



Ministry
of Justice

The Right Honourable
Simon Hughes MP
Minister of State for Justice and
Civil Liberties
102 Petty France
London SW1H 9AJ

To: **Dispute Resolution Professionals**

T 020 3334 3555
F 020 3334 3669
E general.queries@justice.gsi.gov.uk

www.gov.uk/moj

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VOICE OF THE CHILD: DISPUTE RESOLUTION ADVISORY GROUP

You will be aware that in my address at the Voice of the Child Conference in July 2014, I stated:

"It cannot be right that parents can mediate an agreement affecting their child or children...in the absence of the children's voice being heard".

As a response to the recommendation of the Family Mediation Task Force in August 2014, I agreed to convene a 'Voice of the Child' external advisory group, in order to focus on the best outcomes for any children involved within out of court dispute resolution. This group was established in November 2014, consisting of a Core Advisory Group supported by a 'virtual' Expert Forum. The Advisory Group comprised a number of experts in their respective fields, including a member of the Family Justice Young Person's Board (FJYPB) to make sure that the views of children and young people were present at all times. I would like to take this opportunity to thank Emeritus Professor Janet Walker OBE, Angela Lake-Carroll and the members of the Advisory Group for the significant work they have put in to their report and the Expert Forum for their insight and suggestions.

The remit of the Advisory Group was to consider child inclusive models for out of court dispute resolution, including family mediation as it relates to private law matters. The overriding objective was to identify the necessary steps to promote child inclusive practice and hearing the voices of children and young people in dispute resolution. In meeting this objective, the Group have proposed 34 recommendations; a full list of these can be seen in the Group's report which has been published on www.gov.uk.

You will note that a number of these recommendations are primarily for the consideration of dispute resolution professionals. I welcome many of these suggestions (set out in **Annex B**) and would encourage all dispute resolution professionals to take on board these recommendations, recognising the advantages and benefits of child inclusive practice. It is my hope that the relevant dispute resolution bodies will be the drivers for change, so that the voice of the child can be heard loud and clear in the dispute resolution process.

I am also pleased to endorse a number of recommendations made by the Advisory Group, with a full list of these located in Annex A. In particular:

- *The principle of child inclusive practice and the adoption of a non-legal presumption that all children and young people aged 10 and above should be offered the opportunity to have their voices heard during dispute resolution processes, including mediation, if they wish.*

As I said at the Voice of the Child Conference, I firmly believe that children and young people should routinely have the opportunity to have a say in matters which affect their future and agree that this should be a non-legal presumption.

- *That where any form of out of court dispute resolution has involved a child/young person, and the parties achieve agreement, any memorandum of understanding or agreement should reflect the participation of the child. This should also be reflected in any subsequent Consent Order.*

I believe that this could be of significant benefit to the voice of the child, demonstrating clearly that any decision made or reached had been achieved with the child or young person's views taken into account. I have also discussed this issue with the President of the Family Division as a possible issue for his consideration or guidance.

- *That high quality, consistent, accessible and age appropriate information should be made available for all children and young people experiencing parental separation, via leaflets, booklets, support services, videos and websites.*
- *That information on hearing the voice of the child should be incorporated in relevant 'Help and Support for Separated Families' products as it becomes available and is supplied to the Department for Work and Pensions.*
- *That an authoritative website and online tools should be developed in collaboration with young people and supported by a range of services to provide a dedicated 'place to go' for all children and young people at all stages of their parental separation journey.*

As I discussed with the members of the FJYPB on 18 February, it is important that resources, including online resources, are available for, and developed by, young people. Officials will look at developing online tools and information, with involvement from the FJYPB, to make sure that children and young people have access to suitable information at the start, middle and end of their parent's separation. We will continue to work with colleagues at the Department for Work and Pensions on our shared goal in providing relevant, comprehensive information to families going through separation.

