Final Report of the Voice of the Child Dispute Resolution Advisory Group

March 2015

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Executive Summary and Recommendations

In November 2014 the Minister of State for Justice and Civil Liberties, the Rt. Hon Simon Hughes MP, established the Voice of the Child Dispute Resolution Advisory Group to ensure that the necessary steps are taken to promote child inclusive practice in out of court dispute resolution processes and that the voices of children and young people are heard in all private family law proceedings which impact on them. In July 2014, the Minister outlined the Government's commitment to children having a greater voice before decisions are made about their future, putting them firmly at the heart of the Family Justice System. He announced that the Ministry of Justice would work with the mediation sector to arrive at a position where children and young people of ten years and over have appropriate access to the practitioners involved in assisting parents in matters which affect them. Children younger than ten should also have this opportunity if they wish.

The Advisory Group considered how children and young people could be involved in a number of dispute resolution processes but focused primarily on family mediation in order to develop an effective, coherent blueprint for the future which could be adapted for use by other dispute resolution practitioners. An interim report was presented to the Minister on 11 February 2015 and he referred to the progress made by the Advisory Group in a letter to the Family Justice Young People's Board (FJYPB) on 18 February 2015.

The Advisory Group has completed its work and the recommendations are noted in this executive summary. The issues considered by the Advisory Group have been complex and challenging and the recommendations, taken together, should be understood as offering a holistic approach to ensuring that the voices of children and young people are integral to out of court dispute resolution processes in future. The evidence for and the thinking that has informed the recommendations are discussed in detail in the Final Report of the Advisory Group, which should be read in conjunction with this executive summary.

The recommendations fall into five main groups, relating to:

- defining and delivering child inclusive practices (recommendations 1-9)
- private ordering and ethical issues (recommendations 10- 21)
- monitoring of and accountability for child inclusive practice (recommendations 22-24)
- the provision of appropriate information and support for children and young people (recommendations 25-32)
- changes in the dispute resolution culture (recommendations 33-34)

Defining and Delivering Child Inclusive Dispute Resolution Practices

Definition

Child inclusive practice routinely includes the option for children and young people to have a conversation with the mediator/dispute resolution practitioner who is working with their parents or with a child practitioner trained to work with children, enabling children to tell their own story in their own way during the mediation (or other family dispute resolution) process. The focus is on hearing the child's voice as an accepted part of the dispute resolution process if the child wishes to be included. The Advisory Group understands that child inclusion is both a principle and a practice. Each implies equality and respect.

Definition. Child inclusive practice gives children and young people the opportunity to have a conversation (verbal, written, through play or storytelling) with professionals who are assisting their parents to make arrangements for the children's future. It enables consenting children and young people to share their experiences of parental/family separation and express their concerns and views, and for these to be sensitively

considered with their parents so that their developmental needs and concerns can be better understood and taken into account within the dispute resolution process.

Recommendation 1. The Advisory Group endorses the principle of child inclusive practice and recommends 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 directly during dispute resolution processes, including mediation, if they wish.

This signifies the need for considerable change in the culture and practice of mediation and other dispute resolution processes. It emphasises respect for children's right to be heard, listened to and understood by the professionals assisting their parents to reach decisions which impact on the future of children and young people, in whatever dispute resolution process parents are engaged in. The opportunity for children and young people to be heard during dispute resolution processes should be the normal starting point for practitioners. This is, however, a voluntary process for the child and no pressure to participate should ever be placed on a child. The Advisory Group has acknowledged that fully establishing child inclusive practice will take time, and that implementing new practice guidelines, competencies and protocols will be an iterative process.

Models of child inclusive practice

The Advisory Group noted that there is no single model of child inclusive practice, nor one size that fits all, and that a range of approaches can ensure that all children and young people aged 10 and over are offered an appropriate opportunity to have their voices heard. The Advisory Group believes that it is a matter for individual mediators and other dispute resolution providers to decide which approach they prefer, maybe opting to use a range of models for different kinds of cases. Nevertheless, child inclusive practice implies a skilled intervention by a trained and experienced practitioner whichever model is used. For this reason there needs to be a well-managed evolution of child inclusive practice across dispute resolution processes, underpinned by robust practice standards and appropriate training, support and supervision structures.

A number of experienced mediators have indicated their enthusiasm for developing innovative child inclusive practice, building on existing approaches, and a willingness to test out new ways of working that can extend expertise in child inclusive mediation. To this end, a small number of potential pilots that can test different models are described in outline in the Final Report.

Recommendation 2. The Advisory Group recommends that as child inclusive mediation is established as a norm a number of pilots should be established to test and evaluate the use of different models to inform future provision.

Principles of Child Inclusive Practice

Whichever model of child inclusive practice is identified, consistent, overarching principles of practice are needed. The Advisory Group has proposed a number of principles which are described and discussed in the Final Report. These should underpin child inclusive practice and take account of the UNCRC parameters (2009) on the child's right to be heard.

Recommendation 3. The Advisory Group recommends adoption of these principles of practice and the parameters outlined by the general comment on Article 12 in out of court dispute resolution processes.

Standards and Competencies

At the present time the practice standards relating to 'direct consultation with children' in mediation do not support a presumption of child inclusive practice. Moreover, the new 2015 standards do not address child inclusive practice. The Advisory Group decided that because of the culture change required to embrace child inclusive mediation a new standard should be developed, particularly as

other dispute resolution practitioners will also need to have standards in place and there will be commonalities. A new framework should be future proofed and provide a blueprint for mediation professionals and for other dispute resolution service providers as practice is enhanced and new models, for example, using online tools, are developed.

Recommendation 4. The Advisory Group recommends 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..

Requirements for child inclusive mediation

The Advisory Group has agreed requirements for mediators engaging in child inclusive mediation which are discussed in detail in the Final Report.

Recommendation 5. The Advisory Group recommends that 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 and supervision of practice required to maintain professional accreditation to practice.

Recommendation 6. The Advisory Group recommends that reaccreditation for child inclusive mediation should take place at least every three years and the list of practitioners updated on a national database.

The Advisory Group has proposed four sets of suggested competencies: those which should be achieved: by all mediators in relation to communicating effectively with parents about hearing their children's perspectives in decisions which impact on their children; competencies which should be achieved by mediators working directly with children and young people; competencies to be achieved by child practitioners who may work alongside mediators; and competencies for professional practice consultants supervising mediators in their practice..

Recommendation 7. The Advisory group recommends that 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.

The Advisory group has agreed a flow chart which is described in the Final Report, and which indicates the steps that should be taken to ensure child inclusive practice is offered as a process and not as a one off meeting with children and young people who opt to be included during mediation. This flow chart is predicated on: mediation being sought in respect of children's issues; there being at least one child aged 10 or over in the family (although mediators may assess that younger children could/should be invited to participate); and at least one of the children wishing to have their voice heard in mediation. The Advisory Group has also considered the benefits of there being a more unified profession of family mediators as standards and protocols are aligned and child inclusive practice becomes the norm.

Recommendation 8. The Advisory Group recommends that the Child Inclusive Mediation Process Flow Chart be adopted as a template for good practice.

Recommendation 9. The Advisory Committee recommends that consideration be given to the advantages associated with a more unified profession of family mediators and to ways in which this might be achieved.

Private Ordering, Legal, Welfare and Ethical Issues

A non-legal presumption that child inclusive practice is the normal starting point for all mediations concerning children's issues may well assist parents and the professionals working with them to regard the involvement of children as commonplace and potentially beneficial for everyone. The Advisory Group considered it extremely important for there to be very clear guidelines about issues of confidentiality, privilege and parental consent for all practitioners engaged in dispute resolution processes. The principles discussed in respect of mediation also apply to other dispute resolution processes.

Recommendation 10. The Advisory Group endorses the current view that mediation should remain an essentially confidential process and recommends that this should be a clear principle of practice in mediation and in other dispute resolution processes.

Recommendation 11. The Advisory Group recommends that 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.

The Advisory Group has formed the view that the 'Gillick' test can be adapted in relation to whether a child has sufficient maturity and understanding to determine whether his/her communications with the mediator/child practitioner should, or should not, remain confidential. Having taken account of the child's age, this process involves an assessment of the maturity and understanding of the child. It follows that the Gillick competent child/young person may waive, or decline to waive, the right to confidentiality in relation to their communications with the mediator or child practitioner; this may apply irrespective of any waiver of confidentiality by the child's parents.

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 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 designed/drafted with the assistance of the Family Justice Young People's Board.

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 15. 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.

Given the non-legal presumption/practice principle that all children and young people aged 10 and above are to be offered the opportunity to have a conversation with the professional working with their parents, we are of the view that judging a child to not have sufficient maturity, understanding and competence to participate should not be used to limit the number of children and young people

able to have their voices heard or disenfranchise them because of professional concerns about whether child inclusive practice is appropriate. The Advisory Group considered that safeguarding issues, serious mental health issues and severe learning difficulties are likely to be the main reasons for assessing that the child lacks understanding and competence.

Recommendation 16. The Advisory Group recommends that mediators/child practitioners in out of court dispute resolution processes 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.

Safeguarding issues

If safeguarding issues arise in any form of out of court dispute resolution these issues will always override any available confidentiality 'protections' This should be set out in child-friendly language in an Agreement to Mediate form provided to the child or young person.

Recommendation 17. The Advisory Group recommends that safeguarding remains an exception to the principle of confidentiality in any out of court dispute resolution process.

We are of the view that where any form of out of court dispute resolution has involved a child, and the parties achieve agreement, any memorandum of understanding or agreement or subsequent Consent Order should reflect the participation of the child.

Recommendation 18. The Advisory Group recommends 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.**

Parental consent

The Advisory Group sought expert advice on the sensitive issue of parental consent since a parent refusing consent can be a significant barrier to children being able to have the conversation they desire with the professionals involved in their case. We believe that it is critically important that parents and professionals understand the reasons for establishing child inclusive practice and we recognise that this requires a change in both culture and approach across the family justice system. While understanding that parental consent is a difficult legal, welfare and ethical issue the Advisory Group has concluded, after careful deliberation, that Gillick competent children and young people should be able to override the lack of parental consent for participation in mediation (and any other dispute resolution process). This highlights the critical importance of parents and children understanding the child's right to have a voice if they wish and being properly prepared to benefit from child inclusive approaches. Moreover, the Advisory Group believes that the consent of one parent (or adult with parental responsibility) should be sufficient to allow the non-Gillick competent child to have a voice. If both parents refuse consent for a non-Gillick competent child to participate then the professionals involved in out of court dispute resolution processes cannot see the child.

Recommendation 19. The Advisory Group, 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 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 for their parents.

Recommendation 20. The Advisory Group, 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.

Recommendation 21. The Advisory Group recommends that 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.

Monitoring and Accountability

Until recently there has been no central or consistent database for recording the individual details of mediation practitioners. It is essential that, as in any respected profession, there should be a single national database of all family mediators accredited to practice in England and Wales and that this database indicates whether mediators are registered to offer child inclusive mediation.

Recommendation 22. The Advisory Group recommends that family mediators must ensure 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.

Monitoring compliance with child inclusive practice

It is also essential that the recording of data indicating compliance with the new policy is standardised and available to ensure both professional accountability and transparency. Moreover, appropriate case records should be kept as with any professional intervention with adults and children in order to ensure full professional accountability.

Recommendation 23. The Advisory Group recommends that 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.

Recommendation 24. The Advisory Group also recommends that the Legal Aid Agency reviews the recording requirements for legally aided child inclusive mediation to ensure clarity of instruction as to how such cases should be recorded, and ensure that the necessary data are provided to the Legal Aid Agency.

Information and Support for Children and Young People

It is important to consider not just how child inclusive practice should be offered but also how children and young people should be given information about family separation, their right to have a voice in matters that affect them, and the support that is available to them. The existing resources are not joined up, making it very difficult for children and young people to find a clear pathway through the private family law justice system. The Advisory Group took the view that high quality information and support must be made available to children and young people at various stages of family separation that is specific to different age ranges, and has listed the topics that must be covered in the Final Report.

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 though 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.

Concluding Comments

The Advisory Group is in no doubt that to meet the policy intent of providing child inclusive dispute resolution processes within a reformed family justice system far-reaching cultural change is

needed. We would go as far as suggesting that, there should be a positive presumption in law that hearing the voice of the child is the starting point for all dispute resolution processes. We believe that this is a matter for Government to consider and we have stopped short of making a firm recommendation at this stage as a legal presumption would require a change to primary legislation. However, without a clear legal presumption there remains a danger that there is no overarching authority to insist on a substantive change in culture and practice, whatever goodwill might exist. We also believe that enshrining the UNCRC in law would be a significant step forward.

It is clear that more consideration needs to be given to the significant shift in practice that child inclusive mediation implies. Importantly, we suggest that future funding frameworks for child inclusive dispute resolution should be a matter for urgent consideration by the mediation providers and especially by the LAA. Currently there is no funding provision for publicly funded mediation that recognises child inclusive practice as a process which can be offered using a range of models.

Recommendation 33. The Advisory Group recommends that 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.

The Advisory Group has found that the majority of mediators who have offered their views during the course of our work are in favour of a shift to embrace child inclusive practice as it is envisaged in the new policy but with caveats that more attention needs to be given to developing adequate and appropriate training, screening, a comprehensive framework for flexible models of practice, and funding.

The development of child inclusive practice will be greatly enhanced by the involvement of children and young people in planning for change, creating the right environment, preparing information material and websites, training mediators and other dispute resolution practitioners, and ensuring that the SPIP prepares parents for listening to the voices of the their children.

Recommendation 34. The Advisory Group recommends 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.

The Advisory Group is clear that mediation is not a universal panacea and that a range of dispute resolution interventions are developing that can offer families a choice. In considering the competencies and models of practice we have endeavoured to offer a template for other dispute resolution practitioners, many of whom are showing interest in child inclusive practice. In our view this provides important opportunities for greater collaboration and partnership working to meet the needs of separating families and the development of a more established systemic and relational approach to information and service provision.

Report of the Voice of the Child Dispute Resolution Advisory Group

Introduction

1. In November 2014 the Minister of State for Justice and Civil Liberties, the Rt. Hon Simon Hughes MP, established the Voice of the Child Dispute Resolution Advisory Group[1] to ensure that the necessary steps are taken to promote child inclusive practice and that the voices of children and young people are heard in all private family law proceedings which impact on them. This followed a recommendation by the Mediation Task Force in June 2014 that options to include children in family mediation should be urgently reviewed; training, supervision and registration improved; and guidelines and the Family Justice Young People's Board (FJYPB) Charter updated. These steps should enable the provision of a coherent blueprint for hearing children's voices in dispute resolution processes in future.

2. The Minister had outlined in July 2014 the Government's commitment to children having a greater voice before decisions are made about their future both in court and out of court, putting them firmly at the heart of the Family Justice System. He announced that the Ministry of Justice (MoJ) would work with the mediation sector to arrive at a position in out of court proceedings where children and young people of ten years and over would have appropriate access to mediators involved in assisting parents to resolve disputes about arrangements for the children's future. He indicated that the age of ten had been chosen because it is the age of criminal responsibility and, as such, signals an appropriate age at which all children should be given the opportunity to have a say in decisions that affect them. The Minister was at pains to point out that children younger than ten should also have this opportunity if they wish. In other words, younger children should not be disenfranchised but, by the age of ten, there should be an expectation that the child's voice would be heard. The Minister went on to say:[2]

> It cannot be right that parents can mediate an agreement affecting their child or children and then ask the court to consider making this into a binding order in the absence of the children's voices being heard.

3. The evidence gathered by the Mediation Task Force had shown that the current practice model and standard for involving children in mediation, known as 'direct consultation with children' (DCC), were last revised in 2002. Moreover, although some 396 mediators registered with the Family Mediation Council (FMC) in 2014 were qualified to offer direct consultation with children, very few children and young people were being provided with the opportunity to have their voices heard during the mediation process. The evidence showed that hearing children's voices was a minority activity.

4. The Task Force considered that the current model of mediation practice is most accurately described as 'child focused' rather than 'child inclusive'. Child focused mediation places emphasis on supporting parents to consider their children's needs and to negotiate arrangements for the future that will be in their children's best interests. While parents are encouraged to talk to their children about what is happening, children and young people are only occasionally directly 'consulted' and included during the dispute resolution process. Child inclusive practice, on the other hand, seeks to offer all children and young people the opportunity to be involved and have their voices heard directly in dispute resolution processes in safe, supportive ways. Participation is voluntary, however, and no child or young person should ever be pressured into talking with a practitioner who is assisting their parents to resolve their disputes out of court. Child inclusive practice respects children's rights to be heard and gives them a choice about how their voices can be heard. Not all

[1] Members are listed in Annex 1.
[2] Rt Hon Simon Hughes MP, 24 July 2014, speech at the Voice of the Child Conference, London.

children and young people will wish to take up the opportunity to have a voice but the option should be offered.

5. Although child inclusive practice has the same goals as child focused approaches and also encourages parents to talk directly to their children, it routinely includes the option for children and young people to have a conversation with a mediator/child practitioner trained to work with children, enabling children to tell their own story in their own way. The focus is on having mechanisms in place to hear the child's voice as an integral part of the dispute resolution process. This represents a significant shift in emphasis and approach from current DCC practice, and the Mediation Task Force concluded that considerable changes in dispute resolution culture and models of practice would need to be made. The Advisory Group was established to consider how those changes might be made and the issues and concerns that need to be addressed, and to advise on the steps to be taken to fulfil the Government's commitment.

6. The Advisory Group's Terms of Reference are listed in Annex 2. Each of the activities formed a discrete work stream led by one or more of the members of the Advisory Group, drawing on the expertise of members of a specially constituted Expert Forum (see Annex 3). Progress reports were submitted regularly to the Advisory Group, which has met on six occasions. In addition, two surveys were undertaken to inform the work of the Advisory Group: the first was a survey of family mediators registered with the Family Mediation Council (FMC) as having been trained to undertake direct consultation with children; and the second was a Citizen Space survey of professionals who work with children and families. We are grateful to everyone who completed these surveys. A workshop was also convened with members of the FJYPB to explore the issues relating to hearing the voices of children and young people in out of court dispute resolution processes. The FJYPB is a group of around 40 children and young people aged eight and over who have been through the family justice system or who have an interest in children's rights and the family courts.

7. The Advisory Group was tasked to consider the voice of the child specifically in out of court dispute resolution processes. A separate work stream examining the voice of the child in court was undertaken within the MoJ. Since the overall vision is to establish a coherent set of policies and practices throughout the private family law pathway, the Advisory Group has been kept informed about the work being undertaken in the Department and the Co-Chairs have liaised closely with officials. We would like to thank Holly Simpson at the MoJ for ensuring that we were kept fully informed of in court developments and for her contributions in Advisory Group meetings.

8. The Advisory Group has needed to complete its task in a very short time and this would not have been possible without the help of many people. We wish to thank all those who contributed to our work, and offer our gratitude particularly to Sarah Lloyd at the FMC and the FMC Board for supporting the mediator survey; Patrick Daniels, Operations Manager at Resolution, who mounted the mediator survey, distributed it on behalf of the FMC, collated the data and provided the quantitative analysis; Jan Salihi and Neil Underwood at the MoJ for their support with the Citizen Space Survey; members of CAFCASS and the FJYPB for convening the workshop and ensuring that young people's voices guided the Advisory Group at all times; all members of the Expert Forum who responded to requests for information and advice as the work progressed; and last but certainly not least, Robert Hudson at the MoJ for providing an excellent secretariat and supporting the Co-Chairs and the Advisory Group so helpfully throughout all its activities.

9. In February 2015 we submitted our Interim Report to the Minister, describing our work to date and offering initial recommendations. The Minister subsequently informed the FJYPB of the progress that had been made and reiterated his commitment that children and young people would have the opportunity to have their voices heard both in court and out of court when decisions that affect them are being made.

10. In this final report we detail the findings of each work stream and put forward our recommendations for consideration by the Minister. These recommendations, taken together, are designed to provide a coherent framework for children and young people to have a voice in a range of existing out of court dispute resolution processes and in any new processes that might be developed in the years to come. The Advisory Group recognises that establishing child inclusive practice in mediation and other dispute resolution processes requires a change of culture and approach which will take time to develop, and that some activities, such as agreeing and implementing new child inclusive professional practice guidelines, competencies and protocols, will be an iterative process which will continue beyond the life of the Advisory Group.

The Policy Context for Child Inclusive Practice

11. In 1989 the United Nations Convention on the Rights of the Child (UNCRC) set out in detail what every child needs to have for a safe, happy and fulfilled childhood. Article 12 includes the assurance that every child who is capable of forming a view shall have the right to express those views on all matters affecting the child, and these should be given due weight in accordance with the child's age and maturity. Moreover, the child shall be provided with the opportunity to be heard in any judicial and administrative proceedings affecting the child. Complementary rights are enshrined in Articles 6 and 8 of the European Convention on Human Rights (ECHR) and reinforced by the 2010 Guidelines on Child-Friendly Justice as advocated by the Committee of the Ministers of the Council of Europe, which give European Governments guidance on enhancing children's access to justice.

12. As Mr Justice Cobb has pointed out,[3] the various international instruments should give prominence to the child's voice but the UNCRC has not been enshrined explicitly in primary or secondary legislation in England, although it has in Wales via the Rights of Children and Young Persons (Wales) Measure 2011 and the Social Services and Well-being (Wales) Act 2014. In reality, giving children and young people the opportunity to be heard when their parents are experiencing separation and divorce has been a somewhat contentious issue, and practice in England and Wales and in other jurisdictions has varied considerably.

13. A large body of research evidence provides a consistent message that children and young people want to be given clear information about what is happening and many want to be engaged in the decision making process in some way both out of court and in court[4] Moreover, research with high conflict families in Australia which compared child focused with child inclusive practice demonstrated significant additional beneficial outcomes from child inclusive mediation.[5] These included a higher level of repair in the parental relationship; more developmentally sensitive agreements reached and sustained over time; improved father–child relationships; and improved attachment. Importantly, children demonstrated lower anxiety, fewer fears and fewer depressive symptoms.

14. Children and young people appreciated the safe avenue to express their views and contribute to the agreements made by their parents. The inclusion of children challenged parental assumptions and the feedback from children was frequently referred to by parents as 'transformative'. With better emotional health outcomes for children and improved parent–child relationships after parental separation, the child inclusive approach to mediation and to dispute resolution generally in Australia has confirmed the benefits for children and their parents which result from giving children and young people a meaningful voice.

15. The Family Justice Review (2011)[6] endorsed the importance of child inclusive approaches, calling for better training for practitioners and proposing that children and young people should be offered options through which they could have their voices heard, including in mediation. The Private Law Working Group, chaired by Mr Justice Cobb in 2013-2014,

[3] Cobb Mr Justice S (2014) Seen but not heard? *Family Law*, vol. 45, pp. 144-145.
[4] See Birnbaum, R. and Saini, M. (2012) A qualitative synthesis of Children's Participation in Custody Disputes. Research on Social Work Practice, 400 and Walker, J. and Lake-Caroll, A. (2014) Hearing the voices of children and young people in dispute resolution processes: Promoting a child inclusive approach, *Family Law*, vol. 44, pp. 1577-1585.
[5] McIntosh, J., Wells, Y., Smith, B. and Long, C. (2008) Child-focused and child-inclusive divorce mediation: Comparative outcomes from a prospective study of post-separation adjustments, *Family Court Review*, 46(1), 105–124; McIntosh, J., Smyth, B., Kelaher, M., Wells, Y. and Long, C. (2011) Post-separation parenting arrangements: Patterns of developmental outcomes, *Family Matters No. 86, AIFS Journal*.
[6] MoJ (2011) Family Justice Review: Final Report, MoJ.

sought to reinforce these options in the Child Arrangements Programme (CAP) by expressly placing the child at the centre of decision making both in and out of court. Practice Direction 12B of the CAP states at para 4.4 that:

> Children should be involved, to the extent which is appropriate given their age and level of understanding, in making arrangements which affect them.

It refers directly to 'arrangements that are made in the context of dispute resolution outside and away from the court'.

16. Members of the FJYPB have expressed strong views about the importance of children and young people who are experiencing parental separation being given child-friendly information and the opportunity to talk to those in the family justice system who are assisting their parents to make arrangements for the children's future, including mediators and others who work with parents to resolve disputes out of court, as well as to judges if the case proceeds to court. The FJYPB have been represented on the Advisory Group and contributed fully to its work and the recommendations being made. Their voices are reflected throughout this report.

Defining Child Inclusive Dispute Resolution Practices

17. The Mediation Task Force identified a number of divergent perspectives and assumptions amongst mediators about the meaning of child inclusive practice and what it involves. Giving children and young people the right to be heard during mediation is not about conducting forensic interviews, nor making them a party to the case, nor taking evidence, nor expecting them to make decisions, nor ascertaining their wishes and feelings in any formal way. Nor is it about occasionally involving or consulting children in mediation when parents and/or the mediator decide that it might be helpful and of assistance to the mediation process.

18. From a perspective which respects children's rights as envisaged in the UNCRC, child inclusive practice is about providing a child or young person with the right to be heard. Similarly, a child's meeting with a judge is not for the purpose of gathering evidence but for the primary purpose of including the child in the court process, hearing what the child has to say and ensuring that those views are listened to. It is important for the child to know that their views have been heard and understood. Members of the FJYPB were adamant that it should not simply be an option to be heard in court but that it should be the norm for mediators in out of court dispute resolution to include children if children wish to be included, and they indicated that they would like to see a positive presumption to this effect. One young person commented:

> Mediation would be more successful if children and young people are included.

19. Young people want parents to be informed that there is a (non-legal) presumption in all dispute resolution processes and court proceedings that impact on children, that children and young people have the opportunity to participate, thereby placing responsibility on the parents to accept this as the norm in order to uphold the child's right. In their view, the process for child inclusive practice out of court should mirror that in court, providing a seamless set of opportunities for the child's voice to be heard.

20. The Interdisciplinary Alliance for Children (which brings together professional organisations concerned with the rights and welfare of children and young people), stressed to the Advisory Group the importance of recognising that children and young people have a right to be heard and that respecting children's rights is not an optional extra. When future arrangements for children are at issue measures to facilitate and understand the voice of the child should be the starting point and not 'tacked on' to existing procedures.

