Supporting earlier resolution of private family law arrangements

Government response

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Ministry of Justice

Supporting earlier resolution of private family law arrangements

Government response on resolving private family law disputes earlier through family mediation

Response to consultation carried out by the Ministry of Justice.

This information is also available at https://consult.justice.gov.uk/

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Introduction and contact details

This document is the Government response to the consultation paper, Supporting earlier resolution of private family law arrangements.

It will cover:

- the background to the consultation paper
- a summary of the responses to the consultation paper
- a detailed response to the specific questions raised in the report
- the next steps following this consultation.

Further copies of this report and the consultation paper can be obtained by contacting the Early Resolution Team at the address below:

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This report is also available at https://consult.justice.gov.uk/

Alternative format versions of this publication can be requested from privatefamilylawconsultation@justice.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Foreword

Family separation is rarely straightforward and often stressful - never more so than when children are involved. Many families struggle to agree on next steps for their children, from how much time they should spend with each parent, to financial arrangements and child maintenance.

While most families are able to resolve their issues between themselves without the need to go to court, too many still end up in conflict – more than 60,000 private law children and contested finance cases ended up in the courts in 2022 alone. Families encounter a justice system that can, at times, reinforce that conflict, pitting parents against each other to 'win' an unnecessary and destructive legal battle. Evidence clearly shows that these strung-out separations are especially damaging for children with effects that can last a lifetime.

We are determined to change this. So, in March last year, we consulted on how the justice system can better support families to resolve their issues earlier and outside of court, where it is appropriate and safe to do so. I am very grateful to everyone who took the time to give us their views, which we have carefully considered.

The overwhelming view of respondents was that a lack of clear information and guidance means opportunities are being missed to resolve arrangements for children earlier. Many couples look to the courts as a first port of call when alternatives like mediation or early legal advice might avoid needless acrimony and expense.

This response sets out an ambitious package of reforms that will put conflict resolution, and children's welfare, first at every stage of a separation. We want every family to be able to access the right information at the right time, so they understand all the options available to them.

Our measures will help parents to reach an agreement either by themselves, with the support of professionals, such as mediators or lawyers, or through a family court service dedicated to reducing conflict.

Central to this is a new legal advice pilot, which will test how effective early legal advice is in helping parents to reach an agreement at an earlier stage. We believe that providing people who might otherwise apply to the court with government-funded advice from a legal professional will help them to make the right choices for their family, whether that is through information on ways of resolving disputes out of court, or guidance on how to navigate the court process, where that is the right solution for that family.

Improved information for families will set out guidance on the options available to them, with appropriate signposting. This includes the development of a new online tool for parents, bringing together clear, high-quality information to support them in taking their first steps towards an amicable separation.

For couples that do end up in court, we will expand our revolutionary family court pathfinder pilot to South East Wales and Birmingham this year. Following that we plan to extend it to all courts in England and Wales. Minimising conflict in the best interests of children is at the heart of this less adversarial, more investigative approach to private family law proceedings, which strengthens children's voices in the process and provides greater support to the parents who need it most.

Where there is a will to reach a mutual agreement, mediation can be a very successful route to resolving disputes for many families. As of December 2023, our mediation voucher scheme has helped over 24,000 families to access mediation and attempt to resolve their issues without resorting to court. We will continue to support the scheme, investing up to £23.6 million by March 2025.

Given the clear benefits, we also want to encourage greater use of mediation that involves children, where appropriate, so that their views and wishes are heard as their parents come to an agreement. To that end, we will make it easier for mediators to apply for advanced Disclosure and Barring Service checks, so that they are able to work with children.

These are important reforms that will change our family justice system for the better. It is the right thing for children and their families, so that they do not endure the heartache of a long, drawn-out separation. And it is the right thing for our courts, avoiding needless litigation and freeing-up resource for those most in need of the court's involvement and protection.

This Government wants every family to be able to resolve issues around separation as quickly as possible, in the best interests of all involved. Our measures will help to achieve this, while making sure that children's welfare is firmly at the heart of the system, where it belongs.

Rt Hon Alex Chalk KC MP

Lord Chancellor and Secretary of State for Justice

Background

The consultation paper ‘Supporting earlier resolution of private family law arrangements’ was published on 23 March 2023. It invited responses on proposals to encourage the earlier resolution of private family disputes.

The consultation sought views on several issues. The key proposals in the consultation included:

- Supporting parents/carers to resolve their children and financial arrangements without court involvement (e.g. through pre-court parenting programmes);
- Introducing a requirement, in appropriate cases, to make a reasonable attempt to mediate before applying to court; and
- Accountability and the use of cost orders (an instruction from the court for one party to pay part or all of the legal costs of the other party).

The consultation was supplemented by a series of roundtable events with interested stakeholders. The roundtables covered the following topics:

- Mediation and other forms of dispute resolution;
- Domestic abuse; and
- Pre-court support.

We also had a series of direct engagement meetings during the consultation period with key stakeholders, including the Family Mediation Council (FMC) and the Family Justice Young People’s Board.

The consultation period closed on Thursday 15 June. The consultation was also the subject of an oral evidence session held by the Justice Select Committee on Monday 19 June, who then provided a written response to the consultation proposals in July. This response was considered as part of our analysis of responses.

This report summarises the responses we received and outlines the Government’s plans to provide support to separating families to help them resolve their disputes earlier.

The consultation stage Impact Assessment has not been revised.

A Welsh language response paper will be published alongside this document in due course.

A list of respondents is provided at Annex A.

Summary of responses

A total of 281 responses to the consultation paper were received. These have been broken down by sector in the table below, with the caveat that the responses included a mix of both personal and organisational responses. As such, the number of people represented by some of these responses is far greater than 281.

	Number of responses	Percentage
Mediators	75	27%
Professionals in the advice or support sector	63	22%
Legal Practitioners and agencies	87	31%
Members of the public	42	15%
Academics and research bodies	8	3%

These responses were analysed to gauge levels of support and/or opposition for the proposals, gather evidence, and to help inform the Government's policy development. More information about our plans for private family law reform, and how they have been informed by the consultation responses, can be found on page 5.

There were a wide range of views expressed within the consultation responses. There was widespread support for the key aim of the consultation, which was to help more people settle their private family law disputes earlier and away from the court, where it is safe to do so.

We heard differing viewpoints on how best to achieve this key aim. There was broad support for earlier information provision and the safe and appropriate use of non-court dispute resolution and parenting programmes to support families in resolving their disputes. However, there were mixed views about the introduction of a requirement to undertake any one form of non-court dispute resolution. There was a consensus that supporting victims and survivors of domestic abuse and hearing the voice of the child should be central considerations in any new proposals. There were also a wide range of views on how any new proposals might be enforced. Many respondents expressed concern over the potential increased use of costs orders in child arrangement cases in

court, whilst others felt that potential costs orders were a necessary measure to ensure all parties genuinely attempted to reach an agreement in the best interests of the children involved.

In addition to the written consultation responses we received, we engaged with a wide group of stakeholders with an interest in family justice to expand our evidence base and gain further insight. This included roundtable events, as well as a series of focus group meetings, including with members of the judiciary, mediators and the Family Justice Young People's Board (FJYPB).

The views expressed through our programme of stakeholder engagement have been incorporated into the responses to individual questions set out below on page 25.

Government Response

We know that long-term conflict between separating parents is harmful to children's wellbeing, both in the short and long-term.[1] Exposure to parental conflict has links to increased rates of anxiety, aggression, and depression, as well as anti-social behaviour/criminality, reduced academic performance and substance misuse. This has an impact on wider society, with implications across health, education, employment, as well as the family and criminal justice systems.[2] There was consensus in the responses we received that providing parents/carers with support and information earlier can help them to resolve their issues more quickly and outside of court where it is safe to do so.

While most parents/carers resolve their child arrangements without coming to court, in 2022 there were 52,219 new child arrangement cases started. There were 39,423 applications for financial remedy orders, with 11,306 of these applications being contested. In addition, we know that many families who come to court to make child arrangements return to court. One study from 2016-17 suggests that approximately one quarter of families with a child arrangements order returned to the family courts either because the previous arrangement was not working or because new arrangements needed to be.[3] 63% of these returning applications were made within just two years of the previous one.[4]

It is also taking longer for cases to conclude. As of June 2023, it is taking an average of 47 weeks for private law cases to reach a final order.[5] The Government is committed to reducing this timeframe to help families reach certainty over their arrangements more quickly and allow them to move on with their lives with certainty.

