

Breaking up is never easy

Separating families' advice needs
and the future of family justice

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Introduction

Whilst strong and stable relationships are at the heart of family life, regrettably many relationships fail. Every year there are over 110,000 divorces in England and Wales.¹ Many more families separate, with divorce accounting for only 20 per cent of relationship breakdowns.² Relationship breakdown involves difficult decisions and distressing issues to resolve, and every year 500,000 children and adults are involved in the family justice system.³ The issues which need resolving range from responsibility for looking after any children and paying the child maintenance, to problems of how assets get divided, property allocated, and finances, including pensions and benefits, adjusted.

Citizens Advice Bureaux give advice and information, and assist in finding the right help to support individuals, couples and families following relationship breakdown. During 2010/11 bureaux in England and Wales helped over 90,000 clients with relationship problems relating to separation, divorce and dissolution, 52,000 clients with problems relating to children with a further 26,000 clients who raised issues concerning child support – enquiries from both resident and non-resident parents.

Family problems can be financially and legally complex as well as emotionally charged – people need specialist services beyond information and advice, such as legal help, mediation, relationship counselling or parenting support. Consequently bureaux often need to make referrals to other services. A survey of enquiries to Citizens Advice Bureaux about divorce, separation or dissolution issues during the period October to December 2010 found that a majority of clients with these types of problems (54 per cent) had to be referred to family lawyers as legal advice and support was a primary need.

This report looks at family breakdown issues in context of the Government's Family Justice Review and reforms to family legal aid. By analysing evidence from issues presented to

bureaux, this report finds that there is a growing "advice gap" in relation to family problems. The supply of information and advice to separating couples, especially from legal aid, is declining. Whilst mediation and other services can offer alternatives to legal aid, this report illustrates how legal advice and representation, money advice and good quality general advice on family issues are essential to mitigate the worst effects of family breakdown.

Background: Family justice under pressure

Family and household relationship patterns in England and Wales are continually changing. In 2010 there were 17.9 million families in the UK up from 16.5 million in 1996. Of these 12.2 million consisted of a married couple with or without children. So whilst most families are still headed by a married couple (71 per cent), the proportion of cohabiting couple families has increased to 14 per cent, from 9 per cent a decade ago, with the number of opposite sex cohabiting couple families increasing from 2.1 million in 2001 to 2.8 million. The number of dependent children living in opposite sex cohabiting couple families has also increased from 1.3 million to 1.8 million over the same period. And whilst two children remains the most common family size, the average number of children per family in the UK has dropped from 2.0 in 1971 to 1.8 today.⁴

With around 10 per cent of the adult population cohabiting, rates of both marriage and divorce are declining, and nearly one in four dependent children in England and Wales now live in lone-parent families. There are also more step families and children living with parents in same sex relationships. These factors all raise challenges for our system of family law, which is designed around the needs of traditional families. With increasing family diversity, systems and processes for resolving family disputes and breakdown also

1. Office of National Statistics, 2009

2. Millenium Cohort Study, Economic and Social Data Service, 2008

3. Family Justice Review interim report, 2011

4. ONS and the Family Resources Survey (FRS) 2008-9

need to adapt their services to more diverse family arrangements.

The Independent Family Justice Review was established by the last Government amidst concerns about the costly and complex processes for resolving family problems and disputes. The key concerns of the review are how to divert issues away from court and costly procedures, provide better front end information and support for families, including dispute resolution services, in order to resolve their issues and to ensure that relevant agencies work together coherently. The interim review's report recommended that a new Family Justice Service should be established to streamline processes from an "online information hub" to managing the court process and support services such as mediation, court social workers and legal representation.⁶ This would include the new service taking responsibility for the administration of publicly funded legal help on family matters.

However, at the same time the Government are also proposing major changes and restrictions to the family legal aid system. Legal aid will no longer be routinely available in private family law cases, but will remain available in some situations where there is domestic violence. This will mean that around 250,000 people currently served by the family legal aid system will no longer be able to obtain free legal advice.⁷ Instead, there will be funding available for mediation services, which the Government wish to see become the normal route for resolving family disputes.

A requirement to consider mediation in all family cases has already been introduced in the family pre-action protocol from April 2011. The Family Justice Review proposes to take this further and proposes compulsory assessment for mediation.⁸ However, there are concerns about whether there will be sufficient capacity and funding within the mediation sector to cope, especially it becomes the alternative to legal aid. As the Justice Select Committee has said, "We are concerned that the Government may not have budgeted for enough

additional mediations in its legal aid proposals. With more than 200,000 people losing eligibility for legal help and representation, the Ministry of Justice's prediction that only 10,000 extra mediations will be required seems low".⁹ The committee called for "more realistic estimates" for the costs of shifting cases into mediation.