21. The Advisory Group has considered carefully what child inclusive practice should signify in dispute resolution processes and understands that child inclusion is both a principle and a practice. Each implies equity and respect. We endorse the following definition of child inclusive practice:

Definition. Child inclusive practice gives children and young people the opportunity to have a conversation (verbal, written, through play or storytelling) with professionals who are assisting their parents to make arrangements for the children's future. It enables consenting children and young people to share their experiences of parental/family separation and express their concerns and views, and for these to be sensitively considered with their parents so that their developmental needs and concerns can be better understood and taken into account within the dispute resolution process.

22. **Recommendation 1. The Advisory Group endorses the principle of child inclusive practice and recommends the adoption of a 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**.

23. The Advisory Group is clear that we are not here recommending a legal presumption, although this might well be an ultimate goal, but a non-legal presumption or principle that, except in limited circumstances where it would be unsafe to do so, the opportunity for children and young people aged 10 and above to be heard is regarded as the normal starting point in any dispute resolution process. A presumption of this kind indicates that all dispute resolution practitioners, including mediators, collaborative practitioners and others, will need to consider how they can embrace child inclusive practice as the norm in order to uphold children's rights to have a voice in decisions which affect them and fulfil Government policy.

24. This recommendation inevitably signifies a change in the culture and practice of mediation and other dispute resolution processes. Instead of the current system of direct child consultation in which parents and/or the dispute resolution practitioner occasionally suggesting or requesting that a child's voice should be heard and then offering an invitation to participate to some children, the starting point in future would be to provide **all** children and young people aged ten and above with appropriate information about the dispute resolution process and to offer them the opportunity to speak to the professionals involved, should they so wish. We consider the nature and implications of this presumption further when we discuss the ethical and legal issues which need to be addressed.

25. Practitioners would be expected to support the child's right to be heard unless there are exceptional circumstances which render it inappropriate in a given case, and to encourage parents to do the same. This recommendation creates and underlines the expectation that children and young people have the right to be heard when decisions are being taken which impact on their future in whatever dispute resolution process parents are engaged in. Children under 10 should also be able to have a voice if they wish.

26. We recognise that embracing child inclusive practice raises questions about the mechanisms that are appropriate for including children and young people, ethical considerations about taking a children's rights perspective, and implications for meeting the cost of providing this opportunity, all of which the Advisory Group has considered and which are discussed in this report, primarily with a focus on mediation.

27. In order to consider the steps that need to be taken to move towards implementation of the policy intent, we wanted to understand current mediation practice in more depth and thereby determine how a clear, unambiguous framework and standard for child inclusive practice should be developed. By focusing on mediation we hoped to address the key issues in implementation and offer a framework that other dispute resolution practitioners would be able to adapt to ensure that their own processes reflect child inclusive principles in due course.

Current Variations in Mediation Practice

28. Because preliminary exploration of child inclusive practice for the Mediation Task Force had indicated that it is relatively rare in England and Wales, the Advisory Group set out to obtain a more detailed picture of the current situation. We asked the FMC to administer a survey of mediators trained to undertake direct consultation with children. The FMC agreed to assist and a survey was sent to 555 mediators registered as being able to undertake child consultation (from a total number of 1535 mediators registered with the FMC). This yielded responses from 148 mediators. Further details of the survey are provided in Annex 4. Responses were received from 49 mediators affiliated to Resolution, 44 affiliated to the Family Mediators' Association, and 55 affiliated to other mediation providers. There were, therefore, responses from mediators across the member organisations and from different professional backgrounds. The findings from the mediator survey were instrumental in informing the subsequent deliberations of the Advisory Group and they helped to shape many of the recommendations put forward in this report. We include the key findings here.

Gender, professional background and experience

29. The respondents to the survey were primarily female (81%), reflecting the gender make-up of the mediator population as a whole, and came from three main professions – law, counselling, and family therapy/psychotherapy. The remainder listed a variety of backgrounds including advice work, advocacy, health and social services, education, financial services and business. The majority of those completing the survey, however, were lawyers (Fig. 1). Interrogation of the FMC database indicates that this is a fair reflection of the proportion of mediators with a law background. There are currently more lawyer-mediators registered with the FMC than mediators with other professional backgrounds.

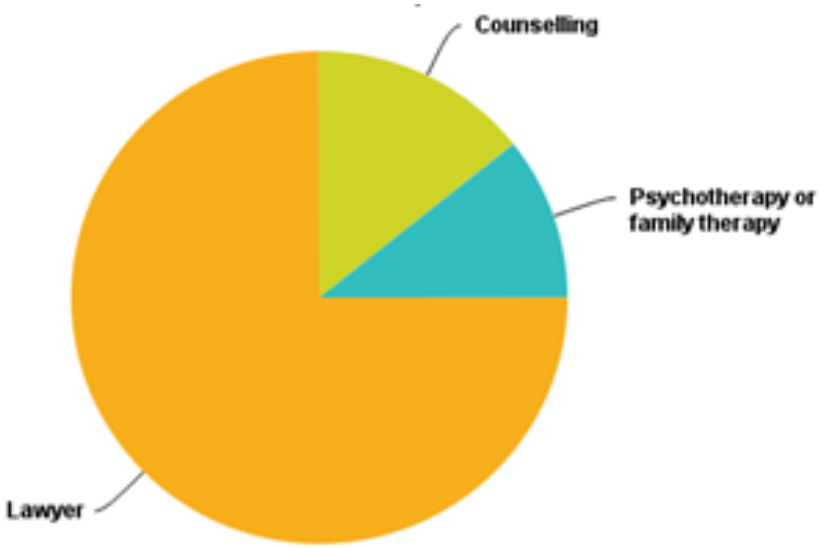

Figure 1 Professional Background of Mediators (n=112)

30. Most respondents had many years' experience as a family mediator, with 66 per cent having practised for ten years or more (Fig. 2).

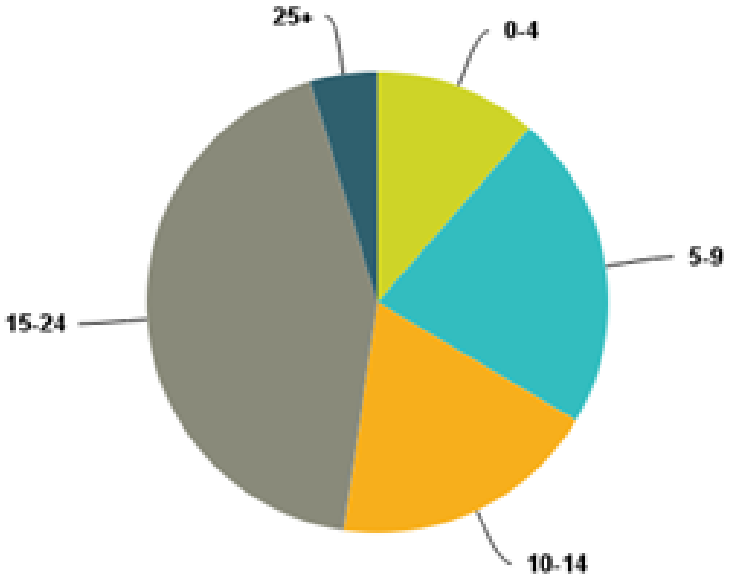

Figure 2 Years of Practice as a Family Mediator (n=149)

Hearing children's voices

31. Some mediators had trained to work directly with children as long ago as 1990 (Fig. 3). It would appear, however, that only a handful of mediators had undertaken the specialist training each year, the most in any one year being 17 in 2012. Despite many mediators having been trained to work directly with children some years ago, it is clear that it has remained an adjunct to mainstream mediation practice.

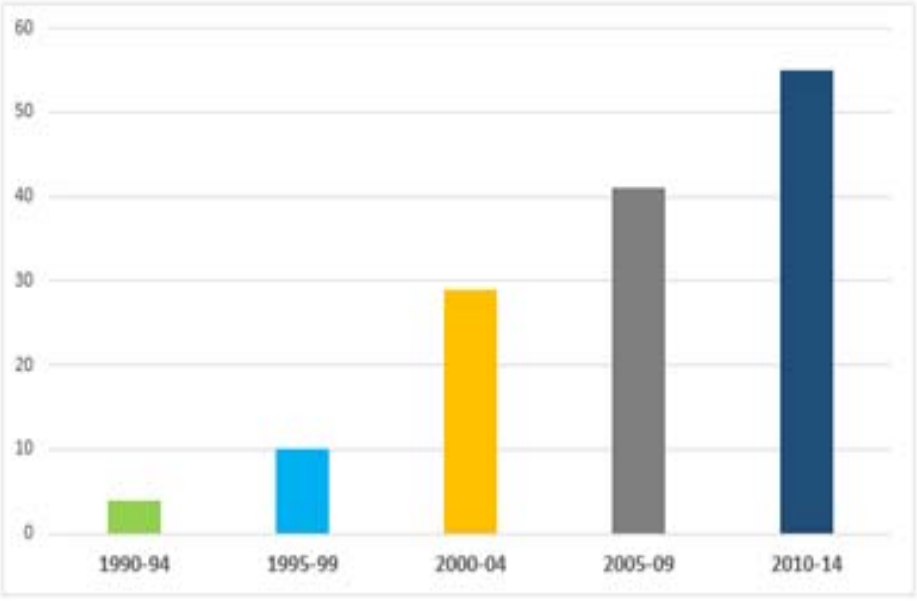

Figure 3 When Mediators Trained to Undertake Direct Consultation with Children (n=141)

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32. Mediators were asked how many children and young people they had invited to participate in mediation in 2014 and how many had actually participated. Seventy-two mediators answered the first question, the majority of whom (70%) had invited ten or fewer children to participate. While at one extreme one mediator indicated that 80 children had been invited to participate and another mentioned 60 children, at the other extreme a number of mediators indicated that they had not invited any children to participate during 2014 and others had invited just one or two (Fig 4).

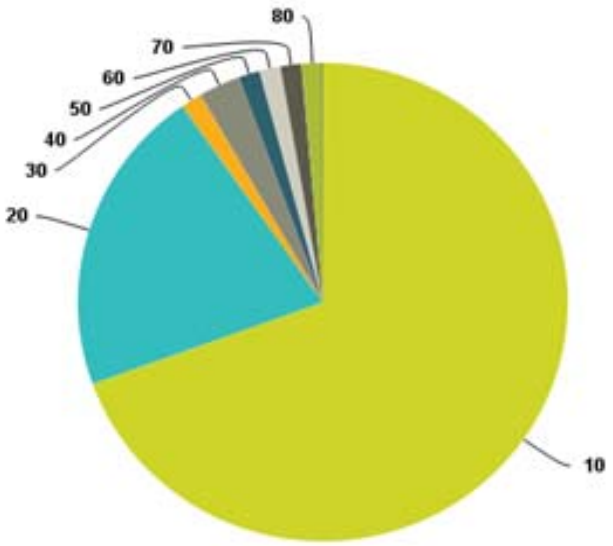


Figure 4 Number of Children and Young People Invited to Participate in Mediation in 2014 (n=72)

33. Data provided by 124 survey respondents indicate the number of children in various age ranges who participated in mediation. This shows that children across a wide age range were consulted during the mediation process, with the greatest number being aged between 11 and 16. Although the new child inclusive policy specifically mentions children aged 10 and over, the information from mediators suggests that a number of younger children may well wish to participate in future:

- 44 children aged 1-6
- 306 aged 7-10
- 323 aged 11-13
- 160 aged 14-16
- 27 young people aged 17 and over

34. It can be seen from Figure 5, however, that most mediators had involved a relatively small number of children in each age range during the course of a year. Indeed, the majority of mediators had undertaken mediation involving fewer than three children in each age range.

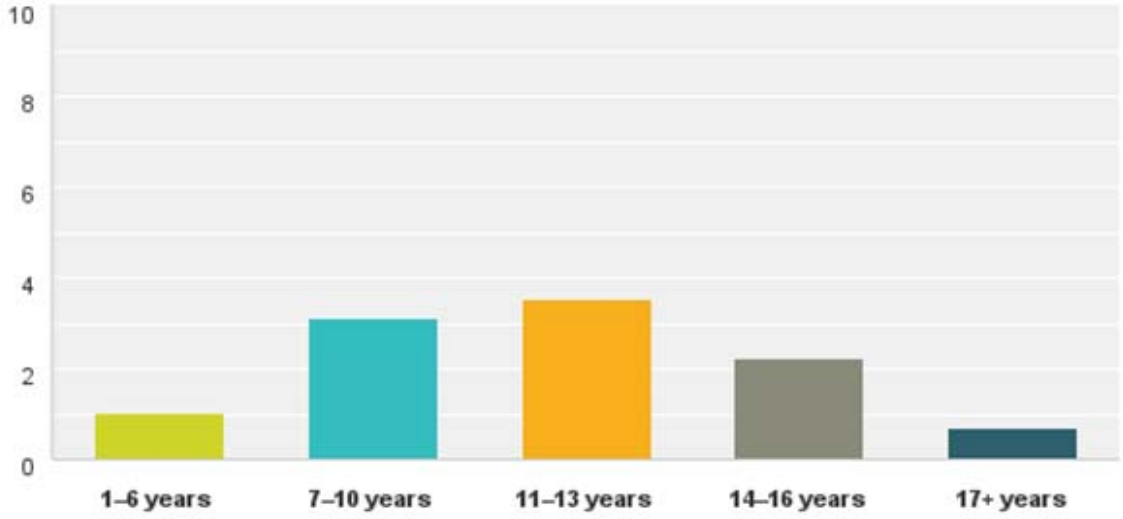


Figure 5 Numbers of Children and Young People Included in Mediation per Mediator in 2104 (n=124)

Models of child inclusive mediation

35. The survey asked about the models being used to involve children. We received 136 mediator responses and these indicated three distinct models of practice:

- 92 per cent of mediators met with the children themselves without parents present and then fed back children's views to the parents in a mediation session
- 12 per cent of mediators worked with another mediator who met with the children and then reported back to the parents and the primary mediator in a mediation session
- 6 per cent of mediators worked in collaboration with another professional such as a child counsellor, child psychologist or advocate, who met with the children and reported back to the parents and mediator in a mediation session.

Some mediators indicated that they used all three models. We have considered the advantages and disadvantages of each of these models in drawing up a proposed new practice framework and standards, which we discuss later in the report.

36. We are aware from the comments offered by mediators that some innovative approaches are being promoted around the country. For example, one mediator described a workshop which is run by a child counsellor for children to attend. The children meet with other children in similar circumstances and have the option of giving feedback to their parents via a verbal or written message. This model also offers individual counselling to the parents and joint family mediation meetings.

Confidentiality

37. Irrespective of the model used, 139 of 141 mediators reported that they always offer confidentiality of discussions with a child or young person, subject to the usual safeguarding exceptions relating to harm. One or two mediators indicated that they believe that the law is unclear about the status of confidential conversations and some said that they offer confidentiality 'in a way that does not prevent information being shared if it needs to be'. The issue of confidentiality had been raised by mediators during the work undertaken for the Mediation Task Force, many of whom expressed their concerns about

Telling parents about involving children

38. The survey asked mediators how they currently inform parents about the opportunity to involve children. The 146 responses revealed a range of practices, with some mediators introducing the option for children to express their views at a Mediation Information and Assessment Meeting (MIAM), some doing so at the initial intake meeting, and some informing parents during the mediation process (see Fig 6).

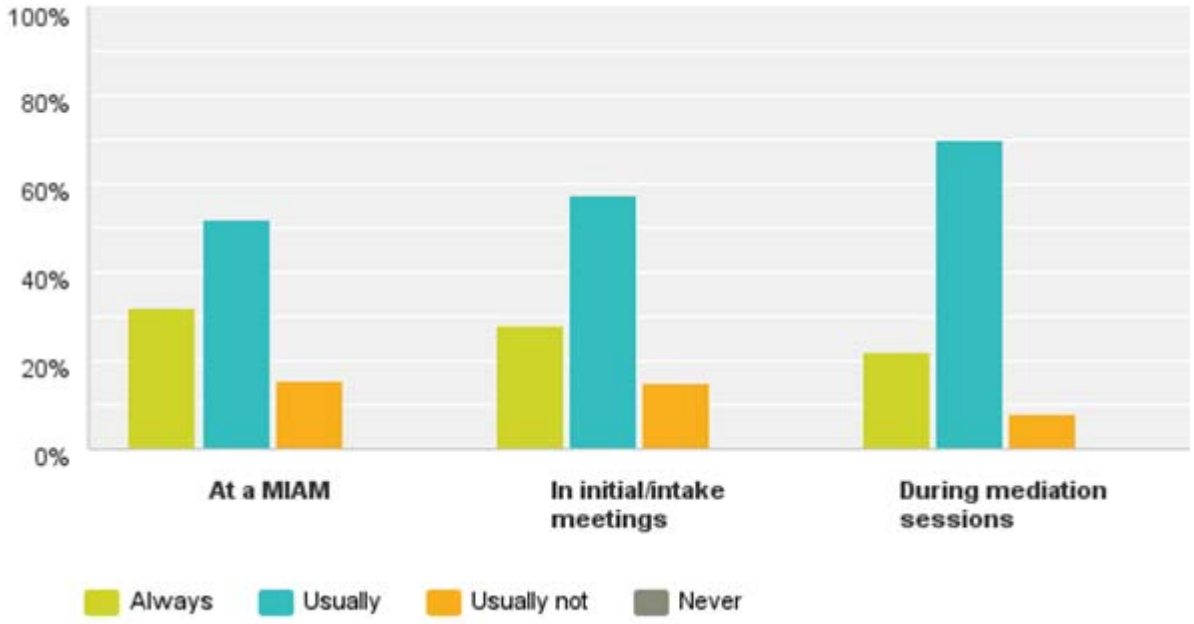


Figure 6 When Mediators Inform Parents about Children's Participation in Mediation (n=146)

39. Not all mediators currently regard it as always appropriate to inform parents about children's involvement, as the following comments illustrate:

> This will depend on the circumstances of the dispute and the stage it has reached.
>
> Only if they [parents] raise a difficulty.
>
> … we are now more conscious of mentioning it at a MIAM but have not consistently done so in the past.
>
> It's client led …
>
> Only if … it might be a useful technique
>
> I discuss it as an option where I think it might be appropriate
>
> I always explain at a MIAM that this is available but it is rarely appropriate.

40. The themes running through the comments are consistent: the opportunity for a child to be included may be mentioned, but frequently mediators regard it as inappropriate and take account of how the parents might react before suggesting it, or assess

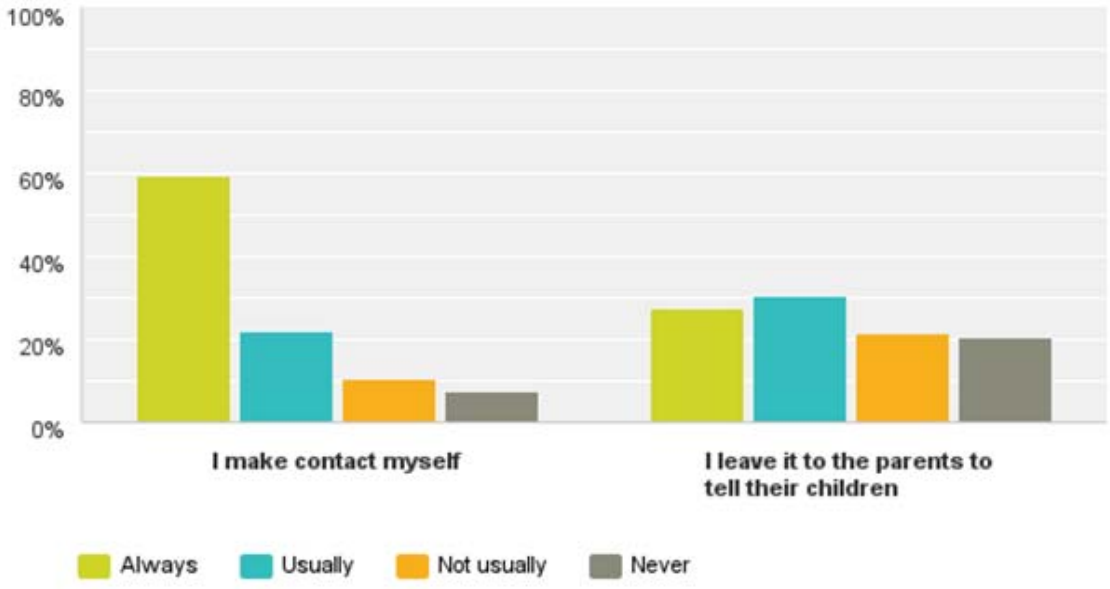


Figure 7 Making Contact with the Children and Young People (n=145)

Giving information to parents about talking to children

41. It is clear from the survey that mediators draw on a wide range of materials to provide information to parents about ways to talk to their children. Figure 8 shows that mediators variously refer parents to websites, parenting programmes, booklets and to their own leaflets and books. There does not appear to be any one primary resource that is universally used, however. Some mediators also mentioned that they signpost parents to other services, such as counselling:

> I direct them to family therapists/counselling services trained to speak to children
>
> Books if I feel the parents would benefit from the help
>
> Information on separation and children on the web
>
> Sources on our website, CAFCASS leaflets etc
>
> Local counselling services for parents
>
> Books for children, e.g. Dinosaurs Divorce
>
> Parenting Plan

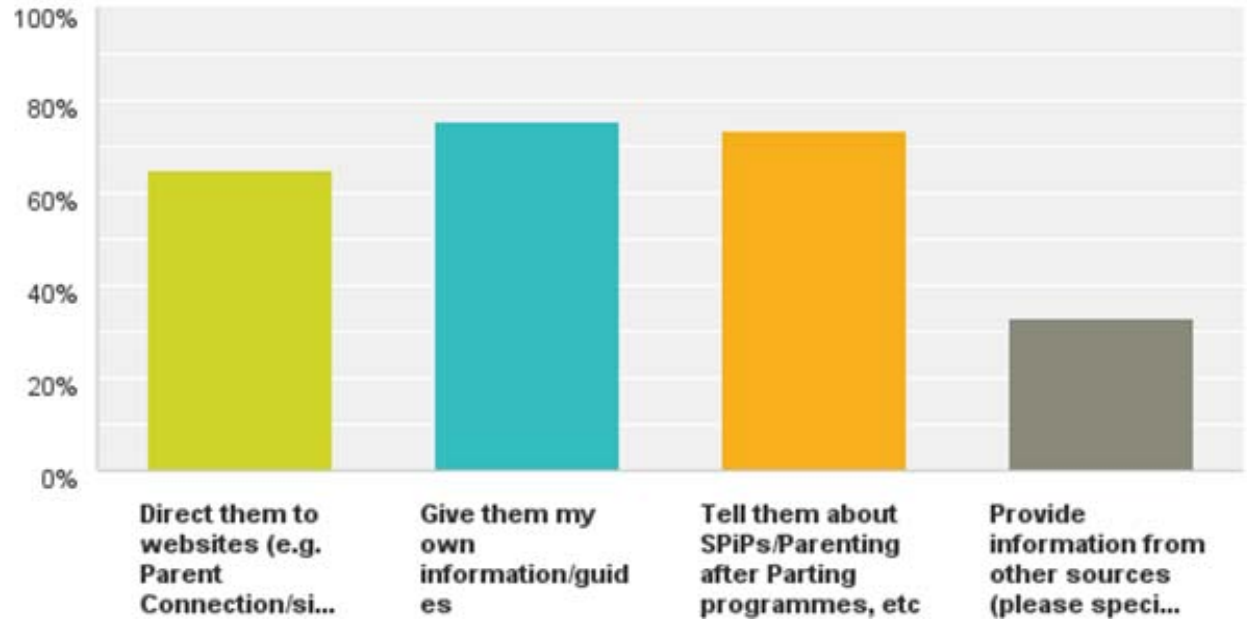


Figure 8 Sources of Information Given to Parents about Talking to Children (n=143)

Perceived barriers to child inclusive practice

42. The survey asked mediators to list the three most common barriers to talking to children during mediation. Figure 9 shows that parents being unwilling to allow their children to be included was cited by 69 per cent of mediators, and lack of funding was cited by 52 per cent. Concerns about the parents putting pressure on their children to say certain things or to make decisions, or parents being considered to be emotionally unready to hear feedback from their children were also regarded as major barriers (cited by 66% and 51% of mediators respectively). One or both of the parents not giving consent for their children to be included was noted as a common reason for children not being given a voice even after an invitation had been offered.

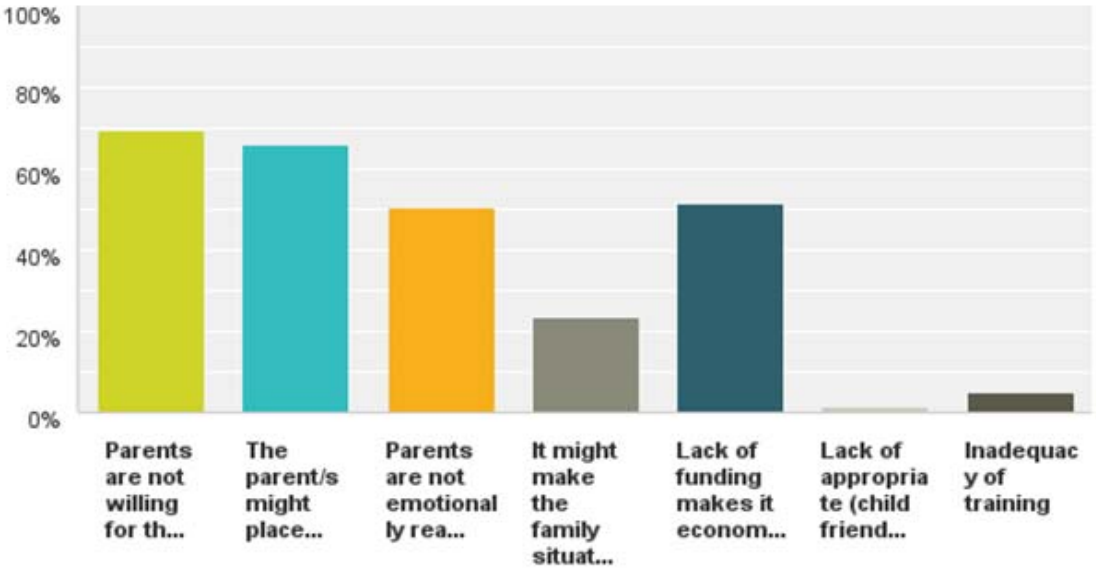


Figure 9 Perceived Barriers to Involving Children and Young People in mediation (n=145)

43. Mediators made a number of comments about the perceived barriers, thereby illustrating the key themes:

> Children can only be seen if both parents provide their permission - sometimes one/both are reluctant as they think they can work things out with me without the necessity for their children to be seen - most parents wish to avoid making the situation more difficult for their children and in some ways the need to meet with children puts an (unfair) burden/pressure on children (or at least that is the parents' perception) - funding is also an issue
>
> Parents worry about their child seeing someone (semi official)
>
> This is a labour of love. It is NOT economically viable (parents won't pay, LAA won't pay) and I believe this inhibits more mediators offering DCC [direct consultation with children]
>
> Most parents are willing but I am left feeling they don't necessarily want to invest in the time and care required to set up the meetings in the most meaningful way possible - I fear that often it is regarded as a quick fix when nothing could be farther from its purpose
>
> Rather than withholding permission, parents just don't think it is necessary

44. The Advisory Group has looked carefully at the perceived barriers to including children, and given very careful thought to the important issue of parental consent. Members of the FJYPB have consistently underlined their view that a parent refusing consent to child participation should not be regarded as a sufficient reason by itself to deny the child a voice. Indeed, they have suggested that the child should have the final say. This raises a number of ethical issues which the Advisory Group has explored in some depth and which are discussed later in the report.

