



Guidance on the use of the inherent jurisdiction (including wardship) of the High Court to protect vulnerable children

This guidance note should be used where protection of vulnerable children cannot be achieved by other means.

Including cases where the following or known or suspected

- Radicalisation and risk of leaving the jurisdiction
- Sexual exploitation
- FGM
- Forced marriage

Other remedies already exist in relation to 2-4 and these should be considered first:

- *Sexual Risk Orders¹
- FGM protection orders²
- Forced Marriage Protection Orders

**Sexual Risk Orders (SROs) are not the only protective order pursuant to the Sexual Offences Act 2003. The CPS, Chief Constable or National Crime Agency (NCA) can make these applications so it would be a matter for these organisations as to whether that would be progressed.*

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/442151/2015-07-03_FINAL_Guidance_Part_2_SOA_2003.pdf

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/416323/Fact_sheet_-_FGM_-_Act.pdf

The Inherent Jurisdiction (IJ) of the High court enables the court to exercise wide ranging powers to protect individual children. It does not enable protection of a group of children, only those who are subject of the application.

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. The same orders can be made..

The IJ should be used as a last resort when other remedies are not available

Examples of orders that can be made:

- orders to restrain publicity;
- orders to prevent an undesirable association;
- orders relating to medical treatment
- orders to protect abducted children,
- orders for the return of children to and from another state
- orders to confiscate passports and prevent removal from the jurisdiction

Who can apply?

- Any individual
- The local authority
- The Police but only where there is a “genuine interest in the child” in the context of the pursuance of the policing purpose. This will need to be assessed on a case by case basis.

How long does it take?

- If urgent an application can be made by phone to a Judge to obtain an immediate order – this will only last until notice can be given to people who are affected by the order
- An application can be made in person to a Judge without notice to anyone else-
this will only last until notice can be given to people who are affected by the order
- A longer hearing will take place at a time and date set by the Judge

What evidence is needed?

- An application and a statement setting out in detail the factual evidence that is relied on to prove the order is necessary. As this is a civil case, the evidential test is the balance of probabilities

- Police need to be clear what information provided can be shared
- Evidence can be given verbally if the matter is urgent, either by phone or in person, but must be backed up by a statement

Threshold

For the Local Authority – S.100 Children Act 1989

The court may only grant leave (to make the application) if it is satisfied that-

- the result the authority wish to achieve could not be achieved through the making of any order that the authority could apply for other than through the inherent jurisdiction of the court
- there is a reasonable cause to believe that if the court's inherent jurisdiction in not exercised with respect to the child he is likely to suffer significant harm.

Who should apply?

- This will usually be either the Local authority or the Police, depending on who has the most information and which agency would be best placed/most appropriate to take the case forward bearing in mind the Local Authority should take the lead in safeguarding children.
- A strategy meeting should be convened to agree the process to be adopted and orders sought
- Lawyers should be involved as soon as possible to advise on evidence and process
- Police and Local authority lawyers will agree with each other who should apply and what information should be provided

Enforcement

- Through High court
- The High Court Tipstaff is the enforcement officer for these orders. 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.

Professional disagreement

- If agencies cannot agree a course of action the BSCB escalation policy should be used.³

³<https://www.bristol.gov.uk/documents/20182/35012/Escalation+procedure+16022012.pdf>

Effect of IJ Orders

- For Wardship only, the Court has overall responsibility for the child and no significant step in the child's life can be taken without the courts permission e.g going abroad, Police interview.
- The Wardship or individual order lasts for as long as the court thinks necessary –
could be a few weeks or until the child is 18.

Inherent Jurisdiction Process/ Flowchart