Advice on family problems

To inform joint work on the Family Justice Review and the proposed changes to the scope of legal aid, Citizens Advice and Resolution (a national organisation of family lawyers) undertook a survey of enquiries to Citizens Advice Bureaux in England and Wales about divorce, separation or dissolution. We obtained a list of all clients who had been given initial advice about this subject between October and December 2010, which contained details of 11,454 people. We randomly selected up to five clients per bureau for the CAB to complete a short survey about the advice they were given using their case records for that client. This resulted in an initial sample size of 1,784 clients.

The survey asked about the following issues:

- Which aspects of family law the client needed advice about.
- Whether the client was eligible for legal aid.
- Whether the CAB referred the client to a family lawyer for further advice, and if not, the reason for this.
- The client's socio-economic profile.

In total we received 1,054 responses. After data cleansing, this resulted in a survey sample of 960 cases.¹⁰ In terms of this client group's socio-economic profile, the data showed:

5. ONS and the Family Resources Survey (FRS) 2008-9

6. Family Justice Review, Interim Report, Ministry of Justice June 2011

7. Impact Assessment, Ministry of Justice Proposals for Reform of Legal Aid

8. Family Justice Review, Interim Report pg 171

9. The operation of the Family Courts: Justice Select Committee 2011

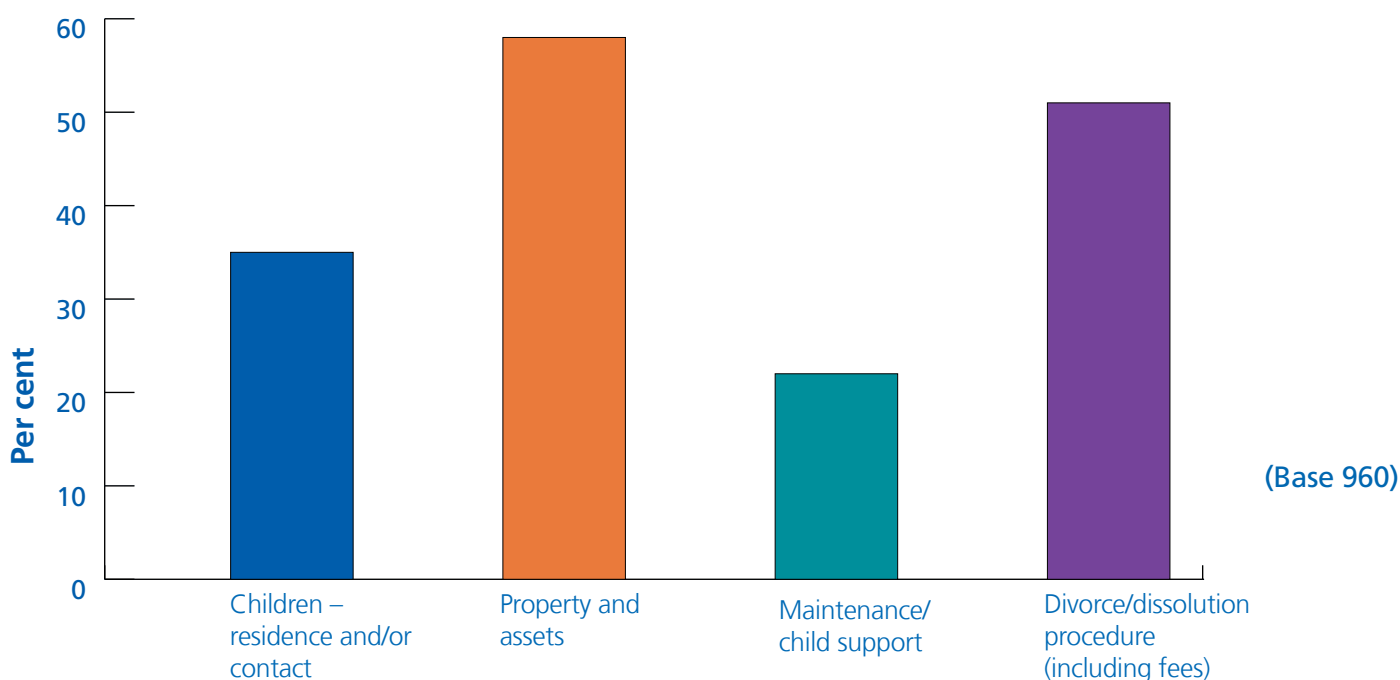
10. 28 responses were removed from the sample because no information was provided apart from the name of the bureau and a client reference number and a further 68 were removed because no information was provided on the issue or issues about which the client was seeking advice.

