

NSPCC response to “Support for All” - the Families and Relationships green paper

Introduction

The National Society for the Prevention of Cruelty to Children (NSPCC) is the UK's leading charity specialising in child protection and the prevention of cruelty to children. The NSPCC aims to end cruelty to children in the UK over future generations. In pursuit of our vision we will:

- Create and deliver services for children which are innovative, distinctive and demonstrate how to enhance child protection most effectively;
- Provide advice and support to ensure that every child is listened to and protected;
- Provide advice and support to adults and professionals concerned about a child and if necessary take action to protect the child;
- Work with organisations which work with children to ensure they effectively protect children and challenge those who do not;
- Campaign for changes to legislation, policy and practice to ensure they best protect children;
- Persuade everyone to take personal responsibility for preventing cruelty to children;
- Inform and educate the public to change attitudes and behaviours towards children;
- Use our statutory powers as necessary to protect children.

General Comments

1. In “Support for All: The Families and Relationships Green Paper”, the Department for Children, Schools and Families sets out its proposals to support all families as they bring up their children, and to help families cope with times of stress and difficulty.
2. The NSPCC welcomes recognition of the fact that relationships between adults in the home have the biggest impact on children's happiness and healthy development, and that good parenting can help children overcome disadvantage and other problems in their lives.
3. We therefore share and applaud the commitment of the Government to supporting all parents, grandparents and carers in sustaining strong and resilient relationships with each other and the children in the home, and to supporting such adults in their parenting of children. We generally welcome measures aimed at helping children through the difficult and distressing circumstances of family breakdown and family transition.

4. In our response we provide detailed comments on two of the specific proposals for consultation:
 - (a) *Do you consider that compulsory mediation assessment would improve the take-up of mediation in family law cases, and what more could be done to improve the take up of family mediation as an alternative to court action?*
 - (b) *How far does the need to seek leave of court act as a barrier to preventing family members applying for contact with a child? Is there a need to remove this requirement for some other family members, beyond grandparents? (Note: Parents are already exempt.)*
5. In addition we will be submitting evidence to the review of the family justice system, and would welcome further engagement with the DCSF on the issues raised in the Green Paper, including sharing our experience of providing family support services to families where children may be at risk of harm.

Specific Comments

Question Four: Do you consider that compulsory mediation assessment would improve the take-up of mediation in family law cases, and what more could be done to improve the take-up of family mediation as an alternative to court action?

6. The NSPCC recognises the increasing role that mediation is playing in resolving family disputes, and the advantages to children that can stem from disputes being resolved by mediation rather than court proceedings. We consider that as mediation allows parents to reach agreement between themselves (which may consequently be more likely to be abided by than a court order), and may improve communication between parents, it is generally in the best interests of children.
7. We approve of the justification given by the Government for mediation in that it can improve outcomes for children by reducing hostility and conflict between parents, and deliver faster resolution of issues. We wholeheartedly endorse the recognition that ongoing conflict between parents negatively affects the wellbeing of the child involved.¹
8. The NSPCC therefore welcomes a more extensive role for mediation in family disputes, but with **three crucial caveats**:

¹ See *Families in Britain: An Evidence Paper*, DCSF, December 2008: “Although conflict may be part of family life, intense parental conflict has been identified as a key mediating variable in reducing parenting quality and producing negative outcomes for children, including those in intact families.”; “Amicable relationships between parents are reported to reduce negative outcomes of divorce on children”.

- (a) Children must be protected throughout the mediation process,
- (b) Children must be listened to throughout the mediation process,
- (c) The mediation must be properly resourced in terms of the service and expertise it can offer.

More needs to be done In order to ensure these caveats are addressed.

