



Children and the law: domestic violence and Practice Direction 12J

This guide is designed to give you information about the rules the court follows in cases concerning children where there has been domestic violence (Practice Direction 12J).

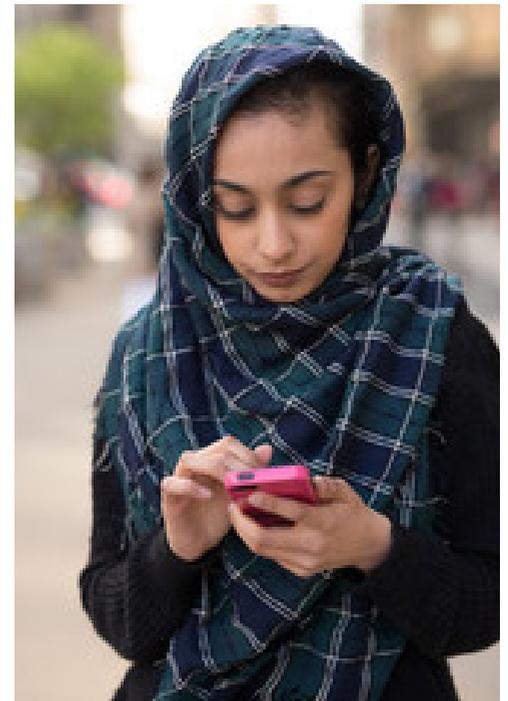
Going to court can be daunting, especially when you have experienced domestic abuse from the other party in the case. There are particular rules the court has to follow in cases concerning children when there has been domestic violence. These are set out in Practice Direction 12J.

This legal guide will give you information about how to get the court to focus on your concerns about your partner's behaviour and the risk they pose to your children as a result of domestic violence using Practice Direction 12J. This guide is not able to go through the entire Practice Direction and, instead, highlights some of the most important parts of it so that you can make sure the court takes your concerns seriously. You may find it helpful to read it in full. You can find a copy here: https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12j

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What is Practice Direction 12J?

Practice Direction 12J is part of the Family Procedure Rules. These are rules that set out the way the court should deal with family cases. They cover all types of family law. Practice Direction 12J is one part of the Family Procedure Rules and Judges must refer to it in any application relating to children where there are allegations that a party or child has experienced domestic violence by another party.



What is the definition of domestic violence?

The definition of domestic violence (called “domestic abuse” in the Practice Direction) is as follows:

Domestic abuse

includes any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, psychological, physical, sexual, financial, or emotional abuse. Domestic abuse also includes culturally specific forms of abuse including, but not limited to, forced marriage, honour-based violence, dowry-related abuse and transnational marriage abandonment;

Abandonment

refers to the practice whereby a husband, in England and Wales, deliberately abandons or “strands” his foreign national wife abroad, usually without financial resources, in order to prevent her from asserting matrimonial and/or residence rights in England and Wales. It may involve children who are either abandoned with, or separated from, their mother;

Coercive behaviour

means an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim;

Controlling behaviour

means an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour;

The family court should apply this definition of domestic violence. If you are concerned that the family court is not using this definition, for example, you believe that the judge is dismissive of the coercive and controlling behaviour you have experienced, then you can remind the judge of the definition of domestic violence set out in Practice Direction 12J.

How to raise allegations of domestic violence

In Practice Direction 12J, the court has a responsibility to think about whether domestic violence is an issue in the case. If there has been domestic violence in the relationship between you and the father of your children, the court has to go on to think about what happened and whether the father of your children accepts that it happened. The court should only order contact between your children and their father if they are satisfied that you or your children will not be exposed to the risk of harm.

The easiest way to make sure you have raised allegations of domestic violence is to do this in a **Form C1A**. If you are applying for an order, you should do this at the same time as you complete the application form.

If the father of your children has applied for an order, you can tell the court about the domestic violence you have experienced in a **Form C1A** which you should complete and send to the court and the father within 14 days of when you receive his application. It is best to send a copy to Cafcass too as the court may not do this.

You should speak to the Cafcass officer before the first hearing. When you speak to them, make sure you inform them that you have experienced domestic violence and ask them to look at your **Form C1A**. If they do not have a copy, send it to them again.

See **Children and the law: when parents separate** for more information about the types of orders you can apply for. You can find the forms online here: <https://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do>

Before each hearing, you should prepare a **position statement**. This is a document that summarises what you want to say to the court about the application. In your position statement, you should make sure you have asked the court to consider your allegations of domestic violence. You can remind the court of their responsibility under Practice Direction 12J in your position statement. See **How to write a position statement for a Family Court hearing** for more information.

