

Parental Separation: Children's Needs and Parents' Responsibilities

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Next Steps



Parental Separation: Children's Needs and Parents' Responsibilities: Next Steps

Report of the responses to consultation and agenda for action

Presented to Parliament by:
The Secretary of State for Constitutional Affairs
The Secretary of State for Education and Skills
The Secretary of State for Trade and Industry
by Command of Her Majesty

January 2005

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Ministerial Foreword



Following the launch of the Green Paper *Parental Separation: Children's Needs and Parents' Responsibilities* in July 2004, we have received a substantial, and largely positive, response to our proposals for reform. The Government firmly believes that both parents should continue to have a meaningful relationship with their children after separation as long as it is safe and in the child's best interests. Most parents are able to make arrangements between themselves for the care of their children.

However, those who do turn to the courts often find the system impenetrable or slow and, further, many are unhappy with the contact that is ordered by the court.

Both the Government and the senior judiciary have acknowledged these concerns. We are working together to ensure that resolutions achieved with or without court intervention are carried through in order to promote the welfare of the affected children.

The proposals in the Green Paper are aimed at helping separating parents to make arrangements in the interests of their child. To help parents more effectively to reach these agreements, the proposals are intended to provide improved access to information, advice and mediation at the time of separation. For those who do ask the courts to decide on arrangements for their children, we intend to improve the legal processes and service delivery.

These challenges strike a chord with many people from all walks of life, as has been evidenced by the responses we received to the consultation. Two points came through loud and clear from the responses. Firstly, that everyone wants the best for the children involved. Secondly, that the current system does not always provide this, which is why change is necessary.

We have listened to the views expressed in the responses and considered how best to take forward the proposals in the Green Paper. We are grateful for respondents' comments and suggestions.

The next steps set out in this response will be taken forward quickly and new legislation pursued as soon as Parliamentary time allows. As each of them is implemented, we will become increasingly confident that the services in place for separating parents are making improved contributions to the minimisation of the harmful effects on children of parental separation and to the promotion of their welfare throughout their childhoods.

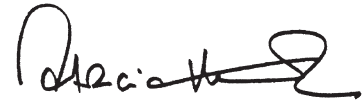
We will be resolute in implementing these many changes to the system and will monitor their impact. But changing social expectations, as well as Government action, are both needed. In time, it needs to become socially unacceptable for one parent to impede a child's relationship with its other parent wherever it is safe and in the child's best interests. Equally, it should be unacceptable that non-resident parents absent themselves from their child's development and upbringing following separation. Friends, relatives, the legal profession and the media all have a role to play in emphasising that children require a good and lasting relationship with both their parents wherever it is safe and in the child's best interests to do so.



Lord Falconer



Ruth Kelly



Patricia Hewitt

Introduction

1. The Green Paper Every Child Matters set out the **five outcomes** that matter for every child. They are:
 - Being healthy
 - Staying safe
 - Enjoying and achieving
 - Making a positive contribution
 - Experiencing economic well being
2. Building on these there is widespread agreement about the key principles that underpin our agenda for change:
 - The child's welfare must be the **paramount consideration** in any help, support or intervention given.
 - A child's welfare is usually best promoted by a continuing and constructive **relationship with both parents**, as long as it is in the child's best interests and safe for all concerned.
 - Both parents have a responsibility to ensure their child has **constructive contact with the other parent** where contact is in the child's best interests.
 - **Collaborative agreements** made between parents should be favoured, as they are likely to work better than those arrangements that flow from court-based resolutions.
 - Parental separation needs a long-term and **flexible approach**. It is not an event that can be solved by a single unchanging settlement, whether court-imposed or not.
 - Help, advice and support for parents and children should be **readily accessible**.
 - The **wishes and feelings of children** in light of their age and understanding should be considered and taken fully into account.

3. These principles provide the foundation of the reforms we will be taking forward over the coming months.

Quotes from children*

“ When they're arguing, they tend to not acknowledge the children are standing there, listening to them. ”

“ If you don't like each other, just make sure your children aren't seeing the way you hate each other so much. Just like, you know, be relaxed – just be civilised. ”

“ There were times when I was at home that I wanted to change the arrangement, but it just carried on. ”

*Quotes from Centre for Research on Family Kinship and Childhood, University of Leeds, and Family Resolutions Pilot Project video.

Summary of responses

4. The consultation ended on 1 November 2004. Written responses received after this date were also included and considered. 269 written responses were received. The responses can be broken down as follows:

Type of Respondent		No of Responses
Individuals	Fathers	45
	Mothers	12
	Grandparents/other family members	20
	Lawyers	6
	Academics	4
	Mediators	6
	Social Workers	1
	Councillors	1
	MPs	1
	Head Teachers	1
	Child Psychiatrist	1
	Serving District Judge	1
	Retired Judge	1
	Unspecified	69
	Sub Total – Individuals	
Organisations	Fathers/Men's groups	9
	Equal Parenting	4
	Mothers/Women's groups	10
	Children's groups	7
	Family/Parents' groups	12
	Legal	24
	Academic	9
	Mediation	9
	Social Workers/Social Services	4
	Other	12
Sub Total – Organisations		100
Total		269

5. In addition to written responses, Ministers and officials actively sought the views of key stakeholders. Ministers held round-table discussions with key stakeholders, lawyers, mediation organisations, children's groups, and mothers' and fathers' interest groups. The charity, Children Law UK, together with the Department for Constitutional Affairs held a joint seminar during the consultation period to gather views about specific issues.
6. The Government is pleased to acknowledge the highly constructive nature of the vast majority of the consultation responses. All of the views expressed in written responses and at the consultation meetings have been taken into account in the development of our agenda for action.