(a) Children must be protected throughout the mediation process

9. The NSPCC is committed to campaigning for changes to legislation, policy and practice to ensure they best protect children.² More safeguards are needed to ensure that mediation is not attempted in circumstances where children are not fully protected. We are mindful of the key role of professionals who come into contact with children in ensuring child protection, and consider that more could be done to ensure that mediators are effectively protecting children.
10. The government’s proposal is that mediation assessment sessions should be made compulsory for parents who go to court to seek to resolve residence or contact disputes, **where it is safe to do so**. However, the government does not propose methods for determining in which cases it is safe to make a mediation assessment session compulsory.
11. We recognise that currently parents who want to be publicly funded by the Legal Services Commission are required to consider the use of mediation if they wish to issue court proceedings, with certain exemptions. One exemption is where the applicant has made an allegation of domestic abuse against a party to the mediation that has resulted in a police investigation or the issuing of civil proceedings for the protection of the applicant in the last 12 months. Further, the mediator has the general power to decide that mediation is unsuitable for the dispute, the parties, and all the circumstances in a case where domestic abuse is alleged³.
12. We further recognise that the Legal Services Commission requires that family mediation is provided in accordance with a Code of Practice designed to ensure that parties participate in mediation only if they are willing and not influenced by fear of violence or other harm, and that cases where either party may be influenced by fear of violence or other harm are identified as soon as possible.⁴ The Family Mediation Council (FMC) also has a Code of Practice, and the Government is committed

² NSPCC 2009 – 2016 Strategy for Children

³ *Understanding Publicly Funded Family Mediation*, Legal Services Commission, June 2009

⁴ *Funding Code Procedures*, Legal Services Commission, April 2010 at D95.2

to working with the FMC to build on existing accreditation schemes for mediators.

13. Given the NSPCC's recommendation that professionals working with families where domestic violence is found should always treat any children present as at risk of maltreatment, even if there is no evidence of violence having been directed at them⁵, we are concerned about the risks that mediation between parents may pose to children in cases where domestic violence is present.
14. We are concerned to ensure that similar safeguards should apply to compulsory mediation assessment sessions in both privately-funded and publicly-funded cases, so that mediation assessment sessions are not compulsory in circumstances where there is a risk to children. We are also concerned to ensure that there is close scrutiny of which cases are, and are not, suitable for mediation, and that the safety and welfare of the children concerned should be the primary consideration in making this decision. This is important for ensuring consistency with the principle of the child's welfare being paramount in court decisions which affect them, as established by the Children Act 1989, and also with Article 3 of the UN Convention on the Rights of the Child. This requires that in all actions concerning children, including in courts of law, administrative authorities and legislative bodies, the best interests of the child shall be paramount.

15. Consequently, the NSPCC recommends that:

- (a) Mediation assessment sessions are compulsory only in "suitable" cases, regularising the position between publicly funded and non-publicly funded cases.**
- (b) In determining whether a case is "suitable" for mediation, primary consideration is given to the welfare of the children involved.**
- (c) Mediators are trained to be alert to signs of domestic violence and are given clear guidelines on procedures for referral to child protection services.**

(b) Children must be listened to throughout the mediation process

16. The NSPCC is committed to listening to children's wishes and feelings about their future in the event of family breakdown.⁶ This is consistent with Article 12 of the United Nations Convention of the Rights of the Child which grants children who are capable of forming views, the right

⁵ Cawson, P (2002) *Child Maltreatment in the Family: The Experience of a National Sample of Young People*, London: NSPCC.

⁶ "More support for family breakdown children", NSPCC Press Release 10 July 2007. Dame Mary Marsh, Director and Chief Executive of the NSPCC said *"Children living through family breakdown often say they don't know who to turn to for advice. In many cases their feelings and wishes for the future are not heard or overlooked."*

to express them freely in all matters affecting them. It has been shown that it is be decidedly unhelpful for children to be “kept in the dark” about what is happening during parental separation.⁷ There is also some evidence to show that mediation that takes place in consultation with children can be a positive experience for them as well as for their parents.⁸

