

Cafcass response to MoJ consultation: Supporting earlier resolution of private family law arrangements

1. Cafcass (the Children and Family Court Advisory and Support Service) is a non-departmental public body sponsored by the Ministry of Justice. Cafcass is the largest employer of child and family social workers as Family Court Advisers and Children's Guardians. Cafcass has a statutory duty to safeguard the welfare of children in family law proceedings in England. We make sure that their wishes and feelings are heard and advise the courts about what is in their best interests. We are independent of the courts, local authority children's services, education, and health authorities.

Introduction

2. Cafcass agrees with the aim of the proposals to support families to find ways of reaching long-lasting agreements between themselves more quickly, without the need to apply to court. Most separating parents resolve their child arrangements without coming to court, but there are many families for which applying to court is a suitable and necessary step towards agreeing child arrangements. Some families attempt to reach an agreement themselves but may need their arrangements escalated to court. Any proposals must consider that ten percent of child arrangements applications are not made by parents, but by others such as grandparents, aunts and uncles, who are either asking the court to formalise a placement away from parents or to determine the arrangements for contact with the child. The proposals would need to consider this cohort in the development of support services to meet their needs. Additionally, some families have had significant involvement in the public law system and to ensure that families are in the child protection system where necessary, more clarity in policy and working together between government departments is required.
3. Those families that do need additional support to reach agreement over child arrangements are entering a family justice system facing unprecedented levels of demand, leading to significant delay for children. Over time, the volume of child arrangements applications has increased. As at March 2023, Cafcass had 32,904 (53,463 children) open active children's cases. This represents a 10.9% higher number of children (c5250) when compared to pre-pandemic, March 2020. The average length of private law proceedings up to the first hearing is 12 weeks (+3 weeks compared to pre-pandemic), and for proceedings after the first hearing is 61 weeks (+22 weeks compared to pre-pandemic). Estimates from 2016/17 suggest that approximately 25% of families with a child arrangements order returned to the family courts, with 63% of returning applications made within 2 years of the previous case being closed.
4. We see the impact that unnecessary delay and repeat proceedings has on children who need safe and stable outcomes as soon as possible. We have heard from young people with lived experience of the family justice system that the delays in decision-making for them, about their futures, are creating additional harm for many and stressful uncertainty for them all. Supporting more separating parents to agree child arrangements outside of court would significantly reduce delays for these children and would reduce demand within the family justice system.

Resources, guidance, and support

5. Cafcass supports the proposal for provision of resources, guidance, and support before court to all parents and carers with a private family law dispute. This information should be child-focused and support parents and carers to prioritise their child's safety and welfare, while increasing understanding of mediation, co-parenting programs, other forms of non-court dispute resolution, and support services available. We see that Cafcass has a strong role to play in this area by extending the provision of our co-parenting program, but outside of this we agree that the provision of a centralised online repository of information would be an excellent resource for all parent's and carer's who need support agreeing child arrangements.
6. In April 2023, Cafcass launched a new programme and set of resources for parents and carers to help them think about how to prioritise their children's needs while they are separating. Planning Together for Children combines e-learning, group work and online support for parents involved in private law family court proceedings. It replaces the Separated Parents Information Programme (SPIP).
7. The Planning Together for Children e-learning modules are currently only available to parents referred to the programme by a Cafcass Family Court Advisor (FCA). Cafcass would support the extension of this resource which has been designed to also be suitable for parents and carers before they make a court application. The modules focus on topics such as what happens if parents or carers go to court, understanding and managing emotions, and looking at things from a child's point of view. Expanding access to this service to all parents and carers pre-court would not incur additional licensing costs, although increased administrative and technical support costs would need to be met. Expectations around access to the resources need to be considered where parents/carers safety might be at risk.
8. The Parenting Plan, which forms a (non-mandatory) part of the programme, is already accessible to all and is designed to help parents and carers make agreements about important parts of their co-parenting relationship and the arrangements for their children, where this is safe for both the children and adults.
9. Since April 2023, 4,975 Planning Together for Children referrals have been made across England. In the past 28% of all private law applications benefited from SPIP; since April we have seen a 5% increase of Planning Together for Children referrals compared to SPIP referral rates. Out of these 2,792 (56%) started the e-learning course and 2,371 (48%) completed it. Over half of parents (1,256) that completed the e-learning have since completed the group workshop. 1,985 parents viewed/started parenting plan and 183 learners completed one (91 plans).
10. 98% of the first 1,085 parents providing course feedback said that they were very likely (85%) or likely (13%) to consider their child's needs and feelings each time they communicate with, or come to an agreement with, their co-parent. 53% strongly agree and 36% agree that they now have a clearer understanding of the impact of family conflict on children.

