Practical Considerations in Domestic Abuse Cases:
FHDRA to Finding of Fact Hearing and Beyond

Preliminary Matters

1. The Court of Appeal judgments of *Re H-N* and *K v K* are clear that PD12J is fit for purpose, the issue is in its implementation. PD12J provides a helpful structure to approaching allegations of domestic abuse, defined as follows: -

> *"**domestic abuse**" includes **any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality**. This can encompass, but is not limited to, **psychological, physical, sexual, financial, or emotional abuse**. Domestic abuse also **includes culturally specific forms of abuse** including, but not limited to, **forced marriage, honour-based violence, dowry-related abuse and transnational marriage abandonment**;*

2. The Domestic Abuse Act 2021, which is now in force includes section 63 provides which provides that where a person 'is, or is at risk of being, a victim of domestic abuse', the court must assume that their participation and evidence will be diminished by reason of vulnerability.

> *s.63(2) **Rules of court must provide that where P is, or is at risk of being, a victim of domestic abuse** carried out by a person listed in subsection (3), **it is to be assumed that the following matters are likely to be diminished by reason of vulnerability**—*
> *(a) **the quality of P's evidence;***
> *(b) **where P is a party to the proceedings, P's participation in the proceedings**.*

3. Section 63 triggers arrangements for participation directions or special measures. It is formally adopted into the Family Procedure Rules 2010 as rule 3A2A.

4. There are extensive provisions governing vulnerable witnesses set out in rule 3A and PD3AA (annexed to this handout).

5. The implementation of participation directions in respect of vulnerable witnesses in a domestic abuse case is helpfully considered in the recent case of Judd J, ***M (A Child)* [2021] EWHC 3225 (Fam)** at §26.

The Harm Report

6. The publication of *Assessing Risk of Harm to Children and Parents in Private Law Cases* (June 2020) precipitated an appraisal of how domestic abuse is considered within the family jurisdiction.

7. The objective of the report was to consider: *How effectively do the family courts respond to allegations of domestic abuse and other risks of harm to children and parent victims in private law children proceedings having regard to both the process and outcomes for the parties and the children?*

8. It is worth noting that the report gathered evidence through questionnaires from a number of sources. Predominately the evidence considered information from lay parties (mainly mothers) with direct experience of the family justice system[1]. Those individuals were self-selecting and there was no wider consideration of the case papers and therefore no objective analysis undertaken as to how the court reached its decision and whether the determination mirrored stated experience of the individual. A more limited amount of evidence was gathered from professionals working within the family justice system.

[1] *The vast majority (87%) were from individuals with personal experience of private law children proceedings– mainly mothers and their families – and 10% were from individuals with professional/practical experience in family courts. The remaining 3% (32 submissions) were from organisations.* (Page 17-19)

9. The report raised concerns that PD12J is not operating as intended and that it was being implemented inconsistently. The central themes of the report were summarised as being: resource constraints – resources being inadequate to keep up with increasing demand in private law children proceedings particularly given the increasing numbers of unrepresented parties; the pro-contact culture – resulting in systemic minimisation of domestic abuse allegations; working in silo – the difference of approach between private law and public law proceedings; and the disadvantages of an adversarial system which played parents in opposition with little or no involvement of the child.

10. The recommendations appear at pages 171 to 187 and are essential reading.

Relevant Case Law

***1. F v M* [2021] EWFC 4 (Fam)**

11. The pernicious nature of domestic abuse, particularly coercive and controlling behaviour was thrown into sharp focus by *F v M* [2021] EWFC 4 (Fam). The case was the remitted case of *R v P (Children: Similar Fact Evidence)* [2020] EWCA Civ 1099

12. The case considers two relationships in which the father is the common denominator. The issue had been the admissibility of evidence in relation to the father's more recent relationship. The father conceded that the evidence was admissible for the purpose of the hearing before Hayden J.

