

Family Justice Review

Response by Action for Children

September 2010

Action for Children

Action for Children is committed to helping the most vulnerable children and young people in the UK break through injustice, deprivation and inequality, so they can achieve their full potential. We believe all children and young people have unique potential and that they should have the support and opportunities they need to reach it. Action for Children helps nearly 156,000 children, young people and their families through nearly 420 projects across the UK. We also promote social justice by lobbying and campaigning for change.

Key points

1 Responding to the views of children

- 1.1 The family justice system touches on issues at the heart of children's happiness and wellbeing. Children tell us that family relationships influence their happiness more than any other factor in their lives.
- 1.2 The current system is not working as well as it should be. Family conflict is not managed well, with the system too often serving to escalate difficulties. Children suffer as a result. But it does not have to be this way. We need a new approach to:
 - Intervene earlier to provide support before problems escalate (both parenting and relationship support)
 - Where there is conflict, a system that puts the interests of children centre stage
- 1.2 Separation is not a guarantee of bad outcomes for children; usually it is the level of conflict that is the issue: *'When you are not together all the time, it can sort of make it better when you do see each other.'* (Gilly 13)

2 Intervening early to support children and families

- 2.1 Families matter a great deal because they are where almost all children are brought up and where children learn to care for others. Family life is pressurised and families need help from sympathetic policies and targeted support. This is the most effective way for the state to promote the wellbeing of children.
- 2.2 Care proceedings can be time-consuming, complex and costly, particularly so in relation to families with complex needs. More resources must be invested in supporting families as soon as problems emerge, intervening early before those problems become intractable and families break down, rather than continuing to channel the vast majority of resources into picking up the pieces at a later stage.
- 2.3 One example is the use of intensive family support, which research has proven to be both effective and cost efficient in working with families with complex and multiple needs. Intensive family support services, such as Family Intervention Services and Multi-Systemic Therapy (MST) work effectively with the whole family and can prevent the need for children to be accommodated where it is safe for the child or young person to be supported within the family thus reducing pressures on the family justice system.

as long as it takes

2.4 Ideally the family justice review should consider how to address the needs of as many families as possible outside of the court system; through both the provision of earlier support to families experiencing difficulties and through offering alternative dispute resolution services. Not only will this be best for children and families it will also help to reduce cost. However, we recognise there remains a role for the court in addressing the most complex and difficult cases. Where this is the case children's interests must be kept centre stage.

2 Keeping children's interests at the heart of the process

2.1 The family justice system must maintain the core principle of the 1989 Children Act that the welfare of the child is paramount. However well intentioned, any watering down of this position could be disastrous. While the desirability of reaching a swift decision in proceedings is obvious, sufficient safeguards must be built into the system to ensure that full assessments are made and that the views and wishes of children are fully taken into account.

2.2 Divorce and separation proceedings must not play out existing conflict between parents through making arguments for parents' rights and entitlements that can be pitted against each other. What we need is to move to a system that encourages parental co-operation to secure better outcomes for their children. What is required is a change in practice rather than a change in the law. The issue is broader than just the family justice system; all services and systems need to reflect changing shape and roles within the family.

2.3 All children must be treated equitably, in both private and public law cases. Our experience is that this does not always happen at present. Issues of safeguarding, especially domestic abuse are still not always identified in private family law, including the impact this has on children and young people.

2.4 If cases do get to the court stage, engaging key workers, who will have worked intensively with families in the assessment process can help to improve the quality and depth of the assessments, enabling the system to take better account of knowledge of the family and parenting capacity which has been built up over time. This will help support the court in its decision-making processes and may well help reduce delay and the need for repeated/ additional assessments.

3 Compulsory information, but not compulsory mediation

3.1 Information and awareness of mediation and its benefits for the whole family is crucial to encourage people to engage with services. The message that helping parents has a positive effect on their children needs to be communicated more effectively.