Mediators' general comments

45. At the end of the survey mediators were invited to give their general comments about the participation of children and young people in mediation. Large numbers of mediators provided thoughtful and detailed comments which have been extremely useful in informing all of the Advisory Group's work streams. Generally, the comments indicate approval for a shift to child inclusive practice in line with a child's rights perspective and the policy intent, but with caveats about the need for appropriate professional training, adequate screening and a comprehensive framework for practice. Positive comments such as the following highlight the predominant views offered by the mediators:

> Over the years I have consulted with children and young people regularly in mediation until the last 5 years and then occasionally when courts recommended it, or parents are keen. I have specialised in counselling children and young people (BACP Accred) and used to work regularly for Action for Children, taking CAMHS referrals. The dual roles were clear and aided job satisfaction and increased professionalism and expertise as mediator. It should be offered routinely to children and young people, and signpost or refer on for additional short term work in schools if resources were available.
>
> On balance, I feel that the involvement of children is positive step for them and for helping parents be informed about how they can work together but that the process needs to be carefully handled with all parties being well prepared beforehand.
>
> I would suggest that meeting the children is a very positive experience for the children and the parents… very often the parents hear some very loving messages from children that they might not hear without this experience.

> Generally it is an empowering process for the children, and can lead to their parents making more informed and suitable choices.
>
> In my view children benefit hugely by being given the opportunity to have their say, and to have someone independent to talk to about their parent's separation. In a large number of cases the children ask me if they can come and talk to me again - showing that they have found the meeting very helpful themselves; have not been at all distressed by the meeting, but rather that they have found it helpful. I make sure that I find out a lot about the children, their likes, dislikes, names of friends, etcetera, before we meet. I make the meeting about them and their whole life, not just about their parents. I think this really makes a difference, and allows children to feel safe and willing to open up to me.
>
> Mediators are uniquely placed to offer children a voice. They know enough about the situation to reassure the child and are clearly not on anyone's side. The fact that they can offer confidentiality is crucial - it allows the child to speak freely. But it is essential that children are not "used" to solve the parents' disputes. Their participation must primarily be for their benefit, so that they can ask questions, express views, ideas or concerns, or just off-load to a sympathetic ear.
>
> I think that it is vital that children and young people have a voice in the issues that affect their lives and it assists in the resolution of disputes in my view.

46. Despite receiving many very positive responses, the survey alerted us to clear concerns which need to be addressed and resolved. These include concerns about possibly exacerbating a difficult situation for the children:

> I feel strongly that whilst children should have a voice and be heard it is my responsibility to guard against exacerbating a difficult situation for them - we are not there for them if the 'aftermath' of feedback is not wholesome
>
> Children should not be involved if they are going to be put into situations which the parents are not capable of dealing with.
>
> I think it's a good idea in principle but we have to be careful how we put this into operation so that we do not cause harm.

47. Other concerns relate to the possibility that children might become decision-makers:

> I feel strongly that children should not be placed in the position of making decisions for the parents, nor be blamed by one parent if they hear something from the child they don't like. Therefore, inviting children to be involved needs serious consideration on all sides.
>
> The parents must be seen first and the mediator would need to 'educate' them not to put pressure on the children. In addition the mediator must ensure the children do not feel under pressure and that they are not being expected to be the final arbiter in the case…
>
> It is vital that the children are not put in the position of commenting on different options. This is why such sessions should NOT be called child consultation, since this suggests their opinions will be sought.
>
> …I feel that there is a risk if not handled carefully that an impression is given that the decision making is being taken from the parents and passed to the children, who do not need that pressure or responsibility, and may not be best placed to make an important decision.

48. Several mediators referred to the terminology used and indicated their belief that the term 'direct consultation' is both unhelpful and misleading. There was also considerable agreement amongst mediators about the importance of having adequate training and

acquiring specialist skills to work with children and young people in order to avoid the risks identified in the comments above:

> I feel very strongly that there should be ongoing training available for all mediators who offer direct consultation.
>
> Needs planning and adequate levels of training.
>
> This is potentially explosive and could be damaging to children and to family systems without proper research, training and monitoring.
>
> The issue of safeguarding of children is centre stage at present. It is not fair on mediators or children to put inadequately trained people in front of vulnerable children who are going through a difficult time in their lives. The course needs re-design with input from front-line children's issues specialists, for example, Social Workers, and should be accredited or kite-marked for quality by an external organisation, for example, NSPCC (they offer this service). This will give both mediators and parents confidence in the training and practice.
>
> The ability to talk to children is a specialist skill that not every mediator has. I think sometimes it would be beneficial for parents to have some coaching outside the DCC process before coming back to hear what their child(ren) might be wanting them to hear or afterward feedback to prepare them for mediation.

49. The Advisory Group agrees with mediators who placed strong emphasis on developing the skills of mediators to equip them to offer child inclusive practice in a safe and constructive way, to work with both parents to help them to see the potential benefits for their children, and to support children and young people during difficult transitions.

50. Despite generally positive comments about the importance of changing practice, not all mediators expressed enthusiasm for a change in the way children and young people are included. A few mediators expressed negative views about any policy change which suggests that child inclusive practice should become the norm:

> It may not always be helpful, even if the child(ren) want it.
>
> I think seeing the child should be the exception and not the norm.
>
> I do not believe that child consultation should become the default position; I am very concerned that if this becomes the norm, I will probably have to undertake child consultations in order to maintain my LAA contract and I have no wish to do so nor do I believe I would be any good at it, which is why I haven't trained to date. Whilst I accept there are cases where it can be helpful and I have a colleague to call on in those circumstances, I am very opposed to any shift in the emphasis on this point.

51. Nevertheless, comments such as these were very much in the minority and the overwhelming majority of mediators surveyed were extremely positive about the benefits associated with child inclusive practice, and most expressed a willingness to promote ways to ensure that it can be properly developed:

> I think it should be routinely offered and would like to see it routinely taken up.
>
> I think there needs to be a culture change so that parents expect someone to talk to their children. They would then assume that their children would talk to the mediator.
>
> I support a cultural change where there is an expectation that children/young people are offered the opportunity unless it is considered inappropriate in certain circumstances. We may need to be more sophisticated in the range of options for

> participation i.e. in mediation, group workshops/discussions, on line information etc.
>
> This is a field that is coming into the 21st century and rightly so. From a general professional discouragement (which I was party to…) we are all (and myself specifically) making a real transition to a real passion for the value to children, the parents and the process. THIS is the 'cusp of history'.

Readiness to undertake child inclusive practice

52. We asked mediators whether they felt ready to ensure that all children aged ten and above are offered the opportunity to talk to a mediator. Seventy five per cent of 146 respondents answered that they are ready, while 25 per cent said they are not. This is a significant minority given that these mediators are registered as being trained to include children in mediation. The reasons given by these mediators for not being ready included: having had insufficient training; the mediation process needing to become more child-centred; concerns about inappropriate parental pressure being put on children, and about raising a child's expectations; the need for more flexible models; and concerns about the cost of providing child inclusive mediation and the inadequacy of current funding, especially in respect of legally aided clients.

53. The two most commonly held concerns relate to the inadequacy of current training and the inadequacy of funding:

> Training needs a complete overhaul. Not all mediators are suited to this type of work. Many mediators have no experience of dealing with children in a professional setting
>
> The two day training we have is inadequate …
>
> This would place a burden financially on my service for legally aided parents … legal aid payments do not recognise the additional work and preparation required …
>
> This simply wouldn't be viable in legally aided cases, and in some private cases places an additional burden of costs on parents who are struggling to meet mediation fees …
>
> We would go out of business unless the rates are significantly increased.

It seems clear that for a number of mediators the provision of further, more in depth training and more adequate funding mechanisms need to be addressed before they will feel competent to embrace child inclusive practice. The Interdisciplinary Alliance for Children has also commented that current funding arrangements can act as a disincentive to developing a mediation process that includes children. The Advisory Group has sought to respond to the various concerns highlighted in the survey.

Models of Child Inclusive Practice

54. The Advisory Group noted that there is no single model of child inclusive practice, nor one size that fits all, and that a range of approaches can ensure that children and young people are offered the opportunity to have their voices heard. The predominant model for talking to children and young people in mediation at the moment is one in which the parents' mediator also has a conversation with the children, either individually or in a sibling group. However, it is a minority activity and with an increasing number of children being offered the opportunity to participate in mediation and other dispute resolution processes, greater take up may well have implications for the model that is both appropriate and practical.

55. It is impossible to know just how many children and young people will take up the offer of talking to the dispute resolution professionals involved but it will certainly not be all those invited. Nevertheless, it is likely to be significantly more than at present. The single mediator/dispute resolution practitioner model may not be one that mediators and others who have not been trained to offer child inclusive work decide to adopt. Currently only a third of mediators have completed training to undertake direct consultation with children and these mediators have variable levels of experience and variable levels of confidence about moving to child inclusive practice. Many will require/desire further training to offer a child inclusive model which does much more than offer some children the chance to participate as an adjunct to parental negotiation.

56. The Advisory Group is aware of four models in use here and in other jurisdictions:

- the parents' mediator also talks with the children and young people and reports back to the parents…the dominant model here at the moment
- a co-mediator talks with the children and reports back to the mediator and the parents
- another professional experienced in working with children and young people talks with the children and reports back to the mediator and the parents
- children and young people participate in a workshop with other young people and their views are reported back to the parents via the mediator

57. Although the third of these models is used by very few mediators here, in some jurisdictions, as child inclusive practice has become more sophisticated, it has emerged as the preferred option and resulted in the development of two interlinked professional roles: the professional mediator(s) who conducts the dispute resolution process with the parents; and the child practitioner/advocate who meets with the children and provides a bridge between the children, their parents and the mediator. This division of responsibility responds to an ethical dilemma raised by some sole mediators who sometimes find themselves caught 'in the middle' as a result of hearing the confidences of parents and the confidences of children. A conflict of interests can occur especially if children do not want their confidences shared with their parents. In this situation, a sole mediator may have to 'keep secrets' or struggle with how their neutrality and impartiality is impacted because they have received information from children that is not to be shared, and have to continue with the negotiation process, knowing that a child has discussed an issue that could be pertinent to the agreements reached by the parents and risking a breach of the confidentiality offered to the child.

58. Using a child practitioner can resolve these conflicts. The child practitioner/advocate is a highly skilled professional who can work across a range of dispute resolution processes in

addition to mediation. Their main role in dispute resolution is to work with children to enhance the outcomes for children whose parents separate, by enabling them to have a voice in any proceedings or interventions which will have a profound impact on their future lives. Extensive experience of child inclusive dispute resolution in Australia has shown that giving children a voice is not simply 'a right of passage'. Child inclusive practice should make a difference to the child's wellbeing and to the way in which parents make decisions, and, as such, the role of child consultant/practitioner/advocate is necessarily very skilled.

59. Research in Australia has demonstrated that while the principle should be that children and young people should always be offered an opportunity to have their voices heard and that working in a child inclusive framework is an accepted standard of practice in the context of family law proceedings, it is essential to ensure that child inclusive mediation is safe.

60. The advantages of using a specialist child practitioner alongside the mediator are that the child practitioner is trained and experienced in undertaking highly sensitive work with young people, may well have a greater ability to meet children's needs and facilitate conversations on difficult topics, and may be able to offer ongoing support where necessary. Moreover, this model allows a separation/boundary between the negotiations being undertaken by the parents and facilitated by the mediator and conversations with children and young people. It requires the two practitioners to work together closely as a team to facilitate a coherent process and coherent outcomes for everyone involved. We are aware that some mediators here are already using this model of practice and that there are skilled child practitioners available around the country willing and able to work collaboratively with mediators. For example, child advocates working with the National Youth Advocacy Service (NYAS) have indicated that they could use their skills to work in a private law context, offering a service in partnership with mediators across England and Wales. Other agencies such as Relate employ both mediators and child counsellors, enabling professional collaboration within the same organisation.

61. The single mediator model currently used by most DCC trained mediators has the advantage that the children meet the same professional as their parents, an approach some children prefer, and the mediator can gain an overall understanding of the parents' issues and the children's perspectives. The potential disadvantage relates to occasions when children do not want all their concerns to be shared with their parents as the mediator cannot 'not know' nor be uninfluenced by what children have told them in confidence.

62. Some mediators have already adopted the second model and work with a mediator colleague who takes responsibility for talking with the children. This approach has similar advantages to that of using another professional and demands close collaboration. A potential disadvantage in the initial adoption of this model in child inclusive practice, as evidenced by some of the respondents to the mediator survey, is that the co-mediator may not have the same high level of expertise in working with children and young people as that held by a specialist child practitioner, particularly in dealing with complex cases.

63. We believe that all these models have merit, including an approach which invites children to a workshop with other children and run by a skilled child practitioner, and that it is a matter for individual mediators and other dispute resolution providers to decide which approach they prefer, maybe opting to use a range of models for different kinds of cases. The Advisory Group is clear that child inclusive practice is a skilled intervention whichever model is used. Conversations with mediators during the course of the Advisory Group's work have indicated that the use of a child specialist is regarded as offering many advantages, especially as many mediators believe that two days training in DCC is not enough to give them the competencies and the confidence they need to work effectively with children and young people.

64. Mediators from a variety of backgrounds have shown awareness of the limitations of their expertise and have stressed the importance of being clear about what they can offer children and young people. The Advisory Group believes that there will need to be a well-managed evolution of child inclusive practice across dispute resolution processes, underpinned by robust practice standards and appropriate training, support and supervision structures, so that mediators can work with parents to enable them to value and accept that their children have a voice and to ensure a positive and safe experience for the children. We recognise that developing policy and practice standards and then implementing quality assured models will all require careful planning, irrespective of which models are adopted.

Recommendation 2. The Advisory Group recommends that as child inclusive mediation is established as a norm a number of pilots should be established to test and evaluate the use of different models to inform future provision.

65. Pilots would enable new approaches to training, new standards, and a range of principles and models to be tested so that examples of best practice can be identified, maximised and rolled out. To this end, we have begun to explore the kinds of pilots that would allow a range of approaches and models to be tested and evaluated. We have held preliminary conversations with a number of existing mediation providers to assess their interest and willingness to participate in a pilot programme should pilots be established. We have received very positive responses from everyone we have talked to and detected a great deal of enthusiasm for trying new ways to develop child inclusive practice, including the formation of new partnership working and innovative approaches. Seven potential pilots in existing mediation practices are described briefly in Annex 5. They cover a broad geographical area from the north to the south of England and in Wales, and draw on the skills of mediators from differing professional backgrounds and with differing organisational affiliations.

66. Each of these pilots would need to test a number of key factors, including *inter alia*:

- the provision of information to parents and to children and young people about child inclusive practice
- preparation of parents and children for the child inclusive process
- identifying any barriers to children and young people being able to have a voice
- ways of obtaining consent from parents and the children and young people
- exploring mechanisms for inviting children and young people to participate
- consideration of the timing and location for talking with children
- how feedback is given to parents and to children and young people
- implications for the time allocated to the mediation process and for the costs
- the provision of ongoing support for children and young people if needed
- identifying any unforeseen or negative impacts
- the impact on negotiation in mediation and the agreements reached
- the experiences of parents and the experiences of the children and young people
- the appropriateness of different models for different families/situations
- the impact of a child inclusive approach on the take up of mediation
- implications for training and supervision of mediators and child practitioners
- the appropriate content of MIAMs, Separated Parents Information Programmes (SPIPs) and Working Together for Children (WT4C) programmes
- links with other out of court support systems and with processes in court

67. The pilots described in Annex 5 would enable the testing of several different approaches, including the range of models of child inclusive practice identified; the use of different child practitioners; the bringing together of different complementary services such as family counselling; the consideration of the emotional readiness to mediate; the flexible provision of MIAMs, SPIPs/DRSPIPs and WT4C; the increasing use of skype and on line processes;

and the protocols for ensuring confidentiality, Gillick competence and securing parental consent.

68. It was not in the Advisory Group's remit to consider the budget required for running a series of pilots, and the development of fully costed proposals would need to be undertaken in conjunction with the professionals involved before any pilot programme could be advanced. The proposed outline pilots nevertheless reflect the considerable goodwill of many experienced mediators in England and Wales and other practitioners to move mediation forward and put child inclusive practice to the test, and to develop new ways of working with children and young people and their parents that are effective, respectful and safe.

Principles of Child Inclusive Practice

69. Whichever models of child inclusive practice are adopted, consistent, overarching principles of practice are needed across all dispute resolution processes. The Advisory Group proposes that the following principles should underpin child inclusive practice in dispute resolution processes:

- children and young people aged ten and over should be given age-appropriate information about mediation and other dispute resolution processes, such as collaborative practice, which explains what the process offers, its purpose and how it is delivered and who by, and which makes it clear that children can, if they wish, express their views to the professionals involved in their case
- safeguarding principles must always take priority
- all children and young people aged ten and over should receive a direct, personal invitation to participate if they wish, unless there are exceptional circumstances why this may not be appropriate or safe
- the involvement of children and young people must always be voluntary and no meeting or other form of involvement should be imposed on those who do not want to be included
- conversations with children and young people should be undertaken by appropriately skilled mediators/child practitioners in a supportive, developmentally appropriate manner
- these conversations should avoid and remove any burden of decision making from the child
- children's experiences should be respected, validated and understood within a process that is developmentally sensitive
- parents should be supported to listen to, understand, value and reflect on their children's needs/views and to take them into account when making decisions for their children's future
- the mediation/dispute resolution process should ensure that the decisions reached take account of the conversations with the children and the messages shared with parents
- conversations with children and young people should be regarded as confidential and the nature and process of any disclosure to parents must be agreed with the child
- children and young people should be supported during the process and signposted to/offered additional help if that is needed
- children and young people should be kept informed about the dispute resolution process and the outcomes reached should be explained to them
- all dispute resolution processes must put children and their families at the heart of the process and respect human agency

70. In July 2009, the UNCRC adopted a General Comment on Article 12 which outlined the parameters on the child's right to be heard. It states *inter alia* that:

- States must avoid tokenistic approaches which limit children's ability to express their views or which fail to give their views due weight
- if children's participation is to be effective and meaningful it must be understood as a process and not a one off event
- processes should be transparent, informative, voluntary, respectful, relevant, child-friendly, inclusive, safe and sensitive to risk, and accountable
- adults should be given the skills and support to involve children

71. All these principles and parameters were endorsed by the children and young people during the FJYPB workshop. They talked about the importance of parents, teachers, school counsellors and other professionals being given the skills to support children; the importance of children and their parents being properly prepared for engaging in child inclusive dispute resolution processes; the importance of receiving feedback from professionals about decisions made and the reasons for them; and the importance of being offered ongoing support from appropriate agencies if that is needed. Children and young people said that they do not want to rely wholly or exclusively on their parents to keep them informed and they suggested that mediators/child practitioners should contact them directly to provide feedback. This kind of approach has implications for the time involved and the skills that are required to work intensively with young people in families in transition.

72. **Recommendation 3. The Advisory Group recommends adoption of these principles of practice and the parameters outlined by the general comment on Article 12 in out of court dispute resolution processes.**

Standards and Competencies

73. The Interdisciplinary Alliance for Children has indicated that the standards applied to child inclusive mediation should have a coherent framework based on contemporary legislation, UN conventions and best guidance and practice. At the present time the practice standards relating to direct consultation with children in mediation are based on policy and practice guidelines originally drafted by the UK College of Family Mediators, revised and extended in 2002, and subsequently held by the College of Mediators and adopted latterly by the Family Mediation Council. These set out the legislative framework up to 2002 and do not take account of more recent legislation. More importantly, the existing standard does not support a presumption of child inclusive practice or recognise the rights of the child but regards the involvement of children as an adjunct to the adult mediation process. It states:

> Mediators must encourage participants to consider the children's wishes and feelings. If appropriate they may discuss with them whether and to what extent it is proper to consult the children directly in order to ascertain their wishes and feelings.

74. The new policy intent shifts the emphasis away from 'consultation' with children if the mediator and parents regard this as appropriate on a case by case basis to a non-legal presumption of offering all children aged 10 and above the opportunity to talk with the professionals involved. Moreover, the inclusion of children in mediation is not necessarily about ascertaining their wishes and feelings as stated in the existing standard but about enabling them to have a conversation at a time when their parents are making arrangements for the children's future.

75. In January 2015 the FMC implemented new standards for mediators but these do not address child inclusive practice. The Advisory Group took the unanimous view that because of the culture change required to embrace child inclusive mediation a new standard should be developed, particularly as other dispute resolution practitioners will also need to have standards in place and there will be commonalities. The new policy provides an important opportunity to develop a new standard and new guidelines which can provide a framework for child inclusive practice generally and set the standard going forward into the future for use by a range of practitioners who are assisting parents to resolve disputes out of court and to make arrangements for their children's future. Children and young people may experience various processes out of court and in court as their parents seek to make arrangements for their future. In all these processes, opportunities to hear the child's voice must be consistently applied by the professionals involved and practice should be of a consistent high standard.

76. The opportunity to develop a new standard was endorsed by the respondents to the Citizen Space survey undertaken by the MoJ. More details about the survey and the findings are contained in Annex 7. The survey received 283 responses. Eighty-one per cent of the 274 people who responded agreed that there should be a single standard, thereby supporting the Advisory Group's view. Consistent application of a standard across various processes underscores the strength and advantage of developing a common standard which respects the rights of the child and which prioritises their welfare. The Interdisciplinary Alliance for Children has commented that a single, common standard also provides parents with a common objective of doing what is in their child's best interests, and this in turn can assist in resolving disputes. Moreover, they argue that this approach must start at the beginning of any process in order to gain the confidence and trust of the child and the parents.

77. In drawing up the framework and considering competencies, we have been mindful of the range of dispute resolution options that families might choose. Family dispute resolution is wider than mediation alone and is continuing to grow, especially as family law and family justice evolves. We are aware, for example, that children and young people may be involved or offered support in collaborative practice. In recent years, the growth of collaborative practice and collaborative models from the United States, which involve child

practitioners, has led to increased interest from collaborative practitioner lawyers here as to whether, if and how children and young people may have an opportunity to speak to a child professional. This is not generally on the basis of hearing what the child might have to say about their situation or what is important to them but may be regarded as providing support to children and young people, and giving their parents a view from the child professional as to how their children are coping with the family situation as a whole.

78. More recently, some of the child professionals and collaborative practitioner lawyers have begun to develop these models further to bring the perspective of the child to the parents and vice versa. At present there are no over-arching principles, no code of practice, nor training in relation to these models, but rather there is an exploration by these professionals of what might assist the family as a whole in reaching workable and long-term outcomes. Mediation-arbitration (med/arb) has also been practised in the USA for many years, and although not extensively practised it is another form of dispute resolution that includes mediation.

79. More recently still, the Forum of Family Arbitrators, has agreed to 'look at and, if appropriate, to contribute to the enlargement of that or a similar scheme to regulate the arbitration of private law family issues concerning children' and have made mention of an appropriate protocol of how the child's voice is heard by the child issues arbitrator. It is also important to note that solicitor negotiations are a dispute resolution process and one that is still used by a proportion of separating parents to sort out arrangements. Family solicitors would not normally consider the involvement of children and young people although they will, when appropriate, provide information and signposting to parents.

80. The growth of the range of dispute resolution processes raises important questions about how an appropriate number of well trained and qualified child practitioners can be available to assist where a child or young person wishes to take up an opportunity to be heard, and points to the need for family dispute resolution practitioners and child practitioners to work together to establish a cohesive, workable and understandable framework that is fully accessible to parents and to their children.

81. Family dispute resolution processes have tended to emerge and grow in an isolated way despite the fact that many of the same professionals may work across each of the processes (that is, some mediators are also collaborative practitioners and family arbitrators etc.) There is also a long standing issue of the various processes being seen as competing for business rather than being part of an overall system designed to assist separating families. For these services to be meaningful and relevant to families, a way needs to be found to move away from competitive silo working and, most importantly, for the dispute resolution professionals to form much closer links with existing children's organisations and child practitioners who have much to offer in relation to working directly with children and young people.

82. The Advisory Group undertook to develop a new framework specifically for mediators which we hope can be readily adapted for use in other dispute resolution processes. We agreed that the framework should be future proofed and provide a vision for mediation professionals as practice is enhanced and new models of delivering mediation, for example, using online tools, are developed.

83. **Recommendation 4. The Advisory Group recommends 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.**

84. We have been mindful of the fact that a framework for practice should also be applicable to other dispute resolution professionals and processes. We suggest, therefore, that other non-mediation dispute resolution professionals involved in child arrangements should undertake appropriate training in the importance of hearing the voice of the child and how children and young people can participate in the dispute resolution process. The training should include, *inter alia* the following topics:

- indications and contrary indications for working with children and young people in the dispute resolution context, including an understanding of mental health and other vulnerabilities
- child development and family systems
- safeguarding, including issues of domestic abuse
- confidentiality
- cultural diversity issues
- the role and responsibility of the child practitioner undertaking child inclusive work
- the roles and responsibilities of other agencies
- the use of parenting plans

Moreover, the dispute resolution practitioners should have access to the register of mediators/child practitioners who can meet with the child or young person; must be able to offer appropriate feedback and support to parents, offering confidentiality where appropriate; and must arrange or signpost support for the children and young people through the parental separation transition.

