



New Park Court

Family Briefing

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Family Briefing

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In her Family Law practice, Emma has a wealth of experience of both private and public family matters. She is regularly instructed within private family law proceedings by both applicants and respondents in applications such as Child Arrangement Orders to determine residence and contact for a child, specific issues and prohibited steps orders.

Finding of Fact hearings: where are we now?

Three interesting 2025 cases on fact finding hearings discussed

Finding of fact hearings have had a make-over in the last five years. Most family practitioners will be very familiar with the dizzy heights of 2021 when in *Re H-N and Others (children) (domestic abuse: finding of fact hearings)* [2021] EWCA Civ 448, there was a monumental shift in the way the courts considered how Practice Direction 12J should be interpreted.

This case drew a lot of attention given it was four joined appeals all dealing with interpretation issues of the practice direction – Family Proceedings Rule 2010: Practice Direction 12J – Child Arrangements and Contact Orders: Domestic Abuse and Harm (PD12J) which sets out what a court is required to do in domestic abuse cases.

Re H-N permitted interventions from many high-profile interested parties, including Cafcass and various charities, making it the biggest ‘consultation’ on fact-finding hearings in recent history.

What came from this Court of Appeal case was essentially a reset to the foundations of what the court should consider, by providing guidance on when to hold a finding of fact hearing, the use of Scott schedules and whether there was any relevance of criminal law concepts to family law proceedings. It is also widely renowned for providing clarity in the approach to be taken when the courts consider controlling and coercive behaviours.

Re H-N told us the proper approach to the decision of whether to hold a finding of fact hearing is to consider whether it is ‘necessary and proportionate’ by:

- a) Considering the nature of allegations, and the extent of which they are relevant, when considering the welfare decisions the court must make;
- b) Whether it is necessary to provide a basis of assessment of risk, and therefore the impact of the alleged abuse on the child(ren); and
- c) Whether there is other evidence which would provide sufficient factual basis to proceed.



K v K [2022] EWCA Civ 468 added to this guidance on interpreting PD12J by asking judges to identify the welfare issues in proceedings as early as possible, and for them to consider the nature of the allegations, and whether the facts alleged were relevant to those welfare issues. If they were, it would likely be the case that a finding of fact hearing was necessary to deal with these disputed issues.

Four years on, 2025 has brought a host of new cases looking at the ongoing issues and the ever-evolving way in which a court considers whether a finding of fact hearing is warranted or not.

A noteworthy mention at this stage is of the Family Justice Council 2024 guidance responding to allegations of alienating behaviours.

It is now an established understanding that there is no such thing as ‘parental alienation syndrome’, and the question of whether a parent has been alienated from their children by the other parent, is a matter of fact to be determined by a judge, usually in a finding of fact hearing. (Re C (‘Parental Alienation’: instruction of expert) [2023] EWHC 345).

The need to consider more widely where any negative behaviours from a child against a parent come from, and whether these are appropriately justified reactions in light of any domestic abuse found, has widened the scope of finding of fact hearings significantly.

With that comes further case law as to what finding of fact guidance ought to be followed. Here are three case-law updates over the last 12 months.

ER v NT (Need for fact-finding hearing) [2025] EWHC 2146 (Fam) Mr Justice MacDonald

The mother in this case appealed a decision by a circuit judge to refuse her application for a finding of fact hearing, instead ordering interim indirect contact with their child, born in 2023. The appeal was allowed.

The judgment summarised the applicable law in both Re H-N and K v K, noting the judge failed to properly identify and analyse the allegations made which could determine a wider pattern of controlling and coercive behaviour.

The judge improperly relied upon the father’s notably limited admissions to indicate a finding of fact hearing was not necessary and noted that there were no serious allegations post-dating the child’s birth, which prevented him from fully considering whether a pattern of behaviour was established.

The fact that allegations predated the birth of the child, and extended over a significant period, ought not to have meant the allegations ‘irrelevant’ but instead could be highly relevant when considered in the wider context of the other allegations and behaviours alleged.

Re A (Appeal: Finding of Fact) [2025] EWHC 1279 Mr Justice Hayden

The father in this case appealed findings made against him over three years earlier, that he had raped the mother. Hayden J commented that efficient and proportional case management including strict adherence to orders ought not to be merely aspirational. Indeed, judicial continuity is ‘itself a facet of child protection.’

What allegations ought to be tried at any finding of fact hearing ought to be considered and sifted out to determine which are relevant in deciding the welfare of the child.



'The decision to conduct a fact-finding hearing, in respect of domestic abuse, doesn't automatically open a floodgate to the litany of allegations which may be years old.' Hayden J also said that the cross-contamination of criminal and family law in the finding of fact area was fundamentally wrong; it doesn't mean that the finding of fact hearing will not be required to consider whether the victim was forced or submitted to sex, or even if they were 'raped'. The judge here distinguished between 'rape' as defined by law in the criminal context, from the ordinary meaning which the word has in everyday life.

Re A (A Child) (Appeal: finding of rape) [2025] EWHC 1500 Ms Justice Henke

This was a High Court judgment overturning a rape finding. The father successfully appealed against a finding that he had raped the mother in the case following a finding of fact hearing.

Henke J was critical of the rationale in the judge's decision to find the rape had occurred, finding it 'abstruse, inconsistent and ambiguous' and therefore 'rationally unsupportable.' Despite this, Henke J was satisfied that other findings made by the judge were properly supported by evidence. The evidence ought not to be looked at in 'compartments' and without having regard to each piece of evidence in its totality: the judge had erred in making the rape finding.