Agenda for Action

7. Below is a summary of the next steps we plan to take over the coming months.

<p>Legal Position</p>	<p>The Government is not persuaded that any fundamental legislative change to the principles of the Children Act 1989 would benefit children.</p> <hr/> <p>New legislation will be introduced in the areas of facilitation of contact and enforcement of contact orders, and any necessary adjustments to Family Assistance Orders.</p>
<p>Safeguarding from Harm</p>	<p>The existing definition of harm in the Children Act 1989 has been clarified to expressly include 'impairment suffered from seeing or hearing the ill-treatment of another.'</p> <hr/> <p>The introduction of new Gateway forms will allow courts to be informed about allegations of domestic violence at the beginning of a case.</p> <hr/> <p>An evaluation of the number of applications with domestic violence allegations will begin in summer 2006.</p> <hr/> <p>The Government does not plan to introduce a presumption of no contact before it has been established that contact will be safe for all involved.</p> <hr/> <p>The Government will pilot an integrated domestic violence court.</p>
<p>Access to quality information and advice</p>	<p>The Government will develop new Parenting Plans and ensure they are widely available at all points in the process. We will consult on these new plans before publishing a final version in April 2005.</p> <hr/> <p>The Government will continue work to improve and support Personal, Social and Health Education provision in schools.</p>

<p>Access to specialist legal advice</p>	<p>A pilot telephone helpline will be launched to provide legal advice.</p> <hr/> <p>The Government will finalise its response to the consultation 'A New Focus for Civil Legal Aid.'</p> <hr/> <p>A new Family Help Service pilot will be launched via the existing Family Advice and Information Service (FAInS) solicitors.</p> <hr/> <p>The Government plans to work with the legal profession to develop an effective and user-friendly accreditation system for all family solicitors.</p> <hr/> <p>The Government will pilot a collaborative law model in line with the Green Paper proposals.</p>
<p>Mediation</p>	<p>The Government does not plan to make mediation compulsory, but will strongly promote its use.</p> <hr/> <p>We will work with the senior judiciary to find out the best way to strongly encourage parties to attend mediation.</p> <hr/> <p>We are also looking at other ways of involving children in mediation.</p>
<p>In-Court Conciliation</p>	<p>The Government will promote and extend in-court conciliation nationwide, and will look at different models around the country and their outcomes.</p> <hr/> <p>CAFCASS, the Court Service and the judiciary will develop principles of best practice for conciliation schemes and publish these by spring 2006.</p> <hr/> <p>By end March 2006, new schemes will have been introduced where none exist.</p>
<p>Family Resolutions Pilot Project</p>	<p>We will evaluate findings from the Family Resolutions Pilot Project which will run until September 2005. The findings will be published in April 2006.</p>

**Changing role for
CAFCASS and the courts**

CAFCASS is developing new staff training modules.

CAFCASS will be expanding its research and evaluation functions to help to identify best practice.

CAFCASS reports will be focused and better targeted to address specific areas.

CAFCASS will work with courts at a local level to evaluate progress towards reductions in report requests. This will help to increase the role of CAFCASS in conciliation work.

CAFCASS practitioners will offer a proportionate service with greater input of time and resources into the most complex and intractable cases whilst still focusing on problem solving and the needs of the child.

**Improving case
management by the
courts**

In July 2004, the President of the Family Division issued the Private Law Framework, which is intended to assist parents to safeguard their children's welfare after parental separation or relationship breakdown.

An initial framework of good practice for courts will be published in January 2005, where the overriding objective shall be furthered by continuous and active case management of every case. This will include judicial availability, judicial continuity, continuous case management, avoidance of unnecessary delay, monitoring and reviewing outcomes and enforcing court orders.

Contact Centres

The Government will develop options for a wider range of services to support contact, which will include those delivered through contact centres, extended schools and children's centres.

£3m and £4.5m of additional Government funding has been identified in 2006/7 and 2007/8 to help support contact.

Other services, such as advice and parenting support, will be included in outreach centres designed to help parents to have meaningful contact with their children.

Helping to ensure that contact arrangements work

CAFCASS will target its resources where needed and will liaise with the judiciary with a view to ensuring that its interventions add value.

We intend to give courts powers to require parents to attend certain classes or programmes (such as parenting classes) before a contact order is made.

The Government will legislate as necessary to extend the flexibility of Family Assistance Orders and make them more effective.

The Government will legislate to ensure Section 11(7) of the Children Act 1989 provides sufficient flexibility in the courts' ability to attach conditions to contact orders.

Better enforcement

A draft Bill outlining plans to introduce new measures for enforcement of contact orders will be published for pre-legislative scrutiny in this Parliamentary session.

Proposals, Responses and Next Steps

8. Our aim, in proposing an agenda for reform, has always been to produce a coherent package of reforms, that will over time shift behaviour and deliver better outcomes for children and parents. This aspiration was mirrored in the overall tone of the consultation responses. While opinions about individual proposals may have differed, the overwhelming majority of respondents welcomed the general thrust of the Green Paper.

“ MCSI welcomes the Government proposals... The paper provides a framework for a flexible, responsive customer-focussed system for family justice. ”

Magistrates Courts Service Inspectorate

“ Refuge would like to express its broad support for many of the initiatives proposed by Government. ”

Refuge

“ I support all attempts to make the law in respect of marriage break-ups, and how it affects children, more equitable and open. ”

Neil Thornton, Father

“ The Council of Circuit Judges broadly welcomes the consultation paper. ”

Council of Circuit Judges

“ Fathers Direct strongly welcomes the Green Paper... as a landmark development that has the potential to transform the lives of tens of thousands of children. ”

Fathers Direct

“ The College welcomes and endorses the general principles underpinning the paper. ”

UK College of Mediators

9. We are encouraged by these positive comments. We will work hard to ensure that the package of reforms is delivered as soon as possible. Details about the individual reforms which together form the overall agenda are considered below. For each area, we look at what was proposed in the Green Paper, summarise the responses related to the specific topic, and outline the next steps we will take.

Legal Position

Green Paper Proposal

10. The current legal position – that both parents are equal and children should have a meaningful relationship with their parents after adult separation, so long as it is safe and in the child's best interests – is the correct one.

Responses

11. Around 20% of responses expressed support for the introduction of a legal 'presumption of equal contact.' Such a presumption would be intended to provide a starting point in contact cases, which would only be disregarded if the facts of the individual case required it. Some fathers' groups and individual responses advocated this idea, while others, such as the Solicitors Family Law Association (SFLA), called for something less prescriptive. The SFLA suggested that the current position in case law – the assumption that, in general, the child's welfare is served by an ongoing relationship with both parents – could helpfully be set out in statute. This would not change the law but would add emphasis to it.
12. Around 60% of respondents did not refer to the legal position. 20% explicitly supported it and were content that an appropriate position had already been established through case law. These respondents also supported the idea that each case should be judged on its particular circumstances rather than using a starting point that presumed that contact with both parents was always positive.

