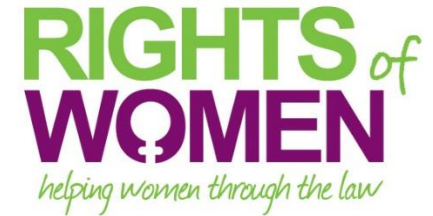


**The Domestic Abuse Act 2021  
and safety in the family court  
– practical updates and tips  
for IDVAs and support workers**

# Key things to consider

- Protection for victim of domestic abuse – DA Act 2021
- Practice Direction 12J
- Prohibition on cross-examination\*\* - DA Act 2021 section 65
- What can IDVAs / support workers do at / in court

# Harm Panel Report 2020



- **Harm Panel Report**
- “unveiled deep-seated and systemic problems with how the family courts identify, assess and manage risk to children and adults”
  - Resource constraints across all private law proceedings
  - Pro-contact culture / minimisation of abuse
  - Working in silos / lack of coordination
  - An adversarial system
    - Children’s voices not heard

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/895173/assessing-risk-harm-children-parents-pl-childrens-cases-report\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/895173/assessing-risk-harm-children-parents-pl-childrens-cases-report_.pdf)

- **Women’s Aid - two years too long report – June 2022**

<https://www.womensaid.org.uk/wp-content/uploads/2022/06/Two-Years-Too-Long-2022.pdf>

## Part 1 – Definition of domestic abuse

Behaviour of a person towards another person where they are each aged 16 or over and **personally connected** to each other and the behaviour is **abusive**.

### **Personally connected:**

- Are or have been married/in a civil partnership (or have agreed to marry/enter into a civil partnership)
- Are or have been in an intimate personal relationship
- Have or have had a parental relationship with the same child
- Are relatives

## Part 1 – Definition of domestic abuse

Behaviour of a person towards another person where they are each aged 16 or over and **personally connected** to each other and the behaviour is **abusive**.

### **Abusive:**

- Physical or sexual abuse
- Violent or threatening behaviour
- Controlling or coercive behaviour
- Economic abuse
- Psychological, emotional or other abuse

## Part 1 – Definition of domestic abuse

### Children as victims of domestic abuse – section 3

#### **If a child:**

- (a) sees or hears, or experiences the effects of, the abuse, and
- (b) is related to [person who perpetrates abuse] or [abused person].

Related – child of either perpetrator or abused person, or a relative  
(broad definition)

IN FORCE

## Part 5 – Protection for victims in legal proceedings

**Special measures (SM)** – assumption in the family court that victim is vulnerable. IN FORCE – SEE FPR PART 3A

**Cross-examination** – in certain circumstances, it will not be permissible for the alleged abuser to cross-examine the complainant themselves. NOT YET IN FORCE

**Barring orders (section 91(14) orders)** – clarify that the family court can make these orders where the child or another individual would be at risk of harm from the making of a further application IN FORCE

## Part 7 - Miscellaneous

**Clare's Law** – will be placed on a 'statutory footing' which means statutory guidance will be published which the police must comply with – NOT IN FORCE

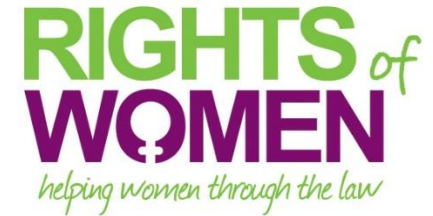
**GP charges for legal aid letters** – GPs will no longer be allowed to charge for letters to support an application for family law legal aid – IN FORCE

**Report on the use of contact centres** – Sec of State must prepare a report on the safety of victims using contact centres within two years of the date of the Act – IN FORCE



# Statutory Guidance on Domestic Abuse Act 2021

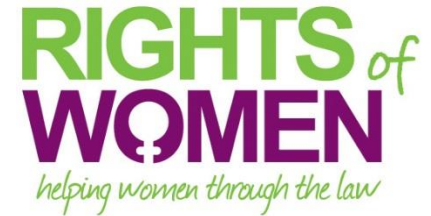
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- Published Friday 8<sup>th</sup> July 2022

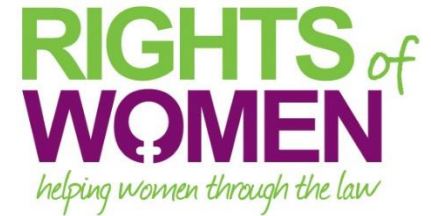
<https://www.gov.uk/government/consultations/domestic-abuse-act-statutory-guidance>

# Participation Directions (Special Measures)



- Family Procedure Rules r3A
- Victims of domestic abuse – or at risk of being a victim – of another party/witness
- Court must assume the quality of their evidence / their participation in the proceedings – will be diminished
- Then court must consider whether participation directions are required
- Victim can say she doesn't want the assumption applied to her

# Participation Directions (Special Measures)



- FPR r3A.7 – what the court must have regard to when deciding on participation directions
- FPR r3A.8 –
  - Prevent a party / witness from seeing another party / witness
  - Participate / give evidence by live link
  - Use a device to help communicate
  - Participate / give evidence with assistance of intermediary
- The duty on the court is throughout the whole proceedings.
- If court decides to make or not make a participation direction, it must set out the reasons on the court order – FPR r3A.9(2)
- EG – screens, separate entrances, waiting rooms, video link

# Family Court decisions / guidance



- **Key recent decisions on domestic abuse**
  - Re H-N <https://www.judiciary.uk/wp-content/uploads/2021/03/H-N-and-Others-children-judgment-1.pdf> - Court of Appeal case about domestic abuse
  - F v M <https://www.bailii.org/ew/cases/EWFC/H CJ/2021/4.pdf> - High Court decision about coercive and controlling behaviour
  - K v K <https://www.judiciary.uk/wp-content/uploads/2022/04/K-v-K-judgment.pdf> - Court of Appeal case after Re H-N (largely unhelpful)
- **Guidance on fact-finding hearings – approved by PFD**
- <https://www.judiciary.uk/wp-content/uploads/2022/05/Fact-Finding-Hearings-and-Domestic-Abuse-in-Private-Law-Children-Proceedings.pdf>

# Guidance on fact-finding hearings (in private law cases)

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- Response to Re H-N
- Trying to limit the number of fact-finding hearings
- Guidance is for all judges in the family court

# Guidance on fact-finding hearings

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- Must be relevant to the issues to be decided (eg relevant to the welfare of the children and risk assessment)
- Are the allegations about safeguarding generally, or particular issues that could be dealt with by supervision or some other measures?

