



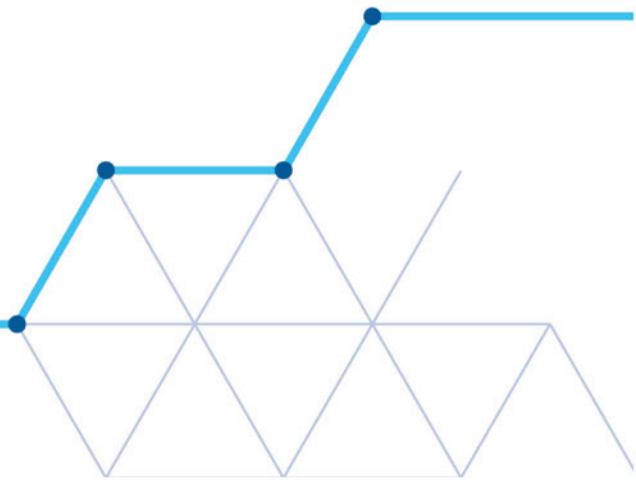
Ministry
of Justice

The implementation and delivery of the family court settlement conferences pilot

A process evaluation

Amy Summerfield and Irina Pehkonen
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1. Summary

Background, research aims and methodology

Settlement conferences are intended to provide an innovative and less adversarial approach to reaching decisions in family law cases. They originated in Canada where they are used to complement traditional litigation proceedings in both public and private family law. The conference provides an opportunity for a family judge (different to the judge managing the case) to facilitate and encourage collaboration and negotiation between parties of a case to help them reach resolution. The aim is to reach agreement by consent of all parties and thereby avoid the need for a contested final hearing. Although no formal evaluation of the model in Canada has been undertaken, positive feedback suggests that settlement conferences can enable parents to engage more meaningfully in discussions, focus all parties on the interests of the child and lead to the timelier resolution of cases.

To understand whether this approach could be valuable in the family courts of England and Wales, the judiciary and the Ministry of Justice implemented a small-scale pilot of settlement conferences in June 2016, following a judicially-led trial in the Liverpool Designated Family Judge (DFJ) area that started in June 2015. The pilot was supported by a number of guiding principles developed to underpin the approach, based the model adopted in Canada. It was initially introduced in three additional DFJ areas (Cardiff, Bristol and Central London). Due to low uptake in these initial areas, it was extended in January 2017 to all family courts that wanted to participate.

The pilot has been subject to a process evaluation led by Ministry of Justice Analytical Services. The aims of the research were three-fold: to explore how settlement conferences were implemented and worked in practice; to understand the views and experiences of judges and professionals involved in relation to the principles and delivery of the pilot; and to identify challenges, lessons learnt and good practice to inform a decision on the future of settlement conferences.

The process evaluation comprised both qualitative and quantitative data collection. A total of 33 in-depth interviews were carried out with a range of professional participants across the family judiciary, legal representatives, Cafcass guardians and local authority social workers. Data was collected by judges for each settlement conference that took place during the two-year evaluation period (between June 2016 and June 2018). This data included a brief description of the case, the outcome of the settlement conference, and estimated time spent on the conference and/or final hearing.

An action research approach was adopted, whereby emerging findings were shared with the project advisory group (made up of senior representatives of the judiciary, Cafcass, the legal profession and children's social care services) so they could agree actions to improve the model and delivery of the pilot on a timely basis throughout the project.

Findings from judicial data collection

Quantitative data collected from all pilot courts since the outset of the pilot (from June 2016 to June 2018) was collected and analysed to provide information on the number of cases that were subject to a settlement conference, the time required to prepare and facilitate them, and the immediate outcome.

Courts in ten DFJ areas undertook settlement conferences during the evaluation period. A total of 324 took place; most (259; 80%) were in the Liverpool DFJ area. Of those conducted in the other pilot areas, 45 took place in public law and 20 in private law cases.

Due to the substantially greater experience of facilitating settlement conferences in Liverpool, data from this DFJ area was analysed separately to avoid the risk of distorting the overall findings. In pilot areas outside of Liverpool, 36% of public law settlement conferences led to resolution of the case (where a final hearing was no longer required), and up to 76% narrowed at least some of the issues. In private law, 45% of settlement conferences led to the resolution of the case, and up to 85% narrowed at least some issues. The proportion of cases that were resolved during settlement conferences in Liverpool was higher; 52% in public law and 56% in private law cases.

Findings from interviews with professionals

The potential for settlement conferences as a positive and less adversarial way to reach decisions in family law cases was widely acknowledged by interviewees. The set-up of conferences varied according to the preferences of the judge and the facilities available in the court room, although most professionals described how the judge sits with the parents and addresses them directly. This less formal setting was considered by some to help parents relax and participate in the process.

The emphasis of the conference on facilitating open and direct communication between parties was identified as a benefit of the approach by representatives across all professional groups. Guardians and social workers said the opportunity to expand on their recommendations was helpful to progress the case, compared with standard court hearings where communication via legal teams created 'layers of separation' between parties. Judges and legal representatives

believed these open discussions enabled parties to focus on realistic options for the case. Professionals reflected that being able to speak directly to the judge gave parents more of a 'voice' in proceedings and was important for them to feel listened to and understood.

Interviewees said that settlement conferences could help parties engage with the decision-making of the court. Being able to discuss the issues of the case and focus on the shared interests of the child was seen to encourage parties to seek compromise, as well as having the potential to improve relationships between them compared with contested final hearings. Cafcass guardians said that some parents felt more in control by having a voice separate to their legal representatives, which could enable them to come to a decision themselves. Other professionals suggested that hearing the judicial and other professional's reasoning for their position carried weight with parents and meant they were more likely to understand the reasoning for, and engage with, the outcome of their case.

Nonetheless, concerns were raised by interviewees across all professional groups and some judges in relation to the implicit imbalance of power between parents and the judge in a settlement conference, and the subsequent risk that parents may feel pressured to make an agreement they were not comfortable with. Whilst judges recognised this and stressed the importance of adapting their style to mitigate the risk, interviewees reflected that parties could still be overwhelmed by the process and not feel able to challenge the authority of the judge. Legal representatives said that there was initial 'fear and scepticism' amongst the profession about the risk of coercion, and expressed concerns that their professional role could be compromised or side-lined within the conference. Most said, however, that their perceptions of the process had improved once they had personal experience of settlement conferences. Professionals said that the conferences they had been involved in had been facilitated fairly and appropriately by the judge.

Similar concerns were raised about whether parents had sufficient understanding of what settlement conferences were, and their potential outcome, to be able to provide informed consent to take part and participate meaningfully. Professionals cited several examples which suggested parents may be unclear about the distinction between standard court hearings and a settlement conference, and the implications this could have.

Such concerns were considered a particular risk for parents with specific needs, such as learning difficulties, substance misuse or mental health issues. Other interviewees felt that the vulnerabilities of parents in many family law cases, particularly in public law, meant that establishing informed consent was likely to be a challenge in the majority of cases.

Interviewees were keen to stress that not all parents and cases were suitable for settlement conferences, and the assessment of which type of case, or characteristics of parents that were appropriate was not straightforward. Settlement conferences for parents who required the support of intermediaries or the Official Solicitor were not considered appropriate as they were unlikely to be able to meaningfully consent and engage in the collaborative process. Judges tended to adopt a flexible approach in assessing cases for suitability. Overall, they argued that there were no set criteria that could be followed to determine the suitability of cases for a settlement conference, other than consent to take part.

Views on the appropriateness of cases for settlement conferences with a potential outcome of permanent removal of children from their parents were mixed. Professionals agreed that permanent separation is particularly difficult for parents to agree to, and legal representatives questioned whether, and how, a settlement conference could be meaningful if there were no options for compromise. Others stressed that settlement conferences did not allow for the legal 'checks and balances' that come as part of the scrutiny of evidence within a final hearing. Whilst judicial views were mixed, many did not consider them automatically unsuitable for the approach. Other professionals agreed that in some cases, where parents have accepted that they are unable to care for their children and that adoption is in their children's best interests, a settlement conference may be a useful forum to discuss and resolve peripheral issues of the case and allow parents to avoid a potentially distressing final hearing where they may be cross-examined and hear evidence.

A judicial skill-set based on specific interpersonal and communication skills was considered imperative to facilitating an effective settlement conference. Professionals said that the judge's role in establishing consent and understanding, and facilitating mediation between parties was particularly important, and felt that not all judges may have the specific skills or appetite to adopt the approach.

Areas for improvement

The evaluation identified several areas to improve the model and delivery of the pilot. The need for better and more consistent training and guidance was raised by professionals throughout the evaluation. Many said that they had little understanding of settlement conferences before attending one themselves. The information provided to parents was also considered inadequate, and meant that parents were reliant on the judge or their legal representative to explain the process.

Interviewees highlighted several misconceptions of the pilot amongst professionals and agreed that lack of awareness was a barrier to uptake of settlement conferences during the evaluation period. Professionals suggested that it would be beneficial for clarity and consistency about which cases to direct to settlement conferences. Some argued that assessment should take place earlier in proceedings to provide more time to prepare with the family. Some judges believed that settlement conferences should be offered as standard as part of the existing court process so all parents are given the same opportunity.

