

Fact-finding recommendations – practice aid

This practice aid should be used to support thinking and decision making before a recommendation for a fact-finding hearing (FFH) is made to the court.

If there are disputed reports of domestic abuse and/or other forms of harm, do you consider a separate fact-finding hearing is necessary? **A finding of fact hearing will not be required in every case where domestic abuse is raised as a concern**, nor should one be unnecessarily recommended. First and foremost, where there are concerns about domestic abuse, the safety of the child/ren and adults, there needs to be an effective assessment about the nature and impact of any abuse as described throughout the Domestic Abuse Practice Policy.

Use this as the basis of exploring the reports and the response to these in the telephone interviews and informing your decision as to the advice for fact finding.

Thinking about recommendation for a fact-finding hearing:

Fact-finding hearings should only be directed where they are relevant, necessary, proportionate and serve a clear purpose. When making this recommendation the report writer should have regard to the provisions of the Family Procedure Rules Practice Direction 12J, paragraphs 5, 16 and 17.

The court will need to consider whether there is other evidence available to the court that provides a factual basis on which it can proceed to make decisions or whether any disputed issues could form part of any final hearing.

The Cafcass guidance can be located here: [Fact-finding guidance.pdf](#) and is also annexed below. It sets out circumstances when a fact-finding hearing is not needed and the impact of delay.

Lady Justice Macur's [Fact Finding Hearings and Domestic Abuse in Private Law Children Proceedings](#) guidance is directed at the judiciary but should also inform the advice of FCAs with regard to the necessity of fact finding.

Only reported concerns that will have an impact on the welfare of the child and make a difference to the arrangements for that child, will need to be considered in fact finding hearing.

Consider the following.

1. How are the reported concerns likely to be relevant in deciding whether to make a Child Arrangements Order, or its terms?
2. Do you already have information, such as convictions or admissions or outcomes of LA assessments which provide a sufficient factual basis for the assessment?
3. Is it necessary to hold a fact-finding hearing to achieve this, or is there sufficient uncontested information available to:
 - provide a factual basis for a Child Impact Report/Section 7 report
 - provide a basis for an accurate assessment of risk and the impact of that risk upon the individual child
 - provide a narrative to frame the discussion with the child
 - allow the court to consider any final welfare-based order(s) in relation to child arrangements?
4. The position of the reported victim may influence the court's decision about whether the fact finding is necessary. Can the alleged victim be supported to participate in any hearing, if this is felt to be necessary?
5. Identify whether any third-party disclosure orders will be necessary.

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Keep the child in mind

- In considering a recommendation for a fact-finding hearing, have you also considered the current arrangements for the child and how those arrangements were decided
- If recommending a fact-finding hearing, have you considered the interim arrangements and whether they are safe/ beneficial pending the outcome of the FFH?
- If you are concerned about current risk of harm complete a 16A risk assessment, being specific about what you are asking the court to do.
- Is it necessary to make a referral to the Local Authority?
- If you have recommended a fact-finding hearing, the steps and decisions above regarding referral/16A and interim arrangements should **be reviewed and discussed with a manager before a decision to close the case, pending the outcome of a fact-finding hearing.**

Summary of analysis – to be recorded on the Child First record

Annex 1:

Cafcass Practice guidance in relation to fact-finding hearings

Overview

This guidance sets out the legal context in which the court may direct a fact-finding hearing, and the role of Cafcass. It should be used by Cafcass staff and contractors when considering the best interests of children in relation to fact-finding.

1.0 Legal context

1.1 Practice Direction 12J sets out the legal context. The wording is as follows:

Paragraph 16: The court should determine as soon as possible whether it is necessary to conduct a fact-finding hearing in relation to any disputed allegation of domestic violence or abuse:

- (a) in order to provide a factual basis for any welfare report or for assessment of the factors set out in paragraphs 36 and 37 (below);*
- (b) in order to provide a basis for an accurate assessment of risk; or*
- (c) before it can consider any final welfare-based order(s) in relation to child arrangements; or*
- (d) before it considers the need for a domestic violence-related Activity (such as a Domestic Violence Perpetrator Programme (DVPP)).*

Paragraph 17: In determining whether it is necessary to conduct a fact-finding hearing, the court should consider:

- (a) the views of the parties and of Cafcass or CAFCASS Cymru;*
- (b) whether there are admissions by a party which provide a sufficient factual basis on which to proceed;*
- (c) if a party is in receipt of legal aid, whether the evidence required to be provided to obtain legal aid provides a sufficient factual basis on which to proceed;*

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(d) whether there is other evidence available to the court that provides a sufficient factual basis on which to proceed;

(e) whether the factors set out in paragraphs 36 and 37 below can be determined without a fact-finding hearing;

(f) the nature of the evidence required to resolve disputed allegations;

g) whether the nature and extent of the allegations, if proved, would be relevant to the issue before the court; (h) whether a separate fact-finding hearing would be necessary and proportionate in all the circumstances of the case.