“ The presumption that it is always in the child’s best interests to have contact with both parents is far too broad, such a sweeping generalisation. ”

Gordon Warren, member of the public

“ The problem is not the law, it is that the implementation of the current law is not bringing about the intended outcome, namely the best interest of the child ... The problem of how we support families in separation is far more complex and diverse than can be solved by one dramatic gesture. ”

Fathers Direct

“ We believe that adherence to existing Children Act principles is the right starting point, rather than a new legal presumption. ”

CAFCASS

“ It is quite clear that without a statutory presumption in favour of shared parenting, the judiciary will continue to prevent fathers from enriching the lives of their children. ”

Fathers 4 Justice

Next Steps

- **The Government is not persuaded that any fundamental legislative change to the principles of the Children Act 1989 would benefit children.**
- **New legislation will be introduced in the areas of facilitation of contact and enforcement of contact orders and any necessary adjustments to Family Assistance Orders.**

13. The Government is not persuaded that any legislative change to introduce a presumption of equal contact would benefit children, nor would it make any significant difference in practice. We intend to retain the ‘paramountcy principle’, set out in section 1 of the Children Act 1989. This requires that when courts determine questions relating to the upbringing of a child, the child’s welfare shall be its paramount consideration.
14. The problem is how to shift the attitudes of some parents better to focus on the needs of the child and how to develop advice, information, mediation, conciliation and enforcement processes that are much better at doing so.

- 15.** This means that this part of the Government's agenda for reform will be driven forward without legislative change, except in the area of the enforcement of contact orders, facilitation of contact (through, for example, referring parents to parenting classes) and any adjustments that are needed to the basis of Family Assistance Orders.

Safeguarding from harm

Green Paper Proposal

- 16.** The Government will implement, in January 2005, the amendment to the Children Act 1989 made by section 120 of the Adoption and Children Act 2002 to the definition of harm, together with improved identification and handling measures for cases where harm issues are raised. The Government will commission independent evaluation of these changes.

Responses

- 17.** Many respondents welcomed the intention to ensure that the safety of all involved would be considered by the courts when making arrangements for child contact. Concerns were raised about the earlier Children Act Sub-Committee (CASC) guidelines not having been fully applied. These have been partially incorporated into case law. The thrust of these guidelines relates to making findings of fact following domestic violence allegations before deciding how to determine contact applications.
- 18.** The coming into force on 31 January 2005 of section 120 of the Adoption and Children Act 2002 will provide an explicit statutory basis for considering the effect on a child of witnessing or experiencing harm. As such, it will promote and enshrine further in law the CASC guidelines. Some respondents asked for more stringent measures to promote safety, citing the numbers of children and mothers who are harmed, either emotionally or physically, as a result of court-ordered contact. There were some calls for legislation to create a statutory presumption that child contact should not take place unless it is proven to be safe. It was suggested that this change should be accompanied by the introduction of a compulsory risk assessment process.
- 19.** A number of respondents mentioned concerns about ill-founded, or even malicious, allegations of domestic violence, which they suggested might be made in order to frustrate and delay proceedings or skew the outcome. Some called for a mechanism to counter these accusations, such as the introduction of a penalty where allegations were proven to have been false.

“ At present making false allegations [of domestic violence] is risk free. This should change. ”

Families Need Fathers

“ The Association supports the...emphasis on the identification and relevance of domestic violence. ”

The Association of District Judges

“ A great deal of unnecessary pain and suffering, and long-term damage, can occur when complaints [of abusive behaviour] are frivolous, made in a vengeful spirit or simply misleading. ”

Phylis Adler/Leon Redler MD

“ Whilst Refuge is in agreement that contact must be safe, it is difficult to establish contact that is both physically and psychologically safe between abusers and their children, particularly in cases where there has been direct abuse to the child. ”

Refuge

Next Steps

- **The existing definition of harm in the Children Act 1989 has been clarified to expressly include ‘impairment suffered from seeing or hearing the ill-treatment of another’.**
- **The introduction of new Gateway forms will allow courts to be informed about allegations of domestic violence at the beginning of a case.**
- **An evaluation of the number of applications with domestic violence allegations will begin in summer 2006.**
- **The Government does not plan to introduce a presumption of no contact before it has been established that contact will be safe for all involved.**
- **The Government will pilot an integrated domestic violence court.**

20. The clarification of the definition of harm, through the enactment of section 120 of the Adoption and Children Act 2002, will mean courts are better able explicitly to consider harm as including ‘impairment suffered from seeing or hearing the ill-treatment of another.’ This provision will be introduced from 31 January 2005. This will mean, for example, that where children are found by the court to have heard or seen the abuse of another, this will be taken into account by the court when considering how best to deal with their case.

21. New 'Gateway' forms will be introduced which will allow courts to hear about allegations of domestic abuse at the outset of proceedings. This means that at the point at which an application is made to the court, both the applicant and the respondent will be able to make the court aware of any previous problems, such as violence in the home. The court will consider whether to make a 'finding of fact' decision at the start of the case, and will take its outcome into consideration when making orders about contact, or other matters, later in the process. These forms will also be brought into use on 31 January 2005.
22. In light of these changes, the Government does not believe that any kind of blanket statutory presumption of no contact would work in cases where allegations of harm were made. It is essential that court-ordered contact should be safe for all involved, but this does not mean that a parent who has been violent may never have contact with their children – but that any contact should be safe and in the child's best interests.
23. The Government will evaluate the impact of these developments on the handling of cases where domestic violence or child abuse is an issue. Changes will be made to the County Courts' computer system so that the numbers of applications with allegations of domestic abuse can be monitored. A review will be conducted when a full year's data is available, in summer 2006.
24. We continue to work to improve courts' handling of domestic violence cases, both criminal and civil. To that end we are pressing ahead with piloting an integrated domestic violence court where one judge would hear both the criminal and family aspects of cases affecting the same family where domestic violence was an issue. A separate Steering Group has been established to take this work forward and we expect to have the first integrated court up and running this year.

Access to quality information and advice

Green Paper Proposal

25. The Government will ensure that the needs of parents following relationship breakdown are better addressed by working in partnership with existing information and advice providers, such as Parentline Plus, Sure Start, Relate (and other recipients of the DfES' Strengthening Families Grant) to improve existing provision of information, advice and help.
26. The Government will revise the existing Parenting Plan material to include clear examples of good contact arrangements.
27. The Government will also encourage and promote the use of online diaries, currently available through web mail providers, as a means of families communicating and making arrangements following relationship breakdown.