- The majority of the enquiries were from women (65 per cent), aged between 25 and 54 (83 per cent) and more than half had dependent children (56 per cent).
- Nearly ten percent were from black, Asian and minority ethnic (BAME) communities.
- Fifteen percent of the clients received tax credits and 14 per cent were in receipt of at least one benefit, such as jobseekers allowance or employment and support allowance, as a main source of income.

The majority of issues on which clients sought advice concerned property/financial issues or legal/procedural issues. There was also a high level of enquiries relating to contact with children, residence, maintenance and child support.

A really key finding was that over half (54 per cent) of the clients needed to be referred to a family law solicitor and over 60 per cent of all of the clients in the survey were eligible for legal aid under the current rules.¹¹ This is perhaps unsurprising given the profile of the issues raised by clients. Few bureaux are able to deal with family legal issues in house; only four bureaux deliver or are involved in the delivery of specialist family law advice.

Issues raised by clients



Information and referrals to other services

For those clients who were not referred to a family lawyer (46 percent of the sample) we asked what assistance they required to deal with their problems.

- 70 per cent of clients wanted self help information.
- 16 per cent of clients needed to be referred to other information or services, such as relationship counselling or family welfare services.
- 10 per cent of clients wanted to be referred to mediation services.

This would suggest that there is a lack of awareness of mediation services, and clients may not be aware of the availability and benefits of mediation. It also shows that after legal advice demand for other family support is concentrated on information on options and self help, and processes for taking further steps to resolve practical issues arising from relationship breakdown rather than mediation.

11. Advisers were able to identify whether the client was eligible for legal aid in 64.3 per cent of the responses.

Domestic violence

Under the Government's proposals for reform of the legal aid system people experiencing relationship breakdown will no longer be eligible for legal aid for the majority of family law cases, including issues involving finances and children, unless domestic violence or child protection issues are reported.

After controversy in the consultation process around the definition of domestic violence, the final proposals have used the term "domestic abuse" instead to cover the psychological aspects of domestic violence.¹² However, the definition remains deeply problematic as it fails to cover a broad spectrum of abuse and harm, and requires a high evidential threshold of legal proof.

In the survey domestic violence was reported in eight per cent of cases and psychological abuse in six per cent. Just over one in five (21 per cent) of those who raised the issue of domestic violence also raised the issue of psychological abuse. In addition:

- 7 per cent of clients who sought advice about property and assets also raised the issue of domestic violence
- 11 per cent of clients who sought advice about residence and/or contact in relation to children also raised the issue of domestic violence
- 19 per cent of clients who sought advice on child maintenance or child support also raised the issue of domestic violence
- 7 per cent of clients who sought advice on divorce/ dissolution procedure, including fees, also raised the issue of domestic violence.

However, as the definitions remain tightly drafted, some people experiencing these serious problems will still not qualify for legal aid. Overall then, only a small proportion of CAB clients seeking legal advice on family matters would be likely to obtain legal aid in the future, when

eligibility and new scope rules are taken into account. For example, our survey shows that the proportion of CAB clients referred to family lawyers who would qualify for legal aid under the new test would only be 18 per cent, compared to 40 per cent now.

We consider that reported domestic violence should not be the only gateway/qualifier into family legal aid. Domestic violence is often a hidden issue, for which people are reluctant to seek help or to report. Only a small fraction of the 15.4 million domestic violence incidents per year are reported to the police, a smaller number to refuges and women's aid and even fewer still become the subject of an application for an injunction.¹³

The original Ministry of Justice's Impact Assessment for the 2010 Legal Aid Green Paper suggests that the number of people who will fit the definition and criteria of domestic violence for the purposes of accessing legal aid is around 56,000 for advice or 68,000 for representation; and the revised impact assessment applying the new definition suggests that the slightly revised criteria will only cover an additional 1,000 cases per annum. However, there will be many more thousands, especially vulnerable women, who have experienced extremely traumatic and stressful behaviours within their relationships, including violence, which fall short of the statutory definitions of domestic abuse but can have devastating outcomes. As the Centre for Social Justice has recognised, "Family breakdown in all its forms is strongly associated with poor mental health in adults and children."¹⁴ There can be a spectrum of behaviour from the unreasonable to the abusive. "Unreasonable behaviour" is currently the most common ground on which divorce is granted in England and Wales and covers circumstances from cold and disinterested conduct to active physical violence.

