



A fact-finding hearing is held

Contents

Who is this document for?	2
1. What is a fact-finding hearing?	2
2. How may the child be feeling?	4
3. What needs to happen before the fact-finding hearing?	4
4. What happens at the fact-finding hearing?	5
5. How can professionals support the child before and during the fact-finding hearing?	6
a) Identify vulnerability.....	7
b) Support the child and family's emotional needs.....	7
c) Keep the child informed and support their participation	9
If the child will be providing evidence at the fact-finding hearing.....	10
5. If facts of child sexual abuse are found	11
6. If facts about child sexual abuse are not found.....	11
a) Support the child's immediate needs.....	11
b) Arrange a post-judgment learning review	12
c) Consider whether there are grounds for appeal.....	14
d) Keep the child's needs in focus	14
7. Where next?.....	16
References	16

Who is this document for?

This practice guide is for Children's Services social workers, CAFCASS social workers (including Children's Guardians and Family Court Advisors), Police, legal professionals and any professionals who may be emotionally or practically supporting a family going through public or private law proceedings when:

- there are concerns of child sexual abuse, *and*
- Children's Services have gone into care proceedings under public law, or the child's parent has gone into private care proceedings, *and*
- The Family Court has decided that a fact-finding hearing is necessary.

1. What is a fact-finding hearing?

- a) When the Family Court is considering allegations of child sexual abuse or other harms, the purpose of a fact-finding hearing is to **establish what happened** and, if findings are made, to inform the judge's final decisions by **assessing the future risks to the child**.

The child's account and information from multiagency sources will be gathered and presented to the court as **allegations** and **evidence**. Based on the evidence the judge will either find facts or not.

When 'findings are made' or 'facts are found' in a family court proceeding, it means the judge has concluded, after hearing the evidence, that an allegation is '**more likely than not**' to have happened on the **balance of probabilities**.

An allegation is when one party says that someone has done something harmful or wrong. In family law proceedings, the most common allegations that people make are that the other party has behaved in a way that was abusive, dishonest or harmful. For example, a parent might allege domestic abuse by the other parent, or a child might say someone sexually abused them – in court, these are allegations. In practice, we call it the child's account. When allegations about child sexual abuse are made, it is common for those allegations to be **disputed** or denied, or (in private care proceedings) for counter-allegations to be made. This is when the court might find it helpful to have a fact-finding hearing.

The fact-finding hearing aims to determine clear facts to support all future decisions about the child's welfare, such as who the child should live and spend time with. Without such a hearing, the court and relevant professionals – including the social worker and the Children's Guardian (CG) or family court adviser (FCA) – would have to rely on conflicting and unsubstantiated accounts; this could impact the reliability of any assessment or recommendations, resulting in decisions which mean a child continues to be sexually abused.

Fact-finding hearings address only **disputed allegations**. The court will not automatically hold a hearing for every dispute but undertakes a balancing act to determine if a fact-finding hearing

is *necessary*. The Court of Appeal has said¹ that the main things a court should consider when deciding whether to order a fact-finding hearing are:

- whether the disputed allegations are likely to be **relevant** to deciding who the child should live with and spend time with
- whether a fact-finding hearing will be **purposeful** for determining risk and the impact of any abuse on the child
- whether fact-finding is necessary or if other evidence is **sufficient**
- whether ordering a fact-finding hearing is **proportionate**, balancing its potential benefits against the harm, delay, and cost to the child and family.

The judge will usually have decided whether a fact-finding hearing is necessary at the First Hearing and Dispute Resolution Appointment (FHDRA) in private family law cases or the Case Management Hearing (CMH) in public family law cases. The Family Procedure Rules [Practice Direction 12J](#) guides this decision making. If an urgent hearing was held first, the decision may have been made then.

For information on how a decision to hold a fact-finding meeting is made, see our guides [A case management hearing is held](#) and [A first hearing and dispute resolution appointment is held](#).