The responses we received to the consultation confirmed that there is support from across the family justice system including mediators, legal professionals, charity organisations and others for our goal to help families reach agreements earlier and to seek to reduce conflict at every stage of any dispute.

The Government is aware that this goal will only be achieved through the effective joint working between all the organisations and individuals involved in supporting separating

[1] https://www.eif.org.uk/report/what-works-to-enhance-interparental-relationships-and-improve-outcomes-for-children

[2] https://www.eif.org.uk/report/what-works-to-enhance-interparental-relationships-and-improve-outcomes-for-children

[3] Of the 40,599 private law cases that Cafcass worked on in 2016-17, 12,376 were returns to court.

[4] Halliday et al. (2017) Page 8, Private law cases that return to court: a Cafcass study private_law_cases_that_return_to_court_-_cafcass_research_november_2017.pdf. Specific focus looking at the oldest child on a child's case.

[5] https://www.gov.uk/government/statistics/family-court-statistics-quarterly-april-to-june-2023/family-court-statistics-quarterly-april-to-june-2023#overview-of-the-family-justice-system

families. The family court does not operate in isolation and we are committed to establishing cross-system agreement to deliver better outcomes for families, particularly the most vulnerable.

We have carefully reflected on feedback from system partners on the best way to achieve this, and in this response we set out our proposals to deliver systematic change.

This paper sets out a substantial package of new measures that will help us ensure families are supported at *every* stage of the journey towards reaching an agreement. This includes:

- Improved information for families when an issue first develops to help provide early guidance over what options are available and signposting to necessary support;

- Support and guidance for those considering whether court proceedings might be necessary, including making early legal advice available, increasing access to parenting programmes and encouraging dispute resolution where appropriate; and

- Reforming the private family law system for those who do need to come to court so that it is more investigative and less adversarial, places the voice of the child at the heart of proceedings and provides additional support for those parents/carers who need it most.

There are also a number of proposals set out in this response that support those with financial issues to resolve upon divorce or dissolution, particularly our efforts to encourage separating couples to reach agreements earlier outside of court before seeking the court's approval of a consent order.

Separately, the Government has asked the Law Commission to carry out a review of the law of financial remedies on divorce (i.e. the law covering how financial issues are resolved following the breakdown of a marriage). This review will address whether the law is still working in the fairest way to support separating couples and avoid unnecessary conflict. The review builds on the Government's landmark reform of divorce law, and the introduction of no-fault divorce which has reduced conflict between separating couples. The Law Commission will complete the first stage of the review by September 2024, after which the Government will consider carefully any next steps.

Supporting families when a dispute arises

No one applies to the family court unless they feel it is absolutely necessary. However, respondents to this consultation were clear that a lack of information and support when families separate, or a dispute arises, means that many disputes can escalate and people apply to the court without a full understanding of what the court process will entail or what

alternatives may be available to resolve disagreements. Here we set out what the Government is doing to help families get the right information at the right time.

Online Support and Information

We will develop a new online tool for parents/carers that brings together authoritative information to support them when a dispute arises. Our ambition is that the information provided will be shaped by their individual circumstances and will make it easier for parents/carers to identify and access support services.

Consultation respondents and feedback from roundtable events told us that having a source of clear, reliable and accessible information was essential for separating families. Whilst information is available online, including Government resources on making child arrangements, the Cafcass website and AdviceNow guides, we understand that these trusted sources of advice need to be more accessible and stand out from the range of conflicting advice available from different sources.

We heard that parents/carers/separating couples may miss opportunities to resolve their child arrangement and financial disputes earlier, and proceed to court as a first step, because of a lack of clear information about alternatives and what the role of court is and is not. Respondents told us that the large amount of information available online can be confusing, with many families unsure of how to make their child and financial arrangements and resolve any disputes away from court. We heard that this information should be accessible in one trusted place and cover a broad range of dispute resolution options.

In November 2023, we began user research to identify the specific challenges that parents/carers faced in accessing accurate and trusted information, when the most appropriate point to receive that information was, and how to find information that was relevant to their individual needs.

Building on the user research, we are now focusing on developing prototypes for a ‘guided pathway’ that will help people to find the most appropriate options for them to resolve their child and financial arrangement disputes. A key aspect of this work will include testing with people who might use the service and gathering their feedback. We will also explore options that would allow users to jointly choose a mediator accredited by the FMC, allowing both parties to agree to the decision and create more trust in the process.

In addition, **by March 2024, we will complete a full review of the relevant GOV.UK pages and will include more detailed information on other types of dispute resolution** in addition to mediation. We will ensure that families are aware of a broader range of ways to resolve disputes outside of court and will undertake activities to strengthen how information appears in search engine results.

We know that many people use resources provided by third sector organisations, and **we will work with other organisations to signpost to relevant support and guidance, ensuring that families are aware of the range of services they can access.** This will include, for example, information and advice for victims of domestic abuse and resources to help support children and ensure that their views are heard.

We will also **review our existing court forms by April 2024 to ensure that anyone who is making a family court application in relation to children or financial matters is provided with the full range of options for resolving disputes away from court as they complete their application.**

Offline information and support

Not everyone can access online information. We recognise the importance of information being available in a variety of formats, and we agree that people without internet connectivity, or those who are otherwise unable or choose not to access support via the internet, must be supported to access the information and guidance they need.

From June 2024, we will ensure that guidance is provided to all families with a dispute who have made an application to court. This guidance will inform them about the mediation voucher scheme and other means of resolving disputes out of court. It will also set out what steps the court will expect them to have taken to try to resolve their issues before the first hearing. This will ensure that those who may not have been aware of the voucher scheme through online signposting can access it and that families coming to court have fully explored all appropriate alternatives.

We will work to develop and distribute information and guidance through organisations that have direct contact with families who do not have access to the internet. We will work with Family Hubs as sources of community support to provide information to people and ensure that a lack of digital connectivity is not a barrier to accessing guidance.

Family Hubs

Family Hubs are ‘one stop shops’ that make it easier for families to access a range of support they need, including support for separated or separating parents. The hub approach means professionals and partners working together more effectively, with a focus on supporting and strengthening the family relationships that carry us all through life.

The Government is investing around £300 million to enable 75 local authorities to create Family Hubs, and to improve vital services to give every baby the best start in life, including support for parenting, perinatal mental health and parent infant relationships, and infant feeding. This builds on the Government’s previous investment to champion family hubs – including a £12 million transformation fund to open Family Hubs in a further 13 local authorities in England.

The Family Hubs programme is making good progress and being well received in the areas where it is currently operating. Local areas are expected to meet the full minimum expectations as set out in the Programme Guide by the end of the funding period (March 2025). This includes helping families to access support for reducing parental conflict and information for separating or separated parents.

Reducing Parental Conflict Programme

The Reducing Parental Conflict Programme, led by the Department for Work and Pensions (DWP), works with local authorities in England to improve children's lives by addressing conflict between parents. In August 2023, the Government published a major evaluation into the effect of conflict interventions delivered through the programme, which demonstrated significantly positive results, including improvements in parental behaviour around children and greater satisfaction with custody arrangements. The Government continues to work with local authorities to embed this type of effective support within their family services offer and has made up to £21 million available in local funding to achieve this.

DWP is also running a £2 million Challenge Fund, supporting projects which diversify the reach of relationship support and generate digital products which can engage parents. Alongside this work, DWP partners with foundations to ensure evidence and best practice is shared. We know families may often experience a range of problems, and so Reducing Parental Conflict is included within the framework for the Supporting Families Programme, and within the service expectations for the Family Hubs and Start for Life Programme. This way parents can access support for their relationships at the same time as addressing other issues, such as housing or health.

Child Maintenance Service

We know that when families separate there are often several issues that need resolving alongside the child arrangements, and that disagreements in one issue can make it harder for parents resolve the others.