3.3 Action for Children would support a shift in resourcing and operation of the family justice system away from the adversarial and towards the collaborative. The system will need to deliver an early assessment of needs (child and parental), a requirement to provide information and the ability to refer to non-legal services such as mediation.

3.3 Action for Children believes that the provision of information about mediation services should be compulsory; possibly with a first compulsory mediation assessment. This would go some way to addressing some of the practical problems in the way the system currently operates, which serve to undermine the uptake of mediation.

3.4 However, we are not convinced that making the provision of mediation compulsory itself would achieve the desired purpose. Certainly if the government chose to go down this route they would need to put in place extensive safeguards to protect vulnerable individuals.

4 Mediation services must be child focused and of a high quality

- 4.1 Action for Children believes that the provision of high quality mediation services is key to ensuring better outcomes for children where the family splits.
- 4.2 Mediation needs to be child-centred – rather than purely legalistic – with parents encouraged and supported in talking to their children about why they are splitting up. At present many do not and as a result children frequently worry that it is their fault.
- 4.3 Mediation should be part of a continuum of child-focused support services that parents can draw on throughout the process of family breakdown.

5 Sure Start Children’s Centres (SSCCs) and Family Centres provide ideal community hubs to host mediation and other parenting and relationship support services

- 5.1 As well as being cost effective, the co-location of services within existing centres will raise awareness of what is on offer and make services such as mediation more visible and acceptable.
- 5.2 Action for Children is a major provider of Children’s Centres. We believe that the co-location of mediation, parenting and relationship support services within Children’s Centres will help ensure that we make the most of this community resource. The government has pledged to refocus Children’s Centres and we would see the co-location of mediation, Family Group Conferencing and contact services as being at the heart of this new offer to reinvigorate Children’s Centres as local community hubs.
- 5.2 The voluntary sector is key to providing relationship support which families trust. The independence, dedication and openness of voluntary sector services often sets it apart and appeals to people who would not readily engage with statutory services.
- 5.3 Relationships matter; supporting healthy relationships is critical to improving outcomes for children and young people. High-quality engagement with all family members and the timely provision of relationship support needs to be more fully built into the ethos of all services which engage with families.

Family Justice Review consultation questions

Please see below Action for Children’s response to a selection of the most relevant consultation questions

Overarching issues and the case for change

- 1 *What does the family justice system mean to you? What should the purpose of the family Justice system be? What should not be included in the family justice system?*

Relationship or parenting problems can often have a long-lasting, negative impact on children and young peoples’ emotional wellbeing. Research shows that children rank family relationships as more influential over their happiness than any other factor.

The family justice review must not play out existing conflict by being diverted into presenting arguments for specific parental rights. What we need is a system which encourages parental co-operation for better outcomes for their children.

In addition the Family Justice System needs to operate far more seamlessly within the context of broader relationship and parenting support services. What is needed is a continuum, with early intervention services, relationship and parenting support more accepted and accessible, combined with better information about, and greater incentives to take up, alternative dispute resolution services outside of the court system. At all stages within this system the voices of children and vulnerable adults must be heard.

- 3 *How effectively does the currently family justice system meet the needs of its users? For example:*
- a. *Does it have the capacity to deal with all cases comprehensively?*
 - b. *How could capacity in the system be increased?*
 - c. *How efficient is the system?*
 - d. *Does the system ensure quality and diversity?*

Working with children and young people who have been involved in the system, generally we are informed that they do not feel that it meets their needs or effectively represents their interests.

Within the current system it is not easy for children and young people to be involved in the decisions that are made about them. This is largely because of the adversarial nature of the system. We are also aware of the fact that decisions are not being taken in a timely manner, and that there can be too many hearings that do not actively deal with or move the situation forward.

All children must be treated equitably both in both private and public law cases; especially when it comes to safeguarding and child protection. Our experience is that this does not always happen. Issues of safeguarding, especially domestic abuse, are still not always identified in private family law, including the impact this has on children and young people.