While many procedures for a fact-finding hearing in public and private law are similar, such as the procedure for hearing evidence and the application of the 'balance of probabilities' standard of proof, there are some differences:

- **In Public Law (Care Proceedings)**, findings of fact relate to the legal standard or '**threshold criteria**' under Section 31 of the Children Act 1989. The court must be satisfied that the child is suffering, or is likely to suffer, significant harm due to parental care. Without these findings, the state has no power to make a compulsory Care Order or Supervision Order.
- **In Private Law (Child Arrangements)**, there is **no such threshold requirement**. The decision to hold a fact-finding hearing is based on whether the findings are necessary to assess risks to the child and determine the final welfare decision, such as where the child will live or who they will spend time with.

It's important to recognise that **a fact-finding hearing does not determine guilt or innocence**. Criminal proceedings use the criminal standard of proof – **beyond reasonable doubt**. This means the jury or judge must be completely convinced, or 'sure', that the defendant is guilty. Family law proceedings should make decisions about care arrangements based on **the balance of probabilities** – but research has shown that the Family Court has often, incorrectly, applied the criminal standard of proof in cases involving child sexual abuse, leaving children in unsafe situations¹.

¹ This four-point test was established in the case of *K v K EWCA Civ 468*, which built upon the principles of a previous case, *Re H-N EWCA Civ 448*.

The Family Court does not need to wait for any criminal proceedings to complete before a fact-finding hearing is held. The main concern of family law proceedings is the child's welfare. A thorough examination of the evidence may, however, assist the criminal case.

The term 'split hearing' is sometimes used. This refers to the two-stage process of a fact-finding hearing to establish the facts of the case, followed by a final decision (at an Issues Resolution Hearing or final hearing in public law proceedings, or at a Dispute Resolution Appointment or final hearing in private law proceedings).

2. How may the child be feeling?

A judge's decision to hold a fact-finding hearing where there are concerns of child sexual abuse is significant and can evoke complex emotions for the child involved. For some children, the decision may bring a sense of relief or validation; it is an acknowledgment that their account is being taken seriously and that a judge will now hear the evidence. However, this can be coupled with intense feelings of nervousness and apprehension about the hearing itself and what it will entail. A fact-finding hearing can run for several days and involve multiple witnesses. This could be distressing for the child when they consider that their personal information and abuse will be discussed in this forum with this level of scrutiny.

The potential conflict at the fact-finding hearing and the sense that there are 'competing sides' can be emotionally taxing, adding to the stress and uncertainty for the child and family. The child is now at the centre of a formal process involving legal professionals, which can be intimidating and overwhelming.

If it is necessary for the child to give evidence at the fact-finding hearing, they are likely to be feeling apprehensive. The Family Justice Council (FJC) has prepared [Guidelines in relation to children giving evidence in family proceedings](#) to help decide whether children should give evidence and how they should be supported. The guidelines emphasise the need to consider the child's wishes and feelings, and in particular their willingness to give evidence. Even where a child has said they wish to give evidence, they are likely to be apprehensive and unsure of what to expect. Having to speak publicly about a sexual encounter of any sort is stressful for anyone, of any age; it will be even more daunting for children, not least because court proceedings are likely to be an entirely new experience for them.

The outcome of the fact-finding is a critical point for the child. Decisions about whether facts are found or not found will have a significant impact on whether the child feels believed and their perception of justice or injustice. It will also have repercussions for decisions that are made about who they will live with and spend time with.

3. What needs to happen before the fact-finding hearing?

To help organise the hearing efficiently, the court will request the preparation of a **witness template**, which outlines a clear timetable for when each witness is expected to give evidence. This is generally created by the legal representative of the party bringing the allegations to the courts' attention. The template lists expected witnesses, notes which allegations they address,

and estimates time for their main testimony and cross-examination. This allows the court to allocate the appropriate amount of time for the hearing.

