

FOURTEEN

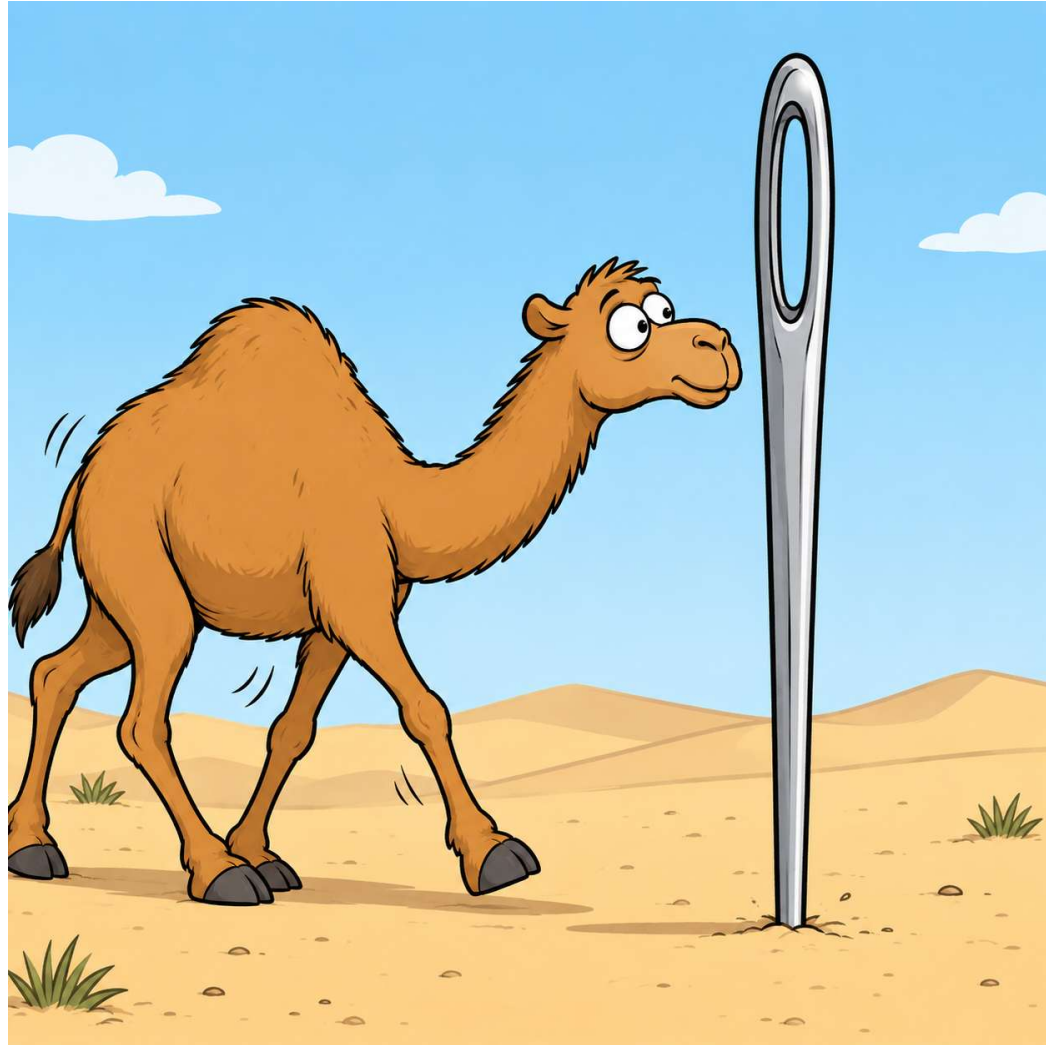
*Interim Contact:
What is realistic and
achievable when seeking
interim contact,
particularly where
allegations have been
raised, and Cafcass
recommends no
contact?*

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September 2026



“....it is easier for a camel to go through the eye of a needle than for a rich man to enter the kingdom of God...”