Responses

28. The majority of respondents recognised that parents need to be provided with advice and guidance to help them through separation. Most parents have no previous experience of separation or the court system. The Government's proposal to build on existing information provision was welcomed by respondents.
29. One new proposal regarding information and advice arose from the consultation responses. The idea put forward was to help children understand the impact of parental separation at an earlier stage. This could be achieved through inclusion of information on parental relationship breakdown in the school curriculum for Personal, Social and Health Education (PSHE).

“The Parenting Plan information should encourage early professional consultation where difficulties arise on both sides, rather than allowing unsatisfactory situations to struggle on allowing for entrenchment or resentment to develop.”

Simon Mortimer, Solicitor

“The NFPI warmly welcomes the proposals to improve the information and advice available to parents.”

National Family and Parenting Institute

“The provision of high quality accessible and child-focussed information ... for all separating couples has the potential to assist even parents who would not have come to court in making arrangements at an early stage and focusing on their ongoing parental responsibilities and roles.”

CAFCASS

Next Steps

- **The Government will develop new Parenting Plans and ensure they are widely available at all points in the process. We will consult on these new plans before publishing a final version in April 2005.**
- **The Government will continue work to improve and support Personal, Social and Health Education provision in schools.**

30. There are many current sources of information and advice for parents and children experiencing parental separation. Different information and advice is available from a variety of sources and in a variety of ways. These include:
- Organisations supporting parents and families (such as Parentline Plus, Sure Start, Relate)
 - Current Parenting Plan leaflets which are available on the internet, in courts and in solicitors' offices
 - Leaflets for children

- 'It's not your fault' – NCH website
 - The Legal Services Commission
 - CAFCASS
 - DfES Divorce and separation booklets distributed via Asda stores in summer 2004.
- 31.** The Government will develop new Parenting Plans – a set of templates which seek to show the sort of contact arrangements that work well for children at different ages and who are living in a range of circumstances. These will be made widely available in solicitors' offices, as well as through advice and mediation services. They will describe, in practical terms, arrangements that are generally beneficial for children. They are intended to be used as practical aids, both by parents themselves and by solicitors, conciliators and mediators, to help parents to reach reasonable agreements.
 - 32.** We plan to consult on the new Parenting Plans over a three month period, before publishing them in April 2005. We will involve a range of different groups and individuals in the consultation process.
 - 33.** While the Government understands the basis for the proposal that information about relationship breakdown should be made available at a very early stage, prior to separation, it plans to take this forward sensitively, recognising the importance of raising such issues in ways that are relevant and acceptable to the target audiences.
 - 34.** In response to the points raised in this consultation, we have considered the scope for exploration of parental separation within Personal Social and Health Education in schools. The PSHE framework for teachers states that at ages 11-14 pupils should "recognise the stages of emotions associated with loss and change caused by death, divorce, separation and new family members". At ages 14-16 pupils learn about the "impact of separation, divorce and bereavement in families and how to adapt to changing circumstances". For younger children there are also opportunities for teachers to examine relationships with pupils.
 - 35.** The Government is committed to supporting teachers in the delivery of effective PSHE through the provision of continuing professional development opportunities and is funding the PSHE certificate for teachers which will benefit 3000 teachers in 2004-05 and 3000 more teachers in 2005-06. The expansion of the National Healthy School Programme to all schools in England will also support standards in PSHE. Through these measures, children will be provided with the opportunity to learn about and examine the issue of parental separation in schools.

Access to specialist legal advice

Green Paper Proposal

36. The Government proposes to make available general legal advice on relationship breakdown through a telephone helpline service, using an existing helpline run by the Legal Services Commission.
37. The Government proposes to redefine and redistribute family legal aid to promote earlier, more consensual resolutions of private law family disputes.
38. The Government proposes to introduce a system of accreditation for solicitors who provide advice on family matters concerning children.
39. The Government proposes to pilot the collaborative law approach with groups of solicitors.

Responses

40. The response to these proposals was generally supportive. Parents who had experience of using legal advice wanted it to be easier to access, and the providers of legal services recognised they might be better delivered.
41. Some responses raised concerns about funding for the reforms, such as the establishment of the new accreditation scheme. Women's groups raised concerns that collaborative law may be less useful in cases where there are concerns about domestic violence.

“ It is very difficult to find a competent and hard working solicitor... There is a need to tighten the rules controlling solicitors promoting themselves as family law specialists. ”

Charles Bryant

“ We cannot see that a third system of accreditation for Solicitors will achieve anything better than the two existing schemes and warn that it will cost time and money to set up and administer. ”

The Association of District Judges

“ Women's Aid is concerned that the emphasis on promoting resolution and agreement through collaborative law is likely to mean that fears about domestic violence will continue to be minimised or ignored. ”

Women's Aid

“ Collaborative law has real merit in appropriate cases. Many family lawyers on opposite sides of a private law matter already informally seek to promote a resolution which is in the interests of both parties and the children without resorting to the court. ”

General Council of the Bar (Law Reform Committee)

Next Steps

- **A pilot telephone helpline will be launched to provide legal advice.**
- **The Government will finalise its response to the consultation 'A New Focus for Civil Legal Aid'.**
- **A new Family Help Service pilot will be launched via the existing Family Advice and Information Service (FAInS) solicitors.**
- **The Government plans to work with the legal profession to develop an effective and user-friendly accreditation system for all family solicitors.**
- **The Government will pilot a collaborative law model in line with the Green Paper proposals.**

- 42.** The Government, through the Legal Services Commission will launch a pilot telephone helpline service providing legal advice from March 2006. This will aim to help people avoid resorting to the courts to solve disputes in the first instance. The helpline will be able to direct clients towards other services which might help them to resolve their problems out of court. The helpline will be evaluated to see if it is achieving these aims. This evaluation will take place after the system has been operating for one year.
- 43.** The Government is currently finalising the way forward following consideration of the responses to the consultation on civil legal aid reforms 'A New Focus for Civil Legal Aid.' The proposals include the following:
- A restructure of the levels of service for private family law cases by replacing three existing levels with one new level of service;
 - Introduction of stricter controls over multiple and repeat applications in family cases; and
 - An alignment of the eligibility limits to achieve uniform income limits across all levels of service: while it is proposed the rates are increased in line with inflation, the upper limit for qualifying for legal representation in court should be reduced. Safeguards and exemptions will be introduced in cases where a client's safety is at issue.
- 44.** A pilot of a new Family Help Service will be launched in April 2005 via the existing Family Advice and Information Service (FAInS) solicitors. The pilot will run for 12-18 months in the first instance. Results from the pilot will inform new contracting arrangements which the LSC will aim to introduce for all suppliers in April 2007.
- 45.** The Government plans to work with the legal profession to develop an effective and user-friendly accreditation system for all family solicitors. The Green Paper made clear that the Government intends to start work with the legal professional bodies to deliver this, taking into account existing schemes and the outcome of the Clementi review.