Discussion and implications

The evaluation presents implications to consider for the next steps for settlement conferences in family law. The potential of settlement conferences to facilitate direct and open communication between parties and enable parents to participate meaningfully in decisions related to their children highlights important issues for the family justice system overall. It raises the need to consider what else could be done to improve the experience and engagement of parents in proceedings and to ensure they feel heard and understood. The findings present similar implications in respect of the role of resolution-focused hearings in standard proceedings (the Issues Resolution Hearing in public law, and First Hearing Dispute Resolution Appointment in private law) to narrow and resolve cases that may not need to go to a contested final hearing. Further research to capture the views of parents and children and to establish the longer-term outcomes of settlement conferences would be beneficial.

Findings of this evaluation will need to be considered as part of a wider open discussion amongst stakeholders to inform a decision on whether, and if so, how, settlement conferences can provide a valuable additional tool in the family courts going forwards. This discussion could explore how the positively viewed aspects of settlement conferences could be incorporated into the current model of proceedings.

Any future development of the settlement conferences model will then need to address key concerns raised in the evaluation and consolidate learning from the pilot. Clear, comprehensive and accessible training and guidance for the judiciary and family justice professionals is required, to be developed in consultation with stakeholders, and be formally and effectively disseminated. Further development of face-to-face judicial training based on the specific interpersonal and communication skills required to enable parties to participate meaningfully could be considered for judges wishing to adopt the model. The information provided to parents may benefit from review, to include seeking feedback from parents and professionals to understand whether it is sufficiently clear and thorough on the settlement conference process and its potential implications.

2. Background

2.1 Background to settlement conferences

Settlement conferences are intended to provide an innovative and less adversarial approach to reaching decisions in family law cases. They originated in Canada where they have been adopted as a case management tool within both child protection and private family disputes in the family court since around 2000.¹ They are used for courts to consider as an option to complement traditional family law proceedings, and are voluntary. Settlement conferences provide the opportunity for a family judge (different to the judge managing the case), trained in the approach, to facilitate collaboration and negotiation between all parties of a case to help them reach resolution. The role of the judge is to 'level the playing field' for all parties, focus on the main issues of the case and guide outcomes in the best interests of the child. As parents may be apprehensive about speaking in traditional litigation settings, the settlement conference is intended to provide the opportunity to actively participate in a meaningful discussion. The aim is to reach agreement by consent of all parties and thereby avoid the need for a contested final hearing.

No formal evaluation of settlement conferences in Canada has been undertaken. However, feedback from judges and legal professionals suggest that the conferences can be a more positive experience for parents, who are better able to meaningfully engage in decisions and focus on the interests of their child, and may lead to quicker resolution of their case.² In child protection cases where the evidence points to separation of the child as the only viable outcome, resolution at the conference is considered to help parents avoid a difficult trial in a more respectful way.³

2.2 Context in England and Wales

Research finds that parents, overall, tend to report negative experiences of the family court in England and Wales. Parents in public law cases, which are brought by a local authority to protect children from actual or likely risk of significant harm, can experience proceedings as punitive and intimidating. Many are confused and feel excluded from what is happening.⁴ Parents in private law cases – those which deal with private issues following the breakdown

¹ Personal correspondence with Hon Justice R James Williams, Supreme Court (Family Division), Halifax.

² Ibid.

³ Hounsell-Gray, S. (2016) Settlement conferencing in child protection proceedings as practiced in Halifax, Nova Scotia, Canada.

⁴ Hunt, J. (2010) Parental Perspectives on the family justice system in England and Wales: a review of evidence. Family Justice Council and Nuffield Foundation.

of a relationship, such as how often the children spend time with each of their parents – can similarly report feeling intimidated by the court process, dissatisfied with the outcomes of their case, and believe that the process of litigation adds to hostility with the other parent.⁵

To explore whether the potential benefits of settlement conferences reported in Canada could be replicated in England and Wales, the previous President of the Family Division, Sir James Munby, encouraged the judiciary in the Liverpool Designated Family Judge (DFJ) area to pilot the model in July 2015. Feedback from judges in this area was positive, and suggested that that around seven in ten settlement conferences were successful in resolving at least some of the issues within the case.⁶

To understand whether the model could be developed as a valuable case management option more widely in the family courts, the senior judiciary and Ministry of Justice agreed to implement a small-scale pilot in June 2016. In his ‘14th View from the President’s Chambers’ in August 2016, Sir James Munby set out his support for the judicially-led settlement conference pilot and evaluation.⁷ This explained that the ‘ethos of the settlement conference is not to pressure parties to settle but to explore whether the candour and confidentiality of the process can help to reach common ground.’⁸

2.3 Principles of settlement conferences

A ‘Protocol as to Basic Principles’⁹ was developed to outline the guiding principles of the settlement conferences approach for the pilot. This describes the “role of the settlement conference is to facilitate discussion of the issues, clarify information, analyse issues and promote understanding between the parties with a view to helping to identify solutions (including solutions which may be addressed by the consent of the parties and not necessarily within the court process). It is the parties and not the judge who determines whether there is agreement on any of the issues and whether an order will flow following such agreement.”¹⁰

⁵ Ibid. Also see Perry, A. and Rainey, B. (2007) Supervised, supported and indirect contact orders: research findings. *International Journal of Law, Policy and the Family*, 21.

⁶ Family Justice Council – 10th Annual Debate: Settlement Conferences: Are they Article 6 compliant? Transcription of audio recording: <https://www.judiciary.uk/wp-content/uploads/2016/10/fjc-transcript-of-10th-annual-debate-1-dec-2016-updated.pdf>

⁷ 14th View from the President’s Chambers (August 2016): https://www.familylaw.co.uk/news_and_comment/14th-view-from-the-president-s-chambers-care-cases-settlement-conferences-and-the-tandem-model#.W9xOsmynzjY

⁸ Ibid.

⁹ Settlement Conferences Protocol as to Basic Principles with Annexes 1 and 2: <https://www.judiciary.uk/publications/settlement-conferences-pilot/>

¹⁰ Ibid.

Cases will be considered whether they are suitable to be offered a settlement conference at the Issues Resolution Hearing (IRH; in public law) or First Hearing Dispute Resolution Appointment (FHDRA; in private law).¹¹

The principles are based on the settlement conference model adopted in Canada and are included in full at Appendix A. In summary, these stipulate:

- All judges who facilitate settlement conferences will have received appropriate training, including observations of settlement conferences.
- Participation in a settlement conference is voluntary and all parties must provide written consent to take part. Any party can withdraw from the process at any time and this will not compromise their ongoing case.
- The judge who conducts the settlement conference should not be the case management judge¹² (unless all parties are agreed) and should not conduct the final hearing if the settlement conference does not resolve the case. Respective judges should not communicate with each other about the settlement conference.
- Anything which is said by the parties and the judge during the settlement conference is confidential. Any proposals made in the settlement conferences will not be referred to during the rest of the case unless the relevant issues or the case is resolved. This is except for any information disclosed that indicates a child is at risk of harm.
- Judges may engage directly with any of the parties during the settlement conference. This will always be in the presence of their legal representative (or in the case of unrepresented parties, Cafcass guardians where possible). In the event of any objection to the dialogue between the judge and a party, the judge will respect the legal representative's position without question.
- No pressure will be placed on any party to reach agreement during the settlement conference, and the judge will repeat this throughout the conference. Parties can withdraw from court during the conference to reflect and obtain advice from their legal representatives at any time.
- It is the primary role of the parties' legal representative to make sure their client is engaged in the process voluntarily, and has full understanding of the process.¹³

¹¹ The IRH is a hearing in public law proceedings. It is an opportunity to narrow the issues and to see if agreement can be made, avoiding the need for a full final hearing. A FHDRA is the first court hearing in a private family law case. It is held to assist the court in identifying issues between the parties and to see if it is possible for the parties to reach an agreement.

¹² In the family court it is considered good practice for the same judge to hear all substantive hearings of the case, known as the case management judge.

¹³ Settlement Conferences Protocol as to Basic Principles with Annexes 1 and 2: <https://www.judiciary.uk/publications/settlement-conferences-pilot/>

Whilst these principles were set out as the basis for the pilot, the precise model and delivery of settlement conferences was not prescriptive to allow judicial flexibility in the approach. Understanding how the settlement conferences were being implemented and worked in practice was a key aim of this process evaluation (see section 3.1).

A recent qualitative study that explored the views of 19 legal representatives through in-depth interviews suggested that the guiding principles were not being applied consistently by settlement conference judges. Legal representatives reported that there was variation by judges in the delivery of the conference, including clarifying the principles from the outset, attention to the consent-led nature of the conference, direct communication with parties and advocates, and the pressure applied to parties.¹⁴

2.4 Implementation of the pilot and evaluation

The pilot was initially introduced in three DFJ areas (Cardiff, Bristol and Central London) in June 2016, in addition to the existing model already adopted in Liverpool from June 2015. These areas were identified by Ministry of Justice Analytical Services against criteria based on caseload volumes, performance data and geographical location to ensure the pilot areas were reflective of a range of court and judicial experience. They were not intended to be representative of all courts.

