

Listening to children's views

The findings and recommendations of recent research

Ann O'Quigley

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This report is in three sections.

- The first discusses the present situation regarding the representation of children's views in private law proceedings.
- The second looks at how these views could be better represented under new arrangements.
- The third looks at children's views as expressed to researchers.

Please note that for the sake of brevity I have used the word 'children' rather than the more accurate phrase 'children and young people' to refer to minors of up to 18 years old. The word 'children' must therefore be understood to include young people. I have sometimes used the word 'young people' when the reference is specifically to older children.

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Summary

This report was produced for a seminar for members of the Lord Chancellor's Advisory Board on Family Law on 5 July 1999. The purpose of the report was to summarise the findings of current research on the issues of listening to children and considering their best interests. This was in the context of the development of court rules in relation to section 11 of the Family Law Act (FLA).

The report summarised the findings of research on:

- 1 the present situation regarding the representation of children's views in private law proceedings
- 2 the more effective representation of children's views under new arrangements;
- 3 children's views on how they would like to be involved.

The present situation

Listening to children involved in family proceedings

Court welfare service

Court welfare officers (CWOs) work mainly through parents and not so much with children. CWOs give various reasons for this including lack of time and limited experience of working with children. According to researchers, some of the contact CWOs have with children is of limited value because of the way in which they are constrained by their constructions of children and also by their awareness of the current judicial ideology that it is in the child's best interests to maintain contact with both parents. Both of these mean that CWOs often

lose sight of the individuality of the child.

Mediation

Most mediators work indirectly by encouraging parents to think about their children's wishes and feelings rather than by talking directly with the children. Researchers expressed concern that mediators in their search for a resolution may overlook the fact that the two parties to the mediation may not be equally powerful and this may lead to oppressive practices where 'agreement' has in effect been coerced. Such practices may further marginalise children involved in the divorce process.

Does the Statement of Arrangements form safeguard children's interests?

There was general scepticism amongst both judges and solicitors as to whether the Statement of Arrangements procedure in any way safeguards the interests of children.

Family Assistance Orders (FAOs)

These are the only means by which social work agencies might be required to help families and children involved in private law proceedings. However, CWOs and judges are not clear about the purposes of FAOs. There are many FAOs where CWOs do not do any work with the children even though they are named in the orders.

Solicitors

Solicitors are in a powerful position *vis-à-vis* their clients. Most solicitors accept the current ideology that it is nearly always in the best interests of the child to maintain contact with both parents and they may bring pressure to bear on clients who oppose such contact. Solicitors do not usually see the child themselves. This is partly because they see

children as potential manipulators *and* as victims of manipulation by parents.

Violence

Researchers expressed concern that the child's voice is currently not being heard in private law proceedings and some children are being forced to maintain contact with violent, abusive parents.

More effective representation

Possible ways of enhancing the role of the CWO

CWOs should: play a more central role from the outset; be able to call on expert witnesses; be able to adopt a more therapeutic, social work role towards children; receive more training in working with children.

Separate legal representation for children

This should be available in cases of entrenched conflict, where there is a history of violence or where the child holds a different view from the CWO. However, separate legal representation may be bad for continuing relationships within the family.

Altering the Statement of Arrangements form

This could be improved to take account of the criticisms made by judges and solicitors. It could be used as a means of channelling families who need more help towards appropriate providers.

Unified service

A new unified welfare service should aim to fill in the gaps in present provision, notably children's access to information and

counselling. Full consideration needs to be given to the provision of any necessary further training of practitioners.

Mediation

There were mixed views as to whether the increasing importance of mediation could have positive outcomes with regard to hearing the voice of the child.

Children's views

Children's experiences of talking to professionals

Children generally are reluctant to talk to outsiders about family matters. Those who have seen professionals found them to be interventionist rather than supportive. They felt that professionals tended to interrogate them rather than have open discussions with them. They found them to be judgemental and intrusive. Children were aware that discussions were not confidential and this led to lack of trust.

Support services children feel that they need

Children want: access to information in a non-stigmatising way (e.g. Internet); accessible, confidential consultation service for children experiencing family breakdown; and separate legal representation for children who need it.

Successful ways of listening to children

- If possible, children should be assured of confidentiality; if this is not possible then the limits to confidentiality should be made clear at the outset.

- Adults should be aware of developmental and cultural factors but should beware of making assumptions about the individual child on the basis of these.
- Adults should adopt a non-intrusive style of interviewing with the aim of learning from the child.
- The child needs adequate information in order to express views.
- Questions should be simple and direct; indirect questions should be avoided as these are experienced by children as 'trick' questions.
- Adults should be open-minded and non-judgemental, and allow the child to raise their agendas and not simply respond to the adult agenda.
- Adults should allow the child to tell the whole of their story, without interrupting or rushing to interpretation.
- Younger children may prefer to speak if they have a friend with them.
- Good communication is more likely to occur if adults see children's abilities and competencies as being *different* from rather than *lesser* than adults'.

- Some children may not want to participate in decision-making at all.
- The interviewer should be alert for any sign of distress in the child and acknowledge it.

Seminar on 5 July 1999

A summary of the discussion at the seminar on 5 July 1999 is to be found in Chapter 4. Shortly before the seminar, the Lord Chancellor announced that the enactment of Part II of the FLA would be postponed. This meant that there was no longer an immediate concern with developing court rules under section 11 of the Family Law Act and therefore the discussion was more broad-ranging touching on general problems to do with changing the wider cultural setting as well as specific points regarding the court welfare service. Suggestions that were made for encouraging positive change so that the voices of children are properly attended to have been listed at the end of Chapter 4.

1 What do we know about the way that children's views are represented at present?

Background

On the basis of recent trends, it is estimated that 19 per cent of children born to married couples will experience parental divorce by the age of ten and 28 per cent will do so by the age of 16. The numbers of children affected by the breakdown of the relationship of their unmarried parents is not known (Rodgers and Pryor, 1998, p. 4).

Millions of children experience these momentous changes which may have numerous consequences for them, yet they may have little say in them and very often they will not even be informed about them (Dasgupta and Richards, 1997, p. 107; ChildLine, 1998; Lyon *et al.*, 1998, p. 21; Butler *et al.*, 1999).

There is general social concern because some children are adversely affected by divorce (Rodgers and Pryor, 1998).

Why is it important to listen to children in family proceedings?

Various reasons are put forward by researchers for listening to children who are involved in separation and divorce. Different researchers give more weight to some reasons than to others and this affects their views on how we can best listen to children to ascertain their wishes and feelings.

- Listening to children and ascertaining their wishes and feelings in situations of separation and divorce is a matter of respecting their *rights*. Taking their views

into account in reaching post-divorce arrangements is a matter of *justice*. These rights are enshrined in Article 12 of the *UN Convention on the Rights of the Child*. Ascertaining the wishes and feelings of the child is also required under the welfare checklist of the Children Act 1989. If children are to act as 'participatory citizens' in a true democracy (as opposed to one where rights can be constrained by a factor such as age and the presumption of lack of competence) they must be listened to. Only in this way can children be 'subjects' who act in their own right and not the 'objects of concern' whose 'best interests' and 'welfare' are interpreted on their behalf by adults (Roche, 1999).

- It is dangerous to assume that parents will always act responsibly with regard to their children (Murch, *et al.*, 1998, p. 122). Yet, where parents are in agreement about arrangements post-divorce, then these will rarely be subject to judicial scrutiny and children's views will not be ascertained.¹
- Listening to children involved in these situations and taking their views into account will lead to better decisions which will be more likely to be adhered to in the longer term.²
- If we listen to children we will see that the judicial tendency to focus on the individual and the rights of the individual may be inappropriate in

family law. Children see the family as a network of relationships, based on an ethic of caring for one another, irrespective of the form any particular family may take. For children it is the *quality* of the relationships that is important. It is therefore dangerous to stigmatise any form of the family or assume that any particular form is more virtuous and therefore more desirable than another. A flexible approach which takes account of the complexity of family interrelationships is needed (Katz, 1997a, p. 7; ChildLine, 1998, p. 58; Morrow, 1998b; Neal, 1999, p. 16).

