

**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-related Activity (such as a Domestic Violence Perpetrator Programme (DVPP)).

**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;

(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.

**19.**

Where the court considers that a fact-finding hearing is necessary, it must give directions as to how the proceedings are to be conducted to ensure that the matters in issue are determined as soon as possible, fairly and proportionately, and within the capabilities of the parties. In particular it should consider –

- (a) what are the key facts in dispute;
- (b) whether it is necessary for the fact-finding to take place at a separate (and earlier) hearing than the welfare hearing;
- (c) whether the key facts in dispute can be contained in a schedule or a table (known as a Scott Schedule) which sets out what the applicant complains of or alleges, what the respondent says in relation to each individual allegation or complaint; the allegations in the schedule should be focused on the factual issues to be tried; and if so, whether it is practicable for this schedule to be completed at the first hearing, with the assistance of the judge;
- (d) what evidence is required in order to determine the existence of coercive, controlling or threatening behaviour, or of any other form of domestic abuse;
- (e) directing the parties to file written statements giving details of such behaviour and of any response;
- (f) whether documents are required from third parties such as the police, health services or domestic abuse support services and giving directions for those documents to be obtained;
- (g) whether oral evidence may be required from third parties and if so, giving directions for the filing of written statements from such third parties;
- (h) where (for example in cases of abandonment) third parties from whom documents are to be obtained are abroad, how to obtain those documents in good time for the hearing, and who should be responsible for the costs of obtaining those documents;
- (i) whether any other evidence is required to enable the court to decide the key issues and giving directions for that evidence to be provided;
- (j) what evidence the alleged victim of domestic abuse is able to give and what support the alleged victim may require at the fact-finding hearing in order to give that evidence;
- (k) in cases where the alleged victim of domestic abuse is unable for reasons beyond their control to be present at the hearing (for example, abandonment cases where the abandoned spouse remains abroad), what measures should be taken to ensure that that person's best evidence can be put before the court. Where video-link is not available, the court should consider alternative technological or other methods which may be utilised to allow that person to participate in the proceedings;
- (l) what support the alleged perpetrator may need in order to have a reasonable opportunity to challenge the evidence; and
- (m) whether a pre-hearing review would be useful prior to the fact-finding hearing to ensure directions have been complied with and all the required evidence is available.