- 46.** The Government will pilot a collaborative law model in line with the Green Paper proposals. The pilot will be carried out with groups of solicitors. If the model is proved to be effective, the Government will roll this out widely as a better use of public legal funding. This preparatory work will conclude in April 2006 and roll-out will follow as soon as possible thereafter, if the evaluation proves the model to be effective.
- 47.** These reforms will allow parents to obtain legal advice when they feel they need it. It will provide for parents who might otherwise progress towards litigation at contested court hearings with an alternative route.

Mediation

Green Paper Proposal

- 48.** The Government, in conjunction with the senior judiciary and rule committees, proposes to review relevant rules and Practice Directions so that the strongest possible encouragement is given to parties to agree to mediation or other forms of dispute resolution, in order to ensure that all alternative means of resolving family disputes, short of contested court hearings, are fully utilised. For those eligible for public funding, this mediation would be funded through legal aid.

Responses

- 49.** Many respondents were in favour of encouraging parties to attend mediation. The main issue raised was whether parents should be compelled to attend mediation after their initial application to the court. Some mediation practitioners were concerned that mediation would not work if parents were forced to attend. In this situation, parents were unlikely to participate fully in the mediation session and it would therefore be doubtful that agreement would be reached. Other respondents were concerned that if mediation were not to be made compulsory, then parents were unlikely to see it as a viable method of resolving their dispute.

“ Mediation should be the foremost mechanism for resolving contact disputes and supporting families in making appropriate arrangements. ”

National Family and Parenting Institute

“ There must be recognition of the difficulties of mediating in certain circumstances, and in particular where there is a substantial power imbalance. ”

The Law Society

“ [Mediation] must be better supported and be seen as first point of contact rather than legal proceedings which simply protract and solidify opposing positions. ”

E.W. Moss, Father

“ The review of rules and Practice Directions to give emphatic encouragement for parties to agree to mediation must ensure that parents do not feel bullied into compliance. Mediation is not the answer for some parents, particularly those who feel their relationship problems are intractable and communication has completely broken down. ”

Parentline Plus & One Plus One

Next Steps

- **The Government does not plan to make mediation compulsory, but will strongly promote its use.**
- **We will work with the senior judiciary to find out the best way to strongly to encourage parties to attend mediation.**
- **We are also looking at other ways of involving children in mediation.**

- 50.** The Government does not plan to make attendance at mediation compulsory. An essential part of the process is that people come to it voluntarily and are therefore willing to participate.
- 51.** However, with the senior judiciary we will determine the best way in which parties can be strongly encouraged to attend mediation and other alternative dispute resolution sessions. The successful involvement of mediators enables parents to resolve their differences outside of the court room. This helps to minimise the negative impact of parental separation on children and maximise the making of enduring agreements between the parents that are responsive to children's interests and wishes.
- 52.** We are also looking at other ways of involving children and developing new models of child focussed mediation and dispute resolution. This may involve mediators in meeting with children. Alternatively, it may involve the mediator in helping the parents to focus on their child or children and more fully to consider their wishes and feelings in the process of separation.

In-Court Conciliation

Green Paper Proposal

- 53.** The Government proposes actively to promote the extension of in-court conciliation services so that they are routinely used for all families in dispute before a formal court hearing, except in cases involving allegations of harm.

Responses

- 54.** There was widespread support for greater use of in-court conciliation amongst respondents. Other respondents, however, raised concerns that in-court conciliation came too late in the process to be really effective. By the time parents had reached the point of application to the courts, the separation may have become acrimonious and, in some cases, hostile. Some doubted the durability of agreements reached in this way.

“ The Law Society supports the concept of in-court conciliation...although we are seriously concerned about the current capacity of CAFCASS and the Court Service to deliver. ”

The Law Society

“ Efforts should be driven by the need to achieve the best parenting for the children and not just to get the adults to agree. Some of our members feel betrayed by existing in-court conciliation often feeling bounced and on occasions tricked into deals whose full implications they did not spot in the haste. ”

Families Need Fathers

Next Steps

- **The Government will promote and extend in-court conciliation nationwide, and will look at different models around the country and their outcomes.**
- **CAFCASS, the Court Service and the judiciary will develop principles of best practice for conciliation schemes and publish these by spring 2006.**
- **By end March 2006, new schemes will have been introduced where none exist.**

- 55.** The Government is committed to exploring different methods of dispute resolution than full court hearings. There are many different models of in-court conciliation in use around the country. This was shown in the Magistrates Courts Services Inspectorate's thematic report *Seeking Agreement*¹, which showed that 306 courts, including Magistrates' Family Proceedings Courts,

1 *Seeking Agreement* report available to download from <http://www.mcsi.gov.uk/204.htm>

operated some form of in-court conciliation. This ranged from less formal 'in-corridor conciliation' to much more formal schemes, such as the scheme in Chelmsford, referred to in the Green Paper consultation document. CAFCASS is working with the Courts Service and the Judiciary to roll out effective dispute resolution schemes in areas where none exist and to review arrangements in other areas where improvements are needed.

