



Child Protection Orders

RFPG

SHERIFF SARA MATHESON

Introduction

- ▶ For emergency protection of children
- ▶ Separate from the children's hearings system, although will normally lead into that system
- ▶ Complicated provisions with short time scales
- ▶ Application can be made under two separate sections; the application should state which section is being founded upon.

Section 38 (frustration of enquiries)

- ▶ Can be sought under this section ONLY by the local authority
- ▶ S38 (2) The sheriff may make the order if the sheriff is satisfied that—
 - (a) the local authority has reasonable grounds to suspect that—
 - (i) the child has been or is being treated in such a way that the child is suffering or is likely to suffer significant harm,
 - (ii) the child has been or is being neglected and as a result of the neglect the child is suffering or is likely to suffer significant harm, or
 - (iii) the child will be treated or neglected in such a way that is likely to cause significant harm to the child,
 - (b) the local authority is making enquiries to allow it to decide whether to take action to safeguard the welfare of the child, or is causing those enquiries to be made,
 - (c) those enquiries are being frustrated by access to the child being unreasonably denied, and
 - (d) the local authority has reasonable cause to believe that access is required as a matter of urgency.

S 38 contd

- ▶ Merely interfering with or making enquiries more difficult will not be sufficient
- ▶ The purpose of this section is to protect evidence that might be used to crystallise the local authority's suspicion in relation to concerns for the child

Section 39 (reasonable grounds for believing harm)

- ▶ Application by anyone
- ▶ S39 (2) The sheriff may make the order if the sheriff is satisfied that—
 - (a) there are reasonable grounds to believe that—
 - (i) the child has been or is being treated in such a way that the child is suffering or is likely to suffer significant harm,
 - (ii) the child has been or is being neglected and as a result of the neglect the child is suffering or is likely to suffer significant harm,
 - (iii) the child is likely to suffer significant harm if the child is not removed to and kept in a place of safety, or
 - (iv) the child is likely to suffer significant harm if the child does not remain in the place at which the child is staying (whether or not the child is resident there), and
 - (b) the order is necessary to protect the child from that harm or from further harm.

S39 Contd

- ▶ BOTH paragraphs must be fulfilled
- ▶ Looks to suffering in the present and future
- ▶ Likelihood of harm to be tested on balance of probabilities
- ▶ Must be “significant” harm
- ▶ Includes physical, emotional and developmental harm
- ▶ Imports the ECHR proportionality test: the more draconian the measure, the greater must be the risk

Proportionality

- ▶ P, C and S v UK (2002) E.H.R.R.31
- ▶ “the taking of a new born baby into public care at the moment of its birth is an extraordinarily harsh measure. There must be extraordinarily compelling reasons before a baby can be physically removed from its mother, against her will, immediately after birth.”

Changes in the 2011 Act

- ▶ There were few changes anticipated in the procedure for CPOs, but there have been a couple of interesting cases
- ▶ GCC, Petitioner 2013 SLT 917- a case with a very particular set of facts, but authority for the view that the proper course for the Reporter, when faced with an incompetent order, is to seek to suspend or reduce it by application to the Ct of S.

Application for a CPO 2015 SLT (Sh Ct) 9

- ▶ Sheriff Holligan issued written reasons in this case relating to the procedure to be followed in such cases
- ▶ The local authority required to appear by its solicitor
- ▶ Which paras of s39 are applying?
- ▶ Is it necessary for the parent (s) to be represented (J v The Lord Advocate; E v The Lord Advocate, 2013 SLT 347). Sh Holligan does not think that it is.

s43

- ▶ Notice of order “as soon as practicable”
- ▶ This was a change from the '95 Act which said “notice shall be given forthwith” and an attempt had to be made to implement it within 24 hours or it ceased to have effect
- ▶ No cases about this yet and it remains to be seen what will be viewed as practicable

What is the Sheriff looking for

- ▶ Identify the applicant
- ▶ Identify the child and where the child currently is
- ▶ State which section the application is made under and what the grounds are
- ▶ State whether the parents are available or are to be represented
- ▶ The application cannot be adjourned to a later date so, for example, there cannot be a delay to allow a safeguarder to be appointed

The process

- ▶ Sheriff Kearney (!!):
- ▶ “The hearing is not a “proof”. The strict rules of evidence do not apply. The sheriff is entitled to have regard to hearsay evidence and will consider the whole information which has been presented and draw such inferences as common sense may suggest. The sheriff has to be “satisfied”.
- ▶ Even where “satisfied” the sheriff retains discretion and is not obliged to make the order sought.

S37 matters authorised

- ▶ The CPO may, in terms of section 37:
 - Require any person to produce the child to a specified person
 - Authorise the removal of the child to a place of safety and their keeping in that place
 - - Authorise the prevention of the removal of the child from any place where s/he is staying
 - - Authorise the carrying out of an assessment either of health or development or of the way s/he is being treated or neglected
 - - Any other requirement to safeguard or promote the welfare of the child

Other matters

- ▶ Section 40: consider whether to include a non-disclosure direction
- ▶ Section 41: consider whether to include a contact direction
- ▶ The normal requirement to have the views of the child does not apply in relation to CPOs
- ▶ The welfare principle in section 25 does apply to CPOs

Once CPO made

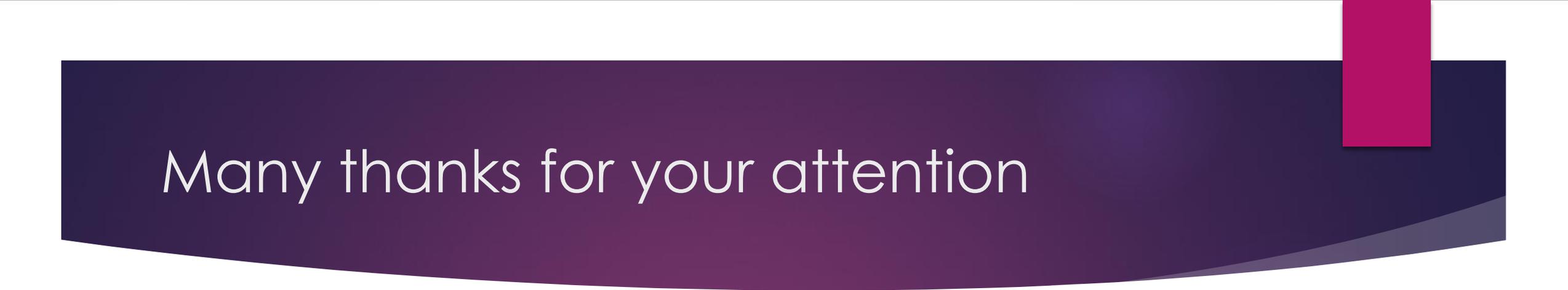
- ▶ Can be reviewed in terms of application for review or termination to the sheriff any time before the second working day hearing has commenced
- ▶ Assuming that doesn't happen second working day hearing is convened under s45 or 46
- ▶ A failure to hold this hearing brings the CPO to an end
- ▶ Limited to considering whether it is satisfied that the conditions for the making of a CPO are met
- ▶ If not met then terminate the order. If met then:
 - Continue the order – continue and vary the order

Contd

- ▶ If continued at second working day hearing application can again be made to the sheriff for review within two working days
- ▶ Assuming that does not happen then there will be an eighth working day hearing, which will always mark the end of the CPO as that hearing will require grounds of referral to be put and if the child is to remain out of parental care an ICSO will require to be made.

Practical matters

- ▶ Discussion of matter as per example in handout



Many thanks for your attention

▶ sheriffsmatheson@scotcourts.gov.uk