One way of both streamlining the system and making it more responsive to the interests of children would be to reduce the number of 'experts' who are brought into the process at a late stage (child psychiatrists, paediatricians, other medical specialists, independent social workers, for example). Instead what is needed is a far greater commitment to the value of the assessments undertaken by local professionals who know the child and the family, be they social workers, doctors or teachers for example. In addition, to improve effectiveness in care proceedings guardians must be given the opportunity to engage with a child and be skilled in ensuring that their views are heard and understood.

Better courts and alternatives to legal processes

- 4 *Are there areas within the current system where we could adopt a more inquisitorial approach, whereby the court actively investigates those facts of the case as opposed to an adversarial system where the role of the court is primarily that of an adjudicator between each side?*

Moving towards a more inquisitorial system is attractive as it would avoid the kind of defensive conflict between parties in present arrangements and therefore could be used to keep the focus more fully on the child. The children we work with tell us that the adversarial nature of the family court system is very distressing for them. They do not want to be forced to see their parents in that light (as it exacerbates the damage of the conflict they have already witnessed). It also makes it harder for children to participate.

There are good examples of how this can work in Scotland. We would urge the review to look at, and build upon, the strengths and learning from the Scottish system which is currently under review.

Obtaining information and views of children in an inquisitorial way with a trusted adult outside of the court is preferable. As with Question 3, we would also like to see far greater use of assessments undertaken by local professionals. What is essential is that the views of the child are effectively ascertained by a trusted adult with whom the child has developed a rapport. Searching for savings in this aspect of the system is likely to be counter productive. Without properly taking the views of the child into account the quality of decisions is likely to be reduced increasing the possibility of the need to further proceedings in the future.

While it will never be possible to prevent all significant harm, where appropriate we should look to deal with cases outside of the system altogether through the provision of effective early intervention services, such as the family intervention projects proven to be effective in working with children on the edge of care, as well as the earlier provision of targeted parenting and relationship support.

- 5 *How far are users able to understand the processes and navigate the family justice system themselves?*
- a. Are there clear signposts throughout the system?*
 - b. Do users know how and where to access accurate and timely information and advice? Is it readily available?*
 - c. What are the options to support/enable people to resolve these issues without recourse to legal process?*

Family support for care proceedings

Current support for families involved in care proceedings is very limited; with families legal advisors often only able give very limited support and guidance. The families we work with in the court arena have many complex needs and the whole process is often a confusing and daunting one for them. Often individual's limited verbal and literacy skills make much of the process difficult to follow and understand. Basic understanding of the legal process is often missing and is not always explained in a way which is accessible.

One of the major strengths of Action for Children's mediation services over the years has been our staff's ability and knowledge of the court process, which is explained individually to all families involved in assessments. This for many is their only basic and understandable form of information.

Parents/families are not supported whilst at court and awaiting hearings. Often there is a long wait in very uncomfortable circumstances, with a professional they know waiting to give sometimes detrimental evidence about them. There appears to be a lack of thought given to the needs of families in these situations. This can be exacerbated by family's perceptions of professionals "happily" chatting together, who clearly know each other (parent solicitor with local authority solicitor). Families have repeatedly identified this as a very difficult and uncomfortable time for them.

Private waiting rooms for families would be very welcome, providing a safe and confidential space. However we are aware of the limitations of the court buildings. Better use of new technology to avoid unnecessary waiting in court buildings might hold some of the answers here.

Primarily what is needed is greater recognition of the complex and individual needs of families, and the support and information needed to accommodate this.

Mediation

Information and awareness of mediation and its benefits for the whole family is crucial to encourage people to engage with services. People need to understand that mediation is not just for families in dispute, it needs to be seen as a normal experience with positive benefits. The message that helping parents has a positive effect on their children needs to be communicated better. Action for Children

believes that the provision of information about mediation services should be compulsory; possibly with a first compulsory mediation assessment. This would help address the current problem that mediation is often not provided at an early enough stage thereby reducing its effectiveness.

