

## Cafcass' overview response to [Dispute resolution in England and Wales: Call for Evidence](#)

### Key messages from Cafcass:

- The findings from the [Private Law Working Group](#) and the [Family Solutions Sub-group](#) must be considered as part of this call for evidence as they draw on extensive experience of professionals working across the sector. These reports highlight the importance of resolving issues early, drawing on interventions such as the Separated Parents Information Programme, and the need for more tailored support for children and families. They also suggest moving away from the legal language of 'dispute resolution' to the more family-focused approach of helping families to resolve their issues.
- There is a wealth of evidence demonstrating the negative impact parental conflict has on children. We want to highlight the need for more joined up local support for children and families and how it is essential that professionals have the right training in place to provide children and families with the best possible support to resolve issues.
- Learning from the upcoming MoJ-led pathfinders in Dorset and North Wales, where families will have early access to multi-agency support, must be taken into consideration when considering the most effective approach to dispute resolution in family law cases.

### Background

Cafcass welcomes this call for evidence on the issue of dispute resolution in England and Wales and, in particular, the opportunity to emphasise the need for an ambitious, joined up approach to support families to reach safe and sustainable arrangements for children. It is worth noting at the outset that there are a range of initiatives across Government that offer some support to families that separate, including the Department for Education's *Family Hubs – Growing up Well project* offering early help to reduce parental conflict, and Department for Work and Pensions' [Reducing Parental Conflict Programme](#) which has several useful resources available for separating parents. As part of this research into helping families to resolve issues, we would support a review of these initiatives to provide a coherent offer of information and support to families at an earlier stage. Dispute resolution services should ideally be co-ordinated locally and the Ministry of Justice's own pathfinder pilots due to commence in Dorset and North Wales provide an opportunity to test a more holistic approach to help families know where to go for support when they are most in need of help.

The effectiveness of 'dispute resolution' can have lifelong implications in the context of family justice: there is a wealth of evidence demonstrating the negative impact parental conflict has on children, and this can be exacerbated by lengthy, adversarial court proceedings. The Nuffield Family Justice Observatory's recent review [Children's experience of private law proceedings: six key messages from research](#) highlights that parental separation can be highly stressful for children and can have a significant impact on their lives. For some, this impact can last into adulthood.

In most cases, separated parents make arrangements for raising their children out of court, either independently or through engaging with support from mediators, counsellors and other professionals. It is also likely that some children do not benefit from a relationship with both parents because some do not want to engage in court proceedings and other forms of support may not be available. A wide-ranging approach to reducing persistent and unresolved conflict is therefore of primary importance in helping parents resolve issues safely, whether out of court or alongside necessary court proceedings.

We believe that sustained investment in a public health approach to family conflict is essential. This approach would involve: reframing the language used around family breakdown, separation and 'dispute resolution' to focus on problem solving in the best interests of the child; public education about the importance of maintaining relationships with both parents where it is safe and in the child's best interest, while also increasing awareness about the impact of family conflict on children; providing accessible support to solve family problems before they escalate through a combination of integrated community-based and specialist services; focusing interventions on reducing the harmful impact on children and ensuring that children are able to access the support they may need to understand the changes in their living arrangements and recover from any harmful impact. In addition, as Anne Barlow's [Mapping and Creating Paths to Family Justice](#) research projects highlight, parents and professionals alike need to understand the appropriateness of different ways to resolve issues and to ensure that a swift, effective court process is available to those who need it, alongside strengthening the provision of other services.

Any proposals should be focused on the needs of the children and families affected by family breakdown and court proceedings. In particular, the Nuffield Family Justice Observatory research [Uncovering private family law: Who's coming to court in England?](#) highlights that families from the lowest socio-economic quantiles are disproportionately represented in the families coming to court, so sustained funding for alternative dispute resolution and wider support is needed to ensure that families receive the help they may need for a range of relevant issues, rather than family stress being exacerbated by lengthy, adversarial court proceedings, or expensive and inaccessible support services.

### **Conflict resolution in court proceedings**

Cafcass family court advisers (FCAs) are experts in resolving conflict in the court arena: all FCAs are experienced social workers, and a key aspect of our early intervention teams' role is attending first hearing dispute resolution appointments (FHDRAs) to assist parents and courts to resolve as many issues as possible at that early stage, where it is safe and appropriate to do so. The Cafcass [Child Impact Assessment Framework](#) used by our FCAs includes a range of tools and guidance to support this work, and to help parents focus on their child's experience rather than on their own conflict. Approximately two thirds of private law cases do resolve at the first court event (whether it is a FHDRAs or other appointment) which highlights the effectiveness of techniques such as shuttle mediation in helping parents agree a workable plan in the best interests of their children. However, approximately one third of private law cases return to the family courts within two years, so it is clear that reform is needed to support arrangements beyond the one-off dispute resolution at court.

