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**Neutral Citation Number: [2025] CIGC (Fam) 12**

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**FAMILY DIVISION**

**BETWEEN:**

**BB**

**Applicant**

**AND**

**DD**

**Respondent**

**Re: A. (a Child)**

**IN CHAMBERS AND IN PRIVATE**

**Appearances:**

**Mr Gareth Jacques of Priestleys for the Petitioner/Applicant**

**Mr Kyle Broadhurst of Broadhurst LLC for the Respondent**

**Before:**

**The Hon Justice Marlene Carter**

**Heard:**

**29 October 2025**

**Draft circulated:**

**4 December 2025**

**Ruling Delivered:**

**15 December 2025**

*Family proceedings – application for fact-finding hearing*

*[2025] CIGC (Fam) 12 - BB v DD re A (a Child)*

## RULING

### Background

1. The parties have a child together. He is now 4 ½ years old. The parties separated in or about April 2022, when their child (“A”) was approximately 1 year old.
2. On 26 August 2025, Mother (“BB”) filed an application for a fact-finding hearing. Father (“DD”) opposes the application.
3. Mother’s case is that any fact-finding hearing should be held prior to any interim or final determination of Father’s application to share equal time with the child, as any such findings will directly impact upon the court’s welfare assessment.
4. Father’s position is:
  - a. The court should decline to direct a fact-finding hearing; and
  - b. An order should be made providing for equal care for A.

### Relevant Law and Authorities

5. In *SC v JW*<sup>1</sup> Williams J. referred with approval to paragraphs 16 and 17 of Practice Direction 12J of the Family Procedure Rules, 2010 of England & Wales (“PDJ12”) as being relevant in any consideration of whether it is necessary and proportionate to hold a fact-finding hearing:

*“16. 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.*

*17. In determining whether it is necessary to conduct a fact-finding hearing, the court should consider –*

- (a) the views of the parties and of Cafcass or CAF/CASS Cymru;*
- (b) whether there are admissions by a party which provide a sufficient factual basis on which to proceed;*

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<sup>1</sup> FAM 2022-0069 (unreported) referred to in *KN v MN* [2015] (1) CILR note 49.

- (c) if a party is in receipt of legal aid, whether the evidence required to be provided to obtain legal aid provides a sufficient factual basis on which to proceed;
- (d) whether there is other evidence available to the court that provides a sufficient factual basis on which to proceed;
- (e) whether the factors set out in paragraphs 36 and 37 below can be determined without a fact-finding hearing;
- (f) the nature of the evidence required to resolve disputed allegations;
- (g) whether the nature and extent of the allegations, if proved, would be relevant to the issue before the court; and
- (h) whether a separate fact-finding hearing would be necessary and proportionate in all the circumstances of the case.”

6. In *H-N (Children) (Domestic Abuse: Finding of Fact Hearing)*, 2021 2FLR 1116 at paragraph 53 the court stated: “Where ... an issue properly arises as to whether there has been a pattern of coercive and/or controlling abusive behaviour within a family and the determination of that issue is likely to be relevant to the assessment of the risk of future harm a judge who fails expressly to consider the issue may be held on appeal to have fallen into error.”
7. As to the necessity of embarking on a fact-finding exercise in the appropriate case *H-N* notes: “Given the nature of such allegations, the evidence may often turn on the word of one parent against that of the other. The evidence may not be crystal clear, yet the stakes may be high. If the court decides as an abusive allegation has not been sufficiently proved, the court must assess future risk on the basis that the event ‘did not take place’. If, in reality, the abuse did occur but there is a lack of evidence to prove it, the court’s subsequent orders may risk exposing the child and parent to further abuse. Conversely, if alleged abuse did not in fact occur, but the court finds the allegation proved, orders significantly limiting the ‘perpetrating’ parent’s future relationship with their child may be imposed.”<sup>2</sup>
8. At paragraph 52 of *H-N* the court noted further: “the fact that there may in the future be no longer any risk .....does not mean that a pattern of coercive or controlling behaviour of that nature, adopted by one partner towards another, where this is proved will not manifest itself in some other, albeit more subtle, manner so as to cause further harm or otherwise suborn the independence of the victim in the future and impact upon the welfare of the children of the family.”