- If children's voices had a place in the negotiation of the post-divorce family then highly conflictual situations where parents resort repeatedly to the courts and children are used as weapons in an inter-parental struggle would be less likely to happen (Lyon et al., 1998, p. 27).
- Even in families where children would usually be treated with respect and have their views listened to and taken into account, this may not happen where the parents are themselves emotionally and perhaps physically distraught.³
- Whether or not they are spoken to and listened to by adults, children will be aware that something is going on that is very important for them. If adults do not communicate with children this does not protect them but makes them more vulnerable (NSA, 1999a).⁴
- Children will develop their own understandings of what has happened.

Very often they believe that they are in some way responsible for their parents' relationship failure (NSA, 1999b; Smith, 1999b, p. 14).

- Being listened to is itself of therapeutic value and not being listened to or consulted can lead to distress and feelings of rejection (Richards, 1999; Dasgupta and Richards, 1997, p. 108; ChildLine, 1998, p. 60; Smith, 1999a, p. 12).

Listening to children involved in family proceedings at present

The main ways by which the wishes and feelings of children involved in the process of divorce are heard is indirectly through the court welfare officer (CWO) or through a mediator.

A CWO may be appointed by the court where the parents cannot come to an agreement about post-divorce arrangements.

Mediation is provided in court by CWOs. It is also provided by the Family Mediation Association and National Family Mediation.

In all those cases where the parents come to an agreement it is impossible to say whether the children who are involved have been allowed to express their wishes and feelings at all or even whether they have had any information from their parents about what is happening to them.⁵

We do not know about the situation of children involved in family breakdown where the parents are not married.

Court welfare officers

The probation service has been responsible for welfare reporting since the 1950s. Currently there are around 700 family CWOs, including 70

senior officers. CWOs are qualified social workers who have usually worked as probation officers.

CWOs mainly work through parents rather than directly with children (Hunt and Lawson, 1999, p. 26). Their focus is to encourage parents to reach a resolution and this is generally perceived as being the best way to help the children (Hunt and Lawson, 1999, p. 23). They have limited contact with the children. CWOs have been criticised in the past for not ascertaining the children's wishes and feelings (James and James, 1999, pp. 196–7). The welfare checklist of the Children Act and the National Standards for CWOs require the court to take the ascertainable wishes and feelings of the children into account. Some CWOs feel that they are more conscious of these requirements now and therefore are more child-focused (Hunt and Lawson, 1999, p. 30). However, some CWOs are still reluctant to work directly with the child and there is no requirement for them to do so; some of those who do see the child do so only because they feel pressurised by the court (Hunt and Lawson, 1999, p. 38; James and James, 1999, p. 197; Sawyer 1999b, p. 262).

Problems with the court welfare officer's role regarding children as perceived by CWOs

- Workload – many practitioners mentioned this as a problem in ascertaining children's wishes and feelings.⁶
- Limited nature of the role – apart from lack of time, practitioners mentioned the fact that they were not involved in a case from the outset; do not play a central role in the court proceedings; they do not have

a budget to call in expert opinion and usually they have no contact with the family for any follow-up work once the proceedings are over (except in the relatively rare cases of the Family Assistance Order, but CWOs are very reluctant to recommend these because there is no funding for them) (Hunt and Lawson, 1999, pp. 31–3, 53–6).

- Lack of experience and training in dealing with children (Hunt and Lawson, 1999, p. 38).

Problems with the court welfare officer's role regarding children as perceived by researchers

Sawyer's research (Sawyer, 1999b)

Sawyer found that CWOs were under pressure to bring about the settlement of disputes on a pre-stated model (i.e. the ideal post-divorce family, which is seen as being one where both parents maintained contact with the child and were conscious of their responsibility to the child). She felt that their consciousness of parental rights prevented them from seeing the child as a person in their own right with their own individual needs and agenda. The assumption of automatic parental responsibility in contested cases reduced the pressure on their workload. Sometimes CWOs reached conclusions that they admitted they felt uneasy about and on questioning agreed that their recommendations were not in the best interests of the child but that they would make them because they fitted in with current judicial ideology. Where children expressed opposition to contact with a non-resident parent these views were not given credence but were attributed to pressure from the resident parent.

The CWOs interviewed said that a recommendation of 'no contact' would require the bringing in of expert psychiatric evidence, about the *child*, whereas a recommendation for 'contact' would not require the bringing in of expert witnesses. For these CWOs, the active participation of the child was not on the agenda at all. In any discussions with children, the CWOs were clear that they were not offering confidentiality. However, this was not always understood by the children who may subsequently feel misled and betrayed by the process. CWOs justified their practices by reference to research that they were aware of, though they were unable to cite it, nor were they aware of any criticisms of this research. Individual children's views, and indeed individual adult views, were unimportant because the prevailing judicial culture is so strong that CWOs are unable to resist it and in effect the child has no voice because a dissenting voice will not be heard.⁸

*Smart et al.'s research*⁹

Smart *et al.* conclude that children may feel disempowered by the legal process because of the lack of confidentiality in their dealings with the CWO, the way in which their 'evidence' is used selectively, the way in which the CWO may perceive the child as part of the family 'system' and not as an individual in their own right, and the way in which the child's views may be ascertained, sometimes indirectly, sometimes in the presence of parents. For some children the experience may not help at all, and may even be negative.¹⁰

*Butler et al.'s research (Butler et al., 1999)*¹¹

Some of the children in Butler *et al.*'s sample had had dealings with CWOs. One child expressed

dismay that her wishes and feelings as expressed to the CWO had been largely ignored in the report; another child reported that the CWO, in representing his views to the court, had so distorted them that in fact a view that was in some respects the opposite of his own view was expressed to the court as being his view. The researchers conclude that if we are to endeavour seriously to ascertain the wishes and feelings of children then their views should be heard accurately and without interpretation.

*Hunt and Lawson's research (Hunt and Lawson, 1999)*¹²

All the practitioners interviewed in this research had experience of working as CWOs and guardians *ad litem* (GALs) in public law procedures. The researchers conclude that because of the limitations in the scope, depth and power of the CWO's role it was difficult for practitioners to achieve even 'good enough' practice. The GAL can focus on the child; the CWO focuses more on the family (Hunt and Lawson, 1999, pp. 30, 44, 102).

Trinder's research (Trinder, 1997)

Trinder concludes that the way in which CWOs operate with regard to children is largely determined by the way they conceptualise children and this affects how they go about their work and their relationships with the child, the parents and the court. Different models of children are found amongst different teams of CWOs.¹³ What they have in common is that these constructions cannot be responsive to the individuality of children and, in working with unconscious models of children, CWOs have developed practices that are for them based on certainties about what children are like and in

this process the individual voice of the child is likely to be lost:

Ascertaining wishes and feelings is only partly about having a right to a say, and very much more about enabling a welfare professional to make the best possible assessment of the child's need and welfare. (Trinder, 1997, pp. 298–9)

Trinder concludes by recommending that professionals should approach each case from a position of uncertainty, respecting the complexities and ambiguities in the lives of the people they will deal with rather than working with unexamined assumptions about children which are based on adult constructions of what children are like (Trinder, 1997, p. 302).

Mediation – are children listened to in the mediation process?

The Family Law Act 1996 amended the Legal Aid Act to empower the Legal Aid Board to secure the provision of mediation in disputes relating to family matters. The Board may make franchise agreements with appropriate mediation services, which will be required to comply with a code of practice laying down arrangements designed to ensure, *inter alia*:

... that the parties are encouraged to consider – (a) the welfare, wishes and feelings of each child; and (b) whether and to what extent each child should be given the opportunity to express his or her wishes and feelings in the mediation. (Murch et al., 1998, p. 16)

Murch and his colleagues sought to provide an up-to-date audit of family mediation, to ascertain the practice of mediators regarding children and their opinions on the direct or

indirect involvement of children in mediation. They concluded that, although mediators are well aware of the importance of children's welfare, wishes and feelings, they seek to address these indirectly through encouraging parents to think about their children's position rather than directly by talking to the children themselves. Those mediators who are prepared to involve children directly in mediation do so only occasionally (Murch *et al.*, 1998, p. 18 and Executive Summary).

A few mediators allow children to come to a concluding session after agreement has been broadly reached so that they can hear directly from both parents the arrangements that have been reached for them. Some mediators are very keen on this practice because they believe it has great symbolic importance for the children and allows them to feel part of the decision-making process without being forced to take sides or make impossible choices (Dasgupta and Richards, 1997, p. 107).