13. The admissibility of the evidence provides a greater appreciation of the mechanism of abuse employed by the father, at § 5: -

> ***"…the consideration of both "cases" together served to illuminate the sinister, domineering and, frequently, tyrannising complexion of F's behaviour, to a degree which would not have been fully appreciated had the cases been severed. It is the***

chilling repetition of identical behaviours, with two very different women of different age and background, which casts evidential light and does so in each individual case."

14. Hayden J makes extensive findings of coercive and controlling behaviour. At § 45 he highlights an extensive number of passages from the mother's police interview which illustrate '*the insidious and manipulative nature of coercive and controlling behaviour.*

15. Hayden J reminds of the inherent vulnerability of victims of domestic abuse identifying that the mother's police interviews: -

"*…reveal both her naivety and her failure fully to grasp the nature of the abuse that I find she was subjected to. This also serves to bolster the credibility of her evidence. Though her appreciation of what has happened to her has developed as she has matured, it is still incomplete. She relates her experiences in a way which reveal a complete ignorance of the paradigmatic pattern of controlling and coercive abuse she is describing.*"

16. The Court was invited to give guidance on the use of Scott Schedules. Hayden J refused to do so but noted: -

"*I consider Scott Schedules to have such severe limitations in this particular sphere as to render them both ineffective and frequently unsuitable. I would go further, and question whether they are a useful tool more generally in factual disputes in Family Law cases. The subtleties of human behaviour are not easily receptive to the confinement and constraint of a Schedule. I draw back from going further because Scott Schedules are commonly utilised and have been given much judicial endorsement. I do not discount the possibility that there will be cases when they have real forensic utility. Whether a Scott Schedule is appropriate will be a matter for the judge and the advocates in each case unless, of course, the Court of Appeal signals a change of approach."*

2. ***Re H-N and Others (children) (domestic abuse: finding of fact hearings)* [2021] EWCA Civ 448**

17. In March 2021, the highly anticipated Court of Appeal judgment ***Re H-N and Others (children) (domestic abuse: finding of fact hearings)* [2021] EWCA Civ 448** was handed down. There is no substitute for reading the judgment in its entirety. It is essential reading.

18. In summary, the judgment is divided into two parts. It provides some general guidance (paragraphs 1-77) and it addressed the four individual appeals (paragraphs 78-223). This handout will focus on the general guidance. There is obvious merit in reading the points addressed in relation to the individual appeals.

19. The judgment surveys the legal landscape charting the progress made by the Family Court in its approach to domestic abuse. There is a bold reminder of the imperfections of the binary approach to allegations, §6:

    "The evidence may not be crystal clear, yet the stakes may be high. If the court decides that an abusive allegation has not been sufficiently proved, the court must assess future risk on the basis that the event 'did not take place'. If, in reality, the abuse did occur but there is a lack of evidence to prove it, the court's subsequent orders may risk exposing the child and parent to further abuse. Conversely, if alleged abuse did not in fact occur, but the court finds the allegation proved, orders significantly limiting the 'perpetrating' parent's future relationship with their child may be imposed."

20. The number of appeals of private law cases remains low but the Court of Appeal readily accepts that "*even a small number of cases where the judicial approach to domestic abuse has been shown to fall short gives rise to deep unease."* An unease which is illuminated by the experiences described in *The Harm Panel Report.*

The Proper Approach

21. There are 4 important issues identified regarding the proper approach of issues of domestic abuse:

    i. Whether there should be a finding of fact hearing;

    ii. The challenges presented by Scott Schedules as a means of pleading a case;

    iii. If a fact-finding hearing is necessary and proportionate, how should an allegation of domestic abuse be approached?

    iv. The relevance of criminal law concepts.