The Child Maintenance Service (CMS) plays a vital role in supporting families where a private financial arrangement is not appropriate. The CMS works hard to increase co-operation between separated parents and encourage parents to provide their children with the financial support they need to get a good start in life.

In October 2023, the **Government announced several improvements to the Child Maintenance Scheme so it can better support separated families** by:

- Introducing administrative liability orders to significantly speed up the time it takes for the Child Maintenance Scheme to resolve cases where parents are

not paying. A public consultation concluded in November 2023 and changes are planned for summer 2024;

- Removing the £20 application fee so that families on the lowest incomes do not face a barrier to accessing the Child Maintenance Scheme;

- Including more income types within the initial child maintenance calculation so the liability accurately reflects a paying parents financial circumstances; and

- Announced a consultation on the how the CMS can improve the collection and transfer of child maintenance payments.

No matter the issues families are facing, the Government is committed to identifying when they need support and advice and taking a joined-up approach to providing it, particularly to the most vulnerable.

Supporting families considering applying to court

There are several options available to families who need support in resolving a child arrangements or financial dispute. We know that some families are not aware of the different options available to them, and this can lead to conflict becoming entrenched. If a dispute cannot be resolved early through information delivered to them at the right time, we will provide a number of dedicated interventions to help families. Here we set out what the Government is doing to help families receive the support they need at the right time to ensure court remains a last resort for those who really need it.

Legal Advice

We will launch a new pilot on legal advice, specifically designed for parents/carers facing challenges when agreeing their child arrangements. The pilot will seek to demonstrate the benefits of high-quality legal advice for families looking to resolve their issues through the courts and, where court is deemed necessary, better prepare them for the court process.

Currently, there is some provision of early legal advice for parties involved in private family law proceedings. This includes legal help and family help for those experiencing or at risk of domestic abuse, people under the age of 18, and cases of international or domestic abduction. Additionally, legal aid is available for mediation in family disputes, including a Mediation Information and Assessment Meeting (MIAM), mediation, and ‘Help with Mediation’ (HwM), although take up of this latter service is very low.

Although we did not ask a specific question about the role of legal advice, many respondents to our consultation considered that the lack of free, publicly funded, family law

legal advice was a barrier to early dispute resolution. Respondents told us that providing funded access to early legal advice would improve the information available to parents/carers, allowing them to make better informed decisions about their dispute, and potentially leading to improved outcomes for parents/carers and their children. While we did not receive substantial evidence supporting this claim, the Law Society highlighted the fall in referrals to publicly funded mediation following the passing of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act in 2012 which removed most early legal advice from scope of legal aid.

We recognise the potential benefits of early legal advice in supporting families in resolving their disputes, whilst noting the lack of sufficient data to prove what impact early advice can have for families. If provided in conjunction with improved universal guidance and information, early legal advice could be tailored to individual circumstances. This could involve conducting a risk assessment to identify concerns or safeguarding issues, offering information on various options for dispute resolution, explaining the court process, and providing advice on potential solutions tailored to their specific circumstances.

Early legal advice also gives people a choice in how they seek to try and resolve their issues. By offering legal advice, rather than mandating a specific form of dispute resolution for everyone, people are given the freedom to choose the type of dispute resolution process that best suits their needs.

We know that many individuals fund their own legal advice, and many solicitors provide free initial consultations. There are also existing schemes, such as the Affordable Advice scheme, which offers a fixed fee or reduced cost advice for individuals dealing with private family law matters. However, our interest lies in evaluating the impact of government-funded early legal advice. Through this pilot we aim to assess the potential benefits, both in facilitating the earlier resolution of disputes and expediting court-based resolution where required.

We plan to launch the pilot in specific regions in England and Wales by summer 2024. Our goal is to collaborate closely with stakeholders in the legal and advice sectors to design a pilot that effectively assists participating families in resolving their disputes and enables us to collect crucial evidence on the role of legal advice in dispute resolution.

Parenting Programmes

We know parenting programmes can help improve outcomes for families. We want to give parents the choice in how they go about reaching an agreement on their child arrangements, therefore we are not taking forward proposals which would mandate attendance at a parenting programme before an application could be made to court.

However, we do want more people to benefit from parenting programmes as we know they can help separating parents/carers with tools that help focus on the best interests of their children and reach an earlier agreement. **We will work with Cafcass and Cafcass**

Cymru to help more families undertake in-court parenting programmes earlier in the process, rather than following a court order, as is currently often the case. We will also work to make pre-court parenting programmes the norm for families seeking to reach an agreement over child arrangements.

There was widespread support in the responses to the consultation for the proposal to encourage more parents to attend parenting programmes earlier in their separation or dispute, and particularly before a final order is made by the court.

There was strong support for these programmes being available before court, but there were mixed views on attendance at these programmes being a mandatory requirement. Alongside the successful parenting programmes offered by Cafcass and Cafcass Cymru, **we will work with partners to help build the parenting programme sector to ensure parents/carers have access to a wider range of high-quality parenting programmes, suitable for parents/carers in different circumstances.**

In April 2023, Cafcass launched its Planning Together for Children course in England, replacing the earlier Separating Parents Information Programme (SPIP). Planning Together for Children is a course that supports parents and carers to think about the needs of children first when they are working out how they can parent together, as they are separating and/or living apart. It supports parents and carers to think carefully about what is in the children's best interests and to do their best to work together to protect children against some of the harmful effects of parental conflict.

In the first six months since launching the new course, 12,874 referrals have been made. 89% (5,844) of parents completing the course report having a clearer understanding of the impact of conflict on children and 86% (5,608) are highly satisfied with the course content and support offered.

In Wales, the Working Together for Children (WT4C) programme is commissioned by Cafcass Cymru to support families involved in court proceedings relating to children to communicate better and work together in the best interests of their children. The four-hour interactive course is provided online but can be delivered in person if needed. The course aims to help family members understand what their children need most when they are making arrangements about spending time with parents and other important people in their family. It is suitable only where there are no safeguarding risks and where there are no concerns about domestic abuse and other forms of harm.

During the 12 months from 1 November 2022 to 31 October 2023 Cafcass Cymru made 787 referrals to their course providers. Of 151 feedback forms that were completed by people who took part since November 2022, 93% said that they found the programme helpful and informative.

In England, earlier referrals (those being made by a Cafcass Family Court Adviser before the first hearing, rather than later in proceedings by a judge) have increased from 2.5% to

more than 20% of all referrals since June 2021. In Wales, 126 (19%) of referrals to WT4C have been early referrals by a Family Court Adviser.

The Welsh Government supports a range of universal and targeted parenting and family early help programmes. This can include support to families who are separated, separating or experiencing inter-parental conflict, as well as offering practical and emotional assistance directly to children and young people. The intention is to help families work together to reduce conflict in the home and the negative impacts associated with familial conflict.

Such programmes can be accessed through local authorities via such initiatives as Family Information Services, Families First and other parenting support teams.

Central to work in this area is the programme, “Parenting. Give it time”, the Welsh Government’s positive parenting campaign. This scheme offers free expert advice, information and support universally to parents and carers through a dedicated, bilingual website, digital advertising and social media channels. More specifically, it provides information and resources, under the ‘Supporting You’ section of the website on co-parenting and relationship support, including ‘Parenting Together’, supporting children through separation, ‘Looking after yourself and manage stress’, and ‘Taking care of you and your family’, for parents and grandparents dealing with difficult circumstances.

Strengthening dispute resolution

The proposals within the consultation outlined a requirement for parties to attempt mediation before making an application to family court in relation to child arrangements or financial disputes. The consultation set out that the requirement would not apply where it would be unsafe, for example in cases where domestic abuse was present. Despite this, many respondents to the consultation were concerned that the proposed exemptions would not be enough to adequately protect survivors of domestic abuse from being required to attend mediation when it is not suitable or safe for them. Respondents also flagged that mediation is not the only form of non-court dispute resolution that families can use to resolve their disputes, and that whilst mediation has been shown to be effective, other options, such as arbitration, lawyer negotiation or a ‘one lawyer two clients’ approach, may be preferable for some families.