We therefore consider that a more nuanced approach based on individual circumstances is needed to assess whether legal aid should be available, taking into account issues such as vulnerability and the outcomes for children.

12. The definition is explained in Clause 10 and 11, Schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Bill and the explanatory notes.

13. Sylvia Walby and Jonathan Allen *Domestic violence, sexual assault and stalking: Findings from the British Crime Survey Home Office Research Study 276*

14. *Mental Health: Poverty, Ethnicity and Family Breakdown* Centre for Social Justice (February 2011)

Supporting evidence on needs for advice on family issues

The results of our survey are also reinforced by other empirical evidence on the need for advice in dealing with family problems. The Legal Services Research Centre's (LSRC) Civil and Social Justice Survey (CSJS) sampled the legal problems of 10,512 adult respondents drawn from 6,234 households across England and Wales.¹⁵ Thirty-six per cent of respondents to the LSRC survey reported a legal problem of some kind and of those who reported family problems, 214 respondents reported divorce; 191 reported problems described as "ancillary to divorce"; 88 reported domestic violence and 152 reported problems relating to children. In all, family problems represented 11 per cent of all problems reported through the survey.¹⁶

Previous research estimated that 83 people per 1,000 of the population might experience problems with relationships and family matters: a total of 2.4 million adults in England and Wales. This research also estimated that 47 people per 1,000 of the population might experience divorce proceedings; a total number of 1.7 million adults¹⁷. And 43 per 1,000 might experience problems with children under 18, a total of 1.29 million adults. When combined, this indicates a total of 5.4 million adults who may experience legal need in relation to family law in England and Wales.

As regards access to accurate and timely information and advice, there is clearly a high unmet need. The Civil and Social Justice Survey, as well as reporting the extent of problems in the family law area, asked survey respondents whether they tried to get help with their problem, and if so, from whom. Forty three per cent of those with family problems sought help from

solicitors, compared to around ten per cent for those who sought help from the CAB service. The survey findings show a higher than average tendency to obtain advice (70 per cent for family problems compared to 47 per cent elsewhere), rather than to handle the problems alone (21 per cent for family problems compared to 35 per cent elsewhere). This indicates a real need for dedicated legal advice in relation to family law. Fewer people in this area take no action at all in than in any other area of civil law problems

The Civil and Social Justice Survey found those who experience domestic violence are less likely than others to take action to resolve it, and are unlikely to go to a solicitor or advice agency in the first place. In 36 per cent of cases, respondents experiencing domestic violence did nothing. Often this was because people simply thought that nothing could be done, though in 24 per cent of cases where respondents did nothing it was because they were "too scared" to act – a fear which access to good legal advice and information might help overcome.

Finally, as regards data on how separating parents deal with childcare arrangements, an ONS survey on non-resident parental contact shows some interesting evidence on child care arrangements. In this study, when asked which services parents had come into contact with in making arrangements for their children, 58 per cent of non-resident parents (and 55 per cent of resident parents) had used a solicitor, 31 per cent had used the Children and Family Court Advisory and Support Service (CAFCASS) and 26 per cent had come into contact with the judge.¹⁸

Taken together with the Citizens Advice survey, these figures demonstrate not only a high level of need advice on family breakdown, but also that these needs are predominantly for services from the legal sector. Therefore in moving towards the whole systems approach recommended by the Family Justice Review, it will be important to recognise the scale of legal advice needs and design services around how these needs could be met in the future.

15. Pleasence, P., Balmer, N., Patel, A. and Denvir, C. (2010) Civil Justice in England and Wales 2009. Report of the 2006-2009 English and Welsh Civil and Social Justice Survey. London: Legal Services Commission.

16. *ibid*

17. Genn, Paths to Justice, Hart, 1999

18. Non-resident parental contact, A report on research using the National Statistics Omnibus Survey produced on behalf of the Ministry of Justice and the Department for Children, Schools and Families, ONS 2007/8

Towards a whole systems approach to family advice

Given the extent of advice and legal need in relation to family breakdown, the outcomes of the Family Justice Review should focus on the problem of access to the legal process and legal support. In particular it needs to focus on how the operation of the family justice system could be improved so people experiencing relationship breakdown can access the most appropriate help to resolve their problems, move on with their lives and achieve well-being into the future. In our experience, the key challenges, in addition to the level of legal and advice services, are as follows:

- complex systems and legal processes
- lack of joined up family welfare systems
- getting the appropriate help, especially in crisis situations
- child support and financial capability in separating families
- making mediation work effectively.