Whether there should be a finding of fact hearing

22. Paragraphs 35 to 36 summarised the applicable parts of PD12J when determining whether there should be a finding of fact hearing. The summary of principles to applied is outlined as follows:

    The court will carefully consider the totality of PD12J, but to summarise, the proper approach to deciding if a fact-finding hearing is necessary is, we suggest, as follows:

    a. *The first stage is to consider the nature of the allegations and the extent to which it is likely to be relevant in deciding whether to make a child arrangements order and if so in what terms (PD12J.5).*
    b. *In deciding whether to have a finding of fact hearing the court should have in mind its purpose (PD12J.16) which is, in broad terms, to provide a basis of assessment of risk and therefore the impact of the alleged abuse on the child or children.*
    c. *Careful consideration must be given to PD12J.17 as to whether it is 'necessary' to have a finding of fact hearing, including whether there is other evidence which provides a sufficient factual basis to proceed and importantly, the relevance to the issue before the court if the allegations are proved.*
    d. *Under PD12J.17 (h) the court has to consider whether a separate fact-finding hearing is 'necessary and proportionate'. The court and the parties should have in mind as part of its analysis both the overriding objective and the President's Guidance as set out in 'The Road Ahead'.*

Scott Schedules

23. There was unanimity in the submissions that the utility of Scott Schedules in domestic abuse cases was limited. It was the view of some that they presented a barrier to fairness and good practice. The concerns centred on two issues:

    i. The need for the court to focus on the wider context in order to establish whether there had been a pattern of coercive and controlling behaviour;

    ii. The limits placed by judges on the number of allegations to be tried and that by taking this approach that the court '*robbed itself of a vantage point from which to view the quality of the alleged perpetrator's behaviour as a whole, and importantly, removed consideration of whether there was a pattern of coercive and controlling behaviour from its assessment'*

24. A significant number of submissions endorsed the approach of Hayden J in ***F v M*** **[2021] EWFC 4 (Fam)**. The Court of Appeal noted that this judgment should be essential reading for the Family judiciary.

25. The Court of Appeal confirms that the '*the process before this court has undoubtedly confirmed the need to move away from using Scott Schedules"* although does not provide any guidance regarding the appropriate replacement for Scott Schedules.

If a fact-finding hearing is necessary and proportionate, how should an allegation of domestic abuse be approached?

26. The judgment question how best to determine allegations of coercive and controlling behaviour proportionately to prevent extending the length of finding of fact hearings in an already overburdened system which would undoubtedly result in delay which is inimical to the welfare of the children involved in private law proceedings.

27. The following 'pointers' are offered at §58:-

> *PD12J (as its title demonstrates) is focussed upon 'domestic violence and harm' in the context of 'child arrangements and contact orders'; it does not establish a free-standing*

jurisdiction to determine domestic abuse allegations which are not relevant to the determination of the child welfare issues that are before the court;

PD12J, paragraph 16 is plain that a fact-finding hearing on the issue of domestic abuse should be established when such a hearing is 'necessary' in order to:

i. *Provide a factual basis for any welfare report or other assessment;*
ii. *Provide a basis for an accurate assessment of risk;*
iii. *Consider any final welfare-based order(s) in relation to child arrangements; or*
iv. *iv) Consider the need for a domestic abuse-related activity.*

Where a fact-finding hearing is 'necessary', only those allegations which are 'necessary' to support the above processes should be listed for determination;

In every case where domestic abuse is alleged, both parents should be asked to describe in short terms (either in a written statement or orally at a preliminary hearing) the overall experience of being in a relationship with each other.

The Relevance of Criminal Law Concepts

28. The Court of Appeal clarifies the approach in ***Re R (Children) (Care Proceedings: Fact-finding Hearing)*** **[2018] EWCA Civ 198; [2018] 1 WLR 182** regarding the application of criminal concepts within family proceedings is the correct approach and reminds that this is the binding authority not the consideration of those concepts as discussed by Russell J in ***Re JH V MF*** **[2020] EWHC 86 (Fam).**

29. The Family court is not required to shy away from using terms such as 'rape' where appropriate but rather the Family court should avoid analysing evidence of behaviour by the direct application of the criminal law to determine whether an allegation is proved or not proved.

The Appeals

30. The judgment then details the approach to appeals against fact-finding and then considers each appeal in turn. The appeals are neatly summarised and identify the approach likely to be taken to appeals of this nature. There is no substitute for reading that section of the judgment in its entirety. The individual appeals are as follows:

(i) *Re B-B* (paragraphs 78-114) – allowed

(ii) *Re H* (paragraphs 116-153) – dismissed

(iii) *Re T* (paragraphs 155-184) – allowed

(iv) *Re H-N* (paragraphs 185-223) -allowed

31. The first instance judgments in relation to the HHJ Tolson QC cases can be found at: ***H v C*** **[2018]** and ***H (A Child)*** **[2020]**.