- 56.** We will continue to promote in-court conciliation. This will be supported by the development of the rest of the agenda for reform, including particularly the Family Resolutions Pilot Project and Parenting Plans.
- 57.** We will work with users and service providers further to develop key principles of effective in-court dispute resolution schemes. Key questions to address will include:
- whether and at what age the scheme ought to involve children directly;
 - where interviews with children should take place;
 - how or whether legal representatives ought to be involved;
 - whether the conciliation process itself should be privileged or not; and
 - how schemes will be evaluated.
- 58.** CAFCASS, the Courts Service and the Judiciary have agreed a 'Model' for court-based first directions alternative dispute resolution schemes and will develop principles of best practice for conciliation schemes and publish these by spring 2006. The Government plan to roll-out effective in-court conciliation systems on a local basis. New schemes will be introduced where none exist. Subject to resources being freed (from report writing and elsewhere) all courts are expected to have an effective scheme by end March 2006.

Family Resolutions Pilot Project

Green Paper Proposal

- 59.** The Family Resolutions Pilot Project will be evaluated in order to ascertain its impact. Outcomes are expected to be known by March 2006 at the latest, which will inform the decision about any national extension of the approach.
- 60.** The new Parenting Plans material will be used in both the extended in-court conciliation services and Family Resolution Pilot Project as soon as they are available.

Responses

- 61.** Many respondents welcomed the principles behind the Family Resolutions Pilot Project. Several warned of the need for proper evaluation of the pilot to assess its effectiveness on outcomes for families.

62. Some respondents pressed for a model similar in design to the 'early interventions' scheme in Florida. Both ideas work from the principle that solutions devised by parents themselves are more effective than orders made by the court.

“Care must be exercised to ensure that whatever the shape of the final scheme it is not fragmented and it is well coordinated between its parts.”

Simon Mortimer, Solicitor

“The Family Resolutions Pilot is a major step forward in attempting to engage parents to help them focus on the needs of their children and to work together collaboratively.”

Centre for Research on the Child and Family, UEA

“This scheme should prove successful in most cases...alternative methods must be in place when conciliation does not work.”

Kathy Riach, Mother

“Appropriate in some cases, but of no value to a non-cooperative and non-compliant parent.”

Stuart and Elizabeth Gregory, Grandparents

Next Steps

- **We will evaluate findings from the Family Resolutions Pilot Project which will run until September 2005. The findings will be published in April 2006.**

63. The Family Resolutions Pilot was launched in September 2004, and will run for 12 months in the pilot areas of Brighton, Sunderland and Inner London. It uses a video, group discussions and parent planning sessions, spread across at least three separate sessions, undertaken under the direction and authority process.
64. We will be evaluating the outcomes of this project, utilising independent academic evaluators from the University of East Anglia. We expect to publish the findings of this evaluation in April 2006, which will inform the decision about how to develop it and whether the Pilot is to be rolled out on a national basis. Meanwhile we will use the supporting products from the project, such as the video and information leaflets, widely at other points in the system to support out-of-court dispute resolution.
65. The Family Resolutions Pilot Project has been developed in a way which enables it to operate within the current legal framework in this country. This means that participation is not mandatory, though there is a strong judicial expectation that parties to cases will participate. We expect that this will be quite sufficient in the vast majority of cases. The evaluation of the pilot will report on this.

Changing role of CAFCASS and the courts

Green Paper Proposal

- 66.** The Government supports the plan of CAFCASS and the judiciary to reduce the proportion of CAFCASS resources that are devoted to report writing, in order to create the capacity to deliver conciliation and support services. This change will be introduced on an area by area basis, as the commissioning of reports diminishes.

Responses

- 67.** There was widespread support for an increased role for CAFCASS (the Children and Families Court Advisory and Support Service, which looks after the interests of children involved in family proceedings) in problem solving, whereby instead of writing lengthy reports, CAFCASS officers could utilise more of their time and skills to help parents to reach agreements and stick to them.
- 68.** Many respondents, however, expressed concerns about the capacity of CAFCASS to deliver the new services. This reflected both concern about the level of resources available to CAFCASS and anxiety about the levels of competence of CAFCASS officers.

“ CAFCASS ... is well placed to take on and develop the social work tasks set out in the Government's proposals. ”

Magistrates' Courts Service Inspectorate

“ CAFCASS has the necessary skilled and experienced practitioners to undertake the new role envisaged in the proposals. We welcome the opportunity to re-deploy our skilled social work practitioners away from the current one size fits all report-focused service, to a service that is more problem solving, resolution and outcome focused. ”

CAFCASS

“ It should be expected that a move from a report writing culture to a conciliation and support one will incur transitional costs. These must be factored into the implementation plan. ”

The Magistrates' Association

Next Steps

- **CAFCASS is developing new staff training modules.**
- **CAFCASS will be expanding its research and evaluation functions to help to identify best practice.**
- **CAFCASS reports will be focused and better targeted to address specific areas.**
- **CAFCASS will work with courts at a local level to evaluate progress towards reductions in report requests. This will help to increase the role of CAFCASS in conciliation work.**
- **CAFCASS practitioners will offer a proportionate service with greater input of time and resources into the most complex and intractable cases whilst still focusing on problem solving and the needs of the child.**

- 69.** CAFCASS have commissioned a specialist Dispute Resolution training module which will be available to support the existing training module from the Royal Holloway core modules. This will be rolled out from March 2005. All CAFCASS Family Court Advisors are qualified social workers and, from April 2005, will be GSCC (General Social Care Council) registered social workers.
- 70.** CAFCASS is currently conducting more than 38,000 dispute resolution appointments a year in comparison to the 12,000-14,000 mediations which are undertaken by the independent and voluntary sector, under public funding. Thus, CAFCASS will be developing what is already a substantial aspect of its current service.
- 71.** CAFCASS will be expanding its research and evaluation functions, so that best practice models can be identified, disseminated and built into practice. These will be brought together during 2005 into a new overarching practice model for CAFCASS practitioners.
- 72.** CAFCASS is also working to achieve the aim of providing more effective problem solving interventions and better facilitation of contact. Even where resolution is not achieved after dispute resolution services have been provided, the focus of the CAFCASS practitioner, where a report is ordered, will still be on reducing conflict, seeking agreements and focusing on what is in the child's best interests. Reports will be focused and more targeted to address specific areas. In some cases, full written reports will not be required where agreements can be reached quickly.
- 73.** CAFCASS practitioners will offer a proportionate service with greater input of time and resources into the most complex and intractable cases whilst still focusing on problem solving and the needs of the child. The less complex cases will then be less time consuming for the CAFCASS officer, who will be able to spend time facilitating agreement rather than reporting on what has happened in the past.
- 74.** CAFCASS is currently auditing the demand for and provision of support services and reports, which varies in different regions and courts. It will build on the existing provision and, over the coming months, will closely monitor the changes in demand for reports and support services. CAFCASS will work with courts at a local level, to evaluate progress towards reductions in report requests and an increased use of CAFCASS practitioners in support services, such as in-court conciliation.

