



Neutral Citation Number: [2026] EWCA Civ 969

Case No: CA-2026-000717

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE FAMILY COURT AT EXETER
HH Judge Willstead
PL24P02662

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30 July 2026

Before :

LORD JUSTICE NEWY
LADY JUSTICE ASPLIN
and
LORD JUSTICE BAKER

D (CHANGE OF CIRCUMSTANCES: DOMESTIC ABUSE ALLEGATIONS)

Harriet Dudbridge (instructed by **Gard and Co**) for the **Appellant**
Daniel Swan (instructed by **Nantes Solicitors**) for the **Respondent**

Hearing date: 7 July 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 30 July 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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LORD JUSTICE BAKER:

Introduction

1. This is a second appeal against a child arrangements order made by Deputy District Judge Loughridge (“the DDJ”) in long-running proceedings concerning a girl, whom I shall refer to as D, now aged 7.
2. The order made by the DDJ provided, in summary, that
 - (1) D shall live with her mother and spend time with her father;
 - (2) The mother has permission to enrol D at a primary school near to her home;
 - (3) D shall have contact with her father (a) during school terms (i) on alternate weekends from after school on Fridays until school drop off on Mondays and (ii) on one afternoon during the week from after school until 6pm, D to be returned to the mother at an agreed location; and (b) during school holidays, on defined dates over the Christmas holiday, with Christmas week to alternate between the parents, and Summer, Easter and half term holidays to be shared equally between the parties.
3. This order represented a significant change in D’s life. Up to that point, since the parents’ separation, she had lived with her father in the former family home and attended a local school. As a result of the order, she would move some fifty miles away to the mother’s new home and a new school.
4. The father filed a notice of appeal against the order, which was stayed pending the appeal. On 18 March 2026, his appeal was heard by HHJ Willstead. The appeal against the “live with” provisions (that is to say, the order that D live with her mother and the school order) was dismissed. The appeal against the “spend time with” provisions was allowed and the parties directed to attempt to agree a transition plan including the “spend time with” arrangements, with provision for any remaining issues to be resolved by the judge on submissions.
5. On 15 April 2026, I granted permission to bring a second appeal and stayed the “live with” provisions in the DDJ’s order until determination of the appeal.

Summary of background and proceedings

6. The parents’ relationship ended in February 2024 when D was aged 5 ½. In July 2024, the mother moved out of the family home and went to live in a town some 70 miles away. D remained living with the father and attending the local school, and had regular contact with her mother. The parents attended mediation but were unable to resolve their disagreements about D’s future care and on 20 December 2024, the mother filed an application for a child arrangements order that D move to live with her and attend a nearby school. In her application form, the mother stated that D was at risk of suffering harm as a result of domestic abuse. On 31 January 2025, the father filed an application for a child arrangements order that D continue to live with him and a prohibited steps order preventing the mother changing D’s school.
7. Meanwhile, the mother had moved again to a property a little closer, approximately 50 miles from the former family home. She started a new relationship with another man

who has three sons. She and her partner live together, and his sons regularly stay overnight at the property.

8. On 6 February 2025, Cafcass filed a safeguarding letter in accordance with paragraph 13.5 of Practice Direction 12B (the Child Arrangements Programme, hereafter “CAP”). The letter was not included in the documents filed for this appeal but a copy was provided at the Court’s request following the hearing. After summarising the parties’ respective allegations, the letter concluded:

“A pattern of coercive controlling behaviour has been reported which is likely to be ongoing via the current arrangement. This is disputed by [the father]. A fact-finding hearing is needed to establish a baseline of fact. However, alongside this, assessment does indicate D is being caught up in these behaviours and her extreme distress at handover may be indicative of the level of distress she is experiencing. If reports by [the mother] are true it is likely D’s relationship with her mother is being used as a means of ongoing abuse which will inevitably be harmful to D, even if there is limited evidence of this at this stage. Consideration needs to be given to whether D is safe in the current arrangement and if this arrangement is best for her pending a fact finding hearing and further information or whether a variation of the current arrangement needs to be considered.”

9. On 24 February 2025, a First Hearing Dispute Resolution Appointment (“FHDRA”) took place before Deputy District Judge Taghdissian, attended by the parties and the author of the safeguarding letter. We were not provided with a copy of the order made at that hearing, but following the hearing a copy of the order was produced by the parties at the Court’s request. The court ordered that a report be prepared under section 7 by a Cafcass officer acting who was directed to address the following issues:

- (1) with whom D should live;
- (2) how often and for how long;
- (3) the wishes and feelings of the child so far as they can be ascertained;
- (4) the concerns of each parent with regard to each other;
- (5) whether D’s emotional needs are being met by the parents;
- (6) how the child would be affected by the proposed change of a move to live with the mother in the [X] area to include changes to educational provision;
- (7) whether or not it appears that the child has suffered or is at risk of suffering any harm;
- (8) the parenting capacity of both parents having regard to the allegations of domestic abuse raised by the mother;

- (9) recommendations in respect of arrangements for the child including stepped arrangements with a view to a final order if possible.

The order contained various recitals including the following:

“The parties have each raised allegations against each other, the mother’s allegations suggest a pattern of coercive controlling behaviour which has a sexual element as well. A consideration is the impact in the long term of the mother’s ability to feel she has a voice in contact arrangement[s], there is a concern that the mother reports that D is showing signs of distress when she has returned to father.”

The order also recited

“Notwithstanding the allegations of domestic abuse the court has decided that a fact-finding hearing is not necessary, noting that each parent accepts that she should spend unsupervised time with the other one, including for weeks during holidays.”

It was further ordered, by consent, that the existing child arrangements should continue pending completion of the report. There was no appeal against either the decision not to hold a fact-finding hearing or the directions to the Cafcass officer.

10. The section 7 report took nearly six months to complete and was not filed until 8 August 2025. It recommended that the child arrangements should be reversed immediately, and that D should move to live with her mother and change schools, and have regular contact, including staying contact, with her father. The contents of the report are a central feature of this appeal and are considered in detail below.
11. At a dispute resolution appointment (“DRA”) on 13 August, Deputy District Judge Turner gave directions for a full hearing, including narrative statements from both parents. At the hearing of the appeal, we were told that, in the light of the section 7 report, an application was made unsuccessfully at the DRA for either a supplemental report or a direction for a fact-finding hearing. Following the appeal hearing, I asked the parties to send a copy of the DRA order. It makes no reference to any such application. Despite the section 7 report’s recommendation for an immediate change of arrangements, the judge at the DRA ordered that the existing arrangements should remain in place until the hearing. There was an issue about whether the Cafcass officer should attend the hearing in person. In a later order, Deputy District Judge Turner gave permission for him to attend remotely.
12. The final hearing before the DDJ took place on 3 November 2025. In addition to the section 7 report, the court had statements from each parent, a letter from D’s school and skeleton arguments from each party’s counsel. The hearing was delayed for over an hour because of technical problems with the CVP link. In the end, the Cafcass officer gave evidence via a Teams link on the DDJ’s computer which was placed on the judge’s desk facing towards counsel and away from the judge. Neither parent gave oral evidence. Counsel made oral submissions. The DDJ delivered an ex tempore judgment, which is considered below, setting out his reasons for making the order set out above.

13. On 7 November, the father filed a notice of appeal, identifying six grounds of appeal. On the same day, HHJ Flexman stayed the order and listed the application for permission to appeal for an oral hearing. On 10 November, HHJ Willstead granted permission, extended the stay and made case management directions, including a transcript of the hearing before the DDJ and updating statements from the parents and D's current school. Unfortunately, the hearing of the appeal was delayed for several weeks. Although a transcript of the judgment was produced, it proved impossible to transcribe the Cafcass officer's evidence because the recording equipment had not picked up the sound from the judge's computer. Then the hearing had to be adjourned, initially because the judge to whom it had been allocated was unavailable and then because counsel were unavailable.
14. The hearing before HHJ Willstead eventually took place on 18 March 2026. Additional statements, and a letter from the school, were filed. After hearing submissions, the judge delivered a judgment dismissing the appeal on five grounds, relating to the "live with" provisions in the DDJ's order, but allowing the appeal on the sixth ground relating to the "spend time with" provisions. She recorded that the parties had agreed to seek to agree an order by consent on those latter provisions, but directed that, in default, she would resolve that issue on the basis of written submissions. Her judgment is also considered below.
15. On 24 March 2026, the father's solicitor submitted a written request for clarification of the judgment. We were told that no reply was received. On 26 March, a notice of appeal to this Court was filed, and as noted above permission was granted and the order stayed pending appeal.
16. D has therefore remained living with her father and attending the local school.

Statutory provisions, rules, case law and guidance

17. The provisions set out below apply to proceedings in England. Provisions governing proceedings in Wales are in some respects different.

Statutes

18. This appeal raises issues relating to some of the provisions of section 1 of the Children Act 1989. Although well known, those provisions relevant to this appeal must be set out here:

“(1) When a court determines any question with respect to—

(a) the upbringing of a child;

...

the child's welfare shall be the court's paramount consideration.

(2) In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

...

(3) In the circumstances mentioned in subsection (4), a court shall have regard in particular to—

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
- (b) his physical, emotional and educational needs;
- (c) the likely effect on him of any change in his circumstances;
- (d) his age, sex, background and any characteristics of his which the court considers relevant;
- (e) any harm which he has suffered or is at risk of suffering;
- (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
- (g) the range of powers available to the court under this Act in the proceedings in question.

(4) The circumstances are that—

- (a) the court is considering whether to make, vary or discharge a section 8 order, and the making, variation or discharge of the order is opposed by any party to the proceedings”

19. Section 7(1) of the Children Act 1989 provides that “a court considering any question with respect to a child under this Act may ... ask an officer of the Service ... to report to the court on such matters relating to the welfare of that child as are required to be dealt with in the report”, “the Service” meaning the Children and Family Court Advisory and Support Service (Cafcass) established under the Criminal Justice and Court Services Act 2000 where its functions are defined in section 12(1) as follows:

“(1) In respect of family proceedings in which the welfare of children ... is or may be in question, it is a function of the Service to—

- (a) safeguard and promote the welfare of the children,
- (b) give advice to any court about any application made to it in such proceedings,
- (c) make provision for the children to be represented in such proceedings,

- (d) provide information, advice and other support for the children and their families.”