3. Re B-B (Domestic Abuse: Fact-Finding)[2022] EWHC 108 Fam.

32. The case of *Re B-B* was remitted for re-hearing before Mr Justice Cobb, **Re B-B (Domestic Abuse: Fact-Finding) [2022] EWHC 108 Fam.**

33. Cobb J sets out useful pointers from a judicial perspective §6: -

> *6. This hearing, and the preparation of this judgment, has highlighted the following:*
>
> *i) The benefit of considering the evidence relevant to each different form of alleged domestic abuse in 'clusters': thus, it was useful to 'cluster' the evidence which went to the issue of alleged physical abuse; separately I considered the evidence of the allegations relevant to sexual abuse, separately emotional abuse, separately financial abuse and so on[2]. Inevitably, the evidence relevant to each form of abuse overlapped in places, but in looking at the evidence by reference to the different forms of alleged abuse, a picture was built up of the nature of the relationship under scrutiny, and it was easier to see whether patterns of behaviour emerged. This may not have been so apparent had the matters been looked at by reference to individual / free-standing items on a Scott Schedule. I accept the Court of Appeal's view that it is the cumulative effect of individual incidents within each*

of those clusters of abuse-type, and of each type of abuse on the other, which give the clearest indication of the experience of abuse;

ii) The importance of resolving these issues close in time to the events in question; this hearing took place between three and five years after the key events. The delay in resolving the issues has compromised the quality of the evidence itself, and the delay has inevitably taken a toll on the litigants who have not been able emotionally to get on with their lives;

iii) The need for flexible arrangements to ensure that participation directions (rule 3AA FPR 2010) truly meet the needs of the parties and the case[3]; the increased use of 'hybrid' hearings over the last 18 months (for all types of hearing in the family court) provides a useful template which worked well in this case;

iv) The need for advocates to focus on those issues which it is necessary to determine to dispose of the case, and for oral evidence and/or oral submissions to be cut down only to that which it is necessary for the court to hear;

v) The evidence of the principal parties is always likely to be far more valuable than the evidence of supporting witnesses; at the case management stage, judges should rigorously test with the parties and/or their advocates (and review for themselves) what (if any) real value is likely to be brought to the enquiry by the evidence of third parties;

vi) The importance of judicial continuity in domestic abuse cases; unsurprisingly, I had no prior connection with this case before it was remitted for hearing by the Court of Appeal. But it struck me as I considered the case management of this case prior to the hearing, and indeed as I listened to the evidence itself, that continuity of judicial involvement would have enhanced the efficient and sympathetic management of the process;

vii) That an abusive relationship is invariably a complex one in which the abused partner often becomes caught up in the whorl of abuse, losing objective sense of what was/is acceptable and unacceptable in a relationship. Like many abused partners, the mother in

this case became immunised to the emotional volatility of the damaging relationship which she saw as normal and acceptable; like many abused partners, she clung to what she knew.

34. A useful summary of applicable legal principles is set out at §26: -

i) The burden of proof lies, throughout, with the person making the allegation[7]. In this case, both the mother and the father make allegations (in some respects overlapping) against each other on which they seek adjudications;

ii) In private law cases, the court needs to be vigilant to the possibility that one or other parent may be seeking to gain an advantage in the battle against the other. This does not mean that allegations are false, but it does increase the risk of misinterpretation, exaggeration, or fabrication;

iii) It is not for either parent to prove a negative; there is no 'pseudo-burden' on either[9] to establish the probability of explanations for matters which raise suspicion;

iv) The standard of proof is the civil standard – the balance of probabilities. The law operates a binary system, so if a fact is shown to be more likely than not to have happened, then it happened, and if it is shown not to cross that threshold, then it is treated as not having happened; this principle must be applied, it is reasonably said, with 'common sense'[10];