Mediation Information and Assessment Meeting (MIAM) (or new equivalent)

11. Cafcass supports the provision of a mandatory meeting to screen for safeguarding risks prior to referral to mediation and co-parenting programs or other forms of non-court dispute resolution, and to provide information and signposting to relevant support services for the family.
12. Currently, before attending Planning Together for Children, consideration of any barriers to co-parenting is carried out by a FCA based on safeguarding checks for any police or local authority involvement and interviews with the parents/carers. The proposed model would mean that a mediator would screen risk to make this decision at a meeting akin to a MIAM. Care is needed to ensure the quality of this risk-screening, particularly around conflation of high-conflict and domestic abuse. We know that in the current system, domestic abuse is often not disclosed until a FCA becomes involved with the family, so robust screening to an agreed consistent standard for domestic abuse must be a key feature, followed up by robust signposting to local and national support services.
13. Cafcass supports the application of MIAM exemptions (subject to the review of the Family Procedure Rules) to attendance at mediation and co-parenting programmes pre-court, where attendance would not be in the best interests of the child, or where it would be unsafe. This includes considerations around domestic abuse, child protection, and urgent hearings. Mediators will need clear guidance and tools to ensure that exemptions are not agreed where tailored support through mediation or co-parenting programmes may in-fact be beneficial for the family. We agree that, where both are deemed suitable, mediation should follow the co-parenting programme.
14. Cafcass and other programme providers would need to be assured that all mediators involved in screening are trained and accredited to a consistent standard before parents and carers are enrolled on the programme, especially for families that have experienced domestic abuse. Mediators may need access to tools to support them to undertake a structured assessment covering emotional readiness, mental health, and domestic abuse. With clear guidance, tools, and training, Cafcass believes that mediators will be able to screen for risk and safely determine suitability for mediation, other forms of non-court dispute resolution, and co-parenting programs, but this decision making needs to be consistent to ensure this pre-court support is targeted to the right families. Cafcass can only support mediators carrying out this screening if quality standards, accreditation and a training programme for mediators are in place, requiring proper investment of resources and time.
15. The new MIAM could be used not just to assess suitability for mediation, non-court dispute resolution, and co-parenting programme attendance, but also as an opportunity to provide early advice about other sources of support, for example local independent domestic abuse adviser (IDVA) services for victims of domestic abuse. The meeting could be run by a mediator, but it could also be held by family support workers or other suitable qualified and accredited professionals.
16. We agree that urgent applications should be exempt from mediation, although once the urgent issue has been resolved the parties should attend a pre-application meeting, subject to no other exemption applying. The courts should only list legitimately urgent

applications and they should be convinced that the exemption applies. Clarity needs to be sought on exemptions for 'urgent applications' to ensure that this relates to urgency of the child's needs, rather than that of the parents or carers. Checks must be in place to ensure that appropriate pathways are followed in situations where there is urgent concern for a child, for example referring to the police or local authority. A review and streamlining of the C100 would be beneficial, with more clarity on the form around what constitutes an urgent application. This is especially pressing since the rise in litigants in person completing the application.