# Guidance on fact-finding hearings

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12. When determining whether to order a fact-finding hearing, consider:

- a. the nature of the allegations and the extent to which those allegations are likely to be relevant to the making of a child arrangements order;
- b. that the purpose of a fact finding is to allow assessment of the future risk to the child and the impact of any abuse on the child;
- c. whether fact-finding is necessary or whether other evidence suffices; and,
- d. whether fact-finding is proportionate.

# Guidance on fact-finding hearings

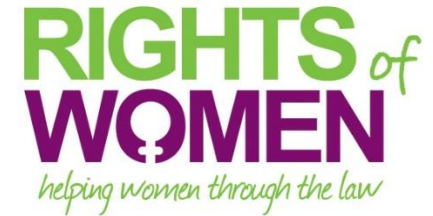
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13. The fundamentals are relevance, purpose, and proportionality. Consider FPR PD 12J [14] and [17].

14. Allegations that require the assessment of a pattern of behaviour, such as controlling and coercive behaviour, do not justify a different approach. The court only needs to determine allegations of such behaviour to the extent that it is relevant and necessary to determine issues as to a child's future welfare. Even then, the court is only required to assess the overarching issue, rather than every single subsidiary factual allegation that may also be raised.



# Safety from Domestic Abuse and Special Measures in Remote and Hybrid Hearings – Nov 20



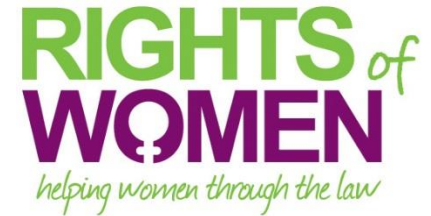
The court should ordinarily allow either party to be accompanied in any hearing by a supporter (whether or not the party is legally represented) or a McKenzie Friend (if the party is not legally represented), subject to the judge's power to exclude any supporter who disrupts the hearing.

- **Ideally supporters should not be directly involved in proceedings (e.g. a domestic abuse support worker or friend).**
- The supporter/McKenzie Friend should be permitted to sit quietly in the same room as the alleged victim, whether the victim is physically present in the courtroom or joining the hearing remotely.
- The court should address the supporter/McKenzie Friend directly at the outset to reinforce the expectations as to their role.

<https://www.judiciary.uk/wp-content/uploads/2020/11/Safety-from-Domestic-Abuse-and-Special-Measures-in-Remote-and-Hybrid-Hearings-Family-Justice-Council-guidance.pdf> pg 5

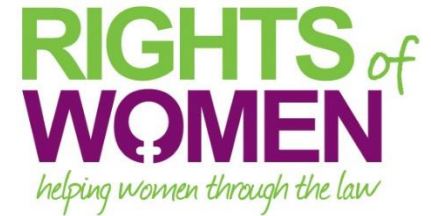
# **IDVAs Supporting Families in Conflict: There is a better way - Sir Andrew McFarlane – Nov 21**

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- “In the court process IDVAs have a valuable role to play. Like that of a McKenzie Friend, in the courtroom their function is to provide individual support to one of the parties. The MoJ Harm Panel report noted inconsistencies in practice as to whether or not IDVAs would be allowed into the courtroom. **To my mind, there are unlikely to be many cases where it is appropriate to refuse a party’s application to be supported by an IDVA at a hearing. In like manner to an application for special measures, a request for an IDVA should almost invariably be granted.** The IDVA is simply in the room as a supporter to enable the party to participate effectively in the proceedings. In addition, specialist support can be essential where the party is a victim of abuse and where plans for their safety, both in and outside the courtroom, must be made.”
- <https://www.judiciary.uk/wp-content/uploads/2021/10/Supporting-Families-in-Conflict-Jersey.pdf>

# Rights of Women legal guides



- McKenzie Friends [https://rightsofwomen.org.uk/wp-content/uploads/2019/07/McKenzie-Friends\\_support-at-court-without-a-lawyer.pdf](https://rightsofwomen.org.uk/wp-content/uploads/2019/07/McKenzie-Friends_support-at-court-without-a-lawyer.pdf)
- Practice Direction 12J <https://rightsofwomen.org.uk/get-information/family-law/children-and-the-law-domestic-violence-and-practice-direction-12j/>
- Fact-finding hearings <https://rightsofwomen.org.uk/get-information/family-law/a-guide-to-fact-finding-hearings/>
- Preparing for hearings and safety in the Family Court <https://rightsofwomen.org.uk/wp-content/uploads/2022/06/Preparing-for-court-hearings-and-safety-in-the-Family-Court.pdf>

# Useful resources



- Professionals can sign up to our online family and criminal law advice forum Finding Legal Options for Women Survivors (FLOWS) here: <https://flowsforum.org>
- Professionals can sign up to our online Women's Migration and Asylum Network for advice on immigration issues here: <http://rightsofwomen.org.uk/about-us/athena-project/>