6 *How best can we provide greater contact rights to non-resident parents and grandparents?*

We are not sure that this is the right question? Currently only 1% of applications for contact are refused. It is not about pitting different adults rights against each other, what we need is a system that encourages co-operative relationships between adults in the bests interest of their children. Again, the provision of support (rather than a change in the law) is crucial. For example, in some of our Children's Centres we provide support groups for grandparents, not only providing advice and information but also opportunities for informal support and networking.

In terms of principles, it should be assumed that it is in the best interests of the child to maintain contact with both parents and extended family unless there is a reason why not. Parents should have equal status unless reasons to the contrary can be shown. However, this cannot be achieved by legal process (such as changing the Children Act). It needs to be achieved by seeking and understanding best interests of the child in individual cases as well as a culture change in the practice of organisations that provide services to children and families (for example to make services welcoming and accessible to fathers).

7 *How effective is alternative dispute resolution, such as mediation, collaborative law and FGC? What types/models are most effective and for which circumstances? Does this differ according to cases? How could we improve and incentives its use and what safeguards need to be put in place?*

Mediation needs to be child-centred and parents should be encouraged and supported in talking to their children about why they are splitting up. Mediation should be part of a continuum of child-focused support services that parents can draw on throughout the process of family breakdown. Action for Children is concerned about the patchy quality of some mediation services, especially those which do not fully resource a child centred approach.

Action for Children's family mediation and children's support services help parents who are separating to focus on their children's needs when planning residence, contact, and so on. Mediators are there to help people work together as parents when they have stopped being partners.

We recognise that parents know their children best. Mediation helps parents plan how to work together on bringing up their children after they have separated. During mediation both parents are helped by a mediator to talk to each other and work out future plans. Mediation helps parents be flexible, and if they need further help at any time in the future, the mediator can assist. We also use the skills of our staff to provide help at other times, such as when the relationship between parents and a teenage child begins to break down.

Some of Action for Children's family mediation and children's support services also provide contact centres, where the parent who is not living with their child can meet them in a neutral venue. We believe there is an urgent need for more supervised contact centres. Where these are located within Children's Centres we can help separated parents develop support networks (such as fathers groups) as well as providing a child friendly and stimulating environment.

There are practical problems with the way mediation is currently offered: currently if the first party wishes to apply for public funding, it is a condition of their application that they meet a mediator. There is no such compulsion on the second party even if applying for public funding themselves and, in our

experience, second parties often refuse to attend an assessment meeting, even though they might not be aware of what this actually entails, bringing an end to the case.

This is frustrating, time consuming and expensive for the mediation service (we receive payment of £25.00 per case). It is also frustrating for referring solicitors who may then feel that a referral to mediation is a waste of time because the second party is not compelled to attend and the solicitor receives a letter simply saying that the mediation is not going to proceed.

Analysis of 200 closed cases at Action for Children Mediation North in 2009, highlights the importance of both parties attending a mediation assessment meeting and that if the second party does attend and finds out more about mediation and its benefits, we have found that they often wish to continue with the mediation process:

- of those cases where both first and second clients attended an assessment meeting, 70% went on to mediation
- of all 200 cases referred only 20% proceeded to mediation.

Therefore, the key is effective information sharing so that both parties understand what mediation is and its benefits for the whole family.

A compulsory mediation assessment could provide the ideal opportunity to do this. However, if compulsory mediation assessment is introduced, it would need to be undertaken carefully and the effects monitored to establish the difference it is making. Safeguarding issues would need to be consistently assessed and appropriately dealt with. In addition, people may see mediation as a place where they will be blamed or judged for their actions. Therefore, messages around mediation being impartial and child centred must be communicated so that the benefits are fully understood.