Alongside our conflict resolution work in the family courts, Cafcass commissions the following relevant interventions on behalf of the Ministry of Justice which are free at the point of use for those ordered to attend:

#### **1. Separated Parents Information Programme (SPIP)**

The Separated Parents Information Programme is a course designed to focus parents' attention on the impact of parental disputes on children and to provide tools for putting the needs of children first, managing conflict and difficulties, and putting this into practice to agree arrangements through the court process or through out of court resolution. 25,000 parents attend the SPIP each year and often tell us that they wish they had completed the course earlier in their separation.

SPIP is free to attend for those who have been ordered to attend by the court, or a Cafcass FCA has made the referral. Parents can also attend if they are not participating in court proceedings, but they will usually have to pay a fee of around £100-150 even when referred by other professionals such as mediators. In some areas it is available for free for all

participants. Therefore, in response to question 4 in the call for evidence, SPIP providers do accept non-court ordered referrals so this should not be a barrier to mediators, but the cost of attending may be a barrier to some parents.

Feedback from the past six months shows that after attending the course, over 97% of participants agreed or strongly agreed that:

- they had a better understanding of how conflict affects children and what children most need from cooperative parents
- they are more aware of how to manage conflict through effective communication
- they know how to focus on moving forward as a co-parent

Most importantly, 85% participants reported that attending the SPIP made a positive difference for their children.

Although this data is derived from self-reports, it is indicative of the benefits that education programmes can have on parents' awareness and confidence in their next steps. Further, the SPIP has been delivered remotely since April 2020 and the feedback has been overwhelmingly positive with an increase in satisfaction scores. The time between a referral made and a parent/carer attending a course has also significantly reduced (from an average of 20-25 working days to 10-14 working days) as a result of remote provision.

## **2. Improving Children and Family Arrangements (ICFA)**

The new Improving Children and Family Arrangements programme is a package of support offered over a few weeks which can include meeting the parents together and/or individually to help resolve issues and prepare them for spending time with their child; direct work with the child to prepare them for spending time with the adult; and observation of the adult spending time with the child in a contact centre, the home, the community, or any other suitable settings. This is a new and more flexible offer than our previous Child Contact Intervention.

Feedback from families demonstrates the value of these programmes alongside the court process, and we have championed a recent change that means Cafcass family court advisers can now refer parents to the Separated Parents Information Programme, with their consent, without having to wait for the order to be made by the family court at the first hearing. Cafcass has been working with the Ministry of Justice to link the data from its mediation voucher scheme with the early SPIP initiative to better understand the impact of these dispute resolution offers on case durations, likelihood of returning cases, and ultimately on the experience of children and families. An initial evaluation will be completed in early 2022.

### **The Mediation Information and Assessment Meeting (MIAM)**

The MIAM was designed to focus attention on the importance of non-adversarial approaches before parents entered legal proceedings and this has certainly had some success in diverting families or coming to court with narrowed issues. At Cafcass, we only receive the cases after initial gatekeeping by the courts and this should include compliance with MIAM attendance or exemption. Nevertheless, we know that gatekeeping is not always robust, and applications are routinely sent to Cafcass which are not in compliance with the Child Arrangements Programme. It is difficult to accurately capture the prevalence of this because the applicant often alleges the case is urgent, and therefore exempt, when this is not appropriate. We are currently undertaking work to better understand how many cases we receive which could be diverted back to a MIAM before it comes back to Cafcass.

Beyond this, providing information to separating families about non-court dispute resolution at an early stage, and in more accessible ways than the current Mediation Information and Assessment Meeting, is needed as families are entitled to apply for court and are likely to be less willing to withdraw from court proceedings once they have made the application. In

addition, it is essential that support services and interventions are affordable for families and mediation is often more costly than representing oneself in court.

### **Private law reform**

Cafcass has been actively involved in the development of the [Private Law Working Group reports](#)<sup>1</sup> and supporting the [Family Solutions Sub-group](#), both of which consider the issue of dispute resolution in the family sector. The key messages set out in the working groups reports support the shift from an adversarial family justice system towards a 'family solutions' system which would aim to create more tailored support for parents and children. The report also invites different language and a broader understanding of how parents may be supported to resolve issues following separation, recommending the language of 'resolving issues' rather than 'dispute resolution'. The working group has noted that the court is being used as a default for many separating couples and there is insufficient support for separating couples to access forms of non-court dispute resolution.