Requirements for child inclusive mediation

85. The Advisory Group has agreed that mediators must:

- have been trained in child inclusive mediation to a standard required and audited by the national professional organisation responsible for setting and maintaining standards
- be accredited by the national professional organisation responsible for setting and maintaining standards
- have been trained to provide child inclusive mediation either directly or via a child practitioner specialist
- be appropriately supported in their professional practice (for example, by a professional practice consultant trained in child inclusive mediation)
- have up to date and mediation specific DBS clearance
- have appropriate facilities for conducting child inclusive mediation

86. **Recommendation 5. The Advisory Group recommends that 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 and supervision of practice required to maintain professional accreditation to practice.**

87. **Recommendation 6. The Advisory Group recommends that reaccreditation for child inclusive mediation should take place at least every three years and the list of practitioners updated on a national database.**

88. Child practitioners who are not trained mediators must have a recognised, approved professional qualification related to working with children (for example, as a child psychologist, social worker, family or child psychotherapist, child counsellor, child advocate), and undertake additional training to work with family mediators (offered by a nationally approved provider).

89. Members of the Advisory Group are agreed that it is important that any substantive change in culture implied by a move to child inclusive practice and the adoption of a 'whole family' approach in dispute resolution processes will require additional knowledge and skills competencies for all the practitioners in dispute resolution services. These additional skills will be required regardless of whether the professional dispute resolution practitioner goes on to qualify and practice to work with children and young people directly or whether they look to partner with a skilled child practitioner to offer child inclusive practice. The dispute resolution practitioner will need to be able to offer the opportunity to children and young people to communicate their thoughts and views.

90. We suggest that this shift requires further evolution in knowledge, understanding and practice beyond the standard previously established and set out in the UK College Standard for Direct Consultation with Children (2002). A new standard should include more detailed competencies in respect of working in a child inclusive model, such as communicating the importance of children having an opportunity to be heard and listened to, explaining the value of the child's perspective as part of a family dialogue towards decision making, and managing discussions about decisions made and the ways in which these are communicated to children and young people. Additionally, the Advisory Group supports the move towards establishing a national standard for selection, training, qualification, and supervision of practice, particularly in respect of those who undertake direct work with children and young people.

91. To this end, the Advisory Group has drawn up four sets of competencies for family mediators. First, for all mediators to communicate effectively with parents about child inclusive practice; second, additional competencies for mediators who wish to talk directly to children themselves; third, competencies for child practitioners who work directly with children and young people; and fourth, for Professional Practice Consultants who hold a vital role in developing, supporting, and supervising mediation practice.

92. It is not the Advisory Group's function or role to set out or define in detail the competencies that should be adopted by the appropriate professional organisation but rather to suggest the type and nature of competencies that should be considered as necessary and appropriate in any future standard. Moreover, although the suggested competencies are directed at mediation and mediators, the Advisory Group considers that other family law dispute resolution practitioners should also consider adopting similar nationally agreed competencies and standards relevant to their own processes. The proposed competencies are attached at Annex 6. They have been prepared following a review of the information provided by members of the Expert Forum, competence standards from other linked professions, including those from existing national occupational standards that relate to direct work with children and young people (especially those that are inclusive of the child's right perspective and Arts. 12 and 13 of the UNCRC), and the Australian Government's competence requirements for developing an understanding of child inclusive practice and in relation to assisting parents to develop parenting arrangements.

93. **Recommendation 7. The Advisory Group recommends that 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 professional development, and dealing with all professional issues.**

94. The Advisory Group has developed a Mediation Process Flow Chart which outlines the steps to be taken to ensure children and young people aged 10 and above have the opportunity to participate appropriately. Further detail about the content of each step is a matter for mediation providers (Table 1).

Table 1. Steps in Child Inclusive Mediation – Process Flow Chart

Step	Purpose	Who involved
1. MIAM/Intake	To introduce mediation/other dispute resolution processes To assess risk To share information – family members and mediators To provide an explanation of child inclusive mediation in children's issues To signpost to other support services for parents and children	Mediator and each parent individually
2. Joint parental session	To explore important issues To prepare parents for child inclusive mediation if at least one child is aged 10 or over (younger children may be included if they wish) To agree invitations to children	Mediator with both parents jointly
3. Conversations with children and young people (ideally soon after joint meeting with parents)	To allow children to talk about what is happening to in their family and hear their perspectives To agree what information can be shared with parents and how this should be done To agree how child/young person would like to receive feedback	Mediator or co-mediator or child practitioner with children and young people, individually and/or in sibling group
4. Joint feedback session	To provide feedback to parents, as agreed by the children	Parents, mediator and co-mediator/child practitioner if used
5. Parental sessions	To explore issues and reach agreement	Parents and mediator
6. Feedback to children and young people	To provide feedback to children/ young people on the outcomes agreed by the parents	Family meeting, or mediator/child practitioner with children, or by phone or letter, as agreed with children and young people
7. Session(s) with children and young people	To provide information and support	Mediator or co-mediator/child practitioner with children and young people
8. Final agreement	To finalise arrangements/ outcomes with parents, agree memorandum of understanding and next steps To ensure children understand the agreements reached in mediation, and offer support	Mediator and parents, Mediator or co-mediator/child practitioner with children and young people

This flow chart is predicated on:

- mediation being sought in respect of children's issues
- there being at least one child aged 10 or over in the family (although mediators/child practitioners may assess that younger children could/should be invited to participate)

- children and young people being given the opportunity to speak to a professional
- at least one child wishing to have their voice heard in mediation
- hearing children's voices being seen as a process and not a one-off event

95. **Recommendation 8. The Advisory Group recommends that the Child Inclusive Mediation Process Flow Chart be adopted as a template for good practice.**

96. The Advisory Group also went further than looking at a single standard for child inclusive practice and gave consideration to the benefits of there being a framework which would establish a single, common standard for:

- entry to the profession of mediation
- the process of selection
- training for mediation
- examination and assessment of competencies
- accreditation
- regulation and continuing professional development

97. Such a framework would have the advantage of setting a single, common standard for all family mediators. This would facilitate the monitoring of accountability, ensure a common standard of training and accreditation which would be transparent and publicly accountable, and bring professional and regulatory scrutiny under one responsible national body. This would also facilitate the provision of consistent information for families on the standards of the services offered, the protocols followed with children and young people, and safeguards in place. During discussions with mediators, we heard considerable support for there being one national body which would promote trust and respect for an integrated mediation profession and, amongst other advantages, would offer a more cost-effective use of resources.

98. We acknowledged that developing an overarching single professional standard would mark a considerable transition from the current arrangements for mediators in which there are multiple mediation providers and multiple training programmes, but noted that the establishment of the new Family Mediation Standards Board provides an important opportunity for a more integrated approach to family mediation to be considered and promoted. We believe that the move to a more child inclusive approach to practice will inevitably require further consideration to be given to the mechanisms for recruitment, training, accreditation and ongoing accountability in mediation and open up the potential for greater professional integration to be achieved.

99. **Recommendation 9. The Advisory Group recommends that consideration be given to the advantages associated with a more unified profession of family mediators and to ways in which this might be achieved.**

Private Ordering, Legal, Welfare and Ethical Issues

100. When parents separate, there are a range of ways in which they might choose to resolve matters between them. Many reach agreement together and without help, although the quality of those agreements may not be optimum to their situation either legally or in relation to their children; some might seek help from other professionals (including mediators, lawyers, or McKenzie friends); some may not make any kind of established arrangements for their separated parenting; and others may wish to take private law proceedings of some kind.

101. The numbers of parents using solicitors is falling, especially in children matters, and attempts by Government to increase numbers using mediation are continuing. A fundamental gap in ensuring that children and young people have an opportunity to be heard is that there is no statutory requirement (excepting Practice Direction 12B Child Arrangements Programme para 4.4) or presumption in law that would ensure that is the case. Essentially and in the absence of any proceedings, it is up to parents to make whatever decisions they wish privately and without the assistance or scrutiny of any professional or of the Court.

102. This has an impact in relation to the professionals with whom parents come into contact. Currently, family lawyers may discuss with parents what is important for them to consider in reaching decisions about their children and may provide examples of what other separating parents tend to do, and mediators will commonly seek to assist parents to reach decisions that take full account of the needs of their children and, in some cases, may involve the children in sharing their own experience and views of what is important to them. Beyond that, there is currently no means of ensuring that parents and children are aware that the child could or should be given an opportunity to be heard in any decision making that may affect them. Professionals working with parents outside of any proceedings would advise or assist on the basis that the matter is 'private' as between parents, and this notion of privacy of intervention may also have a knock on effect in relation to matters such as recording data. The professionals involved with these families would have regard to principles of safeguarding and protection from harm but would otherwise view their intervention as a service provided on a private and generally confidential basis.

103. We are aware that a non-legal presumption of child inclusive approaches might be perceived, nevertheless, as 'interference' in the parents' responsibility to make decisions in respect of their children's upbringing or as challenging or eroding what most parents would see as their 'rights' of consent in relation to anyone speaking to their child. At a time of parental separation, parents may be very protective of their children and wish to attempt to keep them from the upsets; they may be concerned as to what their child or children might say to a professional, or consider that it would be at odds with what either or both parents might want to achieve; or they may be concerned that giving children a voice outside the family would, in some way, be damaging for their child or give them a false notion of what it might be possible to achieve for their future. There is substantial evidence that demonstrates that parents frequently act as the gatekeepers to the provision of information and direct services for children and young people, making it difficult for children to have any independent agency.

104. Conversely, for some parents, having a skilled professional who will listen and be a supporter for their child may be reassuring and relieve some of their concerns about how their child is feeling or thinking. Nevertheless, the mediator survey findings have shown that parental consent is often a barrier to children being seen and heard. This might indicate that parents are sensitive to the privacy of their parenting and to their role as decision makers, but it may be that parents are struggling with how to deal with yet another decision they are asked to take at a time of stress and confusion. The Advisory Group took

the view that much may also depend on how the opportunity for the child to be heard is introduced, explained and offered by the professional working with the parents. Some mediators indicated in the survey that, in their experience, parents rarely refused consent because the mediator took time to explain the purpose and potential benefits for children and, therefore, for the family as a whole.

105. A presumption that child inclusive practice is the normal starting point for dispute resolution services would, we believe, assist parents and the professionals working with them to regard the opportunity for children and young people to have a voice in the process as commonplace and potentially beneficial for everyone. Concerns about burdening children further should not preclude them from having a voice but serve to underline the importance of all practitioners having appropriate training and the skills necessary to reassure parents and facilitate the process for parents and for their children. The FJYPB have commented that children are almost certainly experiencing their own concerns and worries and that talking about them relieves the burden they may be carrying rather than adding to it.

106. The Advisory Group considered it extremely important for there to be very clear guidelines about confidentiality, privilege and parental consent for all practitioners engaged in child inclusive dispute resolution processes. We considered the extent to which child inclusive mediation should be confidential and how confidentiality should be applied; whether privilege is appropriate and helpful as a concept; the particular considerations arising in child inclusive out of court dispute resolution, including parental consent; and the implications for practitioners in respect of safeguarding responsibilities, for developing mediation agreements, and for current codes of practice.

107. We considered that judicial input was essential to the discussion of these issues. We also sought guidance from organisations which routinely talk to and offer confidential support to children and young people in respect of very sensitive issues and problems, including ChildLine and Relate. ChildLine receives calls from as many as 4,500 children and young people every day and Relate provides confidential counselling to over 12,500 children and young people every year. The issues they deal with are very similar and frequently include children and young people talking about the impact of parental separation. Both offer private, confidential services delivered by highly trained and skilled counsellors.

108. Our discussions have enabled us to draw distinctions between welfare considerations to protect and safeguard children and young people and legal considerations which require all practitioners to have regard for the law relating to children and to parents. Both sets of considerations have informed our recommendations in respect of child inclusive dispute resolution processes. Although we have focused on mediation in our discussions of legal and ethical issues, we believe that our conclusions and recommendations can be applied to other forms of dispute resolution.

Confidentiality and privilege

109. The Interdisciplinary Alliance for Children has suggested that children's rights to privacy have become a complex and contentious field and that it cannot be left to an individual mediator to determine the degree of privacy they offer children and young people. Inevitably much of the current thinking around confidentiality and privilege in out of court dispute resolution derives from mediation practice. However, the issues discussed here apply, with relevant adaptations, to all forms (including emerging forms) of out of court dispute resolution (for example, collaborative law). Where out of court dispute resolution is referred to below, this of course includes mediation.

110. Having consulted with members of the Expert Forum, conducted surveys, and consulted with representatives from the FJYPB and other organisations, we reached the clear view that mediation should remain an essentially confidential process. We recognise that where

parties are engaged in other forms of out of court dispute resolution they may well elect for the process to be confidential. Where processes are agreed to be confidential, then we suggest that the principles discussed here in relation to mediation should apply.

111. **Recommendation 10. The Advisory Group endorses the current view that mediation should remain an essentially confidential process and recommends that this should be a clear principle of practice in mediation and in other dispute resolution processes.**

112. We are of the view that all practitioners involved in out of court dispute resolution processes should be assisted to understand the concepts of 'confidentiality' and 'privilege': these terms are sometimes used interchangeably in the context of mediation, but in our view wrongly so. It is clear, in fact, that they have different characteristics and effect. At the present time the FMC Code of Practice for family mediators states, in paras 5.6.1 and 5.6.4 that:

> … all discussions and negotiations in mediation must be conducted on a legally privileged basis. Before the mediation commences the participants must agree in writing that discussions and negotiations in mediation are not to be referred to in any legal proceedings, and that mediators cannot be required to give evidence or produce any notes or records made in the course of the mediation, unless all participants agree to waive the privilege or the law imposes upon mediators an overriding obligation of disclosure upon the mediator.
>
> Privilege will not apply in relation to communications indicating that a child or other person is suffering or likely to suffer significant harm, or where other public policy considerations prevail.

It also states in para 5.51

> … mediators must not disclose any information about, or obtained in the course of, a mediation to anyone, including a court welfare officer or a court, without the express consent of each participant, an order of the court or where the law imposes an overriding obligation of disclosure on mediators.

113. We believe that while confidentiality is relevant to child inclusive dispute resolution practice with a child or young person out of court, it is unlikely that a claim of 'privilege' will arise in that context. Therefore, in order to avoid confusion, particularly given that privilege is a term which is little understood except by lawyers, reference to privilege should be avoided where children are involved during mediation. A more in-depth exploration of the reasoning behind this conclusion enables a clearer understanding of the terms currently being used.

114. Confidentiality limits access to, or places restrictions on, the disclosure of certain types of information. Mediation is recognised to be an essentially confidential process. It has been held by the courts that the principle of confidentiality in mediation exists for the benefit of the parties mediating and the mediator.[7] Mediation is confidential both as between the parties and as between the parties and the mediator. As a result, even if the parties agree that matters can be referred to outside the mediation, the mediator can nonetheless seek to uphold the confidentiality provision. The court will generally endorse that confidentiality, but where it is necessary in the interests of justice for evidence to be given of confidential

[7] See Farm Assist (2) Farm Assist Ltd (in liquidation) –v- DEFRA (No 2) [2009] EWHC 1102 (TCC)); it therefore requires three consents before it can be lifted. Per Ramsey J. in *Farm Assist*: *'The proceedings are confidential both as between the parties and as between the parties and the mediator. As a result even if the parties agree that matters can be referred to outside the mediation, the mediator can enforce the confidentiality provision. The court will generally uphold that confidentiality but where it is necessary in the interests of justice for evidence to be given of confidential matters, the Courts will order or permit that evidence to be given or produced.'* (emphasis added)

matters discussed in mediation, the courts may order, or permit, that evidence to be given or produced.[8]

115. This means that evidence may not be given in proceedings under the Children Act 1989 of statements made by one or other of the parties in the course of meetings held or communications made for the purpose of conciliation/mediation unless all three parties to the mediation agree, and/or save in the very unusual case where a statement is made clearly indicating that the maker has in the past caused or is likely in the future to cause serious harm to the well-being of a child.[9]

116. Indeed, and for the avoidance of doubt, it is to be emphasised that confidentiality is not absolute, and will not be respected in certain circumstances. The court is able to require mediators to disclose information about any mediation which has taken place where there is an overriding obligation in law [10]. ChildLine gives a Confidentiality Promise to all children and young people and this is carefully explained to them, including the circumstances when information cannot be kept confidential when safety and welfare issues are of concern. It also features prominently on their website and provides a helpful template for dispute resolution practitioners.

117. Privilege, on the other hand, is a rule of evidence; it is defined as "the right of a party to refuse to disclose a document or produce a document or to refuse to answer questions on the ground of some special interest recognised by law".[11] Privilege is the right of one or both of the parties to the mediation and does not affect the mediator *per se*. The law of privilege is complex; it can arise most commonly in family law litigation in the context of 'without prejudice' communications and 'legal professional' communications. In this instance, communications between mediators and parties to mediation regarding the compromise of any dispute have been said to attract a form of 'without prejudice' privilege. Privilege can be waived.

118. This means that mediators must not disclose any information about, or obtained in the course of, a mediation to anyone, including a CAFCASS officer or a court, without the express consent of each participant and, where dealing with an older child or young person, – see below – that child/young person, an order of the court or where the law imposes an overriding obligation of disclosure on mediators.[12]

119. Some mediators have been concerned about the status of any documents, including notes made by the mediator and/or when children have preferred to write down their thoughts and perspectives, to be shared with their parents. Uncertainty was expressed by some respondents to the mediator survey as to whether these documents would be considered to be 'privileged' in some way or whether they are covered generally by the terms of the agreement to mediate and therefore could be regarded as confidential as between the child or young person, the mediator and/or the parents and, more importantly, whether they could or might be exposed if there were subsequent proceedings. To address these uncertainties the Advisory Group suggests that, having considered these matters carefully, the concept of privilege is not likely to attach to communications between a child and a practitioner in out of court dispute resolution; it is difficult to conceive of a situation in which

[8] Ramsey J. in Farm Assist (No 2) [2009] EWHC 1102 (TCC)
[9] Re D (minors) (conciliation: disclosure of information) [1993] 2 AER 693
[10] **Competing right** – for example, the right to a fair trial (see, e.g. *Re A (A Child) [2012] UKSC 60)*; **Professional rules or other statutory requirement**s - e.g., *Parry-Jones –v- Law Society [1969] 1 Ch. 1, [1968] 2 WLR 397, CA);* **The interests of justice** – e.g. *Farm Assist (No 2) [2009] EWHC 1102 (TCC);* **Contractual provisions** – and what they may or may not have construed or covered as confidential– e.g. (see *Farm Assist (No 2);* **Issues of money laundering** (Proceeds of Crime Act 2002) or where breaches of professional conduct arise; **Risk to the public** such that it is essential that matters should be brought to the attention of the responsible authorities (see *W –v- Edgell [1990] Ch. 359).* **The fair disposal of a case** – see *British Steel Corporation –v- Granada Television Ltd [1981] AC 1096*.
[11] Glossary to the Family Procedure Rules 2010
[12] Para.5.5.1 FMC Code of Practice

it would offer any additional protection to the practitioner or child, or to the process of mediation, over and above the recognised right of confidentiality.

120. **Recommendation 11. The Advisory Group recommends that 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.**

Age, maturity and understanding

121. Turning to the particular considerations arising in child inclusive out of court dispute resolution, at all times practitioners must have special regard to the welfare of any children of the family. They should encourage participants to focus on the needs and interests of the children as well as on their own. Child inclusive out of court dispute resolution is encouraged where the issue(s) under discussion affect the children or young people. Practitioners should enable children to feel more involved and connected with processes in which important decisions are made in their lives and to give them an opportunity to satisfy themselves that the practitioner has understood their views and concerns and to understand the nature of the practitioner's task.[13]

122. The Advisory Group has endorsed the principle that child inclusive out of court dispute resolution should be the norm and that all children aged 10 and over should be given the opportunity to participate in such processes. All communications between a child and a mediator/child practitioner are essentially confidential, but this is *subject to* the qualifications listed in footnote [8] above, and further to the issues discussed below.

123. Some children and young people involved in mediation or other forms of dispute resolution will not be of an age, maturity and understanding[14] fully to comprehend the issues raised in mediation and/or the essentially confidential nature of the mediation/dispute resolution process; for ease of reference only we refer to this category as 'younger children' (although we recognise that age is only one of the criteria). Older children and young people, however, may well have that level of maturity and understanding; for ease of reference only we refer to this category as 'older children'.

124. Particular implications arise in the context of out of court dispute resolution whether the practitioner is dealing with a younger or an older child/young person. We offer the following as further principles of good practice:

- the practitioner must obtain consent of the child/young person before seeing the child in any out of court dispute resolution process – it is a voluntary process and no meeting or communication should be forced on the child

- the practitioner must obtain parental consent before involving a younger child/young person in any out of court dispute-resolution; we consider that involvement of a child/young person in such a process is ultimately an issue of parental responsibility, but there may be circumstances in which this should be reconsidered, and we discuss this matter further below. If the practitioner is in doubt about the maturity and competence of a child, the practitioner should exercise caution before proceeding to see a child without parental consent

[13] Adapted from the Guidelines for Judges meeting children [2010]
[14] Adapting the approach in relation to children participating in proceedings without a guardian under Rule 16.3 FPR 2010

- if out of court dispute resolution is taking place by way of mediation, the communications between a mediator and a child are essentially to be regarded as confidential

- practitioners involved in out of court dispute resolution must ensure that parents are aware of all 'ground-rules' in respect of which a child will be involved (including the time of any meeting, the likely length of the meeting, the situation and, importantly, confidentiality issues). If out of court dispute resolution is by way of mediation, the mediator must ensure that parents are aware that children will be offered privacy and confidentiality of their discussions with the mediator (with the usual exemptions to confidentiality) and may choose what, if anything, they wish their parents to know of those discussions

- in mediation, the mediator or 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. We consider that it would be useful for mediators to use an adapted 'Agreement to Mediate' form for children, which describes, in child-appropriate language, the circumstances in which the confidentiality of discussions may be lost; similarly, the practitioner must explain to the child in child-appropriate language, the circumstances in which confidentiality may be lifted, for instance if there is an over-riding obligation in law. We are not suggesting that this form should be seen as a quasi-legal contract with the child, but as a way of ensuring that the child has fully understood the limitations of confidentiality

- practitioners involved in out of court dispute resolution should provide appropriate feedback to children and young people during and at the conclusion of the process

- 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 in mediation should be shared with parents

- out of court dispute resolution practitioners should be aware that the children and young people consulted as part of the work of the Advisory Group were of the view that they did not worry about information which had been given in mediation being shared with other professionals involved in their case; they also felt that because the various professionals work differently, it can be useful to talk to each of them anyway – with earlier conversations being built upon

125. Further principles of good practice are as follows:

- if an *older* child/young person wishes information which he/she has shared with a mediator/child practitioner to be disclosed to the parents, the mediator/child practitioner should attach particular weight to that child's wish. Only for good reason should a mediator/child practitioner assert the right to confidentiality in these circumstances

- if a child/young person who has been assessed to be 'Gillick competent'[15] (see below) wishes information which he/she has shared with a mediator/child practitioner to be disclosed to the parents the mediator/child practitioner should respect those wishes. Only in exceptional circumstances and for good reason should a mediator/child practitioner assert the right to confidentiality

- if an *older* child wishes information which he/she has shared with a mediator/child practitioner **not** to be disclosed by the mediator to the parents, the mediator/child

[15] Gillick v West Norfolk & Wisbech Area Health Authority [1985] UKHL 7 (1985)

practitioner should attach particular weight to that child's wish. Only for good reason should a mediator/child practitioner override the child's wish in these circumstances

- if a child who has been assessed to be Gillick competent does **not** wish information which he/she has shared with a mediator/child practitioner to be disclosed to the parents the mediator/child practitioner should respect those wishes. Only in exceptional circumstances and for good reason should a mediator/child practitioner override the child's wish.

126. Gillick competence is defined (in the context of consent to medical treatment) as:

> "*...whether or not a child is capable of giving the necessary consent will depend on the child's maturity and understanding and the nature of the consent required. The child must be capable of making a reasonable assessment of the advantages and disadvantages of the treatment proposed, so the consent, if given, can be properly and fairly described as true consent*" (Lord Scarman)

The significance of this is that (as Lord Scarman further said in *Gillick*):

> "*parental right yields to the child's right to make his own decisions when he reaches a sufficient understanding and intelligence to be capable of making up his own mind on the matter requiring decision*".

127. The Advisory Group has formed the view that this test can be adapted in relation to whether a child has sufficient maturity and understanding to determine whether his/her communications with the mediator/child practitioner should, or should not, remain confidential. Having taken account of the child's age, this process involves an assessment of the maturity and understanding of the child. It will be important for the mediator/child practitioner to consider the child's ability to understand

- the issues under discussion
- the implications of the issues
- the confidential nature of mediation

128. It follows that the Gillick competent child/young person may waive, or decline to waive, the right to confidentiality in relation to their communications with the mediator or child practitioner; this may apply irrespective of any waiver of confidentiality by the other participants to the mediation (usually the child's parents.

129. It also follows that the mediator/child practitioner must be able to assess Gillick competency in each case. The Fraser Guidelines require the practitioner to be satisfied that the child is of sufficient age and competency to consent to any intervention without undue influence from their parents. Relate counsellors use a very comprehensive Gillick Competence Check List and a form that must be completed once the checks have been made. These documents could be easily adapted for use by mediators/child practitioners and they would provide a safe and standardised mechanism for assessing Gillick competency in all child inclusive dispute resolution processes. Relate takes the view that young people aged 16-18 are generally to be regarded as competent to consent to child inclusive processes. More careful assessment is recommended with children under the age of 13. And parental consent should be required for all children under the age of 10. We consider the issue of parental consent in more detail below.

130. **The Advisory Group recommends the following:**

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 13. Mediators/child practitioners should consider the use of an adapted 'Agreement to Mediate' form when working with children/young people, and this should be designed/drafted with the assistance of the Family Justice Young People's Board.

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 during the mediation process.

Recommendation 15. 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 during the mediation process; only in exceptional circumstances and for good reason should a mediator/child practitioner override the child's wishes.

131. Assessment of a child's maturity, understanding and competence will be required in all child-inclusive out of court dispute resolution. Such a need arises particularly in the following circumstances:

- when a practitioner in out of court dispute resolution sees a child with parental consent, assessing what weight to attach to the child's views about onward transmission / disclosure of their views

- where a child/young person contacts an out of court dispute resolution practitioner directly and/or it becomes apparent to the practitioner that the child/young person wishes to participate in the dispute resolution process, but parental consent to the involvement of a child/young person is not forthcoming.