17. We welcome the proposal that the Government will work with stakeholder groups to ensure that the design and development of Parenting Plans available online require the parent to consider the needs of the child rather than just the situation between the parent and their former partner⁹, and the NSPCC would be interested to participate in such work in due course.
18. We support the suggestion that in the future, such an online resource might be suitable for use by children.¹⁰ Such a step could be instrumental in ensuring that children are listened to throughout the mediation process.
19. We are encouraged that in publicly-funded mediations, the mediator is required to have arrangements in place to ensure that the parties are encouraged to consider the welfare, wishes and feelings of each child, and whether and to what extent each child should be given the opportunity to express his or her wishes and feelings during the mediation.¹¹ We are further encouraged to learn that mediators who have contact with children should have particular training. We consider that such safeguards ought to extend to privately-funded mediations, but that further safeguards should be put in place.
20. We have conducted research into children involved in residence and contact disputes resolved by way of court proceedings, and note that of those who did not attend court, 40 per cent would have liked to do so and to talk to the judge, whilst 60 per cent would not have wanted to attend.¹² The NSPCC considers it unacceptable that none of the young people who responded to this study exhibited any awareness of anything they could personally do to initiate any change in their residence and / or contact arrangements.
21. More needs to be done to ensure that the children’s wishes and feelings emanate from the children themselves rather than through their parents’ voices. We recommend that, subject to the agreement of

⁷ *The Voice of the Child in Private Family Law Proceedings in England and Wales*, Mervyn Murch, Professor of Law at Cardiff Law School, [2005] IFL 8

⁸ J McIntosh (2000) *Child Inclusive Divorce Mediation: Report on a Qualitative Research Study*, 18 *Mediation Quarterly* 69; *ibid.*

⁹ *Supporting Information from the Ministry of Justice: Improving Public Awareness and Take-up of Family Mediation*, paragraph 11.

¹⁰ *Ibid*

¹¹ *Funding Code Procedures*, Legal Services Commission, April 2010 at D95.3

¹² “*Your Shout Too*” research by the NSPCC and CAFCASS, Judith E Timms, Sue Bailey and June Thoburn, NSPCC Policy Practice Research Series, 2007

the child, in all suitable cases the mediator should meet with the child directly in order to ascertain their wishes and feelings. The mediator can then determine whether the child should participate directly in the mediation sessions or not.

22. We further recommend that mediators receive specific training in determining suitable cases, interacting with the children, and making these decisions. In cases where it is not suitable for the mediator to meet with the child directly, further thought should be given to methods of assuring the children that their wishes and feelings will be listened to.

23. We are mindful of the law that if it is in a child's best interests to be made a party to residence and contact disputes, the court may appoint a guardian ad litem.¹³ Children's opportunities to be represented should not be reduced if a dispute is resolved by mediation rather than by the court process. We therefore consider that provision ought to be made for a similar individual to be appointed if the mediator considers it to be in the child's best interests.

24. The NSPCC therefore recommends that:

- (a) In all "suitable" cases, mediators meet directly with children to ascertain their wishes and feelings.**
- (b) Mediators are specifically trained in how to determine the appropriate extent of a child's direct involvement in mediations, and how to best ascertain children's wishes and feelings.**
- (c) Further steps are taken to communicate to children that their wishes and feelings are being listened to, even if it is not appropriate for them to be directly involved in the mediation.**
- (d) Mediators should have the power to appoint a representative for the child (analogous to a guardian ad litem) to participate in the mediation if it is in the child's best interests.**

25. In summary, in response to Question Four, the NSPCC considers that compulsory mediation assessment should only be undertaken if the above safeguards are put in place and there is a clear commitment by the government to properly resource effective mediation.

2. *Question five: How far does the need to seek leave of court act as a barrier to preventing family members applying for contact with a child? Is there a need to remove this requirement for some other family members, beyond grandparents? (Note: parents are already exempt).*

