Neutral Citation Number: [2025] EWHC 945 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16 April 2025

Before :

MR JUSTICE PEEL

- -

Between :

Ms V	**Appellant**
- and -	
Mr V	
and	
Amy V (through her Guardian)	**Respondents**

- -
- -

Charlotte Proudman (instructed by direct access) for the **Appellant**
Carl Geary (instructed by Mitchell Ryan Solicitors) for the **First Respondent**
Rachel Chapman (instructed by Abels Solicitors) for the **Second Respondent**

Hearing date: 9 April 2025

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 16 April 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

MR JUSTICE PEEL

A transparency order is in force. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mr Justice Peel :

1. These proceedings concern Amy (not her real name), a girl aged 8. I shall refer to her father as F and her mother as M. Today is the hearing of an appeal by M against an order by Recorder Sharp KC on 24 March 2025 whereby he determined that, notwithstanding his decision on that date to list a fact finding hearing in respect of allegations of domestic abuse by M against F, staying contact arrangements between Amy and F, which had been ordered by the court by agreement in September 2024, should in the interim stand undisturbed. Permission to Appeal was given by Harrison J on 3 April 2025 and listed urgently before me.

2. The background is that M and F met in 2003 when M was 15 and F 24. They had a sexual relationship before M reached 16, which plainly was unlawful. They started living together when M went to university, and married in 2012. Amy was born on 25 November 2016. Their marriage seems to have started to deteriorate in 2018 and M issued a divorce petition in October 2020.

3. On 5 January 2021, M applied under the FLA 1996 for a non-molestation and occupation order. On 27 May 2021 it came before Recorder Sharp KC. The judge found that Amy had suffered harm from witnessing the conflict between her parents, but not "significant harm" within the meaning of s33(7) of the Act. He made specific findings against F of:

    i) Sexual assault in about 2005, when M became very drunk, passed out and F took a video of him touching her sexually.

    ii) An episode of anal rape in 2008.

    iii) F made a number of unkind or inappropriate comments to and about M which the judge considered were indicative of coercive control in a modest way, but to a much lesser degree in recent times.

    iv) In May 2020, F lost his temper while caring for Amy, and acted with excessive force to restrain her, but M was unsupportive and distant when he asked her for help. During this episode he punched a wall .

    v) On 21 December 2020, M and F had an argument in front of Amy, for which the judge criticised both parents, after which M left the house with Amy and moved to her mother's home in County A.

4. The judge concluded the parties could not live together harmoniously, that at times there was fault on both sides, and orders were required to protect Amy, including enabling her to return home. The judge decided to make a non-molestation order against each parent, and made an occupation order against F to leave the marital home so that M and Amy could return. I emphasise that these findings were not made within Children Act proceedings. They were for the purpose of the FLA application, and not for a PD12J analysis.

5. The background thereafter is not wholly clear, but some, relatively limited, contact took place between F and Amy, before F applied for increased contact in April 2023 which

culminated in a final order on 5 September 2024 made largely by consent at which DJ Hay provided that:

i) Amy should live with M.

ii) Amy should spend day contact with F, progressing to alternate weekend staying contact and holiday contact.

This was broadly in accordance with the Cafcass recommendation in a s7 report. M appeared in person. She says that she was "coerced" into agreeing to the order. I have no doubt that attending in person was challenging for her, but there is no material before me to suggest that she was forced to agree to the order, and I note that she did not appeal. Further, most of these matters were in fact agreed at a DRA in May 2024 when both M and F were legally represented, in particular progression to staying contact.

6. It is of note that those Children Act proceedings took place within a context of numerous allegations made by M against F. The court decided not to hold a fact finding hearing, given the findings in the FLA proceedings and the measure of agreement as to contact.

7. As I understand it, overnight contact took place on 27 December 2024 and then on a further six occasions until suspended by Harrison J when he granted Permission to Appeal. Day contact has continued as provided for by Harrison J.

8. On 12 December 2024, only 3 months after the final order, M applied by Form C100 to suspend the contact provisions.

9. In addition to the findings made by the judge in 2021, M says that:

i) F neglected Amy's care and seeks to blame M for it.

ii) He physically assaulted her during a handover on 26 August 2022.

iii) He denigrates and humiliates her directly and in front of Amy.

iv) He uses gaslighting against Amy.

v) He behaves in a coercive and controlling way.

