

Please send your response by 12:00 noon on 23 June 2011 by email to familyjusticereview@justice.gsi.gov.uk, or by post to Family Justice Review Team, Ministry of Justice, 102 Petty France, London SW1H 9AJ.

Towards a Family Justice System

Question 1: Do you agree with the proposed role that the Family Justice Service should perform?

Yes No

Please give reasons.

Respect supports a greater alignment and coherence across agencies in the family justice system but believes the creation of a Family Justice Service as proposed will:

- be unwieldy and won't contain the level of expertise needed across such wide range of areas
- risk reducing the independence of the judiciary
- restrict access to justice on the basis of cost rather than need

The idea that this agency will be setting standards for mediators and hopefully overseeing compliance with these, alongside setting the criteria for expert assessments with some many other functions seems fraught with difficulties.

Respect would support some steps in this direction but at a measured pace with adequate time allowed for each change to bed in before the next takes place.

We would also like to see opportunities for families using the Family Justice System and the voluntary sector to comment on the impact of any changes that occur.

Question 2: Ensuring that a child's voice, wishes and feelings are central to the Family Justice Service is crucial. What would you recommend as the crucial safeguards to enable this to happen?

The focus on mediation set out in the review is a retrograde step in ensuring the wishes and feelings of the child are central to the service. Mediation is an adult centred process, as clearly set out in research by Liz Trinder and co in the Child and Family Law Quarterly, vol. 22, no. 2, 2010, 234-257. A commitment to both parents being involved in a child's life should never override the child's voice, wishes, feelings or safety.

The proposal to delay safe guarding checks until the case enters legal proceedings also seems to create additional risk to children and families when set alongside moves that will delay cases coming to court.

Respect would want to see Cafcass involvement and interviews with the child at the earliest opportunity, particularly where there are allegations of abuse and domestic violence. We also believe that in some cases it might be appropriate for a Judge to talk to the child directly.

Question 3: Do you agree that children should be offered a choice as to how voice can be heard in cases that involve them, including speaking directly to the court?

Yes No

Please give reasons.

Question 4: Do you agree that there should be a single family court?

Yes No

Please give reasons.

Respect fully supports this and believes this is long over due.

Question 5: Do you agree that the changes we have proposed to the judiciary – including greater continuity, specialism and management – will lead to improvements in the operation of the family justice system?

Yes No

Please give reasons.

Respect supports this proposal with the exception of the case management function. Our view is that this will leave the judiciary having to consider costs alongside what is in the best interests of the child and would compromise their core role.

Question 6: Do you agree that case management principles, in respect of the conduct of both private and public law proceedings, should be introduced in legislation?

Yes No

Please give reasons.

Question 7: What changes are needed to the culture and skills of people working in family justice and how best can they be achieved?

Respect believes that the court and other personnel in the justice system should be more prepared to say no to child contact at an earlier stage, particularly where there is a history of abuse or domestic violence and the child does not want contact. Respect sees many families where child contact cases have dragged on through the courts for years where contact is clearly not in the interest of the child but there seems to be a reluctance to say no to the non resident parent. This often subjects the child and resident parent to long periods of uncertainty and continuing distress.

As the family justice system deals with a high volume of abuse and domestic violence cases - and the majority of 'problem' cases which return to court again and again over many years include allegations of abuse and domestic violence - it is crucial that an understanding and awareness of these issues is central to the training, procedures and decision making of the family justice system. Currently we believe this is not the case and needs to be addressed urgently.

We also believe an understanding of substance misuse and mental health issues is important.

Question 8: Do you have any other comments you wish to make on our proposals for system management and reform?

Public Law (Chapter 4)

Question 9: Do you agree with our proposals to refocus the role of the court?

Yes No

Please give reasons.

The direction of the review is overly focussed on ensuring both parents have a role in the child's life and not on the needs, wishes and safety of the child. This seems to be based on the view that where both parents are involved in the child's life outcomes for children are inevitably improved. We believe this is flawed and likely to lead to unsafe decision making.

Where there is continuing and entrenched hostility between parents and a history of abuse or domestic violence, there should be a presumption that contact may not be in the best interest of the child. Our view is that in these cases, the court should seek an appropriate expert assessment of domestic violence risk and impact and be more willing to bring cases to a conclusion with indirect contact until the child is able to make their own choices about contact with the non resident parent. Prolonged family court cases where the risks posed by the non resident parent are high and their parenting capacity too low to be meaningful, do little to support positive outcomes for children.

Question 10: Do you think a six-month limit with suitable exceptions, for all section 31 care and supervision cases should be introduced?

Yes No

What should those exceptions be?

The decision to move to court proceedings can be a turning point for many parents and greater flexibility is needed to allow parents to make the changes they may need to make. The Munro review has taken a step back from time limits finding these unhelpful and stifling of good practice and professional discretion. For example the much praised Family Drug Court could not operate under such a time limitation.

