

Position Statement on Settlement Conferences

1. A settlement conference is a without prejudice judge-led mediation, in which the judge aims to directly resolve the outstanding issues between parties in a public or a private law case. Typically, the conference takes place after the Issues Resolution Hearing (IRH) in a public law case and after the First Hearing Dispute Resolution Appointment (FHDR) in a private law case. If successful, a Consent Order results. If unsuccessful, the case proceeds to trial or a final hearing with a different judge.
2. ADCS, ADSS Cymru, Cafcass and Cafcass Cymru support this new initiative and note it is being piloted in a number of areas across England and Wales.
3. In our professional opinion, a judge-led mediation process can work with particular families who, rightly or wrongly, will take notice of a judge but will not listen to mediators or social workers. The crucial question is whether agreements secured by a judge have a long-lasting effect or impact, but the same risk attaches to agreements reached by mediators or social workers.
4. We take the view that for vulnerable children and families, a resolution of conflict is almost always helpful for the child or children concerned. By definition, a court is involved precisely because big issues for children cannot be resolved between agencies and families. We welcome an all-stage approach to resolution of conflict, even during court proceedings.
5. Evidence from Nova Scotia and British Columbia in Canada and some American states, where judge-led settlement conferences are now standard practice, and from Cheshire, Merseyside and Devon, where most of the settlement conferences to date have taken place, is that resolution of the case is happening in over 50% of cases. This in itself is not earth-shattering as most targeted interventions, including conventional mediation, are recording a similar level of success. However, we do think settlement conferences are a valuable addition to the problem-solving repertoire available to a family court.
6. These days, an intervention has to be able to guarantee this level of success if it is judged to be affordable and sustainable. We are committed to being involved in the decision-making about when a case is suitable for a settlement conference. Broadly speaking we think settlement conferences have a value in the following types of case:
 - All public law cases, except those where contact with parents of any description is potentially harmful to the child or children concerned.
 - The most hard to resolve private law cases, except where contact with one parent is potentially harmful to the child or children concerned.

7. The potential relevance and importance of a settlement conference can be illustrated with two types of case, one a common public law scenario, the other a common private law scenario. The common public law scenario is the parent who has had a previous child of theirs removed from them. This group of parents represent nearly 1 in 3 care applications by local authorities. If the parent can be supported to agree a way forward, this could include support to be able to keep their next child. Most local authorities are working intensively with this group of parents, so support from the judiciary with this group would be valuable. The common private law scenario is parents locked in intractable conflict about the care of their children. These cases can last years in court, causing considerable damage to children in the process. A settlement conference could and should be tried in many of these cases, rather than using Rule 16.4 appointments or other much longer and more expensive interventions.

8. Here is what a children's guardian said about one settlement conference in a public law case:

The mother and father were very entrenched in their views and were contesting the local authority Care Plan which I as the Guardian had endorsed. It was a very sad case as the mother had done well but had maintained her relationship with the father who had done poorly in proceedings. The settlement conference worked well, with the Judge speaking openly and honestly with parents, and taking on board the Guardian's views and opinions on the case. Against my expectations, the parents agreed to settle, and interestingly this was despite the legal representatives for both parents indicating that they had been very clear with the parents on the merits of carrying on with a final hearing, but that the parents had come to the decision freely.

9. Evidence of the value of settlement conferences to date also comes in the form of earlier and shorter hearings e.g. in one case, an 8 day final hearing was set aside and replaced with an earlier 2 day hearing.

10. Whilst the potential of settlement conferences appears clear in certain cases there have been apparent instances in some pilot areas of parents not being adequately prepared in terms of knowing what a settlement conference is, how it works and crucially what are the goals to be achieved? The pilot phase is useful to clarify and where necessary bolster the preparation and information shared with parents leading up to the settlement conference, with the aim of achieving a level of consistency across areas. Use of expectation statements as well as thinking through where it is best to hold the settlement conference to give it the best chance of success, are issues to be worked through.

11. There are cases where settlement conferences are not appropriate. In addition to cases with too high a level of potential danger to a child, the other group of cases where we advise against settlement conferences are those cases where a parent has such a capacity difficulty that any agreement could not be reliably based on informed consent. In those cases, the parent's rights must continue to be separated out from a dispute resolution process, unless a skilled advocate is

able to act on behalf of the parent, operating all the usual safeguards. No pressure must be applied on any of the parties to reach an agreement that they do not decide of their own free will.

12. In this respect, we echo the views of the Family Law Bar Association (FLBA), who say 'With many clients (professional and otherwise) the judge's words have a unique influence, far beyond that of the legal representatives. Judicial interventions therefore can be extremely useful, but they must be made with care' (FLBA, October 2016).
13. The role of the law is crucial as a protection for the most vulnerable members of society but a problem-solving approach based on a social model using psychology-based principles is likely to be more effective in properly-selected cases.
14. We will work through our roles on the Government's Settlement Conference Advisory Group, to put in place an all-agency strategy for settlement conferences, so that every relevant agency's role is made clear.
15. We are also keen to develop a model of social work settlement conferences, before or during proceedings, to resolve disagreements about the social work evidence base in a case. Cafcass and ADCS are working on a protocol for that, which focusses, as should judge-led mediation and settlement conferences, on achieving a positive impact and outcome for the child or children in the case.

Anthony Douglas CBE

Chief Executive of Cafcass

Andrew Webb

Director of Children's Services for Stockport on behalf of ADCS

Neil Ayling

Director of Social Services for Flintshire on behalf of ADSS Cymru

Nigel Brown

Interim Chief Executive of Cafcass Cymru

22nd November 2016