The court will consider:

- which disputed facts will be part of the fact-finding hearing
- what evidence is required (this could mean further assessments are directed)
- whether the parties should file written statements giving details of alleged behaviour and of any response
- whether supporting evidence from third parties, such as police, health, education or other possible witnesses, should be provided to the court in written statements or as oral evidence
- **what evidence the child and any other vulnerable witnesses can give, and what support they may require at the fact-finding hearing to give that evidence (special measures).**
- what support the person of concern may need to have a reasonable opportunity to challenge the evidence (Article 6 Right to a Fair Hearing)
- whether a pre-hearing review before the fact-finding hearing will be beneficial to verify compliance with directions and the availability of required evidence
- how many days are required for the hearing, including hearing the evidence in chief and cross examination.

4. What happens at the fact-finding hearing?

A fact-finding hearing usually follows a sequence of events where the judge hears the evidence from witnesses, as set out in the witness template. This will include social workers and other professionals working with the child in public law cases:

- The hearing usually begins with **brief opening statements** from the legal representatives for each party, outlining their case.
- The person who made the allegations gives evidence first. Their written witness statement is usually used as their main evidence to the court (**evidence-in-chief**). If the person who made the allegations is a child, their **video recorded interview** is usually used as the child's main evidence to the court (evidence-in-chief).
- After giving their evidence, they are then **cross-examined** (questioned) by the other party's legal representatives to test the truth and reliability of their account.
- Any witnesses called to support the allegations will give their evidence and be cross-examined.
- The person **responding to the allegations** then gives their evidence and is cross-examined by the first party's lawyer.

- Any witnesses called to support the responding party's case will give their evidence and be cross-examined.
- After all the evidence has been heard, both parties' legal representatives make closing arguments to the judge, summarising the evidence and why the allegations should or should not be found proven.
- The judge considers all the evidence and delivers a judgment. They will state which allegations they find to be true **on the balance of probabilities** and which are not proven. These findings are then formally recorded in a court order.

The outcome

Facts will be found if, after hearing all the evidence, the court is satisfied the allegation was 'more likely than not' to have happened.

The findings from the fact-finding hearing form the factual foundation for the rest of the case.

- **When facts are found**, the court will take these facts into account during its final decision about who the child should live and spend time with. Professionals should also consider the child's current circumstances and whether, based on the facts found, they are safe.
- **When facts are not found**, they are dismissed and not considered further in the final decision-making process.

5. How can professionals support the child before and during the fact-finding hearing?

Much can be done to support the child and their family at this time. A fact-finding hearing when there are concerns of child sexual abuse is a pivotal part of the family justice process, often shaping the course of future decisions for the child and their family. By determining the facts of the case, it has profound emotional and practical consequences for all involved. Understanding this in the build-up to the fact-finding hearing is essential to ensuring the process is as supportive and sensitive as possible.

This section covers:

- identifying vulnerability
- supporting the child and family's emotional needs
- keeping the child informed and supporting their participation
- making a Family Assistance Order (FAO)

Whatever your role, remember that the support you give the child should be tailored to them, taking account of factors such as their age and stage of development; their sex; their ethnicity, religion and culture; any disabilities or learning difficulties they may have; and their sexual orientation and gender identity. Our practice guide [Taking account of diversity](#) contains more information. It is important to make no assumptions about a particular child. Some children may welcome the intervention and decisions of the court; others may not. Some are keen to

have their day in court, and make robust witnesses, while others may be more apprehensive and require more support.

a) Identify vulnerability

All professionals – including the local authority social worker, the parents’ legal representatives, the child’s legal representative and the Children’s Guardian or Family Court Adviser – are expected to consistently identify and inform the court of any factors that could hinder the ability of the child or other parties to participate in court proceedings. This includes assessing their ability to understand the proceedings, put their views forward, and participate in hearings without suffering significant distress. Children are vulnerable by virtue of their age, and children who have been sexually abused are recognised by the [Achieving Best Evidence \(ABE\)](#) principles as **vulnerable and intimidated witnesses**.

It is the **duty of the court and all parties and their representatives** to identify a vulnerable person **at the earliest possible stage** (under [FPR PD3AA](#))

Remember to consider the vulnerability of the parent(s) or carer(s) who the child lives with as well, especially if domestic abuse is a concern.