- 20. The principal applications in the present case were for a child arrangements order, defined in section 8(1) of the Children Act as “an order regulating arrangements relating to any of the following: (a) with whom a child is to live, spend time, or otherwise have contact; and (b) when a child is to live, spend time, or otherwise have contact with any person”.

Rules of court and practice directions

- 21. Rule 1.1(1) of the Family Procedure Rules 2010 (“FPR”) sets out the overriding objective “of enabling the court to deal with cases justly, having regard to any welfare issues involved”. Rule 1.1(2) identifies various factors which are included in “dealing with a case justly”, including “(a) ensuring that it is dealt with expeditiously and fairly”. Rule 1.4(1) provides that “the court must further the overriding objective by actively managing cases”.
- 22. The rules of court about proceedings concerning children are (save for those relating to surrogacy or adoption proceedings) set out in Part 12 of the FPR, supplemented by a series of practice directions. Chapter 4 of Part 12 contains “Special Provisions about Private Law Proceedings”, supplemented by Practice Direction 12B, the CAP. Practice Direction 12J is headed “Child Arrangements and Contact Orders: Domestic Abuse”.
- 23. The proceedings under appeal were conducted under the Child Arrangements Programme. It should, however, be noted that the CAP is in the process of being replaced by the national rollout of a new procedure, piloted in Dorset and North Wales as the “Pathfinder” programme and now renamed “Child Focused Courts”. The provisions in the rules about the new procedure are (at the moment) entitled “Private Law Reform Investigative Approach” and are found in Practice Direction 36Z. Paragraph 6.1 of PD36Z provides that under the new procedure PD12B is replaced by a new Practice Direction 12B (Pilot). Paragraph 5.1 of PD36Z makes a series of amendments to PD12J in cases under the new procedure. Readers of this judgment should therefore be aware that some references to the rules and PDs in this case may not be relevant to cases brought in the Child Focused Courts.
- 24. PD12B contains detailed provisions about the conduct of proceedings under the CAP. The following are relevant to this appeal. Paragraph 1.2 provides:
 - “The CAP is designed to assist families to reach safe and child-focused agreements for their child, where possible out of the court setting. If parents / families are unable to reach agreement, and a court application is made, the CAP encourages swift resolution of the dispute through the court.”
- 25. Paragraph 10.2 provides:
 - “Continuity of judicial involvement in the conduct of proceedings from the FHDRA to the making of a final order should be the objective in all cases.”

26. Paragraph 13 is headed “Safeguarding”. Paragraph 13.1 provides:

“Where an application is made for a child arrangements order (but not necessarily for specific issue or prohibited steps orders), before the FHDRA (see paragraph 14 below) Cafcass ... shall identify any safety issues by the steps outlined below.”

Under paragraph 13.3, “In order to inform the court of possible risks of harm to the child Cafcass ... will carry out safeguarding enquiries.” Paragraph 13.5 provides that “Cafcass ... shall record and outline any safety issues for the court, in the form of a Safeguarding letter ...”

27. Paragraph 14 makes provisions about the FHDRA. Paragraph 14.3 identifies particular matters to be considered. Under the heading “Safeguarding”, the court at the FHDRA is directed to consider inter alia “The nature and extent of any factual issues and whether a fact-finding hearing is needed to determine allegations which are not accepted, and whose resolution is likely to affect the decision of the court” and “Risk identification followed by active case management including risk assessment, and compliance with the Practice Direction 12J”. Under the heading “Reports”, it is provided that “If a report is ordered in accordance with section 7 of the Children Act 1989, the Court should direct which specific matters relating to the welfare of the child are to be addressed.” It is further provided that “General requests for a report on an application should be avoided; the Court should state on the face of the Order the specific factual and/or other issue which is to be addressed in the focused report.” Under the heading “Case management”, the questions to be addressed at the FHDRA include: “(a) What, if any, issues are agreed and what are the key issues to be determined?” and “(b) Should the matter be listed for a fact-finding hearing?” Another issue identified is “(g) Judicial continuity should be actively considered (especially if there has been or is to be a fact-finding hearing or a contested interim hearing).”
28. Practice Direction 12J sets out principles and procedures to guide judges when deciding whether to hold a fact-finding hearing in private law cases and, if so, how to manage the process. It applies to all family proceedings “in which an application is made for a child arrangements order, or in which any question arises about where a child should live, or about contact between a child and a parent or other family member, where the court considers that an order should be made” (paragraph 1). In the case of Child Focused Courts, the terms of the Practice Direction have been significantly amended by Practice Direction 36Z. But the following provisions of Practice Direction 12J as applicable under the Child Arrangements Programme are relevant to this appeal.
29. Paragraph 4 sets out the key principle and purpose of the Practice Direction:
- “Domestic abuse is harmful to children, and/or puts children at risk of harm, including where they are victims of domestic abuse for example by witnessing one of their parents being violent or abusive to the other parent, or living in a home in which domestic abuse is perpetrated (even if the child is too young to be conscious of the behaviour). Children may suffer direct physical, psychological and/or emotional harm from living with and being victims of domestic abuse, and may also suffer harm indirectly

where the domestic abuse impairs the parenting capacity of either or both of their parents.”

30. Paragraph 5 provides that the court “must, at all stages of the proceedings, and specifically at the FHDRA, consider whether domestic abuse is raised as an issue, either by the parties or by Cafcass....” If so, it must take the steps set out in paragraph 5, including considering “the nature of any allegation, admission or evidence of domestic abuse, and the extent to which it would be likely to be relevant in deciding whether to make a child arrangements order” and then giving directions “to enable contested relevant factual and welfare issues to be tried as soon as possible and fairly”.
31. Paragraph 6 provides:

“In all cases it is for the court to decide whether a child arrangements order accords with Section 1(1) of the Children Act 1989; any proposed child arrangements order, whether to be made by agreement between the parties or otherwise must be carefully scrutinised by the court accordingly....”
32. Paragraph 14 provides:

“The court must ascertain at the earliest opportunity, and record on the face of its order, whether domestic abuse is raised as an issue which is likely to be relevant to any decision of the court relating to the welfare of the child, and specifically whether the child and/or parent would be at risk of harm in the making of any child arrangements order.”
33. Paragraphs 16 to 20 include provisions relating to fact-finding hearings. Paragraph 16 provides:

“The court should determine as soon as possible whether it is necessary to conduct a fact-finding hearing in relation to any disputed allegation of domestic abuse –

 - (a) in order to provide a factual basis for any welfare report or for assessment of the factors set out in paragraphs 36 and 37 below;
 - (b) in order to provide a basis for an accurate assessment of risk;
 - (c) before it can consider any final welfare-based order(s) in relation to child arrangements; or
 - (d) before it considers the need for a domestic abuse intervention.”
34. Paragraph 17 makes provision for matters to be considered by the court determining whether it is necessary to conduct a fact-finding hearing. These include the views of the parties and of Cafcass, whether the factors set out in paragraphs 36 and 37 below can be determined without a fact-finding hearing, whether the nature and extent of the

allegations, if proved, would be relevant to the issue before the court; and whether a separate fact-finding hearing would be necessary and proportionate in all the circumstances of the case. Paragraph 18 provides that “Where the court determines that a finding of fact hearing is not necessary, the order must record the reasons for that decision.”

35. Paragraphs 21 to 23 contain provisions under the heading “Reports under section 7”, including:

“21. (1) Subject to sub-paragraph (3), sub-paragraph (2) applies in any case where- (a) a child being a victim of domestic abuse; or (b) a risk of harm to a child resulting from domestic abuse, is raised as an issue.

(2) In such a case, the court should consider directing that a report on the question of contact, or any other matters relating to the welfare of the child, including matters relating to whether a section 91(14) order would be appropriate (see Practice Direction 12Q) be prepared under section 7 of the Children Act 1989 by an Officer of Cafcass or a Welsh family proceedings officer (or local authority officer if appropriate).

(3) Sub-paragraph (2) does not apply where the court is satisfied that it is not necessary to order the preparation of such a report in order to safeguard the child’s interests.

22. If the court directs that there shall be a fact-finding hearing on the issue of domestic abuse, the court will not usually request a section 7 report until after that hearing....

23. Any request for a section 7 report should set out clearly the matters the court considers need to be addressed.”

36. Paragraphs 28 to 31 contain provisions under the heading “The fact-finding hearing or other hearing of the facts where domestic abuse is alleged”. Paragraph 29 provides:

“The court should, wherever practicable, make findings of fact as to the nature and degree of any domestic abuse which is established and its effect on the child, the child’s parents and any other relevant person. The court must record its findings in writing in a Schedule to the relevant order, and the court office must serve a copy of this order on the parties. A copy of any record of findings of fact or of admissions must be sent by the court office to any officer preparing a report under Section 7 of the 1989 Act.”

37. Paragraphs 32 to 34 contain provisions under the heading “In all cases where domestic abuse has occurred”. These include steps to be taken to obtain information about domestic abuse services, or specialist assessments or details of treatment programmes. Paragraphs 35 to 37 contain provisions under the heading “Factors to be taken into account when determining whether to make child arrangements orders in all cases

where domestic abuse has occurred”. These include the provisions referred to in paragraph 16 quoted above.

“35. When deciding the issue of child arrangements the court should ensure that any order for contact will not expose the child to an unmanageable risk of harm and will be in the best interests of the child.

36. (1) In the light of-

- (a) any findings of fact,
- (b) admissions; or
- (c) domestic abuse having otherwise been established,

the court should apply the individual matters in the welfare checklist with reference to the domestic abuse which has occurred and any expert risk assessment obtained.

(2) In particular, the court should in every case consider any harm-

- (a) which the child as a victim of domestic abuse, and the parent with whom the child is living, has suffered as a consequence of that domestic abuse; and
- (b) which the child and the parent with whom the child is living is at risk of suffering, if a child arrangements order is made.