An advisory group for the project was set up to oversee the implementation of the pilot and monitor emerging findings. The group comprised senior representatives of the judiciary, the legal profession, Cafcass and children's social care services, as well as policy officials from Ministry of Justice and Department for Education.

Due to low uptake over the first six months of the pilot, and the implications this had for addressing the research questions, it was agreed by the project advisory group in January 2017 to extend the pilot to all courts that wanted to participate. In total, ten DFJ areas took part, although the number of settlement conferences undertaken varied considerably across areas. Further details are outlined in section 4.

¹⁴ Brophy, J. (2019) Judicial approaches in settlement conference pilots in children cases: the views and experiences of advocates. Association of Lawyers for Children.

3. Research aims and methodology

3.1 Aims of the process evaluation

The pilot was subject to a process evaluation, whereby the process rather than the impact of the intervention was explored. The evaluation was led by Government Social Researchers in Ministry of Justice Analytical Services and was approved by both the Judicial Office and the HM Courts and Tribunals Service (HMCTS) Data Access Panel. It comprised both qualitative and quantitative data collection during the evaluation period of June 2016 to June 2018.

The aims of the research were three-fold:

1. To explore how settlement conferences were implemented and worked in practice in a small range of DFJ areas.
2. To understand the views and experiences of family judges and professionals in relation to the principles and delivery of settlement conferences.
3. To identify challenges, lessons learnt and good practice to inform decisions on the future of settlement conferences.

3.2 The ‘action research’ approach

Emerging findings from the evaluation were shared with the advisory group on an ongoing basis throughout the pilot to discuss lessons learnt and refine the model and delivery of the pilot. This feedback led to the development and later improvement of a package of guidance and training materials for judges and other professionals taking part in the pilot.¹⁵

3.3 Qualitative methodology

Qualitative research was undertaken in four phases throughout the pilot to capture the views and experiences of the range of professionals that took part. The first phase (May 2017) gathered views from across the judiciary, legal profession and Cafcass guardians. The subsequent phases focused on distinct professional groups: Cafcass guardians in September 2017; legal representatives in February 2018; and judges and local authority social workers in July 2018. A total of 33 in-depth interviews were carried out. The breakdown across professions is presented in Table 1.

¹⁵ See guidance and training materials on the Courts and Tribunals website. July 2017: <https://www.judiciary.uk/publications/settlement-conferences-pilot/> and September 2017: <https://www.judiciary.uk/publications/settlement-conferences-pilot-and-evaluation/>

Table 1 Interviewees by profession

Professional group	Number of interviews
Family court judge	9
Legal representative	10
Cafcass guardian	8
Local authority social worker	6
Total	33

The research team had a nominated HMCTS contact at each court that participated. Interviewees were recruited by asking these contacts to provide contact details of all professionals who had taken part in a settlement conference. These contacts were then followed up directly with the research team.

Interviewees were intended to reflect a range of experience in facilitating or participating in settlement conferences and were recruited from across regions taking part in the pilot as far as possible. Judicial interviewees ranged markedly in their experience of facilitating settlement conferences and were recruited from eight of the ten DFJ areas that took part in the pilot (detailed in section 4). Other professionals had experience of taking part in between two and six settlement conferences each. Legal representative interviewees were represented in six of the ten DFJ areas that took part. Due to the low number of settlement conferences in most pilot courts, social worker and guardian interviewees were only represented from Liverpool and Brighton DFJ areas. The range of experience in taking part in settlement conferences, both across DFJ areas and within professional groups has implications for the generalisability of findings to other courts and should be kept in mind when interpreting the findings.

Interviews took place either face-to-face or by telephone, based on the convenience of the interviewee. An example of an interview template used is at Appendix B (the template was amended slightly for each professional group). All interviews were audio recorded and transcribed verbatim for the purposes of thematic analysis. Findings in section 5 are organised and explored under key qualitative themes, and quotes from interviewees are used throughout to illustrate findings.

3.4 Quantitative data collection

Judges that took part in the pilot were asked to complete a short template for each settlement conference they facilitated during the evaluation period. These were collated and returned to the research team by the nominated HMCTS contact. The data requested included a brief description of the case, the outcome of the settlement conference, and the estimated time spent on the conference and final hearing (if relevant). The data collection form is at Appendix C.

4. Descriptive quantitative findings

4.1 Number of settlement conferences

A total of 324 settlement conferences¹⁶ took place during the pilot evaluation period between June 2016 and June 2018. Courts in ten DFJ areas took part.¹⁷ The majority (80%) of settlement conferences took place in Liverpool DFJ, and most were in public law cases. Table 2 presents a regional breakdown of the number of settlement conferences that took place.

Table 2 The number and regional breakdown of settlement conferences

	Public law	Private law	Total
North West (Liverpool DFJ)	180	79	259
Other pilot areas	45	20	65
<i>London</i>	12	5	17
<i>North East</i>	2	0	2
<i>South East</i>	22	14	36
<i>South West</i>	6	1	7
<i>Wales</i>	3	0	3
Total	225	99	324

Judges recorded that most settlement conferences were suitably referred. In cases that judges assessed as unsuitable, the reasons recorded included because there was no scope for compromise, parents were unwilling to negotiate their position, or the conflict was intractable. In a very small number of cases judges reported that a case referred to them for a conference was unsuitable because parents were not clear the conference was voluntary, or because there were issues within the case that required the cross-examination and scrutiny of evidence in a final hearing.

¹⁶ As there was no way of checking the number of forms received against the number of settlement conferences that took place, the actual number of settlement conferences during the pilot may have been higher if forms were not completed each time.

¹⁷ Settlement conferences were undertaken in (and forms were returned from) the following DFJ areas: Liverpool, Cardiff, Central London (the Central Family Court), West London, Devon, Bristol, Brighton, Leeds, Milton Keynes and Guildford.

4.2 Outcomes of settlement conferences

Judges were asked to record the outcome of each settlement conference they facilitated. Resolution of the case meant that a final order was made and the case was no longer listed for a final hearing. In other circumstances, some of the issues for resolution in the case (such as contact arrangements) may have been agreed (with or without a supporting order) but the case still progressed to a final hearing to finalise remaining issues. Forms were completed after the settlement conference had taken place and therefore this data cannot provide any indication of whether the outcome of the conference had sustained over a longer period.

Due to the substantially greater experience of facilitating settlement conferences in Liverpool, data from this DFJ area was analysed separately to avoid the risk of distorting the overall findings. In pilot areas outside of Liverpool DFJ area, 36% of settlement conferences led to resolution of the case, and up to 76% narrowed at least some of the issues. In private law, 45% of settlement conferences led to resolution of the case, and up to 85% narrowed at least some of the issues. The proportion of settlement conferences that led to the resolution of cases in Liverpool was higher for both public law (52%) and private law cases (56%).

Tables 3 and 4 present the breakdown of these outcomes by public and private law cases, for Liverpool DFJ and other pilot areas. All quantitative findings are self-reported and based on small samples and should therefore be interpreted with caution.

Table 3 The outcome of settlement conferences in public law cases

	Resolution	Order made, but not resolved	No order but issues narrowed	No order, no narrowing of issues
Liverpool DFJ				
Settlement conference outcome	94	17	36	33
Percentage (based on 180 cases) ¹⁸	52%	10%	20%	18%
Other pilot areas				
Settlement conference outcome	16	3	15	11
Percentage (based on 45 cases) ¹⁹	36%	7%	33%	24%

¹⁸ An additional four cases were assessed by the settlement conference judge as not suitable for a settlement conference and 23 were vacated.

¹⁹ An additional two cases were assessed as not suitable, and two were vacated.

Table 4 **The outcome of settlement conferences in private law cases**

	Resolution	Order made, but not resolved	No order but issues narrowed	No order, no narrowing of issues
Liverpool DFJ				
Settlement conference outcome	44	7	6	22
Percentage (based on 79 cases) ²⁰	56%	9%	8%	28%
Other pilot areas				
Settlement conference outcome	9	2	6	3
Percentage (based on 20 cases) ²¹	45%	10%	30%	15%

²⁰ An additional four cases were assessed as not suitable and ten were vacated.

²¹ One additional case was assessed as not suitable.

5. Qualitative findings from in-depth interviews with professionals

The qualitative research sought the views and experiences from a range of professionals that took part in the pilot, including the judiciary, Cafcass guardians, local authority social workers and legal representatives. The findings presented in this section summarise common themes across the interviews, as well as drawing out specific perspectives from individual professional groups. As most of the settlement conferences took place in public law cases, the qualitative findings draw mainly on public law experience. Interviewees were not asked to make a distinction between public or private law cases, although specific issues relating to family law type are drawn out where relevant.

5.1 The potential of the settlement conference approach

Enabling direct and transparent communication

The set-up of conferences varied according to the preferences of the settlement conference judge and the facilities available in the court room. Most professionals described how the judge would come down from the bench to sit opposite the parents and address them directly, sometimes with professional parties sat behind the parents. Professionals reflected that this less formal setting helped parents to relax and engage in the process.

