PUMP COURT

CHAMBERS

Private Law Update

6th November 2025

Jennie Swan and Nida Ali

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Overview

Jennie Swan

- General Case Law Update

Nida Ali

- Case Law Update – Fact Finding Hearings

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Re M (Children: Contact in Prison) [2024] EWCA Civ 1104

- Two children aged 12 and 10.
- F was convicted in April 2024 of raping M on two occasions in 2019. Sentenced to 12y in prison.
- Subsequent to the conviction F was bailed and was offered supervised contact but did not take this up. He had not seen the children for some months.
- The CG had spoken to the children and had reflected their views in a PS. They wanted to see F and hoped he would be OK, however had a limited understanding of why he was in prison.
- The CG recommended contact only by letter, acknowledging the children's wishes and feelings but also considering the impact on M.
- The Judge ordered direct contact 3x per year for 4h in prison, accompanied by F's current partner and for 30m telephone contact once per month.
- M appealed, supported by the CG.

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Re M (Children: Contact in Prison) [2024] EWCA Civ 1104

- Four relevant welfare checklist elements for the decision maker:

  (a) the ascertainable wishes & feelings of the children,

  (b) their emotional needs,

  (e) any emotional harm they were at risk of suffering,

  (f) how capable each parent, and any other relevant person, was of meeting the children's needs.

The checklist is supplemented by PD12J, in particular §36 & 37. §37 requires the Court to consider

(d) the likely behaviour during contact of the parent again whom findings are made and its effect on the child; and

(e) the capacity of the parents to appreciate the effect of past domestic abuse and the potential for future domestic abuse

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Re M (Children: Contact in Prison) [2024] EWCA Civ 1104

Leiven J had stated her conclusion but “said very little to support it”. She did not adequately evaluate:

(1) The fact that F has been convicted of domestic abuse of a most harmful kind, a finding which binds the Family Court.
(2) The impact of the rapes and of the order on M, as required by PD12J.
(3) The significance of F's unrepentant attitude since conviction as a measure of his ability, and that of Ms V, to meet the children's needs.
(4) The weight that was properly due to the children's wishes in the light of their limited understanding of the family situation and their apparently settled state.
(5) The balance between their need for contact with F and their need for continuity of secure care by M.
(6) The potential for unsupervised contact to unsettle the children and harm their relationship with M by exposing them to conflicting narratives.
(7) The appropriateness of Ms V being the facilitator of contact, given her identity of views with F.
(8) The practicality of telephone contact being supervised.
(9) The justification within the evidence for rejecting the expert assessment of the Guardian.

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Re C (A Child) (Change of Given Name) [2024] EWCA Civ 1582

- C, aged 16 years, was one of three siblings living under a CAO order for shared care. C had significant physical and emotional needs, had identified as non-binary for circa 3 years and wished to be referred to as 'they/them'. Previously, C has expressed interest in puberty blockers but no longer sought gender treatment but wished to identify as non-binary and wanted to change their given name from one associated with a male person to one commonly used by either gender.
- C had been using the gender-neutral name socially for about three years and felt far more comfortable using that name. C's mother sought a SIO under s8 CA1989 for permission to change C's given name to that of a gender-neutral name.
- At first instance HHJ Tolson dismissed the application considering that the case was dictated by C's gender issues.
- HELD: allowing the appeal and substituting an order permitting the child's given name to be legally changed

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Re C (A Child) (Change of Given Name) [2024] EWCA Civ 1582

- King LJ was very clear that this decision 'Should not be regarded as a 'gender' appeal' but rather a case concerning a change of name in respect of a capacitous young person who is shortly to reach the age of 16';
- **Dawson v. Wearmouth [1999] 1 FLR 1167** made clear that an application to change a surname was to be informed by the welfare principle.
- s13(1)(a) of the CA 1989 only applied to a child's surname, but it was now well established that the approach to a change of name was identical regardless of whether a court was considering a given name or a surname.
- HHJ Tolson had been wrong to link the issue of C's name to their gender identity. C had used a completely conventional gender-neutral forename for circa 3 years, wanted to change to that name legally, felt more comfortable with that name and it related strongly to their strongly held sense of social personal identity and not simply their gender identity.
- The issue was a straightforward welfare matter effectively uncoupled from any issue surrounding C's non-binary status. Further, Art 8 rights of a person of C's age outweighed the Art 8 rights of those with PR.