(3) The court should make an order for contact only if it is satisfied-

- (a) that the physical and emotional safety of the child and the parent with whom the child is living can, as far as possible, be secured before, during and after contact; and
- (b) that the parent with whom the child is living will not be subjected to further domestic abuse by the other parent.

37. In every case where a finding or admission of domestic abuse is made, or where domestic abuse is otherwise established, the court should consider the conduct of both parents towards each other and towards the child and the impact of the same. In particular, the court should consider –

- (a) the effect of the domestic abuse on the child and on the arrangements for where the child is living;

- (b) the effect of the domestic abuse on the child and its effect on the child's relationship with the parents;
- (c) whether the parent is motivated by a desire to promote the best interests of the child or is using the process to continue a form of domestic abuse against the other parent;
- (d) the likely behaviour during contact of the parent against 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."

38. Finally, under the heading "The reasons of the court", paragraph 40 provides:

"In its judgment or reasons the court should always make clear how its findings on the issue of domestic abuse have influenced its decision on the issue of arrangements for the child. In particular, where the court has found domestic abuse proved but nonetheless makes an order which results in the child having future contact with the perpetrator of domestic abuse, the court must always explain, whether by way of reference to the welfare check-list, the factors in paragraphs 36 and 37 or otherwise, why it takes the view that the order which it has made will not expose the child to the risk of harm and is beneficial for the child."

39. Practice Direction 12J sets out the approach to be adopted. It has been amended on several occasions and continues to be the subject of criticism from various quarters. But its purpose is clear – to provide a robust and rigorous procedure to be followed in cases of alleged or suspected domestic abuse that ensures that the general principles set out in paragraph 4 are respected.
40. Importantly, like all provisions under the Family Procedure Rules, Practice Direction 12J is subject to the overriding objective "of enabling the court to deal with cases justly, having regard to any welfare issues involved".
41. It should also be read alongside the guidance issued by the President of the Family Division in June 2020, "President's Guidance: The Road Ahead" and in particular the following observations that

"Parties appearing before the court should expect the issues to be limited only to those which it is necessary to determine to dispose of the case, and for oral evidence or oral submissions to be cut down only to that which it is necessary for the court to hear Parties will not be allowed to litigate every issue and present extensive oral evidence or oral submissions; an oral hearing will encompass only that which is necessary to determine the application before the court."

42. Part 16 of the FPR is headed “Representation of children and reports in proceedings involving children”. Rule 16.33(1) empowers the court in private law proceedings to direct a Cafcass officer to prepare a report on matters relating to the welfare of the child. Rule 16.33 further provides:

“(2) It is the duty of the officer to—

- (a) comply with any request for a report under this rule; and
- (b) provide the court with such other assistance as it may require.

...

- (4) The officer, when carrying out duties in relation to proceedings under the 1989 Act, must have regard to the principle set out in section 1(2) and the matters set out in section 1(3)(a) to (f) of that Act as if for the word “court” in that section there were substituted the words “children and family reporter” or “welfare officer” as the case may be....”

Case law

43. At this point, I refer to principles established by case law on two issues: (1) when fact-finding hearings should be held and (2) the court’s approach to assessing risk.
44. The necessity of a fact-finding hearing in cases of alleged domestic abuse has been considered by this Court in *Re H-N And Others (Children) (Domestic Abuse: Finding of Fact Hearings)* (Rev 2) [2021] EWCA Civ 448 and *Re K* [2022] EWCA Civ 468. In *Re H-N* the Court suggested the following approach (at paragraph 37):

“(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’.”

In *Re K*, after citing paragraph 37 of the judgment in *Re H-N*, Sir Geoffrey Vos MR, giving the judgment of the Court, observed:

“A decision to hold a fact-finding hearing is a major judicial determination within the course of family proceedings. The process will inevitably introduce delay and postpone anything other than an interim determination of issues relating to the child's welfare, which is contrary to the statutorily identified general principle that any delay in resolving issues is likely to be prejudicial to a child's welfare (section 1(2) of the CA 1989). Further, the litigation of factual issues between parents is likely to be adversarial and, whatever the outcome, to have a negative impact on their ongoing relationship and ability to cooperate with each other as parents. It is therefore important for the court, in every case where fact-finding is being considered, to take time to identify the welfare issues, to understand the nature of the allegations, and then to consider whether the facts alleged are relevant to those issues and whether it is, therefore, necessary for the factual dispute to be determined.”

45. When complying with the obligation under section 1(3)(e) to have regard to any harm which the child “has suffered or is at risk of suffering”, a court must adhere to the well-established principles reiterated by Baroness Hale of Richmond in *Re S-B (Children) (Care Proceedings: Standard of Proof)* [2009] UKSC 17, [2010] 1 AC 678 (at paragraph 8):

“First, it is not enough that the court suspects that a child may have suffered significant harm or that there was a real possibility that he did. If the case is based on actual harm, the court must be satisfied on the balance of probabilities that the child was actually harmed. Second, if the case is based on the likelihood of future harm, the court must be satisfied on the balance of probabilities that the facts upon which that prediction was based did actually happen. It is not enough that they may have done so or that there was a real possibility that they did. Third, however, if the case is based on the likelihood of future harm, the court does not have to be satisfied that such harm is more likely than not to happen. It is enough that there is “a real possibility, a possibility that cannot sensibly be ignored having regard to the nature and gravity of the feared harm in the particular case” (per Lord Nicholls of Birkenhead, [in *Re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563 at p 585F).”

46. *Re S-B* was an appeal in care proceedings and Baroness Hale’s comments were directed at the reference to the likelihood of harm in the threshold criteria for making care or supervision orders under section 31(2) of the Children Act. But the same approach applies to the assessment of risk of harm under section 1(3)(e). That is clear from the judgment of Butler-Sloss LJ in *Re M and R (Minors) (Child Abuse: Evidence)* [1996] EWCA Civ 1317 [1996] 2 FLR 195. In a passage endorsed by Baroness Hale in another case (*Re B (Children)* [2008] UKHL 35), Butler-Sloss LJ in *Re M and R* said (at page 203 E to G of the FLR report):

"[Counsel's] point was that if there is a real possibility of harm in the past, then it must follow (if nothing is done) that there is a risk of harm in the future. To our minds, however, this proposition contains a non sequitur. The fact that there might have been harm in the past does not establish the risk of harm in the future. The very highest it can be put is that what might possibly have happened in the past means that there may possibly be a risk of the same thing happening in the future. Section 1(3)(e), however, does not deal with what *might* possibly have happened or what future risk there *may* possibly be. It speaks in terms of what *has* happened or what *is* at risk of happening. Thus, what the court must do (when the matter is in issue) is to decide whether the evidence establishes the harm or the risk of harm.

We cannot see any justification for the suggestion that the standard of proof in performing this task should be less than the preponderance of probabilities. Were such a suggestion to be adopted, it would mean in effect that instead of acting on what was established as probably the case, the court would have to act on what was only possibly the case, or even on the basis of what was probably not the case."

Cafcass guidance

47. In recent years, the extent and impact of domestic abuse, on its victims and society as a whole, has rightly achieved much wider recognition. An important insight has been the acknowledgement that the victims of such abuse include not only the primary victims against whom the abuse was directed but others affected by the experience, in particular children within the household, who witness the acts of abuse and its consequences. The wounds inflicted on a family as a result of domestic abuse leave scars on its victims which rarely disappear. Foremost amongst the projects which have brought about this wider recognition was the report of the so-called Harm Panel – “Assessing Risk of Harm to Children and Parents in Private Law Children Cases” – published in 2020. The Cafcass Domestic Abuse Framework, incorporating the Domestic Abuse Practice Pathway (hereafter “the Practice Pathway”), the complementary Guidance, and the Practice aid for assessing coercive control, is part of the family justice system’s response to the challenges identified in the Harm Panel’s report.

48. The Practice Pathway was adopted by Cafcass in 2024. It is designed to provide “a structured approach to risk assessment of domestic abuse in the family court”. It is accompanied by a “complementary, overarching guidance document” (hereafter “the Guidance”). The Guidance (at page 4) explains the purpose of the Practice Pathway:

“The Practice Pathway assists the practitioner to conduct an evidence-based risk assessment focussing on child impact which supports professional judgement and should be used in all cases where domestic abuse is a feature. The Practice Pathway can be used independently as a specific practice aid, or referred to

within assessments using the Cafcass Child Impact Assessment Framework”.

49. The assessment objectives are stated to be (at page 4 of the Practice Pathway):

“To prioritise the safety and well being of the child at the centre of proceedings; To promote the best interests of the child and offer a safe recommendation to the court; To work in a trauma focussed, respectful and responsive manner; To assess the impact on the child of their lived experience of domestic abuse and to look for strengths in the family and community to promote safety.”

The Guidance (page 4) there is a “note on language”:

“Throughout this document we have used the words ‘victim’ and ‘perpetrator’. Some agencies might also talk about ‘survivors’, ‘the abusing parent’, or ‘the protective parent’. These are all legitimate uses of language where there are findings, admissions or other evidence of known abuse. We must use our language more cautiously, however, if the facts are disputed between the parties and have not yet been determined by the court. In these circumstances it is appropriate to preface the descriptors ‘victim’ or ‘perpetrator’ with ‘reported’, ‘alleged’ or ‘presenting’. We should sensitively explain to parents why we are writing in this way, and be clear that it is not our intention to diminish or undermine their experiences.”

At page 5 of the Guidance, the aim of risk assessment is explained in these terms:

“The underpinning aim of risk assessment is to understand the issues which could cause harm and provide reasoned evidence to make safe decisions. Domestic abuse risk assessment is bespoke to each individual family and child, but should always follow the same structured process which is transparent to families and to the court. It is therefore important to have the consistency of a strong practice model which is used across the organisation, as a foundation for skilled professional judgement. The Domestic Abuse Practice Pathway, which is now embedded across Cafcass practice, has been refreshed whilst remaining familiar to practitioners.