The [Guidelines in relation to children giving evidence in family proceedings](#) identifies a range of factors to consider.

b) Support the child and family’s emotional needs

There is a common misconception that the child cannot receive emotional support or therapy during a police investigation, criminal proceedings or family law proceedings. This is not true. The Crown Prosecution Service’s 2022 legal guidance [Pre-trial Therapy](#) makes clear that they can, and should. **Refer the child for therapeutic support at the earliest opportunity.** The child’s health and wellbeing should always be the determining factor in whether, when and with whom they can receive therapy – and you can help by **reassuring the child that what they say in therapy will remain with the therapist, unless it *has* to be shared to safeguard them.**

Children may not currently be ready for therapeutic support, and their needs should remain under review. Therapy can be accessed at any point; if they are not ready now, this can be revisited in the future. Be mindful that there can be long waiting lists for therapy, and work with other safe adults to consider how you all can support the child.

To support the child and family’s emotional needs effectively, you should consider:

- the child’s immediate and long-term care, support and therapeutic needs, including their readiness and willingness to engage with therapy
- the non-abusing parent(s)’ emotional and support needs, including their need for support to understand their child’s needs
- the immediate and long-term care and support needs of other children and vulnerable people in the home, not least because they too may have been sexually abused
- the care, support and therapeutic needs of any children in the home who have engaged in harmful sexual behaviour

- When therapy is not appropriate at this time, including any barriers to the child accessing therapy and reasons why there may be opposition to therapy from family or professionals

Any therapeutic support should have clear ground rules and should be mindful of any open investigations and the potential to impact or influence any evidence the child may give in criminal law proceedings or family law proceedings. The therapist should avoid questioning the child about their account or asking too many questions which could be perceived as coaching or influence. Check with statutory and legal professionals about any ground rules that might enable the child to receive support without impacting on proceedings. To learn more about how you can support the child and their family, see our guides:

- [Supporting the child's emotional health and wellbeing](#)
- [Supporting the child's physical health and wellbeing](#)
- [Supporting the child's relationships with their family and friends](#)
- [Supporting the child's education](#)
- [Supporting parents and carers: A guide for those working with families affected by child sexual abuse](#)

Children may benefit from emotional support before and during the fact-finding hearing. Take time to listen and understand what the child needs and who is best placed to help them. In particular:

- Reflect on the fact-finding hearing and how they will be involved. What is the child's understanding of the information they will share at the hearing and how it will be used to make decisions? How might the child feel about details of their abuse being shared in court?
- Think about the decisions of the court. What impact might it have on the child if facts are found or not found? How might the child experience a decision where facts are not found, and how will you support them to understand what this means?

When facts are not found

When facts are not found, Children's Services cannot rely on them to inform decision-making and care planning, even if concerns remain. This could have significant implications for planning around who the child should live with and spend time with. It also has implications for future safeguarding decisions and resources.

False allegations by children are rare – children are much more likely to withhold information about child sexual abuse than make up something that hasn't happened to them². Facts related to child sexual abuse may not have been found for a range of reasons:

- the evidence that was gathered and presented to the court did not satisfy the legal standard of proof – the balance of probabilities,
- the incorrect threshold – beyond reasonable doubt – was applied,

- there was an over reliance on the child's Achieving Best Evidence (or Video Recorded Interview - VRI) recording, which was not corroborated with contextual evidence from multiagency sources,
- the VRI did not follow the ABE principles, which impacted the admissibility and weight of the evidence.

This illustrates why it is important to follow evidential procedures to ensure the best outcome for the child.

Review and reflect on what happened

When a court does not find facts where sexual abuse allegations are made by a child, the disconnect between the legal outcome and the child's lived experience can create a secondary trauma. Professionals must navigate the space between the **legal outcome** and any **ongoing safeguarding duty**. The shift should be carefully managed to avoid the system defaulting to a punitive "false allegation" narrative.

c) Keep the child informed and support their participation

Most children (and parents) won't understand what a fact-finding hearing is, why it is important, what to expect, or how they could be involved.

