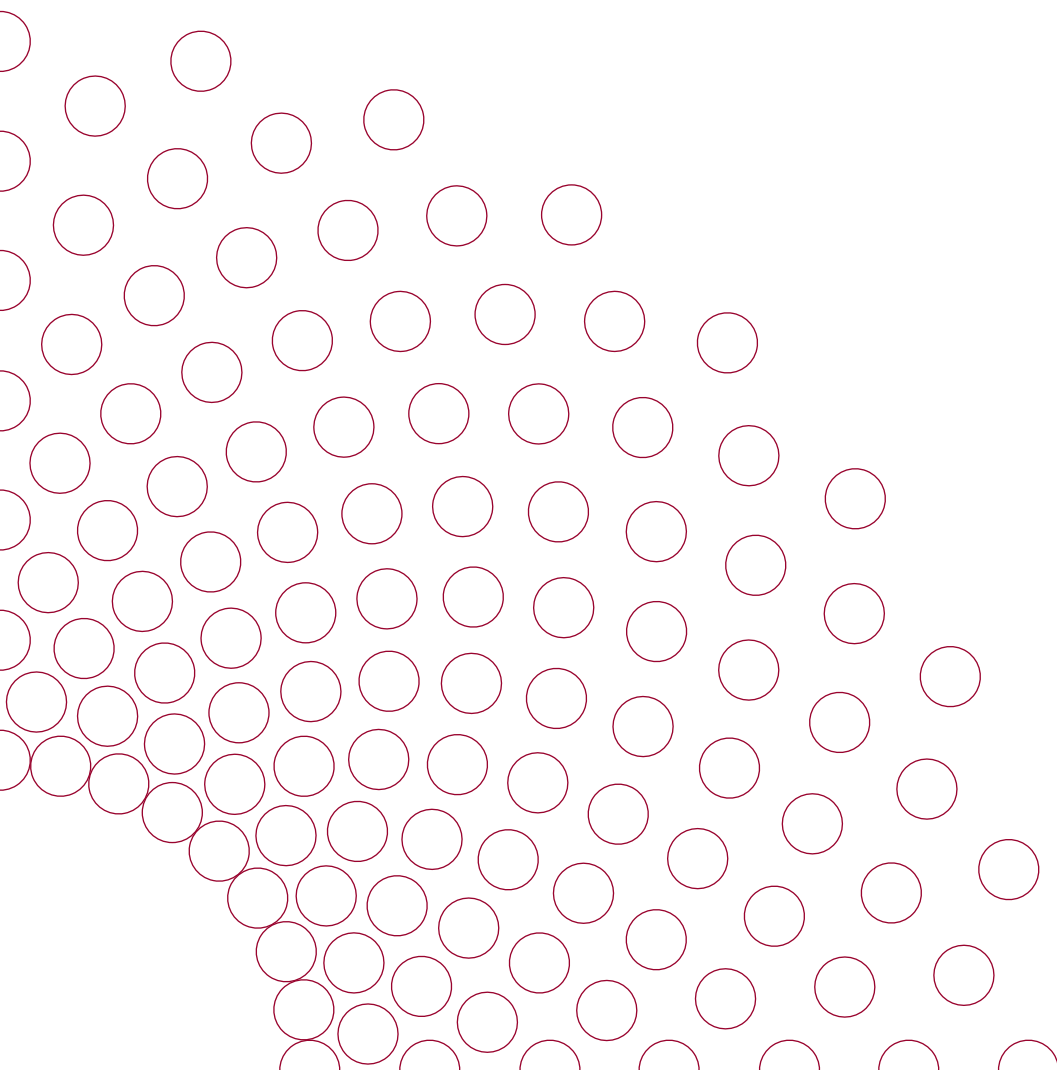


Call for Evidence

Family Justice Review



June 2010

Foreword



The family justice system is vitally important. It attempts to resolve some of the most difficult issues in our society. It must do so with care and consideration and commitment.