Cafcass has identified five stages for the risk assessment of domestic abuse, which are set out below. Each stage corresponds to good practice points within the Domestic Abuse Practice Pathway which guide the practitioner in a systematic approach to assessment.”

50. The five stages of domestic risk assessment are defined as:

- “1. To identify the nature, severity/ impact and duration of the abuse which the child has experienced.
2. To identify with whom the child feels and is, emotionally, physically and psychologically safe.
3. To assess the harm and impact of the domestic abuse on each individual child using a risk and strengths based approach.
4. To assess the likelihood of continued harm from domestic abuse and the seriousness and impact if this were to happen.
5. To provide the court with a clear, evidence-based and well-reasoned onward recommendation in accordance with the child’s best interests.”

On page 5 of the Guidance, after the five stages have been recited, it is stated:

“The assessment stages reflect the importance of the lived experiences of each family member and on the holistic wellbeing of the child, both now and in the future.”

51. The Practice Pathway is a detailed document and it would be disproportionate to set out it in full. It is important, however, to illustrate the way in which it is drafted. The method adopted is to suggest a series of questions for the Cafcass officer to consider under each stage of the assessment. Under Stage 1, for example (“identify the nature, severity/ impact and duration of the abuse which the child has experienced”), they are directed to address a number of questions when identifying the nature and pattern of the abuse”. These include:

“How has the abuse been perpetrated? Was this physical, psychological, emotional? Has there been coercive and controlling behaviour present? Have there been injuries or medical attention required? Is there a history of abuse in previous relationships? Who is the primary perpetrator? What is the power dynamic regarding evidence of specific typology? What has the child or young person experienced in their family environment?”

Similarly-framed questions are suggested for addressing the severity and duration of the abuse.

52. It will be seen that the terms in which stage 1 is framed and the questions posed under the heading are drafted on the basis that abuse has been perpetrated and has been experienced by the child. The same basis can be detected in many of the suggested questions in the following stages.
53. Under stage 2 (“identify with whom the child feels and is emotionally, physically and psychologically safe”), the suggested questions include, for example: “Explore how the child has coped in the home, do they use safety strategies? For example does the child align with the abusive parent to keep safe, or protect the non abusive parent?”

54. Under stage 3 (“assess the harm and impact of the domestic abuse on each individual child using a risk and strengths based approach”), various questions are suggested for “building an evidence base”, including:

- “What does the evidence tell you about the nature, duration and severity and impact of the abuse?”
- How would you describe the behaviours using a typology approach?
- How have the practice aids contributed to your understanding of the domestic abuse?
- Is coercive control present and what is the pattern and impact?
- What has the child experienced? Have they expressed a wish to have contact, if so is this likely to be safe and beneficial.”

Further steps are then suggested under the sub-heading “What is the impact on the child?” These include “use a trauma informed approach to assess the impact on the child in the short and longer term” and “identify impact by exploring emotional, psychological and physical welfare of the child both now and in the future”. Many of the concepts and themes mentioned in this section are explained in detail in the Guidance.

55. At stage 4 (“assess the likelihood of continued harm from domestic abuse and the seriousness and impact if this were to happen”), the Cafcass officer is directed to take further steps, including:

“Using your evidence base, assess the risk of harm to the child in the context of the application, applying professional judgement.

Assess the impact of the abuse alongside the likelihood for the harm to continue with spending time arrangements in place and how serious and impactful this would be.

What specifically is the predicted risk for each child and for the victim[?]

Is unsupervised in-person time spent together safe?”

Further detailed advice is set out under stage 5.

56. Between stages 2 and 3 of the Pathway is a page which attracted some attention from the Court in the present appeal.

“Legal and procedural issues to consider

- Where there has been a fact finding hearing (please see fact-finding guidance for information), the court is required to consider the Welfare Checklist in the light of any findings.
- Where there has been no fact finding hearing, Cafcass staff cannot determine facts. However, Cafcass staff must make use of all of the available information, and their professional judgement informed by the use of this Domestic Abuse Practice Pathway, in order to make recommendations about a safe and appropriate way forward for the child.
- Where there has been no fact finding ordered but domestic abuse concerns indicate that assessment cannot proceed without establishing facts, the practitioner should alert the court prior to filing a section 7 [report]. Legal advice may be necessary.
- Refer to Section 36 and 37 of Practice Direction 12J which highlight the issues for scrutiny by the courts regarding spending time arrangements. These themes should also be considered by the practitioner.”

57. The Guidance gives further advice about what a Cafcass officer should do where the court disagrees with recommendations:

“Cafcass respects the authority of the court, it is our role to carry out work as directed during proceedings. Sometimes the court will depart from our recommendations. Providing the court is in receipt of all relevant evidence and sets out its reasons for departing from our recommendations this is a legitimate divergence and one which Cafcass must accept and work with.

There may however be occasions where the work the court directs us to do, brings us into conflict with our wider social work values and professional standards – namely where we are asked to progress, observe, endorse, or report on arrangements that we have assessed as being potentially unsafe - or where the court has made findings that the child has not experienced domestic abuse, when our direct work with the child indicates that they have.”

The Guidance proceeds to set out steps to be taken by the officer and the Cafcass service manager in such circumstances.

58. In addition to the Pathway and Guidance, we were also shown the Cafcass practice aid for assessing coercive control. Its function is summarised as follows: “This practice aid should be used where the Safe Lives DASH has identified elements of coercive and/or controlling behaviour in the relationship in order to assess this dynamic more fully in the context of the application.” It consists of 49 statements about their partner’s conduct

which the individual is asked to say are true always, to some extent or never. Under the heading “Assessment”, it is stated:

“The assessor will talk through the form with the victim and determine the nature and intensity of the behaviours and ask relevant questions around current perceptions and safety. The purpose of this task is to consider how the disclosed/ alleged behaviours may still be affecting the victim either as a current risk (ie they are ongoing), or whether the impact is more psychologically affecting and the victim still feels controlled or coerced.

The practice aid should be used to establish the risk with regard to the following factors

- The nature of the behaviour and primary perpetrator
- The extent to which these factors were present in the relationship

Your assessment should establish:

- The extent to which these factors remain present in the relationship
- The current risk to victim and child
- The impact on parenting capacity
- The impact on the child
- Mitigating protective factors

This practice aid is a guide only. It is to be used in conjunction with complementary aids and as part of a holistic assessment process.”

59. Having set out at some length the relevant law and guidance, I return to the present case. Before turning to the grounds of appeal and arguments presented to us, I shall consider the section 7 report, the Cafcass officer’s oral evidence, the DDJ’s judgment at first instance, and HHJ Willstead’s judgment on the first appeal.

The section 7 report

60. The report prepared by the Cafcass officer, and the DDJ’s treatment of it, lie at the heart of this appeal. It is therefore necessary to set out the report in some detail.
61. In accordance with Cafcass practice, after introductory information, the report is drafted in sections headed “What is happening for this child?”, “Enquiries made”, “Child impact analysis (How this child is affected)”, “Professional judgement”, “Recommendations” and “The child’s view of the recommendations in their own words”. In the introductory information, the officer wrote “In compiling this report, I

have had regard in particular to the welfare checklist as required by Rule 16.20/16.33 Family Procedure Rules 2010 and I have applied a welfare checklist analysis to the facts of the case throughout.” There is, however, no further direct reference to the checklist in the report.

62. In the section headed “What is happening for this child?”, after summarising in two sentences the mother’s application and the child’s current living arrangements, the officer stated that in her application the mother had “raised concerns relating to domestic abuse and controlling behaviours in relation to the care arrangements for D” and that the father “responded with a C2 application, seeking orders for D to live with him, and raising concerns relating to emotional and psychological harm to himself and D. He also raised several concerns about [the mother’s] care of D.” He noted that in the safeguarding letter “the analysis suggested that [the father’s] accounts of emotional abuse towards him were not as consistent as [the mother’s] reports of abuse against her. The safeguarding letter also expressed concerns that [the father] may be controlling and suggested that a fact-finding hearing maybe needed.” He then referred to the decision that there should not be a fact-finding hearing and summarised the matters which the court had asked to be covered in the section 7 report. It is noticeable that his summary of those matters is worded slightly differently to the wording in the FHDRA order. In particular, the court’s direction to assess “how the child would be affected by the proposed change of a move to live with the mother in the [X] area to include changes to educational provision” was summarised as “the impact of any change on D”. And the court’s direction to assess “the parenting capacity of both parents having regard to the allegations of domestic abuse raised by the mother” was summarised as “an assessment of the impact of domestic abuse on parenting capacity”.
63. In the section headed “Enquiries made”, the officer recorded that he had read all the available information, visited D at home with her father, and had separate meetings with each parent and with D. In the section headed “Child impact analysis”, he set out details of his conversation with D. He was “very impressed with her ability to relax and engage” with him adding that she “chatted openly and freely”. He recorded her comments about her life with each parent. D said her mother was “never grumpy” or strict and she gave her a score of 100 out of 10, adding “she is the best mum”. She said of her father “he is only ever happy”, gave him a score of zero out of 10 for cooking (“he’s not very good, all he knows is how to do spaghetti bolognaise and pizza”) but 100 out of 10 for love. She said she felt safe with her dad and that she saw a lot of her grandparents. She said that she lived mostly with her dad and was happy with that but would like to see more of her mother, adding “I would like to live with them both”.
64. The report continued:

“I asked D if her parents got on together and she said, “they can be grumpy,” and that her dad is the worse of the two, which, “makes me feel sad and it makes me feel a little bit scared.” D told me she also thinks her mother feels scared. D told me she had talked to her mother about this, but she had not been able to tell her father. I asked if she would like this to be different and D said she did. She would like to see more of mother and for her parents to be able to get on better. D told me she had only told her mother and myself about these feelings. I asked how scared

she was, and she said 8 out of 10 and ‘it makes me feel a little bit wobbly inside.’”

The “Child impact analysis” of the report concluded with five brief paragraphs about the officer’s conversations with each parent.

65. The section headed “Professional judgement” started:

“To give this assessment structure, I will write to the headings in the Cafcass Domestic Abuse Framework.”

