

Evidence submitted by NCH

NCH is a leading children's charity that runs more than 500 services for children, young people and families across the UK. Every year in our family support projects we work with thousands of children and parents who are going through the process of separation and divorce. NCH also operates eight mediation projects for separating parents and their children in England and Wales—projects for which, ironically, we are finding it increasingly difficult to secure Government funding, despite the significant public and political interest in this area. Finally, NCH has developed a website to help children whose parents are separating, which can be accessed at www.itsnotyourfault.org.uk

THE KEY AREAS THE INQUIRY IS INVESTIGATING ARE:

- Whether the family courts are being run effectively.
- Whether family court judges have sufficient powers.
- Issues surrounding delays caused by the current system.
- Whether people using the family courts are getting the service they need.

These four issues are closely related so our views about them similarly overlap to some extent. We are confining our responses to private law issues, though obviously NCH also has extensive practice experience of working with the courts in the context of public law (eg care proceedings).

Are the Family Courts being run effectively?

In NCH's experience there is no simple answer to the question of whether the family courts are being run effectively. Performance seems to vary significantly from one area to another. However, the following is a description from an NCH mediation project of practice in a city court where things seem to be running ineffectively:

The long delays caused by the Court process means 12 weeks or more go by when a Court Report is ordered. Often parents end up seeing a different judge with each application. Staff shortages and a lack of financial resources have seen CAFCASS officers taking on both public and private law cases, with public law taking precedence. The Courts are very old and space is very tight. Often there are no separate waiting areas, and this causes endless problems and distress to those waiting to go in. Parents in conflict are forced to hang around for up to one and a half hours in a very small area, which causes animosity even before they see the Judge. While parents wait to see the Judge, the two solicitors often try and talk to each other to negotiate a settlement before they are called. However a lack of space precludes this from happening appropriately.

The Court Clerks organise listings inefficiently. We saw four or five cases listed for the same time. This means the other four cases have to hang around waiting for their turn. We saw many cases where one party failed to attend, which meant that the case could not actually proceed and the Judge was forced to postpone.

I would suggest that all first directions are lumped together on one day—this is a short appointment. The Judge hears the situation and if the parties agree then an Order is made. If they can't agree the case should go on for a report.

Other NCH projects also commented specifically on the difficulties caused by the lack of appropriate waiting areas in family courts.

Do family judges have sufficient powers?

NCH feels that others are better placed than us to respond to this question. However, it is our experience that when one parent is being obstructive, Judges understandably tend to give them many opportunities to comply. There may be a six week gap between hearings and a different Judge often seems to hear the case on each occasion.

For us the problem isn't really that Judges lack sufficient powers to enforce orders: as a children's charity we endorse the view that it would be wrong for Judges to "punish" obstructive parents if this resulted in adverse consequences for the children, as it invariably would. The problems that come to court reflect the complexities of people's lives and there are no simple solutions to the conflicts between parents. An order for contact or residence alone cannot remove the animosity between the parents. The quality of the relationships between family members is something the courts cannot remedy with force or punishment, and so all too often family members are left to deal with the problems arising from difficult relationships on their own.

For NCH, the real policy challenge is to help parents to overcome the conflicts between them, in the best interests both of themselves and their children. We set out some ideas about how this can best be done in our answer to the fourth question.

What are the issues surrounding delays caused by the current system?

Delay is undoubtedly a major problem in the family courts, as we have already explained. Delay increases the acrimony between the parties and can also lead to great distress for the parent who is seeking redress, and for the children. In particular, we are concerned that in some cases the delays can result in contact arrangements which have clearly become inappropriate for the child being continued, because social workers are reluctant to alter them without the court's approval.

SOME OF THE FACTORS THAT CAUSE DELAY ARE:

Inefficiency in organising Court lists. We think Court Clerks should allot cases a set time, not just lump all cases together.

Delays are also caused by one or both parties failing to attend the Court hearing.