¹³ Rule 9.5, Family Proceedings Rules 1991

26. The NSPCC supports the removal of the leave requirement in relation to grandparents. We understand that one quarter of the 12 million children in the United Kingdom will experience the separation of their parents.¹⁴ Analysis of calls to ChildLine has shown that children can not only suffer from parental loss but also from losing contact with grandparents and other loved family members.¹⁵ It has long been believed that children involved in family breakdowns must be helped to enjoy safe and positive contact with grandparents and siblings after their parents separate.
27. NSPCC research has demonstrated that 30 per cent of children do not see as much of the grandparents on the side of their non-resident parent as they would have liked¹⁶ and we are committed to upholding these children's wishes and feelings. We understand that an estimated one million children lose touch with their grandparents as a result of separation or divorce.¹⁷
28. Research tells us that children suffering maltreatment are more likely to turn to a friend or relative for help rather than to a professional¹⁸ and that grandparents and friends have been found to be children's key confidantes in the weeks following their parents' separation.¹⁹
29. Further, our study of child maltreatment in the family tells us that maltreatment is often linked to money worries in the family: 78 per cent of the children who said they had been neglected reported money worries, and 44 per cent said that they were neglected as a result of financial problems.²⁰ We also know that 34 per cent of grandparents give financial help to their grandchildren or support the parents in meeting the cost of bringing up their children.²¹ The NSPCC therefore welcomes the potential for a reduction in maltreatment through the promotion of contact between grandparents and grandchildren.
30. Under the current law, grandparents rarely make applications for contact at court²² and we are concerned that the leave requirement may be a deterrent. We know that grandparents report that such court

¹⁴ *"Beyond the Nuclear: Including the Wider Family"*, The Grandparents' Association, Families Need Fathers and Finer Day. Available at:

http://www.fnf.org.uk/downloads/Including_the_Wider_Family.pdf

¹⁵ "More support for family breakdown children", NSPCC Press Release 10 July 2007.

¹⁶ *"Your Shout Too"*, supra

¹⁷ Grandparents Association estimate, 2009

¹⁸ *"Child Maltreatment in the Family: The Experience of a National Sample of Young People"*, supra.

¹⁹ *"Do Grandparents Matter? The Impact of Grandparenting on the Well Being of Children"*, University of Hertfordshire and Family Matters Institute, 2009

²⁰ *"Child Maltreatment in the Family: The Experience of a National Sample of Young People"*, supra.

²¹ *"Do Grandparents Matter? The Impact of Grandparenting on the Well Being of Children"*, University of Hertfordshire and Family Matters Institute, 2009

²² *Residence and Contact Disputes in Court*, Prof Carol Smart and Dr Vanessa May, Centre for Research on Family, Kinship and Childhood, University of Leeds [2004] Fam Law 36.

proceedings are expensive and lengthy²³, and going to court is an expense that many grandparents cannot afford.²⁴

31. We also recognise the role that the leave requirement may play in deterring inappropriate applications for contact and residence. Clearly, contact itself should only be awarded if the court is satisfied that it is safe to do so, that it is in the child's best interests, and that it is consistent with the child's own wishes and feelings.
32. We are concerned at the lack of evidence and research in the Green Paper on the extent to which the leave requirement is a barrier to other family members applying for contact, and are concerned that there may be family members with whom children may also lose touch after parental breakdown against their wishes. We therefore welcome the government's intention to consult on how far this acts as a barrier for other family members.
33. The NSPCC understands that in determining whether or not to grant leave, the court will have particular regard to statutory factors including the applicant's connection with the child, and any risk there might be of the proposed application disrupting the child's life to such an extent that he would be harmed by it.²⁵ We are committed to providing advice and support to ensure that every child is listened to and protected²⁶ and are concerned that the court does not have particular regard to a child's wishes and feelings when making this decision.

34. The NSPCC therefore recommends that:

- (a) Research is undertaken into the extent to which the leave requirement is a barrier to applications for contact from other family members.**
- (b) In determining whether to grant leave, the court must have particular regard to the wishes and feelings of the child.**

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²³ "Do Grandparents Matter? The Impact of Grandparenting on the Well Being of Children", University of Hertfordshire and Family Matters Institute, 2009

²⁴ "Beyond the Nuclear: Including the Wider Family", supra

²⁵ Children Act 1989, section 10(9)

²⁶ NSPCC 2009 – 2016 Strategy for Children.