The emphasis of the conference to facilitate open and direct communication between all parties was identified as a key benefit by all professional groups. The dialogue was described as more informal than standard court hearings, and social workers said that there was much more emphasis on them being communicated with directly.

Guardians and social workers believed that the settlement conference gave them the opportunity to better explain their viewpoints, including any disagreements between the parties. The opportunity to expand on their reasoning and justify their recommendation in an open and conversational setting was seen to progress the case, compared with standard court proceedings, whereby communication via legal teams created 'layers of separation' between parties.

Legal representatives said that facilitating open communication could enable parties to be clearer about the realistic options for the case.

“Well, the main benefit is there can be more openness and transparency in discussions in relation to what can be achieved.”

Legal representative

Similarly, some judges believed that because they were not the case management judge (and therefore also not the judge for a potential final hearing), it meant they could be more open with parties during the conference about the likely outcome of a case. This was considered helpful in guiding a resolution, particularly in cases with clear evidence of the likely outcome.

“At IRH you have still got all the dynamics of a court hearing, you have still got barristers at the front, battle lines drawn in the sand, people who are not being sensible. They think that they can prove this or prove that, somehow or other the case is going to go differently to the way all the evidence points.”

Judge

Professionals reflected that being able to talk directly to the judge encouraged parents to take part in the conference and enabled them to have more of a voice in proceedings. Judges considered that this was one of the most important benefits of the settlement conference approach compared with standard court hearings. They believed that parents being able to talk freely about the reality of their situation and express their point of view was helpful in making sure they felt listened to and understood.

“My view is the rationale has got to be a more humane and sensitive and sensible approach to family justice where the people who really matter, who are the parties, are given a different kind of opportunity to make their case known and to have it considered sensitively by a judge.”

Judge

Other professionals suggested that the settlement conference approach could be empowering for parents. Whilst the views of legal representatives were mixed, some said that their clients had found it helpful to speak openly in the settlement conference. Guardians reflected that parents may feel more in control by having a voice of their own, separate to their legal representatives.

“Parents in both the settlement conferences I’ve attended have certainly felt that they’ve had a stronger voice in the presence of the judge, which I think has been quite empowering for them.”

Guardian

Cafcass guardians provided some examples where parents reported positively about their experience at the settlement conference. One recalled a mother who said she felt she was ‘speaking with another woman’ rather than a judge. Some professionals, however, suggested that parents could feel uncomfortable speaking directly to the judge (detailed further in section 5.3).

Parental engagement in decision-making

The less formal nature of settlement conferences and the facilitation of open communication was considered to help improve the engagement of all parties in the decision-making process of the court. Professionals, including judicial interviewees, believed that discussing the main issues of the case and focusing on the shared interests of the child was beneficial in helping parties seek compromises and supported mutual decision-making. It was also suggested this could improve relationships between the parties, particularly compared with contested final hearings which could create further tension or conflict.

Professionals considered that hearing the judge explain the reasons why the court might make a certain decision in their case carried a lot of weight with parents. Examples were provided whereby the judge openly challenged the reasoning of the Cafcass guardian and/or the local authority in the settlement conference. This was seen as valuable for building the parents’ trust in the objectivity of the judge, who is observed as listening and challenging the position of all parties. Some professionals believed this helped parents understand and accept the reasoning of the likely outcome of their case, compared with an order that had been ‘forced upon’ parents by a judge.

“It allows them to answer back as well and say if they don’t agree, and there can be discussion between the judge doing the settlement conference and the party.”

Judge

Cafcass guardians were positive about the ethos of settlement conferences to move away from an adversarial approach and explore how decisions in family law cases could be made differently. Some felt enabling parents to be directly involved in the discussion could help

them come to a decision themselves. One described settlement conferences as ‘empowering families to come to the right decision on behalf of their children.’

Legal representatives explained that compared to litigious standard court hearings, parties were generally aware that in a settlement conference they would be asked to make compromises and be expected to explore ways to progress the case. Some described it as a more inclusive approach, which helped parents to be more involved and on an ‘equal footing’ to the professionals in the court.

The resolution of cases without a contested final hearing

Some interviewees reflected on the potential of settlement conferences to narrow or resolve cases before a final hearing. Some said this was important because it could mean an earlier decision for the child, as well as saving court and judicial time by avoiding a contested final hearing. Other interviewees said they were unclear of the distinction in terms of the potential to resolve a case between a settlement conference and effective use of other resolution-focused hearings (an IRH in public law or FHDRA in private law); the purpose of which are to identify, narrow and resolve the issues of a law case, where possible. They argued that if facilitated by a skilled judge, the IRH or FHDRA could resolve the case in the same way a settlement conference could. The implications of this are discussed further in section 6.2.

“Cases that go to settlement conference could conclude at IRH anyway.”

Guardian

It was reported that the time between the scheduling of the settlement conference and the conference itself could be helpful in narrowing issues. Some social workers and judges explained that the parties are often unable to come to an agreement at the IRH, but having time to reflect and understand their circumstances meant they were in a better position to make an agreement by the settlement conference. Several examples were provided where parties had resolved the issues between themselves before the conference took place.

Some professionals suggested that reaching resolution in a settlement conference meant parents could avoid the potentially distressing experience of being cross-examined within a final hearing. This finding was balanced by the views of other professionals in relation to making sure there was appropriate legal scrutiny of the evidence in a case (discussed further in section 5.3).

“[The settlement conference provides] an opportunity to kind of talk from their perspective around what they want in a maybe less stressful way rather than sitting on the stand having to give evidence.”

Social worker

In settlement conferences that did not reach a resolution, professionals said that the opportunity to discuss the case could still lead to narrowing of some of the issues, or identify further issues that needed to be resolved, which could be helpful for the case when it reached a final hearing.

5.2 Assessing the suitability of settlement conferences²²

Interviewees were keen to stress that not all parents and cases were suitable for settlement conferences. The assessment of which type of cases, or characteristics of parents, that were considered appropriate to take part was not straightforward.

Judges tended to adopt a flexible approach and explained that the number of complex factors in family law cases could make it very difficult to standardise criteria, other than consent to take part. They considered that flexibility was more important to address the emerging issues in a case. Some argued that positive assessment by the case management judge that the case was appropriate, as well as parties being willing to participate, was justification alone that a case was suitable. Other judicial interviewees went further and argued that settlement conferences should be offered in all cases because they provide the opportunity to facilitate more creative solutions.

“I think it’s suitable if somebody agrees to try and that’s my premise really ... if we started to say, “This case is suitable/this case isn’t suitable,” we’d be closing down an opportunity to people and I think that might even become discriminatory. So, every case is suitable but they self-select in the end by the consent process.”

Judge

Characteristics of parents

Professionals tended to agree that any type of case where parents required the support of intermediaries or the Official Solicitor should not be referred to a settlement conference. The lack of ability to provide meaningful consent and to engage in the process meant that

²² The judicial data collection exercise included an assessment of whether the case was suitably referred to a settlement conference. See section 4 for analysis of this data.

settlement conferences were not seen as appropriate in these circumstances. Legal representatives cited cases where clients had intermediaries acting for them and had still been referred to a settlement conference because the parties had agreed, and argued that there needed to be better consideration about the ability of parents to effectively participate in the process. Some judicial interviewees, on the other hand, believed that these cases were not automatically unsuitable but took the view that they and the legal advisor would need to be satisfied that parents were able to give fully informed consent.

There were similarly mixed views on whether settlement conferences were appropriate for parents with specific needs, such as mental health issues, substance misuse or learning difficulties. Some professionals believed that these parents could be more susceptible to pressure to make an agreement and therefore the approach was not appropriate. Others suggested that the inherent vulnerability of parents in many public law cases meant it was difficult for many to participate meaningfully (see section 5.3 for a more detailed discussion). Judges acknowledged this but believed it was their responsibility and that of the legal representatives to ensure parents understand and engage in the process, as well as their role to reiterate that there is no pressure to reach agreement during the conference.

The ability and willingness of parties to negotiate their position was considered an important factor when assessing suitability. Cases where parents refused to negotiate (or had been given legal advice not to shift their position) presented barriers to the potential of the settlement conference in reaching agreement. Examples where the ability to negotiate were hindered included cases where the relationship between the social worker and parents had broken down entirely or where separated parents were in entrenched conflict with each other. Nevertheless, some interviewees did cite examples where some such cases reached agreement in the settlement conference.

Type of case

Private law cases with likely outcomes of Special Guardianship Orders and Child Arrangement Orders (such as who a child should live with or spend time with) were generally considered most suitable for the approach. Public law cases where children may return home but local authorities are required to assist the family with supervision arrangements were also often considered appropriate.

Views on the suitability of cases with a potential outcome of the permanent removal of children were mixed. Most professionals felt that it was extremely difficult for parents to accept and agree that permanent removal is in the best interests of their child. Legal

representatives questioned whether, and how, a settlement conference could be meaningful if there were no options for compromise.

“Sitting here as a lawyer, I think I would be very uncomfortable, for instance, doing a settlement conference where the plan is one of adoption with no post-adoptive contact because there is nothing to discuss or settle or agree on. It’s very stark.”