Sometimes mediators see the child on their own and then represent their interests in the mediation sessions with the parents. However, this raises problems over the supposedly neutral stance of mediators (Dasgupta and Richards, 1997, p. 107).

Doubts about the increasingly important role of mediators were expressed by several researchers. They point out that many mediators in their search for a resolution may overlook the fact that the two parties to the mediation may not be equally powerful in the situation or equally able to express their feelings (Murch *et al.*, 1998, pp. 119–20; Smith, 1999b, pp. 144–5). Unequal power relationships within marriage will be reproduced in the mediation if not acknowledged and understood by

mediators. The striving for agreement by mediators in order to avoid court procedures may lead to oppressive practices:

There appears to be little control over the methods employed by court welfare officers to bring about 'agreement' and in many of the cases we have looked at, 'agreement' has been coerced. (Hester and Radford, 1996, p. 92)

Some researchers believe that the drive towards mediation may further marginalise children in the divorce process rather than giving them more of a voice.¹⁴

Does the Statement of Arrangements form safeguard children's interests?

Murch and colleagues carried out research to see if the Statement of Arrangements form which the petitioner in a divorce is required to provide for the district judge safeguards the interests of children involved in uncontested divorces (Murch *et al.*, 1998).

The researchers found that there is general scepticism amongst district judges and solicitors as to the value of the Statement of Arrangements process. District judges rarely take action after scrutinising the written details, largely because they do not consider that there is anything they can do about any problems they have detected. Most district judges and solicitors felt that there should be some independent check by the state on the arrangements made for the children but did not feel that the present system was at all adequate to achieve this. One problem is that the only source of information about the children is the parents.

When asked how they identify cases which may call for some sort of intervention:

*... the district judges were not able to provide any clear idea of their concept of 'children's welfare', with a strong impression emerging from the interviews that the whole s.41 process depends upon the district judges exercising some sort of 'sixth sense' which enables them to identify cases which may call for some sort of intervention but which defies definition. (Murch *et al.*, 1998, p. 68)*

The judges expressed this as follows: 'it works on a gut reaction', 'You just get that feeling', 'the totality of it all just gives you a sense of unease' (Murch *et al.*, 1998, p. 68).

When asked how they would respond to arrangements between the parents that they saw as inappropriate (such as splitting siblings), 57 per cent of the judges said they would intervene. However, that means that 43 per cent felt that they had no such responsibility towards the children (Murch *et al.* 1998, p. 144).

Family Assistance Orders

Since the Children Act 1989, the Family Assistance Order (FAO) is the only means by which social work agencies might be required to help families and children involved in private law proceedings.

Adrian James and Louise Sturgeon-Adams have carried out research into the workings of FAOs (James and Sturgeon-Adams, 1999). They found that there is a lack of clarity amongst CWOs and judges about the purposes of FAOs. Some CWOs see them as representing an opportunity to work with children which they welcome, although they feel that not enough FAOs are made. Other CWOs disagree; they do not feel that they have been adequately trained to work with children and because of this there

are a large number of FAOs where there appears to be no contact made with the children despite their being named in the FAO. Where officers do work with children there is a lack of clarity about the purposes of this work and it is commonly understood by officers that 'working with children' can be effectively done by working through the parents. Again there is a danger that the voice of the child may be lost completely.¹⁵

Solicitors and listening to children

In their research on the Statement of Arrangements process, Murch and colleagues interviewed solicitors about their practices and concerns regarding advising clients on the filling in of the form and their views generally regarding their role in relation to the children (Murch *et al.*, 1998; see also the research of Piper (1997) on the practices of solicitors).

Solicitors, like mediators, may be in a powerful position to influence their clients who are involved in private law proceedings.

Many solicitors feel able to persuade clients to act in ways which fit in with the prevailing ideology that it is almost always in the best interests of children to maintain contact with both parents; in fact few of them questioned this ideology themselves. Solicitors may bring pressure to bear on a client by mentioning what in their view would be the likely response of the court to the client's view and in this way persuade clients to change their instructions. Another powerful weapon which is used by some solicitors is to threaten to write to the Legal Aid Board if the client is being 'difficult' (Murch *et al.*, 1998, p. 149).

The Legal Aid Transaction Criteria require that the child's views regarding current or

proposed arrangements should be considered where residence or contact is not agreed. Some solicitors were not aware of this requirement to attend to the 'voice' of the child, and those who were aware of it relied on parents to communicate the child's views to them or on the CWO to ascertain the child's views (Murch *et al.*, 1998, p. 144).

Most solicitors felt that they have some responsibility towards the children but this did not mean that they felt that they should see the children:

... children were seen as potential manipulators and victims of manipulation at the hands of parents, whose stories were therefore not to be given great credence. (Murch et al., 1998, p. 152)

Solicitors see their role as one of encouraging the parents to consider the children (Murch *et al.*, 1998, p. 145). Where parents have reached an agreement, only 40 per cent of the solicitors felt that they owed some responsibility to the children to assess the arrangements, nearly 60 per cent felt that they did not (Murch *et al.*, 1998, p. 147).

Most solicitors understood ascertaining the child's wishes to mean asking them who they would like to live with and deciding about contact. Only a minority saw ascertaining the child's wishes as being a way of giving the child the opportunity to speak without being asked to make any decision (Murch *et al.*, 1998, p. 154).

Interestingly, when Murch *et al.* asked the judges they interviewed what they would do if a child wrote to the court asking to speak to them, only 17 per cent said that they would consider speaking to the child. The response of one of the judges was considered by the researchers to be typical:

I would only agree to see the child in very, very exceptional circumstances and only when I had made it clear to the child right from the outset that whatever the child said couldn't be regarded as confidential and I would have to make it clear to the parents what the child had said. (Murch et al., 1998, p. 151)¹⁶

Violence

Several researchers expressed considerable disquiet over their findings that at present the child's voice is not being heard in private law proceedings and consequently some children are being forced to maintain contact with violent, abusive parents against their wishes.¹⁷

The assumption seems to be gaining ground that children who do not want contact with a non-resident parent have had their minds 'poisoned' by the other parent (Neale and Smart, 1998, p. 13; Sawyer, 1999a, p. 112). This situation has been medicalised and rendered as scientific fact by its labelling as 'parental alienation syndrome' and practitioners have been enjoined to be aware of it and to apply a checklist of factors which supposedly would indicate that it is present (Willbourne and Cull, 1997; Maidment, 1998; Neale, 1999, p. 10).

Researchers at ChildLine are extremely concerned that solicitors are advising mothers not to pursue any allegations of abuse nor to seek help or therapy for an abused child. This is because solicitors believe the court will assume that children who are unwilling to see the non-resident parent have been 'coached' (or 'alienated') by the resident parent.¹⁸

The researchers at ChildLine also point out that they have never received a call from a child complaining of being coached or forced to allege

that abuse has occurred in the past or in an unsupervised contact meeting. This is significant because it is quite clear that children are aware that they are sometimes manipulated by their parents because of their hostility to each other and they are very resentful when this happens (ChildLine, 1998, p. 28; NSA, 1999a).

The researchers at ChildLine point out that where the children have experienced violence there may be serious damage to the child's self-esteem and the child may feel helpless. Children in these situations may have very ambivalent feelings towards their fathers and may welcome separation (Neale and Smart, 1998, p. 29).

ChildLine points out that it is not valid to assume that contact with both parents is always in the best interests of the child and they also note that studies have shown a strong link between domestic violence and child abuse, including sexual abuse (Hester and Radford, 1996; ChildLine, 1998, p. 27; Smith, 1999b, pp. 57, 59).

Other researchers conclude that family law should operate on the guiding principle that every child should have the right to contact but that this should not be imposed on an unwilling child in their supposed long-term interest (Smart and Neale, 1999b, pp. 189–90).