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<sup>2</sup> At paragraph 6

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9. Counsel for Father noted the following propositions regarding paragraphs 16 and 17 of Practice Direction 12 J taken from the Court of Appeal judgment in *Re H-N* and *K v K* [2022] EWCA Civ 468:

- (a) Not every case requires a fact-finding hearing even where domestic abuse is alleged. It is of critical importance to identify the real issue in the case in particular with regard to the welfare of the child before a court is able to assess if, a fact-finding hearing is necessary and if so, what form it should take (*Re H-N* para 8).
- (b) Fact-finding is only needed if the alleged abuse is likely to be relevant to what the court is being asked to decide relating to the children's welfare (*K v K* para 8).
- (c) The judge considering a fact-finding hearing must first identify the child welfare issue to which the resolution of the dispute will be relevant (*K v K* paras 41-45).
- (d) While domestic abuse is pernicious and the courts have a greatly improved understanding of the various forms of abuse and the impact upon victims and children, "*that does not, however, mean that in every case where there is an allegation of, even very serious, domestic abuse it will be either appropriate or necessary for there to be a finding of fact hearing*". So much is clear from the detailed guidance set out in paragraphs 16–20 of PD12J and, in particular, at paragraph 17: "*(g) whether the nature and extent of the allegations, if proved, would be relevant to the issue before the court*" (*Re H-N*, para 139);
- (e) The correct approach is as follows (*Re H-N*, para 37)
  - i) The first stage is to consider the nature of the allegations and the extent to which they are likely to be relevant in deciding whether to make a [contact / residence order] and if so in what terms (PD12J.5). The applicant has submitted that the allegations set out in the Scott Schedule are relevant in the court's assessment of whether to modify or extend the contact order.
  - 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 both in mind as part of its analysis of the overriding objective.

(f) A decision to hold a fact-finding hearing is a 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. 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. (*Re H-N*, para 42)

10. This court has also considered the following from the authorities filed for the court's consideration regarding the approach of the court in determining the issue on this application.

11. In *K v K*, the Court of Appeal was clear that a misunderstanding had developed that a fact-finding hearing was necessary in every case of alleged domestic abuse:

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

12. In *A v K (Appeal: Fact-finding: PD12J)* [2024] EWHC 1981 (Fam) Cobb J summarised the law as follows:

“58. *When presented with allegations of domestic abuse in private law CA 1989 proceedings, judges need to be astute to work out (ideally as early on in the process as possible) what is, and is not, actually relevant to the precise welfare issues which require adjudication. Peter Jackson LJ addressed this point in Re L (Relocation: Second Appeal) [2017] EWCA Civ 2121 ([61]), which was cited with approval in Re H-N at [32] to the general effect that:*

*“... not all directive, assertive, stubborn, or selfish behaviour, will be 'abuse' in the context of proceedings concerning the welfare of a child; much will turn on the intention of the perpetrator of the alleged abuse and on the harmful impact of the behaviour.”*

13. This was echoed by the Court of Appeal in **K v K** at [89]:

*“All judges hearing children cases will know that there will almost inevitably be emotional fallout following the separation of adults who have been in a close relationship. Whilst the court will not hesitate to adjudicate upon parental behaviour where this impacts upon the protection or welfare of a child, it is not for the court to hear about, much less to resolve, issues between the parents relating to their time together, unless to do so is likely to be necessary for, and proportionate to, the resolution of a dispute relating to the protection or welfare of a child.*

*I associate myself entirely with these remarks. Private law proceedings should not be used for one or other party to air grievances, to seek some form of validation or vindication of what they say went wrong in the relationship, to settle old scores, or pick over the coals of the breakdown of the relationship.*