The Government remains committed to helping more families understand and benefit from dispute resolution. However, we are not proposing to change the law to introduce a requirement on parties to attend mediation before applying to court at this time. Instead, we will focus on delivering the package of measures that helps parents/carers resolve their issues at every stage of the process by:

- providing earlier targeted information before issues escalate;

- providing new dedicated support for pre-court resolution;
- reforming the private family law process to make it less adversarial with a greater emphasis on the voice of the child, and:
- increased support for parties who need it.

Improved domestic abuse screening and training for mediators

We understand the concerns that making mediation a compulsory pre-court step for appropriate cases could risk some individuals who do not fully realise they have experienced domestic abuse being put in a potentially inappropriate situation.

We are working closely with the FMC, and a number of leading domestic abuse organisations to look into how we can help FMC accredited mediators undertaking MIAMs and mediation to improve their approach to identifying domestic and child abuse and supporting victims.

We are keen to focus on effective pre-court screening for domestic abuse to identify those who need to access the courts and potentially require additional support. We will work with domestic abuse partners such as the Domestic Abuse Commissioner on how best we can achieve this.

Mediation

We will continue to support the Mediation Voucher Scheme. By March 2025, we will have invested up to £23.6m.

We know that mediation can be a very successful way of resolving disputes for many families. In March 2021, we launched the family mediation voucher scheme, which offers up to £500 to help eligible families mediate issues involving their children or finances and create a solution that works for everyone, rather than one that has been imposed by a judge. This was to help alleviate the family court backlog exacerbated by the Covid-19 pandemic and to provide an evidence base on the effectiveness of mediation in supporting families to resolve their disputes.

As of December 2023, the scheme has helped over 24,000 families to successfully access mediation and attempt to resolve their issues without having to resort to court. Analysis of the scheme's first 7,200 users shows 69% reached whole or partial agreement and did not need to go on to court. This data does not track cases over time and further study will be required to understand what percentage may turn to the court in the future. Mediator surveys further suggest 51% of participants would not have attempted mediation without the financial assistance offered by the scheme. We will release further analysis from the scheme's second year of operation and beyond as data becomes available for study.

The sustained demand for the scheme demonstrates that a dispute resolution process which is accessible, affordable and tailored to the needs of individuals works. By this time, we expect around 44,600 families to have taken up our offer of assistance.

Child-inclusive mediation

We will support the increased use of child-inclusive mediation by ensuring mediators can apply for advanced Disclosure and Barring Service checks.

Responses to the consultation highlighted the need to ensure the voice of the child is also heard more strongly in out of court dispute resolution processes, particularly as we seek to support more families to resolve their disputes in this way. Child-inclusive mediation is offered by certain properly trained mediators. They ensure that children, where suitable, are consulted as part of the mediation process, which allows them to have their views taken into account by the parents/carers who are trying to reach an agreement. The mediator speaks to the child and tries to understand their thoughts about the situation, asks what they would like to see happen and gives them the opportunity to suggest ways to help to reach an agreement.

We want to support more mediators to offer child-inclusive mediation, and we want more families to take up this service. One barrier to this which we heard in response to our consultation was that some mediators have been unable to apply for the enhanced Disclosure and Barring Service (DBS) check, to provide some assurance to families that they are safe and can be trusted to carry out child-inclusive mediation. We are therefore working with the FMC to develop guidance for mediators to help them access this valuable service and ensure they can apply for the enhanced DBS check. This should help more mediators to offer this service and give families the confidence that it is a safe and secure process for them and their children.

We are also exploring other ways of supporting more families to complete child-inclusive mediation, particularly those families who continue to take advantage of the successful mediation voucher scheme.

Court rule changes to encourage early resolution

The Family Procedure Rule Committee is changing the Family Procedure Rules to remove outdated exemptions to MIAMs and to put in place new measures to encourage full consideration of alternatives to court.

Where families decide to make an application to court, we know that attending a pre-court MIAM, where it is safe and appropriate for people to do so, can give them vital information on the options available to them to resolve their dispute most effectively. We want more people to attend the MIAM unless a valid exemption applies.

The Family Procedure Rule Committee (FPRC) is the body that makes the Family Procedure Rules (the Rules), which set out the practice and procedure to be followed in family proceedings. We have worked closely with the FPRC and have identified several opportunities to encourage people to try non-court dispute resolution and encourage more people to attend the pre-court MIAM through changes to the Rules.

Earlier this year, the FPRC consulted on proposed changes to the Rules, to support the earlier resolution of private family law disputes. The consultation closed on 25 May 2023 and received 38 responses, from individual professionals such as mediators, lawyers and judges and from organisations representing people who work in the family justice sector and those who might use the family courts. This included organisations such as the FMC JUSTICE and Surviving Economic Abuse. Responses to the consultation were broadly in support of all proposals put forward by the FPRC to strengthen the Rules to support people to resolve their issues outside of the family courts, where safe and appropriate.

The changes to the Rules are designed to:

a. Ensure more effective enforcement of the requirement to attend a MIAM by bringing the review of claimed MIAM exemptions earlier in the court process and seeking to ensure courts enforce the MIAM requirement more stringently, including in cases where an exemption was initially valid but is no longer so;

b. Have fewer MIAM exemptions, taking into account modern ways of working including the possibility for online MIAMs;

c. Ensure the court encourages parties to attempt to resolve their disputes through dispute resolution if the court deems it suitable at any stage in proceedings; and

d. Amend the rules on costs orders in financial remedy cases, so that if the court considers that a party has not made a reasonable attempt to attend dispute resolution despite the court considering it appropriate, this can be taken into account as “conduct” when deciding whether to order one party to pay all or part of the other’s legal costs.

The agreed changes will come into force on 29 April 2024.

Improving the court experience for those who need to be there

Following the investigative approach private law Pathfinder pilot, we intend to reform the procedure followed nationally in private law proceedings relating to children to make them more investigative and less adversarial, strengthen the voice of the child in proceedings and increase support to parties who need it.

Building on the investigative approach private law Pathfinder pilot already in place in Dorset and North Wales, the approach will be extended to South-East Wales and Birmingham in April and June 2024 respectively and then, subject to the findings of the evaluation and decisions at the next Spending Review, we intend to roll out the new approach to all courts in England and Wales.

The Government recognises that many families will still need the support and intervention of the family court to reach a safe and fair resolution in the best interests of the children involved. Whilst the intervention of the court is necessary and right in these cases, the fundamental principle underpinning our pre-court reforms – that prolonged parental conflict is harmful to the child and should be avoided – also applies when a case is being considered by the family court.

For those cases that require the support of the legal system, we are making fundamental reforms to the court process for child arrangement cases to reduce its adversarial nature, prioritise the voice of the children, improve the experience of victims of domestic abuse and ensure proceedings can be concluded swiftly in the best interests of the children involved.

In February 2022, the Ministry of Justice began piloting a more investigative and less adversarial approach to private law proceedings relating to children in Dorset and North Wales. Known as Pathfinder courts, the new approach identifies families' needs earlier and works with both adults and children, as well as external agencies like local authorities, the police and schools, to understand their circumstances and help them to reach an agreement and/or conclude proceedings without the need for multiple hearings. A review stage, carried out after an order has been made, aims to ensure that court orders meet the welfare needs of the child and reduce the number of cases that return to court.

The pilot is designed to improve the experience and outcomes for children and parents/carers involved in private law proceedings, and particularly those who may need additional support, such as domestic abuse survivors. This includes earlier referrals to Independent Domestic Violence Advisers (IDVA) where necessary. At the start of a case, the court actively investigates the impact of any domestic abuse on the child and their welfare. At this early stage, abuse support services are contacted and conduct Domestic Abuse, Stalking and Honour Based Violence (DASH) risk assessments where appropriate. The Ministry of Justice fully funds these IDVA services at this initial stage in the pilot areas.

Monitoring and evaluation of the pilots is ongoing. Early insight on case duration and the level of outstanding private law caseloads is positive. Initial feedback from the pilot areas suggests that the Child Impact Report (a key part of the investigative approach private law Pathfinder model) helps to focus the proceedings on the needs of the child, allowing the court to focus on the core issues for the child and their welfare, rather that the wider disputes between the parties. Pathfinder stakeholders and partners report that the closer relationship with local domestic abuse agencies has increased the number of survivors

accessing support services.