When considering these issues, it is worth remembering Trinder's stricture that professionals should approach each case from a position of uncertainty, trying to be aware of their own perspective on children and the practices that arise from this (Trinder, 1997, p. 302) As Masson and Oakley point out:

Recognising children's rights checks adult power, particularly the power of professionals who can claim to have special insight on welfare or needs. (Masson and Oakley, 1999a, p. 11)

This point is reinforced by a reminder about where professional certainties can lead:

In the situation which developed in Cleveland, professionals were manifestly not listening to what the children were saying but felt themselves to be acting in the children's best interest. (Davie et al., 1996, p. 4)

Listening to children in public law proceedings

It is instructive to look briefly at the situation regarding listening to children in public law which is considered to represent a model of best practice with important lessons for any future unified welfare service (Lyon *et al.*, 1998, p. 9).

Research on the representation of children by guardians *ad litem* (GALs) and solicitors in public law proceedings has been carried out by Judith Masson and Maureen Winn Oakley (1999a).

They found that GALs were skilled at establishing rapport with the children and sensitive to their anxieties but this did not necessarily mean that the wishes and feelings of the children were given due weight in the procedures:

*The practice of appointing a solicitor 'for the child' does not guarantee that children's issues will be effectively advocated particularly where solicitors are reliant on guardians or terminate their relationship with the child before the guardian *ad litem* has completed the report. Working practices of guardians, solicitors and the courts operate to protect and distance children from the legal process. Although some children found this helpful, others wanted to participate more. Children who felt excluded tended to disengage*

from the process making it more difficult for guardians to establish their wishes and feelings. (Masson and Oakley, 1999a, p. 3)

They conclude:

Overall, children and young people felt that they did not know enough about what was going on. To them the system appeared to exist for adults, not for them. (Masson and Oakley, 1999a, p. 156)

The researchers identify structural constraints rather than bad practice as being behind the inadequacies of the present system. However, they also note that the attitudes of the professionals towards children militate against the voice of the child being heard in these proceedings (see also Timms, 1997, p. 41; Hunt and Lawson, 1999, p. 115; Ruegger, 1999; Sawyer, 1999a).

Masson and Oakley note that changes in court practice would also be necessary if children who wished to were actually to participate (these points are obviously relevant to the representation of children in private law proceedings too):

Representation of children and young people in these proceedings is largely based on shielding them from the process rather than assisting them to participate. Consequently, their party status does not help to make the proceedings real for them. Greater opportunities to participate, where they wished to do so, might encourage some children to engage with the proceedings. It would also necessitate changes in court practice, such as clearer use of language, shorter hearings and more attention to the needs of ordinary people, which would also benefit parents, relatives and carers. (Masson and Oakley, 1999a, p. 144)

Parents listening to children

The ideal post-divorce family in the view of the Family Law Act is one where both parents accept life-long responsibility for their children. As shown above, CWOs, mediators and solicitors rely on parents looking after their children's best interests and, where they are not doing this, expect to be able to persuade the parents to put the children first. The parents are seen as the principal conduit by means of which the wishes and feelings of the children are conveyed to practitioners. This will be sufficient in many but not all cases.

The evidence of confidential calls from children to ChildLine is that many parents cannot be relied on to listen to their children:

Through most of the calls, there was a picture of children bewildered about what was happening, confused about what had been decided or even their absent parent's whereabouts, lacking or even being refused information, or, most commonly, feeling unable to talk with their parents or ask them questions for fear of upsetting them further. (ChildLine, 1998, p. 23; Smith, 1999b, p. 81)

What comes across here and from other researchers is that children are very sensitive to their parents' feelings and may hide their own distress so as not to cause further difficulty for their parents:

It is clear how fatally easy it is for parents to assume that because the child is not talking and not being openly upset, they are therefore not badly affected by what has happened. Children often need to be given permission to speak as well as have opportunities made and to be given time. (ChildLine, 1998, p. 23; Smith, 1999b, p. 34)

In their calls to ChildLine, children talk about how they hate arguments over who they should live with, how they want to see more of an absent parent, miss their siblings when the family is split up, some want to live with the other parent, some want a change in contact arrangements, but they find it very hard to get their parents to listen to them:

Children tell us how hard it is to get adults to listen and how they don't want to put them under more pressure or upset them. If a child seems upset or needing to talk, it is important to make time to listen. (ChildLine, 1998, p. 45)

Children speak out about being listened to¹⁹

The trouble was they never explained anything to us. They just treated us like babies and we weren't. We needed to know what was going on, what was happening, how things would work out. ... We needed help from outside but there just didn't seem to be the right person to turn to. No-one seemed to be there to help us, especially us, the children. Mum and Dad had the lawyers but we had no one.

... no one listened to me and everything afterwards was just such a mess.

I don't want to live with my dad. He's beating me, I want to live with my mum; there's going to be a court case; but no one's listening to me.

I don't like my dad very much; but I have to go to his house twice a week. The court said so, so I just have to.

Dad wants me to stand up in court and say I prefer living with him.

My parents are separating. I have to decide who I've to live with. Sometimes I wish I didn't live with either of them. They shout all the time.

I would like to live with Dad but I don't want to hurt Mum ... she has mental problems.

I'm living with my Dad. Mum walked out but now she's wanting custody. My sister wants to live with Mum but I don't want to ... will I be able to stay with Dad?

When my Mum said he left, I felt like, 'Why?' And felt a bit sad. And then after about two months or something I was starting to like, feel normal.
(Sam, aged 11)

[Regarding children's understanding of the legal process:]

Interviewer: *Do you understand anything that goes on?*

No.

Interviewer: *Have you ever heard them talk about things like that?*

No, cos if they do talk, they do send us out of the room. Don't get to listen. (Andrew, aged 14)

I know it is something to do with lawyers and everything, but I haven't really been told. I've had to suss it out for myself. (Sion, aged 12)

Interviewer: *Did you ever meet any of the legal people, solicitors or people like that?*

I sat in the waiting room and saw the secretary. But then Mum just disappeared into a room. You try and peep through the door and they're gone. You couldn't go in there. (Emma, aged 12)

Interviewer: *Would you have liked to have had it explained?*

Umm ... In a way, yea. Because, you really feel suspicious of what's happening. And you want to know, but you can't go up to people, 'What happened?' 'What did you sign? What did you do? How did it happen?' Because she'd say, 'Look, you're too young.' And you feel as if you're a little child still. But you want to know. (Emma, aged 12)

I think the kids should know what is going on. Because I think it's very unfair to keep them in the dark. Because it's their parents ... So if they have somebody explain what's going on, then they may find it better ... cos I think it's unfair to not know. (Sarah, aged 14)

Um ... it's just that I needed to know. (Georgina, aged 9)

Summary

- Children are often left in the dark by parents about what is happening. Some are not spoken to about what is happening much less listened to.
- CWOs, mediators and solicitors, insofar as they attempt to ascertain the wishes and feelings of children, usually do so indirectly, through their parents.
- The Statement of Arrangements form is not adequate as a means of safeguarding the interests of children involved in private law proceedings.
- FAOs apply to a relatively small proportion of children. The professionals involved in helping families who are named in FAOs do not usually deal directly with the children.

- Children who dissent from the current ideology that it is in their best interests to maintain contact with both parents may find their views ignored which may result in them being forced into situations that are potentially dangerous for them.
- Listening to children and taking on board what they say seems to be very difficult for adults to achieve, even in situations, such as in public law proceedings, where their representation is considered to be an example of best practice.
- Parents going through separation and divorce may be unaware of their children's needs to be heard.
- Researchers who have attended to what children have to say have all reached the conclusion that the present situation is extremely unsatisfactory with regard to listening to the wishes and feelings of children involved in private law proceedings.
- We have no specific information on the situation of children whose non-married parents have separated.

To sum up this section:

... what does not seem ... satisfactory is that, whilst the Children Act 1989 and the Family Law Act 1996 appear to give greater priority to the wishes and feelings of the child, not just in courts but throughout related legal, administrative, and mediatory processes, our research would suggest that the vast majority of children currently involved in a parental divorce do not have their wishes ascertained by any professional and do

not know that anybody has the slightest interest in them. Perhaps we should admit that there are limits to what professionals involved in the legal process of divorce can achieve in relation to the child's welfare and rights. We could then decide what most needs doing 'properly' and what is the most appropriate forum and body of knowledge to achieve that end. (Piper, 1997, p. 800)²⁰

Notes

- 1 'In the majority of cases, provided the parents agree, there will be no objective scrutiny of proposed arrangements for the children, or any consultation with the children about their wishes and feelings in the matter' (Lyon *et al.*, 1998, p. 14; see actual cases described by authors on pp. 26–27 of very unhappy children whose parents were in agreement on arrangements that worked very badly for the children).
- 2 '... children may, like adults, have contradictory wishes; and ... any decision on their 'best interests' must take those wishes fully into account ... Decision making ... should be a process of negotiation and partnership in which the young person, the parents and the professionals, may all take some responsibility for the decision. Involvement of children is not only essential for their self respect and understanding but improves the quality of decisions taken. The child's wishes and feelings should form an integral part of determining their best interests' (Preface by S. Spencer to Schofield and Thoburn, 1996, p. vi; see also Lyon *et al.*, 1998, pp. 208–9).