59. *Therefore, as appropriate, judges in the Family Court when presented with a private law case involving allegations of domestic abuse where the issue of fact-finding arises, should press the parties or their advocates, as both DDJ Morris and this Judge properly did, by asking them directly at a case management, or later: “why do I need to determine this issue / these issues in this particular case?”; “what difference would it make to the welfare decision/outcome in this case in respect of this child even if I were to find the allegation proved?”. It is important to maintain focus on the individual circumstances of the particular case (Re H-D-H at [21]-[23]). In some cases, like this one, the decision not to hold a fact-finding hearing will leave unresolved some adult disputes between the parties, i.e., about their behaviour towards each other. So be it. If those issues are not relevant to the determination of the application, then court time should not be dedicated to their resolution”.*

14. In the recent decision of **ER v NT** [2025] EWHC 2146 (Fam), MacDonald J identified three questions that the judge must address when considering whether a fact-finding hearing is necessary:

“64. In the present context, the task of the court in deciding whether to order a separate finding of fact hearing was articulated by the Master of the Rolls in *K v K* as follows:

“[42] 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.”

65. In the foregoing context, in order for the parties to understand why they have won or lost on the case management issue in dispute in this case, and to provide sufficient detail and analysis to enable an appellate court to decide whether or not the judgment is sustainable, it should be apparent from the judgment that the judge has addressed, in short but sufficient detail, three questions:

- i) What are the identified welfare issues?
- ii) What is the nature of the disputed allegations?
- iii) Are the matters alleged relevant to the welfare issues such that it is necessary and proportionate, having regard to the purpose of a fact finding hearing as the basis of assessment of risk and the impact of the alleged abuse on the child, the impact of delay and whether there is other evidence providing a sufficient factual foundation, for the allegations to be determined?”

15. In *SC v JW* Fam 2022-0069 Williams J expressed concern about the wide-ranging facts he was being asked to determine. He held at para 40:

“40. ...Although historical allegations may be considered, the mother’s very wide-ranging approach is not consistent with the designed purpose of a fact-finding hearing and this Court should have been invited to ‘hone-in’ on the events that really go to the core of the exercise that I must conduct when considering whether the father’s conduct amounts to controlling and coercive behaviour. In fact, the fact-finding hearing should be used to make findings that are most relevant to the determination by the Court about what child arrangement orders will be in the child’s best interests.

41. The father rightly now highlights that in children cases:

“There will almost inevitably be emotional fall out” and that “it is not for the Court to hear about much less to resolve, issues between the parents relating to their time together, unless to do is likely to be necessary for and proportionate to the resolution of a dispute relating to the protection and welfare of a child.” (as per Lord Voss at para 89 in *K v K* [2022] EWCA Civ 468.

16. In *H-N*, the Court of Appeal made clear that not all bad behaviour will be “abuse” within the context of children proceedings:

*“[32] It is equally important to be clear that not all directive, assertive, stubborn or selfish behaviour, will be 'abuse' in the context of proceedings concerning the welfare of a child; much will turn on the intention of the perpetrator of the alleged abuse and on the harmful impact of the behaviour. We would endorse the approach taken by Peter Jackson LJ in L v F (Relocation: Second Appeal) [2017] EWCA Civ 2121, [2018] 4 WLR 141, [2018] 2 FLR 608 (para [61]):*

*'Few relationships lack instances of bad behaviour on the part of one or both parties at some time and it is a rare family case that does not contain complaints by one party against the other, and often complaints are made by both. Yet not all such behaviour will amount to “domestic abuse”, where “coercive behaviour” is defined as behaviour that is “used to harm, punish, or frighten the victim ...” and “controlling behaviour” as behaviour “designed to make a person subordinate ...” In cases where the alleged behaviour does not have this character it is likely to be unnecessary and disproportionate for detailed findings of fact to be made about the complaints; indeed, in such cases it will not be in the interests of the child or of justice for the court to allow itself to become another battleground for adult conflict.’”*