The section of the report then followed the five stages in the Practice Pathway. Under the first heading (“Identify the nature, severity/impact and duration of the abuse which the child has experienced”), the officer set out details of his conversations with each parent about their allegations of abuse. In each case, he described how he had “used the Cafcass coercive control Practice Aid to gain insight into this”. Under the second heading (“identify with whom the child feels and is, emotionally, physically and psychologically safe”), he reported what each parent had told him about their mental health. There was no reference to the child at all. Under the third heading (“assess the harm and impact of the domestic abuse on each individual child using a risk and strengths based approach”), he recorded that the mother “reports that [the father] has been controlling over contact, and that D cries and is upset when she returns to her father”, that the mother reported that he was “abusive at handovers, and that he controls everything to do with D”, and that the father told him he was concerned the mother was “emotionally swaying D against him”. It is difficult to see how this could be described as “building an evidence base”, or as using a trauma informed approach to assess the impact of the abuse on the child, in the way intended in the Practice Pathway.

66. Under the fourth heading (“assess the likelihood of continued harm from domestic abuse and the seriousness and impact if this were to happen”), the officer expressed concern “at the huge gulf between the parental account of events within the relationship”. He summarised the parents’ comments about their intimate relationship. He then wrote:

“It is difficult to see any compatibility between the parental narratives. Of the two, I find [the mother’s] the more compelling. Given the strength of emotion, the level of hurt felt and the gap between the parental accounts I am concerned about the potential for continued Domestic Abuse between the parties, and therefore the continued potential for D to experience harm.”

67. Under the fifth heading (“provide the court with a clear, evidence-based and well-reasoned onward recommendation in accordance with the child’s best interests”), the officer wrote:

“Whether or not [the mother] had affairs, [the father] believed and continues to believe she did. This lies behind the emotional abuse and control he reports he suffered in the relationship. His emotions were powerful and destructive to himself, and to [the mother]. Indeed, ultimately, whether intentionally or not, these emotions impacted on her in an abusive and harmful way and

were the most likely cause for her seeking to leave the parental relationship.”

The officer continued:

“regrettably, these powerful emotions continue to impact on the family dynamics For me the clearest indication of this lies in D’s own words, when talking about her experience of handovers she said, “it makes me feel a little bit wobbly inside. She is also aware that her mother shares these emotions. This would explain why she can be open and honest with her mother about how she feels, and why [the mother] reports D is tearful and distressed when returning to her father’s home.

Once home with her father, I accept that D will both enjoy her time with him and feel safe in many ways, but not safe enough to express to him how she really feels about her mother. Most likely this will be in part due to what she currently experiences during handovers, and because in all likelihood she has witnessed her mother’s suffering when they all lived together as a family.

For D, this situation is far from ideal, indeed it has the potential to be emotionally abusive, and will be so, if it is allowed to persist. When I consider D’s wish to spend time with both her parents I am not convinced the current arrangements are in her best interests. Nor do I consider a formal shared-care arrangement safe.”

68. The officer therefore reached the following conclusion.

“The only emotionally safe option is for D to reside with her mother, and to have defined contact with her father. Having proffered this advice it is my further advice that it be enacted at the earliest possible opportunity, because I am concerned about [the father’s] capacity to contain and shield D from his emotions; he has a history of appearing to struggle with this.

I have considered Practice Direction 12J, and the requirement for the court to be satisfied that both the child and the resident parent are emotionally and physically safe before, during and after contact. There is no evidence that [the father has ever been physically violent to anyone, though [the mother] did report feeling the potential for this during the argument about the Rolex.

D has a deep emotional attachment with her father, and I used the Cafcass safe contact indicator Practice Aide to validate my conclusions that spending time with him would be safe and beneficial. The protective factors outweighed the risk factors, which supports my findings.”

69. He therefore recommended that D reside with her mother, with contact with her father, including staying contact but less frequently than she currently has with her mother. He made further recommendations that the parents should undertake certain courses to address parenting issues. In the final section of the report (“The child’s view of the recommendations in their own words”), he wrote:

“she said my recommendations about her living arrangements were good, she gave them the thumbs up and scored them 10 out of 10 and ran over to give her mother a big hug.”

It transpired in his oral evidence that this final conversation with D had taken place by video link.

The Cafcass officer’s oral evidence

70. The Cafcass officer’s oral evidence was not transcribed because the sound quality was inadequate as a result of the way in which his evidence was given described above. According to HHJ Willstead’s judgment, she did not have the benefit of a note of his evidence for the first appeal, although extracts from the evidence were cited in counsel’s written submissions. The parties have, however, now agreed a full note for the purposes of this second appeal. It shows that the officer was questioned at length, in particular by Ms Harriet Dudbridge on behalf of the father. I shall concentrate on the issues which are central to this appeal.
71. The officer was asked questions about the likely effect on D of a change in circumstances, an issue which he had not addressed in his report. In answer to Mr Swan for the mother, he described D as a “bright, intelligent young lady who could accommodate a change of school”. In cross-examination by Ms Dudbridge, he described D as “bright, strong and resilient”. He thought schooling was secondary to living arrangements. He agreed with Ms Dudbridge that, in his conversation with D, he had not explored her feelings about her school, or the importance of friendships at school or in the local area. He acknowledged that he had not spoken to D’s teachers. He accepted that a change of school would be “a big change of circumstances”. He had not considered the differences between the two schools, one being significantly smaller than the other, and conceded that he had not undertaken any analysis of the change of schools. He agreed that he had not explored D’s relationship with the three sons of the mother’s current partner, saying that it was not the focus of his assessment. He accepted that moving from being an only child to sharing with three “step-siblings” would be a change but said there was “no evidence that it would be a derogatory change”. In conclusion, it was put to him that he had failed to consider the effect on D of the change in circumstances that moving to her mother would involve. He did not agree.
72. Earlier in his cross-examination by Ms Dudbridge, the following exchange took place:
- “Counsel: Do you think there is any relevance of the location where D has lived her entire life & the school D has attended the whole of her schooling career
- Officer: Relevant to what?

Counsel: D's arrangements. Are you saying it is reasonable for M to say she doesn't want to live in the local area anymore, move to [X] where she doesn't have accommodation, to take D with her

Officer: [Mother] moved for reasons she reports as abuse and it would be natural for her as a mother to want to take her child with her. I support her contentions that she was being exposed to domestic abuse and as such her desire to want to relocate and take her child with her would be perfectly normal." [emphasis added]

73. Ms Dudbridge posed a number of questions about the officer's treatment of the allegations of abuse. Early in her cross-examination, the Cafcass officer stated that the father's interactions with the mother were "abusive towards her in terms of her experience of them". Later the following exchange took place:

"Counsel: You have said '[Mother] was subject to a degree of domestic abuse.

Officer: Yes

Counsel: I'm sure you're aware DDJ Taghdissian said there was no need for a fact find, each parent would spend unsupervised time with D including weeks at a time. Surely you're aware the court will hold a finding of fact where veracity of allegations would have an impact on child arrangements.

Officer: Yes

Counsel: Presumably you accept the court decided the veracity of the allegations were not relevant to D's arrangement?

Officer: Not sure I would read it that way. My view looking at parental experiences & what D would like, the assessment I have done my view is that [mother]'s experience is important in thinking about what is best for her child and how the arrangement came about & I do feel that [the mother] is more of the two sustainable arrangements for D with her father. I am concerned that [the father] does not hold the degree of respect for [the mother]. I concur with the view from my interview with him, that he continues to see her as a bad person which will be emotionally damaging to D.

Counsel: So is it fair to say that you have made [your recommendations] on the basis that some degree of domestic abuse has been perpetrated by [the father] to [the mother]?

Officer: That is part of my argument. I agree that still remains & why I do not suggest shared care arrangements as there has to be an equity of respect. I do not believe [the father] has moved forward from seeing [the mother] in a bad way.”
[emphasis added]

74. When Ms Dudbridge suggested that, by describing the mother’s narrative as “more compelling”, he was making a finding that what she said was true, he responded “no, that is me as a social work professional giving my opinion”. He added:

“Mother found engage with Father painful, and controlling and abusive. That is her reporting it. Difference between that and the court finding a fact but that is her feeling of it.”

Towards the end of his questioning, when Ms Dudbridge returned to this theme, he said:

“My assessment that [the father’s] care to [the mother] was not appropriate when they were together and that will have affected D and should D remain in F’s care that that risk of harm will continue”.

When Ms Dudbridge reminded him that there were no findings that the father’s behaviour was “not appropriate”, he replied:

“There is report of her lived experience & that is powerful enough for me to taking into consideration why she felt like that. If finding of fact is needed, which I don’t think it is, it will be for the court to determine, I simply report on what she has told me.”

A further exchange took place in which Ms Dudbridge put it to the Cafcass officer that there was no factual basis for domestic abuse in this case:

“Officer: There were reports. I treat the lived experience of a potential victim seriously. So I have used the framework as a place where we need to start.

Counsel: You said to father when you met him, you accepted as true what was said to you by mother.

Officer: I can’t recall. I generally accept what most people tell me is their truth

Counsel: On that basis, if mother is telling you she is a victim of domestic abuse, that is the basis for your risk analysis isn’t it?

Officer: I will take it into account as her lived experience and potentially the child's experience."