2.0 When a fact-finding is needed

2.1 When the court makes a decision about whether to hold a fact-finding hearing it should consider the views of the parties and of Cafcass. Whether the court is seeking a response from Cafcass to a request for views in relation to the listing of a fact-finding, or the Family Court Adviser (FCA) is recommending such a hearing, the factors below should be taken into consideration. A fact-finding hearing is not always necessary and both Cafcass and the court have to consider whether a fact-finding is necessary and proportionate in the circumstances of the case.

2.2 The purpose of the fact-finding is to provide a factual basis for the assessment of risk following disputed allegations of domestic abuse, sexual abuse, and physical harm (including non-accidental injuries), where there is inconclusive, insufficient or no independent evidence to support the claim either way and without which, the risks cannot be assessed.

2.3 This does not mean that the FCA must always recommend a fact-finding where there is no corroborating evidence, for example where there are local authority investigations which resulted in no further action. The decision needs to be taken on a case by case basis, weighing up the consequences of there being unresolved allegations, against the potential negative consequences of holding a fact-finding hearing, which are listed below.

3.0 When finding of fact hearings are not needed

3.1 If there is any corroborating evidence of the allegations, such as convictions, admissions by a party or other documentary or 'static' evidence, a fact-finding hearing would not usually be necessary and a risk assessment can be undertaken on the basis of the information already known. The domestic abuse practice pathway is the reference for undertaking risk assessments in respect of domestic abuse.

4.0 Impact on the children or parties

4.1 There may be negative consequences for the child in having a fact-finding hearing. These include delay, stress and trauma for the children or parties, and cost and duration of the hearing, especially where there are litigants in person. Cafcass must be mindful of this, without compromising safeguarding.

4.2 The court must consider what support the alleged victims and perpetrators should be given at the hearings. One or more of the parties may want the child to give evidence at a fact-finding hearing, or the child themselves may wish to give evidence and the court would have to carry out an assessment of whether it is appropriate taking into account the relevant guidance in *Re W*. In such cases the court may ask for an assessment of the impact on the child of giving evidence. If a non-

subject child is to give evidence the court has to consider the same issues and may even direct that the child be joined as an intervener to the fact-finding. If this is the case, Cafcass will not undertake a Re W assessment in respect of the non-subject child.

5.0 Avoiding delay

5.1 Practice Direction 12J is clear that an early assessment of the need for a fact-finding is imperative. This may be within the safeguarding letter or at the first hearing and the balancing exercise outlined in this guidance should be carried out by the Early Intervention Team. It is not necessary for a section 7 report to be fully completed before identifying the need for a fact-finding hearing for the courts consideration, as this inevitably causes delay.

6.0 Additional information

6.1 Cafcass acknowledges that the findings of the court are binding on all parties and any report prepared under section 7 will be based on the narrative which has been established by the court. However, there may be circumstances where Cafcass wants to request the court to reconsider or reopen a fact finding for example when:

- a) significant relevant information has come to light which was not available to the court at the time of the fact-finding hearing; or
- b) the court has made no findings and omitted to reach a view about relevant and significant risk information.

In these circumstances, which it is accepted will be rare, Cafcass should inform the court to set out how this will impact upon the risk assessment and if necessary ask for the case to be reconsidered.

6.2 If the risk assessment concludes that the decision of the court places the child at risk of harm, the FCA can submit a report under section 16A and may consider a referral to the local authority under section 17. If there is a concern that the child is at risk of significant harm then a referral under section 47 will be made.

7.0 Other considerations

7.1 Findings are not required for a referral to be made to a domestic violence perpetrator programme, if there is sufficient undisputed or corroborated evidence of domestic abuse and there is some acknowledgement of the behaviour by the perpetrator.²

7.2 The hearing should be limited to establishing the facts that are pertinent to making the welfare decision and facilitating a robust risk assessment by Cafcass. The Scott Schedule should be succinct, relevant and focused. This is a matter for the court to manage.

7.3 The court may determine disputed facts within a hearing listed for another purpose, such as for directions. This can mean that delay is avoided as it may not then be necessary to hold a standalone fact-finding hearing, and courts may prefer this approach. From a Cafcass perspective this approach can be positive where it reduces delay for the child, but caution is necessary in endorsing this if it leads to key risk information being missed or cross examination of parties who are not fully prepared or represented.

*This guidance has been produced in order to provide clarity in this area of practice and in response to differing expectations from courts across the country. The guidance has been produced by a working group of FCAs, managers, and NIS Improvement Managers.

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