- 3 'All these calls [to ChildLine from children] reveal the pain, turmoil and often betrayal that parents themselves are going through; it is not surprising that many parents are preoccupied with coping with their own problems. When people are in shock, grief or anger, they are much less able to think clearly or even notice what children are feeling. Many parents will hold back from talking to the children, hoping to spare them anxiety and pain; and it is not easy, anyway, to judge how much to say and what to reveal. Parents, too, need people to confide in who are able to listen to their feelings and help them think through how best to inform and respond to their children' (ChildLine, 1998, p. 23). See also Smith, 1999b, p. 13.
- 4 The following quote from a child underlines the dangers of keeping children in the dark, perhaps from misguided notions of protecting them: Interviewer: 'What do you think happens when you go to court?' Child: 'It seems like Deirdre, she was found guilty. I don't want my Mum to be, or my Dad to be guilty. But one of them *has* to be guilty, but I don't want none of them to be guilty ... I felt scared, cos I thought we had to go with him. And stand up in one of those boxes if we were older and said who we wanted to live with and who we wanted to put down as guilty or something. Now I'd say I don't want anyone to be guilty' (Butler *et al.*, 1999).
- 5 We simply do not know about these children. Estimates made by researchers of the numbers of children in this situation vary. There are around 160,000 children involved in their parents' divorce proceedings every year (Lyon *et al.*, 1998, p. 14). CWOs wrote 36,107 welfare reports in 1997 in England and Wales. Assuming a figure of 1.7 children per report, this gives a figure of around 60,000 children as the subjects of welfare reports (Bretherton *et al.*, 1999). In 1997, there were 76,397 s.8 orders under the Children Act 1989 (regarding application for residence, contact, specific issues or prohibited steps); therefore in only around 47 per cent of these cases were reports written by CWOs (James and Richards, 1999, p. 33).
- 6 In the words of two practitioners: 'the pressures are just terrible. And it's all about cutting corners ... Every year we are told to do more and more reports. It's an absolute nonsense; you can't cope with doing more and more reports to the same quality. It becomes very dangerous practice' ... 'not getting to do home visits because of time constraints, that's crazy' ((Hunt and Lawson, 1999, pp. 49, 58).
- 7 Sawyer's research looks at the question of how the position of the child in family proceedings is addressed by the professionals involved. It includes semi-structured interviews with CWOs and also ascertaining their responses to vignettes. These were taken from actual cases where there had been a dispute between the parents. See Appendix for more details of this research.
- 8 See also: Murch *et al.*, (1998, p. 149) on the 'hard line' solicitors take with clients who do not want the other parent to have contact with the child; Kaganas (1999, p. 102) on the increasing preparedness of courts to threaten a change in a child's residence if

contact orders are resisted and to imprison residential parents who disobey orders.

- 9 See Appendix for more details of this research.
- 10 'The court welfare officer and that, they don't really know the family. I don't think it helped talking to her ... I didn't see why everybody should ask all these questions and when you do tell them certain things it doesn't go in the report ... I only really told them what they wanted to hear ... Somebody else to be involved is an idea, who isn't going to go straight back and say 'well this and this' to the [court] but just get them sat down and sort of talk between them, and if you *do* want them to pass it on, they would' (a young person of 22 who was 15 at the time of the court case) (Neale, 1999, p. 24).
- 11 See Appendix for more details of this research.
- 12 See Appendix for more details of this research.
- 13 Trinder labels the two different approaches to children, which incorporate different constructions of childhood, the 'parent's child' and the 'worker's child'.

In the 'parent's child' model children are seen as belonging to the 'junior' ranks of the family subsystem. Practice here centred round enhancing as far as possible the ability of parents to make decisions on behalf of their children. In this view children are less rational than adults. Anything children say has to be interpreted in the light of the family context rather than being seen as an authentic or independent position. Children are seen as highly

vulnerable and as needing to be protected from the burdens of decision-making.

Information about the child is obtained indirectly by asking parents rather than asking the children directly or if the child is asked directly then the aim of the questions is to find out about the child's emotional state rather than to gain any idea of what the child's view is. In this model it is up to parents to make decisions about the future, not the child and not the courts. The child does not have an interest independent of its parents and, as a child, is seen as lacking competence and understanding.

In the 'worker's child' model the child is also seen as vulnerable and dependent but their interests are seen as being potentially different from their parents'. Children are seen as unreliable sources of information, as are their parents, and they are defined primarily by *needs* rather than by *rights*. Practitioners who operate from this perspective are more likely to see the child because they feel that the child may be isolated and need support, and also in order to find out what the child's perspective is. The child's perspective may weigh more heavily in making recommendations but not necessarily; ultimately it is welfare professionals who are assumed to know best (Trinder, 1997, pp. 295-7).

- 14 'If, as intended, the Family Law Act 1996 brings about a substantial shift away from formal legal decision-making processes and towards informal, out-of-court decision-making, even more cases will be settled without ever reaching court and therefore without receiving even the limited amount

- of formal judicial and welfare scrutiny which such cases currently receive. Such a shift, with all that it might imply about the protection of rights in general and, in particular, the interests of children and their rights to be heard, raises a number of major questions which are not easily answered' (James and Richards, 1999, p. 33; see also Lyon *et al.*'s (1998, p. 17) view that the present way in which mediation is carried out 'does not treat the child as the subject of rights but rather as the object of assistance').
- 15 'The prevailing view among welfare officers is that children should not be made to feel responsible for their parents' difficulties and that the problems between the parents should not be placed upon the shoulders of children. As we have shown within our case sample, work *is* undertaken with children but there is general unease about this, as it could lead to children feeling that they are responsible for solving their parents' conflicts' (James and Sturgeon-Adams, 1999, p. 34).
- 16 It may be that the near total rejection by these judges of the possibility of their speaking directly to the child in conditions where their voices could be heard (i.e. confidentiality would need to be assured for the child to speak out) stems from the judges' lack of training in speaking to and listening to children and their own awareness of this lack (Alan Cooklin, personal communication).
- 17 'Even more concerning is the evidence that some children who are caught up in situations of violence, neglect and child abuse are being dealt with through private law proceedings rather than child protection. In these situations negotiated agreements between adults may be inadequate or extremely dangerous for the children involved' (Lyon *et al.*, 1998, p. 13; see also Hester and Radford, 1996, pp. 91–2).
- 18 'If parents separate or are separated and involved in court proceedings about contact or access, parents' solicitors seem to assume that an allegation of abuse is likely to be perceived by the court as malicious and they commonly counsel the mother to hold back. When an allegation is made, parents and children describe an interminable court process and long periods of uncertainty, even with very young children. Lawyers commonly advise against therapy for the child or even against a parent talking to the child – in case it weakens the case because the child could be seen as having been coached. Can we imagine what we are asking of parents and children? To forbid comfort to a troubled child is a deeply unnatural demand to make – and this in the interests of justice?' (ChildLine, 1998, p. 28).
- 19 The first two quotes are from Lyon *et al.*, 1998, pp. 5, 43; the next six quotes are from ChildLine, 1998, pp. 24–7; the remaining quotes are from Butler *et al.*, 1999.
- 20 See also James and James, 1999, p. 202: 'In sum, the focus of the Family Law Act on parental responsibility in divorcing and divorced families relegates the social status of children once more to simply that of subordinate family members whose voice is only to be heard at the discretion of adults'.