In light of these promising results, we will extend the new approach to South East Wales and Birmingham in April and June respectively, and following the formal evaluation later this year and Spending Review decisions, intend to adapt and roll out the model across England and Wales.

Alongside our plans to roll out the Pathfinder model, we are also making a number of individual reforms to improve the experience of victims of domestic violence in the family court. These were recently outlined in our response[6] to the Domestic Abuse Commissioner's (the Commissioner's) report, 'Domestic Abuse and the Family Court; Achieving Cultural Change',[7] published on 9 November 2023.

[6] https://assets.publishing.service.gov.uk/media/654b827cb9068c00130e7573/domestic-abuse-commissioners-report-response.pdf

[7] https://assets.publishing.service.gov.uk/media/654b827cb9068c00130e7573/domestic-abuse-commissioners-report-response.pdf

Conclusion and next steps

We would like to reiterate our thanks to all the individuals and organisations who responded to the consultation for their engagement and support helping families to resolve their issues. In particular we would like to thank those who were able to join our engagement events during the consultation period. Your contributions have helped to shape the programme of reform in private family law cases set out in this response, and for that we are extremely grateful.

Our aim is to now press ahead with our ambitious programme of reform that we believe will improve the lives of separated and separating families across England and Wales. The Rule changes are set to come into force on 29 April 2024, and the Legal Advice pilot will begin in summer 2024. In addition to these reforms, 2024 will see the beginning of the wider rollout of the revolutionary investigative approach private law Pathfinder court model. The Government is keen to continue working with our partners across the family justice system to make these measures, along with all the other reforms underway in family justice to encourage early resolution and reduce conflict, a success.

Responses to specific questions

Question 1: Are you in favour of a mandatory requirement for separating parents (and others such as grandparents) to attend a shared parenting programme, if they and their circumstances are considered suitable and subject to the same exemptions as for the mediation requirement (see chapter 3), before they can make an application to the court for a child arrangement or other children's order?
- Yes
- No
- Don't know
Please provide reasons for your answer

Feedback from the roundtable events highlighted that many parents attending a Separated Parents Information Programme (SPIP) (now Planning Together For Children (PT4C)) in England or a Working Together for Children (WT4C) in Wales, reported a positive experience. Positive elements of the SPIP referenced by respondents included: helping parents to find common ground and effectively focusing parties on how their behaviour impacts on their child.

Although there was no consensus on this, some organisations felt that earlier attendance on parenting programmes would support parents in recognising the effect of their conflict on their child, and that parents would be less entrenched in their views and more willing to reflect on their behaviour. The Family Law Bar Association and Cafcass both supported parenting programmes occurring earlier in the process to allow parents to benefit from an improved understanding of how to make decisions centred around the best interest of their child.

The President of the Family Division stated: *"Attendance on a shared parenting programme would be extremely helpful for most separating parents… The presumption should be that everyone attends such a course unless there is very good reason not to do so. It is crucially important that attendance happens early on before separating parents frame their dispute as one requiring litigation."*

Attendees flagged that there are a number of different programmes, not just those commissioned by Cafcass and Cafcass Cymru, and that making these recognised and more accessible would help more parents to benefit from them.

Many respondents and over 50% of organisations raised the importance of effective screening and risk assessment to ensure that parenting programmes are only used in appropriate cases. Participants in our domestic abuse roundtable event recommended that

domestic abuse experts be involved in any screening process to mitigate risks to victims. This process was especially emphasised by the organisations that were not in favour of mandating or encouraging attendance at a shared parenting programme earlier in proceedings.

However, many responses highlighted that pre-court shared parenting programmes may not be suitable for all separating couples, especially for those in which one party has made allegations of domestic abuse, because there is currently no mechanism to assess the safety or suitability of a parenting programme *before* court. Both respondents and participants in our domestic abuse roundtable event told us that if compulsory mediation was going to be paired with compulsory parenting programmes before court, then an appropriate and thorough domestic abuse screening process would need to be in place and should be developed alongside domestic abuse experts.

Question 2: If yes, are you in favour of this (completion of a shared parenting programme) being required before mediation can start?
- Yes
- No
- Don't know

Please provide reasons for your answer

Of those in favour, 47% cited that the earlier completion of a parenting programme could lead to better mediation outcomes, as parents would then enter mediation more focused on the needs of their children and in a better frame of mind to mediate. There were multiple references to the importance of parenting programmes laying foundations upon which mediation can build, leading to increased chances of mediation successfully resolving disputes outside of court.

This is in comparison to 41% who thought a shared programme should not be required before mediation can start. There were varied reasons given for this; a primary one being that, whilst encouraging completion of a shared parenting programme prior to mediation may be positive, enforcing this may overlook complexities in certain cases. Some also cited that they believed parenting programmes could occur alongside mediation, not necessarily before. Others said that the delays families faced pre-court were already too long and that adding a new requirement would exacerbate the issue.

Question 3: Should information on the court process (non-tailored legal information) be provided to those with a private family law dispute:
- at the mediation information and assessment meeting (MIAM)
- at the parenting programme
- via an online resource
- by any other means (please specify)

The majority of respondents told us that parties should have as much information as possible regarding their options for resolving disputes, whether inside or outside of court, as early as possible. The vast majority of stakeholders were aligned that with this, with only one stakeholder failing to mention improved information sharing as a potential benefit. The majority placed a strong emphasis on sharing information repeatedly, ensuring information was consistent and accessible, and that, where possible, it was specific and tailored to the parties.

Providing information at the MIAM was the preferrable option from respondents, with 68% identifying this as a useful stage at which to receive details on the court process.

Respondents identified some key beneficial features of information sharing at this stage; MIAMs are in person which is an advantageous setting for delivering complex information on courts; this is one of the first points of contact with parents/carers who are likely to go to court, respondents and stakeholders felt the earlier information can be shared, the better. Sharing information at parenting programmes was supported by 49% of respondents. Of these, 75% thought information should be shared at every opportunity (the MIAM, parenting programme, and online). Of the respondents who believed parenting programmes alone were the most appropriate setting to share information, the benefits cited were that this occurs early in the process and is face-to-face.

However, several respondents were concerned that sharing information during these programmes would draw focus away from the child and the overall goals of the parenting programme.

Sharing information online was the only one of these options that was consistently and explicitly encouraged by stakeholders, as well as being supported by 57% of respondents. Over half of stakeholders told us that a ‘one-stop’ online hub of information would be helpful to families.

Many respondents also noted that it is difficult for parties involved in a separation to identify accurate sources of information and advice.

Question 4: Based on current online resources, what are your views on an online tool being provided by the Government to help parents, carers and possibly children involved in child arrangement cases? What information and resources should any such tool prioritise to support families to resolve their issues earlier?

Overwhelmingly, roundtable attendees and respondents felt that there was too much contradictory and unhelpful information online and there needed to be a government backed, central source of information and guidance that people could turn to. Several groups of professionals, including The Family Solutions group and Justice Select Committee, raised at roundtables that they want to see more accessible information targeted at young people.

Professionals at roundtables emphasised that the language and framing of online information is important; they recognise that online resources are likely to be the first thing many parties consult, and therefore have a role to play in using non-adversarial language.

The benefits of a reliable online platform that would support and empower parties were highlighted by legal professionals across three roundtable events and many respondents. Approximately 59% of respondents were actively in favour of an online tool. A key theme referenced by the majority of respondents was that such a tool should not be seen as a panacea and should be only part of the early resolution system, with face-to-face interventions such as mediation still playing an important role. Many respondents strongly recommended that online information was simple and clearly constructed to ensure parents, carers, and children from a range of backgrounds, including those for whom English is an additional language, can understand and benefit.

The need for information to be made available in many formats, not just digital, was also brought out strongly by respondents who highlighted that internet access was not always a given for parties.

Question 5: Do you think it is appropriate for mediators to determine suitability for a co-parenting programme at an information meeting?
- Yes
- No
- Don’t know

Please provide reasons for your answer

There were mixed views from respondents on this point, with no clear majority view (majority here meaning over 50% of responses). Approximately 45% of respondents answered ‘yes’ to this question, with mediators making up 16% of this group. Roughly 35% or respondents felt that it was not appropriate for mediators to determine suitability for co-parenting programmes.