17. Section 3 (1) of the *Protection from Domestic Violence Act (2021 Revision)* (the “*Act*”) sets out the circumstances where a person commits domestic violence:

*“(1) A person commits an act of domestic violence against a prescribed person where it is proved that the person’s conduct caused or is intended to cause:*

- (a) Emotional or psychological abuse;*
- (b) Financial abuse*
- (c) Physical abuse; or*
- (d) Sexual abuse.”*

18. Section 3(2) of the *Act* sets out the definitions of the different categories of abuse as identified at section 3(1) and specifically recognises coercive and controlling behaviour, as being categorised through emotional or psychological abuse and financial abuse. Notably, section 3 (3) confirms that:

*“Any act of abuse identified in subsection (1) which is committed on a single occasion shall be regarded as an act of domestic violence, even though some or all of those acts, when viewed in isolation, may appear minor.”*

19. Section 3 (4) of the *Act* confirms that:

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*“Without prejudice to the generality of subsection (1), a person abuses a child, if that person:*

*(a) Causes or allows the child to see or hear the physical, sexual, emotional or psychological abuse of a person with whom the child resides; or*

*(b) Places the child or allows the child to be placed at real risk of seeing or hearing the abuse described in paragraph (a).”*

### **Mother’s Position**

20. M’s application is supported by an affidavit and exhibits setting out the allegations that she would seek to prove against F. The sixth affidavit of the Applicant is dated 26 August 2025. The allegations against the Respondent are set out in summary in the Scott Schedule which also references and draws upon matters set out in the Applicant’s other affidavits:

*“The allegations relied upon have already been set out in detail in my earlier affidavits sworn on 9 October 2023, 24 April 2024, 14 October 2023, 26 November 2024 and 3 July 2025 and which I respectfully ask the Court to read as if repeated herein.”*

21. The Scott Schedule was produced to assist the court with particular allegations which, M submits, when taken in totality justify findings that M has been the victim of domestic abuse, including coercive and controlling behaviour by F.

22. Counsel for Applicant submits that M’s allegations meet the definition of domestic abuse, characterised by coercive and controlling behaviour. Those allegations, in summary are:

*“(a) That M was subject to an assault by F on 28 June 2025.*

*(b) That F has threatened M with physical violence.*

*(c) That in the presence of the [A], M was denigrated by F, by way of video call on 30 June 2025.*

*(d) That F persistently sends abusive and threatening messages to M.*

*(e) That F persistently denigrates M and threatens to use litigation against her and control contact between M and Z.*

*(f) That F has sought to financially control M.”*

23. The 6th affidavit records that there has been a continuation of the behaviour complained of including further abusive messages between late June and early August 2025 and the obstruction of indirect contact, that is the calls scheduled with M during the time that A was with F.
24. M states the following regarding the necessity for the court embarking on a fact-finding hearing at this juncture –
- “11. *I respectfully submit that a fact-finding hearing is necessary and proportionate in order for the court to determine the factual matrix relevant to the welfare of [A] and the just resolution of the financial provision claim under Schedule 1. The behaviour of the Respondent is having a significant impact on me and [A], as demonstrated by the telephone call of 30 June 2025 as referred to in my fifth Affidavit.*
12. *The allegations raised, if proven, have a direct bearing upon:*
- a. *The credibility and reliability of the parties;*
- b. *The financial needs, resources and housing requirements of both [A] and I;*
- c. *The welfare and safety considerations pertaining to [A];*
- d. *The appropriate level of contact between the Respondent and [A].”*
25. Regarding the Scott Schedule, counsel for M noted the caution expressed at paragraph 31 of *H-N* that the court must be mindful that “*it is not the intention of the perpetrator that is key, it is the impact of their behaviour upon their victim that should be assessed.*” As such, it is further submitted that M can establish a basis for the allegations she makes against F (even on F’s own case), and there is evidence that the court will need to test to be able to establish what has occurred both during and post the parties relationship.
26. In this regard counsel for the Applicant reiterated that the authorities make plain that the approach of regarding coercive or controlling incidents as being ‘in the past,’ and therefore of little or no relevance in terms of establishing a risk of future harm should be considered ‘old-fashioned and no longer acceptable’<sup>3</sup>