Pre-court co-parenting programmes

17. Cafcass is in favour of extending the provision of attendance on co-parenting programmes before court, providing that these programmes are accredited and quality assured. We would like to see the development of accreditation and standards to ensure the quality of programmes for families. The Cafcass Planning Together for Children programme encourages parents and carers to consider how they can communicate and work together to agree parenting arrangements without the need for more court hearings, and to understand how disagreements and arguments can worry their children and impact on their wellbeing and development.
18. In 2022, Cafcass began working with the Ministry of Justice (MoJ) to offer the SPIP earlier in the family law process, referred to the programme by an FCA rather than court-ordered at the first hearing. The evaluation of this project found that parents and carers with sufficient time to attend SPIP before their first hearing had the highest resolution rates (71% of these children's cases closed to Cafcass at the first hearing and dispute resolution appointment (FHDRA)). The ability for FCAs to make referrals to the SPIP (and now Planning Together for Children) has since been expanded and enabled throughout private law proceedings. Since the launch of Planning Together for Children to replace SPIP in April 2023 we have seen an increase in FCAs making referrals by 3% (up from 6 to 9%).
19. Providing access to Planning Together for Children and other accredited programmes before a court application can be made or accepted would extend these benefits by ensuring that parents and carers have better knowledge and understanding of the court process and support their ability to make decisions in the best interest of their child. Encouraging this more collaborative approach to decision making – where it is safe to do so - before the inherently divisive court process has begun may help to stop family disputes escalating and support the creation of longer-lasting arrangements for children.
20. Increased access to the Cafcass Planning Together for Children group workshop stage would need to be funded and would involve a 'per participant cost' which would depend on demand for the service.

Pre-court mediation

21. Cafcass agrees with the principle that parents and carers should attend mediation before they can apply to court, subject to the exemptions mentioned above. Mediation can be a useful mechanism to support parents and carers to reach an agreement about arrangements for their child, especially after completion of a co-parenting programme.

22. However, mediation requires a willingness and emotional readiness to engage, and we are concerned about the likelihood of parents reaching an agreement if the mediation has been mandated. As outlined above, our support of encouraging attendance at mediation pre-court is critically dependent on effective risk-screening having taken place, especially where there is known or alleged domestic abuse.
23. The Support with Making Child Arrangements (SwMCA) six-month pilot evaluation showed that parents/carers who attended a combination of a SPIP and mediation were more likely to reach a full agreement, and to make a consent order or withdraw their application from court. 78% of parents/carers who attended both a SPIP followed by mediation then applied for either a consent order or made an application to withdraw their court case.
24. A public campaign to improve awareness about mediation and other forms of non-court dispute resolution, as well as changing parents' and carers' understanding of its purpose, would be beneficial to improve people's expectations and understanding of the process.
25. Cafcass would support increased provision of child inclusive mediation, however the £500 funding available per child's case for mediation will not be sufficient to cover the cost of this, and more mediators will need to be trained to undertake this work.

Court ordered mediation

26. Cafcass supports courts having the power to order parties to attempt mediation at any point in the court process if circumstances suggest it is appropriate. Adults should have access to mediation and NCDR throughout the process to support them to make lasting agreements and to reduce delay for children.

Other forms of non-court dispute resolution (NCDR)

27. It is important that parents and carers access the support most suited to the needs of their family and specifically that they find agreement that is in the best interest of their child. Mediation may not be the right support for everyone, and where early-neutral evaluation, arbitration, or other forms of NCDR can provide a safe route to finding agreement outside of court this should be explored. Cafcass would support expansion of limited funding offered for pre-court mediation to cover other forms of non-court dispute resolution where this would be more suitable for the family. If mediators are undertaking the initial assessments at meetings akin to a MIAM, they will need adequate training and knowledge of all other forms of NCDR on offer to properly assess a families' suitability for this support.
28. If there are any questions regarding the points raised in this consultation, please contact Nikki Gardner, Policy Officer via policyteam@cafcass.gov.uk.