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Re A, B & C (Child Arrangements: Final Order at Dispute Resolution Appointment) [2025] EWCA Civ 55

Court of Appeal Decision

- At first instance the matter had been heard by a DDJ who had previously heard the case in 2019 and had made a shared lives with order.
- Subsequent to the 2019 final decision there had been further litigation in 2020 which had concluded with the same outcome.
- In 2023 M had issued a further application to vary the CAO. Within these proceedings F applied for a s.91(14) order.
- At the FHDRA the matter was heard by DDJ O'Leary. She gave directions for the parents to file statements addressing the change in circumstances since the previous proceedings. CAFCASS were to file a safeguarding report.
- At DRA, the Judge read the parents (lengthy) statements, heard submissions and read the SG letters (which did not recommend a further s.7 report).
- She dismissed M's application and made a s.91(14) order

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Re A, B & C (Child Arrangements: Final Order at Dispute Resolution Appointment) [2025] EWCA Civ 55

First Appeal

- M appealed on the following grounds:
  1. the Judge was wrong to summarily dismiss M'a application to vary the CAO and refuse to order a s.7 report in the context of a material change in circumstances and serious concerns about the children's welfare and the current CAO not meeting their needs,
  2. the Judge was wrong to refuse a s.7 report, resulting in a gap in the evidence relating to the children's wishes and feelings particularly,
  3. the Judge was wrong to make "findings" about M without her being put on notice or having the chance to give evidence, there was no evidential basis for such findings,
  4. the Judge was wrong to refuse M permission to disclose a recital of the 2019 order to the school,
  5. the Judge was wrong to make a s.91(14) order when CAFCASS did not recommend it and previous applications had been made by F.
- Permission was granted, but the appeal was dismissed

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Re A, B & C (Child Arrangements: Final Order at Dispute Resolution Appointment) [2025] EWCA Civ 55

Second Appeal

- M appealed to the CofA on broadly the same grounds. The Court noted that:
  - M's application was of limited scope: she sought to reduce the time the children spent with F
  - Although there was no oral evidence there was extensive written evidence
  - The children were between 5 and 10, and had had the involvement of two ISWs in previous proceedings to ascertain their wishes and feelings
  - the Judge had made "observations" about M, rather than formal "findings", which she was entitled to do, particularly noting the previous judgments in contested proceedings

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Re A, B & C (Child Arrangements: Final Order at Dispute Resolution Appointment) [2025] EWCA Civ 55

Even where the parties are unable to reach agreement, the Court has the power to bring proceedings to an end if satisfied that this is in the best interests of the children.

In cases such as this one, where there have been proceedings relatively recently in which Judges have made orders after contested hearings, it is likely that the Court will decide that there should be no further investigation unless there has been a significant/material change in circumstances.

There is nothing new in the idea that Judges have a discretion as to how to exercise their case management powers in children's cases, although the obligations on Judges when exercising that decision to be rigorous in case management are now in sharper focus.

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Re E (Children: Costs) [2025] EWCA Civ 183

F's appeal from a decision of a Deputy HC Judge not to make a costs order against M at the conclusion of a FFH.

- Children were aged 11, 10, 8, and 3.
- Parties separated in January 2022. The children remained with M, and F had not seen them since.
- Both parties made allegations against each other. M's included rape. By April/May 2022 M was making extreme allegations against F, including that he had physically and sexually abused some of the children, and allowed others to sexually abuse them. This had resulted in ABE interviews of the children.
- No Police action was taken against F, who alleged that M was making up the allegations to alienate the children from him.
- Findings were made against both parents, each succeeded on some but not all of their allegations. M's allegations of rape of her and sexual abuse of the children were not found.
- By the end of the FFH F had incurred over £75,000 legal costs. M was legally aided.

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Re E (Children: Costs) [2025] EWCA Civ 183

The Judge noted that M's allegations had emerged "piecemeal" over 8 witness statements and that there was "considerable force" in the argument that the serious allegations of sexual abuse of the children had only emerged after it became clear to M that this was the only way of preventing contact between the children and F.

He found that she had persuaded herself that F had sexually abused the children. She had pressured the children to "start talking" and persuaded them that F is a bad person who posed a danger to them.

F sought a costs order. M had legal aid but a costs order would act as a gateway to making an application to the LAA pursuant to s.26 LASPO.