Those who answered no to this question often pointed out that mediators were just one potential avenue for getting people into parenting programmes and that parties should not necessarily have to wait to speak to a mediator to be referred to a parenting programme.

Only one roundtable suggested that mediators should determine suitability, with the others explicitly advising against this. These roundtables included Women's Aid, the Law Society, Welsh Government, and the Domestic Abuse Commissioner. Mediators do not currently undergo specialist training in recognising domestic abuse; professionals were concerned this would hinder their ability to make safe and appropriate decisions regarding parenting programmes.

Of the respondents who felt that mediators should be able to determine suitability, at least 13% explicitly cited that the experience and skills of mediators would support them in making this decision. A few respondents supported mediators in making this decision as they meet both parents at an early stage in proceedings, and therefore can effectively gauge the benefit of a parenting programme in each case. A significant number of respondents who answered yes were also clear that mediators would need to be provided with adequate training to enact this role effectively.

Whether or not respondents felt that a mediator was an appropriate avenue for referral, they frequently expressed their feelings that the referrer must be familiar with family law procedure and domestic abuse safeguarding.

Question 6: Can you share any experience or further evidence of pre-court compulsory mediation in other countries and the lessons learned from this?

We did not receive many examples of pre-court compulsory mediation in other countries beyond those already discussed within the Government consultation (Australia, New Zealand, and Norway). Examples included Malta, in which a couple must meet with a court appointed mediator to try and reach an agreement before they can bring proceedings to the court, and California, in which all parents must participate in mediation prior to a hearing regarding child arrangements. The importance of appropriate domestic abuse screening was highlighted within the Californian system.

Question 7: How should the 'MIAM' pre-mediation meeting under this proposed model differ from the current MIAM?

Responses to this question were varied. Many did not answer the question or did not feel knowledgeable enough about the current MIAM to comment. The majority of those who did answer believed there should be few or no changes to the current system. Currently, an authorised family mediator (i.e. mediators identified by the FMC) will conduct a MIAM to

assess whether a dispute is suitable for mediation and share information about the mediation process and other out of court alternatives.

There were several changes proposed by multiple respondents. These included:

a. Numerous respondents expressed that, when MIAMs take place, both parties should be required to take part, rather than solely the applicant. This was the most prevalent view expressed by respondents regarding changing MIAMs.

b. Approximately 5% of respondents recommended that MIAMs are redesigned to enhance the focus on the child's best interests. A similar percentage expressed a desire for parenting programme information or features to be incorporated into a reformed MIAM.

c. A small number of respondents suggested, if MIAMs are redesigned, they should include greater integration of related services including domestic abuse experts.

Question 8: What should "a reasonable attempt to mediate" look like? Should this focus on the number of mediation sessions, time taken, a person's approach to mediation or other possibilities?

Many respondents felt that determining 'reasonable engagement' would be difficult in a mandatory system. Many highlighted that 'reasonableness' is subjective and therefore, if it is to be measured, must only be measured in objective data points such as whether an individual attended a session. Of those who agreed with the proposals, most respondents agreed that it should involve an assessment of a person's approach to mediation, and the number of sessions attended (though ideas on number of sessions varied between 1 and c.3 sessions).

Question 9: a) Do you agree that urgent applications, child protection circumstances (as set out in the current MIAM exemption), and cases where there is specified evidence of domestic abuse, should be exempt from attempting mediation before going to court?
- Yes
- No
- Don't know
Please provide reasons for your answer

An overwhelming majority of 69% of respondents agreed with this statement, believing that these exemptions were important measures to protect children and survivors of domestic abuse. There were concerns about how these exemptions were being applied, with some voicing concerns that the evidence requirements were excluding abuse survivors from

accessing exemptions. These concerns were; victims of domestic abuse may not recognise they are victims; the victim contacting domestic abuse services is often used as evidence, but not all victims will have done so, meaning not all will have this evidence, and not being believed when they have made these allegations may be harmful to them. Others voiced concerns that exemptions were being abused by some litigants in person.

A small proportion of respondents answered, ‘don’t know’ or did not respond (12%) to this question, and 18% did not support this statement. Those who disagreed told us that allegations of domestic abuse may not necessarily prevent mediation from taking place and could be conducted separately via shuttle mediation.

In relation to what circumstances should constitute urgency, the key themes that emerged were:

a. Where there is a risk of abduction or a flight risk.

b. Where there is a risk of harm to a child or adult.

c. Other (including where there is a medical or schooling emergency or similar time pressured decision to be made).

Question 10: If you think other circumstances should be exempt, what are these, and why?

Of those who answered this question, the key themes were:

a. Where drug and alcohol abuse have incapacitated one of the parties.

b. Where a parents/carer’s actions become unreasonable as a result of mental illness.

c. Where there are previous violent convictions.

d. Where there are allegations of sexual abuse, both between parties and in instances of child sexual abuse.

Question 11: How should exemptions to the compulsory mediation requirement be assessed and by whom (i.e., judges/justices' legal advisers or mediators)? Does your answer differ depending on what the exemption is?

Whilst a quarter of respondents felt that mediators were best placed to assess exemptions, nearly a third of these respondents were mediators themselves. Others felt that a legal practitioner would be better placed and might enable earlier gatekeeping, minimising delays to the process, however, again, roughly a third of these were legal practitioners themselves.
Currently local courts are allowed some flexibility in how they practice gatekeeping. However, MIAM attendance is consistently considered early on in gatekeeping by legal advisors or judges. If parties have not attended a MIAM and do not have a valid exemption, the case will be adjourned until this requirement has been fulfilled. In cases where there is evidence of domestic abuse, or bankruptcy, a MIAM exemption can be granted. However, a key theme that emerged from the responses was the need for current gatekeeping and enforcement processes to be reviewed to ensure that the process is working effectively.

Question 12: What are your views on providing full funding for compulsory mediation pre-court for finance remedy applications?

Respondents were clear that any mandatory requirement should be funded in some capacity but there were differing views on the prescribed value of this funding. Many suggested that further work needed be done to understand whether the voucher limit under the Mediation Voucher Scheme needed to be raised to ensure it covered enough sessions to give meaningful results. Currently, the voucher scheme offers a £500 voucher for parties to undertake mediation relating to private law children matters.

Some respondents were in favour of a means tested approach for finance cases while others highlighted that a means tested approach is often a lengthy process which has the potential to inadvertently penalise certain groups (e.g. those with assets but little available cash).

Question 13: Does the current FMC accreditation scheme provide the necessary safeguards or is additional regulation required? -
Yes -
No, additional regulation required -
Don't know

For context, the current FMC code of conduct for mediators' states that all mediators must have appropriate safeguarding policies and procedures in place. This includes embedding domestic violence screening at Information and Assessment meetings and using exceptions to confidentiality to report safeguarding concerns to the authorities.
Roughly half of all respondents told us that they did not know enough about the FMC accreditation scheme to comment on this question. Of those who did comment, the general consensus was that FMC accreditation was robust, but that there was value in implementing measures to improve its effectiveness. A fairly frequent suggestion from respondents was that enhanced domestic abuse training would benefit mediators in both recognising and providing appropriate emotional support and signposting to victims of domestic abuse. Several respondents felt that it would be beneficial for mediators to receive training to ensure that the focus of mediation is on the wellbeing of the child.
Finally, the requirement that all mediators be FMC registered was highlighted as a potential effective strategy for further improving mediation outcomes. FMC accredited mediators currently conduct all MIAMs, however this recommendation from respondents would see that all mediation was conducted via FMC accreditation.
Roundtable discussions highlighted concerns relating to untrained people moving into the sector, noting that 'mediator' isn't a protected title.

Question 14: If you consider additional regulation is required, why and for what purpose?

Consultee respondents who answered this question focussed on the need for greater domestic abuse training, child-inclusive mediation, and a good understanding of family law.

Some respondents highlighted that outside the umbrella of the FMC, there is very little regulation, although the proposals were for any mediation to only be carried out be FMC accredited mediators. They emphasised the complex task mediators face in resolving disputes and the need for consistent training and accreditation to safeguard and quality-assure the service.

