



**Response to the Constitutional Affairs
Select Committee Report:**

Family Justice: the operation of the family
courts revisited

**Presented to Parliament
by the
Secretary of State for Constitutional Affairs and Lord Chancellor**

**by Command of Her Majesty
November 2006**

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Introduction

1. The Government is pleased to take this opportunity to respond to the Committee's recent Report¹. We are grateful for the Committee's continued commitment and contribution to raising awareness of the problems that family breakdown causes, and the impact on the children involved.
2. The family justice system needs to be responsive to changes in society, to the way people live their lives now. We want them to know about their rights, how to help themselves, and how to get protection from the courts when they need it. We want to encourage families to resolve disputes themselves wherever this is appropriate and possible, through the use of mediation. Earlier and less formal approaches often produce better outcomes.
3. We also recognise the important role of the court and the need for efficient court processes in appropriate cases. It can be vital that cases get to court early and are dealt with effectively and quickly, for example where there is a need to protect the vulnerable or a similar compelling reason.
4. We are currently working on a wide range of matters in family justice including:
 - **Involving children** - Recent research from Cardiff University, commissioned by the Department for Constitutional Affairs, showed that children felt that the court and their judges should be child-friendly and that they should be able to put their views to the court. The balance between involving children and imposing impossible choices is difficult. So we are consulting on our proposals about the way that children are involved in the court process.
 - **Later life judgments** - We know how important it is to talk to children about what is happening to them and their families. It is increasingly recognised that children's need to know about their background and their need to know their "life story" grows rather than diminishes as they reach adulthood.

So we need to look at this across the family court system and find a practical solution. We have consulted on how we can improve this situation as part of the openness of the family courts consultation.

¹ Family Justice: the operation of the family courts revisited (HC 1086)

- **Openness of the family courts:** We want to see greater confidence and accountability in the family justice system. We have recently consulted on a set of proposals that we believe will achieve these objectives. The proposals included allowing the press to attend family proceedings as of right, while ensuring that the privacy of the families involved, especially children, is protected through anonymised reporting.
 - **Childcare Proceedings:** In the light of the recently published review² we are now considering our next steps. We are also actively addressing delays in the family justice system so as to speed up the process. Work to implement the Review and improve the care proceedings system is overseen by an inter-agency Ministerial Group.
5. The Department for Constitutional Affairs (DCA) and Her Majesty's Courts Service (HMCS) continue to work closely with members of the judiciary in the family justice system. And with: The Department for Education and Skills; the Home Office; the Legal Services Commission; and the Children and Family Court Advisory and Support Service. Local Authorities also play a key role, particularly with vulnerable children and families in child care proceedings.
6. Further information on the development of the Government's approach on family justice will be sent to the Committee over the coming months.

² Review of the Child Care Proceedings System in England and Wales (May 2006) – Department for Education and Skills, Department for Constitutional Affairs, Welsh Assembly Government

Summary

7. The Government is committed to improving the family courts and, in particular, reducing delays in the system. We are now working to bring together county courts and Family Proceedings Courts (FPCs) into an integrated operation with a single administrative team supporting both jurisdictions. We are also working to deliver Unified Family Centres where there are tiers of court in the same place, wherever this is possible.
8. We have made it clear that we have no plans to reduce the number of Legal Advisers in the Magistrates' Courts. Indeed, we are currently working on development of a new career structure to assist with both recruitment and retention of Legal Advisers.
9. We understand the Committee's concerns about specialist family judges. We are considering, with the Lord Chief Justice, how we might make better use of the depth of experience we have in our family judges and Magistrates.
10. We know that there are clear benefits in the use of mediation in the family courts, particularly in arrangements about contact with children involved in relationship breakdown. We want to see mediation regarded as a routine method of resolving those disputes and we are continuing to actively promote mediation.
11. More could be done to encourage people to consider the use of mediation, for example through preliminary meetings with mediators. The Children and Adoption Act 2006 includes powers for the courts to send parties to meetings where they will be told about mediation and how it works so that they understand how it might help them make mutually agreeable arrangements for contact with their children.
12. We are now actively considering the issue of transparency, and we published a Consultation Paper³ on our proposals earlier this year. The consultation closed on 31 October 2006. We are currently examining the responses very carefully and expect to publish a formal Response Paper in the New Year.

