

What is a Finding of Fact (FOF) Hearing?

A FOF hearing is used in public and private law family proceedings when facts are in dispute between the parties and require the intervention of a judge to establish what has actually happened. The burden of proof is on the person making the allegations, in Public Law this will be the Local Authority. If any allegations, should they be proved, are likely to affect the court's final decision, then a FOF is more likely. However, it must also be deemed necessary. Therefore, if someone has been convicted in a criminal court, then it will not be necessary to deal with the allegations again. Similarly, if a party makes admissions, or accepts substantial parts of the allegations, a FOF hearing might not be necessary.

A FOF hearing can be conducted as a 'stand-alone' (split) hearing to establish the facts before the case moves on to welfare and disposal at a final hearing. This method provides an opportunity for reflection with the families as they come to terms with any findings made, and this can inform final assessments and care planning. However, split hearings are now mostly used for complex cases, in which death or very serious medical issues are features, or where there is only one factual issue to be decided and the threshold criteria would not be satisfied if a finding could not be made. Well-settled case law sets out that split hearings cannot be held simply to establish a factual basis to inform social work assessments.

The Standard of Proof

The standard of proof in the Family Courts is the 'balance of probabilities', simply put, if something is more likely than not to have happened. As Baroness Hale put it in *Re B*, '*the standard of proof in finding the facts necessary to establish the threshold is the simple balance of probabilities, neither more nor less. Neither the seriousness of the allegation nor seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies....*'

This is a very crucial difference from how factual determinations are made in the Criminal Court where allegations can only be found to be true if the Court is sure 'beyond reasonable doubt'. This means that the Family court can consider allegations where there would be insufficient evidence for a criminal trial, or where the criminal court has acquitted someone. The family court can also take history into consideration which the criminal court often cannot.

What types of findings may be relevant to my work

FOF hearings can consider a multitude of allegations including: domestic abuse; controlling and coercive behaviour; abuse and neglect, and are often used to determine whether injuries to children are accidental or non-accidental. This can lead to findings being made in respect of:

- Domestic abuse by one parent to another, or exposure of the children to the same.
- Sexual, physical or emotional harm to an adult or child.
- Neglect; failure to protect; non-accidental injury by assault, or failure to supervise/safeguard a child.
- Concealing information or dishonesty.
- Parental alienation.
- Fabricated and induced illness or Injury.

What does it mean if a finding is made or not made?

If a finding is made - the Judge has decided that the allegation was proved to the necessary standard. The matter alleged is therefore considered to have happened, and this is the factual basis on which assessments and decisions will be made to ensure that the child is safeguarded.

If a finding is 'not made' - this is the term that is used if the Judge has decided that the allegations was not proved to the necessary standard. Professionals and parents cannot proceed with any personal belief or assumption regarding the allegations, or act as if the decision is still in doubt once the Judgment has been given. Unless the decision is appealed, this is the end of the matter.

If new evidence comes to light, the court can be asked to reconsider its decision. The request will go through several stages but will only proceed if there is a chance that a different conclusion may be reached.

Pool of Perpetrators - When there is more than one person who could have caused harm to a child they are referred to as the 'pool of perpetrators'. This could be because the child had spent time with parents, grandparents, family friends or extended family in the timeframe that injuries/harm/abuse occurred. Whilst the Judge will endeavour to identify who caused the injury or harm, they may conclude that the harm occurred or the injury was non accidental, but be unable to narrow down who actually did it. In this scenario, if someone is in the pool, and cannot be excluded, they are treated the same as someone positively identified as causing the harm.

Accidental Injuries – If court deem an injury to a child to be accidental, this is the starting point to move forwards. More often than not, the child will return to the parents care, and safeguarding and any future work/intervention will be based upon the injury being accidental.

If an allegation was made but not found – The fact that an allegation was made is a relevant fact moving forward, but the allegation itself is treated as not true. The Judge may give an explanation as to why they found as they did which can assist when working with the family in the future. If further allegations are made in the future, it is open to the court to consider that previous allegations were made as relevant evidence. However, you cannot treat previously unsubstantiated allegations as substantiated without further evidence leading to an admission by the alleged perpetrator, or a finding being made by court.

Case Law and Guidance

- *The President's Guidance in Relation to Split Hearings* [2010] 2 FCR 271
- *B (Children)* [2008] UKHL 35
- *Re S-B (Children)* [2009] UKSC 17
- *H-M (Children)* [2021] EWCA Civ 748
- *Re H-N and Others (children) (domestic abuse: finding of fact hearings)* [2021] EWCA Civ 448
- *Re P (Sexual Abuse - Finding of Fact Hearing)* [2019] EWFC 27
- *Re E (Children: Reopening Findings of Fact)* [2019] EWCA Civ 1447