132. It follows that practitioners require training in assessing the maturity, understanding and competence of the child. Nevertheless, given the non-legal presumption that all children and young people aged 10 and above are to be offered the opportunity to have a conversation with the professional working with their parents, we are of the view that judging a child who is aged 10 or over not to have sufficient maturity, understanding and competence to participate should not be used to limit the number of children and young people having their voices heard or disenfranchise them because of professional concerns about whether child inclusive practice is appropriate in mediation. The Advisory Group considered that safeguarding issues, serious mental health issues and severe learning difficulties are likely to be the main reasons for assessing that the child lacks understanding and competence.

133. Arguments that it might be distressing to the child do not normally constitute good reason to disenfranchise a child, particularly as the purpose of child inclusive practice is to provide the child with information and enable them to receive support independent of their parents if necessary. These serve to allay stress rather than increase it. Furthermore, high conflict

disputes can be particularly stressful for children and being able to express their concerns and worries can be reassuring and supportive. This would also remain the case if the child had been subjected to parental pressure in relation to what they might say as such pressures are likely to have been present in some form even before parents sought assistance from a dispute resolution practitioner. Talking to a highly skilled child practitioner can help a child to deal with such pressures.

134. The children and young people who attended the workshop were very clear that there should be very few exceptions to hearing children's voices and if they want to participate that wish should be respected if at all possible. The onus is on the practitioners to support the children and their parents to be able to benefit from children's participation in dispute resolution processes. Hence the exceptionally important need for practitioners to have appropriate skills and competencies to promote and undertake child inclusive practice.

135. Indeed, the children and young people were uncomfortable with an arbitrary distinction between 'younger' and 'older' children, emphasising that very young children are capable of expressing their views. Respondents to the mediator survey also commented on the fact that they had very successfully included children as young as six in mediation and that age alone should not be regarded as a barrier. ChildLine also take the view that all children and young people, irrespective of their age and level of maturity, have the ability to communicate in some way and should have the right to do so.

136. **Recommendation 16. The Advisory Group recommends that mediators/child practitioners in out of court dispute resolution processes must have appropriate training and skills 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**.

Safeguarding issues

137. If safeguarding issues arise in any form of out of court dispute resolution these issues will always override any available confidentiality 'protections'. Such issues include a significant risk to the life, health or safety of children, the parties, or anyone else, or in relation to money laundering/other unlawful act/s.[16] This is established practice in mediation. Practitioners who see children directly must explain to the child in an age appropriate way that they cannot keep confidential information in relation to harm being caused to him / her or any other child by another person and will need to refer to someone who is responsible for keeping children safe from harm.

138. Conversations about privacy, safeguarding and disclosure must reflect professional and ethical responsibilities to children and young people and take place before the views of children are explored so that they can make informed choices about participation. Practitioners should be honest and ethical in their discussions with children and young people, and use language that is clear, understandable, age appropriate and jargon-free.

139. **Recommendation 17. The Advisory Group recommends that safeguarding remains an exception to the principle of confidentiality in any out of court dispute resolution process**.

140. It may well be that in light of the Advisory Group's recommendations, standard 'Agreements to Mediate' or 'Participation Agreements' (which set out both the scope of and limitations to confidentiality) will need to be reviewed/amended. We are of the view that where any form of out of court dispute resolution has involved a child, and the parties achieve agreement,

[16] See, for example, Working Together to Safeguard Children: A Guide to inter-agency working to safeguard and promote the welfare of children HM Government/DfE March 2013

any memorandum of understanding or agreement or subsequent Consent Order should reflect the participation of the child.

141. **Recommendation 18. The Advisory Group recommends 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.**

Parental consent

142. We have seen that the issue of parental consent has been a thorny one for mediators wishing to offer children and young people the opportunity to participate in the mediation process and have their voices heard. Indeed, it is cited as one of the key barriers to child inclusive practice being developed. We received a number of comments such as the following from survey respondents:

> I would not want to approach a child without the parents' permission. I think the issues should be determined by the parents….according to the principles of non-directive mediation.
>
> Unfortunately most parents do not want to involve the children even though often what their children have to say is insightful and helpful.
>
> Convincing parents of the benefits of child consultation is difficult when both parents are engaged in a highly emotional dispute over arrangements regarding the family.

143. During our consideration of confidentiality issues we also looked carefully at the issue of parental consent for child inclusive practice, especially as the members of the FJYPB were firmly of the view that if the starting point is that children aged 10 and over are to be routinely given the opportunity to have their voices heard then one or both parents should not be permitted to refuse consent and thereby override the wishes of their children. Members of the Advisory Group expressed mixed views about whether the young people should have the right to be heard regardless of their parents' consent and we regard this as a significant but crucial matter on which there should be careful guidance. While we are aware that any perception of the erosion of parental consent or removal of parental responsibility is likely to cause anxiety for parents and for mediators, we are equally aware that respecting the rights of children to be heard in any processes that will impact on their future is a matter that children and young people feel very strongly about. Moreover, the policy intent is that children and young people should be able to have their voices heard.

144. It is critically important, therefore, that parents and professionals understand the reasons for establishing child inclusive practice and recognise that this requires a change in both culture and approach across the family justice system. Parents will need to be helped to understand the purpose and principles underpinning child inclusive approaches, appreciate the potential benefits for all the family, and be clear about the context in which children and young people's voices are to be listened to and taken seriously. At the very least, all information for parents and for children will need to explain carefully the nature and purpose of child inclusive dispute resolution processes. If messages are consistent and reassuring they should do much to remove the current barrier to children having a voice simply because parents refuse consent. In the Advisory Group's view, establishing new competencies for mediators to successfully embrace child inclusive practice should mean that they are skilled in reassuring parents about respecting their child's wish to be included in the dispute resolution process.

145. Nevertheless, the Advisory Group has considered whether there are circumstances in which young people should be able to have their voices heard if they wish even if at least one parent refuses consent. We believe that our conclusions about the issue of confidentiality offer a solution here. We have already recommended that the mediator/child practitioner should take account of the child's age, maturity and understanding in considering the child's ability to make a decision about the level of confidentiality that should be attached to what the child says can or cannot be shared with parents. It would be reasonable to conclude, therefore, that Gillick competent children and young people should be able to override the lack of parental consent for participation in mediation (and any other dispute resolution process).

146. This may pose a problem for mediators/child practitioners who may not be able to gain access to a child to make an assessment as to competence, but with far greater awareness in future amongst children and young people about their right to have a voice in these processes it may well be that a young person will contact the mediator themselves to express a wish to participate. These difficult issues highlight the importance of parents and children being helped to understand the child's right to have a voice if they wish, and being properly prepared to benefit from child inclusive approaches. Preparation for child inclusive mediation is critical to ensuring that the relationship between children, young people and their parents is not damaged or eroded, and that conflicts do not arise that are harmful to the child or young person's future and continuing relationship with both parents. We recognise that this is a particularly sensitive matter and will require practitioners to be highly skilled.

147. Generally, it is one or both parents who have parental responsibility for the child. But this is not always the case. Our discussion of parental consent in this report refers to the consent of all those with parental responsibility and this may include, for example, a step-parent or a grandparent with a Section 8 Children Act 1989 Child Arrangements/Residence Order. The Children Act 1989 sets out very clearly the persons who may have parental responsibility.

148. If a child or young person who wishes to talk to a mediator/child practitioner is assessed as Gillick competent good practice should nevertheless dictate that the parents or those holding parental responsibility should be consulted about the arrangements for the child to be included in the process. This good practice is reflected in the new competencies for mediators. However, we are of the view that the consent of the parents for a Gillick competent child to be included in the mediation process is not required. We recognise that this requires the mediator to work very carefully with the parents to avoid them withdrawing from mediation or damaging their relationship with the child.

149. **Recommendation 19. The Advisory Group, 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 Gillick competent should be able to have their voice heard by a suitably qualified practitioner, if they so wish, irrespective of whether one or 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 for their parents.**

150. We have also considered the issue of parental consent in respect of children and young people assessed as non-Gillick competent but who may still express a wish to be included in the process and to be heard. Relate requires its practitioners to make every effort to work with the parents to support them in understanding the relevance of the child being heard and to pay attention to the impact on the child and the parent. In addition, the practitioner should check whether there are any existing court orders in place which determine whether both parents are required to give consent before a child can be seen in mediation since there may be a Specific Issue Order or Prohibited Steps Order in place regulating the

exercise of parental responsibility. We believe that mediators should do the same. If legal orders are in place then these must be taken into account.

151. Relate is clear that the consent of only one parent is required in cases concerning a non-Gillick competent child who is under 13. Their guidance is detailed and specific on this point and does not cause problems in practice. Relate emphasises, however, that it is important and good practice to encourage consent from both parents and to support a parent who might withhold consent to understand why the child should be able to receive the help they want. Similar guidance should be provided for mediators and other dispute resolution practitioners.

152. Similarly, ChildLine do not require parental consent but assess all children in respect of competence, resilience, and risk and protective factors, and consider age and disability if and as it might impact on a child or young person's competence. Organisations which listen to children and young people as their primary focus offer a high threshold of confidentiality based on the knowledge that many children and young people will tell no-one about very sensitive issues, such as their abuse, and difficult experiences without that high level of confidence. They also recognise that anonymity may help many children to be able to speak out. They also consider at what stage competence might become an important consideration. They recognise that all children can communicate in some way and have the right to do so. In considering competence they are looking at the child's ability to understand their situation and the implications and possible consequences of sharing their views and thoughts.

153. After very careful consideration of these matters the Advisory Group has formed the following views about the issue of parental consent in respect of the non-Gillick competent child:

- mediation and dispute resolution processes are designed to achieve outcomes for children which are in their best interests
- it is in the child's interests to be involved/have their voice heard in mediation/out of court dispute resolution processes if they so wish
- as a matter of good practice, mediators should always seek to obtain the consent of all persons with parental responsibility to involve a child of whatever age in the mediation process
- provided that at least one person with parental responsibility consents to the non-Gillick competent child being involved that child should be able to have their voice heard unless there is evidence that it would not be in the child's best interests

154. **Recommendation 20. The Advisory Group, 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 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 their families.**

155. In formulating our approach and recommendation we have drawn on the experience of ChildLine and Relate and would hope that mediators are able to support both parents to understand the importance of allowing if not encouraging a child to have their voice heard and obtain the consent in such a way that the parents can agree. We note the comments of McFarlane LJ in *Re W* [2012] EWCA Civ 999 at [78]:

> Parents, both those who have primary care and those who seek to spend time with their child, **have a responsibility to do their best to meet their child's needs** in relation to the provision of contact, **just as they do in every other regard. It is not, at face value, acceptable for a parent to shirk that responsibility and simply to say 'no' to reasonable strategies designed to improve the situation in this regard.**

In reaching our conclusion about the issue of parental consent the Advisory Group noted that a parent could, if they wish, ultimately seek legal redress if they continued to object to a child being given the opportunity to participate in the dispute resolution process. The courts have the power to regulate the exercise of parental responsibility by making a Specific Issue or Prohibited Steps Order. We are of the view that mediation is likely to have failed anyway if legal redress were contemplated and consider that skilled practitioners will be able to prevent any such step being contemplated or taken.

156. Nevertheless, if both parents refuse consent for a child to be included in mediation or express their view as part of another dispute resolution process, the mediator/dispute resolution practitioner cannot then see a non-Gillick competent child and we cannot recommend that the non-Gillick competent child's wish should prevail.

157. We are aware that the welfare of any child must be a paramount consideration and that child inclusive practitioners must provide a safe environment for children and young people. It is not acceptable to offer children the opportunity to participate and have their voices heard unless efforts are made to ensure they understand the process they are taking part in, understand the potential limitations and consequences of talking to the mediator/child practitioner, and are fully and appropriately prepared for the process. Children and young people must not be placed in a situation in which their relationship with their parents might be damaged or which would place them under undue pressure.

158. In addition, if the child is to meet with the mediator/child practitioner then arrangements must be made for this to take place in premises which are child-friendly, conform to health and safety standards, and ensure that privacy and confidentiality can be maintained. UK law is based on the premise that professionals will provide reasonable care and limit the risks/liability for children and young people.

159. We have noted that child inclusive practice requires a culture change in out of court dispute resolution and that mediators and others will need to consider a number of legal, welfare and ethical issues to ensure that they can safely offer children and young people a meaningful voice. Organisations that routinely work with children and young people have well tried and tested protocols for providing an emotionally and physically safe environment for child inclusive practice and we believe that these can be readily adapted for use by a range of dispute resolution services. If all of our recommendations are accepted, it will be necessary for the FMC Code of Practice, and any other relevant code of practice, to be revised to reflect changed practice.

160. **Recommendation 21. The Advisory Group recommends that Professional Practice Guidance for all family dispute processes should be reviewed and revised as necessary to take account of the guidance offered in this report and the recommendations proposed.**

Monitoring and Professional Accountability

161. The Advisory Group has agreed that a pro-active approach to hearing the voice of the child is needed to promote opportunities for children to talk about their views and contribute their thoughts when arrangements are being made that affect their future. This necessitates a significant culture change in dispute resolution processes and in the practice of family mediation. This report has highlighted a range of areas in which changes are needed. Another area that requires fundamental review is the system for recording the numbers of mediators and others qualified to undertake child inclusive practice and information about the work they undertake.

162. Until recently there has been no central database for recording the individual details of mediation practitioners and, as we discovered when conducting the mediator survey, the personal contact details of mediators are not kept in a standardised way. It is essential that, as in any respected profession, there should be a single national database of all family mediators accredited to practice in England and Wales and that this database indicates whether mediators are registered as competent to offer child inclusive mediation.

163. Moreover, the data will need to be consistent in content, updated regularly and assurance provided that mediators have achieved continuing professional development (previously CPD) requirements and an enhanced DBS certificate. It is important to establish whether child inclusive mediation as it is envisaged in future is recognised within the ROA Exceptions Order and in the Police Act 1997 (Criminal Records) regulations, and whether there is or should be portability of the DBS certificate from other roles which would be specific to the work undertaken in child inclusive practice.

164. **Recommendation 22. The Advisory Group recommends that family mediators must ensure 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.**

Monitoring compliance with child inclusive practice

165. It is also essential that the recording of data indicating compliance with the new policy is standardised and available to ensure both accountability and transparency. At the present time data about the inclusion of children and young people and mediation are not routinely recorded and information is patchy. Mediators who provide legally aided mediation are required under the terms of their contract to submit data to the Legal Aid Agency (LAA) and this should include information on the type of mediation undertaken and the inclusion of children and young people.

166. The LAA has been able to confirm such figures as they have for legally aided cases that have involved 'direct consultation with children'**.** However, it appears that some mediators have been unaware that 'direct consultation with children' should be recorded using a specific code and have variously recorded this activity as co-mediation. The figures provided by the LAA show that in 2012/13, 133 legally aided mediations involving children and young people were claimed for in the correct code. In 2013/14 the number was 85. It is possible that some additional cases were claimed under the code for co-mediation, but it is not possible to verify this. These figures substantiate those from our survey, which also suggests that the numbers of mediations involving children and young people were low. In

privately funded mediation there is no requirement to record information about the numbers of children who have participated.

167. The Advisory Group discussed the reluctance of some mediators to record any information about their clients or the service that has been offered and we consider that this is not commensurate with a fully accountable, transparent professional service for parents and children. Appropriate, professional record keeping should be a central requirement in professional practice in any intervention with families and children. In the light of our recommendations relating to confidentiality, we are of the view that records must be kept specifically relating to how many children and young people and of what ages have been offered the opportunity to have their voices heard, and the numbers and ages of those who have taken up this opportunity and participated in the mediation process in some way. In addition, mediators will need to consider how to ensure that in future they keep appropriate case notes recording the interventions delivered and the outcomes achieved.

168. The majority of respondents, including mediators, to the Citizen Space survey indicated that they would be willing to provide these data (see Annex 7), although their views on how the data should be recorded varied considerably. Some referred to providing data to their individual member organisation, some to a national mediation body (e.g. the FMC) and others referred to the LAA, CAFCASS and the MOJ.

169. A question on the Citizen Space survey directed at other practitioners undertaking work with families and children (including child advocates, child counsellors, psychologists, family workers) revealed that the vast majority provide records on a case by case basis to their organisation. Some organisations keep computerised case records and, in some agencies, practitioners are required to complete these as a condition for payment for their services.

170. We concluded that the current inconsistency in recording amongst mediators is unhelpful and out of step with other professionals working with children and young people. This is a matter which the mediation organisations need to address urgently if mediators are to be fully accountable for their practice and open to public scrutiny as a profession.

171. **Recommendation 23. The Advisory Group recommends that 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.**

172. **Recommendation 24. The Advisory Group also recommends that 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 ensure that the necessary data are provided to the Legal Aid Agency.**

Information and Support for Children and Young People

173. It is important to consider not only how child inclusive practice should be offered but also how children and young people should be given information about family separation, their right to have a voice in matters that affect them, and the support that is available to them. The Mediation Task Force acknowledged that existing resources are not joined up, making it very difficult for children and young people to find a clear pathway through the private family justice system.

174. Many children and young people feel unable to talk to their parents, school friends or teachers about what is happening in their family and they can become isolated and worried. While there has been considerable focus in recent years on the provision of better information and support services for separating parents there has been little parallel investment in information and support for children and young people, although some of the Department for Work and Pensions (DWP) Innovation Fund projects contain elements of indirect support and information.

175. There is evidence that children and young people do not know where they might get information and support and that many young runaways cite family separation as the trigger for leaving home. In 2012/13, Childline reported a 122 per cent increase in children and young people contacting them about their parents' separation or divorce and a doubling of contact from children concerned about their parents drinking behaviour, often linked to family breakdown.[17]

176. The view has often been taken that it is parents' responsibility to talk to their children, give them information and provide support at the time of parental separation. Yet children and young people have made it clear that parents are frequently too distressed themselves to do this and mistakenly believe that their children are doing well irrespective of what is going on around them, often because children and young people are so worried about causing their parents further distress that they make considerable efforts to appear to be unaffected and coping well. The Advisory Group took the view that high quality information and support must be made available to children and young people in order to underpin the policy intent, and sought to scope existing provision as part of its remit.

177. We concluded that currently there is no complete suite of information that meets the needs of children and young people whose parents are separating, although there is evidence that support services are growing and could be coordinated. Responses to the survey of mediators revealed that practitioners draw on a wide range of leaflets and make use of websites in order to offer information to parents who are separating. Respondents to the Citizen Space survey also referred to a range of leaflets, books and information that they provide for children and young people, often via websites. Much of the information is generic, however, and not focused specifically on meeting the needs of children and young people experiencing parental separation.

178. We concluded from the survey data that there is no particular consensus about which information best meets the needs of children and young people whose parents are separating, and that the material varies in its quality, content and the messages given. Members of the FJYPB told us that good quality, accessible, age sensitive information needs to be available for children and young people as soon as they realise that their parents may be going to split up, during the separation process and well beyond when parents and children are having to make sense of new living arrangements.

[17] Childline, 'Can I tell you something?' What's affecting children in 2013. Childline Review, 2012/13.

179. When children and young people become aware of difficulties at home they are frequently anxious, uncertain and feeling stressed. These feelings usually persist throughout the separation process and young people can feel cut off from family members, worried about their parents and worried about what will happen to them and to themselves. Young people may find themselves protecting younger siblings from the stresses in the home and/or looking after their parents if they are too distressed to cope. The young people told us that it is often very difficult to talk to their parents about what is happening and how they are feeling when everything around them is unpredictable and seemingly falling apart.

180. The Advisory Group endorses the young people's pleas for authoritative and accessible information that assists them to understand what is going on around them, how they might feel and where they might turn for help and support. Above all, children and young people want to understand whether and how to make their voices heard by the professionals who might be assisting their parents on their separation journey.

181. Information is currently provided by agencies such as CAFCASS, primarily for children and young people whose parents are involved in family court proceedings, and the National Association of Child Contact Centres (NACCC), which provides a welcome pack for children whose parents are using a contact centre to facilitate contact with a non-resident parent. The pack contains various stories about children to introduce children of different ages to what happens in a contact centre. Other organisations have information available for children but usually it is accessed once families are involved in legal proceedings. We note that One Plus One has information available for children on its website, as do Young Minds, ChildLine and Relate. But the only dedicated website created for and by young people experiencing parental separation is Kids in the Middle (KidsinTheMiddle.org.uk) which was launched in 2014.

What information is needed by children and young people

182. The Advisory Group has agreed that authoritative, jargon-free information, specific to children of different ages, should be developed for children and young people at various stages of family separation and from a range of cultural and ethnic backgrounds. Consideration must also be given to the provision of information to children and young people who have difficulties with literacy or who may have sensory or other associated disabilities. The information needs to include the following:

- sensitive descriptions of the various changes and consequences that can and do occur when parents split up
- how the child/young person might feel
- where children/young people might go and who they might talk to in order to share their worries and feelings
- a step-by-step pathway that illustrates which agencies might be involved and what they do
- a description of each service, including mediation, the role of mediators and other practitioners engaged in mediation and other forms of dispute resolution, what happens when families use mediation or another dispute resolution service, and how a specific process might help if parents choose to use it
- ways in which children's voices can be heard, by whom and when

- encouragement to share feelings and concerns and how children's voices can be helpful when parents are making plans and making arrangements for children's future but that they are not the decision-makers

- ways (tools) by which children's views can be expressed

- what confidentiality means

- what consent means

- ways in which children might be able to talk to their parents and how they might understand how their parents may be feeling

- ways in which it might be possible to access help and support from within the family

- what to do if a child/young person has serious worries about the wellbeing of themselves, their siblings and/or their parents

- organisations that can support children and young people with special needs

- how a child/young person might receive ongoing support

183. We believe that information could be developed specifically for four age groups: primary school children; higher primary/lower secondary school children; young people in secondary school; and young people over school leaving age. We have been advised that it is very important not to lose sight of the needs of young people aged 17 to 22 who can be significantly impacted by their parents' separation.

How information should be made accessible

184. Young people have made it very clear to us that information must be available in language that is age-appropriate, clear and easy to navigate and digest. Information can be made available in a variety of ways but of particular importance is the development of a dedicated website and, ideally, an APP that can be downloaded to a mobile phone. Information has to be culturally sensitive, non-stigmatising and non-patronising and it should not pathologise the effects of parental separation.

185. A dedicated website (APP) should be a one-stop-shop for children and young people, providing information and support at various stages and enabling effective links to support services such as ChildLine, children's counsellors, child advocates, CAFCASS and so on. Of paramount importance is the involvement of children and young people in developing information leaflets, booklets, videos about child inclusive processes, a website and an APP that are child and young person friendly, universally accessible, and give consistent messages.

186. The Advisory Group was told about plans to develop the Kids in the Middle website in collaboration with a range of agencies including CAFCASS, the FJYPB, Relate, Resolution, Only Mums/Only Dads and mediators. The aim is to establish a high-quality and financially viable online information and advice service for children and young people in separating families. By working in collaboration with other agencies, Kids in the Middle wants to ensure that the current gaps are filled, and that children and young people will have simple but effective tools that will help all those providing support to parents and children, including mediators and practitioners offering dispute resolution interventions both out of court and in court, to deliver a quality service that is child inclusive. We understand that the proposal is to build an online tool that promotes services for children offered by those organisations collaborating with Kids in the Middle and create a referral resource for parents and young

people. The tool will be developed by young people and the website will be run by them and promoted via a variety of social media. Members of the FJYPB informed us that they welcome and support this development.

187. The Advisory Group is aware that additions and changes are being made to the Parenting Plan to highlight the significance of child inclusive practice and hearing children's views, and to ensure that all dispute resolution practitioners are child inclusive in their approach. We understand that CAFCASS is undertaking work which sets out the importance of effective listening, preparing parents to listen to their children and addressing emotional readiness.

188. As with all aspects of a child inclusive family law pathway, achieving the need for better information for parents and for children and for new ways of providing information and support in a digital age requires substantive culture change at all levels. It also needs a more joined up approach between a wide range of agencies and organisations working out of court, such as mediation and collaborative practice with family lawyers, and in court agencies, such as CAFCASS, and those that span the two, such as contact centres, children's counselling services, helplines and websites.

189. The Advisory Group consulted with key agencies in Wales to obtain information about information for children and young people in Wales. Although neither CAFCASS Cymru or wider departments of the Welsh Government have information available about family mediation, either for adults or for children, CAFCASS Cymru provides electronic access to age-differentiated information about the role of the Family Court Advisor and has suggested to the Advisory Group that it would be possible to include sections for children and young people about mediation and other dispute resolution processes and about the opportunities to have their voices heard, when the website is further developed over the course of the next year. We regard this as a welcome development.

190. We were also aware of the Skills for Justice Report on the viability of a Mediation Centre for Excellence in Wales, published in 2014. The report noted that mediation is currently unregulated as such and recommended that a centre of excellence should have a broad remit to include dispute resolution more generally and actively promote greater uptake of mediation services. The report suggested that the focus should be on debate about standards and quality, continuing professional development, raising the profile of mediation, developing a referral route, engaging with service users, establishing a quality mark, and developing a research function. All of these recommendations fit well with the issues and recommendations discussed in this report.

191. We understand that the CAFCASS Cymru Participation Board is in the process of reviewing all its information for children and young people and will ensure that children and young people are fully engaged in the review and in the development of new information. We were informed that consideration could be given to exploring the possibility of making such information about family law processes available in schools in Wales, although this would need to be agreed with colleagues in the Welsh Government responsible for education and the relevant Minister.

192. CAFCASS Cymru has urged that further thought should be given to how information for children and young people is explained to them, and has drawn attention to the role that independent and objective professionals can play in explaining and leading children and young people through the resources that may become available. This endorses the view taken by the Advisory Group that child inclusive approaches require multi-disciplinary cooperation.

193. We believe that partnership working and collaboration are key to the success of child inclusive approaches, and the FJYPB have suggested that accreditation of organisations that support a child inclusive approach could be offered via a quality kite mark, for example.

This would encourage projects, such as the NACCC Moving On programme sponsored by the DWP, to ensure that children's voices are central to helping parents collaborate and communicate around the needs of their children. The Advisory Group is aware of the DWP initiative 'Help and Support for Separated Families' (HSSF) Mark, which might provide valuable learning when considering a kite mark that would demonstrate child inclusive practice.

194. The DWP provides online support to separating and separated couples through Sorting Out Separation, part of the Help and Support for Separated Families initiative. Sorting out Separation is an information hub which provides information on a range of issues that couples may face and signposts on to organisations that can provide further support, advice and help. While Sorting Out Separation is aimed at adults, the DWP have been working with colleagues from the MoJ to include some additional information for children and young people through the 'mylinks' section of the site. We understand that this will include information about hearing the voice of the child in relevant areas throughout the site.