Respect proposes that the court takes a more pro-active role to ensure lead agencies provide timely and relevant support to allow parents to undertake work that will enhance their ability to be safe and appropriate parents.

Question 11: Do you agree the timetable for the child should be strengthened?

Yes No

What are the elements that need to be taken into account when formulating it?

While disagreeing with the six month limit, the needs of the child for stability need to remain central to the process. Mechanistic use of time limits is not the best way to achieve this.

Question 12: Do you think our approach to the strengthening of judicial case management is correct?

Yes No

Please give reasons.

Respect agrees with the aim but we do not want to see Judges having to focus on case management nor to be accountable for this. They should remain focussed on making the best decision for the child, not a speedy court process.

Question 13: What criteria should be used in the decision whether or not to appoint experts? And should the judge draft the letter of instructions?

Respect agrees that the judge should draft the letter setting out clearly what questions they require the expert to address. There is a pressing need to ensure that the expert is fit for the task the court is requiring them to undertake.

If the Family Justice System is to get value for money from experts, then they must be fit for the task asked of them. Respect has established a register of experts in domestic violence cases which requires each expert to submit to a regular peer review process to ensure that they are competent to undertake such assessments.

Respect hopes that other groups of experts will follow suit on this. Respect has seen too many expert reports in domestic violence cases that are poorly executed and undertaken by psychologists and other professionals with little training or expertise in domestic violence. These reports compromise the ability of the court to exercise its safeguarding function. We strongly urge the review to recommend that experts should be subject to some form of registration that is SPECIFIC to the role they will undertake and not viewing a psychologist as a "jack of all trades" able to carry out any kind of assessment without expertise and training in specialist issues.

Question 14: Under a proportionate working system, what are the core tasks that a guardian needs to undertake in care proceedings?

Question 15: Could there be a greater role for other dispute resolution services in support of the public law court process?

Yes No

Please give reasons.

The role for dispute resolution in public law seems constrained by the nature of public law work where parents are not so often in dispute with each other as disagreeing with the interventions of others. However, we are not opposed to dispute resolution services when appropriate, but we do not see where this approach adds value within the public law context.

Question 16: Do you have any other comments you wish to make on our proposals for public law?

Private Law (Chapter 5)

Question 17: Do you agree there is a need for legislation to more formally recognise the importance of children having a meaningful relationship with both parents post-separation?

Yes No

Please give reasons.

Respect strongly opposes this for the reasons cited above in Q9. We believe this is an overly simplistic view that does not take into account the needs of most families in private law contact disputes where there is a history of abuse or domestic violence. This seems to us the most common cause of prolonged involvement of the court in children's lives, where the court continues to consider repeated requests for changes and variations in contact arrangements. In cases where there is a history of abuse or domestic violence, the child does not wish contact and the non resident parent has taken no steps to address this abusive behaviour the court should bring cases to a resolution in the interests of the child.

Respect cannot see what value will be gained for children by this approach, it will prolong court involvement as the law tries to sustain unsustainable - and sometimes dangerous - contact arrangements. Just because a parent has a strong desire to be involved in the child's life does not mean that they have the capacity to provide meaningful, consistent, safe parenting.

Question 18: Do you agree with the proposals to remove the terms 'contact' and 'residence' and to promote the use of Parenting Agreements?

Yes No

Please give reasons.

Question 19: Do you agree that there should be a requirement to consider dispute resolution services prior to making an application to court?

Yes No

Please give reasons.

Requiring a consideration of dispute resolution seems perfectly sensible but the review appears to go beyond a consideration. Respect believes the proposals as set out will pressure parents into mediation when in a significant number of cases this will increase the risk of further abuse. Also, mediation is not a child centred process and we have serious concerns about the way this is presented in the review and the case management role given to mediators.

Question 20: Do you agree with the processes we outline for the resolution of private law disputes?

Yes No

Please give reasons.

The stress placed on mediation as a form of resolution in private law disputes and the vastly expanded role for mediators, while suitable for some families, raise enormous concerns for all agencies in the domestic violence sector.

Sir Nicholas Wall has previously warned about the problems of out of court agreements in contact disputes where there is a history of domestic violence. This proposal robs the court of its safeguarding role and hands it instead to poorly regulated mediators. This is the most alarming element of the review and we urge a more nuanced approach that does not assume that one size will fit all in family justice.

The review outlines expectations of mediators to case manage, identify domestic violence and assess power relationships between the couple with no safeguarding checks before mediation.

We are concerned about this for several reasons:

- we don't believe that mediators are the right people to decide on which cases are suitable for mediation - it is in their interests to support a move into mediation
- there is a considerable body of evidence from other jurisdictions that the vast majority of domestic violence cases are not suitable for mediation
- mediators currently do not have the skills to undertake this role in families where there is abuse or domestic violence
- mediation is not currently sufficiently regulated or accountable
- there will be little or no acknowledgement of abuse by the perpetrator as this will not be in their interests if the case goes to court
- not reaching a resolution at mediation will be seen as a failure, putting pressure on vulnerable parents to reach solutions that aren't sustainable or safe, putting children and young people at risk.