‘...The easiest way to make sure you have raised allegations of domestic violence is to do this in a Form C1A...’

What should happen at court?

Cafcass report

Before the first hearing, Cafcass should contact you and the father of your children to discuss the application. They will also complete what are called safeguarding checks. This is where they contact social services and the police to see if they have ever been involved with your family.

You are entitled to know what the outcome of these checks are. If you have not received this from Cafcass before the first hearing, you should ask the judge to arrange for you to be sent a copy.

At the first hearing, if the safeguarding checks are not available, and no other reliable safeguarding information is available, the court must adjourn the first hearing (this means put it off until a later date) until the results of safeguarding checks are available.

The court should not make any orders for contact without the safeguarding information from Cafcass unless the order is to protect your children.

'...The court should not make any orders for contact without safeguarding information from Cafcass...'

If you are worried at the first hearing that the court is going to make orders for contact without the safeguarding checks, you should tell the judge that this is not permitted under Practice Direction 12J.

If a judge goes ahead to make an order for contact in this situation, you may be able to appeal this decision. You should contact our family law advice line to discuss this further.

Special measures

If you are concerned about going to court at the same time as the father of your children because he has been abusive towards you, you can ask the court to make special arrangements to protect you or your children when you attend any hearing. Under Practice Direction 12J, the court must ensure, as best they can, that appropriate arrangements are made for the hearing and any subsequent hearing. These may be:

- The court can provide you with a separate waiting room to wait in before you are called in front of the judge. This will limit your contact with the other party when you are not in front of the judge.
- If you are afraid that the other party will follow you out of the court then you can ask the judge or the Cafcass officer to help you by asking the other party to remain in the court building for a certain period of time after you have left.

- The court can place a screen in between you and the other parent, so that you cannot see each other. The judge will decide whether or not to allow the screens.
- In more serious cases, you can ask to attend the hearing via a video link or live link so you do not have to be in the room with the other parent.
- If you are worried about being questioned directly by your abuser, or you are worried about having to question him directly at a final hearing or a fact finding hearing, you can request that the judge asks the questions instead.

You should ask for the special measures you would like before the first hearing. If you are the applicant, you can do this on your application form. If the father of your children has made the application, you can tell the court that you would like special measures when you respond to his application. You should do this in **Form C7** within 14 days of receiving his application. It is sensible to telephone the court a few days before each hearing to make sure they have put the special measures in place.

When the court is considering your request for special measures, they should ask you for your views on what you think is the best way for you to feel safe.

See **A guide to preparing for court hearings and safety in the family court** for further information about attending court.

Admissions

If, during a hearing, the other side has accepted that he was abusive towards you or the children, you should ask the court to record this in the court order or set it out in a schedule which can be attached to the order.

Practice Direction 12J states that the court must record any admissions made about domestic violence and that these should be sent to Cafcass as soon as possible.

If you are worried that admissions made by the other side have not been recorded, try to raise this with the judge during the hearing and ask him to tell you what exactly will be recorded while you are in court.

If you receive the order after the hearing and the admissions have not been written down, then you can ask the court to correct the mistake under the slip rule. This is when the court can change a court order if there is a mistake in the way it has been written. You should write to the judge explaining the mistake and writing what you believe the order should say.

If the judge will not correct the mistake, you can apply to get a transcript of the hearing. Every court hearing should be recorded and a transcript is when someone writes down what was said from the recording. You can complete a **Form C2** asking the court to direct that a transcript is prepared. If there is a disagreement about what was said in court, for example, the other side denies that they admitted that they had been abusive, the transcript will resolve this.

When will the court have a fact finding hearing?

If the other side denies the allegations of domestic violence you have made, then the court will not be able to rely on them until the court has heard all of the evidence and decided whether they believe they did or did not happen. The hearing when the court will listen to the evidence from you, the other side and any witnesses you have, is called a fact finding hearing.

Under Practice Direction 12J, the court should have a fact finding hearing if the allegations will make a difference to the court's final decision. The decision they should be thinking about is whether, as a result of the allegations, the other side poses a risk of harm to you or your children as a result of the domestic violence. They will consider the following factors:

- the views of the parties and of Cafcass
- whether there are admissions by a party
- if a party is in receipt of legal aid, what was the evidence used for legal aid purposes
- whether there is other evidence available to the court
- whether the factors set out below can be decided without a fact-finding hearing;
- the nature of the evidence required to resolve disputed allegations;
- whether a separate fact-finding hearing would be necessary and proportionate in all the circumstances of the case.

