



## **Cafcass response - Reform of the legal requirements for divorce**

Cafcass represents children in family court cases in England. We put children's needs, wishes and feelings first, making sure that children's voices are heard at the heart of the family court setting, and that decisions are made in their best interests. Our duty is to safeguard and promote the welfare of children going through the family justice system. For divorce and separation cases, our experienced Family Court Advisers (FCAs) may be asked by the court to work with families and then advise the court on what we consider to be the best interests of the children.

We work with over 60,000 children a year whose parents are going through divorce or separation proceedings. Our unique role means that we see first-hand how conflict such as a long-running court case or mutual hostility between parents can become intolerable for children. The impact of harmful conflict can negatively affect children in a number of ways:

- Children are often preoccupied with surviving the emotionally volatile climate in their divided family
- They are often confused and burdened by divided loyalties
- They may suffer anxiety or depression
- Common emotions include anger, grief, sadness and guilt – a tendency to self-blame
- Children may suffer loneliness
- They may experience changes in behaviour, heightened aggression or withdrawal, loss of appetite, and disrupted sleep
- Children's social interactions with others may suffer

Overall Cafcass supports the ambition of the proposals to minimise conflict, but we think further steps are needed to improve outcomes for children. A summary of our main points is set out below and we have provided detailed responses to the consultation questions in the Annex.

### **Main points in Cafcass response**

#### **Notification process**

We fully support proposals to introduce a notification process, and agree that this should be *instead of* requiring parents to submit a reason for why their relationship has irretrievably broken down. As the consultation paper highlights, it is the conflict between parents, rather than the separation per se, which has harmful consequences for the children. The current requirement to provide evidence of one of the facts – especially where these relate to behaviour – causes further conflict. A notification period should help shift the focus away from blame and on to arrangements for children and financial matters. However, we would like to see greater consideration given to the potential for a negative reaction by the respondent, especially where domestic abuse features. Support must be put in place to help both parents in this scenario, ensuring they understand the process, what it means for them **and their children**, and signposting to appropriate interventions or dispute resolution services at this early stage. We also strongly support the introduction of a joint notification process to encourage spouses who are agreed on the inevitability of divorce to cooperate in the notification rather than requiring a petition and response. We envisage that this will provide a stronger foundation for cooperation in making arrangements for their child and any financial matters.

#### **Removal of the respondent's right to contest**

We support the removal of the right to contest given these cases are rare, and that the process of contesting a divorce adds to the conflict and uncertainty for children but rarely results in a change

to the outcome. The Queen's Proctor should retain the right to intervene if it or the respondent raise concerns with the court over jurisdiction, fraud, or where a notifying parent lacks capacity or has been placed under duress.

### **Timeframe**

Retaining the two-stage decree process (decree nisi and decree absolute) helps to preserve clarity about the longstanding divorce process with the decree nisi providing parents with notification that the marriage has irretrievably broken down. We believe that the timeframe for divorce should take account of the child's timescale and not just that of the parents. For that reason, we would prefer an overall timeframe of no longer than six months from end to end so that children do not suffer any unnecessary delay. But if the Government's conclusion is that a six-month period is needed either between notification and first decree, or between decree nisi and decree absolute, our preference is for the former. This is because our understanding is that this stage already takes longer on average, and because it seems sensible that the state's initial endorsement (through decree nisi) of the likelihood of divorce should be at the end, not the beginning, of any reflection period.

### **Joining up approach to divorce with legal aid review and amendments to child arrangements**

Given that around a half of divorces involve dependent children, we would have expected the consultation to say more about how in practice the impact of conflict on them can be alleviated. This would need to include consideration of whether more can be done to provide additional early information and support to assist divorcing couples in agreeing arrangements for their children, to help reduce the likelihood that disputes over the child will subsequently need to be resolved in court proceedings. Separate policy strands are considering the future of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) and private law demand in the family courts, but we should take this opportunity to consider how the system as a whole can better support parents to make arrangements for their children, outside of the court process where it is safe to do so. We think there is a strong case for a pre-court dispute resolution offer during the divorce process, to be embedded in the system. In addition to self-help support, this could include a tailored blend of online or face-to-face mediation, social work assessment and early legal input. Early legal advice would be particularly advantageous to parents as it can help them to resolve any issues quicker and prevent problems from escalating, which carries extra importance where complex matters such as child arrangements and finances must be resolved.