2 What do we know about how children's views might be better represented under new arrangements?

Enhancing the role of the court welfare officer

Many of the practitioners interviewed by Hunt and Lawson in their research had suggestions on how to enhance the role of the CWO so that they could act in a more child-focused way and so that the child's voice could be heard:

Several informants wanted court welfare officers to play a more central part in proceedings by, for instance, 'attending directions hearings', 'staying in court to hear the evidence', 'giving evidence last', 'being privy to out of court negotiations', 'having a role in preventing delay', or more generally 'moving the role more towards the guardian role'. (Hunt and Lawson, 1999, p. 53)¹

Several CWOs felt that they should be able to call in expert opinion and have better access to GPs, psychiatrists, etc. At present there is no budget to pay for a report so at best the expert's opinion can be gleaned on the basis of a phone call but this evidence can easily be disputed in court (Hunt and Lawson, 1999). The results of Ruegger's research into the GAL service should be noted here: practitioners should weigh the possible negative consequences for the child against any positive consequences before calling for expert evidence, the child should be fully informed of the purposes of the expert assessment and, if possible, the child's consent should be sought and the child should be informed of the outcome of the assessment (Ruegger, 1999).

Some CWOs also felt that a lot of problems (e.g. regarding contact), which may involve repeat applications to court, could be sorted out with less pain to all those affected, especially the children, if they were able to adopt a more therapeutic, social work, role and were less involved in information gathering and did not operate within tight time constraints (Hunt and Lawson, 1999, pp. 55, 58, 132). Many CWOs felt that there is too much emphasis on investigating when there should be more on helping and supporting both parents and children (Hunt and Lawson, 1999, p. 99). Murch *et al.* also question the emphasis on 'scrutinising' arrangements made by parents at a time when they need support not judgement (Murch *et al.*, 1998, p. 21).

Some practitioners expressed the view that they felt that many CWOs needed more training on working with children if their work was to become more child-focused (Hunt and Lawson 1999, p. 38).

There was general agreement amongst the practitioners interviewed that the court welfare service could not develop into an effective child-centred service while it was part of the probation service (Hunt and Lawson, 1999, p. 12).

Other writers agree with the principle of enhancing the role of CWOs and discuss practical details of how this could be achieved. They emphasise the need for training and for clear guidelines so that practitioners can be aware of the best practice.²

Separate legal representation of children

In private law it is rare for a child to be a party or to be separately represented. Section 64 of the Family Law Act 1996 empowered the Lord Chancellor to provide for the separate representation of children under Parts II and IV of the Act which deal with divorce, separation, family homes and domestic violence. Under section 10 of the Children Act a child can seek leave of the high court to be granted leave to make a section 8 application for a residence, contact, prohibited steps or specific issue order. In practice, leave has not been granted very often by the high court probably because of the potential numbers involved and also because of an 'institutionalised reluctance to intervene in what are seen as private family matters' (Lyon *et al.*, 1998, p. 10; Roche, 1999, p. 64).

Almost all the practitioners interviewed by Hunt and Lawson were in favour of making legal representation for children more widely available in private law; only one interviewee expressed ambivalence and this was because of variation in the quality and approach of solicitors currently practising, it was not an objection in principle (Hunt and Lawson, 1999, pp. 53, 62).

These practitioners felt that separate legal representation of the child would focus the attention of the court on the child and would make parents see the child as a person with rights and views of their own. Separate representation was seen as being appropriate in situations of 'deeply entrenched conflict'; where 'the child is a ping-pong ball between the parents and the child's needs are lost'; where 'there is emotional abuse'; where the case is 'complex' or 'controversial'; where the child

holds a different view to the CWO or where the CWO is making a recommendation which goes against the norm, such as changing a child's residence or terminating contact altogether (Hunt and Lawson, 1999, p. 63). Some practitioners envisaged a system which operated somewhat like the tandem working of the GAL and solicitor in public law but others envisaged the CWO and the solicitor functioning independently.

Many practitioners spoke of the need for flexibility, for the court to be able to make a decision on the merits of each case, rather than following 'rules'. Practitioners wanted the CWO to have the power to apply for leave for separate representation of the child, perhaps on the basis of preliminary enquiries.

Hunt and Lawson conclude that the primary role of the CWO is to promote the interests of the child and that this should be made explicit. CWOs could begin a case by exploring the potential for parental agreement and reporting to the court, but, where this is not sufficient, then the CWO should be able to commission expert reports and, where necessary, instruct a solicitor (Hunt and Lawson, 1999, p. 119). This representation should be possible at all court levels and not just at the higher levels as at present (Hunt and Lawson, 1999, p. 132). Legal aid in such cases should be restricted to accredited solicitors and barristers (accreditation should be on a similar basis to that of the Law Society's Children's Panel) (Hunt and Lawson, 1999, p. 133).

Lyon *et al.* believe that it is imperative to implement section 64 in order to safeguard children in situations where violent fathers are seeking contact under section 8 of the Children Act (Lyon *et al.*, 1998, p. 13). They feel that

separate representation of children on the public law tandem model should be available for children in all cases involving implacably hostile parents, where there is a history of violence, where contact is being refused to a parent who apparently represents no risk to the child and where courts accept the need for medical or psychological reports on a child.

Lyon *et al.* note that in their research all the judges were able to cite examples from their own experience where separate representation would have improved the situation of the children (Lyon *et al.*, 1998, p. 202). This view was supported by the welfare professionals (Lyon *et al.*, 1998, p. 103).

Sawyer points out some of the pitfalls of separate representation of children. She describes it in itself as a 'direct affront' to the traditional structure of the nuclear family and that the admission of its desirability 'entails a questioning of the necessary virtue of parental authority'. It may have negative consequences for the child if it seems to them that they are being asked to express a view as to their future and this is a view that is at odds with both parents; this may merely exacerbate family conflict and raise children's expectations when there is little hope of these being fulfilled. Representation may be good for the child's individual self-esteem but bad for continuing relationships within the family (Sawyer, 1999a, p. 111). She also notes:

One of the most obvious practical questions on which child representation founders is that of discovery. A party's case cannot be properly formulated without the fullest information as to the cases put by the other parties; parents may feel unhappy about having to reveal the history of

their marriage to their children, especially as they may conceivably disagree as to what that history was. (Sawyer, 1999a, p. 118, n. 16)

Altering the Statement of Arrangements procedure

After concluding that the present Statement of Arrangements form does not safeguard the interests of children, Murch *et al.* suggest possible ways to improve the situation so that children's wishes and feelings are taken into account and their welfare is made a priority:

- The 'minimalist' option would be to improve the Statement of Arrangements form in ways which take account of the criticisms of it made by the judges and solicitors in the research. In particular they felt that it should not be possible to give simple yes/no or otherwise vague answers; some of the questions presuppose a standard situation which may not exist; questions asking for information about matters the court can do nothing about should be removed and there should be questions which give information about domestic violence and other child protection matters.
- The authors of the report favour using the Statement of Arrangements approach as a means of identifying and channelling families who need help towards appropriate providers by giving CWOs a more proactive role throughout the divorce process.³

Other writers question whether altering the Statement of Arrangements form will allow the

child's voice to be heard; solicitors will still be recording the parents' views of the wishes and feelings of the child (Piper, 1999, p. 87).

Unified service

As noted before, practitioners interviewed by Hunt and Lawson unanimously expressed the view that the court welfare service would never develop into an effective child-focused service while it was part of the probation service (Hunt and Lawson, 1999, pp. 12–13).

The researchers concluded that a new unified welfare service must aim to fill the gaps in present provision. Most importantly, children should have access to information and counselling, both during any proceedings and subsequently. This could be provided in-house or contracted out (Hunt and Lawson, 1999, p. 99).

Sawyer has serious doubts about the viability of a unified service. She sees the roles of CWOs and GALs and the cultures within which they operate as being radically different. CWOs are in effect controlled by the ideologically driven concerns of the judiciary within which the welfare of children is narrowly and inflexibly defined. GALs operate in a more independent way and feel able to question, even in an adversarial way, where they perceive that the child's welfare demands it.⁴

In Sawyer's view, any administrative amalgamation of the services needs to acknowledge their differences; otherwise she feels that the new unified service could fall apart under the strain of these differences (Sawyer, 1999b, p. 5).

Other writers are more optimistic about the creation of a unified service but point out that this needs to be approached cautiously and

gradually with full consideration being given to any necessary training (Timms, 1997, p. 42; ALC, 1998, p. 40).