10. Thus, in the round, M asserts a history of domestic abuse encompassing physical, sexual and emotional misconduct which has, on her case, taken place over many years within a coercive and controlling framework. She says that F presents a risk both to her and to Amy as victims of domestic abuse.

11. The majority of the assertions made by M relate to the period before the order of September 2024. However, M says that since then F's behaviour has continued and worsened. She says she suffers PTSD as a result of the ongoing abuse. She says that Amy's behaviour on returning from contact has been emotionally dysregulated, at times behaving unpleasantly towards her. She has been bed wetting and displaying angry outbursts. Amy is secretive and, on M's case, F's behaviour is being normalised in Amy's eyes.

12. F denies the allegations and says M's hostility towards him infects their relationship and her attitude towards contact. He says Amy is relaxed and happy in his care. He believes M is deliberately undermining his involvement in Amy's life.

13. The application was listed urgently on 19 December 2024. DJ Hay gave directions and kept in place the contact arrangements save for minor amendments.

14. The application came before the judge on 24 March 2025. M and F were both represented. It was M's case that there should be a fact finding hearing, and contact should be suspended. The Guardian supported a fact finding exercise, and suggested that interim contact should be reduced, but not suspended. I do not have a transcript of the two judgments given by the judge, one on the question of fact finding and the second on interim contact, but I do have the Guardian's counsel's Note of judgment, which gives a helpful overview of the judge's thinking.

15. In the first ex tempore judgment, the judge decided to accede to the application for a fact finding hearing and made a number of appropriate case management directions. The judge cited the definition of domestic abuse within the Domestic Abuse Act 2021 and referred to the various relevant provisions of PD12J. He asked rhetorically whether a fact finding hearing was necessary and proportionate. He considered the relevance of domestic abuse and its potential impact on Amy. He took into account the view of the Guardian that a fact finding hearing was needed because the parents are so entrenched in their hostility to each other that, unless and until the issue of domestic abuse is addressed, it will resurface time and again. The judge concluded, "albeit with some hesitation" that a fact finding hearing was necessary to "lance the boil". He said that the fact finding would be relevant to the assessment of risk to Amy from either or both parents. In my judgment, the judge was right to direct a fact finding which has infected the litigation for a number of years. The welfare evaluation needs the framework of clear findings as to the parties' conduct, before considering the impact on risk and welfare.

16. The judge went on to decide that M would benefit from an intermediary assessment to assist her participation in the proceedings. It was M's case that the abusive behaviour including anal rape and domestic abuse had generated mental health anxiety, PTSD and vulnerability. This is not a case of impaired cognitive capacity, but the judge determined that there was sufficient material to justify an intermediary assessment before determining whether M needs such support.

17. The next hearing will be a PTR in May 2025.

18. The judge then, in his second judgment, moved on to decide whether staying contact should continue as previously ordered. He does not appear to have referred directly to paras 25-27 of PD12 J although there is no reason to suppose that he did not have these in mind. They provide as follows:

> "25. Where the court gives directions for a fact-finding hearing, or where disputed allegations of domestic abuse are otherwise undetermined, the court should not make an interim child arrangements order unless it is satisfied that it is in the interests of the child to do so and that the order would not expose the child or the other parent to an unmanageable risk of harm (bearing in mind in particular the definition of "victim of domestic abuse" and the impact which domestic abuse

against a parent can have on the emotional well-being of the child, the safety of the other parent and the need to protect against domestic abuse).

26. In deciding any interim child arrangements question the court should–

(a) take into account the matters set out in section 1(3) of the Children Act 1989 or section 1(4) of the Adoption and Children Act 2002 ('the welfare check-list'), as appropriate; and

(b) give particular consideration to the likely effect on the child, and on the care given to the child by the parent who has made the allegation of domestic abuse, of any contact and any risk of harm, whether physical, emotional or psychological, which the child and that parent is likely to suffer as a consequence of making or declining to make an order.

27. Where the court is considering whether to make an order for interim contact, it should in addition consider –

(a) the arrangements required to ensure, as far as possible, that any risk of harm to the child and the parent who is at any time caring for the child is minimised and that the safety of the child and the parties is secured; and in particular:

(i) whether the contact should be supervised or supported, and if so, where and by whom; and

(ii) the availability of appropriate facilities for that purpose;

(b) if direct contact is not appropriate, whether it is in the best interests of the child to make an order for indirect contact; and

(c) whether contact will be beneficial for the child."