- *That information about hearing the voices of children and young people should be incorporated in all material about mediation and dispute resolution services, and should be included in all relevant products for separated parents and their children, and websites run by relevant agencies.*
- *That there should be closer partnership working between all the professionals providing help and support to separating families ensuring that the voices of children and young people are at the heart of interventions both out of court and in court.*

While this particular proposal is a general recommendation for good practice, I fully endorse the sentiment. Where skilled professionals work together, with a focus on the welfare of the child, this can only be beneficial for family justice.

- *That information for parents, children and young people, and professionals working with them should be cascaded through the use of social media, advice columns, schools and community hubs.*
- *That consideration should be given to developing a kite mark for services that demonstrate that they offer a quality child inclusive approach to families experiencing parental separation.*
- *That young people should play a central role in the implementation of child inclusive dispute resolution processes and that the Family Justice Young People's Board Charter should reflect the presumptions and recommendations made in this report.*

Although I cannot comment on what the FJYPB should include in their charter, I wish to commend them for their continuing work in supporting children going through parental separation. I also firmly believe that it is vital that the views of children and young people are at the heart of any dispute resolution process and that the FJYPB should play a pivotal role in implementing these recommendations. In particular, it is very important that they are involved in the creation and distribution of child-focused information so that it is created *by* young people, *for* young people. The involvement of the FJYPB and their logo would be a 'kite mark' of quality assurance, showing that the views of children and young people have been obtained in the development of literature, posters or websites.

There are a number of important recommendations which set out the Group's views on parental consent and confidentiality within out of court dispute resolution:

- *Where a child/young person is assessed to be 'Gillick' competent, the mediator/child practitioner should respect that child's wishes about disclosure/non-disclosure of information given in mediation; only in exceptional circumstances and for good reason should a mediator/child practitioner override the child's wishes.*
- *Mediators/child practitioners in out of court dispute resolution must have appropriate training in assessing the maturity, understanding and competence of the child and should ensure that a comprehensive Gillick check list is used and the outcomes recorded.*
- *Taking account of the child's right to be heard, when parents are involved in mediation or other out of court dispute resolution process, a child or young person deemed to be 'Gillick' competent should be able to have their voice heard by a suitably qualified practitioner, if they so wish, irrespective of whether both their parents have given consent, and that mediators and other dispute resolution practitioners must be fully trained and skilled in working sensitively with these families to ensure constructive outcomes for children and with their parents.*
- *Taking account of the child's right to be heard, recommends that when parents are involved in mediation or other out of court dispute resolution process, a child or young person deemed to be non-Gillick competent should be able to have their voice heard by a suitably qualified practitioner, if they so wish, provided that at least one parent (or adult with parental*

responsibility) has given consent to the child's participation in the process, unless there is evidence that it would not be in the child's best interests, and mediators and other dispute resolution practitioners must be fully trained and skilled in working sensitively with these families to ensure constructive outcomes for children and their families.

I am very grateful for the significant work that the Advisory Group has done in relation to these areas; in particular, I wish to thank Mr Justice Cobb for his valuable contribution in what is a highly complex matter. These are areas that require a great amount of consideration but I would stress that issues surrounding parental consent are fundamental to obtaining the voice of the child in out of court dispute resolution. I would therefore encourage the Family Mediation Council to work with Mr Justice Cobb on how and whether the Group's recommendations could be adopted in practice, and address how important issues could be overcome by the end of this year. It should be recognised that these recommendations could have a significant impact on mediation involving children and young people.

I also wish to focus on the following recommendations, namely that:

- *Consideration should be given to the benefits of encouraging all separating parents to attend a Separated Parents Information Programme (SPIP) or Working Together for Children (WT4C) as early as possible and to making these available as the first step in the out of court pathway for parents with dependent children.*

You will be aware that we are nearing the end of this parliament, and that it would be inappropriate for me to commit to specific reforms. However, I agree that SPIPs are a key opportunity to influence the behaviour of parents, introducing them to the presumption of hearing the voices of their children and focusing their minds on outcomes which are best for the child or young person. I therefore wish to support this recommendation by expressing my belief that the introduction of SPIPs should be *considered* as part of any future reform to the private law system.