It's a huge challenge and one that becomes ever more difficult to meet. More cases are coming into the court system and they are taking longer to resolve. This is distressing for families and life for them can be made worse, not better. And we are all challenged to find ways of doing more with less.

This review was born from a belief that we must create a better system. I and my panel colleagues are determined to achieve this.

But we also know we can't do this alone. We want to hear from everyone involved in the family justice system: children, families and professionals alike from all the different parts of the system.

This is why we are launching this call for evidence. You don't need to be an expert: we just want to know what you think and why. This is your chance to tell us what we can start doing, do better or stop doing at all.

We are ambitious in what we want to achieve. Please be ambitious too in your responses.

We look forward to hearing from you.

A handwritten signature in black ink that reads "David Norgrove". The signature is written in a cursive, slightly slanted style.

David Norgrove
Chair of the Family Justice Review Panel

Call for Evidence

Family Justice Review

What is the family justice system?

The family justice system comprises a network of organisations and individuals. At its heart are the children and families who use, and are involved in the system. Surrounding them are the agencies and professionals who are most directly engaged in resolving their cases. These include: the courts; local authorities; Cafcass and CAFCASS Cymru; contact activity providers; family lawyers; mediators and the Legal Services Commission. This will form the focus of our Review.

There are of course many other organisations which may work with families involved in, or potentially involved in, the family justice system. While not directly involved in resolving a justice issue the work of these organisations may impact on the core system. While we won't be scrutinising their work in the same detail we do want to consider the relationships between and impact of these services upon the core family justice services and the families who use them.

What is this Review about?

This Review will look at all elements of the family justice system. We'll be examining both public and private law cases. In public law this means looking at how the courts, with other agencies, manage cases involving children and the public care system. In private law this means we'll be looking at contact and residence disputes between family members. We'll also be examining the processes involved in granting divorces and awarding ancillary relief¹. We won't be examining the law as it relates to the grounds for divorce or the amounts of ancillary relief that should be awarded.

We will look at a wide range of issues. Ministers have particularly asked us to look at how better use can be made of mediation and how best we can provide greater contact rights to non-resident parents and grandparents.

The review will also look at how the different parts of the family justice system are organised and managed. This will include considering the roles, responsibilities, skills and capacity of its workforce.

1. Ancillary relief is an application for financial relief alongside (ancillary to) divorce

Our aim is to propose reform which will establish a system which is simpler, more cost-effective, timely and just. At all times we want a system that protects children and vulnerable adults² from risk of harm.

How will the Review be carried out?

The Review is being led by a panel. Since starting our work in March 2010 we have been having introductory meetings with key partners, reviewing the issues and developing our plans for our work. There has of course also been a change of government since we commenced work and we have been speaking with ministers to understand their hopes for the review. The Government has asked us to take forward the Coalition Agreement commitment to increase the use of mediation when couples break up, and to look at how best to provide greater access rights to non-resident parents and grandparents. The Terms of Reference have been refined to reflect this.

It is crucial that the Review is informed by the experiences of users and professionals in the family justice system. Gathering this evidence to inform recommendations for reform will form a substantial part of the Review's work. A period of intensive fact-finding activity and formal evidence hearing sessions will be carried out over the summer months, starting with the launch of a 'call for evidence' in June 2010. The call for evidence will allow us to take

evidence from everyone involved in the family justice system: parents and children, families, professionals and representative bodies, regardless of their level of expertise. We are particularly interested in hearing from children and young people, and will undertake further work with children's organisations to gather their views.

The Family Justice Review is a joint review by the Ministry of Justice, Department for Education, and the Welsh Assembly Government. The Panel will produce a report and final recommendations for Ministers based on this evidence in 2011.

How do I respond to the call for evidence?

As this is a wide ranging and complex subject we have posed lots of questions. However, you don't need to answer all of them. We'd recommend you read all the questions through and then decide which questions you have an interest in responding to. Your response should be no longer than 5,000 words.