Legal representative

Judges said that cases where the local authority plan is for adoption were less likely to be referred to a settlement conferences and agreed that they presented particular challenges. Whilst some judges were not comfortable with facilitating settlement conferences in these cases at all, others did not automatically consider them unsuitable.

“I think there can be no absolute rule but I think it is difficult for a parent in such [a] situation to say, yes, I’ll come along to the conference and essentially agree to my children being the subject of placement orders.”

Judge

Other professionals agreed that, whilst these cases were particularly difficult, they identified examples where a settlement conference had worked well when parents had accepted that adoption was in the best interests of their child. They described how the settlement conference judge expressed understanding and empathy for their situation. Reaching resolution at the conference also meant that parents could avoid a potentially distressing experience of being cross-examined if they chose to give evidence in a contested final hearing.

“[Using a settlement conferences in some adoption cases] prevents the parents ... having to go through what’s really a traumatic process of a final hearing and hearing the evidence ... where you’ve got parents maybe who accept the fact that they are not able to care for their child.”

Social worker

Judges similarly reflected on cases where parents had understood that their children were unlikely to be returned to their care and had expressed their preference not to have a final hearing. Some judges believed that if parents could consent to the process, and given an opportunity to reflect on the agreement, that cases with a plan for adoption can be managed appropriately in a settlement conference. Judges explained that settlement conferences

provided the opportunity for them to explore the local authority's care plan for adoption, as well as encouraging parents to focus on the best interests of the child.

"Parents don't want to sometimes be subjected to cross-examination at a final hearing when they themselves know that they haven't been able to resolve substance abuse issues, perhaps domestic violence issues and know that there are all sorts of documents and evidence against them and recognising, very reluctantly, that they're probably not in a position to care for their children."

Judge

Social workers stressed that the decision to plan for adoption is made after all other options have been explored and ruled out. They therefore believed that the likelihood of the settlement conference changing the local authority's recommendation for adoption was limited and would be reliant on approval from the local authority decision-maker.

Cases where the plan is for adoption but there remains the option of agreeing contact arrangements with birth parents were considered conducive to the settlement conference approach. These could include adoptions by the child's extended family. In these cases, social workers said they could seek to understand the position of the parents in advance to help facilitate agreement in the conference.

Professionals, including the judiciary, agreed that cases with domestic abuse allegations were neither suitable nor appropriate for settlement conferences because of the likely intimidation of witnesses that would prevent meaningful mediation. Cases with non-accidental injury and sexual abuse allegations were also described as unsuitable.

Judicial skills

Specific interpersonal and communication skills were considered necessary for judges to facilitate an effective settlement conference. Interviewees felt, overall, that not all judges would have the required skills to facilitate settlement conferences, and some may not be keen to adopt this approach.

"I required very different skills, non-intellectual skills in a way; personal skills, just trying to have what appeared to be ordinary sensible conversation with someone rather than simply make some ruling rather remotely from the parents up on the bench."

Judge

Interpersonal skills that enabled the judge to form a rapport with the parents was important to make sure parents understand the process and the reasoning for the likely outcome of their case. This included explaining why their views may be incongruent to the evidence; to make sure parents are (and believe they had been) heard; and supporting them to reach a decision in their children's best interests.

Some judges said they found communicating directly with parents a challenge because it is not necessarily standard practice in court. They said that they must adopt a calm and patient approach, and be careful not to apply any pressure on parents to agree with them.

"[It] requires the ability to analyse issues with the parties in a clear and analytical way and not to put pressure but to focus on welfare with them and empower them to make decisions if they want to and if they can."

Judge

Judges overall felt that facilitation should not be 'formulaic' so they could adapt their style to the individual needs of each party and case. Nonetheless, interviewees agreed that setting out the guiding principles at the outset was key to making sure parents understood the nature and process of the conference. This included reminding all parties that the conference is a consent-led and confidential process which meant cases should go to a contested hearing unless all parties were comfortable making an agreement, and the settlement conference would not be referred to in any final hearing. Some judges asked all parties and professionals what they hoped to get from the conference which helped parties feel at ease and encouraged open dialogue.

5.3 Concerns and risks with the settlement conference approach

Imbalance of power

Representatives from all professional groups raised concerns about the perceived unequal balance of power between parents and the judge in a settlement conference. Judges recognised that it was important to adapt their style in facilitating the conference to suit the needs of all parties. There were examples of judges trying to address this power imbalance, such as stepping down from the bench and using first names. Social workers said this was helpful in breaking down barriers. Most legal representatives said that the settlement conferences they had taken part in had been facilitated fairly by the judge and enabled all parties to participate effectively.

“Now, you can try and remove some of the inequality by the way that you deal with them but they know that you’re the judge... we have to be very, very careful because we do have power and authority that we don’t put pressure on people because even if you say you’re not, by the very fact that you’re a judge, it’s implicit.”

Judge

Nevertheless, some judges and other professionals expressed concern that an imbalance of power was implicit. They highlighted the risk that settlement conferences can be intimidating to parents, who could be overwhelmed by the process and not feel able to challenge the authority of the judge. Guardians raised the risk that removing the ‘protection’ of the legal representative could lead to parents coming to a decision that otherwise they would not have agreed to.

“The influence and the position that you have as a judge in that room stays with you and so I think that there is some pressure involved, whether we recognise it or not.”

Judge

The statutory 26-week timeframe for the completion of care and supervision cases was highlighted as a potentially exacerbating factor of this risk. Some interviewees were concerned that settlement conferences may be inappropriately used to ‘rush’ the resolution of cases to meet the timeframe, which may include the risk of pressurising parents to agree. Conversely, others were concerned that holding a settlement conference could lead to cases extending over 26 weeks if they did not settle. Examples were provided where parties wished to change their solicitor after they had disagreed with the advice they were given at a settlement conference, which had led to delays in the case.

Understanding and ability to consent

Professionals cited concerns around the ability of parents to understand and provide meaningful consent to participate in the process. Consent to take part was sought from parents by their legal representative or the judge at the IRH and again at the beginning of the settlement conference. Cafcass guardians raised some concerns about seeking consent at the IRH because parties may be feeling anxious and find it difficult to retain information during court proceedings. Overall, professionals agreed that there was insufficient information for parties to properly consider taking part in a settlement conference and said further information for all parties would be beneficial. This is discussed further in sections 5.4 and 6.

Professionals provided examples of situations which had led them to question whether parents understood what settlement conferences entailed. Some legal representatives raised the concern that this could lead to parents agreeing to an order against their legal advice. One Cafcass guardian, for example, said it was evident that parents in one case did not understand the confidential nature of settlement conferences because they later referred to the conference during their final hearing. A social worker described two cases where parents contested the local authority plans for adoption and wanted to hear evidence and ‘have their say’ but agreed to take part in a settlement conference. This had led them to question whether these parents had fully understood what the settlement conference was.

“Parents need to know what they are consenting to and, if not, it can actually be quite an oppressive exercise.”

Social worker

Professionals considered the risk of lack of understanding and ability to consent as a particular issue for parents with specific difficulties such as learning disabilities, mental health problems, substance misuse and experience of domestic violence. The assessment of whether cases with vulnerable parties were suitable for settlement conferences was mixed (as outlined in section 5.2). Some Cafcass guardians also questioned whether litigants in person in private law cases could provide valid consent to take part as they would not have a legal representative to explain the process.

Concerns in relation to legal and representation issues

Legal representatives described initial ‘fear and scepticism’ within their profession about settlement conferences, primarily due to perceived imbalances of power and the risk that their clients could be coerced into agreeing something they may not otherwise have done so. Most legal representatives interviewed reported that their perceptions of the process were more positive once they had experience of them, although many still held reservations, particularly in relation to which cases were suitable (as outlined in section 5.2).

“I was one of those lawyers who were extremely concerned and felt that I wouldn’t be advising any clients to embrace settlement conferences ... but as they’ve evolved, here I am now quite... you’re likely to find me being the lawyer who says, hey, this looks like it’s a case suitable for a settlement conference.”

Legal representative

Some professionals reported that settlement conferences did not allow for the legal 'checks and balances' that come as part of the scrutiny within a standard court hearing. Guardians and legal representatives, for example, suggested that a lack of thorough assessment of the evidence and cross-examination of witnesses could lead to less robust decisions in court.

Some legal representatives were concerned that their role could be professionally compromised in a settlement conference. They explained that they faced a difficult balance between encouraging their client to engage and participate in the conference to reach a resolution, whilst not appearing to go against what the client may have previously instructed. This carried the risk that parents may not feel supported by their lawyer and could compromise relationships in cases that went on to a final hearing.

Direct communication between parties and the judge in a settlement conference meant legal representatives adopted a more observatory than participatory role. Many solicitors described their role as 'side-lined' or 'marginalised' in settlement conferences. Some were uncomfortable that clients were speaking on their own behalf.

"Your client is obviously exposed because they are speaking directly to the judge in a way that they wouldn't normally do and you are not getting the chance to filter and finesse their views into what they actually mean rather than speaking in the language that they use more informally... from a lawyer's perspective settlement conferences are very passive but quite an apprehensive process."