The Judge made no order as to costs on the basis that the allegations of both parties had been tried and he had made some but not all of the findings sought by both.

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Re E (Children: Costs) [2025] EWCA Civ 183

- The Court confirmed the general practice of not awarding costs against a party in children proceedings, although the Court retains a discretion to do so in exceptional circumstances, including cases where a party has behaved reprehensibly or unreasonably in relation to the proceedings. This applies equally to public or private law cases, irrespective of whether a party is legally aided. There is no difference between a FFH or any other hearing [§23]
- Previous authorities referring to the 'ring fencing' of costs at a FFH had not survived the Supreme Court decisions in **Re T (Children) (Costs: Care Proceedings: Serious Allegation Not Proved) [2012] UKSC 36** and **Re S (A Child) (Costs: Care Proceedings) [2015] UKSC 20**.
- The 2023 decision of **A Mother v A Father [2023] EWFC 105** which sought to draw the distinction was "wrong in a number of respects" - the correct position is at §23

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Re E (Children: Costs) [2025] EWCA Civ 183

HELD:

- The Judge was right to look at the whole picture. Cross-applications are commonplace and the fact that M had not proved her rape allegation was not a basis for penalising her in costs
- The extreme allegations of sexual abuse, including by handing the children to a paedophile 'sex ring' were of an entirely different character. There was no equivalence between these extreme allegations and more commonplace ones of domestic abuse: they had transformed the litigation and led to hugely increased costs
- The Judge was wrong to refuse to order costs on the basis that he had made a mixture of findings without considering his power to order that M should bear a proportion of F's costs
- The Judge should not have given weight to his finding that M had persuaded herself that the allegations of sexual abuse were true - the Judge is not assessing how reasonable M considers her behaviour to have been, but assessing the matter objectively
- The Judge had been unduly indulgent in assessing M's motivation and should have taken into account a number of striking features including the link he had found between M's allegations and her realisation that this as the only way to prevent F from having contact.
- M was ordered to pay half of F's costs up to the judgment of the FFH, excluding representation at hearings which an order was made that there be no order for costs.

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Re O (Domestic Abuse: International Relocation) [2025] EWCA Civ 888

F's appeal following M being granted permission to relocate with the two children to the UAE.

Background:

- The parents had extensive ties and links with other countries. Neither parent had family or owned property in the UK, although the children were British nationals.
- The parties met in 2012 and separated in 2021. Following separation the children lived with M but spent extensive time with F, including overnights and (UK) holidays.
- In October 2021 M issued an application for a CAO. She made allegations of domestic abuse and a FFH was undertaken.
- Serious findings were made against F, including serious physical abuse, attempted suffocation, coercive and controlling behaviour towards M, and physical chastisement of the older child.
- As a counterpoint, the SW who had supervised F's contact said that "much was positive" about his parenting and his relationship with the children.
- At a final hearing in February 2023 the Judge made a lives with order to M and ordered that F's contact with the children would be unsupervised in the community and supervised at his home.

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Re O (Domestic Abuse: International Relocation) [2025] EWCA Civ 888

- In May 2023 M issued an application to relocate with the children to Dubai. Initially this was based on her financial situation in the absence of significant financial support from F. Subsequently her focus shifted to her need to "move on" from the trauma of the domestic abuse.
- Two CAFCASS reports did not make a positive recommendation either way, but did consider that M's application was "genuine, well thought out, and finely balanced"
- In his judgment, the Judge correctly directed himself as to the law regarding international relocation and determined two outstanding findings of fact: that F had spent a short amount of time with the children unsupervised in his home, and (much more concerningly) that he had physically chastised the younger child and sought to blame the older child for bringing this to the attention of CAFCASS.
- The Judge also made findings that F had not addressed any of the issues set out in the 2022 judgment, and that his domestic abuse of M and the children was continuing.
- The Judge accepted that M's relocation plan lacked some coherence and detail but reflected on the length of the proceedings which made it difficult to set out the plan in detail. He was satisfied that her plan was well thought out and realistic.
- The Judge also noted the significant impact of the proposed move on F's relationship with the children. He noted, however, that this was not a "well functioning status quo".