The child's participation in court proceedings is supported by the Family Court Advisor or Children's Guardian. Their main purpose is to be the voice of the child in proceedings and to ensure their best interests are represented; they have specific duties mandated by Cafcass policy and the Family Procedure Rules. In public law proceedings, the child will also have a social worker.

Before the fact-finding hearing, the social worker and / or Children's Guardian should take the time to discuss:

- who will be at court
- who will give evidence (the witnesses, which may include the child)
- how the child can participate in the fact-finding hearing through direct work with their social worker or Children's Guardian
- whether they are required to give evidence
- how they feel about giving evidence and what support they might need (explain their options)
- what decisions will be made (facts found or not found)
- how the decisions will be made
- how the child will be informed about the decision made.

Use age-appropriate terms, and reassure the child that it's not about getting anyone in trouble – it's about making sure everyone is safe and making the best decisions for them. It may be helpful to explain:

- "The judge will listen to everyone, including you, to understand what happened."

- “Your main job is to tell the truth and help the judge understand what happened.”
- “Everyone [say who] has a chance to tell the judge what happened.”
- “The judge might want you to come to court to tell them what happened.”
- “Everyone will be asked questions by the lawyers after they have said what happened. This helps the judge understand exactly what happened.”
- “After the judge hears all the information, they decide what happened and what should happen next.”
- “Someone you trust will explain these decisions to you in a way you can understand.”

If the person of concern will be present at the hearing, the child may feel especially nervous about their account of what happened, being discussed. Reassure them about how their personal information will be handled by the court.

Always give children opportunities to provide more information and let them know who they can tell. Telling is a process not an event. It is common for children to provide more information throughout the court process and should not be assumed to be as the result of coaching or encouragement from one of the parents. It is important to establish whether the information has already been included already in proceedings or whether it is new information and requires ABE procedures to be followed.

Consider talking to the child about the possibility that the court will not ‘find facts’ relating to child sexual abuse, to prepare them for this eventuality. Point out that a judge in the Family Court must be satisfied that something is ‘more likely than not’ to have happened – and that ‘not found’ decision simply means the judge doesn’t think there’s enough information or evidence to meet that specific legal test. This may help the child to see how the information they provide relates to the court’s decisions, so they understand the outcomes more clearly.

- , Supporting the child’s participation before the **fact-finding hearing** will depend on their age, understanding and specific needs, and whether they are required to give evidence. As a social worker, child’s solicitor or Children’s Guardian, you can: check if they want to meet the judge or visit the court
- ask the judge to write the child a letter after the hearing, explaining any big decisions that have been made
- support the child to writing a letter to the judge.

If the child will be providing evidence at the fact-finding hearing

Historically, children were protected from attending court or providing evidence, especially when there were concerns of child sexual abuse, but it has become more common. Some children are willing to participate, while others may feel more hesitant about providing evidence. It is rare that younger children attend fact finding hearings or get cross examined on their evidence in chief. Where they are invited to a fact-finding hearing, if they appear to be suffering trauma or mental health issues, a Gillick competency test may be applied.³

³ Gillick v West Norfolk and Wisbech Area Health Authority [1985]

The Family Justice Council (FJC) have prepared [Guidelines in relation to children giving evidence in family proceedings](#) to help decide whether children should give evidence and how they should be supported. The guidelines emphasise the need to consider the child's wishes and feelings, in particular their willingness to give evidence.

If the child (or any other vulnerable witness) is to give evidence, a **ground rules hearing** (GRH) will be scheduled before the fact-finding hearing. The sole purpose of the GRH is for the judge to establish and reach agreement upon the specific special measures (or participation directions) that will be used to ensure that the witness can participate effectively, and that the quality of their evidence is maximised without causing them undue fear or distress.

The child may benefit from being appointed an intermediary, who can be with them in court to help them understand and answer questions. Practice guidance on [The use of Intermediaries, Lay Advocates and Cognitive Assessments in the Family Court](#) sets out when an intermediary should be used in family law proceeding to support vulnerable witnesses.