Our preference is for online responses for ease of analysis. You can respond via our online questionnaire at www.justice.gov.uk/reviews/family-justice-intro.htm. You can also respond by email to familyjusticereview@justice.gsi.gov.uk.

2. A vulnerable adult is a person aged 18 years or over who may be unable to take care of themselves, or protect themselves from harm or from being exploited. This may be because they have a mental health problem, a disability, a sensory impairment, are old and frail, or have some form of illness.

If you would like to submit relevant articles or research to the panel, please email them to familyjusticereview@justice.gsi.gov.uk or send a hard copy to the address below with a brief summary of what you have enclosed.

Family Justice Review
4.23 - 4th Floor
Ministry of Justice
102 Petty France
London
SW1H 9AJ

Please submit responses as soon as possible and no later than **Thursday 30 September 2010**.

The Panel intend to use all evidence submitted in forming their recommendations. If you would like your evidence to remain confidential or anonymous, please indicate this in your response.

Extra copies

Further paper copies of this consultation can be obtained from our website at www.justice.gov.uk/reviews/family-justice-intro.htm.

A Welsh version of these questions is also available from our website

Alternative format versions of this consultation are available on request on 020 3334 4200 or familyjusticereview@justice.gsi.gov.uk.

Questions

The Panel would, in particular, welcome evidence and views on the following questions. Given the broad nature of the Review, respondents should not feel they need to supply comments for every question, but only those for which they have experience:

Overarching issues and the case for change

The Review Panel would like to hear evidence about the family justice system as a whole. The family justice system is a vast and complex area which helps to resolve wide ranging issues. The impact of the decisions it takes are amongst the most serious and have the greatest impact on the lives of families and children. This first section asks questions about the system as a whole. The sections which follow ask for your evidence and views on more specific issues.

1. What does the family justice system mean to you? What should the purpose of the family justice system be? What should not be included in the family justice system?
2. What should the role of the state be when dealing with family-related disputes that do not concern the protection of children or vulnerable adults? To what extent should the state fund this?
3. How effectively does the current family justice system meet the needs of its users? For example:
 - a. Does it have the capacity to deal with all cases comprehensively?
 - b. How could capacity in the system be increased?
 - c. How efficient is the system?
 - d. Does the system ensure equality and diversity?

Better courts and alternatives to legal processes

Courts play a central role in the family justice system, and the very nature of family justice cases means that they often deal with highly complex and volatile situations. Families who need to use the courts may be particularly vulnerable and in need of support and may have little prior experience of the court process. Furthermore, some families may find themselves using the courts where there may be more effective alternatives. Alternative Dispute Resolution (ADR) such as mediation and collaborative law have proved effective for many in resolving issues, and negating the need for court involvement. The Review Panel is interested in exploring the strengths and weaknesses of the current court processes and where these can be improved. In addition, it would like to understand whether there are some elements of the current system that could be safely resolved outside the court arena.

4. Are there areas within the current system where we could adopt a more inquisitorial approach, whereby the court actively investigates the facts of the case as opposed to an adversarial system where the role of the court is primarily that of an adjudicator between each side? What are the options, and advantages and disadvantages, for:
 - a. Private disputes arising from divorce or separation?
 - b. Public matters, where the state intervenes to ensure the protection of children?
5. How far are users able to understand the processes and navigate the family justice system themselves?
 - a. Are there clear signposts throughout the system?
 - b. Do users know how and where to access accurate and timely information and advice? Is it readily available?
 - c. What are the options to support/enable people to resolve these issues without recourse to legal processes?
6. How best can we provide greater contact rights to non-resident parents and grandparents?
7. How effective is alternative dispute resolution (ADR), such as mediation, collaborative law and family group conferencing? What types/models of ADR are more effective and for which circumstances? Does this differ according to cases? How could we improve it and incentivise its use and what safeguards need to be put in place?