Respect would like to see an automatic exemption to mediation for any case where there are allegations of abuse or domestic violence so that these can be properly investigated by appropriate expert assessors enabling the court to exercise its safeguarding role.

Question 21: Which urgent and important circumstances should enable an individual to be exempt from the assessment process for Dispute Resolution Services?

If there is an allegation of abuse or domestic violence then this should lead to an exemption from dispute resolution. As previously noted (Q20) there could be the option for parents to opt in, if they believe this will be of use to them. This option should only be allowed if the proper safeguarding checks, safety planning and risk assessments have been undertaken, the needs and wishes of the children have been fully assessed and the mediator has specialist training in working with families with a history of abuse and domestic violence.

Question 22: What do you think are the core skills required for mediators undertaking an assessment?

The most valuable skill will be to know their limits. It is not uncommon for professionals to believe that they can "cure" all. Relate has taken the well considered view that couples counselling is unsafe in domestic violence cases. We would urge mediators to adopt a similar view regarding mediation. Solutions agreed in mediation where there is a history of abuse or domestic violence stand a high chance of failing. This is likely to create further costs, add to the delay in getting a resolution and further adding to the distress of children and young people. As stated previously, research is clear that mediation is not child focussed. In cases of abuse and domestic violence the safeguarding role of the court should not be given to mediators.

Question 23: Is there any merit in introducing penalties, through a fee charging regime, to reflect a person's behaviour in engaging with Dispute Resolution Services, including the court?

Yes No

The process as set out in the review does not have adequate safeguards for exempting parents from dispute resolution where there are allegations of abuse and domestic violence (which we hope will be rectified).

Without these exemptions being routinely and robustly administered, any proposal which penalises parents who do not fully engage with dispute resolution are likely to punish parents who have safety concerns and/or concerns about the other parent's parenting capacity. Ultimately it will punish parents who are trying to protect their children and runs the risk of bringing the whole process into disrepute.

It will put the rights of (alleged or evidenced) abusive parents (usually fathers) above the needs, wishes, safety and best interests of children and punish mothers for failing to participate. It will lead to more court hearings and create a further level of legal process where there is no need for one. Respect cannot see what this will add to resolving child contact disputes or producing good outcomes for children.

Question 24: Do you have any other comments you wish to make on our proposals for private law?

To summarise, Respect recommends that:

The Family Justice System change its view that it is always better that both parents are involved in a child's life. In some cases of abuse and domestic violence this just is not true. Instead the focus should be safe and meaningful outcomes for children.

The court and other personnel in the justice system should be more prepared to say no to child contact at an earlier stage in cases where there is a history of abuse or domestic violence, the child does not wish contact and the non resident parent has taken no steps to address this abusive behaviour, in the best interests of the child.

The value of expert assessments which inform a court's decision making in complex situations should be recognised. Respect's directory of professionals able to undertake assessments of domestic violence risk and impact should be referred to by the courts, when choosing an expert assessor.

Domestic Violence Perpetrator Programmes (DVPPs) which have passed Respect's risk and safe guarding audit and are registered with Cafcass as contact activity providers, should be available for parents who have been abusive or violent, giving them the opportunity to address their behaviour. Contact arrangements should be reconsidered post completion, but it needs to be acknowledged that in some cases further contact is not a safe or acceptable option.

There should be an automatic exemption to mediation for any case where there are allegations of abuse or domestic violence so that these can be properly investigated by appropriate expert assessors enabling the court to exercise its safeguarding role.

An understanding and awareness of abuse and domestic violence should be central to the training, procedures and decision making of the family justice system.

Implementation

Question 25: Do you have any comments about how these proposals might best be implemented?

The creation of a Family Justice Service would be a hugely complex process and should be undertaken with care and the required amount of time. The family justice system is under huge pressures and this needs to be recognised in any moves to reform. This cannot be seen as a resource neutral exercise and must come with an adequate level of investment to ensure success.

About you

Full name

Neil Blacklock

Capacity in which you are responding to this consultation exercise

General Public

With experience of the system:

- Mother
- Father
- Child
- Grandparent
- Other – please specify

- Person with no experience of the system – please specify

Professional

- Judge
- Magistrate
- Solicitor
- Barrister
- Social Worker
- Guardian
- 3rd Sector staff
- Expert
- Legal Advisor
- Mediator
- Court Staff
- Academic
- Other – please specify

Experience of child contact delivery and expert assessment in domestic violence cases

Date

14th June 2011

Company name/organisation (if applicable)

Respect

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Address to which this acknowledgement should be sent, if different from above