The DDJ's judgment

75. DDJ Loughridge's judgment was delivered ex tempore, apparently at 4.45pm. The transcript is less than two pages. It contained no summary of the background history, nor the legal principles, nor the issues, nor the parties' respective cases on those issues, nor any reference to the written evidence of either parent. Instead, at the outset the judgment immediately focused on the section 7 report, which the DDJ described as "an important and in many ways a pivotal document". He recorded that the father "says that the report is fundamentally flawed for a number of reasons", in particular because "it does not consider the impact of change on D" and the Cafcass officer "has simply accepted the mother's narrative of difficulties within the relationship and has preferred that narrative to what the father has said, and taken it into account in making his recommendations, despite there being no factual findings about domestic abuse". On this latter issue, the DDJ said:

"The issue of whether he has overstepped the mark in terms of his conclusions about who did what in the relationship, why it broke down and domestic abuse generally is a subtle and nuanced one. Mr Swann [the mother's counsel] acknowledged that in paragraph 66 of the report [the Cafcass officer] did overstep the mark by using the terminology he did - that of the two narratives he found the mother's the more compelling. I agree that that choice of words was unwise. However, he is entitled to gain an insight and form an impression of the family dynamics and indeed he did so by utilising the Cafcass coercive control practice aid with both parents.... [The Cafcass officer's] clear emphasis in his oral evidence was that he understood it is for the court to make factual findings but that nevertheless the perception of what has gone on in the minds of the mother and the father is a matter which is appropriate and necessary to take into account, and which has to be factored into his assessment and recommendations. He was clear that the mother's perception was that she was powerless from the moment she chose to leave the family home and that everything that was done thereafter in respect of D was on the father's terms."

The DDJ referred to the father's lack of respect for the mother who he saw as a "bad person". The DDJ continued:

"He is entitled to form those views and, indeed, such analysis is part of the function of a social worker writing a section 7 report notwithstanding that these are not factual findings. It is only by addressing those sort of issues that sensible and well-reasoned recommendations can be made."

76. The DDJ said that the magnetic factor in the welfare checklist was which of the parents was best placed to meet D's emotional needs. He continued:

“whilst in this case there are indicators that D has a good relationship with her father and that she feels safe with him, there are also some indicators that she feels more able to be open and communicative with her mother about anything troubling her.”

He drew this conclusion from the observations in the report, including D’s reference to feeling a little bit scared. He referred to the Cafcass officer’s oral evidence:

“He referred to a very strong and intense emotional reaction by the father to the breakdown of the relationship and that this is an ongoing issue in terms of his insight into how this is impacting others and his ability to meet Ds emotional needs. I accept Mr Swan’s submission that Father has struggled to move on. That underpins [the Cafcass officer’s] analysis that the mother is likely to be better able to promote D’s relationship with Father if she is living with Mother than Father will be able to do if it is the other way around.”

77. His judgment concluded with the following paragraphs:

“9. In summary, therefore, in my view the section 7 report taken as a whole is an informative and weighty piece of evidence from a highly experienced social worker who has undertaken a thorough investigation and analysis of the family dynamics. His approach of putting the parenting issue at the centre is a perfectly sensible one and his conclusion that the current arrangements are not in D’s best interests is a valid reason to depart from the status quo. He repeatedly said in evidence that D is a sociable and resilient child and she will cope readily with the changes involved in going to live with her mother and in changing schools.

10. D’s own wishes and feeling are not entirely clear because she does not fully appreciate that spending more time with one parent means less time with the other and those wishes and feelings are not a particularly significant weighty factor in the court’s decision.

So in terms of the order, it is a lives with Mum order.”

78. The transcript concludes with the DDJ’s brief reasons for refusing the father’s application for permission to appeal.

The first appeal

79. The notice of appeal against the DDJ’s judgment raised the following grounds:

- (1) The court was wrong to place such weight on the ‘parents’ experience’ when no domestic abuse had been found to have happened and when the section 7 report relied on the erroneous ‘fact’ that domestic abuse had occurred.

- (2) The court placed too much weight on the Cafcass officer's view that the mother's perception was that she was 'powerless' despite the officer being unable to evidence any substantive issues with the contact that was agreed between the parties.
 - (3) The court's reasoning that 'the mother is better able to promote D's relationship with the father than he will be able to do the other way round' is unevidenced and the court was wrong to draw this conclusion.
 - (4) The court, relying on the inadequate Cafcass report, did not appropriately consider the effect of change of circumstances for the child.
 - (5) The court, relying on the inadequate Cafcass report, did not have evidence to conclude the mother is best placed to meet the child's emotional needs.
 - (6) The court was wrong to not adequately consider the "spend time with" provisions between the father and child.
80. At the end of the hearing, HHJ Willstead delivered an ex tempore judgment which has now been transcribed. She identified the test for allowing an appeal, namely where the decision of the lower court was (a) wrong or (b) unjust because of a serious procedural or other irregularity. She recorded that she had not been provided with a transcript of note of the evidence given by the Cafcass officer, nor copies of the parents' statements available to the DDJ. She observed that as a result she was "further disadvantaged to understand the broad scope of evidence to which he had regard when making his decision". She noted the technical difficulties which had impeded the Cafcass officer's oral evidence, adding that this was "not an unusual occurrence", that the DDJ was "plainly doing his best to provide the parties with a decision within the time available", and that "he was not invited to adjourn his decision or to provide a written judgment". She noted that neither party had appealed the decision at the FHDRA that a fact-finding hearing was not necessary, nor against the direction that the section 7 report should include "an assessment of the impact of domestic abuse on parenting capacity".
81. Before addressing the grounds of appeal, HHJ Willstead made a "general point" that "several of the oral submissions made in support of the appeal came back to the central theme that the very brief ex tempore judgment did not provide sufficient analysis of the issues". She observed that there had been no attempt by counsel, pursuant to Practice Direction 30A paragraph 4.6, to give the DDJ the opportunity of considering whether there was a material omission from the judgment. She also observed that under paragraph 4.9 of the Practice Direction she was required to consider whether there was such an omission and if so whether to adjourn for the lower court to provide additions to the judgment, but decided that the passage of time since the ex tempore judgment made this "all but impossible to achieve".
82. Considering the first two grounds together, HHJ Willstead observed that, although the Cafcass officer had accepted it was not his role to make findings about whether domestic abuse had in fact occurred, "it appears plain from his report that he did indeed do that". She concluded, however, that she could not "detect any aspect of the ex tempore decision which endorses or adopts [the Cafcass officer's] belief that the father is a perpetrator of domestic abuse". She did not accept Ms Dudbridge's submission on behalf of the father that, as the Cafcass recommendations had been informed by his

conclusions about abuse, the DDJ could not rely on the recommendations without accepting those conclusions, observing:

“Judges are entitled (and indeed required) to analyse the information before them, and are not required to accept wholesale what is put before them. The decision would only be wrong if the errors were imported into the judge’s reasoning, which they are not.”

She added:

“I am satisfied that DDJ Loughridge did properly disregard [the Cafcass officer’s] own opinion about the victim/perpetrator dynamic in the relationship but properly took into account the risk that his impression of the father was well founded.”

83. Dealing with grounds 3 and 5 together, which dealt with the DDJ’s conclusions about the capacity of the parents to meet D’s emotional needs, HHJ Willstead cited passages from the section 7 report which had not been mentioned in the DDJ’s judgment. She observed that, if his failure to cite those passages were a material omission, “further reasons should have been requested”. She added that “notwithstanding my concerns about this, I am satisfied that there is evidence available on which DDJ Loughridge could reasonably reach this conclusion. These grounds fail.”

84. Turning to ground 4, the judge said:

“41. The absence of consideration of this aspect of the welfare checklist is a significant gap. I am unclear how this failed to make its way into [the Cafcass officer’s] final report, particularly in light of the specific direction setting out the need to consider the impact on D of change, and in light of the change of primary carer, home, school and surroundings being the most significant change for her if there is to be a transfer of residence.

42. That said, it was clearly explored with [the officer] in evidence, and DDJ Loughridge noted in his judgment that “[he] repeatedly said in evidence that D is a sociable and resilient child and she will cope readily with the changes involved in going to live with her mother and in changing schools.”

43. The purpose of oral evidence is for further information to be obtained to assist the court in making the correct decisions for a child’s welfare. If the absence of this analysis in the s7 report had been an omission so material as to be incapable of resolution in evidence it is very surprising that this point was not raised at the DRA and an addendum directed. DDJ Loughridge has accepted the evidence of the section 7 reporter (which I do not have) about the impact of change on D. I agree that more detail in the judgment may have assisted the father in understanding what had been taken into account, but I repeat that this ex tempore judgment has, in several areas, summarised conclusions

briefly, and in this case it appears that all of the potential changes are contained within DDJ Loughridge's description of "the changes involved in going to live with her mother and in changing schools". Each of the criticism made on behalf of the father about the lack of consideration of change is set out explicitly in paragraph 3 of the judgment, so it cannot be said that the deputy district judge did not have them in his mind when he reached his decision. If the failure to explicitly set out the impact of each potential change on D was considered a material omission further reasons should have been sought. As before, they were not, but also as before I am satisfied that DDJ Loughridge was reasonably able to determine whether he accepted [the Cafcass officer's] evidence on the impact of change on D, which from his judgment it can be seen that he did."

85. Finally turning to ground 6, HHJ Willstead noted that there was no analysis in the DDJ's judgment about the future arrangements for D to "spend time" with her father. She concluded that this was a material omission and therefore allowed the appeal against that part of the order. As noted above, she gave directions for the re-determination of the issue if the parties were unable to agree.

The second appeal

86. Five grounds of appeal were advanced to this Court. It was said that HHJ Willstead was wrong in:

- (1) stating that the errors within the section 7 report were not imported into the DDJ's reasoning;
- (2) stating that there is no evidence that DDJ Loughridge has adopted the Cafcass officer's view that the father has disrupted/ or attempted to disrupt D's relationship with her mother;
- (3) concluding that there was evidence on which DDJ Loughridge could reasonably reach the conclusion in relation to the grounds of appeal that the mother is better able to promote D's relationship with the father than the father will be able to do the other way around; and that the court did not have evidence to conclude that the mother is best placed to meet the child's emotional needs;
- (4) concluding that that the DDJ was reasonably able to determine whether he accepted the Cafcass officer's evidence on the impact of change on D; and
- (5) emphasising the fault on the part of the father's legal team for not requesting clarification from the DDJ and should instead have focused on the inadequacy of his reasons.

87. In her submissions to this Court, Ms Dudbridge pointed out that the DDJ had failed to identify the issues, or the parties' respective cases on those issues. At no point did he compare the competing arguments. This was particularly problematic because it was accepted by the DDJ, and by HHJ Willstead, that the Cafcass officer's recommendation

was based on his conclusion that domestic abuse had occurred. Ms Dudbridge submitted that the Cafcass officer had proceeded on the basis of the mother's allegations because they were part of her lived experience.