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<sup>3</sup> See parag. 52 of *H-N* parag. 68 of *K v K*

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27. Counsel submitted that the court should embark on the fact-finding exercise because dealing with the allegations raised by M, are directly relevant when determining whether to make a “joint 50:50” order as sought by F. Counsel submitted the following in support:

- “(i) Per paragraph 4 of PD12J, [A] may have suffered indirect harm by virtue of F’s actions as the domestic abuse alleged has had a significant impact on M.*
- “(ii) There is a greater risk of [A] being exposed to F’s actions as [A] grows older. In particular, [A] will grow more aware of F’s views of his M and will be less shielded from them, the more time he spends with F.*
- “(iii) The alleged actions of F have occurred, predominantly, whilst the parties have been in litigation. Ordinarily, such actions decrease during litigation due to Court oversight. F’s actions towards M have, on her case, escalated, which increases the risk to [A] and M when Court proceedings end.*
- “(iv) A shared, flexible order as sought by F, will only increase the risk of F confronting M constantly about dates / times of contact, as on M’s case F continually seeks to push goal posts.*
- “(v) The welfare reports filed, thus far, which have informed the Courts approach to contact between [A] and F, have, to a large extent failed to deal with M’s concerns about F’s behaviour and how they impact M and [A], both directly and indirectly. Indeed, the most recent report fails to appropriately deal with concerns of domestic violence raised by M in her fifth affidavit and that despite F accepting that “harsh expressions were uttered by him” the incident is downplayed by [the Social Worker] on the basis that “no one received any physical injury.” Such an approach is clearly old-fashioned and outdated. As such, it is clear to M that, for a proper assessment to be undertaken of the appropriate amount of time [A] is to spend with F, that a factual matrix needs to be established by the court.*
- “(vi) Whilst F has made some admissions, F appears to have no comprehension as to how abusive these are and the impact that the same have had on M and [A].”*

### Father's Position

28. The Respondent's 6th affidavit sworn on 03 October 2025 is lengthy in response to M's allegations regarding controlling and coercive behaviour. F's main point of contention, apart from disputing that M has provided proper and factual context to the allegations that she has made, is that M refuses to provide him with adequate time with A. F stated that all attempts between the parties to try to reach agreement have failed and related that many of M's demands seem to be framed with an undercurrent of financial issues

29. At Paragraph 9 he stated:

*"As has been the case in the past, [BB]'s allegations have not been provided in chronological order, nor has the surrounding context been provided with respect to the exchanges that occurred. She has instead cut a few sentences from a conversation and then presented them to the Court alleging that they are abusive. I will be the first to accept that we have had heated conversations, however, those conversations did not occur in isolation, and it is not the case that I am the instigator of these disputes. For the Court to understand the context, in the paragraphs below I will reference the allegations in chronological order, provide the relevant background and, where available, provide the full text of the conversation."*

30. F states that the failure to provide full context and proper chronological order, is important since some of the allegations relate to when the parties were newly separated and trying to sort their then intertwined business interest.

31. F denies that his actions could amount to coercive and controlling behaviour and that none of the allegations set out in the Scott Schedule meet the statutory definition of coercive or controlling behaviour. It was submitted on behalf of F that:

- a. *Coercive behaviour means an act or a pattern of acts of assaults, threats, humiliation and intimidation or other abuse that **is used to harm, punish or frighten the victim**. While it is accepted that there has been conflict between both parents about finances and arrangements for [A], there is no act or patterns of acts designed to "harm, punish or frighten" M.*
- b. *Controlling behaviour means an act or pattern of acts **designed to make a person subordinate and/or dependant** or to exploit their resources and capacities for personal gain, depriving them of the means needed for independence, resistance*