Legal representative

Nevertheless, legal representatives were clear that their professional duties to their client remained the same in a settlement conference. Duties towards their clients included ensuring only cases that could reach sensible compromises should be put forward for a settlement conference; preparing their client for the conference and making sure they understood the process; assisting their clients to reach an agreement; and objecting to proposals that were not appropriate.

Some guardians, similarly, said that they felt constrained in a settlement conference and found it difficult to represent the young person fully. Some guardians and social workers believed that judges allocated more weight to the views of the parents in a settlement conference, over the needs of the child, and felt that guardians and local authorities should be given more of a voice.

None of the professionals interviewed gave examples of cases where children had attended a settlement conference, although guardians reported four occasions where older children prepared statements or a recording for the conference. This was felt to be a helpful start to negotiations.

5.4 Areas for improvement

Professionals identified several areas to improve the process and delivery of the settlement conference model. These suggestions were shared with the project advisory group on an ongoing basis and most led to actions in response. The implications of these are developed further in section 6.

Training and guidance

The need for better and more consistent training and guidance was raised continually throughout the evaluation. The project advisory group responded to this concern by developing written materials and a judicial training video, although it was still raised as a concern in the most recent qualitative interviews.

Views on the availability of training to social workers were mixed. Some mentioned that they had received no training nor seen any guidance whereas others said they had attended events by local judges or local authority solicitors to explain the concept and processes. Overall, most social workers had little understanding of settlement conferences before attending one themselves, and had been unsure of the process even if they had read the available guidance. They called for further training and online guidance materials. Guardians agreed that additional face-face learning would be beneficial to consolidate learning from the pilot and share good practice.

Guidance provided to legal professionals was varied. Some, but not all, reported informal conversations with judges or they had received materials via email. Most legal representatives said that they only received information about settlement conferences through other professionals that had previously taken part or from the judge when they attended their first conference. They called for specific guidance outlining their role in settlement conferences.

Information for parents

Concerns related to parental lack of understanding of the process are described in section 5.3. Professionals, most notably guardians, felt there was insufficient information provided to

parties who were overly reliant on the judge or legal representatives to explain the process. It was proposed that clearer guidance for parents, including an accessible brochure that explains the settlement conference approach and emphasises the consent-led nature of the process would be particularly helpful. In response, the project advisory group developed a leaflet for parents.²³

In addition to written guidance, professionals considered that parents may need additional support in the settlement conference itself so they are able to engage effectively in the discussion. Some social workers suggested that the Personal Support Unit²⁴ could provide a valuable role in helping litigants in person in private law cases to understand the settlement conference process.

Awareness

Representatives from all professional groups identified misconceptions about the pilot – for example, the distinction between a settlement conference and an IRH – and felt that the lack of awareness was a barrier to uptake. It meant that settlement conferences were not considered as an option for appropriate cases in some areas, particularly in private law cases which are more likely to be heard by magistrates and involve litigants in person.

Judges reflected that promoting the pilot had presented a significant challenge, and had relied on the goodwill of those involved. Some suggested that raising awareness of the pilot (and any future model) should be a formal process, with dedicated resources and clear allocation of responsibilities.

Assessment of suitability

Some judicial interviewees believed that the settlement conference approach should be established as part of the standard court process, otherwise this could lead to inconsistent access for families. This could involve introducing a formal requirement to assess the suitability of a settlement conference at an IRH, and recording why a conference was not deemed appropriate if it was not listed.

Professionals thought that there should be more consistency about which cases to direct to a settlement conference. Guardians and social workers assessed that they could play an

²³ See 'Information leaflet for parties': <https://www.judiciary.uk/publications/settlement-conferences-pilot/>

²⁴ The Personal Support Unit (PSU) is a charity that provides support to people who represent themselves in court.

important role in determining whether a family is suitable. They argued that this assessment could be built in earlier in the process, such as the Case Management Hearing²⁵ rather than the IRH, to enable professionals to prepare the family earlier. Guardians reiterated that the settlement conferences that had been the most successful had been those where they had sufficient time to explain the process and prepare the family.

To mitigate some of the concerns in relation to perceived pressure in cases with a plan for adoption specifically, one judge suggested it might be appropriate to deal with these cases in 'two-stage' settlement conferences, with a 'cooling-off period' in between. This would allow parents a chance to reflect and for the local authority to seek approval from their decision maker. They considered this could further the engagement of parties in the settlement conference and address the potential risk that any agreements are not informed or consensual.

Joint working and communication

Professionals identified issues due to poor communication about the scheduling of settlement conferences. Examples were provided where guardians were not told of settlement conferences being arranged, or not informed in a timely way to enable them to prepare, submit reports on time and participate effectively in the conference. Better communication between professionals in relation to the scheduling of settlement conferences in some areas may therefore be required. Legal representatives suggested that it would also be beneficial to have statements from all parties and a schedule of issues to work through in advance to help participants focus on the key issues.

Logistics

Guardians said that the unavailability of judges trained to facilitate settlement conferences meant that it was sometimes difficult to schedule them in a timely way, and as a result, IRHs were listed instead. Examples were given of two cases where the case management judge facilitated the settlement conference because there were no other trained judges available.

Judges said that it was a challenge to find court rooms that were suitable to facilitate settlement conferences because not all provide the space for all parties to sit at the same level or around the same table.

²⁵ This is usually a short hearing at the beginning of a public law case that sets out procedural and practical issues of the case, such as the timetable and evidence requirements.

6. Discussion and implications

This section presents a summary and discussion of the main findings of this process evaluation. The key themes present wider implications in relation to the management of family law proceedings overall, as well as specific lessons for the settlement conferences pilot. It will be important to consider the wider implications for the family justice system in considering appropriate next steps for settlement conferences.

6.1 Key messages

A total of 324 settlement conferences in courts across ten Designated Family Judge (DFJ) areas took place during the two-year evaluation period; 80% of these were in Liverpool. Most settlement conferences led to a narrowing of at least some of the issues. Over a third (36%) of public law and almost half (45%) of private law settlement conferences in courts outside of Liverpool led to resolution of the case. The proportion was higher in the Liverpool DFJ area, which may reflect the greater experience of delivering the model.

Judges and other family justice professionals were broadly positive about the potential for settlement conferences as an alternative approach to reaching decisions in family law cases. The benefits identified were based on providing a less formal setting that encouraged open dialogue, which enabled parties to collaborate and reach a consensual agreement. Being able to speak directly to the judge was seen by many interviewees as empowering for parents and helped them engage with the decisions made for their children. Professionals believed that the settlement conferences they had been involved in had been facilitated fairly and appropriately by the judge.

Nonetheless, concerns were raised by interviewees across all professional groups and some judges in relation to the implicit imbalance of power in a settlement conference, and the risk that parents may feel pressured by the authority of the judge to make an agreement they were not comfortable with. Similar concerns were raised about whether parents had sufficient understanding of what settlement conferences are and their potential outcome. Whilst both concerns were considered greater for parents with specific needs, some interviewees felt that the vulnerabilities inherent in most family law cases meant that establishing informed consent was difficult overall.

Interviewees stressed that the criteria for assessing whether cases were suitable for settlement conferences was not straightforward. Many professionals questioned the

appropriateness of settlement conferences for cases that may lead to permanent separation of children, although judges tended to adopt a more flexible approach.

6.2 Implications for the family justice system

Parental engagement

Findings from this evaluation point to the wider, more fundamental issue of parental experiences in family law proceedings. It highlights the need to consider what else could be done to help parents feel they have been heard and understood within proceedings. Positively viewed aspects of the settlement conference pilot – including the less formal nature of the conference, being able to directly speak to the judge, and to promote open and transparent communication between parties – provide important lessons for the family justice system overall.

Similar lessons can be drawn from evaluations of the Family Drug and Alcohol Courts (FDAC). FDAC is a problem-solving model which aims to support parents overcome their substance misuse problems through multi-disciplinary and therapeutic intervention. Whilst based on a different premise to settlement conferences, the FDAC evaluation findings in relation to the value that parents attribute to the views of the judge are relevant. FDAC parents report positively about the objectivity of the judge in their case, describing them as fair and able to see the perspectives of all parties. Parents also said that they appreciated that the judge spoke to them directly in a calm and sensitive manner which helped reduce anxiety of proceedings.²⁶

These findings, conversely, also allude to the concern raised in this research about the impact of the judge's authority on parents. Some FDAC parents acknowledged that they found it difficult to be honest with the judge for fear that it could compromise their case. Praise from the judge was also considered to carry more weight with parents who may be keen to please them.²⁷ The findings from both this pilot and the FDAC research reiterate the importance of enabling parents to have a voice in proceedings – which may include the opportunity to speak directly to the judge where appropriate – whilst acknowledging and mitigating the risk of unintended pressure on parents to come to an agreement. Capturing the views of parents and children who have experienced settlement conferences is an important area for further research.

²⁶ Harwin, J., Ryan, M. and Broadhurst, K. (2018) How does FDAC Succeed with Parents with Substance Misuse Problems? Exploring Relational Practices within the English Family Drug and Alcohol Court

²⁷ Ibid.