- *The Child Inclusive Mediation Process Flow Chart be adopted as a template for good practice.*

I recognise that the model suggested in the report would be a model for good practice and would like to invite the Family Mediation Standards Board (FMSB) to consider how it could include the processes for child inclusive mediation in any guidance in a way which is affordable and appropriate to mediators.

- *Funding mechanisms should be put in place urgently to provide for appropriate new funding levels for publicly funded child inclusive mediation and that the level of funding must recognise the importance of child inclusive practice being a process and not a one off event for a child or young person.*

I also acknowledge that an increase in child inclusive dispute resolution may result in additional work for professionals. While I am unable to make a formal commitment to funding at this time, I agree that *further consideration* should be given to the funding requirements of child inclusive mediation for sessions with children and young people over the age of 10 and I have asked my officials to look into this issue while they are revising the LAA contracts for mediation later this year.

This further consideration also applies to the recommendation for pilots to be established to test provision of child inclusive practice. There may be additional costing considerations required for the creation of a pilot scheme and whilst I support and acknowledge the need for data on the numbers of child inclusive mediation, I cannot commit to specific funding at present. However, I encourage the family dispute resolution sector to identify ways in which they can enhance the voice of the child by adopting best practice, some of which has been highlighted through existing models as set in the report.

The creation of this report was a substantial undertaking and I am very grateful to everyone involved. I acknowledge that some of the recommendations will require a change of culture within the dispute resolution sector. Indeed, many of the Group's recommendations can only be achieved through the hard work, desire and good will of dispute resolution professionals. My belief remains clear, however; children and young people should have the opportunity to have their voices heard in matters that affect their future. This report will play a significant role in helping children and young people have that voice in out of court dispute resolution.

Yours sincerely
Simon Hughes

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Annex A

Recommendations endorsed by the Ministry of Justice.

- Recommendation 1: The principle of child inclusive practice and adoption of a non-legal presumption that all children and young people aged 10 and above should be offered the opportunity to have their voices heard during dispute resolution processes, including mediation, if they wish.
- Recommendation 10: Mediation should remain an essentially confidential process and that this should be a clear principle of practice in mediation and other dispute resolution processes.
- Recommendation 12: All communications between a child/young person and a mediator/child practitioner shall be essentially confidential. However the mediator/child practitioner should always discuss with the child the issue of confidentiality and seek to elicit the child's views about the confidentiality of discussions. The mediator/child practitioner shall attach due weight to the child's views according to the child's age and understanding when considering whether information given by the child should be shared with the parents.
- Recommendation 14: Only for good reason should a mediator/child practitioner assert the right to confidentiality overriding the wishes of an older child/young person in relation to disclosure of information given in mediation.
- Recommendation 17: Safeguarding remains an exception to the principle of confidentiality in any out of court dispute resolution process.
- Recommendation 18: Where any form of out of court dispute resolution has involved a child/young person, and the parties achieve agreement, any memorandum of understanding or agreement should reflect the participation of the child. This should also be reflected in any subsequent Consent Order.
- Recommendation 24: The Legal Aid Agency should review the recording requirements for legally aided child inclusive mediation to ensure clarity of instruction as to how such cases should be recorded and that the necessary data are provided to the Legal Aid Agency.
- Recommendation 25: High quality, consistent, accessible and age appropriate information should be made available for all children and young people experiencing parental separation, via leaflets, booklets, support services, videos and websites.
- Recommendation 26: Information on hearing the voice of the child should be incorporated in relevant 'Help and Support for Separated Families' (HSSF) products as it becomes available and is supplied to the Department for Work and Pensions.
- Recommendation 27: An authoritative website and online tools should be developed in collaboration with young people and supported by a range of services to provide a dedicated 'place to go' for all children and young people at all stages of their parental separation journey.
- Recommendation 28: Information about hearing the voices of children and young people should be incorporated in all material about mediation and dispute resolution services, and should be included in all relevant products for separated parents and their children, and websites run by relevant agencies.
- Recommendation 29: There should be closer partnership working between all the professionals providing help and support to separating families ensuring

that the voices of children and young people are at the heart of interventions both out of court and in court.