Question 15: a) Should the requirement for pre-court mediation be expanded to include reasonable attempts at other forms of non-court dispute resolution (NCDR), or should it be limited only to mediation?
- Mediation only
- Other forms of non-court dispute resolution (NCDR)
- Don't know
Please explain your answer

b) What are the advantages and disadvantages of expanding the requirement?

c) If for 15a you answered 'other forms of non-court dispute resolution (NCDR)', to what other forms of NCDR should it be expanded?

d) If for 15a you answered 'other forms of non-court dispute resolution (NCDR)', what accreditation/regulatory frameworks do other forms of NCDR have that could assist people in settling their family disputes in a way that fits with the legislation that applies to private law children cases and financial remedy cases?

e) If the requirement is limited to mediation, should completion of another form of dispute resolution lead to an exemption from the requirement to attempt mediation?

What came across clearly from responses to this question is the belief that families should be given a range of options, as mediation may not be suitable in every instance. Many responses and round table discussions told us that enabling people to make an informed choice about what route was best for their circumstances would likely lead to better outcomes than taking a one-size-fits-all approach. Few respondents (8%) answered 'don't know' to this question.

The key advantages of expanding the requirement to other forms of NCDR included:

a. It would help meet the increased demand of out of court dispute resolution if more people were being encouraged to settle their disputes out of court.

b. Parties who are unsuitable for mediation, or unwilling to engage with it, would be able to choose a different form of dispute resolution, potentially leading to greater chances of success.

The key disadvantages cited were:

a. That people would need to be well informed about their options, what each would entail, how long each would take etc.

b. There is a cost disparity between different forms of NCDR.

The most commonly cited answers for what other forms of NCDR could be used were arbitration, early neutral evaluation (ENE) and solicitor negotiation. Arbitration is a voluntary process in which an independent arbitrator will review the details about a dispute and make a decision that is then enforceable by the courts. If parties chose to pursue this, they must pay a cost to the arbitrators. ENE takes place with a judge who will review the case and give parties an indication of the likely outcome should it progress through court proceedings. This is a non-binding form of NCDR. If parties choose to use solicitor negotiation, their solicitors will correspond to find a solution that both parties agree with.

There were not many responses to what accreditation/regulatory frameworks exist for other forms of NCDR. Those who did answer listed frameworks including the Solicitor's Regulation Authority, the Bar Standards Board, membership of the Institute of Family Law Arbitrators, Resolution's Specialist Accreditation scheme and the Chartered Institute of Arbitrators.

Qualifications were suggested as a crucial requirement for anyone conducting NCDR.

Opinions on whether completing another form of NCDR should exempt someone from mediation differed. Those who agreed with the statement cited that it would decrease unnecessary delays in the system. Those who disagreed stated that if other forms of NCDR were unsuccessful, mediation may still work to settle a dispute away from court.

Question 16: What is the best means of guarding against parties abusing the pre-court dispute resolution process:

i. should the court have power to require the parties to explain themselves

ii. what powers should the court have in order to determine whether a party had made a reasonable attempt to mediate, for example when considering possible orders for costs?

Respondents told us that the court already has powers to require parties to explain themselves, and to stay the application to allow for mediation or other NCDR to be attempted, but that these powers are infrequently used.

Some roundtable attendees considered that if people are using the resources of the state, the court is entitled to know why someone is there and not in NCDR; but others pointed out the difficulties in determining whether a 'reasonable attempt' has been made given the confidential nature of mediation.

Question 17: How could a more robust costs order regime discourage parties in court from avoiding reasonable attempts at pre-court or post-application mediation and lengthening proceedings unnecessarily? Should judges continue to have discretion to decide when to make these orders and what specific costs to include?

Those who agreed with a cost order regime, subject to judicial discretion, felt that it was a necessary measure to deter people from abusing the court system.

Others expressed concerns that increasing the use of cost orders, especially in children cases, would be harmful for the following reasons:

a. The threat of cost orders could be used as a tactic by perpetrators of abuse to coerce their partner into attempting mediation when this may not be appropriate or safe.

b. Attempting to define what a ‘reasonable attempt’ to mediate is may result in further harm to vulnerable people who would be sent back to complete a process which may not be suitable for them.

c. Imposing cost orders on the parents/carers would negatively impact upon the children in a case as it would only further deplete the family’s finances.

Question 18: Once a case is in the court system, should the court have the power to order parties to make a reasonable attempt at mediation e.g., if circumstances have changed and a previously claimed exemption is no longer relevant? Do you have views on the circumstances in which this should apply?

Many respondents stated the judges already have powers to pause proceedings, to encourage people to engage in NCDR for example, but that it is not used regularly.

Some respondents felt that judges should have the power to refer people back to mediation when circumstances have changed, at any stage in proceedings. Some mediators told us that successful mediation was still possible after proceedings had begun as long as parties were willing to engage with the process.

Those who were opposed to the idea highlighted their concerns that pausing proceedings would only add further delays, lengthening disputes rather than resolving them earlier. Concerns were also raised over how a ‘reasonable attempt’ would be measured.

Question 19: What do consultees believe the role of court fees should be in supporting the overall objectives of the family justice system? Should parties be required to make a greater contribution to the costs of the court service they access?

Only 62 respondents were in favour of court fees either staying the same or increasing; a greater number of respondents disagreed with a fee increase.

Of those who disagreed with fee increases, the key theme which emerged was that higher fees could act as a barrier to justice as we know that those seeking access to the family court experience disproportionate levels of deprivation. There was also a call for fees to be means tested in family cases.

However, many respondents pointed out that it should not be cheaper to litigate than to attempt to resolve issues out of court as this does not incentivise people to pursue an out of court resolution, where safe and appropriate.

The Government strongly agrees with the view shared by the majority of consultees that fees should not act as a barrier to justice. That is why the Government operates the Help with Fees remission scheme to ensure that that all individuals, regardless of their financial circumstances, are able to access the courts. On 27 November we revised the scheme to be more generous by providing greater levels of financial assistance for both low and middle earners. While court and tribunal fees are not directly subject to means testing, the availability of a fee remission scheme based on an individual's financial circumstances acts a form of means testing for paying these fees.

The Government recognises the views shared by the majority of consultees on the role of the user in contributing to the funding of the court in private law cases. Alongside court fees, the state plays a large role in funding the courts and tribunals. However, the cost of administering the courts and tribunals has increased since fees were last increased in 2021 due to rising administrative and judicial costs. The Government is now consulting on a proposal to increase most fees across HMCTS by 10%, which was launched on 10 November 2023. This is substantially below the level of inflation faced since 2021, and hence would represent an increasing share of taxpayer funding towards the cost of running the courts and tribunals since 2021.

The reformed Help with Fees scheme will continue to ensure that those with the lowest incomes will receive full fee remission. The reforms will also mean that even those higher up on the income distribution may pay less to apply to court. This will be the case regardless of the outcome of any decisions made to increase court fees.

In addition to the questions we set out within the consultation, we also received feedback from consultees on the proposal to mandate mediation. Those who voiced support for the proposal stated that this would help to normalise mediation, as it would come to be seen

as the ‘first step’ of a dispute between parents/carers. This would then, in turn, enable the family courts time and resources to be dedicated to those families who need it the most. Of those who expressed concerns with mandatory mediation, the key issues can be categorised in the following ways:

a. Some respondents felt that successful mediation relies on parties entering the process on a voluntary basis. On that basis, requiring parties to attempt mediation could jeopardise this dynamic.

b. Introducing a requirement to attempt mediation would increase the risk that a domestic abuse survivor could be forced to mediate with their abuser.

c. Other forms of dispute resolution may be more suitable for some people, so employing a one-size-fits-all approach may not lead to positive outcomes for many families.

Equalities and Welsh Language

Equalities

The Public Sector Equality Duty (PSED) is set out in section 149 of the Equality Act 2010. The PSED requires the Minister to pay due regard to the need to:

a. Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010;

b. Advance equality of opportunity between different groups of persons who share a protected characteristic and those who do not; and

c. Foster good relations between different groups of persons who share a relevant protected characteristic and those who do not.