Improving case management by the courts

Green Paper Proposal

- 75.** The Government strongly supports the declared intention of the judiciary, working with the Court Service, to develop guidance setting out how best to manage private law cases and thereby actively manage them. This will involve:
- Earlier listing of cases
 - Cases to be heard as quickly and effectively as possible
 - Greater judicial continuity
 - Rapid return to court where needed.
- 76.** Target times will be developed by 2005 for key stages such as first hearing conciliation appointments and enforcement hearings.

Responses

- 77.** Many respondents welcomed the proposals to improve case management. Some individuals complained of the lack of judicial continuity and the delay in their own cases. Most in the legal profession felt the reforms were welcome, but questioned the availability of resources to implement them.

“The Law Society supports the use of target times for key stages.”

The Law Society

“[The courts are] a bewildering and intimidating environment...it is evident that those who try to help are over-stretched.”

Debbie Apperley, member of the public

“Earlier listing of cases would assist greatly. Where contact has, for whatever reason, ceased, the difficulties which resulted in a break in contact will only increase with time.”

General Council of the Bar (Law Reform Committee)

“More funding [needed]...to cut waiting times for hearings.”

Rachel Allen, member of the public

“There should be continuity of input both from CAFCASS officers and from Judges... In our view, it is vital that there should be this consistency of inputs, as this will reduce delay, as Judges and CAFCASS officers will not have to revisit issues and will be familiar with the case.”

Solicitors Family Law Association

Next Steps

- **In July 2004 the President of the Family Division issued the Private Law Framework, which is intended to assist parents to safeguard their children's welfare after parental separation or relationship breakdown.**
- **An initial framework of good practice for courts will be published in January 2005, where the overriding objective shall be furthered by continuous and active case management of every case. This will include judicial availability, judicial continuity, continuous case management, avoidance of unnecessary delay, monitoring and reviewing outcomes and enforcing court orders.**

- 78.** On 21 July 2004 the President of the Family Division issued the Private Law Framework, which is intended to assist parents to safeguard their children's welfare after parental separation or relationship breakdown. On the same day the Chief Executives of the Court Service and CAFCASS wrote to their staff and managers to announce the implementation of the new Framework. The Framework supports the key proposals contained in the Green Paper, and has been the subject of detailed discussion and agreement between the judiciary, Court Service, and CAFCASS.
- 79.** The President intends to provide guidance in January 2005 to put in place a **Private Law Programme** that will improve the resolution of private law family cases. The Programme will also be extended to the Family Proceedings Courts.
- 80.** There is to be a gradual roll out of the Private Law Programme, as areas become ready. It is anticipated that any current in-court conciliation schemes will be reviewed to reflect the principles and key elements of the Programme as set out in the President's forthcoming guidance. The key elements of the programme are as follows:
- Families will be given an early **First Hearing Dispute Resolution Appointment (FHDRA)** between 4 and 6 weeks of an application being issued
 - CAFCASS practitioners will be used to facilitate in-court conciliation in accordance with the local schemes
 - Families will be encouraged to consider and make use of the Parenting Plan materials
 - Detailed case management to identify agreements of those issues that need to be determined
 - Focus of CAFCASS reports on specific issues that are identified
 - **Judicial continuity** and the continuity of CAFCASS practitioners wherever possible
 - Cases to be brought back to court by CAFCASS if necessary
 - Access to the allocated judge for an **urgent review hearing** and where necessary enforcement of private law orders within 10 working days.

Contact Centres

Green Paper Proposal

- 81.** The Government is currently considering how best to continue supporting this key part of the voluntary sector after April 2006. Discussions about funding will continue as part of the DFES Spending Review allocation process and will be announced as part of that.

Responses

- 82.** Many responses pointed to the vital role that contact centres play in ensuring that contact can take place between parents and children. The use of contact centres in cases involving allegations of domestic violence was also felt to be useful. Issues were raised about the limited availability of contact centres in some areas of the country.
- 83.** Other respondents, however, felt that contact centres were impersonal, difficult places for parents to develop a relationship with a child.

“ Regarding more contact centres I should say ‘no thank you’ – such places are bleak and not a long term solution. ”

Adrian Johnson, Father

“ It is incredibly difficult for the most resourceful parent to build or maintain a rewarding relationship with their child at a once-a-month, two-hour session in a contact centre. ”

Fathers 4 Justice

“ Contact centres are a vitally important resource in the hands of the court in re-establishing a broken relationship between parent and child. ”

The Association of District Judges

“ In circumstances where contact must be supervised...it is important that supervision is adequate, that safety is considered when children and the resident parent are travelling to/from the centre...Staff should be fully trained in domestic violence awareness, child protection and risk assessment. ”

Refuge

“ The artificial nature of such places is alien to a normal child/parent relationship but nonetheless they form an essential service in the most desperate circumstances. ”

Michael Gaca, member of the public

Next Steps

- **The Government will develop options for a wider range of services to support contact, which will include those delivered through contact centres, extended schools and children's centres.**
- **£3m and £4.5m of additional Government funding has been identified in 2006/7 and 2007/8 to help support contact.**
- **Other services, such as advice and parenting support, will be included in outreach centres designed to help parents to have meaningful contact with their children.**

- 84.** Contact centres are seen by many to be a valuable means of ensuring that children are able to maintain contact with both parents. Supervised contact centres can be important in resolving contact cases where there are issues of domestic violence. However, others see the centres as being of limited value, or of causing delay and stigma for some of the parents who are required to see their children at such venues.
- 85.** The Government plans to look at ways in which contact centres can be used more widely to help parents and children following separation. Contact centres should not be seen solely as places where actual contact takes place, but also as a base for outreach services, which can support parents and children beyond any formal period of court-mandated contact.
- 86.** We are exploring options to ensure that services to support child contact are easily accessible to parents and children. Contact centres will be one of these options, whilst some extended schools and children's centres may also be able to provide services along with advice for parents, family mediation and parenting education support.
- 87.** Through the Spending Review (2004) process, £3m and £4.5m of additional new funding has been identified for 2006/7 and 2007/8 to develop services for supporting contact. We will be working with CAFCASS, the National Association of Child Contact Centres (NACCC) and other representatives of child contact service providers to explore options for developing wider services for children and families which support contact.