5. If facts of child sexual abuse are found

If facts have been found at the hearing, findings can shape and inform decision making moving forward. The findings can inform risk assessments, safety plans and final recommendations. The judge will use the facts to determine final orders for children, including who the children should live with and spend time with.

Where facts have been found relating to child sexual abuse, specialist services may be more likely to accept referrals to support children and their family.

The finding may also allow children to speak more openly about what happened to them. This could result in a criminal case being reopened or re-examined.

6. a) Support the child's immediate needs

After the fact-finding hearing, be sure to follow the plan you agreed with the child about how to keep them informed.

If the judge has not 'found facts' about their sexual abuse, this can be a particularly difficult and confusing outcome for the child. They may feel disbelieved, invalidated, and unprotected.

The child's immediate emotional wellbeing is the priority. The fact-finding outcome does not erase what happened to them or the courage it took to tell what happened.

- **Reassure and validate** them that they did the right thing by telling someone. Use validating language such as, "You did the right thing by saying something," and "We are here to support you." Emphasise that you take what they said seriously.
- **Actively listen** and allow them to express their feelings about the decision, whether it's anger, sadness or confusion. Let them speak at their own pace and reflect back what they say, to show you are listening and understand their perspective.
- **Explain your continued role** following the court's decision, and be clear about how this may change your role in the future. For example, if facts have not been found and the case concludes in the private court arena, you may no longer work with the child as their Guardian or Family Court Advisor.

- **Explain that professionals will review and reflect** on what happened at the hearing.
- **Carefully explain the judge's decision** in a truthful, age-appropriate way that avoids reinforcing feelings of disbelief. Building on any previous conversations about this that you have had, explain clearly that the court's decision is not a judgment on whether the child was telling the truth. A judge in family court must be satisfied that something is 'more likely than not' to have happened, and a 'not found' decision simply means the judge decided there wasn't enough information or evidence to meet that specific legal test. **It does not mean they concluded the child was lying.** It may help to describe the court as a decision-making forum that requires specific evidence to reach a verdict: "In our legal system, a judge is like a referee. They have a very strict rulebook. For them to say, 'this happened,' they need to see a certain amount of proof. In this case, even though they heard everything you said, the rulebook says they didn't have quite enough pieces of the puzzle to make a formal legal decision." This separates the child's internal reality from the external legal result, preventing them from feeling that their identity or honesty has been rejected by the state.
- **Support them to think about what happens next.** Support should be based on the child's presentation and needs, not the legal findings. For example, you might say: "The court's job was to look at the past. Our job is to look at your future. The judge's decision doesn't change the fact that you have been feeling [anxious/scared/upset]." Explain what support will be available to them going forward.

b) Arrange a post-judgment learning review

Children's Services or Cafcass (depending on whether you are in public or private law proceedings) should lead a post-judgement, multi-agency learning review. This is not to challenge the court, but to understand the 'evidential gap' and separate legal certainty from safeguarding necessity.

The central question is: "Did we provide good quality evidence to the court, and how did the quality of the evidence effect safe and just decision making?"

Quality and adherence to ABE principles

The **Achieving Best Evidence (ABE)** interview is often the primary evidence in sexual abuse cases. If the court gave it 'little weight', the review should analyse:

- **Procedural compliance:** Were the ABE principles carefully followed? What feedback did the court provide? Where, if anywhere, did the ABE interview process deviate from ABE principles, and how did this affect the court's decision-making?
- **Questioning style:** Did the interviewer use leading or suggestive questions? In family law, even 'minor' deviations from ABE principles can lead a judge to find the evidence unreliable, due to the risk of 'memory contamination'.
- **The child's lived experience:** Where applicable, did the interview take into account the child's neurodiversity or trauma presentation? The review should check if an **intermediary** was used to assist a vulnerable child in giving their best evidence.

