

Domestic abuse and violence

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In proceedings involving children where there are allegations of domestic abuse or violence, the Court is guided by '[Practice Direction No 6 of 2008](#)'.

This directive requires the Court to consider the extent to which such abuse or violence would be relevant in deciding whether to make any orders about residence or contact.

For the purposes of the Practice Direction, the term 'domestic abuse' is very widely defined and includes:

"physical violence, extreme or excessive threatening, insulting or intimidating behaviour and any other form of abuse which directly or indirectly may have caused harm to the other party or to the child or which may give rise to the risk of harm. Harm in relation to a child means ill treatment or the impairment of health and development including, for example, impairment suffered from being present in the same premises or witnessing or being aware of the ill treatment of another."

In such cases, the Court is required at an early stage in the proceedings and usually at the first hearing to decide whether it is necessary to hold what is called a Finding of Fact hearing. At such a hearing, the Court will hear evidence on the allegations made by each party and determine which facts are accepted.

In practice, Finding of Fact hearings are very difficult for everyone involved. The Court will hear evidence from each party and possibly other witnesses to determine the truth or otherwise of the allegations made by each party.

One important point about Finding of Fact hearings is that in deciding whether to hold such a hearing, the Court must consider whether the disputed facts are likely to affect the outcome of the case. Clearly, there is little point in subjecting the parties to a difficult hearing unless the determination of specific facts is likely to assist the Court in making orders for residence or contact.

In practice, the Practice Direction is applied rigorously by the Court, which is understandably very protective of children and spouses or partners who have been abused.

In such cases, the Court has to consider every case on its facts and balance the benefits of the children maintaining interim contact with the absent parent, against the possibility of exposing them and the custodial parent to further risk.

In cases involving allegations of domestic abuse or violence, it is essential that you seek immediate legal advice in this very complex area of law.

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