v) Sometimes the burden of proof will come to the judge's rescue: the party with the burden of showing that something took place will not have satisfied him that it did. But, generally speaking, a judge ought to be able to make up his/her mind where the truth lies without needing to rely upon the burden of proof[11];

vi) The court can have regard to the inherent probabilities of events or occurrences[12]; the more serious or improbable the allegation the greater the need for evidential 'cogency'[13];

vii) Findings of fact in these cases must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation[14]; it is for the party seeking to prove the allegation to "adduce proper evidence of what it seeks to prove";

viii) The court must consider and take into account all the evidence available. My role here is to survey the evidence on a wide canvas, considering each piece of evidence in the context of all the other evidence. I must have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the person making the allegation has been made out to the appropriate standard of proof;

ix) The evidence of the parties themselves is of the utmost importance. It is essential that the court forms a clear assessment of their credibility and reliability;

x) It is, of course, not uncommon for witnesses to tell lies in the course of a fact-finding investigation and a court hearing. The court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear, and distress. I am conscious that the fact that a witness has lied about some matters does not mean that he or she has lied about everything (see R v Lucas [1981] QB 720); I have borne firmly in mind what Lord Lane CJ said in Lucas, namely that:

"To be capable of amounting to corroboration the lie told out of court must first of all be deliberate. Secondly it must relate to a material issue. Thirdly the motive for the lie must be a realisation of guilt and a fear of the truth. The jury should in appropriate cases be reminded that people sometimes lie, for example, in an attempt to bolster up a just cause, or out of shame or out of a wish to conceal disgraceful behaviour from their family. Fourthly the statement must be clearly shown to be a lie by evidence other than that of the accomplice who is to be corroborated, that is to say by admission or by evidence from an independent witness."

xi) That my function in resolving disputes of fact in the family court is fundamentally different from the role of the judge and jury in the Crown Court. As the Court of Appeal made clear in Re R [2018] EWCA Civ 198:

"The primary purpose of the family process is to determine, as best that may be done, what has gone on in the past, so that that knowledge may inform the ultimate welfare evaluation where the court will choose which option is best for a child with the court's eyes open to such risks as the factual determination may have established" ([62] Re R). A point which I myself considered in F v M [2019]EWHC 3177, in a judgment which was referenced with approval in Re H-N (see §69/70).

xii) At all times, I must follow the principles and guidance at PD 12J of the Family Procedure Rules 2010.

4. K v K [2022] EWCA Civ 468

35. *K v K* concerned the father's appeal against a district judge's findings of fact made against him in private law proceedings.

36. The mother and father had separated in 2017. The father had regular unsupervised contact with the three children until 2018, when the eldest refused to see him. In December 2019, the father complained of parental alienation in a without-notice application. He claimed an

exemption from the mediation information and assessment meeting (MIAM) required by the Children and Families Act 2014 s.10 on the basis that further delay would cause undue hardship because he might not see his children at Christmas and that it would cause them a risk of harm. The mother had made some relatively minor allegations against the father but, at that point, did not object to him having unsupervised contact. A safeguarding letter consequently recommended a fact-finding hearing after one of the children made an allegation about the father's sexual boundaries and inappropriate questioning. That was the priority allegation at the First Hearing and Dispute Resolution Appointment (FHDRA) in February 2020, but the mother also made allegations that the father had raped her and that she had been subject to bullying and controlling behaviour by him.

37. The judge decided to hold a fact-finding hearing. At that hearing, he found the allegations of rape, verbal abuse and bullying and controlling behaviour proven. He also found that an incident in which the father had flicked his son's ear was an example of his physical abuse of the children. Those findings were upheld on a first appeal.

38. The appeal was allowed on the basis that the judge's finding of rape was wrong because the judge had failed to look at the matter in the round. The finding of generalised coercive and controlling behaviour was not found. The Court was critical of the judge allowing his order to suggest that he had found physical abuse of all three children proven, when he had not. The case was remitted for a decision as to whether a fresh finding of fact hearing was required. The Court of Appeal summarises its conclusions at §5.