Multi-agency contextual evidence

Judges often find that an allegation stands in 'isolation' without sufficient corroboration. The review should consider:

- **Contextual evidence gap:** Was there an over-reliance on the child's video recorded interview (VRI) alone? A safe and just decision often requires **contextual corroboration** – for example, school attendance logs, medical records, or observations of the child's behaviour from health visitors or teachers that align with the timing of the concerns.
- **Chronology quality:** Did Children's Services or Cafcass submit a robust, integrated chronology? A frequent criticism from the Family Court is that evidence is 'fragmented'. The review should check whether the court was shown a clear pattern of behaviour, or whether incidents were presented as disconnected events.

The professional evidence and analysis

The way that social workers and experts present their evidence can significantly impact a judge's confidence in it.

- **Analytic vs. descriptive evidence:** Did the evidence (the social worker statement, the section 7 or 37 report, witness statements, the Schedule of Allegations, expert evidence, or other evidence) merely *describe* the concerns, or did it *analyse* them? Analysis of evidence should move beyond 'suspicions' to a clear analysis of why the evidence supports a specific finding.
- **Confirmation bias:** Did professionals use the term 'disclosure'? Using this term assumes the abuse happened before the court has decided on that. If professionals used this language, it may have undermined their credibility by signalling a 'closed mind' to the court. We prefer child-first language, for example, 'X told us Y happened.'

Evidential thresholds and legal gatekeeping

The review should examine the preparation of evidence:

- **The cumulative picture:** If the sexual abuse allegation wasn't 'proven', was there evidence of grooming behaviours or coercive control that was overlooked? While a specific act may not be proven 'on the balance of probabilities', the environment of risk often can be. Have professionals considered grooming behaviours were also used on them, as part of the assessment process.
- **Case strategy:** Was the Schedule of Allegations or threshold statement too broad? Would focusing on fewer, more 'provable' allegations have led to a more just outcome?
- **Expert evidence:** If a psychological or medical expert was used, did their report meet the **FPR Part 25** standard, the expert being recognised and regulated and able to produce evidence for the family court? Was the expert given all relevant background material, or were they working from a partial file?
- **The hindsight check:** "What piece of evidence do we wish we had collected six months ago? How do we ensure it is collected in the next case?"

c) Consider whether there are grounds for appeal

In cases brought under public law proceedings, Children's Services should seek legal advice about whether there are grounds for appeal. If they believe the decision was 'wrong' because the judge made a serious error in reaching a conclusion. Possible grounds for appeal include:

- **Error of law:** The judge applied the incorrect legal standard (e.g., using "beyond reasonable doubt" instead of the civil "balance of probabilities") or misinterpreting the law.
- **Unreasonable finding:** The judge made a factual finding that no reasonable judge could have made based on the evidence provided. This is a high bar, as appellate courts are very reluctant to overturn a trial judge's assessment of witness credibility.
- **Failure to take account of material evidence:** The judge 'clearly failed to give due weight' to a significant piece of evidence (e.g. a medical report or a specific ABE interview segment) that was central to the case.
- **Irrationality:** The judge's reasoning was so flawed or illogical that it cannot support the conclusion reached.

Alternatively, there may be grounds for appeal if Children's Services believe the decision was 'unjust' (Procedural Irregularity). This refers to *how* the hearing was conducted rather than the final verdict itself.

- **Inadequate reasoning:** The judge failed to explain *why* they reached their decision. A 'lack of reasoning' is one of the most common successful grounds for appeal.
- **Breach of natural justice:** A party was not given a fair opportunity to present their case or cross-examine a key witness – for example, the court did not follow the Practice Direction **PD3AA** ensuring vulnerable witnesses are appropriately supported, and the witness did not have the opportunity to provide their best evidence.
- **Bias or appearance of bias:** The judge displayed actual bias or behaved in a way that would lead a reasonable observer to conclude they were not impartial.
- **Failure to follow guidance:** The judge failed to follow mandatory guidance, such as Practice Direction 12J (Domestic Abuse) or Achieving Best Evidence (ABE) principles where relevant.

d) Keep the child's needs in focus

There is a risk that agencies and services may become punitive and question the child's honesty about the allegations. This could shift the narrative away from the child's presentation and needs towards approaches that are potentially harmful, such as 'honesty' coaching or directing the child to participate in harmful sexual behaviour provision.