195. The HSSF Mark is awarded to organisations that demonstrate that they meet a set of standards, designed by the Tavistock Centre for Couple Relationships, and show that the service promotes collaboration and puts the needs of children at the heart of the separation process. Forty-three organisations have been awarded the Mark directly and five organisations (National Association of Child Contact Centres, Resolution. Relate, National Family Mediation and Relationship Support Scotland) act as 'umbrella' bodies and are now awarding their members with the Mark, taking the total number of Mark holders to over 400.

196. The HSSF Innovation Fund has funded 17 projects which test innovative approaches to supporting separated parents to improve the quality of their relationship. One of these is an online project which offers parents a personalised service, including Behaviour Modelling Training, to help parents resolve conflict, the opportunity to develop a parenting plan, and a forum for peer support. For parents unable to access online support there is a telephone coaching service. Two further projects deliver face to face interventions which focus on the voice of the child, offering a specific intervention for the child, where appropriate. Since all the interventions are fully evaluated there is a growing body of evidence as to what works in helping separated parents work together to resolve disputes.

197. In addition to hearing about developments in programmes and websites, the Advisory Group has received advice from many mediators, parenting experts and FJYPB members, all of whom have suggested that, to achieve culture change for children and young people and to promote better parenting outcomes post separation, the Separated Parents Information Programme (SPIP) should be available to parents very early on in the process of separation and divorce rather than further on in the pathway after parents are involved in legal proceedings. Mediators we have spoken to have been particularly supportive of this suggestion. The CAFCASS SPIP booklet provided to parents could be extended to ensure information is given about the importance of hearing the child's voice and how this can be facilitated, through mediation, for example. Evidence from this and from other jurisdictions with similar programmes consistently indicates that these have a significant positive impact on parents and on their willingness to find ways to work together to achieve the best outcomes for their children and their family. The SPIP aims to facilitate and support positive co-parenting and to assist parents to focus on agreements which have the welfare of their children at their heart. Most parents who attend find the programme extremely useful and say they wish that they had been able to attend much earlier and before the case has gone to court.

198. Young people told us that all parents should be required/encouraged to attend a SPIP but that this intervention is far too late once CAFCASS is involved. In their view parents being able to attend the SPIP much earlier would do more to encourage parents to mediate than attendance at a MIAM when the conversion rate to mediation is relatively low if only one

parents attends. Conversations with mediators have highlighted their wish to make SPIPs more meaningful and more easily available to more parents by introducing them at the start of the process and to modify them so that they act as a bridge to other services, including MIAMs and mediation. This ambition reflects the findings from the Mapping Paths to Justice study[18] in which the researchers referred to best practice in terms of the joining up of support and tailoring creative combinations of processes to meet the needs of individual cases.

199. To some extent the early offer of SPIPs has been facilitated by the introduction of the DRSPIPs pilots. These Dispute Resolution Separated Parents Information Programmes are being delivered by existing SPIP providers in five pilot areas, although they are also available across England outwith the pilots providing parents pay. Whereas the court ordered SPIP is free for parents, they can choose to pay for and access DRSPIPs without going to court. The DRSPIPs have the same content and both parents are encouraged to attend separate group sessions.

200. The DRSPIPs pilots are testing three different payment methods: parents pay the full cost (£150 per person); parents pay a subsidised rate; or attendance is free. We understand that the uptake is highest in areas where the DRSPIP is offered free and the second best take up is in areas where parents pay the full cost. The pilot has been extended to increase the numbers of parents accessing the DRSPIPs and decisions about future provision will be influenced by the findings and by the overall family law reform agenda. It may well be that part of the DRSPIP offer could be provided effectively online, but whatever decisions are taken the Advisory Group believes that there is a strong case to be made for parents to be able to attend/have access to the (DR)SPIP before they embark on out of court dispute resolution processes, including mediation.

201. In Wales a programme that is similar to but not exactly the same as the SPIP is offered under the title Working Together for Children. Mediators in Wales are of the view that this programme should also be offered to parents much earlier and before cases move into the court. There is a considerable appetite to develop a more integrated service offer, moving some services online and making it as easy as possible for parents to access the services that will be best for them by offering choice. This integrated offer should also focus on helping parents to understand the importance of their children having a voice. We are also aware of the success of programmes that offer a meeting place for children and young people to share their experiences with other children and young people in similar circumstances, such as Kids Turn and Changing Futures North East (a DWP innovation fund programme), and which also encourage them to make their voices heard.

202. Mediators and young people have also referred to the importance of the MIAM in telling parents about the right of the child to be heard when decisions are being made about their future. Not only should parents be encouraged to talk to their children but to allow their children to talk to the professionals involved in their case. The Mapping Paths to Justice study placed considerable emphasis on enabling informed and appropriate choice and suggested that MIAMs should explain the full range of dispute resolution options. The researchers suggested a renaming of MIAM to DRIAM in order to provide a genuine choice of dispute resolution processes and that these meetings should be provided by a range of accredited providers and not just by mediators. During the Advisory Group's discussions mediators and young people commented on the opportunity a MIAM gives for the voice of the child to be carefully explained to parents.

203. The Advisory Group has considered the views of mediators, experts and young people very carefully and makes the following recommendations:

[18] Barlow, A., Hunter, R., Smithson, J. and Ewing, J. (2014) *Mapping paths to justice*, University of Exeter.

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, videos, support services 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 separating 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 for 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.

Concluding Comments

204. The Advisory Group has worked within a very tight deadline to meet the terms of reference set by the Minister. Unfortunately we have been unable to take account of the developments stemming from the Children and Vulnerable Witnesses Group as the final report of this group has not yet been published. All other aspects of the remit have been completed in the time available.

205. Members of the Advisory Group are in no doubt that far reaching cultural change is needed to meet the policy intent of providing child inclusive dispute resolution processes within a reformed family justice system. We would go as far as suggesting that to create and establish an environment and culture in which children and young people have the opportunity, should they so wish, to be heard in every process that is designed to assist parents to make arrangements for the children's future, there should be a positive presumption in law, such as that which has been established in respect of continued parental involvement (s11, 2A/B, Child and Families Act 2014). A legal presumption that all children aged 10 and above should have the opportunity to be heard would send a strong message to parents, children and young people, and to family law professionals that children's right to have a voice should be upheld and that their parents have a responsibility to ensure that this should be the case, except in very exceptional circumstances.

206. Such a legal presumption would be of considerable assistance to professional bodies tasked with establishing new codes of practice, guidelines, training and frameworks for practice across dispute resolution processes, and it would increase the confidence of practitioners, such as mediators, with regard to their own roles and responsibilities towards children and their parents.

207. We believe that this is a matter for Government to consider and we have stopped short of making a firm recommendation at this stage as a legal presumption of this kind would require a change to primary legislation. However, without a clear legal presumption there remains a danger that there is no overarching authority to insist on a substantive change in culture and practice, whatever goodwill might exist. Others have suggested that it would be a positive step if the UNCRC were to find its way into legislation in England, underlining the growing acknowledgement of the autonomy and agency of children and young people in having a part to play in their own lives, rather than being passive recipients of the decisions made by parents and family law professionals.

208. The Mapping Paths to Justice study pointed out that where there is a dispute involving children's arrangements good practice involves ensuring the agenda is driven by the needs and welfare of the children and not by the rights of adults. This premise argues for a more systematic inclusion of children's voices in all dispute resolution processes. The Advisory Group has made strong recommendations about there being robust practice requirements relating to child inclusive dispute resolution processes, particularly in mediation which addresses children's issues; the development and adoption of a new single standard; improved and enhanced training for mediators; and ongoing professional accountability and monitoring of practice. We have endorsed three primary models of child inclusive practice and made recommendations about setting up pilots to test these models and assess their cost-effectiveness.

209. In addition, we have sought to clarify issues of confidentiality, privilege and parental consent in order to remove some of the current barriers to child inclusive practice. Of equal importance is the need for far better, more consistent information and support for parents, children and young people, and more joined up approaches across the agencies working with separating families. We have heard positive suggestions from a range of agencies about the ways in which silo working can be dismantled to better meet the needs of young people and their parents when parents are splitting up. There is a good deal that must and

can be done, via joined-up working and the use of social media and digital technology, to assist in the inclusion of children and young people becoming a reality in private family law proceedings, both out of court and in court.

210. Many examples of good practice were brought to our attention as we went about our work in the Advisory Group. Although child inclusive practice presents some challenges for mediation and other dispute resolution processes since it is clear that hearing the voice of the child cannot simply be tacked on to existing approaches, we are aware that there is a considerable appetite for change amongst many mediators who have campaigned long and hard for children's voices to be central to the dispute resolution process. One issue which is key to the future development of child inclusive practice is that of funding. Many mediators are concerned that there is insufficient recognition for the additional work required in legally aided cases if children's voices are to be properly and appropriately heard and if mediators are to move beyond simply paying lip service to the policy. The negative impacts of financial restrictions and the apparent lack of public funding for child inclusive mediation has surfaced repeatedly during the course of our discussions.

211. Without delving into detail about current LAA policies relating to payment for child inclusive work, it is clear that more consideration needs to be given to the significant shift in practice that child inclusive mediation implies, especially as giving children a voice signifies a process and not a one-off meeting. It is also a highly skilled intervention. Privately paying clients will also need to consider the additional costs associated with child inclusive mediation, and we note that some services do not charge parents for including their children in the process. This situation would be unsustainable in a changed approach in which child inclusive practice is regarded as the normal starting point in all dispute resolution processes relating to children's issues.

212. Given the anxieties about the negative impacts of the Legal Aid, Sentencing and Punishment of Offenders Act, LASPO, 2012, on mediation uptake discussed by the Mediation Task Force in 2014, we would suggest that future funding frameworks for child inclusive dispute resolution should be a matter for urgent consideration by the mediation providers and by the LAA. It is also important to address how all models of child inclusive mediation, including those which involve a co-mediator who sees the children and those which involve a child practitioner, can be funded appropriately.

213. At present, there is no provision in the LAA contract or in the funding regulations to pay for a co-mediator unless there are exceptional circumstances (and child inclusive mediation should not be considered as exceptional in future) or for another professional to see the children during the mediation process. Since the co-mediator and child practitioner models may well be attractive for mediators who have not been involving children and young people thus far, appropriate funding needs to be considered as a matter of some urgency. We note that the LAA is guided by the FMC in respect of appropriate mediation models that comply with Professional Codes of Practice; the Advisory Group hopes that the FMC will endorse the various models of child inclusive practice discussed in this report such that appropriate funding mechanisms can be established.

214. Many mediators regard child inclusive work as a threat to their financial survival and it may be that business models for child inclusive practice need to be urgently reviewed, both in respect of privately and publicly funded clients. There is a suspicion amongst some mediators that parents will not pay for their children to be included in mediation. However, we have not been given any substantive evidence for this claim and some mediators are of the view that if child inclusive mediation is regarded as normal practice in family mediation, parents will not be opposed to covering the cost. A positive non-legal presumption of child inclusive practice may well minimise any unwillingness to pay. It is relevant in this respect to note that a small number of parents have been willing to meet the costs of attending a DRSPIP. Nevertheless, the issue of funding for child inclusive mediation does need to be addressed, and it may be that funding and delivery mechanisms should be reviewed in the

light of our recommendation to offer SPIPs/WT4C much earlier in the out of court pathway, prior to parents taking steps to resolve their disputes via mediation or other informal processes.

215. **Recommendation 33. The Advisory Group recommends that 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.**

216. The Final Report of the Family Justice Review (2011) emphasised that:

> …children's interests are central to the operation of the family justice system … Children should be given age appropriate information … they should as early as possible be supported to make their views known …[19]

The Children and Families Act 2014 also emphasises that:

> …the court and parties should be conscious of the need to ensure that children are involved, as appropriate, in the context of their age and level of understanding in the decision-making process.[20]

217. The policy of child inclusive practice across out of court and in court pathways provides a critical opportunity to embrace changes that will put children and young people firmly at the heart of the family justice system. Young people have told us that routinely including children and young people by giving them the opportunity to participate in dispute resolution processes will do much to ameliorate the marginalisation, anxieties and distress they feel when their parents separate, which can affect them for many years. During our workshop with the FJYPB, one participant made the following bold statement:

> The only sensible people in the family when parents split up are the children and young people.

Mediators have confirmed that the participation of young people can assist parents to focus on the needs of their children and to consider more innovative ways of agreeing future arrangements.

218. The development of child inclusive practice will be greatly enhanced by the involvement of children and young people in planning for change, creating the right environment, preparing information material and websites, training mediators and other dispute resolution practitioners, and ensuring that the SPIP prepares parents for listening to the voices of the their children.

219. **Recommendation 34. The Advisory Group recommends that children and young people themselves 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.**

220. Although we have focused primarily on how mediation processes can and should take a child inclusive approach, we are fully aware that mediation may not be appropriate for everyone and in all circumstances. Mediators and mediation organisations have always been clear that mediation does not offer a universal panacea for parents who are in dispute or having difficulty agreeing arrangements for the future. It is clear that there are a number

[19] Family Justice Review, Final Report, 2011, Executive Summary paras 8 and 9.
[20] Child Arrangements Programme, President of the Family Division, 2014.

of dispute resolution processes established and emerging. The potential for parents and for children and young people to have a range of options will ensure that families are able to choose a practitioner and a service that they believe fits their circumstances best. This may be particularly helpful in the quest to reduce the number of parents who seek judicial determination in respect of arrangements for their children.

221. In considering models of practice and required competencies for mediators and child practitioners we have been mindful of the opportunity to form a template for other dispute resolution professionals where we have noted rising interest and emerging practice in hearing the voices of children and young people within other dispute resolution processes. This growing interest in dispute resolution will hopefully encourage greater levels of partnership working where child practitioners (mediators or child specialists) could work collaboratively with, for example, collaborative practitioners or family arbitrators. It might also encourage skilled professionals such as those in child advocacy services, to suggest the involvement of mediators and other dispute resolution practitioners in the work they undertake more generally in other family conflict situations. Overall, we suggest that child inclusive practice may increase the potential for practitioners to work more cohesively and towards a more established systemic approach to services for separating and transitioning families. It is essential that children and young people are given the opportunity to participate in all forms of dispute resolution and not just in mediation.

222. The Advisory Group has put forward a large number of recommendations for consideration. In our view they offer a holistic package for change which will ensure that children's voices can be heard appropriately. We believe that only by working holistically towards a changed culture in family dispute resolution will the voices of children and young people be acknowledged as integral to any process that is designed to assist parents to resolve disputes and reach agreements. Advisory Group members have been aware that some recommendations require considerable shifts in thinking and practice and some may well challenge long-held beliefs about the context in which dispute resolution takes place. If the policy intent to give children and young people a voice is to be realised, however, then substantive change is inevitable and the desire expressed by children and young people to be involved, if they wish, in all family law processes must be recognised and upheld. We believe that the recommendations in this report, taken alongside the steps being taken to include children and young people in the in court processes, offer a positive framework for developing child inclusive practice in a seamless and coherent way.

Annex 1

Members of the Voice of the Child Dispute Resolution Advisory Group

Emeritus Professor Janet Walker OBE	Co-Chair
Angela Lake- Carroll	Co-Chair
Mike Coote	CAFCASS
Mr Justice Cobb	Judiciary
Richard d'Souza	Department for Work and Pensions
Sally Ireland	Office of the Children's Commissioner
Dr Carole Kaplan	Child and Adolescent Psychiatrist
Shysta Manzoor	Family Justice Young People's Board
Dominic Raeside	Family Justice Council and Family Mediation Council
Robert Hudson	Secretariat, Ministry of Justice

Annex 2

Voice of the Child: Dispute Resolution Advisory Group – Terms of Reference

Background

1. David Norgrove, Chair of the Family Justice Review Board, was invited by former MoJ Minister Lord McNally to convene and chair a time limited Family Mediation Task Force to consider the key issues facing family mediation practitioners and to make recommendations to MoJ on how to resolve them.

2. The Task Force made its recommendations in June 2014 and the Government responded in August 2014, by accepting, among other things, the recommendation to set up an Advisory Group to review the status of the Voice of the Child in family mediation.

The Group

3. There will be a Core Advisory Group of experts meeting as necessary (at least once per month) and a 'virtual' Expert Forum which will be consulted on specific issues. Members of the Advisory Group and the Expert Forum may be commissioned to carry out specific work and all members will be expected to respond accordingly to commissions for information, for example for data, protocols, standards, etc.

4. This Core Group is convened separately to the formulation of policy looking at the Voice of the Child in court, but where there is common ground, will naturally be linked.

5. In considering any links to the 'in-court' process, the Group will only focus on child inclusive family dispute resolution as it relates to private law matters.

6. An interim report will be submitted to the Ministry of Justice by the end of January 2015. This document will set out what has been achieved to-date and include proposals and recommendations for further work to be completed as appropriate.

7. Family Mediation will be the main focus for the Group but it will also seek to encompass general principles for child inclusive family dispute resolution.

8. The Advisory Group is mindful of, and intends to ensure that all discussions and outcomes will take account of issues of equality, diversity in all forms and the importance of ensuring the safety of vulnerable adults and especially of any child or young person.

9. This Group will also be mindful of developments stemming from the Family Justice Council Children and Vulnerable Witnesses Group as they may apply to out of court direct consultation with children.

10. The Secretariat will be provided by the Ministry of Justice.

Terms of Reference

11. The overriding objective of the Group is:

    - to ensure the necessary steps are taken to promote child inclusive practice and ensure that children's and young people's voices are heard.

12. The Advisory Group will achieve this by:

    - fully scoping child inclusive practice and best practice in the UK;
    - reviewing the national standard for mediation professionals undertaking child inclusive practice;
    - updating relevant guidelines and protocols and resolving any confidentiality and privilege concerns;
    - ensuring that authoritative and accessible information and support are available for children and young people at all appropriate stages;
    - improving the recording of the numbers of mediators and others trained and engaged in child inclusive practice;
    - improving the recording of the number of children and young people seen and invited to participate in child inclusive practice;
    - identifying any barriers to child inclusive practice and the means to resolve them; and
    - making recommendations for the ongoing review and monitoring of child inclusive practice.

13. The drafting of specific papers will be delegated to members of the Expert Forum, in collaboration with the Advisory Group, according to need and focus.

The Core Advisory Group

14. Membership will be made up of professionals and statutory leads from relevant dispute resolution and child focussed consultation disciplines. This includes, but is not restricted to, family mediators, legal practitioners, relevant children practitioners and academics.

15. Members have been invited due to their expertise and experience of working directly with children and young people. Members will be expected to consult and reflect views as appropriate from their professional body or group if they have one and not their own personal agenda.

The Expert Forum

16. The purpose of the Expert Forum will be to draw on members' expertise to inform and support the Advisory Group in meeting the overriding objective. It will not be required to convene 'in person' but will be consulted on the programme of activities and specific issues. Members who are assigned to sub-groups to take forward specific tasks will determine for themselves how they work with other Forum members to assist their work.

17. Membership will be made up of professionals and statutory leads from relevant dispute resolution and child focussed consultation disciplines. This includes, but is not restricted to, family mediators, legal practitioners, relevant children practitioners and academics.

18. Members have been invited due to their individual expertise and experience of working directly with children and young people and are expected to consult and reflect these focusing at all times on what is best for the child or young person.

Annex 3

Members of the Voice of the Child Dispute Resolution Expert Forum

Experts from a range of professional backgrounds were invited to join the Expert Forum. The focus was on selecting people with experience of working with children and young people in a variety of settings, representatives of agencies closely associated with family law proceedings, and mediators with responsibility for training and education. The Chief Executives of the FMC member organisations were asked to nominate key members with responsibility for and experience of mediation training, specifically in undertaking direct consultation with children

Advisory Group members were also able to consult other experts in specific topics and the names of these experts were added to the list on an ad hoc basis. Members of the Expert Forum were contacted by work stream leaders as and when appropriate and their views sought on specific issues.

Helen Adam	Mediator
Cressida Burnet	ADR Group
Professor Tanya Byron	Child Psychologist
Elizabeth Coe	National Association of Child Contact Centres (NACCC)
Dr John Coleman	Oxford University
Hywel Ap Dafydd	Office of the Children's Commissioner for Wales
Rhian Davies	CAFCASS Cymru
Eleanor Druker	Legal Aid Agency
Clare Evans	Family Justice Young People's Board
Duncan Fisher OBE	Kids in the Middle
Andrew Greensmith	District Judge, mediator and member of the FMC Board
Bob Grieg	Only Mums, Only Dads
Glyn Hardy	Legal Aid Agency
Lisa Harker	NSPCC
Paul Harris	HMCTS
Denise Ingemells	Mediator
Angela Joyce	Department for Education
Suzanne Kingston	Collaborative Practitioner and Family Arbitrator

Anthony Kirk QC	Family Law Bar Association
Jennifer Lynch	Family Justice Young People's Board
Ewan Malcolm	Relate
Chris Martin	Youthnet
Jackie Norton	National Family Mediation (NFM)
Lisa Parkinson	Resolution, Family Mediator/Trainer
Joe Parsons	Ministry of Justice
Margaret Pendlebury	National Family Mediation (NFM)
Christine Renouf	National Youth Advocacy Service (NYAS)
Marian Roberts	College of Mediators
Beverley Sayers	Family Mediators' Association (FMA)
Ruth Smallacombe	Family Mediators' Association, Family Mediator/Trainer
Julia Thackray	Only Mums, Only Dads
Judith Timms OBE	National Youth Advocacy Service (NYAS)
Emily Tuttiet	Welsh Family Justice Network
June Venters QC	Law Society
Karin Walker	Resolution, Family Mediator and Collaborative Practitioner
Anne Williams	Clinical Psychologist
Sarah Woolrich	Barrister

Annex 4

Survey of Family Mediators

In order to gain a more up to date view of current mediation practice the Advisory Group was keen to seek information from those mediators registered with the Family Mediation Council as able to offer direct consultation with children. We understood that there were 555 such mediators on the FMC database.

We developed a series of questions and these were mounted on to Survey Monkey with the support of the MoJ and the FMC. The survey was administered by the FMC to protect the anonymity of mediators unless they chose to provide their name and a contact address, which very many of them subsequently did.

The survey went live in mid-December 2014, with a closing date of 4 January 2015. The closing date was subsequently extended twice when it became obvious that some mediators in the not for profit sector had not received the survey, primarily because the FMC does not have personal contact details for those mediators and so all communication is via a generic office address. The only option was to ask others to cascade information about the link to the survey to as many colleagues as possible. This was clearly problematic as the FMC could not contact these mediators directly to alert them to the survey.

By the time the survey closed on 12 January, however, the responses had increased and were well spread across the member organisations. Since the majority of mediators registered with the FMC have a law background it is not surprising that the majority of respondents to the survey also have a law background.

Alongside the survey responses we received a number of other submissions, including one from a mediation service that routinely invites children and young people to participate in mediation. We were sent copies of a suite of information leaflets, letters and protocols which are used to inform parents and children and young people about child inclusive approaches, what they entail and what is expected when children have the opportunity to be heard by a co-mediator. They provide a useful template for child inclusive mediation and will require very little tweaking to meet the new policy intent.

Some mediators also provided case studies to demonstrate the benefits of child inclusive approaches and have given permission for these to be quoted. Two of them are summarised below:

> **Summary of child inclusive mediation with a family with two daughters, Louise (20) at university, and Sarah, 16.**
>
> Parents went for all-issues mediation. Mother, who was French, had spent some time away from the family during the last few years, returning to the family home in between.
>
> After the parents had been in mediation for a while, Sarah was invited to talk with the mediator who was seeing the parents and a mediator colleague. She agreed. Sarah was clearly distressed and found it hard at first to be forthcoming. She said she felt distanced from her mother and saw her father as the main parent. Sarah had felt more isolated since Louise had gone to university. Sarah gradually opened up and although she struggled to find the right words to express her feelings she

seemed pleased to have the opportunity to share them and to talk about how she was coping with her parents' separation and the remoteness of her mother.

Sarah chose not to be present when the mediators provided feedback to her parents, but agreed that some key things should be shared with them. These were:

- her distress at the uncertainty of the situation and what was happening
- her acute feelings of loss in respect of her mother
- her concern about not knowing what was being agreed in mediation

The feedback had a profound impact on Sarah's mother who admitted to being terrified about leaving the family home and worried that her daughter would never want to see her. The mediators were able to reassure her that Sarah wanted to see her mother regularly but had been unsure about how to verbalise this to her mother because of the growing emotional distance between them.

Once reassured, Sarah's parents were able to respond positively. Her father was relieved that his wife was talking her feelings for the first time and that Sarah wanted frequent contact with her mother, which he had not realised. The parents were able to talk through the way forward, taking Sarah's feelings into account. The mediators were of the view that child inclusive mediation had been cathartic for Sarah and for her parents, and resulted in positive arrangements being made.

Summary of child inclusive mediation with a family with two daughters, Tricia aged 13 and Mandy aged 9.

The parents were in high conflict and had been referred for mediation by the court. The parents found it difficult to listen to each other or accept what each had to say about the children. The father had left the matrimonial home and was living in shared accommodation. The parents and the mediator agreed to offer the girls the chance to have their voices heard and both came to talk to the mediator. During their conversation with the mediator, both girls said that they did not like going to the house where their father was living and would prefer him to have his own house where they could feel more comfortable. Both of the girls said that:

- they felt confused
- they found it 'weird' that their parents were unable to talk
- they would like their parents to be able to talk to each other, even if it was just to say 'hello' when they met
- they did not like the food their father cooked when they visited him

Tricia said that 'sometimes they (her parents) both say things at the same time and I don't know who to talk to because I don't want the other one to get upset.' Mandy talked about the activities she liked to do with her father.

During the conversation with the mediator, the girls wrote their thoughts on a whiteboard. This was printed off, and with their agreement it was shared with the parents. The mediator described it as 'very powerful' when the parents could read what Tricia and Mandy had written in their own handwriting, and this enabled them to think about how they could behave differently and reach agreements that would respond to the girls' needs.

A large number of respondents indicated that they would be willing to talk further to the Co-Chairs of the Advisory Group about the issues raised in the survey. Some discussions with mediators have taken place on a one-to-one basis, others have taken place in small groups and in network meetings during the course of the Advisory Group's work. We are very grateful to all those who took the time to share their experiences, their concerns and their suggestions for moving closer towards child inclusive mediation practice though the survey and in conversations with the Co-Chairs.