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Re O (Domestic Abuse: International Relocation) [2025] EWCA Civ 888

On Appeal:

- F's appeal proceeded under three main headings:
  1. the Judge failed to consider the proportionality of the decision to give M permission to relocate to the UAE;
  2. the Judge had been overly swayed by sympathy for M as the victim of domestic abuse,
  3. M's stated motivation for the move and the formulation of her plans, had shown a concerning lack of consistency and clarity.

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Re O (Domestic Abuse: International Relocation) [2025] EWCA Civ 888

HELD:

- If domestic abuse is proved, the Court will consider its orders in an international relocation case in just the same way as it would in a domestic private law case
- However, the Judge will need to factor in additional characteristics of an international relocation which will include (but not be limited to) the geographic distance between the perpetrator parent and the subject child, the availability of measures to protect the victims of domestic abuse and the likely change of jurisdiction post-relocation [§93]
- In such a case the Court may well find it appropriate to consider the following (in relation to s.1(3)(e) CA 1989):
    1. whether the abuse is in any respect ongoing, and how the victim/s can be protected in each jurisdiction,
    2. the extent to which, if at all, the abuse has informed or influenced the applicant's decision to apply to relocate,
    3. what support will be available to the victims of abuse (parent or child) in this country and in the country to which relocation is sought,
    4. how the abused parent/child can be protected from further abuse from the perpetrator while living in this country and in the country to which relocation is sought - orders? Protective measures?
    5. how ongoing risk from the perpetrator can be assessed and/or managed in this country or abroad ("the Court should ensure that any order for contact will not expose the child to an unmanageable risk of harm" PD12J §35) this is likely to be relevant to CAO 'spend time with';
    6. what professional or other supervision of contact is available both in this country and in the country to which relocation is sought? How can indirect contact be managed and/or (if relevant) supervised [§94]

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Re O (Domestic Abuse: International Relocation) [2025] EWCA Civ 888

- In view of the prominence which the proportionality argument assumed in this appeal, I suggest that Judges dealing with similar applications may be well advised to acknowledge that they have considered the Art 8 rights of the parties and the proportionality of the outcome within the wider best interests review, so as to avoid a challenge to their reasoning.
- The Judge was not improperly swayed by sympathy for M. In a case where domestic abuse is established the Court is required to afford appropriate weight to such findings and to conduct its risk assessment in accordance with PD12J.
- The fact that the expert evidence suggested that there would essentially be no effective jurisdiction going forward for determination of welfare disputes relating to the children was troubling, but not fatal to M's case where the Court had assessed that M genuinely recognised the benefit of F to the children's lives and would promote the relationship.

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KL v BA [2025] EWHC 102 (Fam)

- Parties formed a relationship in 2019 and subsequently a child was born. The man, KL, believed he was the father and he and the mother, BA registered the birth together with KL being named on the birth certificate as the father. The relationship ended and DNA testing established that KL was not the biological father. However, he had a close bond with the child and wished to continue his role as father by seeking CAO. In 2023 he applied for a PR Order.
- At first instance the Magistrates held that he already had PR and BA sought to have that removed. The Judge indicated that she would make a declaration of non-parentage.
- ISSUES: whether the effect of such a declaration in respect of a man who was not married to child's mother yet was named as father on the birth certificate and later shown not to be the biological father, rendered his putative acquisition of PR under s.4(1)(a) of CA1989 void ab initio, or whether he had and retained PR that could only be removed by court order. If the latter were correct, the question arose as to whether the judge could make such an order automatically or whether a welfare analysis was required.

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KL v BA [2025] EWHC 102 (Fam)

- HELD: KL did not acquire PR under s.4(1)(a) of CA 1989 when he was mistakenly registered as the child's father on her birth certificate and so he never held PR. The natural and ordinary meaning of the words used in the statute meant that he was not eligible to register the child's birth with the mother and thus acquire PR.
- The clear intention of Parliament was to convey PR only to biological fathers pursuant to that provision.
- There was no legal presumption that a man named on a birth certificate was the biological father. Rather, the registration of the birth was simply evidence of parentage and, if an issue arose as to that parentage, that must be resolved by the court: See **P v. Q and F (Child: Legal Parentage)[2024] EWCA Civ 878.**
- The use of the word 'person' rather than 'father' in s.4(2A) of CA 1989 was entirely consistent with the ordinary meaning of the words used in s.4(1)(a) and did not require that s.4(1)(a) be interpreted as granting a man in KL's position PR.
- As no legal difficulties resulting from a man's putative PR being void ab initio were identified in the course of submissions or previously decided cases, the court was not persuaded that there was any public policy justifying a departure from the natural and ordinary words of s.4(1)(a). No order was required to remove PR.