The cost of mediation is a barrier to the take-up of family mediation and unfortunately, in our experience, respondent parents are often not willing to pay if they do not qualify for legal aid. However, the resulting costs of legal bills if mediation is not sought can be significantly higher.

Linking mediation services to Children's Centres

Action for Children has been in discussions with the Child Maintenance and Enforcement Commission (CMEC) looking at ways to link to our Children's Centres, considering how to promote to parents making their own arrangements, promoting cultural change and providing access to the information to achieve non-enforced options.

Currently parents are not well informed of changes to CMEC and are apprehensive about engaging the Commission on a voluntary basis.

We are considering piloting some approaches in our Ashington Children's Centre. This might include:

- A CMEC agent regularly attending the Centre to hold appointments with parents and this being promoted through our events calendar and internet site.
- The CMEC attendance being linked to other activity such as Job Centre plus presence.
- Providing information and training for staff, so they could better inform and sign post parents.

At present our Mediation North Service undertakes mediation sessions at Ashington Children's Centre one day a week. However, these are for referrals from family law solicitors. But referrals do not have to come via solicitors and the service could be more widely promoted. Raising awareness of mediation and linking to the CMEC could increase referrals, with Children's Centres crucial in identifying families that would benefit from mediation and linking them to our mediation services.

10 *Would adding a triage stage, whereby cases as to the appropriate course of action, make the system more efficient.*

While this proposal seems attractive in terms of increasing efficiency, we would urge caution. There needs to be sufficient time to undertake a full assessment, especially given the prevalence of safeguarding concerns (domestic abuse) in a high percentage of cases. In addition, sufficient time must be taken to establish the child's feelings and views – and ensuring that these are taken into account in the decision-making process.

In summary, efficiency is important but not at the cost of getting a full and accurate picture. Poor decisions are more likely if insufficient evidence has been gathered, leading to the greater likelihood of the need for new procedures in the future. As well as the high costs likely to result, it should be remembered that research shows that the children who are likely to suffer the worst outcomes in the long term are those that bounce in and out of the care system.

A more user friendly and child-focused system

22 *How could the system be improved to ensure it meets the needs of users and secure positive outcomes for children?*

Quite often the subtlety of the discussion of the best interests of the child gets lost in debate over parents rights and entitlements. Shared care and meaningful involvement is not the same as equal time spent with both parents.

We need a broader shift in approach and systems of all the agencies involved to reflect change in shape and roles within the family. This is broader than just the family justice system. All services and systems that work with families need to look at culture, the attitudes of professionals, provision of information etc. All professionals need to support parental co-operation in the best interests of the child.

Key elements of family-friendly services:

- **Early intervention** – in universal and targeted services to ensure that all families get the early support they need to make a long-term difference.
- **Work with all members of the family** - hold the child's needs at the centre, identifying those of the parents, siblings and other family members, and build on the strengths that are already there
- **Fathers and male carers** – actively promote a positive and involved role for male family figures.
- **Flexibility** – open at different times of the day and at weekends and promoted to include children and families from ethnic minorities, children with disabilities and other groups who may have specific needs that prevent them from attending or who may find it difficult to attend at regular times.
- **Outreach** – for some families traditional ways of accessing support do not work, which is why effective outreach is essential.
- **Participation** – the more children and families are involved in the design of a service, the better the delivery will be.

24 *In what types of cases is it important to hear the voice of the child to assist with decision making? How should the child's voice be heard in the family justice system?*

It is important to hear the voice of the child in any cases involving children.

A key principle within these systems should be the appropriate participation of children and young people. Children and young people need to be consulted about decisions that are vital to them, such as where they will live and how often they see each parent. To ensure this is meaningful they will need time to develop rapport with a trusted adult and reassurance that the information they provide will be treated with discretion – as well as assurances that they are not to blame for any decisions made.

It is not just about hearing children's voices in formal proceedings that is important, it is also about the provision of education to ensure that parents are encouraged and supported in talking to their children.

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