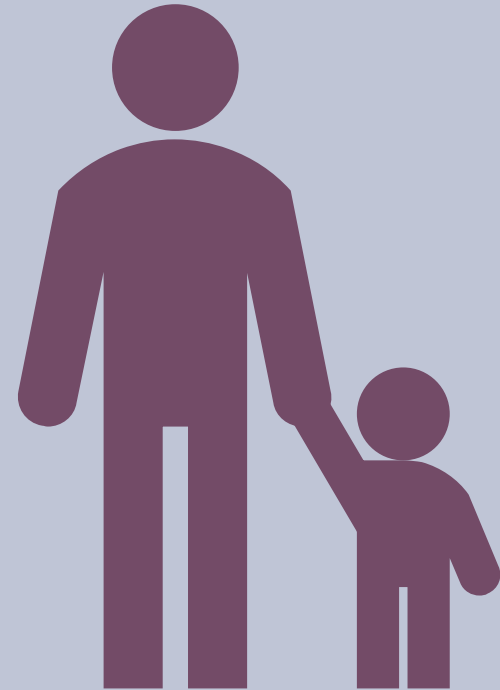
### SECTION 37 REPORTS AND INTERIM CARE ORDERS

Sara Chalk

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# WHEN IS A SECTION 37 REPORT ORDERED?

- A Section 37 report is ordered within private law Children Act proceedings (such as applications for Child Arrangements Orders) when the Court becomes concerned regarding the welfare of the child and there are concerns that the child has suffered or is at risk of suffering significant harm.
- The Court may make a direction for a Section 37 report of its own motion or following the recommendation or request of another party.





WHAT IS SIGNIFICANT  
HARM?

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## WHAT IS SIGNIFICANT HARM?

- Significant harm includes but is not limited to :
  - Physical harm as a result of:
    - A. The young person's own actions for example taking part in risky behaviour – criminality or self harm which the parents are unable to control.
    - B. A parent or third party's behaviour towards the child such as from domestic abuse or which the child is exposed to and which the parent fails to protect the child from. This can also include inappropriate physical chastisement.
    - C. Exposure to parental criminality
    - D. Exposure to alcohol/drug abuse
  - Sexual harm or risk of sexual harm
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# SIGNIFICANT HARM

- Emotional harm including exposure to:
    - A. Domestic abuse
    - B. Parental acrimony and/or alienating behaviours
    - C. Exposure to poor parental mental health
  - Neglect (poor home conditions, not meeting developmental or emotional needs, lack of food etc)
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# POWER OF THE COURT TO ORDER A SECTION 37 REPORT

- **Section 37 (1) of the Children Act 1989 states:**

“Where, in any family proceedings in which a question arises with respect to the welfare of any child, it appears to the court that it may be appropriate for a care or supervision order to be made with respect to him, the court may direct the appropriate authority to undertake an investigation of the child’s circumstances.”

- **Section 37(2) states:**

Where the court gives a direction under this section the local authority concerned shall, when undertaking the investigation, consider whether they should—

- (a) apply for a care order or for a supervision order with respect to the child;
  - (b) provide services or assistance for the child or his family; or
  - (c) take any other action with respect to the child.
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## OTHER POWERS OF THE COURT UNDER SECTION 37

- Section 38 gives the court the power to make an interim care order or interim supervision order where the court gives a direction under s 37(1). The court has to be satisfied that there are reasonable grounds for believing that the child is suffering or likely to suffer significant harm attributable to the care given to the child, or likely to be given, not being what it would be reasonable to expect a parent to give, or the child is beyond parental control. The child must be under 17 years of age.
  - In ***Re L (Interim Care Order: Extended Family) [2013] 2 FLR 302*** the Court of Appeal held that it was not inappropriate for a Judge to make a s 37 direction and an interim care order under s38 where the local authority had already provided a full report and indicated the intention to issue care proceedings. This course of action avoided the procedural obstacles of issuing the application and enabled the court to deal with the urgent matter of making orders for the protection of a child.
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# EXTENSION OF THE SECTION 37 REPORT AND/OR INTERIM CARE ORDER (ICO)

- If an interim care order or interim supervision order is made following a s37 direction it shall expire after 8 weeks if no application has been made by the local authority for an extension or to issue care proceedings under section 31 Children Act 1989. If the 8 week period for the provision of the s37 report has been extended by the court the interim care order shall expire at the end of that extension period if the local authority has not made an application.
- The court has jurisdiction to make more than one s37 direction in any proceedings and can extend an existing direction on the basis of which a further interim care order can be made. However, once the purpose of the s 37 direction is properly discharged and the local authority has discharged its duty there is a jurisdictional line beyond which the court may not go in deploying the power to make further interim care orders



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# WHO UNDERTAKES THE SECTION 37 REPORT?

- Section 37 reports are completed by a social worker within the Local Authority's Children's Services department.
  - Section 37(5) Children Act 1989 states:  
The local authority named in a direction under subsection (1) must be—
    - (a) the authority in whose area the child is ordinarily resident; or
    - (b) where the child is not ordinarily resident in the area of a local authority, the authority within whose area any circumstances arose in consequence of which the direction is being given.
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## HOW LONG DOES A SECTION 37 REPORT TAKE?

The information shall be given to the court before the end of the period of eight weeks beginning with the date of the direction, unless the court otherwise directs.