19. The judge decided that the holiday contact should be suspended but the weekday contact, and alternate weekend staying contact, should continue. The judgment is brief, and perhaps less analytical than it might have been, but the essence is that: no concerns had been raised by [County B] Social Services in a report dated January 2025; Cafcass had in 2024 recommended overnight contact; the order in September 2024 was largely by consent; the allegations made by M largely predated the September 2024 order; Amy might struggle to understand why her time with F is being reduced.

20. In reaching this conclusion, the judge had before him the Guardian's recommendation that conduct should be reduced to:

i) After school on alternate Tuesdays until 6pm.

ii) Alternate Saturdays 9.15am-3pm,

in each case unsupervised.

21. M had initially sought a suspension of contact, or supervised contact, but ultimately agreed with the Guardian's recommendation.

22. It can therefore be seen that the judge departed from the Guardian and M by providing for overnight staying contact in the interim.

23. M sought permission to appeal from the judge at the hearing. In refusing permission to appeal, the judge said this:

> *"*Section 1(3) of the Children Act has been considered. I have considered change of circumstances and I've had regard to manageable risk of harm. I bear in mind; contact has been going on for some time and on a gradually increasing basis and that a number of agencies have looked into manageable risk and they conclude there is no unmanageable risk. A DJ has come to the Court with the conclusion that there wasn't an unmanageable risk as otherwise she wouldn't have come to the order.
> The situation is very different in a case like this where there is an existing pattern to one where there isn't. No, I refuse permission to appeal."

It seems to me that the reference to "manageable risk of harm" is indicative of the judge's awareness of s25-27 of PD12J.

24. At this appeal, M submitted that the judge was wrong to make an order for staying contact, and should have endorsed no more than the Guardian's recommendation for day contact. She says that the judge failed sufficiently to balance in the equation the risk to Amy of continued contact despite having determined that there should be a fact finding. F says that this experienced judge reached a decision which was within the range of legitimate outcomes and the court should be slow to interfere with what is essentially an evaluation by the first instance tribunal. The Guardian said on this appeal she takes a neutral stance.

Law on appeal.

25. An appeal operates by way of a review of the decision of the lower court: FPR 30.12(1).

26. By FPR 30.12(3) an appeal may be allowed where either the decision was wrong or it was unjust for serious procedural or other irregularity.

27. The court may conclude a decision is wrong because of an error of law, because a conclusion was reached on the facts which was not open to the judge on the evidence, because the judge clearly failed to give due weight to some significant matter or clearly gave undue weight to some other matter, or because the judge exercised a discretion which "exceeds the generous ambit within which reasonable disagreement is possible, and is, in fact, plainly wrong": **G v G (Minors: Custody Appeal) [1985] UKHL 13**.

28. The appellate court should adopt a cautious approach before interfering with findings of fact and exercise of evaluation: **Fage UK Ltd & Anor v Chobani UK Ltd & Anor [2014] EWCA Civ 5**, at paras114 to 115.

Conclusions

29. In reaching my conclusions I have borne in mind the provisions of the Domestic Abuse Act 2021 (in particular s1 which defines domestic abuse and s3 which includes the child as falling within the definition of "victim" of domestic abuse), PD12J (particularly paras 25-27 and 35-37) and the welfare checklist contained in the Children Act 1989. I

have reminded myself of the developing case law referred to in the skeleton arguments, including **Re H-N and Others (children) (domestic abuse: finding of fact hearings) [2021] EWCA Civ 448**, in particular paras 31 and 32:

> "31. The circumstances encompassed by the definition of 'domestic abuse' in PD12J fully recognise that coercive and/or controlling behaviour by one party may cause serious emotional and psychological harm to the other members of the family unit, whether or not there has been any actual episode of violence or sexual abuse. In short, a pattern of coercive and/or controlling behaviour can be as abusive as or more abusive than any particular factual incident that might be written down and included in a schedule in court proceedings (see 'Scott Schedules' at paragraph 42 -50). It follows that the harm to a child in an abusive household is not limited to cases of actual violence to the child or to the parent. A pattern of abusive behaviour is as relevant to the child as to the adult victim. The child can be harmed in any one or a combination of ways for example where the abusive behaviour:
>
> i) Is directed against, or witnessed by, the child;
>
> ii) Causes the victim of the abuse to be so frightened of provoking an outburst or reaction from the perpetrator that she/he is unable to give priority to the needs of her/his child;
>
> iii) Creates an atmosphere of fear and anxiety in the home which is inimical to the welfare of the child;
>
> iv) Risks inculcating, particularly in boys, a set of values which involve treating women as being inferior to men.
>
> 32. It is equally important to be clear that not all directive, assertive, stubborn or selfish behaviour, will be 'abuse' in the context of proceedings concerning the welfare of a child; much will turn on the intention of the perpetrator of the alleged abuse and on the harmful impact of the behaviour. We would endorse the approach taken by Peter Jackson LJ in *Re L (Relocation: Second Appeal)* [2017] EWCA Civ 2121 (paragraph 61):
>
> > "Few relationships lack instances of bad behaviour on the part of one or both parties at some time and it is a rare family case that does not contain complaints by one party against the other, and often complaints are made by both. Yet not all such behaviour will amount to 'domestic abuse', where 'coercive behaviour' is defined as behaviour that is *'used to harm, punish, or frighten the victim…'* and 'controlling behaviour' as behaviour *'designed to make a person subordinate…'* In cases where the alleged behaviour does not have this character it is likely to be unnecessary and disproportionate for detailed findings of fact to be made about the complaints; indeed, in such cases it will not be in the interests of the child or of justice for the court to allow itself to become another battleground for adult conflict."

30. Domestic abuse is a vile, indefensible scourge in our society. The findings made by the court against F in 2021, albeit within Family Law Act proceedings rather than Children Act proceedings, are very grave indeed. M's allegations of continuing abusive behaviour since then are cause for concern, and have to be seen in the light of the 2021 findings. The impact on M has yet to be fully established, but potentially severe. The impact on Amy, who has clearly witnessed conflict between her parents, may be damaging to a high degree. It is right to note also that F makes allegations against M which are, if proven, serious in terms of the impact on Amy. None of this should be underestimated. The question is whether these matters require the court to limit contact until they have been fully inquired into at the fact finding stage, and then at the welfare stage when the court will consider the risks to Amy.

31. My task relates solely to interim contact. The fact finding is for another day; so too the welfare hearing which will follow. The wider issues are not before me. The parties must understand that what I say in this judgment should not in any way bind or influence judges who come to this case later.

32. I acknowledge that this experienced Recorder was familiar with the case having conducted the Family Law Act hearing in 2021. It seems reasonable to me to assume that he had in mind the relevant provisions of the Domestic Abuse Act 2021 and PD12J. This was, it seems to me, a finely balanced decision. In the end, I conclude that his order maintaining overnight contact tipped to the wrong side of the balancing scales.

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.

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 gravity of the allegations, and potential impact on Amy, was such that it was unsafe to continue with overnight contact. In my judgment, the Guardian's recommendation at the hearing was the appropriate, balanced way forward. I conclude that the judge, who gave this case anxious consideration, ultimately was wrong and should have provided for more limited contact on an interim basis. I will allow the appeal, discharge the overnight staying contact and instead provide for unsupervised contact as follows:

i) After school on alternate Tuesdays until 6pm.

ii) On alternate Saturdays from 9.15am-3.15pm.

Transparency

35. At the hearing before the judge on 24 March 2025 one member of the media attended. A transparency order was made on that occasion, which I will continue. At the hearing of the appeal, four media representatives attended including the person who had attended before Recorder Sharp KC. She applied for a variation to the transparency order so as to permit naming of the Father, and publication of his specific employment. I decided it would not be appropriate for any such variation to take place at this stage, save that the fact that he is a serving member of the Armed Forces may be reported, and in effect adjourned the application to be considered after conclusion of the fact finding hearing. I gave a short ex tempore judgment in which I set out the following main reasons for coming to this decision:

i) The parties had had very little notice of the application and did not have a meaningful opportunity to consider it and put forward their submissions. An application of this sort is likely to require careful thought.

ii) **Griffiths v Tickle [2021] EWCA Civ 1882** and **Summers and Anor v White [2024] EWFC 182** were cited to me. In both those cases the Articles 8 and 10 balancing exercise was held to come down in favour of naming the perpetrator. However, those cases were after the fact finding exercise had concluded. In this case, the fact finding hearing is likely to be months away. It is true that findings in 2021 were made in Family Law Act proceedings, but in my judgment the entire picture needs to be established at the forthcoming hearing before the application is considered.

iii) Part of the exercise involves consideration of the child's Article 8 rights and, as part of that analysis, her best interests. The Guardian will not be in a position, on the child's behalf, to undertake a full evaluation of what is in Amy's interests, including as to publication of her father's name and specific employment.