The role of ‘standard’ resolution-focused hearings (IRH and FHDRA)

The purpose of an Issues Resolution Hearing (IRH) or First Hearing Dispute Resolution Appointment (FHDRA) is to narrow issues and resolve cases in public or private law proceedings respectively, where possible. The issue raised by some participants that public law cases deemed suitable for a settlement conference could have been resolved within an IRH poses important questions of the role of existing resolution-focused hearings. The principles developed to underpin the pilot, as well as the findings in this evaluation, present some of the distinctions between the IRH/FHDRA and a settlement conference. It may be these differences that influence the meaningful participation of parents and likely resolution of the case. For example, it may be that a more informal meeting where parents can speak directly with a different judge to the one managing the rest of their case is what enables parents to contribute, understand the decisions of the court and facilitate a consensual agreement.

Data collected by the judiciary for this evaluation found that 36% of public law cases and 45% of private law cases were resolved at the settlement conference. Academic research can provide some context to these figures. One study of a sample of public law cases found that around a third concluded at the IRH.²⁸ Whilst a direct comparison is not appropriate, this may suggest that the proportion of cases that reach resolution at a settlement conference is not markedly different to the proportion that resolve at the IRH.

Further research may also be considered. As well as qualitative research to understand the views and experiences of children and parents who have taken part in settlement conferences, the feasibility of an impact evaluation could be explored. This could establish whether it is possible to collect robust empirical evidence on the impact of settlement conferences on outcomes for children and families.

6.3 Options for next steps

The findings of this evaluation, as well as other relevant research, will need to be considered as part of a wider open discussion amongst stakeholders to inform a decision on whether, and if so, how, settlement conferences can provide a valuable additional tool in the family courts going forwards. Importantly, these discussions could explore whether, and how, the positively viewed aspects of settlement conferences could be incorporated within existing

²⁸ Masson, J. et al (2018) How is the PLO working? What is its impact on court process and outcome? This study found that a third of a sample of 203 public law cases completed at the IRH, and half of cases that went on to a final hearing completed within a single day.

proceedings to improve engagement and facilitate agreement between parties. It may also be helpful to have further discussion and clarity on the distinct and complementary roles of settlement conferences with other resolution-focused hearings.

It would be helpful to understand the reasons why uptake of the pilot was relatively low outside of the Liverpool DFJ area that initiated the pilot in June 2015. This may have been driven by similar concerns identified in this evaluation, or wider issues, such as lack of awareness or resources available to train in the approach.

Any future development of settlement conferences, if then considered appropriate, will need to address specific issues raised about the pilot model, as outlined in section 6.4.

6.4 Implications for the settlement conferences model

Clear, specific and accessible training, guidance and information

Guidance for professionals and parties, as well as online training materials for the judiciary were available during the pilot and reviewed based on feedback from professionals taking part. Despite this, views that the guidance and training were not sufficient continued throughout the duration of the project. It may be beneficial for guidance and training for family justice professionals to be developed in consultation with respective professional groups, and formally and effectively disseminated.

Judicial training

Facilitating a settlement conference fairly and appropriately was reported to require specific judicial skills different to those employed in standard court hearings. The development of additional face-to-face training for judges to support them to appropriately and effectively facilitate settlement conferences could be considered for all judges wishing to adopt the model. This judicial training could focus on the development of specific interpersonal and communication skills to enable parties and professionals to engage and participate meaningfully in the process.

Guidance for professionals

It would be helpful for guidance for family justice professionals to provide clarity on the issues raised during the evaluation, and cover the following areas:

- **Assessment of case suitability:** to outline what factors should be considered when assessing whether a case is appropriate for a settlement conference. Particular consideration to be given to cases with parents with specific needs, such as

learning difficulties, and those that may lead to permanent separation of parents and their children.

- Roles and responsibilities of each professional group at each stage of proceedings in respect to settlement conferences: of significant importance will be to clarify the responsibilities of different professional groups in making sure parents understand the process, and are able to meaningfully consent, engage and participate throughout. Other areas may include:
 - Pre-conference: how to assess and contribute to the decision to refer to a settlement conference; and how to prepare for them.
 - During the conference: what is expected and required in order to participate. To include clarity on whether professionals have any responsibilities to support litigants in person in private law settlement conferences.
 - After the conference: to clarify responsibilities of professionals if parents change their mind to what was agreed in the conference; further clarity on what 'in confidence' means for the rest of the case, particularly what can be referenced from the settlement conference in a final hearing.

Information for parents

In addition to guidance for professionals in respect of ensuring parents understand and provide full consent to participate, the information provided to parents about settlement conferences may benefit from review. It would be helpful to seek feedback from parents and professionals who have taken part in settlement conferences to understand whether it is sufficiently clear and thorough on the process. This is likely to cover, at least: what will happen at the settlement conference and how parents can participate; the difference between settlement conferences and other court hearings; and what happens if parents later change their mind to what was agreed in the conference.

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Appendix A

Protocol as to Basic Principles

Settlement Conferences Protocol as to Basic Principles

Aims and Objectives

The role of the Settlement Conference is to facilitate discussion of the issues, clarify information, analyse issues and promote understanding between the parties with a view to helping to identify solutions (including solutions which may be addressed by the consent of the parties and not necessarily within the Court process).

It is the parties and not the Judge who determines whether there is agreement on any of the issues and whether an order will flow following such agreement.

Authority for Scheme

The basis under which the scheme operates has the approval of the President of Family Division.

Training

All Judges who operate this scheme have received appropriate training including observation of Settlement Conferences.

Participation

All parties must consent to a Settlement Conference by signing a document in the form of Annex 1.

They must also be provided with the information as to the process on the basis of the document in Annex 2.

Participation in the scheme is voluntary.

Any party may withdraw from the Settlement Conference at any time and this will not, in any way, prejudice their case.

Status of Settlement Conference

For the purposes of the pilot, a Settlement Conference has the status of an Issue Resolution Hearing. Where parties have legal aid, the Settlement Conference will be paid to providers as a further IRH if unsuccessful, and as a Final Hearing if successful.

Judicial Continuity

A Judge who conducts the Settlement Conference should not be the Case Management Judge (unless all parties are agreed). If the Settlement Conference does not result in a resolution of all issues, the Judge who conducts the Settlement Conference must not be the Judge who conducts the Final Hearing. Further, the Judge who conducts the Final Hearing will not speak to the Settlement Conference Judge about the Settlement Conference.

Confidentiality/Privilege

Anything which is said by the parties during the course of the Settlement Conference Process is confidential to the Settlement Conference. This relates also to what the Judge has said to the parties and what the parties have said to the Judge or to each other.

Any proposals made by any party shall not be referred to in the event that the matter is not settled save where issues are agreed and may be recorded as such.

However, it should be made clear to all parties, at the outset of the Settlement Conference, that if it is discovered during the process of the Settlement Conference that a child is at risk of significant harm, the Judge will immediately end the Settlement Conference and will take appropriate steps to protect the child.

Transparency

The Settlement Conference will be recorded on audio recording equipment which shall be preserved by HMCS.

Listing

Settlement Conferences must be capable of being listed as a matter of priority so that delay is not encountered in the proceedings.

Generally, a Final Hearing should be listed so that all parties are aware of the availability of such a hearing if the Settlement Conference does not resolve some or all of the issues.

Role of Judge

For the purpose of the Settlement Conference, the Settlement Conference Judge will have access to the Court bundle (or such documents as the parties agree) and a case summary.

For the purpose of enabling the parties to have direct involvement in the Settlement Conference, the Judge may directly engage with any of the parties. Such involvement will only be in the presence of the relevant party's legal representative who may raise an objection to such dialogue taking place without giving a reason. In the event of such objection, the Judge will respect the legal representative's position without question.

Although the procedure is flexible, a party is never to be seen without his/her legal representative. If a party is not represented in Public Law cases, the Guardian will be present. In Private Law cases, CAFCASS generally and, if appropriate, to welfare issues, will be present.

No pressure will be brought to bear on any party with a view to reaching agreement.

Exceptionally, and where the parties agree, one party can be seen by the Judge (without the other parties being present) but that will only happen in the presence of their legal representatives. This is generally to be considered only if protective of Article 6 rights of the parties e.g. a litigant wishes to speak to a Judge without the other parties being present so that he/she is not prejudiced in any final hearing which may follow and there can be no risk of prejudice to other parties.

Where the Judge addresses a litigant with a view to probing issues, the legal representative is free to engage or object to any question or raise any issues. The Judge will not ask the legal representative as to his or her view on any issue as that may potentially embarrass the legal representative/party and go behind the legal/professional privilege.

A Judge can give a neutral evaluation if the parties indicate that they wish this to be expressed. However, a Judge should point out that another Judge may disagree and should further point out any other limitations on his/her opinion.

Pressure

At all stages of the Settlement Conference, the Judge will repeat that there is no pressure to agree anything. Further, a hearing date is available for full determination of the issues.

If there is any issue as to lack of understanding/capacity of any party or any affect of emotional pressure or vulnerability, the Settlement Conference must be terminated.