Complex systems and legal processes

Difficulties in resolving family problems can often be compounded by the complexity of the system. Currently the family justice system does not meet the needs of its users as well as it could. Our clients' experience suggests this owes much to the complexity of the system, court processes and the use of language which makes it virtually impossible to navigate the system without the help of a family law solicitor. In 2010–11 bureaux dealt with nearly 150,000 enquiries about

divorce, ancillary relief and dissolution. One concern regularly raised by bureaux is the confusing court forms and use of legal jargon in guidance which makes it virtually impossible to understand, let alone navigate without legal help. For example:

A CAB in the North West saw a man who was petitioning for divorce. As there was no joint property or children of the marriage, he wanted to deal with the divorce himself rather than pay for a solicitor. He came to the CAB in April 2011 because he was struggling to understand how to complete part 3 of the new forms. The guidance notes stated that the petitioner had to tick the box to show which jurisdiction provision should apply and then the grounds on which the petition was to be made to show that the court had jurisdiction. In the actual form, the words 'on the following grounds' were directly under and indented under the jurisdiction relating to a civil partnership, thus suggesting that this section only related to civil partnerships. After much rereading of the form and guidance notes, it became clear that the form actually relates to either jurisdiction.

Even if a divorce is entirely consensual, and the parties do not wish to use lawyers, complex legal documentation needs to be completed. Free template documents with supporting guidance are not easily accessible, and so completion of relevant documents may be beyond the capabilities of many users of the family justice system. Processing family law forms is also beyond the scope of what most free advice agencies can offer. Nor is there support within the Court Service for users who do not have legal advice back-up, for example with filling in relevant forms or completion of procedural matters.

A CAB in the South West of England saw a 44 year old man, who was going through a divorce. He had made amicable arrangements with his wife to cover financial matters and maintenance for their children. The court then asked for a 'consent order' (statement of financial arrangements when couples agree) to be completed by the couple and

advised the client to visit the CAB where help could be given in wording the statement. The client did not want to engage solicitors so asked the CAB for help. The bureau adviser phoned the court on the client's behalf and was advised that a consent order should have a certain pattern and form of wording. However, the court had no advice on how a client who does not want to engage a solicitor could see an exemplar or template.

We therefore welcome the interim proposals of the Family Justice Review for new processes to manage divorce and separation, and the proposal to establish a user facing "online information hub" for England and Wales. This would provide a single point of access for information, legal documents and applications for family related issues via an online "divorce portal", supplemented with a telephone helpline, and paper based information. In designing this portal it will be essential for the Ministry of Justice to work closely with existing advice networks.

We also welcome the recommendation that uncontested divorce cases should be processed on an administrative rather than judicial basis. However, we consider that the review could go further in relation to simplification and streamlining the procedure, delivering fairer outcomes, and making grounds and options for divorce clearer and more accessible, especially where there is mutual consent. Further simplification of the underlying law, as well as terminology, will be essential to support the shift of uncontested cases to an administrative process, and the positive role that Government considers mediation should play. Questions remain over whether the existing legal framework continues to be appropriate for the contemporary and diverse needs of separating families, for example where divorce is contested or cases of domestic violence and forced marriage where the victim may be unable to face the procedures required by the law even with legal aid. **The next stage of the Family Justice Review should look at simplifying forms and language – terms such as decree nisi and prayer are simply unnecessary and inappropriate.**

Lack of joined up family welfare systems

The interim findings of the Family Justice Review stated that "family justice does not operate as a coherent, managed system...in many ways, it is not a system at all"¹⁹ The review points to fragmented but overlapping organisational structures and processes which prevent coherent management of family law problems. The same is true of the relationship between the family justice and other agencies which deal with family breakdown such as Jobcentre Plus and the Tax Credits Office, the Child Maintenance and Enforcement Commission, and housing authorities. Agencies are often slow to recognise changes to personal relationship status and to respond appropriately. For example:

A CAB in the East Midlands saw a 21 year old woman living in privately rented accommodation with her two young children, who had split up with her partner. Her ex-partner was receiving the child benefit and the client had applied to have it transferred to her, but was told this would take 12 weeks. The client had no income from any source and the rent was overdue. She had submitted a claim for income support, which had been erroneously turned down on the grounds that she was not receiving child benefit. The bureau considered that processing of benefits claimed due to relationship breakdown should be prioritised where applicants have no other income.