8. To what extent do issues around enforceability of court orders motivate decisions to go to court? To what extent does it affect decisions within and outcomes of cases?
9. Are there elements of cases which could be considered outside of a court setting and if so by whom? For what type of cases would this be appropriate and what sort of settings might be suitable alternatives? What are the benefits and disadvantages?
10. Would adding a triage stage, whereby cases are assessed as to the appropriate course of action, make the system more efficient; i.e. by speeding processes up, ensuring resource could be allocated appropriately etc? In what areas might this be appropriate?

Governance and management

The family justice system encompasses a large number of different organisations and individuals e.g. the judiciary, legal practitioners, social workers, Cafcass guardians, experts, administrators, IROs and court staff. Activity starts before cases reach the court arena and often extends well beyond the conclusion of a case in court. Effective case resolution and good outcomes for children and families depends on efficient running of the system and strong partnership working amongst all those involved. In our review we want to look at the different responsibilities of each of the different parts of the FJS.

11. Do you think the family justice system is well organised and managed? What are the strengths and weaknesses of the current governance and management structures? Who should take responsibility for the decision-making process? Who should be responsible for the administrative running of the system?
12. What systems issues are there? Eg. how could things like IT, filing and administrative processes be improved?
13. Who should take ownership of cases when they are in the family justice system? Who is the case manager? And at which point do and should they relinquish responsibility?
14. How can we ensure that there is sufficient and appropriate accountability throughout the system?

15. How well do different organisations/partners in the family justice system communicate, share information and work together to resolve cases?
16. How clear are the different roles and responsibilities of those who are involved in the family justice system (such as the judiciary, legal practitioners, social workers, Cafcass officers, expert witnesses, administrators, IROs, court staff)? Are all these roles necessary? How effectively are these roles fulfilled?

Finance and funding

We are all acutely aware that savings in public expenditure must be found. The Family Justice System will not be exempt from the need to examine carefully the amount of funding supplied to the system, and how it is applied. The Review will need to consider, as part of its work, how family justice can be delivered better in a less costly way

17. Where do you think there is scope to make efficiency savings within the family justice system?
18. What improvements to funding arrangements and mechanisms could be made?

Workforce development

The family justice system is made up from practitioners from a wide range of professional areas, and is not limited to those who work within courts on a daily basis. Work undertaken in family law is often complex, sensitive and judgement based, requiring highly skilled and confident practitioners.

19. Please tell us about your role in the family justice system. What value does this add to the family justice system?
20. What qualifications and experience should be required for the different roles of those who work in the family justice system? What should be included in initial training and continuous professional development?
21. Are there sufficient performance management and feedback mechanisms throughout the system as a whole?

A more user friendly and child focused system

Ensuring that the family justice system remains focussed on the needs of the children and families who use it is a clear priority for us. We want to ensure that children and vulnerable adults are protected from harm. We also want to minimise distress and conflict wherever possible.

22. How could the system be improved to ensure it meets the needs of users and secures positive outcomes for children?
23. How can we ensure sufficient protection is afforded to vulnerable adults through the system?
24. In what types of cases is it important to hear the voice of the child to assist with decision making? How should the child's voice be heard in the family justice system?
25. How effective are Cafcass and CAFCASS Cymru? What should their role and remit be in the future?

And finally

26. What has guided your response to the questions posed above, e.g. personal experience, feedback from the public, specific research or evidence?
27. What can be learned from the way in which other sectors work which could be transferred to the family justice system?
28. Do you know of any good and innovative practice in the UK that the Review Panel should consider? What wider services could be tapped into (especially in the children's sector) to support the family justice system?
29. Is there anything we can learn from international examples?
30. What question would you have liked us to ask that we haven't posed and what would your response be?

The Panel recognises that the questions posed in this document cannot fully cover every aspect of the family justice system. We welcome any further information and evidence that you feel relevant to the review.