### **Early help and support**

In our experience, separating parents with dependent children who end up in disputes over child arrangements need help to address underlying factors and behaviours which may influence family strain or adverse childhood experiences. Cafcass has already developed a number of materials and intervention programmes for separating parents. Our Separated Parents Information Programme (SPIP) has shown how children can benefit if their parents are given support in helping to manage conflict and difficulties in a way that does not lose focus on their child's needs. Ideally Cafcass would like to offer the SPIP and other interventions at an earlier stage, as we know that once parents enter private law proceedings to resolve child arrangements, positions are often already entrenched. A stronger link to a pre-court offer for divorcing parents from the point they both acknowledge the divorce being served (through sole or joint notification) would further strengthen the likelihood that the government will achieve its objective of reducing the impact of family conflict on children.

## **Annex**

### ***Retaining irretrievable breakdown as sole ground for divorce and introducing a joint notification process (Q1, Q2, and Q3)***

We support the retention of irretrievable breakdown as the sole ground for divorce and agree that a notification process should replace the five facts available to petitioners.

We see how the current divorce process can increase conflict between parents, affecting their child's psychological development and emotional wellbeing, and in more extreme cases, posing risks to their safety and welfare. There may already be conflict of varying degrees before the divorce petition, so minimising any further conflict is crucial. Requiring parents to submit a reason for why their relationship has irretrievably broken down entrenches their position and can cause further conflict if cited in child arrangements and financial arrangements proceedings.

A notification process is simpler and removes the prospect of unnecessary litigation so that the focus moves away from blame and on to financial matters and arrangements for children. While we anticipate that a notification process will reduce parental conflict, it is not a silver bullet given the disruptive and divisive impact resolving financial arrangements and making arrangements for the child can have. These can significantly harm parents' relationships with one another, which ultimately affects their child. For both parents, signposting to appropriate intervention or dispute resolution services at an early stage is vital to encouraging amicable relations going forward.

We welcome the introduction of a joint notification process to encourage spouses who are agreed on the inevitability of divorce to cooperate in the notification rather than requiring a petition and response. Early and mutual agreement on one of the most important decisions an individual will make in their life is likely to reduce future conflict and provide a stronger foundation for cooperation in making arrangements for their child and resolving any financial matters.

While we agree the inclusion of unilateral or sole notification is appropriate, especially where domestic abuse features, we would like to see greater consideration given to the potential for a negative reaction by the notified parent. We have seen cases where the divorced parent has taken offence and "punished" the petitioner for divorcing them. Support must be offered early to help both parents in this scenario, which may include signposting to an appropriate organisation that offers counselling or advice, such as Relate.

The notifying parent in sole notification cases should be made aware of the practical and legal ramifications of divorcing their spouse before they give notice. For represented parents this could be done through a legal representative, and for unrepresented parents through the online divorce portal. Respondents should also receive help and guidance on what receiving notice of divorce means and next steps as early as possible to ensure they get the right information.

Consideration should also be given to the impact on families and children where a notified party's UK immigration status depends on their marital status. The petitioner may give notice to divorce the dependent parent, which could leave them facing deportation from the UK at worst, or a lengthy process to establish UK immigration status at best. Such uncertainty could add stress to an already difficult time for the family and especially the child.

### ***Retaining the two-stage decree process (decree nisi and decree absolute) (Q4)***

The two stages should be retained as they preserve clarity about the long-standing divorce process with the decree nisi providing parents with notification that the marriage has irretrievably broken down. The time between petition and decree absolute should be used to encourage parents to reach consensus on arrangements for their child and finances.

### ***Timeframe for reducing family conflict, measurement, and special circumstances (Q5 and Q6)***

#### *Timeframe for divorce*

We believe that the timeframe for divorce should take account of the child's timescale and not just that of the parents. For that reason, we would prefer an overall timeframe of no longer than six months from end to end so that children do not suffer any unnecessary delay. Parents will be able

to move on quicker and to turn their focus to making arrangements for their child and resolving any financial matters. Certainty is also given to domestic abuse victims who know they will be divorced from their alleged abuser within a fixed time period, thereby reducing any further trauma for the victim and any children. While the period provides time for administrative processes to be finalised, it also endorses the state principle that there should be time for reflection between the parents on their situation and for any discussions about child or financial arrangements.