You should think about what you want to achieve at court and whether the domestic violence you have experienced is relevant to the decision the court has to make. For example, if you do not believe that the father of your children should have any contact with them because he was abusive towards you and he is asking for contact, then your experience of domestic abuse will be very relevant to the decision the court has to make.

However, if you are asking the court to make an order for you to take the children on holiday and the father of your children is refusing, the court may decide that they can make this decision without fully exploring your allegations of domestic abuse.

If you believe that your allegations of domestic violence are relevant to the decision the court has to make and the other side denies them, then you should ask the court to have a fact finding hearing. You can explain your reasons for this in a position statement. See **How to write a position statement for a Family Court hearing**.

What if the court is going to order contact to take place before a fact finding hearing?

Practice Direction 12J says that if the court believes that it is necessary to have a fact finding hearing, the court should not order that contact takes place between your children and the other side unless they can be satisfied that your children and you would not be exposed to an unmanageable risk of harm.

In order to make this decision, the court should think about the effect of contact on you and your children whether that is emotional, physical or psychological.

The court should think about whether there may be arrangements that would make contact manageable, such as supervised contact or the other side sending letters or cards. If you are concerned about this, you should tell the judge that under Practice Direction 12J, they have to consider the effect of the contact on both your children and you in light of the domestic violence.



How will the court make final decisions about contact where there has been domestic violence?

Where there has been domestic violence and this is either accepted by the other side or been proven by the court at a fact finding hearing, the court can still make an order for the other side to have contact with your children. There are factors that the court considers in every application to do with the upbringing of a child. This is called the welfare checklist. They are:

1. Your child's wishes and feelings
2. Your child's physical, emotional and educational needs
3. The likely effect on your child of any change in his or her circumstances
4. Your child's age, sex, background and any relevant characteristics
5. How capable both parents are of meeting your child's needs
6. The range of powers available to the court

However, there are additional factors that the court must think about before they make an order for contact.

The court should take steps to obtain information about the facilities available locally to assist any party or the child in cases where domestic abuse has occurred. This may be domestic violence support services, perpetrator programmes for the other side, contact centres or other facilities that they believe are relevant.

In every case where domestic violence has been established, the court should consider the conduct of both parents towards each other and towards the child and the impact of this behaviour. In particular, the court should consider:

1. the effect of the domestic abuse on the child and on the arrangements for where the child is living
2. the effect of the domestic abuse on the child and its effect on the child's relationship with the parents
3. whether the parent is motivated by a desire to promote the best interests of the child or is using the process to continue a form of domestic abuse against the other parent
4. the likely behaviour during contact of the abusive parent and its effect on the child
5. the capacity of the parents to understand the effect of past domestic abuse and the potential for future domestic abuse.

Before any hearing where you are concerned that the court will make an order for contact between the other side and the children, you should explain in your position statement why you do not believe this is safe using the points above. You could use these points as headings in your position statement and explain to the court that you are setting out the factors for the court to think about in Practice Direction 12J.

If the court asks you to prepare a witness statement that addresses the welfare checklist, you should use the points in both of the lists above as headings and explain underneath the heading, how it affects your children in particular. See **A guide to preparing witness statements for the Family Court** for more information.

If the court makes an order, the court must always explain why it takes the view that the order will not expose the child to the risk of harm and is beneficial for the child. You can ask the judge to put these reasons in writing, for example, in the order if you are not clear.





The law is complex and may have changed since this guide was produced. This guide is designed to provide general information only for the law in England and Wales. You should seek up-to-date, independent legal advice.

Rights of Women does not accept responsibility for any reliance placed on the legal information contained in this guide.

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For free, confidential, legal advice on family law including domestic violence, divorce and relationship breakdown and issues relating to children call the following:

Women living and working in London: call **020 7608 1137**. The advice line is open **Mon 11am-1pm, Tues to Thurs 2-4pm**.

For all women: call **020 7251 6577**. The advice line is open **Mon to Thurs 7 – 9pm and Friday 12-2pm**.

