

20 June 2023

Ministry of Justice Consultation on Supporting Earlier Resolution of Private Family Law Arrangements

A briefing from the Family Solutions Group

About us

1. The Family Solutions Group (FSG) is a multi-disciplinary group set up in January 2020 by The Honourable Mr Justice Cobb as a sub-group of the Private Law Working Group. We were tasked with considering what is needed to improve the experience of families who separate before any application is made to the Family Court. Our report [‘What About Me? Reframing Support Services for Families Following Parental Separation’](#) was published in November 2020.
 2. The recommendations received widespread support across the family justice sector and have been endorsed by the President of the Family Division, Sir Andrew McFarlane. He has described the report as a “*blueprint for radical change*” and gave his commitment “*to do all that I can to press for its recommendations to be implemented*”.¹
 3. The FSG continues to meet as a voluntary group to promote the implementation of its various recommendations. Membership of the FSG is multi-disciplinary and encompasses a range of professional backgrounds and expertise. Our aim is to promote the needs and rights of children and young people whose parents separate.
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Family Solutions Group’s response to the consultation: Supporting Earlier Resolution of Private Family Law Arrangements

1. Every year, around 280,000 children see their parents separate in the UK. How those separations are handled will affect the rest of their lives. This response is written with those children in mind. Many separating families are not involved with the family court, but their children’s lives are still deeply affected by the manner of the separation. Promoting the needs of children must be a priority, plus it also reflects the wishes of most parents to minimise distress for their children following any separation. Getting the system right for society starts with getting it right for children.
2. A family policy fit for the 2020s must encompass more than access to the family court. Following any separation, some families will need the assistance and protection of the family court. Other families will need support in arriving at solutions outside the court. Both pathways need a just and fair process, where needs and vulnerabilities are understood, where child welfare and rights are prioritised, and where the best outcome for the family is reached. Both pathways should fall under an overarching definition of a ‘Family Justice System’ to ensure just outcomes for all.

¹ Sir Andrew Macfarlane, ‘Supporting Families in Conflict; There is a better way’ Address to the Jersey International Family Law Conference 2021.

The Family Solutions Group urges the government to frame its proposals for change to reach all separating families, not just those who turn to the family court for help. Many of the concerns that follow separation are not legal issues, and other support is needed.

3. The Family Solutions Group recommends that government develops a dedicated 'Family Solutions System', which sits alongside but separate from the Family Court, and together makes up a 'Family Justice System'. We believe this would provide a family policy fit for the 2020s. Family wellbeing should be prioritised, and this cannot happen with the provision of the family court alone, plus some divergence schemes for non-court dispute resolution (NCDR). It requires the dedicated promotion of solutions as part of an overarching family justice system, with appropriate language and messaging.
4. Whilst we welcome the government's ambition to make out-of-court solutions the norm, this must be seen more broadly than enforcing mediation once couples turn to court. A commitment to support families to resolve issues without turning to the court, wherever safe and appropriate to do so, is a positive step forward. However, to achieve the goals hoped for, we invite the government to review a number of factors beyond the simple 'mediation' or 'court' presentation. Families need access to early information and options via an authoritative family separation website, and a triage meeting (MIAM) to assess needs and the appropriate pathway.
5. We are also calling for 'Family Aid' for those who are financially eligible. As well as legal advice, this would include wrap-around support to help the family adapt and make it easier to resolve arrangements. For example, Family Aid could provide counselling sessions for each parent and/or their children, attendance at a Separated Parent Programme, and age-appropriate child consultation to ensure children's voices are at the heart of decision-making.
6. The cost of 'Family Aid' would be small compared to the expense of handling cases in court and would significantly increase the success of earlier resolution of cases. This is not about spending more money; it is about putting the money that is already spent to better use.
7. The proposed changes should be developed alongside a positive move to dial down the adversarial nature and language of family separation issues in the courts. There is an urgent need to shift mindsets away from adversity and battles towards safety, wellbeing, and child welfare.
8. All families need information, guidance, and support to manage the process well. With the right help and support at the right time, many more families may be able to resolve their issues without recourse to the court. Without that help and support at the right time, the number of families who end up in court will most likely continue to increase. The Family Solutions Group believes these modest changes will transform the government's proposals from aspirational to achieving wide-reaching changes and benefits to separating families and all of society.

Addressing the needs of children

1. Children are affected by family separation; how it is handled will have a long-lasting impact. Even so, there is no political oversight for the wellbeing of these children. If the government's proposals for earlier resolution are to achieve wider benefits for families, we urge the government to consider the Family Solutions Group's recommendations for children and young people.
2. Separating parents in conflict are often not aware of the impact on their children. Many children need someone to talk to about what is happening at home, and schools are the front-line emergency service. Schools should be able to provide a first responder listening ear and be equipped with information and signposting details to give out.
3. We recommend that the government proposals to reform family policy and make it fit for the 2020s should be accompanied by policy changes to support children affected by family separation. The Family Solutions Group recommends that:

- In the absence of a dedicated government department, the Department for Education should take responsibility for the wellbeing of children whose parents separate.
- Schools should be trained to provide first-responder listening and signposting to resources and information for children and young people.
- Schools should include a PSHE module about family separation for all children.
- The remit and funding of Family Hubs be extended to enable them to support children and young people directly following separation.
- Funding for child-inclusive mediation is placed on a proper footing to encourage child consultation (where appropriate) when parents separate.
- The government funds a public awareness campaign to highlight the expectation that children should be involved, to the extent which is appropriate given their age and level of understanding, in making the arrangements which affect them when parents agree matters directly or through NCDR processes (PD12B:4.4).
- The government incorporates the UNCRC into domestic legislation as a matter of urgency.
- Pending incorporation of the UNCRC, the Children Act 1989 be amended to extend the application of the s1(1) welfare principle and s1(3) checklist beyond court proceedings.

Conclusion

We welcome this consultation on the earlier resolution of private family law arrangements. This has encouraged some detailed thinking, discussions and debates with multi-agencies focusing deeply on the differing roles played by all.

There appears to be a universal call for change – the system is broken and needs to be changed. It is easy to call out a broken system but much harder to work out the changes required. Our plea is that each change introduced is tested against what this will mean, in practice, for children. By 'children', we mean all children whose parents separate in England and Wales, many more than simply those whose families turn to the court for help.

This is an exciting opportunity to reset the provision of services to meet the needs of the modern family in all its many facets. We wish the government well in its deliberations to come.

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