The protected characteristics are age, disability, civil partnership, ethnicity, gender reassignment, marriage, pregnancy and maternity, sex and sexual orientation.

As each of the reforms detailed within the Government Response are developed, due consideration will be given to the PSED as it relates to each individual reform. The considerations below have been made in relation to the package of reforms as a whole.

Direct discrimination

We consider that the proposals set out in the Government Response are not directly discriminatory as the proposals would apply equally, irrespective of any protected characteristics. We do not consider that the proposed measures would result in adults, children, employees or dispute resolution professionals being treated less favourably as they aim to strengthen the process and support for families resolving child arrangements, regardless of any protected characteristics.

Indirect discrimination

We have considered indirect discrimination and whether proposals in the Government Response would be likely to put adults, children, employees and dispute resolution professionals sharing a protected characteristic at a particular disadvantage when compared to those who do not share that characteristic.

Our data shows that, when compared to the general population, adults and children with a) a white Gypsy or Irish Traveller background, b) a mixed or multiple ethnic background and in particular two of the mixed ethnicity backgrounds c) any other mixed or multiple ethnicity background and d) a mixed white and black Caribbean background, and e) those with any other ethnic background are over-represented in private family law. Children with an autistic spectrum diagnosis were also over-represented compared to those in the general population.

Our evidence also shows that men are over-represented as applicants in private family law proceedings, whilst mothers are a higher proportion of respondents.

Children in the 5–10-year-old age group are also over-represented (compared to other child age groups) in private family law proceedings.

We consider that these groups may be positively impacted by our proposals which aim to strengthen earlier resolution of conflict and support families to resolve child arrangements outside of court where possible. After due consideration, we believe the proposals are a proportionate means of achieving our legitimate aim of supporting families to resolve child arrangements and financial remedy cases regardless of any protected characteristic.

Discrimination arising from disability and duty to make reasonable adjustment

We recognise that it remains important to continue making reasonable adjustments for disabled individuals who are involved in children and financial arrangements, to ensure appropriate support is given. We will continue to take steps to ensure accessibility for disabled people, for example with the availability of online MIAMs. We are confident that there will be no particular disadvantage to disabled people.

Harassment and victimisation

We do not consider that the areas of change proposed within the Government Response will give rise to harassment or victimisation within the meaning of the Equality Act, especially considering we are ensuring that appropriate measures and exemptions are in place for cases where domestic abuse is alleged Some of the proposals detailed above, i.e., the investigative approach private law Pathfinder Pilots, have been specifically designed to further improve the experiences of survivors of domestic abuse.

Advancing equality of opportunity

Consideration has been given to how these proposals impact on the duty to advance equality of opportunity by meeting the needs of adults, children and employees who share a particular characteristic, where those needs are different from the needs of those who do not share that particular characteristic.

We believe the suite of reforms outlined in the Government Response will benefit all families by helping them to reach agreements more quickly and in a less adversarial way, and this means it will benefit groups with certain protected characteristics who are overrepresented in these kinds of proceedings.

Welsh Language Impact Test

We have considered the implications for Welsh language. A Welsh language version of the consultation response will be published alongside this version.

Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf

Annex A – List of respondents

1gc family law
3PB
AG Contact Centres Ltd.
AIM Mediation Ltd.
Alternative Family Law
amicable
Ann McCabe solicitors
Archbishops' Commission on Families and Households
Association of Lawyers for Children
Ataraxy Mediation and Ataraxy Family Mediation Training
Barrister practising from Monckton Chambers
Belper Child Contact Centre
Berkshire Family Mediation
Bishop's Stortford Child Contact Centre
Blandy & Blandy
Bridge Child Contact Centre
Bridge Family Mediation
BSG Solicitors
CAFCASS
Cafcass Cymru
Calm Mediation
Cambridge Family Matters
CARA's Centre for Action on Rape and Abuse
Central Law Group CIC
Centre for Action on Rape and Abuse
Chancery Bar Association
Chartered Institute of Arbitrators
Children First Family Mediation
Children Need Voices
Childrens homes, contact centre 24/7 support and outreach
Citizens Advice Caerphilly Blaenau Gwent
Clarion Solicitors
Clarke and Son Solicitors Limited
College of Mediators
Confidante (Family Law)
Consilia Mediation
Cornwall mediation
Council of HM Circuit Judges
Dean Wilson LLP
Devon & Exeter Mediation Practice
District Judge, County Court, Ministry of Justice
Divorce Jigsaw

Divorce Mediation Resolution Limited
Domestic Abuse Commissioner Office
Dootsons Solicitors LLP
Emma Bradford & Co Mediation Ltd
Family Justice Council
Family Law Bar Association
Family Mediation Council
Family Mediation Legal Aid Action
Families Need Fathers
Family Court Crisis
Family Court Reform Coalition
Family Division of the High Court
Family Law in Partnership
Family Law Partners
Family Matters Mediate Limited
Family Mediation and Mentoring LLP
Family Mediation Cymru
Family Mediation Support
Family Mediation Yorkshire
Family Mediators Association
Family Solutions
Family Solutions Group
FM Family Law
FMA
Focus Family Mediation
Gateway Mediation
Gingerbread
Greater London Family Panel
Green Light Mediation ltd
Hampshire County Council
Harbottle & Lewis LLP
Harpenden Child Contact Centre
HMCTS
HMPPS
Hold Up Your Hands
Holistic Family Mediation & Coaching
Horizon Mediation
Independent Domestic Abuse Services
Independent Social Work Consultancy
Institute of Family Law Arbitrators
J Farrer Mediation
Jane Wilson Mediator
Judges of the Central Family Court
JustForToDay
JUSTICE
Kay and Pascoe LLP
Kee Mediation Ltd

Kent Family Mediation Service
Kevin Shearn Family Law Practice Limited
Kingsley Napley
Krajewski Mediation
Lancaster University
Latin American Women's Rights Service
Law for Life
Legal Aid Practitioners Group (LAPG)
Leicestershire Law Society
LKW Family Mediation
Magistrate
Magistrates' Association
ManKind Initiative
Md8 Family Mediation, Focus Family Mediation, Family Matters Mediation
Mediate UK
Mediation and Domestic Abuse Network
Mediation First
mediation west wales
MESH (Mediation Sheffield)
MiD Mediation and Counselling
Midlands Dove Mediation / Elliot Mather LLP
Minerva Mediation
namf.co.uk
National Association of Child Contact Centres
National Association of Separated Parent Programmes
National Family Mediation
Normal Like Me Specialist SEN Research Services
Northwest Mediation
Nuffield Family Justice Observatory
Only Mums and Dads
Oxford University
Pathway Mediation
Pax Mediation Ltd
Penningtons Manches Cooper
Philippa Cullen Family Mediation
Poole Alcock
Pyramids Contact Centre
Recover Our Kids
Refuge
Relate
Resolution
Respect
Restored Lives
Ria Cohen Family Law Mckenzie Friend Consultancy
Richardson Family Law
Sarah Smith Mediation Services
SeparateSpace

Shared Parenting Scotland
Shropshire bench
Southern Family Mediation Ltd
Stewarts
Sulha Solutions
Support & Supervised Family Contact Centre Ltd
Support Not Separation
Susan Regi Mediator
Susanna Long Family Mediation
Surviving Economic Abuse
Talbots Law Ltd
Tees Valley Mediation
TGP Cymru
Thames Valley Family Mediation Service
The Change for Children
The Co-Parent Way
The Divorce Coaching Academy and the Divorce Doctor
The Divorce Surgery
The Family Mediation Trust
The Law Society of England and Wales
The Starting Point Centre
The University of Manchester
The Worcester Family Mediation Practice
Tonbridge Child Contact Centre
Trauma Stop UK CIC Ltd
Two Wishes Foundation
University of Bristol
University of Warwick
Wales Safer Communities Network
WeCare Mediation
Wells Family Mediation
Welsh Womens Aid
Westwood House Child Contact Centre
Wilson Solicitors LLP

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Alternative format versions of this report are available here: Supporting earlier resolution of private family law arrangements - GOV.UK (publishing.service.gov.uk).