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Fact Finding Hearings

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ER v NT [2025] EWHC 2146 (Fam)

Background:

- The child, 'CT', was aged two at the time of the hearing.
- The parties' relationship spanned from 2002 to 2023. Across which M made 33 allegations, including:
  - drug induced psychotic episodes
  - physical abuse
  - coercive and controlling behaviour
  - emotional and verbal abuse
  - drug and alcohol misuse
- F made limited admissions, that did not include the allegations involving physical violence, threats to kill or systematic coercive control.

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ER v NT [2025] EWHC 2146 (Fam)

- HHJ Godwin dismissed M's application for a FFH on the basis that:
  - sufficient information could be gleaned from F's admissions;
  - none of the "serious" allegations post-dated the birth of CT and there had been subsequent contact;
  - F had addressed his substance misuse and anger issues; and
  - there would be a delay of 9-12 months before a FFH could be listed, with Cafcass reports compounding that delay to 18 months.

Appeal:

- Five grounds:
  - inadequate reasons for dismissing the application for FFH;
  - wrong in failing to specifically address PD12J;
  - failed to conduct an analysis of the evidence;
  - wrong to place reliance on the 'Anger Planet' course; and
  - failed to consider PD12J before ordering indirect contact.

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ER v NT [2025] EWHC 2146 (Fam)

- [43] - [55] MacDonald J neatly sets out the law relating to FFHs.
- Held: the appeal would be allowed, a FFH was necessary –
- In deciding this, MacDonald J noted:
  - The characterisation of "*other evidence which provides a sufficient factual basis to proceed*" as opposed to "*sufficient information*"
  - Crucially, the court must give sufficient reasons to explain *why*
  - Three questions:
    - What are the identified welfare issues?
    - What is the nature of the disputed allegations?
    - Are the matters alleged relevant to the welfare issues such that it is necessary and proportionate, having regard to the purpose of FFH as the basis of assessment of risk and the impact of the alleged abuse on the child, the impact of delay and whether there is other evidence providing a sufficient factual foundation, for the allegations to be determined?

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ER v NT [2025] EWHC 2146 (Fam)

- Here, HHJ Godwin had failed to:
  - sufficiently identify/analyse the welfare issues (PD12J para 35-37);
  - adequately consider the nature of the allegations or the evidence;
  - provide adequate reasoning to explain why the judge reached his conclusion;
  - placed too much emphasis on completion of a three-day anger management course with 'Anger Planet'

- Moreover, in refusing the application for a FFH but also directing Cafcass provide a s7 report "*dealing with – M's concerns about F's domestic abuse*", HHJ Godwin in effect, left the question over the treatment of the remaining disputed facts to be grappled with by Cafcass.

Conclusion: matter was remitted for a FFH before a different CJ.

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CP v M & Ors [2025] EWFC 39

Background:

- CP and M were in a civil partnership and had 5 children together.
- Separated in 2014/15 – M moved to a Gulf State, CP remained in the UK.
- Initially, it was agreed the children would spend with CP: 6-7 weeks in England each Summer, and 1-2 weeks in the Gulf each Christmas.
- From 2019, CP's time with the children began to reduce and by 2022, her contact with the children had ceased completely.
- Following various applications and appeals, CoA declared (i) CP the legal parent of the four younger children and (ii) that English courts had jurisdiction to consider CP's application for a Child Arrangements Order.

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CP v M & Ors [2025] EWFC 39

- CP's case: M had prevented her from having contact.
- M's case: the boys simply refuse to have contact with CP.
- CP sought a FFH to determine the facts of her involvement in the children's lives with a view to then directing family psychological therapy which may bring about the resumption of contact.
- M and CG proposed the court should conclude proceedings without a FFH or psychological intervention, as delay was harmful to the children who were finding proceedings distressing, and a FFH would be positively harmful to any prospect of a relationship between CP and the children in future.

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CP v M & Ors [2025] EWFC 39

Held: continuation of the proceedings highly unlikely to achieve any useful purpose, counter-productive to the future prospects of a positive relationship between CP and the boys and detrimental to the children's welfare.