Annex 5

Possible Child Inclusive Pilots

The Advisory Group has identified number of possible child inclusive pilot options. During the course of our work mediators have come forward with ideas as to how child inclusive practice could be extended. The pilots outlined offer an opportunity to develop and test different models and approaches in different parts of England and Wales. The mediators involved are committed to ensuring children and young people have a voice. The mediation providers have not been asked to develop a costed business proposal for the pilots that are being suggested. This would have to be considered as a next step if a pilot programme in child inclusive mediation practice were to be undertaken. We are aware that there are other innovative ways in which children and young people are being offered a voice, such as in the Changing Futures North East DWP-funded innovation project which offers workshops for children whose parents are separating, in close cooperation with family mediators. These workshops might also offer potential evidence-driven piloting opportunities.

1. Building on the Family Matters Resolution Service

Family Matters is part of the Department for Work and Pension's Innovation Fund programme and works with separated and separating parents to help them to make arrangements about parenting apart. Family Matters Guides, who are experienced family lawyers and trained mediators, work with both parents, supporting them to get through their break-up in a way that minimises the disruption to their children. The service is delivered from solicitors firms in Crewe, Oxford and Newcastle and started in April 2013.

The service model includes close work with other support organisations in the community, including organisations working with children and young people, such as Children's Centres, schools, social services and the equivalent of Troubled Families Units in each of the areas. These agencies provide referrals into Family Matters and take referrals from the service.

At the end of January 2015, Family Matters had worked with over 1,000 parents. In the period April 2014 to the end of January 2015, Family Matters saw 669 parents. These parents had 227 children aged ten years and older (where this information was disclosed). This means that, on average, Family Matters Guides are seeing the parents of 23 over-ten-year-olds each month. Between 1 April and 30 September 2015, it is anticipated that the parents of at least 138 young people in this age group will be involved.

Family Matters Guides do not work directly with children, but urge the parents they work with to focus on the needs of their children. Presenting parents with a means to 'hear' the voice of their children would make this case more powerfully. Family Matters would work with agencies and professionals locally to provide young people with the opportunity to talk to someone skilled in talking to and listening to children while their parents are trying to sort out arrangements for their future. This would include: Children's Centres; student welfare officers; community organisations working with children and families, such as Donnington Doorstep in Oxford, who offer one-to-one support to vulnerable children; mediation services trained to work with children; Troubled Families Units; and social services.

Family Matters Guides already have strong links with these organisations, but are keen to test out how these links could be strengthened to give young people more opportunity to have their

voices heard in their parents' dispute resolution process; and to test out how the policy intent might work locally. In particular, the pilot would be able to identify practical obstacles to presenting children with the opportunity to have their voice heard, such as resource and capacity limitations on professionals trained to work with children and young people.

Family Matters would work with parents to put local services in touch with the young people to offer them the opportunity to share their views on their family's future and to have an input on decisions that may affect them. The Family Matters Guides would then feedback the outcome of these discussions to the parents, thereby enabling them to put their children at the centre of any arrangements they make.

The Family Matters Guides are themselves trained lawyer-mediators working in legal firms which have a very strong reputation in their local area, and who undertake mediations in addition to their work as guides.

Family Matters Crewe

Crewe includes some of the most socially deprived areas in England. The Family Matters service has an excellent relationship with the local courts and also delivers fortnightly outreach sessions in the Stoke court, working closely with the CLOCK service (a community legal outreach companion scheme offered by Keele University). Mediation is offered in Crewe and Nantwich and in outposts in local towns. The firm offering the Family Matters service holds a legal aid contract and provides both publicly funded and private mediation. There are three mediators and collaborative legal practice is also offered.

Family Matters Oxford

This has been the busiest Family Matters location and has dealt with some of the most complex cases. The firm hosting the Family Matters service is located in one of the more deprived areas of the city, with a smaller office in Reading, and has a strong track record in legal aid and immigration work, and serves many parents from a black and ethnic background. There are three qualified mediators and a collaborative lawyer. The firm also offers community outreach in West Berkshire. The team has developed strong links with all of the referral agencies for domestic violence work and regularly provides drop in clinics for various refuges, and works closely with the local Contact Centre and local family centres.

Family Matters Newcastle

The Newcastle Family Matters service is operated by the largest Family Law Department in the region, with 5 (soon to be 7) collaborative lawyers, 3 mediators, and a further 3 mediators who work in Family Matters. The firm offer a triage service in order to ensure clients receive the right service for them. The firm offers Couple Information Meetings (Choosing Options Together), mediation and collaborative practice which involves the use of specialist consultants. The firm also works with a highly experienced Family Transitions Consultant who, amongst other things undertakes emotional readiness assessments. The team offers a very flexible service to separating and divorcing parents, and has seen an increase in high conflict cases. The Family Matters team would like to be able to offer SPIPs earlier in the process and to provide a one stop shop in-house for separating parents.

These three pilots offer a sound test base for innovative child inclusive practice, including the use of emotional readiness assessments, with a wide range of separating families from different ethnicities and socio-economic groups.

2. Testing Different Models of Child Inclusive Mediation in London

Two Relate mediation services, one based in north-west London and the other based in north-east London already offer children the opportunity to be included in the mediation process, using all three of the main models described in the report. A pilot in London would enable these models to be tested further with a clear focus on child inclusive mediation with a mix of legally aided and private mediation clients in centres which offer a range of ancillary services for parents and for children, including child counselling. These two services have partnering arrangements with Relate London South East and Relate London South West to deliver mediation in their counselling venues south of the river. In effect, therefore, this pilot could test models of child inclusive mediation in all the London Boroughs except for Bexley.

In 2014, the two mediation services worked with 480 couples in mediation, about half of whom were legally aided. There are 11 mediators, of whom 8 are trained in and offer direct consultation with children. The services between them undertook 1369 MIAMs in 2014, again to a mix of legally aided and private clients. Both SPIPs and DRSPIPs are provided by the services, and in 2014 they delivered 114 SPIPs to 725 parents.

Both services offer child counselling for children aged 5 and over and also Relateen for young people aged 11-18. This enables mediators to offer a child inclusive mediation model that uses a child counsellor to work with the mediator.

A child focused mediation pilot in NW and NE London Relate would allow comparison between three models: the same mediator working with the parents and the children; the children being seen by a co-mediator; and the partnership approach with a child counsellor. There is capacity in both services to experiment with these to ensure that MIAMs and SPIPs can be adapted to inform parents about the child-inclusive approach. The availability of highly skilled and experienced child and adult counsellors can provide a wrap-around service for children and young people and for parents which supports them through the dispute resolution process.

A suite of materials for children and young people, including information about mediation, letters of invitation to participate, and protocols relating to parental and child consent, confidentiality and safeguarding are already in place and can be modified to embrace child inclusive mediation (rather than the current child consultation model). The mediation service in London North West is also expecting to pilot the delivery of online mediation later this year.

3. Piloting Child Inclusive Mediation in Partnership with the National Youth Advocacy Service (NYAS)

We have indicated in the report that some mediators and other dispute resolution professionals may prefer to adopt a model of child inclusive practice which involves the use of a child practitioner or child advocate. The National Youth Advocacy Service is keen to work in partnership with mediators to test this model using highly experienced child advocates.

Currently, the predominant model for seeking the views of the children whose parents are involved in mediation is that the mediator, trained to undertake direct consultation with children, meets with the parents and with the child. This pilot would offer an alternative inter-disciplinary model which draws on the specialist skills of children's advocates. NYAS believes that the skills required to ascertain the views of a child are different to those of the mediator, who must by definition remain impartial and cannot act as an advocate, and that the independence of the advocate from the mediation process is an advantage when building the trust of the child.

This pilot would bring together the skills of family mediators and advocates and build on the professional frameworks and standards already in place. NYAS is a socio-legal children's rights charity providing advocacy services to children and young people in care and in the child protection system. In addition, NYAS has its own legal aid franchise and team of in house family lawyers and is the only court approved organisation, other than CAFCASS, appointed to represent children and young people who are made party to private law family proceedings under Rule16.4 Family Proceedings Rules 2010. It appoints both a guardian and a solicitor for each of these children to ensure that their rights and welfare are protected within the proceedings.

NYAS is also commissioned by CAFCASS to provide child contact services. All of NYAS' services are developed in compliance with the UNCRC and, in particular, Article 12. NYAS' role as an advocate is to ensure that children and young people's voices are heard when decisions are being made about them.

NYAS is the leading provider of advocacy services to children and young people across England and Wales and has been providing these services for 30 years. It employs more than 300 advocates on a self-employed contract basis. All advocates have experience of working with children and young people, hold an externally accredited advocacy qualification and work in accordance with the National Advocacy Standards. They are recruited in accordance with NYAS safe recruiting procedures and are subject to enhanced DBS checks.

This pilot would seek to ensure that children are empowered by a process in which they are enabled to have an age-appropriate input within a process that protects them from the responsibility for what is agreed, and that children and young people are protected within the process by NYAS' child protection and confidentiality policies.

NYAS have suggested that this pilot should run in three locations: West Midlands, Merseyside and South Wales. In each of these localities NYAS has a pool of trained experienced advocates and office accommodation. NYAS advocates would need to attend additional training to explore advocacy in the context of mediation, parental separation, private law ordering, risk and domestic violence.

The role of the advocate would be to give the child an opportunity to talk about what is happening to them, how they feel about what their parents are doing and any concerns they have. There would be three stages to the process:

> Session 1. The advocate will meet with the child and explain the mediation process. They will emphasise that it will be for the parents to make the final decisions and explain the principles of confidentiality that apply. They will agree with the child what they want to be shared with their parents.
>
> Session 2. The advocate will attend a session with the mediator and the parents to share the child's views.
>
> Session 3**.** A final meeting will be held with the child to feedback what their parents have agreed.

NYAS would work in partnerships with mediators. It is proposed that providers of MIAMs would be briefed on the model and would have information to give parents at the MIAM. This pilot would offer an opportunity to establish an innovative model of inter-disciplinary professional practice tailored to the needs of families in order to ensure the voices of children are heard. NYAS has an electronic case recording system, ensuring that information is recorded for each case. This service could be extremely cost-effective since it would deploy an existing reservoir of trained and experienced child advocates alongside mediators and could be readily replicated across England and Wales.

4. Mediation Now Ltd – Piloting a Free Child Inclusive Service

Mediation Now Ltd is a family mediation practice founded in 2007 by Resolution trained lawyer mediators. It is the largest mediation provider in South Hampshire, with offices in Cosham, Emsworth, Fareham, Havant, Petersfield and Portsmouth. Each office holds a legal aid franchise. In addition to a traditional mediation practice, Mediation Now has a contract with the DWP under their Innovation Fund to run the Changing Lives programme. This provides separated parents with specific support in reducing the impact of separation on children. The sessions incorporate the communication and conflict resolution aspects of the Prepare/Enrich relationship education programme together with other evidence based communication tools. Delivery is face to face on a 'separated couple' basis with one mediator.

Mediation Now has set up an innovative in court mediation pilot scheme in Portsmouth County Court which has been running successfully for over a year, and has provided free mediation training to the local judiciary and CAFCASS on the changes made under LASPO. All mediators are Resolution trained child consultants

Mediation Now would like to run a pilot to offer a free child meeting to all children aged 10 and over whose parents are in mediation. This would be for a 12 month period (which could be extended if successful). Free child meetings would give all children the opportunity to be listened to in the separation process without additional cost to their parents. This free initiative would be promoted at court and amongst local family lawyers and CAFCASS. Parents would be actively encouraged to allow their children to participate in the child meeting and given literature explaining the benefits of this at MIAMs and further promoted during the mediation process.

Because Mediation Now believes that children would benefit from more than a 'one off' opportunity to voice their wishes, needs, feelings and anxieties around such a significant life event, and they would encourage parents to allow their children to attend at least one further meeting in order to ascertain their views on the final child arrangements made by the parents.

Mediation Now would work with a local child psychologist (who also sits as a magistrate in the family court) to identify the best way of gaining feedback from the children as to the efficacy of the consultation process.

Mediation Now have four mediators, three of whom are trained in direct consultation with children. In 2014 they undertook mediation with 283 new couples, of whom 114 were eligible for legal aid.

5. Family Mediation North East – Child Inclusive Practice in a Dispersed Geographical Area

Family Mediation North East was established in January 2013. There are three directors who all hold FMCA status. They are full time family mediators with affiliations to the Family Mediators' Association, the College of Family Mediators and Resolution. All three mediators are trained in direct consultation with children.

There are two trainee mediators and a full time office manager. Between them the mediators have very many years' experience in family legal practice, advocacy work, and social work, thereby forming a multidisciplinary team. One of the directors has served on the Law Society's Family Law and Children Panel and is a Resolution Family Law specialist and a member of the local Family Justice Board.

The service has its main base in Ashington with outposts across Northumberland, Tyne and Wear and County Durham. It serves a large rural area as well as urban centres. Referrals to the team are increasing month on months, with 50 percent coming via their website. They have excellent links with local family lawyers and the judiciary. About 50 per cent of the mediations are private. The inclusion of children is offered in all these cases.

The service signposts clients to a range of specialist support services across the region and has received excellent feedback about the quality of its mediation service. A pilot in this kind of thriving new cost effective mediation service offers a chance to test child inclusive practice in a widely dispersed geographical area in which the mediators travel to the clients and are building a service in rural locations where no mediation has been available previously.

6. Building on Experience of Multidisciplinary Practice Devon

Devon Family Solutions has a considerable track record of offering child inclusive mediation, involving children in the mediation process in an appropriate way, either through direct consultation with the mediator working with the parents, or through a children's resource worker, who is an experienced child psychologist.

Devon Family Solutions is based in Exeter but with offices in 8 other locations in Devon. The service consists of mediators, psychologists and family counsellors and offers a comprehensive wrap around service for separating and divorcing families. The mediators are all experienced practising senior family lawyers or academics. Devon Family Solutions offers a free first appointment for all and free MIAMs for everyone.

All parents seeking mediation are informed about the opportunity to allow their children to meet with the Children's Resource Worker who will talk to the children in confidence about how they view their changed life circumstances. Parents are helped to understand that their children's views may be different to those held by each parent, and that watching parents separate can be an extremely traumatic time. Parents are told that children have to deal with a range of emotions such as tears, anger, guilt, fear, bravado and denial, and, in addition, the children may say different things to each parent about the same situation and that their love and loyalties to both parents will leave them wanting to make clear how much they love each of them.

Parents are told that the role of the child psychologist during the process of separation is to enable their child to discuss the problems at hand in a safe and confidential environment, without fear of retribution, or of causing pain to either parent.

Devon Family Solutions offers the opportunity to test further a model using a child psychologist, which is a model already well-recognised and evaluated in Australia, but which has not yet been evaluated in England.

7. Child Inclusive Practice in Wales

In Wales the UNCRC is incorporated in legislation and there is an accepted expectation that children’s voices will be heard. At the present time we understand that CAFCASS Cymru is reviewing the information given to children and young people and is supportive of extending child inclusive dispute resolution practice. Two existing mediation services affiliated to NFM would like to come together to pilot child inclusive practice in both North and South Wales. Although mediation provision in Wales has been badly impacted by the changes in public funding since LASPO, there is considerable enthusiasm to join the remaining service provision in a pilot to offer child inclusive mediation to as many Welsh families as possible.

Family Mediation Cardiff operates in 10 venues in South East Wales, from Bridgend in the west to Monmouth in the east, and including the cities of Newport and Cardiff. More recently mediation is being also delivered in Gwent, following the demise of the Gwent Family Mediation Service. North Wales Family Mediation, part of Relate Cymru, covers all of North Wales with venues in Bangor, Llandudno, Rhyl and Wrexham. Between them, the two services have 10 mediators, most of whom are trained in direct consultation with children. In 2014, the two services provided over 270 mediations (both legally aided and private), and delivered over 1300 MIAIMs (again, legally aided and private).

In Wales the SPIP equivalent is known as Working Together for Children (WT4C), and in 2014 the two mediation services delivered 70 WT4C courses. The numbers of MIAMs, mediations and WT4C courses delivered are expected to increase in 2015. While the majority of mediations have been publicly funded the services expect private clients to increase in numbers.

Both services are committed to child inclusive practice and believe that children's voices should be an integral part of the service offer in Wales. Currently, Family Mediation Cardiff does not charge parents for including children and young people, nor for the feedback session with the parents. The mediators would very much like to be able to offer the WT4C courses earlier in the dispute resolution process before parents have gone to court. The evidence they have gathered suggests that parents very much appreciate the course and express the wish that it had been available much sooner in their family law process. The services would like to be able to try flexible approaches in respect of when the WT4C course and the MIAM are offered, tailoring them to the family's needs and circumstances.

The two services also offer a range of other support to separating families: Family Mediation Cardiff is currently developing new programmes. North Wales Family Mediation would like to make more use of online provision and, because of the dispersed population mediation and low number of Welsh speaking practitioners, mediation could be offered via skype. Relate Cymru, which runs the North Wales Family Mediation service, also provides supervised and supported Child Contact services including a 'handover' service which supports families to manage contact more effectively It also runs a Respect accredited Perpetrator programme and relationship counselling services.

A combined pilot in a partnership between these two well-established mediation services would enable a more comprehensive and flexible approach to be taken to child inclusive work, adopting innovative approaches which would make it easier for parents to select the most appropriate dispute resolution pathway. The willingness and enthusiasm of these two services to work together to offer child inclusive mediation across most of Wales, in both Welsh and English, is welcomed by the Advisory Group and, if pilots are to be established, it would ensure that there is provision in England and in Wales.

Annex 6

Competencies for Mediators and for Child Practitioners

In the preparation of this annex, the Advisory Group has reviewed the information provided by:

- members of the Expert Forum
- competence standards from other (linked) professions including those from existing national occupational standards that relate to direct work with children and young people (and especially those that are inclusive of the child's rights perspective and Art. 12 and 13 of the UNCRC)
- The Australian Government's Competence requirements for developing an understanding of child inclusive practice and in relation to assisting clients to develop parenting arrangements

It should be expected that all competencies listed in this Annex will be demonstrated by a combination of oral and written examination, observation and portfolio work.

Mediators – General

The suggested competencies listed in this first section would be **additional** to those already listed for family mediators in the standard set out by the FMC and may form part of any framework for qualification and practice for other dispute resolution professionals. This is by no means an exclusive list and there may be further competencies to be considered and included by the professional organisation/s.

Knowledge – must know and understand

- Role and responsibilities in relation to the rights and interests of children, young people and their parents, how to maintain yourself as a professional and where to seek assistance from others including maintaining regular and appropriate supervision of your practice
- Relevant legislation in relation to the child and young person's right to be heard inc. Art. 12 UNCRC and understanding the child's right perspective
- Legislation relating to equality, inclusion and young people's rights
- Models for communicating and creating an appropriate relationship with parents in relation to the importance of children and young people's opportunity to be heard
- Active listening in relation to hearing parents views and concerns in relation to their children being offered an opportunity to be heard
- Models for communicating with parents and particularly in relation to giving information and explanations so that parents are clear what you mean
- Sources of information and support for children and young people and their parents
- Principles and practice of anti-discrimination and inclusion for working with children and young people
- Relevant law, policy and procedure relating to inclusion, equality, participation and children's rights
- The range of communication and behaviours that result from cultural, age, gender, ability, racial or religious diversity and communicating with respect
- The role of the direct work co-mediator and/or child practitioners, including appropriate commissioning and contracting
- Procedures and documents required for the recording of issues related to children and young people's rights and their views (including confidentiality and data return)

Performance/Skills - Must be able to demonstrate/evidence

- Work and communicate effectively with parents to identify and reduce barriers that can prevent the inclusion of the child or young person's view or perspective as part of the mediation process
- Ability to support parents in enabling and supporting their children to be heard as part of family dialogue towards parental decision making
- Identify and seek expertise to deal with any barriers that are outside your role or expertise
- Follow policies and procedures for equality of access, inclusion and anti-discriminatory practice and participation
- Identify and appropriately challenge practice, procedures or policies that can exclude children and young people
- Identify, signpost and/or provide any support that parents, children and young people need to participate in decision making that affect their lives
- Identify the most appropriate means for a child or young person to be heard, plan with and make appropriate arrangements for that process, including suitable partnership working with direct work co-mediator or child practitioner (where decided on)
- Work within the boundaries of role and responsibilities
- Identification and appropriate completion of all recording/data/audit material required

Direct Work Co-Mediator

These are the competencies required of FMCA mediators who wish to train, qualify and practice in direct work with children as part of a dispute resolution process

Knowledge - Must know and understand

- Role and responsibilities in relation to the rights and interests of children, young people and their parents, how to maintain yourself as a professional and where to seek assistance from others including maintaining regular and appropriate supervision of your practice
- Family systems theory (higher level)
- Attachment theory (higher level)
- Theories of power balance, respecting the rights of the child or young person
- Core and relevant research
- Theories in child development (higher level)
- Theories of sibling and group work
- Children and young people's reactions to separation, change and family transition (higher level)
- Relevant law and legislation in private law children's matters
- Relevant legislation in relation to the child and young person's right to be heard including Art. 12 UNCRC and understanding the child's right perspective
- Safeguarding – including relevant legislation and statutory requirements of 'Working Together', principles and practice in relation to Domestic Abuse/Violence
- Legislation relating to equality, inclusion and young people's rights
- Mental and physical illness and disability in children and in adults
- Active listening in relation to hearing children and young people appropriately and providing them with the opportunity to communicate
- Models for communicating and creating an appropriate relationship with children and young people
- Ways of giving information and explanations so that children, young people and their parents are clear what you mean
- Principles and practice of anti-discrimination and inclusion for working with children and young people

- Relevant policy and procedure relating to inclusion, equality, participation and children's rights
- Principles of assessment of competence, especially in relation to 'Gillick' competence
- Principles of confidentiality. for younger, older children and in relation to Gillick competence. Interface between out of court and in court processes
- Role and responsibility of (key/commissioning) mediator
- Role and responsibility of CAFCASS and of Children's Services/other agencies
- Parenting Plans
- The range of communication and behaviour that result from cultural, age, gender, ability, racial or religious diversity and communicating with respect
- Procedures and documents required for the recording of issues related to children and young people's views and right to be heard (including confidentiality and data return)

Performance/Skills – must be able to demonstrate/evidence

- An awareness of role and objectives and maintenance of professional practice
- An ability to 'contract' effectively with co-professionals, parents and child or young person
- Ability to support and enable children and young people to be heard and to support children who are distressed
- Provide age appropriate information to children and young people In relation to the effects of family separation, transition and change and identify sources of help and support
- Demonstrate an ability to work in partnership with co-mediator or other professionals as appropriate etc.
- Proper and sensitive assessment of the child's competence, including whether the child is 'Gillick competent'
- Provide age appropriate explanation of principles of confidentiality and privacy and any exceptions to child or young person
- Identify and utilise the most appropriate means to communicate with the child or young person
- Identify and plan for the most appropriate means to work directly with sibling groups
- Identify and assist children and young people to decide on what they want their parents to know and understand and how that it is to be communicated on the child or young person's behalf
- Explore with children and young people where they have concerns about what they would like their parents to know and assist them to consider the ways in which a difficult message can be communicated whilst ensuring that the child is aware that they have a right to confidentiality or privacy of their view (with exception in relation to harm)
- Assist the child or young person to communicate with their parents in person or with support as appropriate
- Assist the child or young person to consider possible outcomes as a result of sharing their perspectives or views with the parents
- Ability to plan for and manage feedback from direct work with child or young person whether with the child or young person or with parents
- Provide feedback to/support children and young people regarding parental responses or decisions made
- Identification and appropriate completion of all recording/data/audit material required

Child Practitioner

Listed here are the competencies to be met by a child professional/child practitioner (i.e. a professional who is **not** a mediator but is skilled in working directly with children and young people). It would be for the professional organisation/s to decide whether and how they would test what may be termed 'generic' competencies that would very likely form part of the qualification and experience of any child professional (as it may not be appropriate/desirable for some of these professionals to have to repeat learning in areas of qualification and practice that they may already

hold). This might be by reviewing/comparing competencies for child professionals that are already established and deciding whether those qualifications would 'exempt' the child professional from requirements to meet any other than the mediation related competencies.

For ease, the competencies that are set out here and marked with an * are those that relate directly to mediation related competencies.

Knowledge - must know and understand:

- Role and responsibilities in relation to the rights and interests of children, young people and their parents, how to maintain yourself as a professional and where to seek assistance from others including maintaining regular and appropriate supervision of your practice
- Family systems theory (higher level)
- Attachment theory (higher level)
- *Family conflict theory in relation to separation, divorce and family transitions
- *Theories in family dispute resolution
- Theories of power balance, respecting the rights of the child or young person
- Core and relevant research
- Theories in child development (higher level)
- Theories of sibling and group work
- Children and young people's reactions to separation, change and family transition
- *Relevant law and legislation in private law children's matters
- Relevant legislation in relation to the child and young person's right to be heard including Art. 12 UNCRC and understanding the child's right perspective
- *Principles and practice of family mediation
- *The role, responsibilities and boundaries of family dispute resolution practitioners
- *The role and responsibilities of child practitioners working in/with family dispute resolution/family dispute resolution practitioners
- *Principles and practice in relation to other forms of family dispute resolution
- *The role of mediators, collaborative practitioners, family arbitrators, family solicitors
- Principles of assessment of competence, especially in relation to 'Gillick' competence
- *Confidentiality in respect of mediation process and in relation to the child's right to be heard in any process where decisions will be made that will affect their lives
- Safeguarding – including relevant legislation and statutory requirements of 'Working Together', principles and practice in relation to Domestic Abuse/Violence
- *The role of statutory agencies – CAFCASS and Children's Services in relation to private law families
- Legislation relating to equality, inclusion and young people's rights
- Mental and physical illness and disability in children and in adults
- Active listening in relation to hearing children and young people appropriately and providing them with the opportunity to communicate
- Models for communicating and creating an appropriate relationship with children and young people
- Ways of giving information and explanations so that children, young people and their parents are clear what you mean
- Principles and practice of anti-discrimination and inclusion for working with children and young people
- Relevant policy and procedure relating to inclusion, equality, participation and children's rights
- Principles of confidentiality including for younger, older children and in relation to Gillick competence. Interface between out of court and in court processes
- Role and responsibility of (key/commissioning) mediator
- *Role and responsibility of CAFCASS and of Children's Services/other agencies
- *Parenting Plans

- The range of communication and behaviour that result from cultural, age, gender, ability, racial or religious diversity and communicating with respect
- Procedures and documents required for the recording of issues related to children and young people's views and right to be heard (including confidentiality and data return)

Performance/Skills - must be able to evidence/demonstrate

- * An awareness of role and objectives and proper maintenance of professional practice
- *An ability to 'contract' effectively with co-professionals, parents and child or young person
- Ability to support and enable children and young people to be heard and to support children who are distressed
- *Provide age appropriate information to children and young people In relation to the effects of family separation, transition and change and identify sources of help and support
- *Demonstrate an ability to work in partnership with co-mediator or other professionals, etc.
- Proper and sensitive assessment of the child's competence, including whether the child is 'Gillick competent'
- *Provide age appropriate explanation of principles of confidentiality and privacy and any exceptions to child or young person
- Identify and utilise the most appropriate means to communicate with the child or young person
- Identify and plan for the most appropriate means to work directly with sibling groups
- Identify and assist children and young people to decide on what they want their parents to know and understand and how that it is to be communicated on the child or young person's behalf
- Explore with children and young people where they have concerns about what they would like their parents to know and assist them to consider the ways in which a difficult message can be communicated whilst ensuring that the child is aware that they have a right to confidentiality or privacy of their view (with exception in relation to harm)
- Assist the child or young person to communicate with their parents in person or with support as appropriate
- Assist the child or young person to consider possible outcomes as a result of sharing their perspectives or views with the parents
- *Ability to plan for and manage feedback from direct work with child or young person whether with the child or young person or with parents
- Provide feedback to/support children and young people regarding parental responses or decisions made
- *Identification and appropriate completion of all recording/data/audit material required

Professional Practice Consultants (Child Inclusive Practice)

The Advisory Group has noted the information in relation to the role and practice of the Professional Practice Consultants (PPCs) working with mediators and as has been set out in the FMC Manual for Professional Standards and Self-Regulatory Framework (September 2014). As it is the case that the framework includes competencies for mediators (up to and including FMC Accredited status), it would seem equally as important for competencies in relation to Professional Practice Consultants to be developed in order to provide an appropriate framework in relation to this vital role. Similarly, there would need to be particular competencies in relation to those PPCs who will provide support to mediators or other child professionals (who wish to have their dispute resolution related practice supervised by a PPC rather than their own clinical supervisor) offering child inclusive practice.