Helping to ensure that contact arrangements work

Green Paper Proposal

- 88.** The Government will provide effective follow-up of court orders by ensuring that families are contacted by a CAFCASS officer soon after an order has been made, to check that it is being implemented in practice. We will legislate, as needed, to revise the arrangements for the use of Family Assistance Orders. Any such legislation will be informed by responses to this document during consultation. The Government seeks views on the need to legislate or clarify the conditions courts may apply to orders made.

Responses

- 89.** There was widespread support for the principle of improved post-order follow up. Doubts were raised regarding the ability of CAFCASS officers and the availability of sufficient CAFCASS resources to check whether contact orders were being implemented.
- 90.** CAFCASS, in its response, made clear that it believes it has a clear role and remit to engage in appropriate post-order work both directly and through commissioning other specialist agencies. It will be in the best interests of children for this to be flexible.
- 91.** Changes to the legislation on Family Assistance Orders were proposed by a number of respondents. In particular, respondents advocated the removal of the current restriction of FAOs whereby they may only be used in 'exceptional circumstances.' Some responses also included calls for the current duration of FAOs, which currently stands at six months, to be extended.
- 92.** Under section 11(7) of the Children Act 1989, a contact order may contain conditions about how it is to be carried into effect. Responses to the consultation questioned whether any extension of these powers would be necessary in practice.

“ FNF supports these provisions, especially for the provision for follow up and for the development of family assistance orders. **”**

Families Need Fathers

“ The expectation that a CAFCASS officer previously involved in the case will follow it through and return the matter to court in the event of a default is a significant expectation and improvement on current procedures. **”**

Family Law Bar Association

“ We support the aims of FAOs and have been frustrated by the restrictions mentioned in the consultation. **”**

The Magistrates' Association

“ If Family Assistance Orders are to be revised by removing the present criteria of 'in exceptional circumstances' and reviewing their duration, both local authorities and CAFCASS will need to be adequately resourced to take on these responsibilities. **”**

Parentline Plus & One Plus One

Next Steps

- **CAFCASS will target its resources where needed and will liaise with the judiciary with a view to ensuring that its interventions add value.**
- **We intend to give courts powers to require parents to attend certain classes or programmes (such as parenting classes) before a contact order is made.**
- **The Government will legislate as necessary to extend the flexibility of Family Assistance Orders and make them more effective.**
- **The Government will legislate to ensure Section 11(7) of the Children Act 1989 provides sufficient flexibility in the courts' ability to attach conditions to contact orders.**

- 93.** As mentioned above, CAFCASS has stated that its role includes post-order work. CAFCASS will need to target its resources and will need to liaise closely with the judiciary to make sure that its post-court interventions add value. CAFCASS intends to look at creating additional roles within its workforce, such as Family Support Workers, to carry out the different tasks identified.
- 94.** As part of the draft Bill on enforcement of contact orders, we intend to give courts powers to require parents to attend relevant parenting programmes or classes, or information sessions before making a contact order. This is intended to facilitate the making of the contact order and help to ensure that the contact arrangements work for all involved.
- 95.** The extension of post-order follow-up services will take place linked to the rolling out of conciliation services and other changes in the way CAFCASS officers are deployed at the local level.
- 96.** In light of responses to the consultation, the Government will look more closely at whether legislation is necessary to extend the flexibility of Family Assistance Orders and make them more effective.
- 97.** The Government will legislate to ensure that Section 11(7) of the Children Act 1989, which allows conditions to be placed on contact orders, is sufficiently flexible to allow courts to make a requirement to attend relevant parenting classes or programmes, including information meetings or meetings with a counsellor, a condition of a contact order being made.

Better Enforcement

Green Paper Proposal

- 98.** The Government proposes to legislate at the earliest possible opportunity to provide additional enforcement powers. These new powers will include:
- Referral of a defaulting parent in a contact/residence case to a variety of resources including information meetings, meetings with a counsellor, or parenting programmes/classes designed to deal with contact disputes

- Referral of a non-resident parent who has been violent or who has breached an order to a relevant programme
- Attachment of conditions to orders which may require attendance at a given class or programme
- Imposition of community-based orders, with programmes specifically designed to address the default in contact
- The award of financial compensation from one parent to another (for example where the cost of a holiday has been lost).

Responses

- 99.** The majority of responses which addressed the proposed new enforcement powers welcomed the idea. Some respondents wanted the Government to go further and include a wider range of sanctions.

“The proposals for greater powers of enforcement of the courts’ orders for contact are both necessary and welcome. They should be implemented without delay.”

Family Law Bar Association

“I sincerely hope that when Mothers do, or do not attend court...that Judges will be seen to act upon and enforce the law and make Mothers aware of the serious consequences of their actions.”

Wendy Boycott, Grandmother

“The problem is our power to enforce orders. This is the real issue which needs to be addressed.”

District Judge McHale

“It’s good to see the Government willing to tackle this issue [enforcement] but when? Every day that passes sees fathers increasingly being frustrated and emotionally damaged.”

George Rutter, Grandfather

“Women’s Aid experience and research suggests that unless there is a stronger requirement on the courts to ensure that contact orders are safe before they are enforced, this will result in further risk.”

Women’s Aid

Next Steps

- **A draft Bill outlining plans to introduce new measures for enforcement of contact orders will be published for pre-legislative scrutiny in this Parliamentary session.**

- 100.** The new enforcement measures proposed in the Green Paper will be included in a draft Bill to be published in this Parliamentary session. The Bill will include powers for courts to refer parents to programmes, classes or information sessions before a contact order is made and at any other time during the proceedings. Courts will be able to attach conditions to orders which may require attendance at a given class or programme. Where an order is breached, new sanctions will be introduced to impose community-based orders for unpaid work or curfew and awarding of financial compensation from one parent to another. As a last resort, courts will have the power to impose a fine or commit a parent to prison where a contact order has been breached, as is currently the case for contempt of court.
- 101.** The draft Bill will be subject to pre-legislative scrutiny. This scrutiny will be carried out by a Parliamentary Committee and the public will also have an opportunity to comment.



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