A London CAB saw a 29 year old woman who had been living with her husband in local authority accommodation. He was the sole tenant and moved out when the relationship broke down whilst the client continued to live in the property with no further contact with her husband. She was also wrongly refused housing benefit because

19. Non-resident parental contact, A report on research using the National Statistics Omnibus Survey produced on behalf of the Ministry of Justice and the Department for Children, Schools and Families ONS 2007/8

she was deemed not to be liable to pay the rent, and was deemed not to be in priority need even though she had a dependent child because the father was still receiving the child benefit and tax credit, and because she did not have evidence that her child was dependent on her. The local authority then repossessed the property, despite knowing that there had been a relationship breakdown and that the client remained in occupation. The local authority did not advise her, or take account of her rights under family law and as a result the client lost her home, triggering a duty to rehouse.

We welcome the Family Justice Review's vision of a single system and service underpinned by effective sharing of information between different agencies. But this could extend further so that there can be information sharing protocols, consistent guidance, policy and best practice across statutory agencies which deal with family breakdown issues. **In order to fulfil cross-governmental policies on putting children first, the Family Justice Review should also look at how statutory agencies interact with the systems of child support and other services put in place to deal with child welfare following relationship breakdown.**

Getting the appropriate help, especially in crisis situations

Family law is complex, as many cases also involve complex property problems and sensitive childcare and parental responsibility issues. We are concerned that access to family legal aid is becoming restricted to the point of being almost entirely removed in private law cases. Bureaux

regularly report situations where for vulnerable and low income families it is already virtually impossible to obtain family legal aid, due to both the insufficiency of providers within a reasonable travel distance, and insufficient capacity to take on cases relating to the allocation of matter starts. For example:

A CAB in the South East of England saw a 44 year old man who needed help finding a solicitor to apply for an occupation order. He was in receipt of jobseekers allowance and was joint tenant with his wife of a housing association property. The marriage had broken down and to give his wife some space, he left the marital home and had rented a room. The day after he left home, his wife sent him a text telling him that she had put his belongings outside the door. He wanted to return home, but had not been able to do so and needed quick access to a solicitor. He was not able to find a solicitor in the local town who provided legal aid and could take action quickly to resolve his problem.

A CAB in the East of England saw a 28 year old woman in April 2011. She and her partner had separated acrimoniously in early March 2011. They had a two year old child. The partner refused to return the child after a visit a few days earlier. The police would not intervene as they said that the child appeared to be happy. The client was eligible for legal aid, but had been unable to find a lawyer with matter starts able to take on the case. The bureau was unable to find a legal aid solicitor locally and after many phone calls finally identified a one in a neighbouring town.

It is also important to recognise that family law issues rarely occur in isolation from other problems. There is ample evidence that job loss, financial difficulties and loss of income can bring about family breakup, which can in turn lead to other social and money problems. For example, findings from respondents to the most recent CSJS revealed that those who had become unemployed during the survey's three-year reference period were much more likely than

others to report having experienced family law problems.²⁰

This close connection between family breakdown and other social welfare law problems raises another issue for the proposed legal aid reforms as areas such as debt, welfare and employment rights advice are also going to be taken of scope. There will be very little chance that people will be able to find free specialist legal advice, and their situations are likely to deteriorate, leading to increased public expenditure when their situations become more serious or other agencies such as police or social services get involved. The Government is replacing a system where inexpensive “legal help” advice is able to solve problems at an early stage, with a system where more expensive legal assistance will be only available in serious and emergency situations, such as child protection proceedings and representation in serious family breakdown cases where domestic violence is proven in court, and significant damage will already have been done, particularly to children. **We therefore recommend that both the definition of domestic violence and the test for accessing legal aid must reflect people’s real experience of leaving troubled and traumatic relationships.**

Besides legal aid, the other key statutory sources of help with family breakdown and crisis situations are local authority children and adult social services and court based social services (CAFCASS). Statutory services and social work professionals are there to deal with the more complex needs of family crises, from assessing risks of harm to delivering counselling and support and more intensive interventions. It is especially important that social services are able to, and do, give their clients the full range of welfare advice, for example relevant information about financial assistance available under the Children Act, and child benefit entitlement. **We recommend that social services should provide their clients with information on relevant benefits, financial and other support available in respect of children’s behavioural, emotional and educational needs.**

Family breakdown, child support and financial capability

Relationship breakdown can result in dramatic changes of circumstances, especially in relation to financial and childcare arrangements. People who are newly single, and especially lone parents, often run into debt and financial problems following relationship breakdown or have liabilities from their previous relationship. For example:

A London CAB saw a 30 year old unemployed woman with a one year old child who had separated from her husband and they divorced. She was receiving benefits but also had multiple debts of approximately £21,000. Her ex-husband had persuaded her to take out credit in her name when they were together, spending the money himself. After separating, the client was having to pay the loans back as she was the one who was legally liable and was facing financial problems as a result.

