St.Mary's
FAMILY LAW SPECIALISTS

Private Law Case Law Update

Eleanor Hull

April 2025

Successful Appeal Against an Order for Interim Contact

V v V & Anor [2025] EWHC 945 (Fam)
Mr Justice Peel
16 April 2025

Full judgment can be found here

Summary

Peel J allowed an appeal against a decision to allow overnight interim contact with the father ('F') against the recommendations of Cafcass in light of the fact that the judge had ordered a fact-finding hearing, which would inevitably lead to a review of the appropriateness and safety of interim contact [34].

Background [1] – [23]

This case concerns a girl aged eight ('A'), whose mother ('M') and F met in 2003 when M was aged 15 and F aged 24. They had a sexual relationship which "plainly was unlawful"; they married in **2012,** and A was born on **25.11.16**. The relationship began deteriorating in **2018,** and M issued a divorce petition in **October 2020** [2].

On **05.01.24**, M applied for a non-molestation order and occupation order against F. On **27.05.21**, a non-molestation order was made against each parent, and an occupation order made against F, allowing M and A to return to the family home. The judge "concluded the parties could not live together harmoniously, that at times there was fault on both sides" [4].

The judge also made specific findings against F, including findings of anal rape and sexual assault of M and F using excessive force against A [3(i) – 3(v)]. Peel J emphasized these were made for the purpose of the FLA application, and not a PD12J analysis.

Thereafter, limited contact took place between F and A, F applied for increased contact in **April 2023**. On **05.09.24** a Final Order, made largely by consent, ordered that A should live with M and spend day contact with F progressing to alternate weekend staying contact and holiday contact. M appeared in person and said she was "coerced" into agreeing the order. Peel J did not feel this was the case:

> *"I have no doubt that attending in person was challenging for her, but there is no material before me to suggest that she was forced to agree to the order, and I note that she did not appeal. Further, most of these matters were in fact agreed at a DRA in May 2024 when both M and F were legally represented, in particular progression to staying contact" [5]*

On **12.12.24** M applied to suspend the contact provisions. An urgent hearing was listed on **19.12.24** at which the judge gave directions and kept in place contact arrangements save for minor

amendments. Overnight contact took place on **27.12.24** and on a further six occasions until permission to appeal was granted.

On **24.03.25** the judge listed a fact-finding hearing in respect of allegations of domestic abuse made by M against F. M seeks additional findings, stating that F presents a risk to both her and A as victims of domestic abuse, the majority of the allegations relate to the period prior to **September 2024.** However, M alleged that F's behaviour has continued and worsened since then. F denies the allegations.

At this hearing M initially sought for contact to be suspended but then agreed with the child's guardian ('G'), who suggested that interim contact should be reduced to supervised contact with no overnights. The judge departed from this by providing for overnight staying contact in the interim. M sought permission to appeal from the judge at the hearing which was denied [23]. Permission to appeal was given by Harrison J on **03.04.25.**

The Appeal

The parties' positions were summarised at [24] as follows:

> *"At this appeal, M submitted that the judge was wrong to make an order for staying contact and should have endorsed no more than the Guardian's recommendation for day contact. She says that the judge failed sufficiently to balance in the equation the risk to Amy of continued contact despite having determined that there should be a fact finding. F says that this experienced judge reached a decision which was within the range of legitimate outcomes and the court should be slow to interfere with what is essentially an evaluation by the first instance tribunal. The Guardian said on this appeal she takes a neutral stance."*

A summary of the law in relation to appeals was given at [25] – [28].

Judgment [30 – onwards]

> *30. Domestic abuse is a vile, indefensible scourge in our society. The findings made by the court against F in 2021, albeit within Family Law Act proceedings rather than Children Act proceedings, are very grave indeed. M's allegations of continuing abusive behaviour since then are cause for concern and have to be seen in the light of the 2021 findings. The impact on M has yet to be fully established, but potentially severe. The impact on Amy, who has clearly witnessed conflict between her parents, may be damaging to a high degree. It is right to note also that F makes allegations against M which are, if proven, serious in terms of the impact on Amy. None of this should be underestimated. The question is whether these matters require the court to limit contact until they have been fully inquired into at the fact-finding stage, and then at the welfare stage when the court will consider the risks to Amy.*
>
> *31. My task relates solely to interim contact. The fact finding is for another day; so too the welfare hearing which will follow. The wider issues are not before me. The parties must understand that what I say in this judgment should not in any way bind or influence judges who come to this case later.*
>
> *32. I acknowledge that this experienced Recorder was familiar with the case having conducted the Family Law Act hearing in 2021. It seems reasonable to me to assume that he had in mind the relevant provisions of the Domestic Abuse Act 2021 and PD12J. This was, it seems to me, a*

finely balanced decision. In the end, I conclude that his order maintaining overnight contact tipped to the wrong side of the balancing scales.

33. His judgment on the issue of whether to hold a fact-finding hearing referred to the impact on a child of witnessing domestic abuse, as has been the case here: s3 of the Domestic Abuse Act 2021 resonates. At para 12, he referred to the allegation of F turning Amy against M which, if proven, could be "insidious". At para 14 he said that M's allegations "go to the root of the safety of the contact regime". At para 15 he said that if M's allegations are proven "then Amy is at risk" from F, and that if F is right then she is at risk from M. The risks either way are psychological and emotional rather than physical. Having identified the potential risks to Amy if the fact finding determines that M is correct, it seems to me that he did not fully follow through to consider whether in those circumstances interim staying contact could be safely managed. That is particularly so given the history of very serious findings made in 2021.

34. F makes the valid point that overnight contact was agreed by M in September 2024, but at that time no court had decided that a fact-finding hearing should take place. Everything changed on 24 March 2025 when the judge decided that a fact-finding hearing was necessary. The judge's concern that Amy might not understand the reason for removing the overnight contact was a valid consideration but had to be viewed in the context of a decision to direct a fact-finding hearing. It seems to me that in the circumstances, contact needed to be reviewed on an interim basis. Had the judge decided not to hold a fact-finding hearing, the position would have been different, but the decision to embark upon fact-finding inevitably leads to a review of the appropriateness and safety of interim contact. In my judgment, the gravity of the allegations, and potential impact on Amy, was such that it was unsafe to continue with overnight contact. In my judgment, the Guardian's recommendation at the hearing was the appropriate, balanced way forward. I conclude that the judge, who gave this case anxious consideration, ultimately was wrong and should have provided for more limited contact on an interim basis. I will allow the appeal, discharge the overnight staying contact and instead provide for unsupervised contact as follows:

i) After school on alternate Tuesdays until 6pm.

ii) On alternate Saturdays from 9.15am-3.15pm.

Peel J also considered an application for an amendment to the transparency order made on 24.03.25, to permit the press to name F and publicise his specific employment. Peel J felt this variation would not be appropriate at this stage, save for the fact that F is a serving member of the armed forces may be published [35].

Practical Consequences

This judgment is a helpful reminder of the need to carefully consider s25-27 of PD12J when considering applications for interim contact when a fact-finding hearing has been ordered. Maintaining the status quo may not always be in the child's best interests when the gravity of the allegations and potential impact on a child mean that continuing the current contact arrangements becomes unsafe.

St.Mary's
FAMILY LAW SPECIALISTS

Eleanor Hull

E: eleanor.hull@stmarysfamily.co.uk

T: 0115 950 3503