

## **Evidence submitted by National Family Mediation**

National Family Mediation is a network of services around the UK that provide mediation to families that are experiencing separation and divorce. Our services are registered charities and work in the not-for-profit sector. All services are contracted to supply mediation with the Legal Services Commission. We have worked in this field for 25 years and have always been available to undertake work diverted from the court system. Prior to CAFCASS the majority of services had partnership agreements with local probation services via Family Court Welfare Services to provide mediation for families in the Court setting. Recently these partnership arrangements have been reduced as a result of a change in focus and budget constraints within CAFCASS.

Whilst the number of clients referred to mediation has increased since it became compulsory for those wishing to apply for public funding to attend a meeting with a mediator, Access to Justice Bill (Section 11 Funding Code) this only affects people applying for public funding privately funded clients or litigants in person do not necessarily know about the availability of mediation. Previously people were diverted from court through the partnership arrangement regardless of public funding status.

### **1. WHETHER THE FAMILY COURT SYSTEM IS BEING RUN EFFECTIVELY**

Timetabling at the onset of cases appears to work well but if there is a need for a full hearing there are often lengthy delays in listing and hearing the case with court and judicial availability restricted. For many families the fact that the final hearing is delayed, often by several months, can mean deterioration of family relationships whilst they await the outcome. This does not promote parental responsibility and does not enable families to conclude the emotional issues surrounding their separation. There is also no mechanism in the Court setting for alternatives to be used in the interim period with people relying on their solicitors or waiting to test the evidence of a CAFCASS report.

A frequent frustration is the change of judge at every hearing statements are rehearsed and re-rehearsed, different decisions made according to the particular judge on the day and there is no continuity of case management or decision making in the judicial process.

### **2. WHETHER FAMILY COURT JUDGES HAVE SUFFICIENT POWER**

The Children Act 1989 provides the Court with a whole range of options for dealing creatively with family disputes that can benefit outcomes for children. These do not appear to be used very creatively. For example the use of shared parenting until recently these were seldom used as it was felt there needed to be a high level of cooperation for the order to be effective recently however, views appear to have changed. Shared parenting acknowledges both parents as having responsibility for their children and places the onus on parents to take joint responsibility for their children's upbringing and welfare.

The issue of implacable hostility regarding contact is a perennial one and not easily solved. Punitive measures have been considered but it is difficult to image how a custodial sentence for one parent will benefit the children. It is however widely acknowledged that Orders made in the family court have little influence over a recalcitrant parent.

The Court could however be more active in directing people to alternatives such as mediation whether it is in a children's case or an FDR. Being in the Court process does not preclude mediation from being considered at anytime during the lifetime of a dispute. Court

direction and case management could be well used if judicial continuity were to be implemented.

In addition there is a need to consider ancillary relief and children's issues more comprehensively. Contact issues are difficult to resolve when life altering decisions about accommodation, income, financial support etc have yet to be made. These decisions do impact upon children's lives and need to be considered as a whole.

The implementation of the FLA 1996 made it a requirement for those wishing to apply for public funding to attend a meeting with a mediator to assess suitability for mediation and financial eligibility for public funding. As a result the route into mediation has changed. There is however currently no compulsion on the second party to the proceedings to attend an assessment meeting with a mediator as a result the first party to the proceedings issues a court application. At Court this is then presented as mediation having failed when in fact it has not taken place. The Court then timetables the case often adjourning for a CAFCASS report to be prepared and moving into hearing and contested evidence mode.

For private paying clients this is a particular issue as they often do not know that mediation is available and are reluctant to add to their costs with an additional service having instructed a solicitor. This effectively means that there exists a two tier system with mediation not being available to all.

Section 13 and 14 of the Family Law Act would have given judges more power to direct parties into mediation however this part of the FLA 1996 was not implemented

### **3. ISSUES SURROUNDING DELAYS**

Only 10% of the divorcing and separating population uses the Court to resolve its difficulties yet for that 10% achieving a resolution is a very lengthy affair. There will always be people for whom the Court is the only and necessary process for the vast majority however alternatives such as mediation may help to reduce the delays if it is actively considered by the court at all times during the lifetime of the case.

CAFCASS has of course had its difficulties since its inception and in some areas there continue to be back logs with private law cases waiting as long as 26 weeks for reports to be prepared, many of these cases could be referred to mediation in the interim however, with reduced partnership arrangements between CAFCASS and NFM services and complex issues of for-profit and not-for-profit providers there is confusion about who can be referred to whom.

There is now discussion about "front loading" the service CAFCASS provides. CAFCASS does not however have a remit to initiate work before court proceedings are initiated. Additionally whilst Courts appear to like the quick fix arrangement that currently exists through in-court conciliation procedures all the evidence suggests that agreements brokered in the shadow of the court are pressurized and frequently breakdown. Research confirms that agreements reached outside of the Court setting are more durable and lead to better outcomes for children. Part of the courts aim is to enable families to reach lasting agreements that meet children's needs.

### **4. WHETHER PEOPLE USING THE FAMILY JUSTICE SYSTEM GET THE SERVICE THEY NEED**

As stated earlier the system from beginning to end takes too long for families. There are often protracted negotiations that take place before proceedings are issued. There are several new initiatives being piloted FAINs, collaborative law and Family Resolutions Pilots are three examples. Much of this work replicates what National Family Mediation services already provide but are not being utilized to best effect. When in the Court setting timetabling and availability of resources to conclude matters can take many months. For children caught in their parental conflict this can be very damaging and alternatives to disputed adversarial proceedings are not considered as a matter of course.

Providing information that is easily accessible and readily available that empowers people to retain control of the difficulties in their lives is a serious challenge and requires a cultural change in thinking to the traditional view that solicitors and Courts alone will solve the problem.

National Family Mediation

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