A CAB in the South East of England saw a 32 year old woman with two children who had separated from her partner. Her ex-partner went to live with his mother, whilst the client was living in a council property which was in her own name. She was working part time as well as receiving child maintenance, child benefit, and tax credits. However she was in debt because of a tax credit overpayment they had incurred as a couple. The overpayment totaled £3,500, which she was repaying by installments of £100 a month, as well as repaying a bank loan. Many of the household bills were in the name of her ex-partner, and she was concerned that he had sold the car which was in her name. Her ex-partner had been made redundant and intended to move abroad, so she was concerned that he might

default from an agreed payment to her. He was also trying to reclaim gifts she had given him which were worth about £500 and were still in her house. The client wanted to know what her rights were regarding the gifts, the energy bills, managing her debts, and how to ensure he would continue with the child maintenance.

Single parent families are disproportionately affected by poverty. A report by Gingerbread in 2010 included a survey which showed that 47 per cent of single parent respondents were behind with their financial commitments such as utility bills.²¹ Money advice needs to be available to people experiencing relationship breakdown, and should therefore be part of the overall information and advice made available to separating families. The Gingerbread report found from their survey of single parents, that over half would like to be able to get advice on budgeting and managing their money, but were also less likely than other groups to actually seek professional advice.

The Family Justice Review has proposed a new delivery model for family support around the point of separation to be accessible via the Family Justice Service's online hub.²² As well as providing a direct gateway into other services, including court applications, mediation, and parenting plans and programmes (PIPS), it is proposed that a range of self-help resources, guidance and information will also be available through the hub - such as an online calculator for separation budgets based on the example of the Money Advice Service's financial capability tool.²³ We welcome this approach for enabling dissemination and access to information at low cost, but consider it essential that online and helpline systems should not be the single or only point of access for support, as those experiencing relationship breakdown will continue to need support by other methods, such as face to face advice, when necessary.

Child support and maintenance often remains a contentious issue for separating families. The policy issues around child maintenance have been subject to a separate consultation by the

Department for Work and Pensions (DWP).²⁴ Whilst we do not intend to comment on the DWP's proposals in this report, broadly we welcome the emphasis on facilitating voluntary agreements, although we also note that the overwhelming majority of low income single parents use the statutory child maintenance service out of necessity rather than choice. Consequently there is a major issue of contention arising from this consultation over whether all resident parents should have to pay to access child maintenance.

Crucially however, the DWP Green Paper does recognise the need for accessible advice and support services so that parents can find it easier to obtain the help they need to agree maintenance arrangements for their child between themselves, without the intervention of either the Child Maintenance Enforcement Commission or the courts. The emphasis is again on mediation, self-help and encouraging responsible behaviour and voluntary understanding and undertakings in relation to children's welfare. **Whilst we endorse this approach, we would also urge Government to retain a robust and freely accessible system for the statutory enforcement of child maintenance.**

Is mediation the way forward?

Mediation is currently very much the favoured solution to family justice and relationship breakdown issues amongst policymakers, given the perceived benefits of conflict resolution, voluntary agreements and families taking more responsibility for resolving their own issues. Overall we agree with this approach and recognise the potential of mediation and other alternative dispute resolution options, but mediation should not be considered a universal solution. Whilst we recognise its value, it is not appropriate for all family cases, especially where there are power

21. Peacey, *Family Finances*, Gingerbread, 2010

22. Family Justice Review Interim Report, page 169

23. <http://divorce.moneyadviceservice.org.uk/>

24. *Strengthening families, promoting parental responsibility: the future of child maintenance* DWP 20111

imbalances between the parties or where one party simply refuses to mediate. For example:

A CAB in the North East of England saw a woman who had participated in mediation, but as the relationship had broken down due to abuse, she was in a disadvantaged position. She agreed to take on debt accrued by her ex-husband only so that the process would be over quickly. The negotiations were done in separate rooms but she found the thought of having any contact with him extremely distressing. The client agreed to things that she subsequently wished she had not and was left in a difficult financial position.

If people are pressured to use mediation rather than the courts in difficult cases such as this, it can lead to injustice if their needs are not carefully assessed.

A CAB in the North West saw a woman who wanted to divorce her husband. However, the new family law rules introduced in April 2011 require mediation prior to divorce proceedings. This is problematic for cases such as this, as the client and her husband had been separated for nine years, so the bureau considered that mediation would be inappropriate for a couple who had been separated for such a long time.