## NEXT STEPS

If upon completion of the Section 37 report the Local Authority decide not to issue care proceedings and apply for a Care Order or Supervision Order, section 37 (3) Children Act 1989 states:

Where a local authority undertake an investigation under this section, and decide not to apply for a care order or supervision order with respect to the child concerned, they shall inform the court of—

- (a) their reasons for so deciding;
  - (b) any service or assistance which they have provided, or intend to provide, for the child and his family; and
  - (c) any other action which they have taken, or propose to take, with respect to the child.
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# CAN THE LOCAL AUTHORITY REVIEW THEIR DECISION?

**YES!**

Section 37 (6) Children Act 1989 states:

If, on the conclusion of any investigation or review under this section, the authority decide not to apply for a care order or supervision order with respect to the child—

- (a) they shall consider whether it would be appropriate to review the case at a later date; and
- (b) if they decide that it would be, they shall determine the date on which that review is to begin.

- In those circumstances the Court may order an addendum Section 37 report to update on the outcome of any review.
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## WHAT IF THE LOCAL AUTHORITY DECIDE TO APPLY FOR A CARE ORDER/SUPERVISION ORDER?

- If during the course or on completion of the Section 37 report the Local Authority decide to apply for a Care Order or Supervision Order, the Local Authority will issue public law care proceedings under Section 31 of the Children Act 1989.
  - The Local Authority can apply for a Care Order or Supervision Order under Section 31 (1) of the Children Act 1989.
  - Section 31(1) - On the application of any local authority or authorised person, the court may make an order—
    - (a) placing the child with respect to whom the application is made in the care of a designated local authority; or
    - (b) putting him under the supervision of a designated local authority
  - Section 31 (2) - A court may only make a care order or supervision order if it is satisfied—
    - (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
    - (b) that the harm, or likelihood of harm, is attributable to—
      - (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or
      - (ii) the child's being beyond parental control.
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# WHAT IS AN INTERIM CARE ORDER/SUPERVISION ORDER?



**Interim Care Order (ICO)** – an interim/temporary order made for the duration of proceedings or until further order if the Section 38 CA 1989 threshold is met. It gives the Local Authority overriding Parental Responsibility for a Child and allows them to make decisions about the child’s welfare.

**Interim Supervision Order (ISO)** – an interim/temporary order made for the duration of proceedings or until further order if the Section 38 CA 1989 threshold is met. It places a legal duty on the Local Authority to offer support to a family by befriending and assisting them, offering advice and supporting them on childcare matters.

# LEGAL TEST FOR AN INTERIM CARE ORDER/INTERIM SUPERVISION ORDER

- Section 38 (2) Children Act 1989 states: A court shall not make an interim care order or interim supervision order under this section unless it is satisfied that there are reasonable grounds for believing that the circumstances with respect to the child are as mentioned in section 31(2).
- Section 31 (2) - A court may only make a care order or supervision order if it is satisfied—
  - (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
  - (b) that the harm, or likelihood of harm, is attributable to—
    - (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or
    - (ii) the child's being beyond parental control.

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# EFFECT OF AN INTERIM CARE ORDER

- If made an Interim Care Order places a child in the care of the Local Authority for the duration of the proceedings or until further order unless a time limited Order is made.
- **HOWEVER** whilst an Interim Care Order places a child in the care of the Local Authority, it does not mean that a child is automatically placed in foster care or any other care arrangement.
- On an application for an Interim Care Order the Local Authority will put forward an interim care plan for the child which could include placement in a foster placement. To remove a child from a parent on an interim basis requires the Local Authority to prove on a balance of probabilities that the safety of the child requires it, and removal must be proportionate to the risks of allowing the child to remain in the care of the mother – Re G (interim care order) (2011) 2 FLR 955
- Re C (A Child) (Interim Separation), Re [2019] EWCA Civ 1998 – removal must be a necessary and proportionate response to the situation that has arisen. All options must be considered.

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# LEGAL AID FUNDING

- If an Interim Care Order is made by the Court under Section 37(1) whilst a Section 37 report is completed an application for legal aid funding can be made but this will be on a means and merits basis.
- If the Local Authority initiate care proceedings and apply for a Care or Supervision Order (including interim order) the parent will automatically be entitled to legal aid funding and this is not means or merits based.
- If a parent has Parental Responsibility for a child who is subject to an application under Section 31 Children Act 1989 (care proceedings) they will be an automatic Respondent to the proceedings.
- If a parent does not have Parental Responsibility for a child who is subject to an application under Section 31 Children Act 1989 then they will not be an automatic Respondent to the proceedings but will be given notice and they should then apply to be joined as a party to the proceedings.



Legal Aid  
Agency



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# POINTS TO CONSIDER!!!

S37 directions can be useful tools in cases of intractable disputes if the children are suffering harm as a result of one parent's distorted or false views of the other. In *Re M (Intractable Contact Dispute: Interim Care Order)* [2003] 2 FLR 636 the children were removed from their mother under an interim care order and placed with their father under a s 8 order with a 2-year supervision order being made in favour of the local authority.



A Section 37 direction can have serious consequences for a family – public law care proceedings can be initiated and an application made for an interim care order and possibly removal of the child!



Parents must therefore take these directions seriously and fully engage with the Local Authority for the purpose of the Section 37 report. It is imperative that parents receive legal advice on the effect and possible consequences of a Section 37 direction!