88. Ms Dudbridge submitted that the Cafcass officer's assessment of D's emotional needs, and the capacity of each parent to meet those needs, on which the DDJ relied, was based substantially on some of D's comments during their conversation which, in cross-examination, he accepted were ambiguous. She submitted that the report did not provide evidence to support the conclusion that the "only emotionally safe option is for D to reside with her mother", that the DDJ failed to analyse that conclusion, and HHJ Willstead was wrong to be satisfied that there was evidence available on which the DDJ could reasonably reach this conclusion.
89. In her judgment, HHJ Willstead acknowledged that the absence of any reference to the impact on D of the change in circumstances that would follow were she to move to live with her mother was a significant gap in the section 7 report but said that the DDJ was "reasonably able" to determine whether he accepted the officer's evidence about the change in circumstances. But unlike this Court she did not have any note of that evidence on which to make that assessment. Ms Dudbridge drew attention to passages in her cross-examination of the Cafcass officer to demonstrate that he had failed to give any or any adequate consideration to this factor.
90. Ms Dudbridge submitted that the repeated observations by HHJ Willstead that the father's lawyers ought to have asked the DDJ for additional reasons were misplaced. The failings in the judgment were on a scale which could not properly be repaired by such a request. In any event, permission to appeal was quickly granted by HHJ Flexman and after that no request for clarification could be submitted to the judge without the express approval of the appellate court: *Re C, D and E (Care Proceedings: Adequacy of Reasons)* [2023] EWCA Civ 334, paragraph 38.
91. Responding on behalf of the mother, Mr Swan accepted that any finding made by the author of a section 7 report about who was the victim or the perpetrator of domestic abuse in the relationship cannot be given any weight by a court. He also accepted that the section 7 report's conclusions and recommendations were imported into the judge's reasoning, but submitted that this did not extend to the Cafcass officer's "findings". He sought to demonstrate by reference to the terms of the DDJ's judgment that he did not endorse or accept the Cafcass officer's own belief that the father was a perpetrator of domestic abuse and submitted that HHJ Willstead was correct to dismiss the argument that it was not possible for the DDJ to rely on the Cafcass officer's conclusions without also accepting his findings.
92. Mr Swan expanded his submissions to raise a broader question about how section 7 reports are undertaken. He articulated that question as being whether, and to what extent, there is a conflict between, on the one hand, the "common ground" that until an allegation is admitted or proved to the relevant standard it cannot be treated as having happened and, on the other hand, the practice aids used by Cafcass in the preparation of section 7 reports in cases where domestic abuse, including coercive control, is in issue. In this case, Mr Swan submitted that the report complied with the FHDRA direction to consider the impact of domestic abuse, and asked, rhetorically, how one could assess the impact on a child of their experience of domestic abuse without forming a view as to what that experience has been. He further submitted that the

Cafcass officer's methodology was entirely in line with Cafcass practice guidance, that he was correct to employ this guidance and accompanying practice aid in his assessment of the family, that the fact that he formed his own conclusions was inevitable considering the guidance and practice aids deployed, that HHJ Willstead was right to conclude that the DDJ had not adopted the Cafcass officer's findings, and right to conclude that the DDJ was entitled to rely on the recommendations in the report.

93. Mr Swan accepted that the DDJ's short ex tempore judgment did not contain a detailed analysis of the Cafcass officer's assessment that the mother is better able to meet D's emotional needs, but submitted that HHJ Willstead was right to conclude that the DDJ would have had the full report in mind. Mr Swan also accepted that the section 7 report failed to address the impact of a change in circumstances but submitted that, as the DDJ's judgment referred to the welfare checklist, this factor was "clearly in his mind" and that HHJ Willstead was right to conclude that the DDJ was entitled to rely on the Cafcass officer's oral evidence on that issue.
94. Mr Swan submitted that HHJ Willstead did not place too much weight on the failure to ask for additional reasons. He fairly observed that he could not improve on the DDJ's judgment and conceded that it did not fully follow the structure to be expected. But he sought to demonstrate that the DDJ's judgment was not materially deficient by reference to the requirements of a judgment identified by case law. He accepted that there is no evaluation in the judgment of the other written evidence before the court but submitted that this was because the DDJ identified that the section 7 report was the key evidence on which his decision would turn and he was entitled to follow the recommendations in the report.

Discussion and conclusion

95. Judges in the family courts are often required to make decisions in difficult circumstances. In this case, Deputy District Judge Loughridge was presented with more than the usual difficulties. The arrangements for taking the oral evidence of the Cafcass officer, which another judge had directed could be given remotely, broke down. After much delay, the DDJ was forced to resort to taking the oral evidence via his own laptop. The sound quality was poor. The screen was facing away from the bench. Ms Dudbridge had a lot of questions. It was not until late in the afternoon that the DDJ was able to deliver judgment. The proceedings had already been bedevilled with delays. He understandably felt that it was in the child's interests that he deliver judgment that afternoon. Unfortunately, the outcome was a judgment that was fundamentally flawed.
96. In *Re B (A Child) (Adequacy of Reasons)* [2022] EWCA Civ 407 at paragraph 59, Peter Jackson LJ gave guidance about the drafting of judgments in children's cases:

"59. Judgments reflect the thinking of the individual judge and there is no room for dogma, but in my view a good judgment will in its own way, at some point and as concisely as possible:

- (1) state the background facts
- (2) identify the issue(s) that must be decided
- (3) articulate the legal test(s) that must be applied

- (4) note the key features of the written and oral evidence, bearing in mind that a judgment is not a summing-up in which every possibly relevant piece of evidence must be mentioned
- (5) record each party's core case on the issues
- (6) make findings of fact about any disputed matters that are significant for the decision
- (7) evaluate the evidence as a whole, making clear why more or less weight is to be given to key features relied on by the parties
- (8) give the court's decision, explaining why one outcome has been selected in preference to other possible outcomes.

60. The last two processes – evaluation and explanation – are the critical elements of any judgment. As the culmination of a process of reasoning, they tend to come at the end, but they are the engine that drives the decision, and as such they need the most attention.”

97. Regrettably, the DDJ’s judgment failed to contain adequate references to any of these elements, and in some respects there was no reference to them at all. He did not state the background facts, or identify the issues, or each party’s case on the issues. He did not refer to any of the evidence except for the section 7 report and the oral evidence of the Cafcass officer. As a result, there was no evaluation of the evidence as a whole, nor any indication as to the allocation of weight to the key features relied on by the parties. In dismissing the first appeal, HHJ Willsteed observed at various points that, in so far as there were omissions in the DDJ’s judgment, they should have been addressed by a request for clarification. As this Court has recognised on several occasions, however, where the deficiencies in the judge's reasoning are on a scale which cannot fairly be remedied by a request for clarification, it will not be appropriate to seek clarification but instead to apply for permission to appeal: see *Re O (A Child) (Judgment: Adequacy of Reasons)* [2021] EWCA Civ 149 at paragraph 61 and *Re C, D and E (Care Proceedings: Adequacy of Reasons)* [2023] EWCA Civ 334 at paragraphs 30-1. The DDJ’s judgment in this case unfortunately fell into that category.
98. This was an important decision in the life of the child and her parents. There were plainly arguments going both ways that needed to be weighed carefully. Given the issues in the proceedings, notwithstanding the consequential delays, it would have been wiser to reserve judgment. Had this course been taken, it is possible that some of the omissions in the judgment would have been avoided. The failure to consider any aspect of the parents’ evidence, or their arguments on the material issues, were perhaps the most striking omissions. But this was compounded by the DDJ’s exclusive focus on the Cafcass officer’s evidence. The analysis in the section 7 report did not provide a sufficient basis for reaching conclusions on the issues in the case. This might have become more apparent if the DDJ had identified those issues at the start of his judgment.

99. Although the Cafcass officer recorded at the start of the report that he had “regard in particular to the welfare checklist as required by Rule 16.20/16.33 Family Procedure Rules 2010” and had “applied a welfare checklist analysis to the facts of the case throughout”, there was no further reference to the checklist in the report. Instead, as noted above, the analysis was conducted primarily by reference to the Domestic Abuse Practice Pathway. Whilst some of the factors in the checklist were considered in the course of this exercise, others were not.
100. The most striking omission was the failure to address the likely effect on D of the change in circumstances which would undoubtedly follow were she to move to live with her mother, leaving the family home in which she has always lived and her current school where she is settled, and moving potentially to a household consisting not only of the mother but also her partner and his three sons. In preparing the report, the Cafcass officer was required, under FPR rule 16.33(4), to have regard to the factors in the welfare checklist in section 1(3) of the 1989 Act, including the likely effect on the child of any change in her circumstances. That was not only a plainly material factor in the checklist but also a matter which the case management order made at the FHDRA expressly directed that the report should cover. There was no consideration in the report of how the child would be affected by the proposed change at all and the particular direction to consider changes in educational provision was ignored. In this respect the Cafcass officer failed to comply with his duty under FPR rule 16.33(2)(a) to comply with the court’s direction.
101. In his oral evidence, the officer did not accept that he failed properly to consider the effect of the change in circumstances that a move to her mother would involve, but the absence of any reference to it in his report, and the note of his answers to Ms Dudbridge’s questions, indicate otherwise. The officer’s observation in evidence that the child was “resilient” did not repair this omission and the DDJ was wrong to accept that it did.
102. In dismissing the father’s fourth ground of appeal – that the DDJ had not appropriately considered the effect of change of circumstances on the child – HHJ Willsted accepted that the absence of this aspect of the welfare checklist was “a significant gap”, particularly in the light of the express direction in the FHDRA order. She concluded, however, that she was satisfied that the DDJ was “reasonably able to determine whether he accepted the Cafcass officer’s evidence on the impact of change”. As she acknowledged in her judgment, however, she did not have a note or transcript of the oral evidence. An agreed note of his evidence has been provided to this Court. Read together with the report, it is clear that the significant gap in the report was not filled by the oral evidence and that the officer did not give any or any adequate consideration to the effect of the change in circumstances.
103. The officer’s ultimate conclusion was that “the only emotionally safe option is for D to reside with her mother, and to have defined contact with her father”. This was not expressed in terms of the welfare checklist, but he plainly concluded that D was at risk of emotional harm if she remained living with her father. He arrived at that conclusion on the basis of his assessment of the risk to the child arising out of domestic abuse using the Practice Pathway. This assessment, and the DDJ’s reliance on it, led to a further flaw in the judgment