There are also issues of cost and quality assurance for family mediation that need to be addressed. Whilst legal aid funding will continue to be available for mediation, this may not be able to replace the capacity or type of service previously provided by family legal aid solicitors. The capacity of the mediation sector to meet additional demand needs to be considered. In our view, it is also essential that all mediators, whether publicly funded or not work to the current LSC Mediation Quality Mark Standard and that FJS mediation services should be funded on a similar basis to family legal aid.

A CAB in the South East saw a 40 year old man who had lived with his partner for about six years. He had joint parental responsibility for their three children, and sought mediation help when the relationship with his partner

broke down. The client had bought what became the family house many years before he met his partner and the mortgage was nearly paid off. He solely owned the property. The client's partner wanted the separation but the relationship had remained amicable and the client wanted to keep it that way, especially for the children. So the client and his partner contacted a local mediation provider, but thought their approach was very pushy and focused on financial rather than relationship and childcare issues. They were also under the impression that it was a free service, which it was not.

Mediation has benefits, but it is not the only service that can achieve desirable outcomes, including early settlement, and enable families to move on. We welcome the Government's recognition that mediation may need to be supplemented by legal information and advice to ensure it is effective and that settlements are legally appropriate. Current proposals on mediation as an alternative to legal aid will allow some legal advice to be available (at a fixed fee rate of £156) before and after the mediation process, under the legal aid scheme (subject to means and merits tests). It is therefore recognised by Government that mediation and legal advice are complementary and that individuals may need legal advice in order to decide that mediation would be appropriate to their needs and situation.

However there are many models, such as collaborative law, of how both mediation and legal advice can work in a complementary way to deliver an effective negotiation process to resolve disputes. The conclusion from our evidence is that different types of service combining advice and negotiation may be necessary to achieve effective resolution of personal, parental or financial issues. One holistic model that has also been trialled has been Family Advice and Information Networks (FAINS) – a Legal Services Commission project that was piloted as assessed favourably, but never rolled-out for reasons of cost. **If a new Family Justice Service is to take single ownership of commissioning family support services, we recommend that the**

Service should have the flexibility to draw together different combinations of support appropriate to client need.

Conclusion

We agree with the Family Justice Review that legal processes and support services for separating families must be organised and managed more coherently in future. Users of the system should not have to navigate multiple agencies and impenetrable processes. We therefore welcome the key recommendation of the review that a new integrated family justice service should pool the resources of different agencies, including family legal aid, and co-ordinate their roles in resolving family problems. But there is a real challenge over the availability of advice and information for those experiencing relationship breakdown. Unless there is adequate availability of legal advice the 'integrated' approach will fail.

Whilst we agree with the review that pooled statutory budgets could help stretch family justice resources further, it will also be essential for the new service to establish effective strategic partnerships with the voluntary sector to improve outcomes and services for separating families. Advice providers such as Citizens Advice Bureaux in particular may see an increase in family breakdown enquiries, as a result of legal aid changes, which they do not have the resources or expertise to deal with. So the relationship between family justice and advice services should be strengthened and developed to ensure that there is appropriate expertise in the sector to deal with family breakdown issues.

The family justice system should also be equipped to deal with more than just legal issues. But given high levels of legal need and complexity, we cannot agree with the Ministry of Justice that domestic violence should be the only circumstance that merits legal aid. Whilst a high proportion of relationship breakdown disputes

and problems may be amenable to resolution without the intervention of costly legal services, this assumption is not applicable to all family breakdown cases. The complexity of the issues and severity of dispute are also factors that should be taken into consideration as well as domestic abuse. **A single, holistic Family Justice Service could be given far greater discretion over which cases are allocated legal help or representation within the constraints of a fixed budget.**

This report points to a pressing need for people experiencing relationship breakdown to be able to access good information, advice and support, so that they are aware of their options and the consequences of their decisions, on their children and financial situation, and can adjust to new circumstances. This is especially the case for those who experience trauma as a result of relationship breakdown, or who are vulnerable due to other factors, or find themselves struggling with the new challenges of lone parenthood. As a major life event, relationship breakdown requires people to adapt their financial capability and parenting skills.

The Government has made fixing broken families one of their highest priorities. Implementation of the Family Justice Review's recommendation to establish a new type of Family Justice Service therefore provides a real opportunity to bring together dispute resolution with family welfare and money advice, to tackle some of the most difficult issues that follow from relationship breakdown.

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