But if the Government's conclusion is that a six-month period is needed either between notification and first decree, or between decree nisi and decree absolute, our preference is for the former. This is because our understanding is that this stage already takes longer on average, and because it seems sensible that the state's initial endorsement (through decree nisi) of the likelihood of divorce should be at the end, not the beginning, of any reflection period. We see the period from application to decree nisi as an opportune time to nudge conflicting parents towards an appropriate intervention or dispute resolution service that would reduce conflict and encourage them to cooperate on matters such as arrangements for their child. This can improve a child's relationship with both parents, which, together with low levels of inter-parental conflict post-divorce, can help the child to adjust to this significant change in their family circumstances.

In a scenario where the period between notification and decree is six months, we hope that a minimum and fixed period of a matter of weeks between decree nisi and decree absolute will be considered. This would allow for any outstanding matters regarding the child or finances to be arranged, for legal formalities to be finalised, and for the court to make any referrals to the Queen's Proctor.

#### *Extending/reducing the timeframe*

While we support a limited timeframe for the divorce process, we acknowledge that there are exceptional circumstances where parents may wish to reduce or extend this period and provision should be made for this. These include where both parents jointly agree to divorce and want to move away from the UK; impending death; or where the marriage was subsequently found to be illegal, such as forced marriage.

Parents could be incentivised to cooperate if those who give joint notification and can resolve arrangements for their children and finances are given the option of an expedited process. Given that parents may have reached consensual agreement on these matters having separated months or even years before they begin the formal legal process of divorce, it is in theirs and the child's best interests if the process can be expedited where appropriate.

#### **Do you think that the minimum period on nullity cases should reflect the reformed minimum period in divorce and dissolution cases? (Q7)**

N/A

#### ***Removing the ability to contest a divorce (Q8 and Q9)***

We support the removal of a parent being able to contest a divorce as it reduces the potential for further conflict between the parents, which could become (further) entrenched and lead to disagreement around child arrangements.

Where one parent wants a divorce because they allege the other has abused them, taking away the ability of the accused to contest the complainant's petition will reduce the risk of this abuse continuing. It is hoped that this would afford greater protection to both the alleged victim and the child.

Contested divorces can also exacerbate negative relations between the parents and leave the child in limbo, which can adversely affect their emotional wellbeing.

***Retaining Queen's Proctor, supporting parties to "reconciliate", and early support offering (Q11 and Q12)***

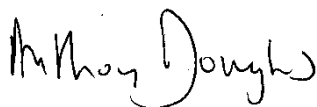
*Queen's Proctor*

We support the Queen's Proctor retaining the right to intervene if it or the respondent raises concerns with the court over jurisdiction, fraud, or where a notifying parent lacks capacity or has been placed under duress.

*Support for parents and Cafcass offer*

The intended success of reforming the current divorce laws is contingent on there being appropriate support and dispute resolution opportunities for parents and families during and after the divorce process, and prior to submission of a c100 application to resolve child arrangement disputes in court. This is essential and could include signposting to mediation and early legal advice on child arrangements and finances, which could be facilitated by legal representatives and the online divorce portal. Early legal advice would be particularly advantageous to parents as it can help them to resolve any issues quicker and prevent problems from escalating, which carries extra importance where complex matters such as child arrangements and finances must be resolved.

In our experience, separating parents with dependent children who end up in disputes over child arrangements need help to address underlying factors and behaviours which may influence family strain or adverse childhood experiences. Cafcass has already developed a number of materials and intervention programmes for separating parents. In particular, our Separated Parents Information Programme (SPIP) has shown how children can benefit if their parents are given support in helping to manage conflict and difficulties in a way that does not lose focus on their child's needs. Ideally, Cafcass would like to offer the SPIP and other interventions at an earlier stage, as we know that once parents enter private law proceedings to resolve child arrangements, positions are often already entrenched. A stronger link to a pre-court offer for divorcing parents from the point they both acknowledge the divorce being served (through sole or joint notification) would further strengthen the likelihood that the government will achieve its objective of reducing the impact of family conflict on children. We would like to emphasise that we think these offers should be voluntary, and are not proposing that they should be mandatory or that there should be a return to scrutiny by the court as part of divorce proceedings.



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