A delay of 12 weeks or more is not unusual while a CAFCASS Officer prepares and then files their report. The time set aside for the preparation of these reports should be much shorter, in our view.

In our view the same Judge should, wherever possible, see the parties for the duration of the Court process.

Early intervention should also be encouraged. All Court applicants should be given information about mediation, relationship counselling etc. At the moment this clearly doesn't happen.

We think it would be helpful if Magistrates Clerks and Judges were proactive in ensuring

mediation is considered, perhaps even requiring CAFCASS to give reasons when this is deemed not to be appropriate. One of our mediation projects reports that while it works quite closely with CAFCASS, it rarely receives a direct referral from the Court.

We believe that a significant proportion of parents attending a First Directions Hearing could be referred to mediation. This especially applies to those who are not entitled to public funding, since it is possible their solicitor has never told them about mediation, as they are not required to attend mediation appointments in the same way as are those seeking public funding. If more cases were referred to mediation then this might reduce delays.

It seems as if referrals for mediation are often dependent on whether the CAFCASS officer at Court is "mediation minded", since certain officers refer regularly, whereas others never do. CAFCASS managers need to be more proactive in keeping mediation in the forefront of Court Duty Officers' minds. Another NCH mediation projects reports that it periodically attends CAFCASS staff meetings and that this leads to mediation referrals increasing in the period after their visit. The same project reports a good rate of success with court referred cases. 75% of cases referred to it from court do not require a welfare report, with the parents either agreeing while in mediation or subsequently.

Are people who use the Family Courts getting the service they need?

It is clear to us that a significant number of people who use the family courts are frustrated by the delays and other problems in the system discussed above, and are ultimately disappointed by the service they receive. NCH believes there is a danger, however, of us having unrealistic expectations of what the courts can deliver: they are rarely able to resolve the deep-seated conflicts that underlie the difficulties that lead parents to come to court in the first place. We need to engineer a cultural shift away from seeing courts as the places where such disputes are resolved—something that is hard to do at a time when we seem as a society to be becoming more, rather than less litigious.

The Government has, to some extent, recognised this problem and in its recent Parental Separation Green Paper it proposes an increase in in-court mediation to help divert parents in dispute away from polarising court processes, so they can agree their own solutions. The draw back to this proposal is that by the time such parents reach court they are often already in entrenched positions, and "forcing" them to agree at the door of the court is probably unlikely to produce enduring agreements.

Many organisations that work in this field, including NCH, believe that what is needed is a far more systematic set of support services to help intact families, families that are breaking down and families that have separated, in recognition of the fact that separation is a process, not an event. We regret that the Government's Green Paper does not offer this strategic response. As we have outlined above, as part of this strategic approach more early intervention is required, to help prevent a cycle of unproductive court cases developing, with much more proactive use of mediation.

Last but by no means least, there is a crying need for more child-focused support services to help children whose welfare is being seriously jeopardised by the conflict between their parents. The extent to which children's voices are heard in key decisions about residence and contact is unclear. However, neither mediators nor solicitors routinely see children. [2] Moreover, the new Legal Services Commission contract for mediation does not pay for child consultation or liaison with Social Services! The research shows that both

professionals and parents are struggling to adjust to the relatively new concept of children as citizens, with rights to have their views taken into account.[3] It has been suggested that this has particular relevance in the context of contact: some argue that children who say they want contact are taken seriously, but those who refuse are not,[4] even if there are issues about their safety.[5] At present, children have limited opportunities to participate in contested court proceedings, generally via a report from a CAFCASS Children and Family Reporter. However, representation by a children's guardian or solicitor will hopefully become more common once the power to order it becomes law following the implementation of section 122 Adoption and Children Act 2002, planned for the end of 2004. NCH does not want to see cases needlessly going to court, but we strongly support the view that children should have the right of representation in those court cases where their best interests are at risk of being lost.

In the UK NCH has helped to pioneer models of mediation that are supportive of parents and appropriately inclusive of children. We believe more Government support is needed to help spread this good practice throughout the country.

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