- Poole J noted the children strongly did not want to have contact with CP and "*those wishes have, if anything, strengthened the more effort has been made to ensure that they have a proper understanding of the history of their relationship with CP and the reasons behind her applications. It is clear to me that attempts to change their minds or to encourage them to adopt a different understanding of their life stories, will be resented by them and will be very likely to fail*" [22].
- There was *"no clear evidence that the boys' resistance is rooted in manipulation by M as opposed to their own experiences"* [23].

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CP v M & Ors [2025] EWFC 39

- *"Declarations of parentage have been made. CP and M were in a civil partnership when each boy was born. CP's surname is one of their middle names. CP is more than a "family friend". However, it does not follow that the court is bound either to compel the children to have contact with CP or to take extensive measures to encourage them to do so. Over a sustained period of time the boys have refused to engage with CP. Whether this is due to manipulation by M, by reason of CP's past behaviour, or just because of circumstances and their experiences… In my judgement there is no purpose to be served in holding a finding of fact hearing. Whether or not the Court found that M has engaged in alienating behaviour, the boys' positions in relation to spending time with CP would be very unlikely to change… the process of exploring and determining allegations of alienation would be likely to cause emotional harm to the children involved. Likewise, I cannot foresee circumstances in which the Court would compel the children to participate in family therapy or psychological interventions and the element of compulsion would, again, be damaging to their emotional health and wellbeing"* [24-25].

- Conclusion: no order made on CP's application save for allowing for memory boxes and the provision of updates about the children from M to CP at suitable intervals.

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V v V & Anor [2025] EWHC 945 (Fam)

Background:

- F and M first had a sexual relationship in 2003, when M was 15 and F 24. They married in 2012. Amy was born in 2016. Parties had separated by 2020.
- In May 2021, during FLA proceedings, Recorder Sharp KC made serious findings against F including: sexual assault, anal rape and "*modest*" coercive control. The Judge found that the child had suffered harm from witnessing parental conflict, albeit not "*significant harm*" within s33(7).
- Final CAO made largely by consent in September 2024: live with M, have day contact with F progressing to alternative weekend and holiday contact.

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V v V & Anor [2025] EWHC 945 (Fam)

- Just three months later, M applied to suspend contact.
- M had raised additional allegations against F, including that:
  - F had neglected the child's care and sought to blame M for it;
  - F physically assaulted her during a handover in 2022;
  - F denigrated her daily in front of the child;
  - F gaslight the child;
  - F was coercive and controlling.
- The majority of allegations pre-dated September 2024. However, M's case was that F's behaviour had worsened, resulting in M suffering from PTSD and Amy being emotionally dysregulated upon returning from contact.
- M sought a FFH which was supported by CG on the basis that the parents were so entrenched in their hostility that until such issues were addressed they will resurface time and time again. Recorder Sharp KC directed a FFH.

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V v V & Anor [2025] EWHC 945 (Fam)

- CG had recommended reducing interim contact to day contact.
- Recorder Sharp KC determined that holiday contact would be suspended but the weekday and alt weekend staying contact would continue.

Appeal:

- M's position: The judge was wrong to allow overnight contact where a FFH had been ordered to address serious allegations, and should have endorsed no more than CG's recommendation for day contact.
- F's response: The judge's decision was within the range of legitimate judicial discretion; the court should be slow to interfere with an evaluation of risk and contact made by a first-instance judge.

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V v V & Anor [2025] EWHC 945 (Fam)

Held: allowing the appeal

- Peel J said at [33]:

> *"His judgment on the issue of whether to hold a fact finding hearing referred to the impact on a child of witnessing domestic abuse, as has been the case here: s3 of the Domestic Abuse Act 2021 resonates. At para 12, he referred to the allegation of F turning Amy against M which, if proven, could be "insidious". At para 14 he said that M's allegations "go to the root of the safety of the contact regime". At para 15 he said that if M's allegations are proven "then Amy is at risk" from F, and that if F is right then she is at risk from M. The risks either way are psychological and emotional rather than physical. Having identified the potential risks to Amy if the fact finding determines that M is correct, it seems to me that he did not fully follow through to consider whether in those circumstances interim staying contact could be safely managed. That is particularly so given the history of very serious findings made in 2021."*

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V v V & Anor [2025] EWHC 945 (Fam)

- Continued at [34]:

> *"F makes the valid point that overnight contact was agreed by M in September 2024, but at that time no court had decided that a fact finding hearing should take place. Everything changed on 24 March 2025 when the judge decided that a fact finding hearing was necessary. The judge's concern that Amy might not understand the reason for removing the overnight contact was a valid consideration, but had to be viewed in the context of a decision to direct a fact finding hearing. It seems to me that in the circumstances, contact needed to be reviewed on an interim basis. Had the judge decided not to hold a fact finding hearing, the position would have been different, but the decision to embark upon fact finding inevitably leads to a review of the appropriateness and safety of interim contact… In my judgment, the Guardian's recommendation at the hearing was the appropriate, balanced way forward."*

Conclusion: overnight contact discharged, unsupervised day contact permitted in the terms recommended by CG.

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Re A (Appeal: Findings of Fact) [2025] EWHC 1279 (Fam)

- This was an appeal against a finding of rape made following a fact-finding.

Three key legal principles underscored:

1. *"Efficient and proportional case management, strict adherence to Orders, and judicial continuity should not be regarded as merely aspirational, they are essential. This is true generally, but it falls into particularly stark relief when the Court is addressing allegations of domestic abuse. Judicial continuity in this sphere is not only necessary to achieve more effective hearings and, accordingly, better-informed decision-taking, it is, in itself, a facet of child protection. It is the subject children who sustain the scars of protracted, vituperative and intractable litigation of this kind"* [12].

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Re A (Appeal: Findings of Fact) [2025] EWHC 1279 (Fam)

2. Reminds us at [18] of the *Fage UK Limited v Chobani UK Limited* [2014] EWCA Civ 5 legal principles applicable to an appeal against a finding of fact made by a trial judge, as summarized by Lewison LJ in *Volpi v Volpi* [2022] EWCA Civ 464:

   - *An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.*
   - *The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion.* ***What matters is whether the decision under appeal is one that no reasonable judge could have reached****.*

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- *An appeal court is **bound, unless there is compelling reason** to the contrary, **to assume that the trial judge has taken the whole of the evidence into his consideration**. If judge does not mention a specific piece of evidence, does not mean that he overlooked it.*
- *The validity of the findings made by a trial judge is **not tested by if the judgment presents a balanced account of the evidence.** The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.*
- *An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration **only if the judge's conclusion was rationally insupportable**.*
- *Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over as though it was a piece of legislation.*

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- On the facts of this case, Hayden J held:
  - many characteristics of a *"good judgment"* were abundant in the Recorder's findings of controlling behaviour, verbal and physical abuse;
  - however, the analysis relating to the rape allegations was "*abstruse, inconsistent, and ambiguous*" [37] – including the Recorder's finding that M "*submitted to his actions*", a conclusion that the judge noted was "*at very best, ambivalent in identifying whether the sex was consensual*" [27]
  - "*Whilst the word rape is a word defined by law, it must be remembered that it has a separate life in ordinary language where it exists as an everyday word. These are not "concepts from the criminal law" as the Recorder termed it, but facts which required determination. Whether the sexual act is "consensual" is an important finding of fact (i.e. not law) which cannot logically be avoided... Indeed, it is central to the evidence on this particular allegation*" [25]
  - "*Though the Recorder made a finding of rape, I am left with an impression that she was striving to identify F using sex as a facet of his coercive and controlling behaviour. However, the Recorder did not make such a finding, nor would it be right for me to substitute one*" [39]

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3. "*All this serves, conveniently, to illustrate the importance of identifying, clearly, those issues which must be tried at a fact-finding hearing and those which do not need to be. On the facts of this case, it was not necessary to explore the challenging terrain between 'consent' and 'submission' to sexual intercourse. This was a marriage characterised by the wider controlling behaviour of F, in the manner described by the Recorder. This, it seems to me, is the essence of the identified harm on which the analysis of the children's future welfare was predicated. If it requires to be said, which I hope, in the light of my reasoning above, it does not, this is not, in any way, to diminish the gravity of an allegation of rape. It does, however, serve to highlight and illustrate the separate and distinct functions of the Family Court and the Crown Court.*" [45]

Conclusion: The judge concluded that the Recorder's findings were "*rationally unsupportable*" in support of the allegation of rape and must be set aside [43].

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Fact Findings: Key Takeaways

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Thank you

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