*and escape and regulating their everyday behaviour. It is clear in this matter that it is M that had dictated contact. With respect to finances, F had voluntarily paid significant maintenance and support and has been unwavering in this regard. Separate from this he has transferred substantial assets to M well after they separated.”*

32. Counsel for F made submissions focused on the facts before the court as they applied to the principles set out in PD12J and in the relevant authorities:

***(i) The welfare issues that the court will be asked to determine do not require a fact-finding hearing***

Counsel submitted that the judge considering a fact-finding hearing must first identify the child welfare issue to which the resolution of the dispute will be relevant. He submitted that in this case, the ultimate issues between the parties are narrow: F seeks an equal shared care arrangement. M now seeks that A spend alternate weekends with F from Friday to Sunday and one weekday afternoon on alternate weeks.

Counsel further submitted that the court should consider the following:

- a) The court has already determined that A can have extended holidays and travel with F. He travelled with F for an extended period over the summer and a shorter period in October.
- b) After the extended summer contact, the Welfare Report confirmed that there were no welfare issues that arose.
- c) There can be no real dispute that A’s time with F will continue to be unsupervised.
- d) If the above is true, the only real welfare issue left for the court to determine is whether there should be an equal shared care arrangement or something akin to the current arrangement whereby A has shorter periods of overnight contact with F.
- e) The determination of that issue does not require a lengthy, costly, adversarial fact-finding hearing.

***(ii) A fact-finding hearing has not been recommended by the court welfare officer and is not necessary for the preparation of a welfare report***

Counsel for F argued that one of the main considerations in determining whether a fact-finding hearing may be necessary is where it is required to provide a factual basis for any welfare report or for an assessment of the matters in the welfare checklist. Counsel noted that two welfare reports dated 19 April 2024 and 26 August 2025 have already been prepared in this matter. Counsel also noted that when M met the social worker for the preparation of the first report, she did not make

any allegations of domestic abuse. In the second report the social worker, fully considered the recent events of July 2025. He did not conclude that a fact-finding hearing was necessary, and neither did he recommend it. Counsel submitted: *"It is self-evident that a fact-finding hearing was not necessary for the preparation of a welfare report ...No further welfare report is required."*

**(iii) The nature of the allegations is not such as to require a fact-finding hearing**

*"The allegations made by M in this case are not allegations of domestic abuse relevant to the welfare matters; they are allegations of post-separation conflict about child arrangements and finances. There is no need to determine the allegations in order to resolve the welfare matters concerning [A] and there is no need for a fact-finding hearing."*

**(iv) A fact-finding hearing would be adversarial and would negatively impact the parents' ongoing relationship**

Counsel referred to the Court of Appeal judgment in *Re H-N* and stated:

*"In this case, where there has plainly been post-separation conflict around contact, the negative impact of a fact-finding hearing should be avoided if at all possible. What these parents, and most importantly, [A] need is a final determination of the contact issues so that matters can move forward outside the court arena."*

**(v) A fact-finding hearing would cause further delay, which would be prejudicial to A's welfare.**

Counsel for the Respondent submitted that the court should be concerned that proceedings concerning A have now been ongoing for almost 2½ years since F issued his application in the Summary Court on 1 May 2023 and M issued her application in the Grand Court on 30 May 2023.

Counsel noted that PD12J makes clear that the decision as to whether there should be a fact-finding hearing should be made as soon as possible, at a very early stage of proceedings and also that M did not issue her summons for a fact-finding hearing until 26 August 2025, by which point proceedings had already been ongoing for 27 months.

Counsel for F concluded that if the court were to list a fact-finding hearing, it would likely cause further delay for the parties, and most importantly for A, of many months, which would be wholly prejudicial to his welfare. Finally, apart from those considerations, F submits that a fact-finding hearing would also incur unnecessary expense and be an inappropriate use of the court's valuable resources.