³ Confidence and Confidentiality: Improving transparency and privacy in family courts (CP 11/06)

Detailed Response to Specific Points Made

Delays and Resource Issues

We are disappointed that it appears the Department's continuing difficulties with resources seem to be preventing the judiciary from reducing the delays in the family court system. The move towards "cascading down" cases to the Family Proceedings Courts seems a sensible use of existing resources and we trust that the Department will not hinder this scheme by reducing the number of legal advisers provided to the Family Proceedings Courts, or by failing to fill posts that become vacant.

We are also surprised that there has been no movement in increasing the number of District Judges (Magistrates' Courts) sitting full time in the Family Proceedings Courts (FPCs). This would seem a sensible course, ensuring judicial continuity and specialisation in family cases. We hope the Department will investigate the current obstacles to further such appointments.

13. We have no plans to reduce the number of Legal Advisers in the Magistrates' Courts. HMCS is working closely with the Justices' Clerks' Society and the Legal Advisers Working Group to develop a new career structure for both Justices' Clerks and Legal Advisers to help both with recruitment and retention.
14. Currently judges are not normally recruited to particular jurisdictions, with one or two exceptions such as family only Recorders. If judges are able to sit in more than one jurisdiction, such as civil and family, it gives the business a greater flexibility. At the same time, we understand the concerns expressed by the Committee. We are considering, in conjunction with the Lord Chief Justice and the judicial Heads of Division, how we might make better use of the experience of family judges and Magistrates.
15. In July 2006 we published a Consultation Paper⁴ which proposed bringing together the administration of the county courts and FPCs in London. This

⁴ HMCS London Region, Proposals for a Network of Family Courts Centres (CP 16/06)

integration would enable us to manage family business in London more effectively, moving us towards a Unified Family Service.

16. Our aim is to create a network of Family Courts Centres across London, readily accessible to everyone. These centres will offer the best possible facilities for family business within our available resources and the constraints of the existing buildings. Hearings will be held every weekday, making it easier to list longer care cases in a way that makes best use of court time. There are also local regional initiatives to develop Family Court Centres.
17. Unfortunately our existing court buildings do not always readily lend themselves to operating a Unified Family Service, particularly with the differing needs of county courts and FPCs. In places where we are unable to set up Family Courts Centres in a single building, we are instead “linking” courts that are geographically close to each other. These linked sites will be administered as if they were a single building and cases will be listed before the most appropriate court. In most cases the linked sites are within easy walking distance of each other and frequently have a tradition of working closely together.
18. At the same time, we are also aware of the need to have a single modern code of procedure for family proceedings to support the Unified Family Service. HMCS issued a public Consultation Paper⁵ on new Family Procedure Rules in August 2006. The responses we receive will help the Family Procedure Rule Committee and HMCS to produce a single modernised and harmonised procedural code for family proceedings.

⁵ Family Procedure Rules – A new procedural code for family proceedings (CP 19/06)

Transparency in the Family Courts

We reiterate the point which was made in the report by the Constitutional Affairs Select Committee in the last Parliament, that an obvious move to improve transparency in the family court would be to allow the press and public into the family court under appropriate reporting restrictions, subject to the judge's discretion to exclude the public. We are pleased that the Department for Constitutional Affairs has undertaken to consult on the issue of transparency and expect that moves towards open justice in the family court will quickly follow.

19. A public consultation on increasing the transparency of the family justice system was launched on 11 July and closed on 30 October 2006. Alongside the formal paper, we operated separate online discussion forums for adults and children during the consultation period. We also held a number of events for groups of stakeholders, including some specifically for children and young people.

20. Our proposals include:

- Altering existing restrictions on who may attend family proceedings, and what the media may report, so that all family courts are consistent with each other
- Giving the media the right to attend and report all family proceedings in the interests of the public, but allowing the court, in certain circumstances, to exclude them from hearings or restrict what they might report
- Allowing people other than parties to apply to the court to attend a hearing, and allowing the court to invite others itself to a hearing
- Ensuring reporting restrictions allow both adults and children involved in family proceedings to remain anonymous, although enabling the court to increase or reduce restrictions for individual cases
- Introducing a new criminal offence for breaches of reporting restrictions
- Making adoption proceedings a special case, so that there is transparency in the process up until the placement order is made, but beyond that proceedings remain private

21. We also wanted to ask people's opinions about:

- Whether we should make special provisions for inspectors from Her Majesty's Inspectorate of Court Administration and the Commission for Social Care Inspection, and certain other groups, so that they do not need to apply to be able to attend family proceedings but can attend as of right
- Options on making more information available to adults who were involved in family proceedings as children

22. We are now carefully examining all the many responses we received, including responses to the formal Consultation Paper as well as the discussion forums and stakeholder events. Once we have had the opportunity to consider the views of respondents to the consultation we will announce, early in 2007, the detail of how we intend to proceed. We will also publish the responses to the consultation.