39. The case provides guidance on the proper approach to fact-finding hearings following *Re H-N.* The following key points can be distilled: -

(a) The attendance of parties at Mediation Information and Assessment Meeting (MIAM) is a mandatory provision [§26]

Children and Families Act 2014, section 10: - "before making a relevant family application a person **must** attend a family mediation information and assessment meeting"

Part 3 of Family Procedure Rules 2010 (FPR 2010) makes provision for "non-court dispute resolution"

The list of MIAM exemptions in rule 3.8 is tightly drawn. The Court should not shy away from remitting the matter for mediation if the exemption is not met.

(b) First Hearing and Dispute Resolution Appointment (FHDRA) provides an opportunity for judicially led dispute resolution [§37]

FPR PD12B – the court should consider "the nature and extent of any factual issues" and "whether a fact finding hearing is necessary"

Emphasis the importance of proper consideration being given to the possibility of non-court dispute resolution at the FHDRA

(c) The judge considering a fact-finding hearing must first identify the child welfare issue to which the resolution of the dispute will be relevant [§41]

The Court of Appeal sets out the importance of PD12J particularly paragraphs 16-20 and reminds of crucial passages from *Re H-N:* -

> *"8.* ***Not every case requires a fact-finding hearing even where domestic abuse is alleged. As*** *we emphasise later,* ***it is of critical importance to identify at an early stage the real issue in the case in particular with regard to the welfare of the child before a court is able to assess if, a fact-finding hearing is necessary*** *and if so, what form it should take….*

The correct approach is detailed at § 37 as follows:

> *"i) The first stage is to consider the nature of the allegations and the extent to which it is likely to be relevant in deciding whether to make a child arrangements order and if so in what terms (PD12J.5).*

ii) In deciding whether to have a finding of fact hearing the court should have in mind its purpose (PD12J.16) which is, in broad terms, to provide a basis of assessment of risk and therefore the impact of the alleged abuse on the child or children.

iii) Careful consideration must be given to PD12J.17 as to whether it is 'necessary' to have a finding of fact hearing, including whether there is other evidence which provides a sufficient factual basis to proceed and importantly, the relevance to the issue before the court if the allegations are proved.

iv) Under PD12J.17(h) the court has to consider whether a separate fact-finding hearing is 'necessary and proportionate'. The court and the parties should have in mind as part of its analysis both the overriding objective and the President's Guidance in "the Road Ahead".

(d) It is important to focus on whether there has been coercive and controlling behaviour opposed to specific factual allegations of abuse [§63].

As such, the Court should:

(i) Focus on the overarching issue of coercive and controlling behaviour when it is raised, and

(ii) To do so in this context only to the extent that it is relevant and necessary to determine issues as to the child's welfare.

(e) A finding of fact hearing must be necessary and proportionate.

*"65. **A fact-finding hearing is not free-standing litigation**. It always takes place within proceedings to protect a child from abuse or regarding the child's future welfare**. It is not to be allowed to become an opportunity for the parties to air their grievances. Nor is it a chance for parents to seek the court's validation of their perception of what went wrong in their relationship.** If fact-finding is to be justified in the first place or continued thereafter, **the court must be able to identify how any alleged abusive behaviour is, or may be, relevant to the determination of the issues between the parties as to the future arrangements for the children**.*

67. It seems that a misunderstanding of the court's role has developed. There is a perception that the Court of Appeal has somehow made it a requirement that in every case, in which allegations of domestic abuse are made, it is incumbent upon the court to undertake fact-finding, involving a detailed analysis of each specific allegation made. That is not the case. As Re H-N explained and we reiterate here, ***the duty on the court is limited to determining only those factual matters which are likely to be relevant to deciding whether to make a child arrangements order*** *and, if so, in what terms."*

The President's Guidance (May 2022)

Fact-Finding Hearings and Domestic Abuse in Private Law Children Proceedings – Guidance for Judges and Magistrates

40. The guidance of the President for judges and magistrates is simple and clear guidance which identifies the practical steps and points to be considered at each stage of proceedings. The guidance covers:

    (a) general points;
    (b) directions to be considered at the FHDRA/gatekeeping with a particular focus on whether MIAM provisions have been complied with and whether any further evidence is required to determine the matter;
    (c) Whether a fact-finding hearing is required:
    (d) Case management if a fact-finding hearing is required;
    (e) Revisiting a decision not to have a fact-finding hearing

41. A copy of the guidance is attached to this handout for ease of reference.

Considerations Post-Finding of Fact Hearing

Section 91 (14)

42. The Harm Report considered 'the challenges relating to the application of the Practice Directions and section 91(14) orders.' It noted that s91(14) is the key provision to prevent repeated unmeritorious applications in child arrangement cases but noted that even when perpetrators of abuse are 'barred' from making further applications, the process of applying for leave to apply can also be used as a tool of abuse.

43. There is a question about whether s.91(14) is an ineffective remedy. A survey of 143 magistrates by the Magistrates Association found that 90% said that such orders were rarely or never made. Indeed, many of the professionals consulted for the report had limited professional experience of the use of section 91(14) orders. This raises the obvious question as to whether the provision is not been utilised as often as it could be.

44. There is a common view that applications pursuant to section 91(14) require a history of unreasonable applications. This is a common feature, but it is not a pre-requisite. In the leading case of *Re P (A Minor) (Residence Order: Child's welfare)* [2000] Fam 15, Butler-Sloss LJ contrasts the language of s91(14) with s42 of the Supreme Court Act 1981 noting that there is no requirement to show unreasonable behaviour before the court can impose restriction and '*such an omission, is, no doubt, intentional and designed to give the court a wide discretion.'* The following cases are useful in considering the implementation of section 91(14):
    a) *Re P & N (Section 91(14): Application for Permission to Apply: Appeal)* [2019] EWHC 421
    b) *SZ v DG & Ors* [2020] EWHC 881 (Fam)
    c) *C1 and C2 (Child Arrangements)* [2019] EWHC B15 (Fam); *Re C3 and C4 (Child Arrangements)* [2019] EWHC B14 (Fam)
    d) *Re C-D (A Child)* [2020] EWCA Civ 501
    e) A (a child) (supervised contact) (s91(14) Children Act 1989 orders

45. Previously, there was limited guidance regarding the application of s91(14) within the statute. S67 Domestic Abuse Act 2021 amends s91 CA 1989 and the new section 91A makes

further provision about the circumstances in which the court may make an order under s91(14).

Contact Centres

46. There is a report due to be prepared on the use of contact centres (s83 DAA 2021) within 2 years considering: *"the extent to which individuals, when they are using contact centres in England, are protected from the risk of domestic abuse or, in the case of children, other harm."*

47. The recent case of ***Griffiths v Griffiths (Guidance on Contact Costs)*** [2022] EWHC 113 (Fam) provides useful guidance on:

(a) Whether in principle a court has the power to order that a party pay for contact under section 11(7) of the 1989 Act
(b) Whether the Judge was wrong to order direct contact in the particular circumstances of the case
(c) Whether a victim of abuse should pay the costs of contact for the abuser to have contact with the parties' child

Domestic Abuse Perpetrator Programmes

48. In May 2021, Cafcass issued temporary guidance given that the provision of Domestic Abuse Perpetrator Programmes were severely limited. The temporary process involved reviewing cases where DAPP had been ordered but not yet commenced; completing a re-assessment and considering whether the direction for DAPP should be discharged and replayed with a an alternative plan informed by the reassessment.

49. In May 2022, this guidance changed to:

Please note family court advisors can no longer recommend perpetrator programmes to court.

The Ministry of Justice has decided to work towards replacing the existing DAPP with a new programme to better meet the needs of a wider range of families. Provision under the current contracts will end on 31 March 2023 and the time to complete the programme is typically nine months. Therefore referrals ceased on 30 June 2022.

PRUDENCE J. BEAUMONT
Deans Court Chambers

ELEANOR KEEHAN
St. John's Buildings

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