- New testament, Matthew 19:24



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Allegations

FPR 2010 Practice Direction 12J:

*“Where the court gives directions for a fact-finding hearing, or where disputed allegations of domestic abuse are otherwise undetermined, the court **should not make an interim child arrangements order** unless it is **satisfied that it is in the interests of the child to do so** and that the order would **not expose the child or the other parent to an unmanageable risk of harm** (bearing in mind in particular the definition of “victim of domestic abuse” and the impact which domestic abuse against a parent can have on the emotional well-being of the child, the safety of the other parent and the need to protect against domestic abuse).” – para 25 [emphases added]*

- Still a welfare decision in relation to the child
- Risk does not have to be extinguished, it only has to be manageable (“not unmanageable”)
- BUT
 - Court must be satisfied (fairly high test)
 - Welfare of alleged victim relevant, not just through the lens of welfare of the child
 - Starting point is no order

FPR 2010 Practice Direction 12 J

*“In deciding any interim child arrangements question the court should—
(a) take into account the matters set out in section 1(3) of the Children Act 1989 or section 1(4) of the Adoption and Children Act 2002 (‘the welfare check-list’), as appropriate; and*

(b) give particular consideration to the likely effect on the child, and on the care given to the child by the parent who has made the allegation of domestic abuse, of any contact and any risk of harm, whether physical, emotional or psychological, which the child and that parent is likely to suffer as a consequence of making or declining to make an order.” – Para 26 [emphases added]

- Requiring the Court to consider what is likely
- Emphasis here on domestic abuse
- Also a requirement to consider **harmful** impact on child of not making an order

FPR 2010 Practice Direction 12J

“Where the court is considering whether to make an order for interim contact, it should in addition consider –

*(a) the arrangements required to ensure, **as far as possible**, that any **risk of harm** to the child and the parent who is at any time caring for the child is **minimised** and that the safety of the child and the parties is secured; and in particular:*

*(i) whether the contact should be **supervised or supported**, and if so, where and by whom; and*

(ii) the availability of appropriate facilities for that purpose;

*(b) if direct contact is not appropriate, whether it is in the best interests of the child to make an order for **indirect contact**; and*

*(c) **whether contact will be beneficial for the child.**” – Paragraph 27*

- Risk managed (not extinguished)
- Use of supervision or support to reduce risks
- Role of indirect contact
- Benefit to child of contact part of the overall balancing
- Don't forget about FPR 2010 paras 27A and B if this is a case where refugees are involved

Relevance:

- K and K [2022] EWCA Civ 468 emphasises that the Court must focus on the potential relevance of the allegations to decisions about the child and that relevance has to be considered in the context of the facts of the individual case
- Paras 14 and 17(g) of PD12J also emphasise the need for the Court to evaluate whether or not allegations are relevant

- Strength of allegations (prima facie)
 - Third party evidence?
 - Consistency
 - Inherent plausibility
 - Rebutting evidence
 - Voice of the child
- Limited presumption (for now) of involvement being consistent with welfare; s1 (2A) CA 1989

- However, Re E, F and G (Interim Arrangements) [2024] EWCA Civ 874 will generally mean that:
 - Where facts need to be resolved, decisions which are contingent on that resolution should not be made
 - “Satisfied” really does mean that the Court must be satisfied that there is not an unmanageable risk of harm

CAFCASS

Impact of recommendation and stage of litigation

- Limitations of the safeguarding letter
 - Not spoken to child
- Quality of analysis
 - Inherent reasoning
 - Depth of analysis
 - Balance
 - Regard to all the nuances of PD12J explored above?

- Are proceedings in a child focused/ pathfinder Court?
 - Intervention and decisions hearings may well lead to an interim substantive decision
 - Child Impact Report may be more robust
 - There may be a domestic abuse risk assessment
- Simultaneously harder to secure progress against the odds yet, theoretically, easier to make progress more generally

- Preparation is key
 - Gather evidence
 - Prepare to address the concerns
 - Ensure the focus is on the child, not on parental dispute (as far as possible)
- Key lessons
 - Relevance
 - Strength of evidence
 - Impact upon child (and parent)
 - Objective evidence?

- Is there a ‘knock out blow’ to CAFCASS reasoning?
 - If so, then consider if decision in *Tui v Griffiths* [2023] UKSC 48 assists
- What is your plan for risk mitigation?
 - Supervision?
 - Support?
 - Handover?

Synthesis

- Decisions about interim arrangements have always been a tricky balance of
 - Not pre-judging the final hearing (either way)
 - Doing the best that can be done with limited court time
 - Doing the best that can be done with partial information
 - Promoting the family life of the child and parents
 - Protecting the child and parents

- Currently in a phase of reset, following the Harm Report, Re H-N and as part of the pathfinder/ Child focused Court
- Any binary system is likely to lead to injustice
- Our role as lawyers to help the system work justly
- Reality is that where there are significant allegations and CAFCASS adverse recommendation, then no or supervised-only contact is likely to be the norm

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