As a national organisation, we have tried to map the provision of services available across England and have found significant variation across local areas. It is also a changeable landscape due to the nature of short-term funding. Long-term funding is required to enable a network of support to be sustained in each area so that there is consistency across the country, while also recognising the importance of flexibility to meet the needs of local populations. We therefore welcome the focus on Family Hubs as part of the government's commitment to supporting children and families and although it is not yet clear how the Family Hubs will integrate with the existing provision and court systems in practice, we look forward to engaging with this as part of the private law reform pathfinder pilot in Dorset.

### **Tailored support for children and families**

We strongly believe that alternative dispute resolution and out-of-court options are needed as viable alternatives to court as well as complementing the legal process. Further, we understand that a 'one size fits all' approach will not work, and that families require a range of support depending on their individual circumstances. This support must include interventions and activities beyond 'dispute resolution', including trusted information, tools and resources tailored to help families understand the possible solutions; psychological support and relationship counselling; parent/child interventions; and wider support such as for ill health and alcohol or drug misuse. For example, although Cafcass can only work directly with families going through the family courts, we understand the need for accurate, accessible information for all separating parents, so we piloted the Cafcass Co-Parent Hub, a free online resource for separated families, linking together expertise from across the family justice system. The pilot was well-received by families and we have now transferred the content to the main Cafcass website to ensure that it is accessible to all parents seeking information about post-separation parenting.

We agree that mediators and other professionals should be able to signpost parties to quality-assured support or interventions for parents earlier in the resolution process. We see the benefits of improved integration between the services we commission and those provided by others. This was evidenced in our closer working with mediators as part of the *Support with Making Child Arrangements* pilot in Manchester during 2018, which found that parents who received a combination of the Separated Parents Information Programme (SPIP) and

---

<sup>1</sup> <https://www.judiciary.uk/wp-content/uploads/2019/07/Private-Law-Working-Group-Review-of-the-CAP-June-2019.pdf>  
<https://www.judiciary.uk/wp-content/uploads/2020/04/PRIVATE-LAW-WORKING-GROUP-REPORT-1.pdf>  
<https://www.judiciary.uk/wp-content/uploads/2020/12/Private-Law-Advisory-Group-Report-Dec-2020.pdf>

mediation were more likely to resolve their issues. The upcoming no fault divorce legislation is an ideal opportunity for a public education campaign about the benefits of dispute resolution. It is also essential that professionals have the right training in place to provide children and families with the best possible support to resolve their issues, rather than possibly exacerbating the issues further. The upcoming MoJ-led pathfinders in Dorset and North Wales will also pilot a court process where families have access to a multi-agency approach of support from the outset, based on the needs of the family. It is important that any learning from this pilot is fed into the wider work around resolving issues in family law cases.

Cafcass is in the process of re-commissioning support services for children and families in private law proceedings to replace the current SPIP, which is 12-years old. The programme re-design, which will be subject to MoJ approval, provides a good opportunity to incorporate best practice, learning and evidence gained over the past 12 years to offer more accessible and tailored support for separating parents at an earlier stage. The new offer will need to consider how to make better use of digital support options and how impact and outcomes can be better tracked over time, as Cafcass' current legal remit does not allow for longer term follow-up with families.

### **Summary of recommendations**

Cafcass welcomes the focus on developing a coherent, joined-up approach to helping families resolve issues, whether they are doing so out of court or whether they need to come to court to ensure a safe resolution of the issues for children and families.

Based on a range of data and experience, our primary recommendations for the Dispute Resolution Team to consider are:

- Reframing and broadening the understanding of alternative or non-adversarial dispute resolution to a more holistic, public health approach of supporting families to resolve issues safely and sustainably. This includes acknowledging that families may be experiencing a range of issues – including parental conflict – which can have a cumulative harmful effect on children
- Ensuring there is a coherent strategy across government departments to maximise resources required to deliver and evaluate any interventions. This includes adequate long-term funding to ensure a minimum standard of support across the country, while recognising specific demands and needs in local areas
- Ensuring any proposals build on the work which has been started by the Private Law Working Group, the Family Solutions Sub-group, and the teams leading the pathfinders in Dorset and North Wales