There were widely differing views amongst the practitioners interviewed by Hunt and Lawson as to whether the roles and expectations of CWOs and GALs were very different or more similar than different (Hunt and Lawson, 1999, p. 24). If the new unified service is to be successful, more research may be needed to shed light on the practices of CWOs and GALs; this will be particularly useful if the views of the children who have experienced these services are taken fully into account in any such research.

Mediation

The Family Law Act 1996 gives a central place to mediation. Murch *et al.* (1998, pp. 202, 211) question whether this is either appropriate or practicable. As noted already, children rarely express their views directly in mediation; instead, mediators endeavour to ascertain the wishes and feelings of children indirectly by asking the parents. They also note that at present fewer than half of all mediators have received any training in working with children (Murch *et al.*, 1998, p. 168). If there are to be an adequate number of mediators to deal with the number of divorces every year which involve children then many of these mediators will of necessity be relatively lacking in experience (Murch *et al.*, 1998, p. 169). Murch *et al.* also express disquiet over the fact that the shortfall in mediators is likely to be largely filled by the training of lawyers and in terms of 'background, training and culture' lawyers are not geared towards working with children (Murch *et al.*, 1998, p. 202).

On the basis of the needs expressed in calls to them, ChildLine question the usual exclusion of children from direct involvement in the process of mediation and express the view that involving children would help both them and their parents to reach sound decisions.⁵ Other researchers are also positive about the possibility of involving children in mediation and detail cases where this has been successfully done, sometimes many years after the actual divorce.⁶

Information meetings and parenting plans

Research findings on these are being reported separately.

Summary

- Most researchers support enhancing the role of CWOs.
- Researchers and practitioners agree that in certain circumstances children need separate representation.
- The Statement of Arrangements procedure could be given a more significant role.
- Most researchers support the unification of current services but point out that there are considerable difficulties to be overcome, particularly with regard to the levels of training of practitioners, if this is to be done effectively.
- Some researchers express disquiet over the more central role of mediation and question whether it can become child-

centred. The usual practice is to ascertain children's wishes and feelings indirectly. Some mediators are trained in working with children; few are experienced in working with children.

Notes

- 1 They quote the views of a practitioner about how such changes could improve the outcome for the child: 'I used to go to court and listen to the evidence [when working as a GAL]. You can do a lot that way. And by giving evidence last you could get what the child wanted, what you wanted for the child. As a guardian you give evidence last. That's most powerful, you have the last shout. If the court welfare officer was in the same place things would be a lot different' (Hunt and Lawson, 1999, p. 54).
- 2 In an article in *Family Law*, the Association of Lawyers for Children (ALC, 1998) express their agreement with the idea of enhancing the role of the CWO by allowing more time for ascertaining the wishes and feelings of children. In contested cases, a CWO should always be involved (this point is also made by James and Richards, 1999, p. 34) and should consider whether the child needs separate legal representation; an older child should always be advised about the possibility of separate representation. The court should reconsider separate representation from time to time as the case progresses.

With regard to the CWO adopting a more proactive stance to protect children who may be at risk of violence from contact with

their father, Judge Hall suggests that where it is applicable it would make sense for the CWO to interview staff in the women's refuge where the child may have been living for some time. The child may well have spoken to staff there and opened up to them in a way that they would not to a CWO who is a comparative stranger and who works within time constraints. He also stresses the importance for judges to take full account of a child's life experiences to date in coming to any conclusion about what is in the child's best interests (Hall, 1997, p. 815).

- 3 On filing a statement of marital breakdown, a brief Statement of Arrangements form could be filled in. Here, details of all children in the family and any concerns of the parent regarding the welfare of the children could be noted (e.g. any behavioural changes which may indicate the risk of longer-term dysfunction). The form could invite the parent to contact the CWO to discuss these concerns. Alternatively, on receipt of the form by the court, the CWO could contact *both* parents, where possible, and make them aware of any advice and support services. Thereafter, the CWO continues to play a proactive role during the statutory period for reflection including perhaps helping parents to compile parenting plans. The final divorce order should include a statement of the proposed arrangements for the child including information on the extent of the consultation with the child and the child's knowledge and understanding of the proposed arrangements. This would be scrutinised by the district judge with a focus

on being satisfied that the arrangements have been reached jointly and that the child's wishes and feelings have been taken into account (Murch *et al.*, 1998, pp. 217–222 and Executive Summary).

- 4 '... without a clear discussion of the difference between welfare and rights to representation, and a clear acknowledgment that the right to representation, or even to the expression of a view, entails the right to dissent, which may appear so adversarial, then there can be not only no children's rights but also no method of presenting resistance to the authority of a court or to the opinions of experts ... [this] raises serious questions not only about the treatment of children within this society, but also about the nature of the democratic society. This study shows that the judiciary have control of their court officers and are able to influence ideas of welfare in a way which is deeply political and deeply rooted in the traditions of a system which is founded on parental rights. The judiciary have actively resisted movements towards giving children greater rights of representation, and have reinterpreted welfare, and legislation, to justify it' (Sawyer, 1999b, p. 330).
- 5 '... [children] are perfectly able to enter into discussions about the future, so long as they are not being asked to choose in an atmosphere of acute conflict where they feel caught in the middle ... These calls are a very persuasive argument in favour of a mediation service which includes children ... an outside person to help everybody talk through the issues could be of considerable help to children, as well as to parents, in

managing the feelings which threaten to overwhelm them and reduce their capacity to make sound decisions' (ChildLine, 1998, p. 25). The wide range of views among mediators regarding the inclusion of children in mediation is discussed in Smith (1999b, pp. 151–160).

- 6 An example of successful mediation involving children five years after a divorce gives some indication of how a greatly expanded, but more focused, service could help families in the long term. There were ongoing problems regarding contact. Initially the mediator met the children alone. She provided feedback to the parents about this, as agreed with the children. The major problem for the children was the

parents' continuing hostility towards one another. The parents agreed to new arrangements taking into account the wishes and feelings of the children. The mediator pointed out that not all divorce conflicts could be resolved by mediation and she would always exclude conflicts where there was physical or emotional abuse, alcohol or drug abuse and emotional imbalance. She felt that a much happier resolution had been reached in the case she described but noted that children should be involved only after a careful assessment by the mediator of the relationships between the parents and the children and only if she felt confident in dealing with children herself (Gentry, 1997).

3 How would children like to be involved, who would they like to talk to directly, what are successful ways of doing this?

Children are not used to being listened to

... ours is a culture that does not particularly like children. The adage that 'children should be seen and not heard' has an authentically English ring about it. (James and James, 1999, p. 204)

Children in our society are not accustomed to having their views taken into account in their everyday lives at home and at school. We do not live in a culture which supports participation by children. (Schofield and Thoburn, 1996, p. 62; see also Morrow, 1999b, pp. 9, 14–15)

Why do adults have difficulties about listening to children?

- Adults view children as essentially 'other'; they are seen as less important and they are dependent and less powerful. Language is a tool used communally on the basis of shared understandings. Adults interpret what children say. Welfare professionals do so on the basis of their understanding of what is in a child's best interest (Neale, 1999, p. 30).
- Adults fear that they will upset children by talking about difficult experiences such as separation or divorce (Smith, 1999a, p. 12).
- Adults protect themselves from their own vulnerabilities by projecting them on to

children. In order to keep the anxieties contained it is therefore vital *not* to listen to children's own constructions of their needs but instead act as if adults know children's best interests better than they do (Day Sclater and Piper, 1999, p. 18).

- Many professionals are aware of their lack of training and experience in talking to and listening to children (Davie *et al.*, 1996, pp. 6–7; Murch *et al.*, 1998, p. 152; Hunt and Lawson, 1999, p. 38; Morrow, 1999a, p. 298).
- Children are very aware of the distress of their parents and may themselves avoid discussing the problems (ChildLine, 1998, p. 23).
- Many adults (including welfare professionals, solicitors and judges) confuse 'participation' with decision-making. They are reluctant even to speak to or listen to children because they see this as inappropriately asking the child to decide (Murch *et al.*, 1998, p. 178).
- Children are seen as vulnerable and in need of protection, including from themselves. However, to some extent it is their lack of rights that creates that vulnerability (Morrow and Richards, 1998, p. 97).