23. Our proposals will need primary legislation, and so the speed of any changes will be dependent on the Parliamentary timetable. However, we believe it may be possible to pilot some of the proposed changes within the existing legal framework, and we will be discussing this with the President of the Family Division and the family judges at the earliest opportunity.

Mediation and the Family Resolutions Pilot Project

The results of the Family Resolutions Pilot Project (FRPP) appear to support the view that if more people are to be diverted out of the court system, a degree of compulsion may have to be used. In its report in the last Parliament, the Constitutional Affairs Select Committee recommended a preliminary compulsory meeting with a mediator. This is not the same as compulsory mediation, but would allow people to see whether mediation is suitable for them. We believe that it would be advantageous if the Government were to conduct a trial of this scheme. We note that where people are seeking legal aid they are already expected to consider mediation first. We do not see why this type of compulsion is good for some parents but not for others. Part of the role of family law practitioners should be to prepare their clients for this as a normal part of the family proceedings process.

Measured by participation level, the FRPP was a failure. The main difficulty seems to have been convincing people to enter into the scheme in the first place. We recognise that the judiciary continue to support the scheme. However, if resources are to be dedicated to it, we believe that it should be run on a compulsory basis.

24. We know that mediation works. It produces longer-lasting agreements and is far more effective than going to court. We are actively promoting family mediation, encouraging people to attend initial meetings to learn about mediation. We want people to see mediation as the normal way to resolve disputes, particularly where there are children involved, where this is appropriate.
25. Currently people who apply for public funding have to attend a meeting with a mediator as one of the requirements of the Community Legal Service Funding Code. The mediator will decide whether the dispute can be resolved through mediation and, where possible and appropriate, will proceed straight to mediation.
26. When only one person involved in the dispute is publicly funded, and the other is unwilling to try mediation, we will actively try and encourage the other person to consider mediation by ensuring that they receive information about it so that they can make an informed decision.
27. We included in the Children and Adoption Act 2006 powers to allow the court to order people to attend meetings to consider using mediation to resolve their dispute over contact arrangements about children, although these powers have yet to come into force. This means that the court will be able to ensure that everybody, including those who have not previously considered mediation or

thought it suitable, will have to at least consider resolution of their dispute that way. In particular, the court will be able to actively encourage people towards mediation in cases where it thinks it might be appropriate. We believe that this is a more constructive and effective approach, as opposed to forcing everybody to attend meetings regardless of whether there is any realistic prospect of mediation succeeding.

28. We are also looking at ways of simplifying and increasing use of family mediation, particularly through amending rules of court. In addition we are considering amending court forms to try and provide encouragement to those who are not publicly funded. We believe that if people had to state why they did not think their case was suitable for mediation, that might assist the court when it looks to steer people in that direction.
29. Our intention is to ensure that, as far as possible, the opportunity to resolve family disputes through mediation is considered equally by all, whether publicly or privately funded, and whether legally represented or not.
30. Certainly, where privately funded applicants are using a lawyer, the changes to the court forms will remind them to discuss mediation with their client. This is, already a requirement in the Law Society's Family Law Protocol⁶.
31. The Government believes that solicitors have an important role in encouraging their clients to consider mediation, preparing them for mediation and supporting them during the mediation process. We worked with the Law Society and others to develop the Family Law Protocol. One of the elements of the protocol is a requirement for solicitors make their clients aware of the benefits of mediation, where appropriate. The protocol was first published in early 2002, with a revised second edition appearing in February 2006.
32. At the same time, to help people who need legal advice during the mediation process, the Legal Services Commission has introduced a new service called Help with Mediation. This enables people who are eligible for public funding to receive advice from a solicitor during and after mediation.
33. The Committee has re-iterated their previous comments on the Family Resolutions Pilot Project (FRPP). However, the evaluation of the FRPP has given us a lot of valuable information on how best to operate effective schemes. We will be using this information to guide us as we develop and implement the contact provisions of the Children and Adoption Act 2006.
34. The Government also set up the Family Mediation Helpline which began operating in January 2006 and was officially launched in May 2006. The Helpline provides general information on family mediation, the likely suitability of certain cases for mediation and can refer callers to their nearest mediation

⁶ Family Law Protocol, developed by the Law Society of England and Wales in conjunction with Resolution, Legal Services Commission and Department for Constitutional Affairs

service. The helpline has so far received over 1700 calls and made over 400 referrals.



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