Rights of Women publishes a number of other guides that may be useful. For further information about these contact us or visit our website www.rightsofwomen.org.uk

Useful contacts

Find a Lawyer

Ministry of Justice

<https://find-legal-advice.justice.gov.uk>

The Law Society

www.lawsociety.org.uk

Resolution (to find a family law solicitor)

01689 820 272

www.resolution.org.uk

Bar Council

020 7242 0082

www.barcouncil.org.uk

Support and Information

Citizens Advice Bureau

www.citizensadvice.org.uk/index/getadvice.htm

Bar Pro Bono Unit

www.barprobono.org.uk

Law Centres Network

www.lawcentres.org.uk

Personal Support Unit (PSU)

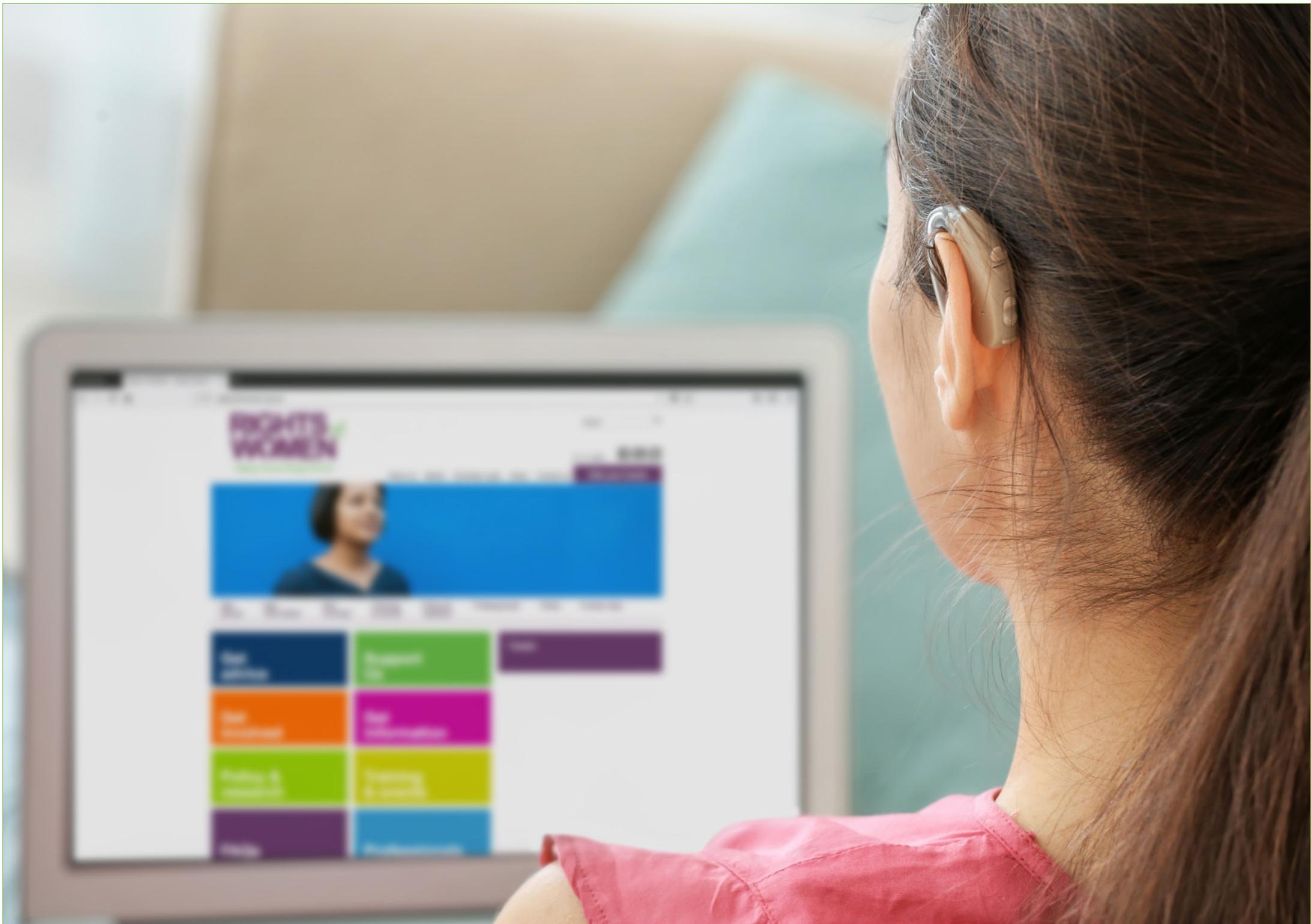
020 7947 7701 or 020 7947 7703

www.thepsu.org

National Domestic Violence Helpline

0808 2000 247

www.nationaldomesticviolencehelpline.org.uk



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