The Advisory Group suggests the following competencies as a starting point for such a framework (and as additions to the current definition and essential requirements set out in Part 4: Common requirements for Professional Practice Consultancy, FMC Manual):

Knowledge - Must know and understand:

- The role and responsibility of the PPC in supporting Child Inclusive Practice and practitioners
- Relevant theoretical understanding of models for supervision and supervisory/guided practice
- Models for assessing practitioner professional development and competence and appropriate appraisal
- Relevant theoretical understanding in relation to children's rights and parental responsibility
- Relevant theoretical understanding of family systems, attachment, child development, sibling groups, the effect of separation, change and family transitions
- Relevant law and legislation in private law children's matters
- Relevant legislation in relation to the child and young person's right to be heard inc. Art. 12 UNCRC and understanding the child's right perspective
- Safeguarding – inc. relevant legislation and statutory requirements of 'Working Together', principles and practice in relation to Domestic Abuse/Violence
- Legislation relating to equality, inclusion and young people's rights
- Mental and physical illness and disability in children and in adults
- Active listening in relation to hearing children and young people appropriately and providing them with the opportunity to communicate
- Models for communicating and creating an appropriate relationship with children and young people
- Ways of giving information and explanations so that children, young people and their parents are clear what you mean
- Principles and practice of anti-discrimination and inclusion for working with children and young people
- Relevant policy and procedure relating to inclusion, equality, participation and children's rights
- Principles of assessment of competence, especially in relation to 'Gillick' competence
- Principles of confidentiality including for younger, older children and in relation to Gillick competence. Interface between out of court and in court processes
- Role and responsibility of (key/commissioning) mediator, direct work co-mediators and other child professionals
- Role and responsibility of CAFCASS and of Children's Services/other agencies
- Parenting Plans
- The range of communication and behaviour that result from cultural, age, gender, ability, racial or religious diversity and communicating with respect
- Procedures and documents required for the recording of issues related to children and young people's views and right to be heard (including confidentiality and data return)

Performance/Skills – must be able to demonstrate/evidence

- An awareness of role and objectives and maintenance of PPC's own professional practice
- Demonstrate the ability to apply models of supervisory/guided practice
- Make appropriate assessments of supervisees professional development, competence in practice and in providing appraisals
- An ability to test and challenge supervisee practice positively, appropriately and as a means to develop best practice
- Ability to assist supervisees to achieve best practice standards in supporting and enabling children and young people to be heard and in supporting children who are distressed
- Ensure that supervisees are aware of all policies and procedures in relation to working within the principles of inclusion, equality, participation and children's rights and in relation to anti-discrimination
- Check the supervisees ability to properly and sensitively assess the child's competence, including whether the child is 'Gillick competent'

- Ensure that the supervisee is able to provide age appropriate explanation of principles of confidentiality and privacy and any exceptions to child or young person
- Assist supervisees to identify and utilise the most appropriate means to communicate with the child or young person or with sibling groups
- Ensure that supervisees can identify and assist children and young people to decide on what they want their parents to know and understand and how that it is to be communicated on the child or young person's behalf
- Ensure that supervisees can assist the child or young person to consider possible outcomes as a result of sharing their perspectives or views with the parents
- Assist supervisees to plan for and manage feedback from direct work with child or young person whether with the child or young person or with parents
- Ensure that supervisees have Identified and have completed appropriate recording/data/audit material required

Annex 7

Citizen Space Survey

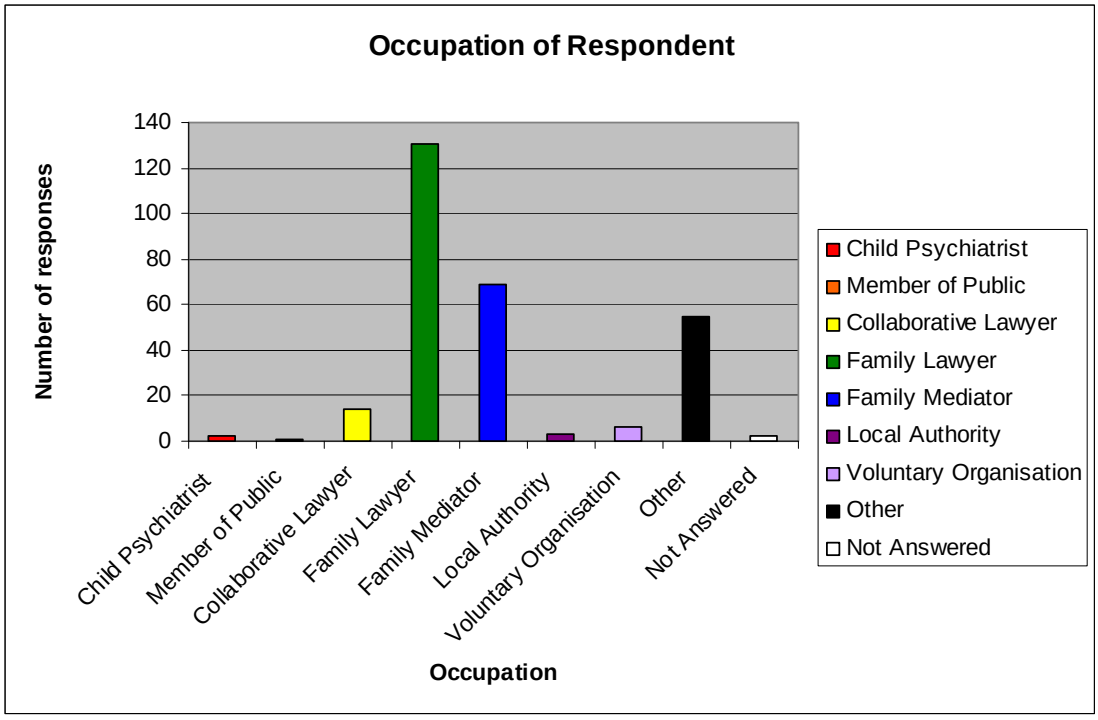
A Citizen Space Survey was carried out to support the Advisory Group, and in particular the work streams, in order to:

- improve the recording of the numbers of mediators and others trained and engaged in child inclusive practice
- improve the recording of the number of children and young people seen and invited to participate in child inclusive practice.

Sample and Methodology

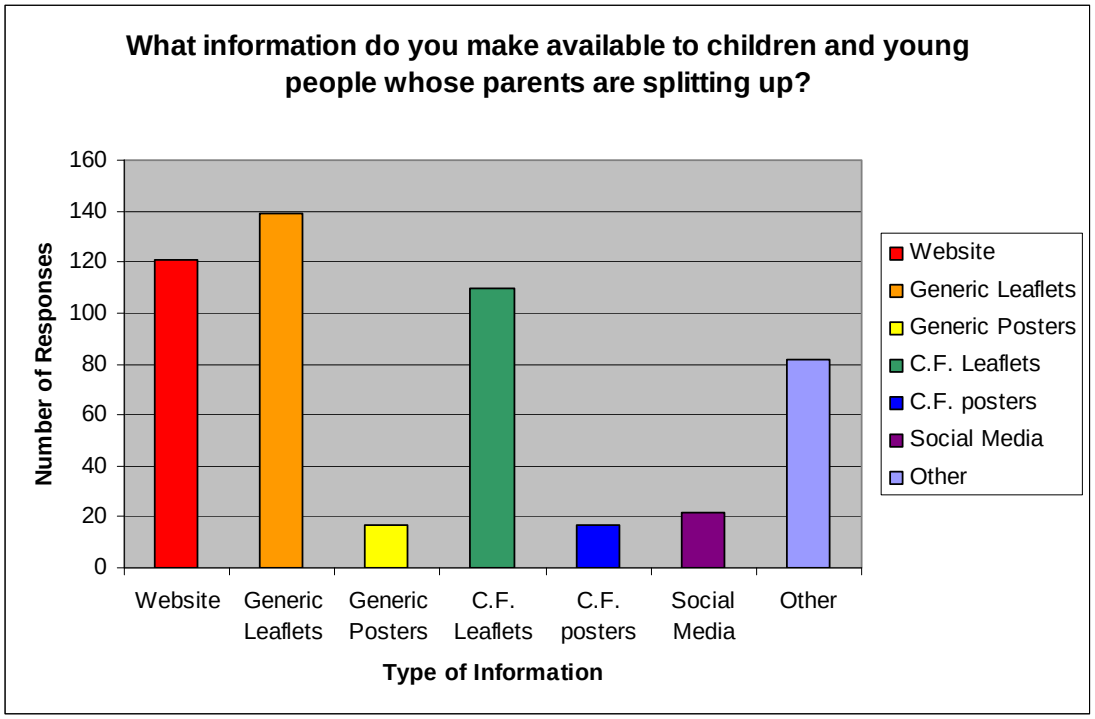
A survey was created aimed at anyone with experience of dealing with separated families and professionals with experience of working with children in other professions. It required an online response to 7 questions.

The survey was launched on 2 January 2015 and ran until 16 January 2015. The consultation received 283 responses from a variety of professionals.



- 131 of the responses were from family lawyers, with 69 responses from family mediators and 14 from collaborative lawyers.
- Of the 55 'other' responses, 35 were from CAFCASS or NYAS.
- The 'Other' category also included magistrates and the judiciary as well as multi-skilled mediators (for example, family mediators who were also family lawyers)

Information Provision



This question allowed respondents to select multiple options on the information they make available to children and young people.

- 139 respondents made generic leaflets available to children and young people, with 121 offering information via their website.
- 110 made specific child-focused leaflets available to children and young people.
- Of the 82 'other' responses, 12 felt that direct discussion with children was the most useful source of information and 10 provided books, literature or a recommended reading list. 10 replied that they had never been asked for information or offered nothing to children and young people.

The wide variety of responses suggests that, at present, a range of information products are used and there is no consensus on which information is best suited to children and young people. The most common information available was 'generic' and not focused at the specific requirements of children and young people experiencing separation and divorce. The 'Other' category included provision of books and literature as well as consultation (either face to face, via telephone / text or via letters)

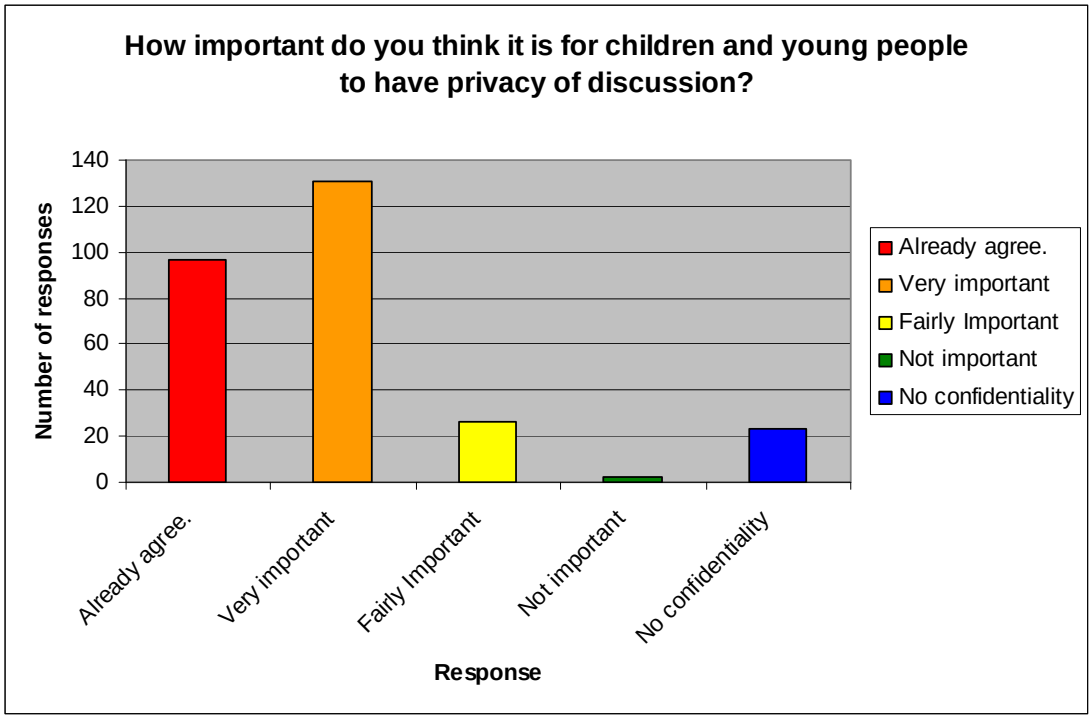
Website	Generic Leaflets	Generic Posters	Child Focused Leaflets	Child Focused posters	Social Media	Other
121	139	17	110	17	22	82

Importance of Privacy of Discussion

Respondents were asked about the importance of discussions with children and young people being private:

- 131 respondents agreed that it was very important for children and young people to have privacy of discussion, with an additional 97 saying that they always agree with the child or young person what they can disclose to the parent(s)
- Only 2 respondents said that privacy of discussion was not important
- 23 respondents felt that confidentiality of discussion should not be offered. Of these responses, 15 felt that that transparency was important to keep the parents informed or to prevent professional conflict of interest

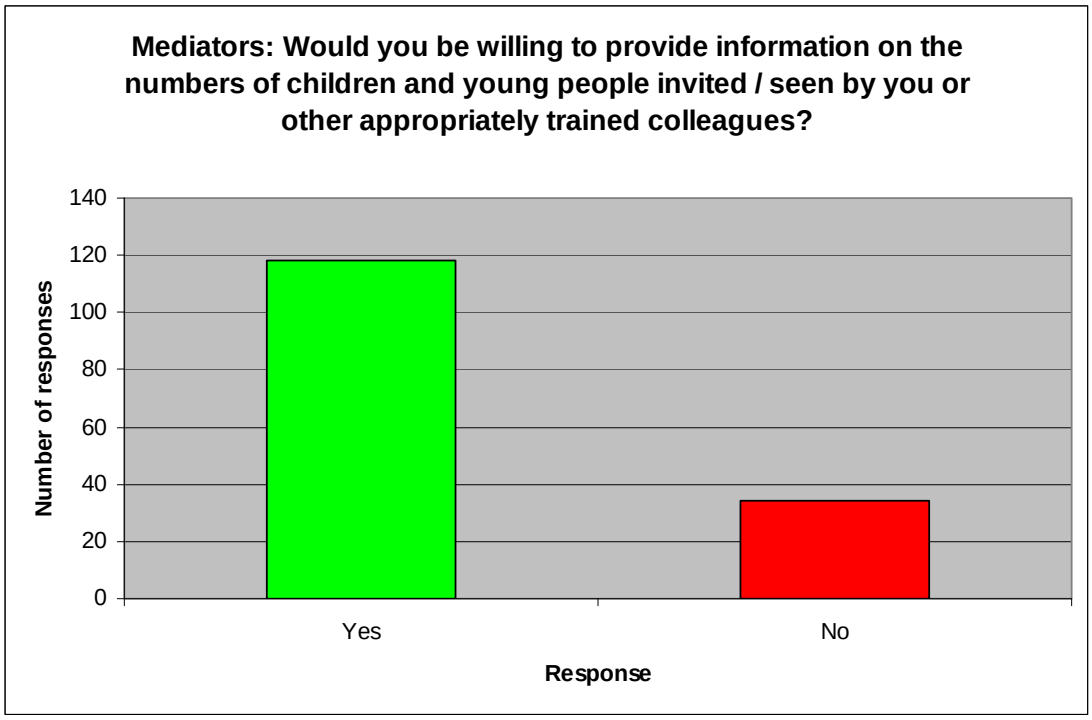
The responses support the principle shared by the Advisory Group of the importance of privacy of discussion. The Group recognised mediation as being an essentially confidential process and felt it should remain as such, albeit with the standard safeguarding requirements.



Already agree.	Very important	Fairly Important	Not important	No confidentiality	Not answered
97	131	26	2	23	4

Views on Providing Information about the Numbers of Children Invited to Mediation

This question was aimed specifically at mediators with direct experience of child-inclusive practice.



- Of 152 responses to this question, 118 mediators agreed that they would be happy to provide information on the numbers of children and young people invited or seen in their practice
- Only 34 respondents were unwilling to provide this information
- Of these 34 responses, 13 indicated that their response was due to a lack of training or lack of direct child inclusive practice

We note that the majority of mediators felt happy to provide this information.

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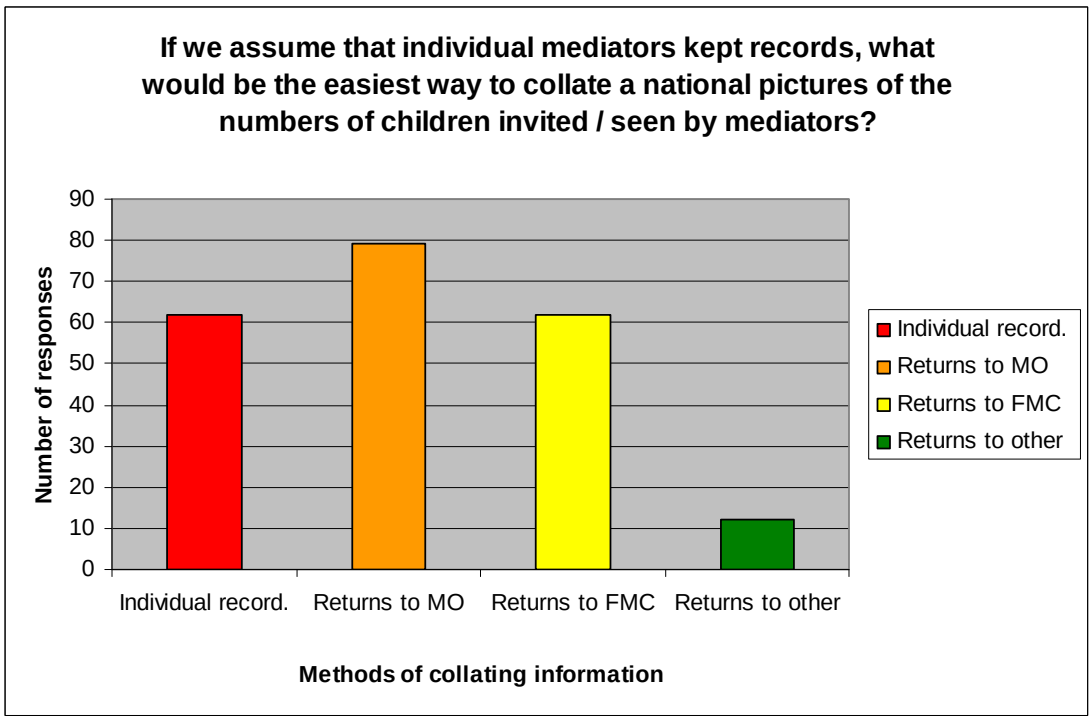
Views on the Easiest Way to Collate Information



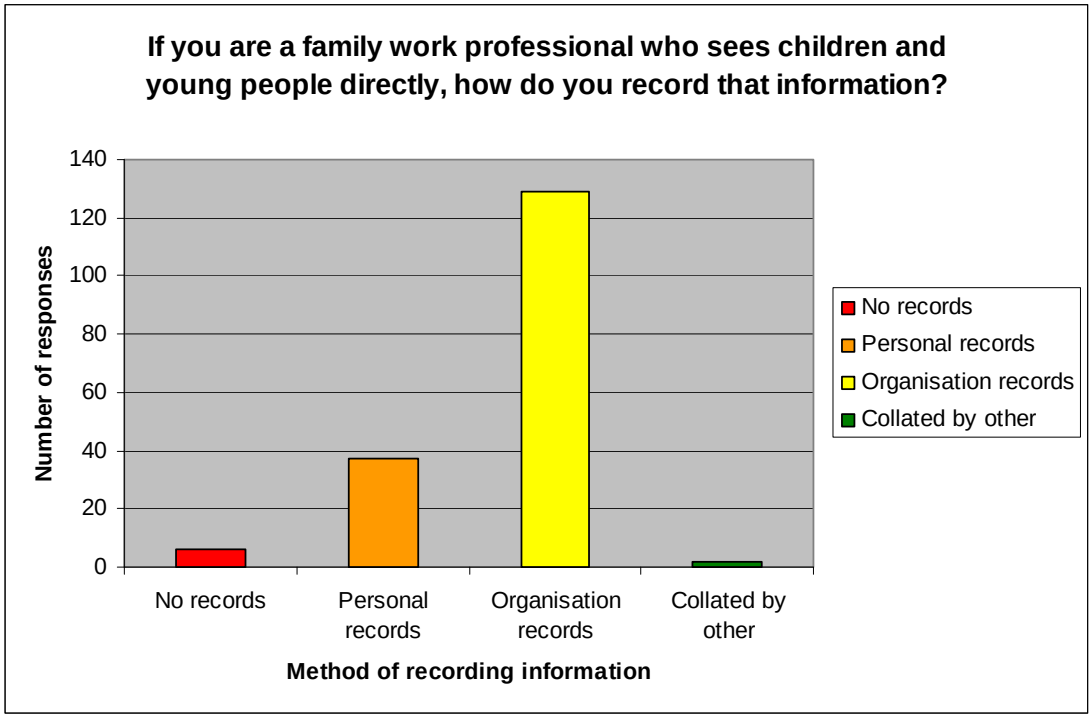
This question received a range of responses, with 79 making returns directly to member organisations, 62 making returns directly to the Family Mediation Council and 62 preferring to keep individual records.

- Of the 12 'other' responses, there was a range of suggestions including providing information to the MoJ / HMCTS, CAFCASS and the Legal Aid Agency

Individual record.	Returns to Member Organisation	Returns to Family Mediation Council	Returns to other	No answer
62	79	62	12	68

Views on How Practitioners Currently Record Information on Child Inclusive Practice

This question was aimed at family work professionals (for example, family law specialists, family workers, child psychologist and child advocates).



- Of the 174 responses to this question, the majority (129) responded that their organisation records the information on the number of children and young people that are seen professionally
- Only 6 respondents said that they keep no records

The responses underline the need to bring family mediation into line with other family work professionals, ensuring appropriate recording of information required for audit purposes and for professional accountability.

No records	Personal records	Organisation records	Collated by other	No answer
6	37	129	2	109

Views on a Single Standard for Practitioners Working Directly with Children and Young People.

- Of 274 responses to this question, 221 indicated that a single standard would help promote and encourage child inclusive practice
- Of these responses, the most common benefits recorded were consistency of approach and training, a belief it would result in higher standards and a greater focus on the child or young person
- Only 53 felt that a single standard would not be beneficial
- Of these responses, the most common concerns related to differences between member organisations preventing a common framework and a concern that a single approach limits creativity and prevents a flexible approach.

Other Comments

A number of themes emerged from the responses to the survey:

Family Lawyers

Responses from family lawyers were mixed in terms of involving children and young people directly in out of court dispute resolution processes. Some regarded the current a lack of involvement as detrimental, while others regarded it as the responsibility of the parent(s) to include children and young people and keep them informed. A few pointed to the need for caution due to concerns over pressure being placed on the child by a parent over a particular course of action.

Some respondents referred to training, noting that specific, highly skilled training was necessary to deal with children and young people effectively, and a few stated that they have no interest in child inclusive practice or that parents do not want their children involved. Some others raised

professional conflict of interest concerns, feeling it would be inappropriate to consult directly with the children and young people if they were representing either parent.

Family Mediators

The majority of family mediators were in agreement that the direct involvement of children and young people can be useful and beneficial, but should not be mandatory. There was an emphasis on inclusion being age appropriate and a belief that parental consent is of great importance.

Several mediators raised concerns about funding and affordability, both for the mediator and the parties involved, and some raised concerns about a lack of specific knowledge / training in direct consultation with children.

General Thoughts and Themes

There were a number of other comments such as: a belief in the importance of 'the right setting' for child inclusion to be beneficial and for the child to feel secure; a belief that support is needed for both the parent and the child; a belief that sharing good practice is beneficial for everyone involved in direct consultation with children.

Conclusions

A number of conclusions can be drawn from the Citizens' Space survey. These are that:

- The mixed messaging and number of variations of material available suggests that a clear, consistent message for children and young people is lacking for those experiencing parental separation
- There is consensus about the importance of confidentiality for children and young people in mediation
- The majority of mediators surveyed would be willing to record the numbers of child inclusive practice
- The mixed response to how information should be recorded highlights the lack of consistency within the mediation sector in recording child-inclusive practice
- Elsewhere it is standard for practitioners to record the numbers of children and young people seen or invited to be seen and to keep records
- A single standard for those working directly with children and young people would be desirable and encourage good practice