If a party has learning disabilities/mental health issues/or any other such issues as impact upon full participation, a Judge will be fully aware of this and only communicate with that party in a manner which is appropriate and upon appropriate advice from all parties and, in particular, that party's legal representative.

Judges must appreciate/be aware that a Judge/Court setting often intimidates a parent or vulnerable party. It is possible for a parent/litigant to answer a question/provide a response which is intended to please the Judge but does not reflect a true wish or need.

Although the Judge should ask all parties at the outset to clarify their position as to the disputed issue, once the Judge has seen the party/parties for consideration of the issues, the Judge will not ask that party if the issue/issues are agreed. He will allow that party/parties to withdraw from Court to reflect/obtain advice from legal representatives or to have the opportunity to reflect as to how they wish to proceed.

Any party's lawyer is free at any stage to contribute to the process of the Settlement Conference.

No party is required to speak directly to the Judge. At all times a party may refuse to answer a question/engage with the process of the Settlement Conference or leave the process/terminate the Settlement Conference.

Adjournment of Settlement Conference

If a party requests, a Settlement Conference can be adjourned for a period to allow reflection/consideration/further information to be obtained.

The Voice of the Child

Where a child wishes to see the Judge, this may be arranged with the CAFCASS Officer/Reporting Officer/Guardian following the 2010 guidelines.

Orders

Where an agreement has been reached on some or all of the issues, this will be recorded in a Court Order approved by all parties. If there is no agreement, the Order will simply adjourn the case for the trial date.

Fair Process

It is critical to preserve a party's Article 6 and Article 8 rights throughout the process. Each party is entitled, if they wish, to a final trial. This cannot be abrogated by the Settlement Conference process.

Settlement Conference Judges are Judges who have been appropriately trained in the process and who are willing to engage in such a process. They must uphold the law and where appropriate international treaties such as the UN Convention on the Rights of Children and the European Convention on Human Rights during the Settlement Conference and when endorsing any agreement reached between the parties.

Role of Representatives

It shall be the primary role of the parties' legal representatives to ensure that the party they represent remains engaged in the process on a wholly voluntary basis and that a party has a full understanding of the process.

Judgement

In the event of a Settlement Conference resulting in a determination of the issues on which a Judgement is required, the Judge shall, with the consent of the parties hand down an extempore Judgement giving reasons.

Her Honour Judge Margaret De Haas Q.C.

Designated Family Judge for Cheshire & Merseyside

8th November 2016

Appendix B

Interview template

Settlement conferences pilot – judicial interview template

Thank you very much for agreeing to participate in an interview as part of the evaluation of the settlement conferences pilot. My name is [x] and I am a social researcher within the Analytical Services Directorate at the Ministry of Justice.

The main areas that I would like to explore through this interview are:

- Your experience of facilitating settlement conferences
- Your views and experiences of the benefits and/or challenges of the settlement conference model
- Your experience of how the settlement conference pilot is working in practice, and any areas where it could be improved.

This should take no longer than 45 minutes. I am bound by the professional and ethical standards of the Government Social Research profession; my role is to provide objective and impartial analytical advice to policy-makers. You will remain anonymous in any reports that may arise from this research. You are not expected to discuss details of individual cases or parties, although any cases we do discuss will be anonymised.

With your permission, I am audio recording the interview to help me with the analysis. Please let me know if you don't feel comfortable with answering any questions and we'll move on.

Do you have any questions before we get started?

Part A Case management role: referral and suitability

1. As a case management judge, approximately how many cases have you referred to a settlement conference?
2. How do you consider which cases are suitable to be referred for a settlement conference?

If not cited, prompt: Type and characteristics of cases, parties, or issues for resolution? In your assessment, what makes these cases suitable?

3. Have you experienced any difficulties in identifying suitable cases for referral?
4. Have you experienced any other challenges during the referral process?

Part B Facilitating a settlement conference

5. Approximately, how many settlement conferences have you facilitated?
6. How would you describe the way you facilitate a settlement conference? What are the main differences between facilitating a settlement conference and a standard court hearing?

Prompt in the following areas:

- *Are there any differences in how you set up the court? Do you use the bench at all?*
 - *How do you interact with the parties to the case? The professionals within the case? How is this different to a standard court hearing?*
 - *Is there any difference in the direction or influence of the settlement conference judge compared to a standard court hearing?*
 - *Specifically, how are settlement conferences different from IRHs in public law proceedings?*
2. Are there any types of cases that you consider are not appropriate for a settlement conference? *Please explain the reasons for your answer.*

Prompt:

- *Have any cases been inappropriately referred to you for a settlement conference?*
 - *What were the implications of this?*
3. What factors make an 'effective' settlement conference (those which led to narrowing or resolution of the issues)?

Prompt:

- *Type of case or characteristics of parties, issues for resolution, engagement from parties and/or professionals?*
 - *Features of judicial management or style? What skills does the judge need to have to facilitate an effective settlement conference?*
 - *What are the main barriers in facilitating a settlement conference?*
4. In your view, how have professional parties (solicitors, barristers, Cafcass guardians, etc.) responded and adapted to the settlement conference approach?
 5. In your experience, how have parties engaged with the settlement conference approach?

Part C Benefits, challenges and improvements

6. What do you consider are the main benefits of the settlement conference approach?
7. What do you consider are the main barriers or challenges with the settlement conference approach?

(If not cited or already covered), prompt:

- *Any difficulties with engagement or understanding from parties or professionals; questions around the judicial role in settlement conferences; legal issues?*

8. Have you identified or observed any good practice to facilitate an effective settlement conference?
9. Are there any improvements that could be made to the settlement conference approach?

(If not cited or already covered), prompt:

- *In which ways would you address the challenges and barriers you have identified?*

10. Have you experienced any barriers or challenges with the pilot overall?

(If not cited or already covered), prompt:

- *Any difficulties with implementation, guidance, training, listing or resources?*

11. Are there any improvements that could be made to the pilot overall?

Part D The future of settlement conferences

12. In your assessment, do you consider settlement conferences to be an important option as an alternative to standard court hearings in the longer-term? *Please provide reasons for your answer.*

13. If yes, what steps need to be taken to introduce settlement conferences as a standard option within court proceedings?

Prompts:

- *How should this process be formalised? How can we ensure consistency in approach?*
- *Guidance and training for the judiciary?*
- *Engagement, guidance and support for professionals and external stakeholders?*

14. Can you foresee any challenges in this approach?

Prompts:

- *Engagement from across the judiciary? Appropriate skillset across the judiciary?*
- *Engagement with external stakeholders?*
- *Any legal implications to consider?*
- *Operational implications of implementation? Resource issues?*

15. Is there anything you would like to add that we haven't already covered?

Many thanks for your time today.

Appendix C

Judicial data collection template

Settlement Conferences in Family Law: Collection of Data

The Ministry of Justice has launched a pilot study in several DFJ areas in England and Wales to support settlement conferences as part of family law proceedings. Data is being collected as part of this pilot to allow for a process evaluation to take place. This has been authorised by both HMCTS and the Judicial Office. Members of the family judiciary are being asked to complete this form for **any family law cases that are scheduled for a settlement conference during the pilot study.**

Please complete this form for all relevant hearings and give to your nominated contact at HMCTS, who will forward to the Ministry of Justice. The nominated contact at this court is: [insert here]. They will return all completed forms to Ministry of Justice analysts, and have received separate guidance on how to do this.

Court Name	
Case Number	
Type of Case	
Level of Judge	
Date of Settlement Conference	

1) Please provide a brief outline of the case, and the issues for resolution. Please do not include names of any parties involved.

2) Was this case suitably referred for a settlement conference? Please explain your answer.

3) Was the settlement conference vacated or adjourned for any reason?

Yes	
No	

If yes, please explain why:

--

4) If no, what was the outcome of the settlement conference?

a) An order was made and the case is now resolved.	
i) Which order was made?	
b) An order was made but the case is not fully resolved.	
i) Which order was made?	
ii) Has a Final Hearing been scheduled?	
c) An order has not been made but issues have been narrowed. A Final Hearing has been scheduled.	
d) An order has not been made and issues have not been narrowed. A Final Hearing has been scheduled.	
Other (please describe)	

5) How long was the Final Hearing in this case initially listed for? If the FH was not listed, please provide an estimate of how long it would have been listed for.

Hours/Days
Estimated/Actual (please circle)

6) Following the settlement conference, how long is the Final Hearing now listed for? If the FH is not yet listed, please provide an estimate of how long it will be listed for.

Hours/Days
Estimated/Actual (please circle)

7) How long did you spend preparing for the settlement conference?

Hours/Days

8) How long did you spend facilitating the settlement conference?

Hours/Days

9) Please provide any further comments you may have in the box below.

Ministry of Justice Analytical Services would like to follow-up with some members of the judiciary who have been involved in facilitating settlement conferences as part of the pilot. This will involve a short telephone interview with a social researcher to explore your views and experiences of what worked well, what did not work well, and what could be improved. If you are willing to be contacted in relation to this follow-up research, please provide your name and contact details below.

Name	
Telephone	
Email address	

Many thanks for your support and co-operation in this exercise. It will ensure that we can collect robust data on how this pilot is working in practice and inform decisions around any future arrangements.