

# The Family Test

## Supporting earlier resolution of private family law arrangements: resolving private family disputes earlier through family mediation

### Introduction

1. The Family Test ensures that the impact on families is considered when the Government develops policies. This includes all types of family relationships and structure, including extended families, with a particular focus on children and their parents who may be living together or living apart.
2. This Family Test accompanies a consultation document which is seeking views on supporting earlier resolution of private family law arrangements. The consultation considers how family disputes may be resolved earlier through family mediation. The consultation document is known as a White Paper – these documents are produced by the Government with the aim of allowing people both inside and outside of Parliament to feedback on proposals.

### The policy background

3. There is clear evidence<sup>1</sup> that prolonged conflict between separating parents is harmful to children's wellbeing and life chances. Research shows that exposure to inter-parental conflict is associated with higher rates of anxiety, depression, aggression, hostility, anti-social behaviour/criminality, reduced academic performance and substance misuse.<sup>2</sup> Using the family courts to resolve private disputes involving children can often lead to lengthy conflict between parents/carers and could result in children experiencing significant periods of time where settled or suitable arrangements are not in place. Based on mediation funded through legal aid, we assume that 50% of financial remedy applications have a linked children case.
4. There is also evidence that getting an order from the court often does not provide a long-term solution for families. Approximately one quarter of private law children cases return to the family courts.<sup>3</sup> This suggests that asking a judge to decide what is in the best interests of the child rather than reaching a mutual agreement, either privately or with the help of a professional, may not always be the best way of helping parents/carers and separating couples to resolve their issues.

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<sup>1</sup> [What works to enhance interparental relationships and improve outcomes for children? | Early Intervention Foundation \(eif.org.uk\)](https://www.eif.org.uk/what-works-to-enhance-interparental-relationships-and-improve-outcomes-for-children/)

<sup>2</sup> [What works to enhance interparental relationships and improve outcomes for children? | Early Intervention Foundation \(eif.org.uk\)](https://www.eif.org.uk/what-works-to-enhance-interparental-relationships-and-improve-outcomes-for-children/)

<sup>3</sup> Nuffield Family Justice Observatory. Uncovering Private Family Law: Who's Coming to Court in England ([nfjo\\_whos\\_coming\\_to\\_court\\_England\\_full\\_report\\_FINAL-1-.pdf](https://www.nuffieldfjo.org.uk/nfjo_whos_coming_to_court_England_full_report_FINAL-1-.pdf) (nuffieldfjo.org.uk))

## Policy Aims

5. The policy aim behind the consultation is to support families to find ways of reaching long-lasting agreements between themselves, more quickly, and without the need to apply to court sometimes on multiple occasions.
6. The consultation makes policy proposals and asks questions under three main themes:

### Supporting people to resolve their child and finance arrangements:

We are consulting on how to improve the resources, guidance and support available to families seeking to make child and finance arrangements. We are also seeking views on whether to make attendance at a co-parenting programme offered by Cafcass and Cafcass Cymru compulsory for suitable parents/carers before an application can be made to court regarding arrangements for the child(ren).

### Agreeing child and finance arrangements through mediation:

We are consulting on introducing compulsory pre-court mediation and what this might look like for families seeking to make child or finance arrangements and in what circumstances this requirement should apply. We are also consulting on how to get the mediation sector ready, seeking views on what steps are needed to increase the sector and whether additional accreditation and training is required. We are also consulting on whether such a pre-court requirement should be limited to mediation or whether other forms of non-court dispute resolution could play a role.

### Accountability and costs in court proceedings:

We are consulting on giving courts the power to order people to mediate, where appropriate, and on how costs orders could be used to hold people accountable if they fail to make a reasonable attempt to mediate. We are also seeking views on how we could amend family court fees to better reflect costs of coming to court and remove disincentives to people for attempting to resolve their dispute outside of court.

## Which aspects of the policy impact on families?

7. The policy is likely to impact separated or separating families, including couples without children. The consultation proposes several measures which encourage people to attempt to agree their child and financial arrangements, without first applying to the court, where there are no domestic abuse or child protection concerns. This includes, subject to the outcome of the consultation, introducing a mandatory requirement for parents to attend a co-parenting programme and mediation before making an application to the court which relates to child arrangements (unless exempt). People seeking to resolve financial arrangements would also be required to attend mediation before making a contested application to the court. The policy also aims to provide better information for people to equip them to resolve child and finance arrangement-related disputes amicably, which this is possible and appropriate. Furthermore, the policy aims to hold people accountable where they have failed to reasonably engage with mediation.

8. This policy aims to have a positive impact on families, supporting them to find ways of reaching agreements between themselves, more quickly, and without the need to apply to court, sometimes on multiple occasions. The policy aims to deliver better outcomes for families by ensuring family members actively try to resolve their issues, before conflict between them becomes entrenched. We believe this will deliver better outcomes for families and reduce the harmful impacts that conflict can have on children.

## **The Family Impact Test questions**

### ***Question 1 What kinds of impacts might the policy have on family formation?***

None. This policy is specifically in relation to people reaching agreement about their child or finance arrangements following a separation. We do not anticipate that this policy will impact family formation.

### ***Question 2 What kind of impact will the policy have on families going through key transitions such as becoming parents, getting married, fostering or adopting, bereavement, redundancy, new caring responsibilities or the onset of a long-term health condition?***

This policy aims to help people agree their child and finance arrangements outside of court proceedings with minimum conflict and difficulty whilst going through/post a separation. We hope that this policy will have a positive impact and support and assist those going through significant life transitions.

### ***Question 3 What impacts will the policy have on all family members' ability to play a full role in family life, including with respect to parenting and other caring responsibilities?***

We anticipate that the policy to encourage parents to resolve their arrangements out of court, where appropriate, will support families to find ways of reaching long-lasting agreements between themselves, more quickly, and without the need to apply to court sometimes on multiple occasions. In addition, we hope that the policy to extend the use of existing co-parenting programmes pre-court, will help parents to co-parent more effectively and encourage them to take steps themselves to develop agreements in the best interests of their child/children without court intervention.

### ***Question 4 How does the policy impact families before, during and after couple separation?***

The policy will mainly be relevant during and after couple separation. At this time, couples separating need to make arrangements about their children and finances, particularly when they begin living apart. The policy will introduce new requirements and steps to be completed before an application can be made to the family court, which may prolong the time it takes to reach court. However, the policy will ensure that more families are able to resolve their issues without needing to come to court, which will allow more of the court's resource to be diverted to those cases who need it most. We hope that the policy will help parents resolve their issues in a less adversarial environment and give them the tools to co-parent effectively post-separation.

***Question 5 How does the policy impact those families most at risk of deterioration of relationship quality and breakdown?***

Using the family courts to resolve private disputes involving children can often lead to prolonged periods where settled arrangements are not in place. Ensuring families are supported to make their arrangements with the minimum conflict and difficulty will ensure that the deterioration of relationship quality and breakdown does not become further entrenched when dealing with their child arrangements.

***Are the impacts appropriate and justified?***

Yes. There is support for reforms in this area from across the sector. Not only will this support families and reduce conflict for children which we know can be detrimental to their welfare, it will also ensure that court time can be saved for more complex and serious cases. The current time for a private law case to conclude is 40.5 weeks. Agreements through mediation can be reached in significantly shorter time, thereby reducing the duration of uncertainty and potential conflict for families. We believe, therefore, that the proposals are a proportionate means of achieving our aim of helping families to resolve private family disputes earlier.

**Ministry of Justice  
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