- Recommendation 30: In order to change the culture to one in which children and young people are routinely given the opportunity to have their voices heard when parents split up. Information for parents, children and young people, and professionals working with them should be cascaded through the use of social media, advice columns (including Agony Aunts), schools and community hubs.
- Recommendation 31: *Consideration* should be given to developing a kite mark for services that demonstrate that they offer a quality child inclusive approach to families experiencing parental separation.
- Recommendation 32: *Consideration* should be given to the benefits of encouraging all separating parents to attend a Separated Parents Information Programme (SPIP) or Working Together for Children (WT4C) programme as early as possible and to making these available as the first step in the out of court pathway for parents with dependent children.
- Recommendation 34: Young people should play a central role in the implementation of child inclusive dispute resolution processes and that the Family Justice Young People's Board Charter should reflect the presumptions and recommendations made in this report.

Annex B

Recommendations primarily for the consideration of dispute resolution bodies (including the Family Mediation Standards Board / Family Mediation Council) which are supported in principle by the Ministry of Justice.

- Recommendation 3: Adoption of the principles of practice and the parameters outlined by the general comment on Article 12 in out of court dispute resolution processes **(see report)**
- Recommendation 4: The adoption of a new Framework for Child Inclusive Mediation which presupposes that where a mediator undertakes mediation relating to child issues, the mediator must have arrangements in place at the start of the process to provide child inclusive mediation either them self or through contractual arrangements with another mediator or child practitioner appropriately qualified to work with children.
- Recommendation 5: Training for child inclusive practice should be provided/approved by a nationally recognised professional organisation and should be to a high professional standard. Competencies should be assessed and continuing professional development required to maintain professional accreditation to practice.
- Recommendation 6: Reaccreditation for child inclusive mediation should take place at least every three years and the list of practitioners updated on a national database.
- Recommendation 7: There should be a new single professional standard for child inclusive mediation and a national professional organisation responsible for setting competencies, approving training, assuring quality and ongoing professional development, and dealing with all professional issues.
- Recommendation 8: The Child Inclusive Mediation Process Flow Chart be adopted as a template for good practice **(see report)**.
- Recommendation 9: Consideration should be given to the advantages associated with a more unified profession of family mediators and to ways in which this might be achieved.
- Recommendation 11: In direct work with children during out of court child inclusive dispute resolution, because it is unlikely that privilege will attach to the communications between the practitioner and the child, reference to 'privilege' is likely to be confusing in any communication with the child and should, in that context, be avoided.
- Recommendation 13: Mediators/child practitioner should consider the use of an adapted 'Agreement to Mediate' form when working with children/young people, and this should be drafted with the assistance of the Family Justice Young People's Board.
- Recommendation 21: Professional Practitioner Guidance for all family dispute resolution processes should be reviewed and revised as necessary to take account of the guidance offered in the Final Report and the recommendations proposed.
- Recommendation 22: Family mediators must make sure that they provide accurate, consistent, regularly updated professional data to a single national body which can produce an accurate record of all mediators, including those qualified to offer child inclusive mediation directly. This database should also confirm that the required DBS certificate is current for undertaking child

inclusive practice. This requirement should also be considered in relation to all other existing and emerging family dispute resolution processes.

- Recommendation 23: There should be a requirement for all mediators to record consistent data in relation to child inclusive practice and that these should be collated nationally for the purposes of professional monitoring of interventions, audit, accountability and evaluation. Similarly, this requirement should be considered in relation to all other existing and emerging family dispute resolution processes.