**Court's Conclusions**

33. At the heart of the court's determination of whether to order a fact-finding hearing is the balancing of what is necessary to determine the issues between the parties with the welfare of their 4-year-old child remaining paramount. I am mindful that this is not a divorce proceeding with property settlement, nor is it one where the applicant is alleging that the financial needs of the child are not presently being met. The ultimate financial orders for the benefit of the child remain pending. The assessment of the need for a fact-finding hearing is dependent upon whether the court can determine the future welfare needs of the child especially regarding increased contact between the child and the respondent.
34. The matters which would form the main thrust of any fact-finding hearing are those that relate to direct interactions between the Respondent father and the Applicant. The future welfare needs of the child are not divorced from issues which affect the Applicant and which have direct and indirect effects on her as caregiver. The Applicant has related that there are direct effects on the child who, the Applicant states, has witnessed interactions between F and the Applicant, incidents which the M alleges demonstrate his controlling and coercive behaviour. Although some of the matters alleged are of historical behaviour in the sense of having happened prior to the parties' separation, this does not mean that they could not be taken account of and that they could not be considered as exhibiting or foreshadowing a pattern of behaviour as complained of by the Applicant.
35. Based on the authorities cited herein this court must consider several matters:
- (i) The nature of the allegations and the extent to which they are likely to be relevant in deciding whether to make a [contact / residence order] and if so in what terms.*

The Applicant has submitted that the allegations set out in the Scott Schedule are directly relevant in the court's assessment of whether to modify or extend the contact order. The allegations are of an assault in June 2025; threatening and abusive messages, seeking to financially control the Applicant, threats of physical violence and language which seeks to denigrate the Applicant. These allegations are of the sort that if found to be proved on a balance of probabilities may meet the definition of domestic abuse characterised by coercive and controlling behaviour. These are matters which a court must consider in deciding whether to make an increased contact order as is sought by F.

36. F denies the allegations and where counsel for M has submitted that F admits to the having used certain language alleged to be abusive and threatening, F states that the court could not therefore simply base its finding on the fact of what was said without having the full context of what was transpiring between the parties at that time. F states that they have not been presented in full context and has sought in his 6<sup>th</sup> affidavit to set out the full context.

***(ii) The purpose of the fact-finding 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.***

37. Counsel for the Applicant has confirmed that the welfare issue for which the fact-finding will be relevant is not simply to ground an application that the Respondent should have no contact with the child or even of supervised contact only. Rather, it is to determine the factual basis in the case, which, if it is established that the Respondent has been guilty of coercive and controlling behaviour, will assist the welfare officer in any further welfare report prepared for the court's consideration and so are relevant to the final orders to be made in this case, and ultimately the issue of the appropriate contact order. It will assist the court to determine whether contact with the Respondent should be increased in line with the application before the court by father for 50:50 contact with the child.

38. This is in effect the primary issue to which the fact-finding is geared. A fact-finding exercise may have an impact upon the credibility and reliability of the parties and so impact the assessment of the financial needs, resources and housing requirements of both A and M. However, these are indirect impacts. The main issue remains the welfare issue and the relevance of the fact finding to issues surrounding continued and expanded contact between father and child.

***(iii) 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.***

39. This court must assess whether it is necessary to embark on the fact-finding exercise. Of particular relevant in this case is whether the evidence now before the court is sufficient to enable the court to make a determination regarding the future welfare needs of the child and contact. To this end, the court has before it various affidavits from both parties with detailed, comprehensive and thorough statements directly relevant to any determination regarding contact. Counsel for M submits that the court faced with theses differing statements must decide on the factual matrix and

so must hear and assess each party regarding the different allegations to find on a balance of probabilities if these allegations have been proved by the Applicant.

40. Apart from these considerations the court has had the benefit of welfare reports relating to the child. I am mindful of the counsel for the Applicant's submission regarding the fulsomeness of the last of these reports. However, the depth of information now before the court, available for the welfare officer's proper and directed consideration, may mitigate this perceived deficiency. Going forward, the welfare officer would be directed to closely consider these affidavits in arriving at any recommendations for this court.