104. The problems in this respect started with the FHDRA order. The author of the safeguarding letter had concluded that there was a reported pattern of coercive controlling behaviour which, if true, was “likely to be ongoing via the current arrangement”, that D was “being caught up” in those behaviours, and that “her extreme distress at handover may be indicative of the level of distress she is experiencing”. On that basis she recommended that there should be a fact-finding hearing. Contrary to that clear recommendation in the safeguarding letter, the FHDRA judge decided that a fact-finding hearing was unnecessary. But the fact, as recorded in the FHDRA order, that each parent accepted that D should spend unsupervised time with the other, did not obviate the need for a fact-finding hearing if, as the safeguarding letter stated, D was being caught up in controlling behaviours through the current arrangements and as a result experiencing extreme distress. As paragraph 6 of PD12J emphasises, it is the court’s obligation to scrutinise proposed arrangements agreed between the parties to ensure that they meet the child’s welfare needs.
105. The problems were compounded by the directions given to the Cafcass officer in the FHDRA order. Alongside the recital that “notwithstanding the allegations of domestic abuse the court has decided that a fact-finding hearing is not necessary”, the order directed the officer to assess “the parenting capacity of both parents having regard to the allegations of domestic abuse raised by the mother”.
106. It should be noted that this direction does not comply with the template orders published by the Standard Orders Group with the authority of the President of the Family Division. The terms of the standard order to be used depend on whether or not findings have been made. Where findings have been made, the standard order suggests that the section 7 report should be directed to consider, inter alia, “any harm suffered by the child[ren] and the parent with whom the child[ren] are living as a consequence of the domestic abuse found” and “any harm which the child[ren] and the parent with whom the child[ren] are living is at risk of suffering if a contact order is made”. Where no findings are made (which must include cases where the court has decided that a fact-finding hearing is unnecessary), the standard directions for the section 7 report do not refer to domestic abuse at all. Under the scheme of the standard orders, the only circumstances in which an officer asked to prepare a section 7 report may be directed to “have regard to allegations of domestic abuse” in circumstances in which findings have not been made is at an interim stage, before determination of facts by the court, when advising, inter alia, as to “the impact on the child[ren] and on the care given by the parent making the allegation of domestic abuse of any contact and the risk of harm, whether physical, emotional or psychological, if a contact order is made”.
107. In this case, no one challenged the FHDRA direction to the Cafcass officer to assess “the parenting capacity of both parents having regard to the allegations of domestic abuse raised by the mother”. In those circumstances, it is hardly surprising that he took the allegations into account. And for my part, it is difficult to see how the Cafcass officer could comply with this direction without considering whether the allegations were reliable.
108. Given the direction to assess “the parenting capacity of both parents having regard to the allegations of domestic abuse raised by the mother”, it is unsurprising that the Cafcass officer decided to use the Practice Pathway. As stated in the complementary Guidance, the Practice Pathway “assists the practitioner to conduct an evidence-based risk assessment focussing on child impact which supports professional judgement and

should be used in all cases where domestic abuse is a feature”. In this case, however, the officer elected to base his entire “professional judgment” on the Pathway. It became the prism through which he arrived at his recommendation. It formed the basis of his conclusion that “the only emotional safe option was for D to reside with her mother”. As a result, he seemingly lost sight of the need to consider all the relevant factors in the statutory welfare checklist to which he was obliged to have regard under rule 16.33, including the effect on the child of the proposed change in her circumstances.

109. It is clear from several statements in the report that the Cafcass officer based his recommendations on his conclusion that the abuse had occurred – not only his observation that the mother’s narrative was “more compelling” but also his comments that he was “concerned about the potential for continued domestic abuse between the parties”, and “in all likelihood [D] has witnessed her mother’s suffering when they all lived together as a family”. But in reaching those conclusions, he did not analyse the allegations using the court’s approach to the assessment of risk outlined in the case law summarised at paragraphs 45-46 above. In his oral evidence, he said that he generally accepted what most people tell him as “their truth” and that if the mother was telling him that she was a victim of abuse he would take it into account as “her lived experience and potentially the child’s lived experience”.
110. It is crucial to evaluate the impact of the experience of abuse on the victim and child. It is through the lived experience of victims that professionals have acquired a greater understanding of the nature and extent of abuse, including coercive control. Where there is a dispute about whether abuse has occurred, however, a court’s finding must be based on an objective analysis of the evidence as a whole. That analysis must be conducted by the court in accordance with the principles and practice identified in the case law cited at paragraphs 45 and 46 above and in PD12J. The Cafcass Officer’s observations about the child and the parents may well provide important evidence as to whether domestic abuse is an issue within the family. I understand that this has been the experience in the Child Focused Courts with the Child Impact Report prepared at an early stage in the process. But such observations can never be elevated into findings which, if not agreed, are a matter to be determined by the court.
111. As noted above, under section 12(1) of the 2000 Act, in the course of family proceedings in which the welfare of children is in question, Cafcass’s functions include not merely to give advice to the court about any application made to it in such proceedings but also a wider duty, to safeguard and promote the welfare of the child. In carrying out his duties in relation to proceedings under the 1989 Act, the factors to which the Cafcass officer must have regard under rule 16.33(4) include any harm which the child has suffered or is at risk of suffering and in the course of the inquiries under section 7 information may come to his attention to indicate that the child is at risk as a result of domestic abuse. It follows, therefore, that there may be circumstances when a Cafcass officer feels compelled to refer to domestic abuse allegations in a section 7 report notwithstanding the court’s decision not to hold a fact-finding hearing.
112. As one would anticipate, the Practice Pathway makes provision for this. In the section headed “Legal and procedural issues to consider”, quoted at paragraph 56 above, it is stated:

“Where there has been no fact finding ordered but domestic abuse concerns indicate that assessment cannot proceed without

establishing facts, the practitioner should alert the court prior to filing a section 7 [report].”

113. Returning to the present appeal, on completion of the section 7 report, it should have been recognised by the Cafcass officer, the parties and the court that, as the recommendation in the report was based substantially on the conclusion that abuse had occurred, the question of whether to hold a fact-finding hearing had to be reviewed. If the Cafcass officer’s assessment was correct, it called into question whether the proposal as to the time D should spend with her father was consistent with her welfare. After the report was filed, neither the officer nor the parties nor the court realised that, given the importance the officer attached to his conclusion that abuse had occurred, it was necessary to reconsider the question whether a fact-finding hearing was necessary. Under PD12J paragraph 5, the obligation on the court to consider whether abuse is an issue relevant to a decision about a child arrangements order arises “at all stages in the proceedings”. An opportunity to reconsider the question arose at the DRA but on that occasion the judge – who was not the judge who conducted the FHDRA nor the judge who ultimately conducted the final hearing – did not take it.
114. A further opportunity might have arisen at the final hearing but was not taken. Instead, the DDJ in his judgment simply discussed the section 7 report and the Cafcass officer’s oral evidence, and accepted his conclusion and recommendations which, as illustrated above, had been based substantially on the assessment that the mother’s allegations of abusive behaviour were true. On the basis of his assessment of the allegations of abuse, the Cafcass officer concluded that “the only safe option was for D to reside with her mother” and that the mother was best placed to meet the child’s emotional needs. Contrary to the conclusion reached by HHJ Willstead, I find that the DDJ’s ex tempore decision clearly adopted the Cafcass officer’s conclusion that the father was a perpetrator of domestic abuse and imported that conclusion into his reasoning.
115. For those reasons, I conclude that the DDJ’s decision was unjust as a result of procedural irregularity, that HHJ Willstead was wrong to dismiss the first appeal and that this second appeal must be allowed on all five grounds. If my Lord and my Lady agree, the child arrangements order made by the DDJ will be set aside and the matter remitted for rehearing. I would propose that the matter be remitted in the first instance to the Family Presiding Judge for the Western Circuit, Mrs Justice Judd, to reallocate as she thinks appropriate.
116. I conclude with three final observations. First, where the court, with or without the parties’ agreement, has decided at the FHDRA that there should not be a fact-finding hearing into allegations of abuse but the Cafcass officer’s section 7 report concludes that allegations of abuse are a material factor in the decision about the child’s future, this should be expressly drawn to the court’s attention by the Cafcass officer and the parties and the question of whether to hold a fact-finding hearing reviewed. There is of course the risk that this will add to the delay in reaching a decision about the future. But that is less serious than the risk that court may make an order on a factual basis which has neither been agreed by the parties nor determined by the court.
117. Secondly, the requirement to take this course is identified in the Practice Pathway in the section entitled “Legal and procedural issues to consider”. But as noted this is rather hidden in the current version between stages 2 and 3. It occurs to me that in future versions it might be moved to a more prominent place in the document. There may also

be an argument for including the passage recited at paragraph 112 above as a recital in the standard template order made after a FHDRA.

118. Thirdly, this case underlines once again the importance of judicial continuity. As noted above, paragraph 10.2 of PD12B provides that “continuity of judicial involvement in the conduct of proceedings from the FHDRA to the making of a final order should be the objective in all cases”. DDJ Loughridge was the third judge involved in the proceedings. It is possible that, had the final hearing been conducted by the judge who conducted the FHDRA, he would have realised that the conclusions reached in the section 7 report required him to revisit his decision that there need not be a judicial determination of the mother’s allegations, either at a separate fact-finding hearing or as part of the final hearing.

LADY JUSTICE ASPLIN

119. I agree.

LORD JUSTICE NEWHEY

120. I also agree.