- **Encourage clinical independence:** Children's Services should advocate that CAMHS or therapeutic providers maintain a **trauma-informed approach** based on the child's *presentation* and *needs*, rather than the legal outcome.
- **Challenge judicial overreach:** While judges find facts, they are not clinicians. If a court orders a change in therapy to 'address lying', Children's Services should challenge this

and, if necessary, consider seeking clinical expert evidence to explain why such an approach may be psychologically damaging to the child.

- **Ensure harmful sexual behaviour provision is supportive:** If the child is moved to this provision, to support and care for the child, the care plan should focus on support and safety, not on a punitive response.
- **Consider the ‘evidence vs. reality’ gap:** Ask yourself: “If the court did not find the facts proven, does our clinical assessment of the child’s trauma symptoms change? If not, how do we facilitate continued support?”
- **Carry out safety planning:** In the absence of a finding, consider what 'safety network' can be built that protects the child. When facts are not found, the accuracy and neutrality of **case recording** are paramount to ensuring that the child is not further marginalised and the professionals maintain credibility.
- **Avoid definitive language of ‘falsity’:** Records should state that the court was ‘not satisfied to the required standard’ or that ‘findings were not made’, rather than recording that the child ‘lied’ or the allegations were ‘untrue’. This approach recognises that a failure to meet the legal standard of proof does not mean abuse didn’t occur, and helps prevent a permanent ‘false allegation’ label in the child's record.
- **Differentiate between legal outcomes and clinical needs:** Documentation should clearly distinguish between the legal finding and the child’s presentation and therapeutic needs. Even in the absence of legal proof, the record should continue to document the child’s presenting trauma, emotional distress or behavioural symptoms, ensuring that the care plan remains needs-led rather than being dictated solely by the judicial outcome.
- **Document the ‘evidential gap’ for future safeguarding:** Record the outcome of the post-judgment learning review and any subsequent legal steps. This creates a ‘road map’ for future social workers, ensuring that – if new concerns arise – they understand the context of the previous hearing and can address the specific evidential weaknesses identified in the learning review.

Make a Family Assistance Order (FAO)

The judge may make a **Family Assistance Order (FAO)** under **Section 16 of the Children Act 1989**. Its purpose is to provide support to families transitioning through high-conflict or complex proceedings, including those involving fact-finding for child sexual abuse. The purpose is to provide a named professional (Social Worker or CAFCASS officer) who acts as a neutral point of support for the family.

The period immediately following a fact-finding or final court order are often the most challenging. The FAO aims to:

- Providing support with navigating post-court arrangements.
- Help the family access specific services, such as therapeutic support for a child following a fact-finding hearing.
- In a professional context, this means building a relationship of trust to lower conflict and improve cooperation.
- Stabilise arrangements and ensure that the arrangements about who the child lives with and spends time with are bedded in successfully.

- Reduce conflict by acting as a buffer between parents who may have high levels of animosity following the court's findings.

The FAO ensures the child's perspective remains central during the implementation of court orders. The aim is to help the child understand the changes in their life and to provide them with a safe professional to speak to if arrangements are not working.

The FAO acts as a structured exit strategy from the court system, ensuring the family is connected to local Family Hubs or community resources before professional involvement ends.

7. Where next?

When the fact-finding hearing completes, the case will go to:

- [a Dispute Resolution Appointment \(DRA\)](#) in private law proceedings, or
- an [Issues Resolution Hearing \(IRH\)](#) in public law proceedings.
- Or return to this [response pathway summary guide here](#).

References

ⁱ Child Safeguarding Practice Review Panel (CSPRP), I wanted them all to notice (CSPRP, 2024), [https://assets.publishing.service.gov.uk/media/67446a8a81f809b32c8568d3/CSPRP - I wanted them all to notice.pdf](https://assets.publishing.service.gov.uk/media/67446a8a81f809b32c8568d3/CSPRP_-_I_wanted_them_all_to_notice.pdf).