***(iv) whether a separate fact-finding hearing is 'necessary and proportionate'. The court and the parties should have both in mind as part of its analysis of the overriding objective.***

41. F's 6<sup>th</sup> affidavit filed in response to that of the Applicant foreshadows a robust response to the allegations to be considered on a fact-finding exercise. While some of these allegations will be disputed, not in the sense of what was alleged to have been said was in fact said but that there was context to those utterings. The court will have to determine if they were abusive, threatening or an attempt to denigrate the Applicant. Counsel for F has stated that given the allegations by M there may be cross-allegations by F.
42. If these matters are to be resolved, despite the Scott Schedule and an attempt to thereby limit the extent of the court's interrogation of the allegations and responses thereto, a fact-finding exercise will take some time. If the court is to hear testimony from the parties even limited to the discrete matters in the Scott Schedule, the court will have to dedicate several days to this exercise. This would also affect the hearing of the other matters regarding A's welfare in the form of his future financial needs.
43. I am grateful for the submissions of counsel on this application which have proved very helpful. This is not a simple issue. This court must have in mind the matters referred to above and to marry these with the court's knowledge of time constraints going forward. The main issues remaining between the parties are the contact application and the financials which encompass future financial provision for the child and an application for a legal services payment order. The parties have filed affidavits addressing the financial aspects as ordered by this court. The matter of the contact is one that has been before the court for some time. The contact order

presently in place was an interim order which was to bridge the time of that order and other applications before the court. The interim contact order has been in place since December 2024.

44. In this case there is a further matter that is of relevance. This is the ongoing adversarial nature of the proceeding. I am concerned about the effect that a fact-finding hearing will have on the relationship between the parties. This concern extends to whether the fallout from such a hearing will adversely affect A since there is every indication that it may amplify grievances on both sides regarding how matters between them are presented and characterized before the court. A further deterioration in that relationship cannot be of benefit for the future welfare of A.
45. Mindful of the above, the determination of this court is that the application for a fact-finding hearing is dismissed. In all the circumstances the hearing will not be proportionate to the issues that are before the court. The time which will be necessary to devote to such a hearing is not proportionate to the main issue remaining for determination between the parties. More pertinently, this court considers that it has sufficient evidence before it to determine the issues surrounding contact. The court must move to resolve the matters before it as a decision on the contentious issues between the parties will enable them to concentrate their efforts on their young child. I am mindful that counsel for the Applicant wished to address the court further on the issue of contact before any final order was made. F has made extensive submissions on this issue and sought an order for equal shared time with A at the hearing. However, apart from initial submissions in November 2024, M has only addressed this issue indirectly in making other applications to this court. For this reason, I will not make final orders at this time.
46. In *SC v JW*, Williams J., after embarking on a fact-finding hearing, lamented the fact that what was demonstrated after days of hearing in a defined contact case was the seeming inability of the parties to introduce reasonable flexibility to the contact arrangements contained in the court order. The Learned Judge determined that the parties should attend relevant coparenting program tailored to enabling them to interact in an improved manner that better meets their daughter's needs. I believe that a similar approach may assist in this case. As stated at paragraph 44 above, this court has great concern about the deterioration in the relationship between these parties and the impact it could have on A. The court will propose dates for hearing of the remaining issues early in the new year.

47. The court's order is as follows:

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- (i) The application for a fact-finding hearing is dismissed.
- (ii) The contact order dated 5 December 2024 presently in place remains until the next hearing.
- (iii) The parties are to attend individual co-parenting sessions and are to liaise with the welfare officer in this regard.
- (iv) The welfare officer shall prepare an interim report for the court's consideration, once a hearing date has been determined, to assist the court to assess whether the orders sought by either party regarding contact are of further benefit to A in terms of certainty and his interaction with each party.



**Hon. Justice Marlene Carter**  
**Judge of the Grand Court**