Children's feelings about their experiences of talking to professionals

- Children are generally reluctant to talk to 'outsiders' about family issues as this is seen as both disloyal and as liable to lead to an escalation of problems.
- The professionals were seen as having been interventionist rather than supportive.
- The discussions that the children had with professionals felt like interrogations.
- Adults were judgemental and intrusive in their approach.
- Discussions were not confidential (Trinder, 1997, p. 300; Neale and Smart, 1998, p. 33; NSA, 1999b)

Professionals may be perceived as inflexible, intrusive, condescending, deceitful, secretive, untrustworthy, disrespectful, as re-enforcing in a myriad of ways their superiority to the child.
(Neale and Smart, 1998, p. 33)

Some suggestions from research about the support services children might want

These are some of the findings of Lyon *et al.*'s (1998) consultation with young people regarding a support service:²

- The young people expressed anger at the present lack of information and their consequent powerlessness. They wanted information to be available in a non-stigmatising and easily accessible way (e.g. in schools, via radio, TV, cinema and Internet). Many felt that this information

was needed 'before they needed it', so that they could be proactive.³

- They found the present organisation of services unintelligible. They wanted access to an organisation to provide support whose functions and responsibilities were intelligible to young people.
- They wanted a freely accessible, confidential *consultation* service available for all children experiencing separation or divorce. They suggested high street shopping centres and schools as possible venues. They also suggested that some teachers could be trained so that they have a knowledge of all support services for children and could refer children to them, if necessary.
- They wanted separate representation by specially trained lawyers for children who need it. Children may need someone to stand up for them because of lack of confidence, being in a strange situation, and because of the difficulty of talking in front of parents.

The authors of the report point out the importance of support services for young people being accessible by them when they feel that they need them – it should not be court procedures that 'trip' the child support service into operation. Information for children must also be readily accessible *by* children. None of the young people involved in the consultation day had ever seen any of the Department of Health's leaflets CAG 1–9 which give information on the steps children involved in divorce can take to help themselves.

The authors note that the consultation service could help to resolve difficulties and operate as a preventive and sifting mechanism so that the majority of young people would not have the need to become involved in court proceedings themselves. This service could provide help and support, not just at the time of the parents' relationship breakdown, but perhaps many years later when arrangements which had been agreed earlier and were causing difficulties for the young person could be adjusted.

The authors stress the importance of flexibility: reading a leaflet may be enough for some children to give them the impetus to discuss their concerns with a parent or a trusted friend and resolve them; for others a brief consultation may be all that is necessary to put their minds at rest about a worry; others will need much more help – perhaps someone to advocate for them, perhaps separate legal representation.

Many other researchers also point out the importance of providing *ongoing* support services for children and families:⁴

There can be no way that things are 'put right' once and for all. Once it is possible to see post-divorce parenting as a process rather than a contract, it becomes feasible to think in terms of flexible guidelines which emphasize the need for ethical procedures rather than final adjudications. (Smart and Neale, 1999b, p. 197)

Respecting children's agendas

1. What is important to children is the quality of the relationships within their family, not any particular structure. For

children, 'proper' families are characterised by relations of trust, care and openness. It is the care provided by adults and the role that people play in their lives that defines them as 'family' for children and not their biological status. Research shows that an active, involved, caring father is significant in the development of children's self-esteem, whether or not he lives with his children. Authoritarian, controlling fathers have negative effects on children's self-esteem (Katz, 1997b, pp. 22–4; Milligan and Dowie, 1998, pp. 25, 45–6, 64; Morrow, 1998b, p. 28; Neale *et al.*, 1998, p. 22; Neale, 1999).

- Siblings are very important to children (Brannen and Heptinstall, 1998; Morrow, 1998b; Smith, 1999b, p. 21).
- Many children, regardless of ethnic background, have a great deal of contact with wider kin. This finding contradicts the stereotypical view of the modern family. Social policy that equates the 'family' with the 'nuclear family' may ignore the child's agenda and the importance for the child's identity of maintaining these wider social contacts (Brannen *et al.*, 1998; Morrow, 1998b).
- Friends may be very important for a child's sense of identity and self-esteem. This tends to become increasingly true as children get older. Contact arrangements made when a child is very young may be inappropriate when the child is older because they may interfere with their social lives outside the family and this can

be very damaging for young people (Brannen *et al.*, 1998; Lyon *et al.*, 1998, pp. 26–8; Morrow, 1998b; Smith, 1999b, p. 72). Children who had recently experienced their parents' divorce reported that they had turned to their friends for support when they were upset (Butler *et al.*, 1999).

- Children want to be listened to and given information about what is going on (Butler *et al.*, 1999). They value guidance and advice from adults in a situation of open dialogue but they do not want simply to be told what to do (Morrow, 1999b; Neale, 1999, p. 15; Smith, 1999b, p. 71; Oakley and Masson, 2000). Many children feel that they are not listened to and that parents frequently act as proxies to speak on their behalf (Butler *et al.*, 1999; Morrow, 1999b, pp. 14–15). However, it must always be borne in mind that some children will not wish to speak about upsetting matters to anyone (Lyon *et al.*, 1998, p. 81).
- Many children want help, advice and support so that they feel able to speak for themselves, whether in mediation or in court. This process is sometimes called 'facilitation'.⁵
- Our society places a high value on *independence* and because of this children are devalued. In their families, children are involved in many reciprocal relationships with family members, e.g. caring for relatives, a sick parent, or looking after siblings. If we learned to value this *interdependence*, as children do, then children's contribution to society would be more valued (Morrow, 1999b, p. 21).
- Young people resent being addressed or considered as children or teenagers and treated as totally dependent and lacking in competence. If there were an assumed age of competence of 12 then adults would have to take this on board in dealing with young people (Oakley, personal communication).
- The majority of children have a well-developed moral sense. They are able to take others' feelings and needs into account, and negotiate solutions to dilemmas on this basis. They have a strong sense of what it means to be fair and research shows that they are overwhelmingly concerned that things should be fair for their parents (ChildLine, 1998, p. 23; NSA, 1999a; Smart and Neale, 1999a, p. 4; Smith, 1999b, p. 34).
- A very high proportion of research into divorce concentrates on 'outcomes' and does not give value to children's present experience. Childhood has value in its own right – it is not simply a preparation for adulthood (Roberts, 1999, p. 11). Research which has focused on children's experiences of separation and divorce shows that for many these are simply events along with many others with which they come to terms in their own way and they are not the catastrophic tragedy that is sometimes portrayed (Brannen and Heptinstall, 1998, pp. 8–9; Neale and Smart, 1998, p. 9; Butler *et al.*, 1999; NSA, 1999b).⁶ However, if adults actively listen to children then the processes of adjustment may be made

significantly easier and the ongoing long-term difficulties which a minority of children experience may be mitigated.

- Children often feel isolated in situations of family conflict and want opportunities to talk to other children who have had similar experiences (Butler *et al.*, 1999).⁷ Most young people who have been through changes in their families feel that help in the form of information, advice and support mainly from their peers would have helped them to adjust more easily (NSA, 1999a; Smith, 1999b, pp. 84-5).
- Children find ongoing conflict in the family very upsetting. They are aware of sometimes being used by one parent to check up on the other or to pass on messages, etc. They do not want either parent to express hostility to the other – they feel loyalty and attachment to both parents and want these feelings to be respected no matter what the parents feel about one another (ChildLine, 1998; NSA, 1999a).
- Where children do not want contact with a parent this view needs to be taken very seriously. Research shows that rigid adherence to contact arrangements can be very distressing for children. Human relationships cannot be forced; children who have been forced to maintain contact with fathers have poor relationships with them when they reach adulthood (Kaganas, 1999, p. 108; Smith, 1999b, pp. 65, 132).
- Some children feel that when it comes to

important matters like residence or contact it is important to have the chance to try out any new arrangements before deciding whether to accept or reject them (Smart, 1998, p. 18).

How children would like to be involved

- Many children are used to participating in family life in decisions which affect them. Where there is this basic trust in a family, children take for granted their right to participate in the decision-making process around the separation and divorce of their parents (Brannen *et al.*, 1998; Neale, 1999, p. 19).
- Although some children took their active participation in family life for granted, they were aware of the difficulties of actually taking the responsibility of making decisions for themselves (Brannen *et al.*, 1998; Morrow, 1998a; Butler *et al.*, 1999, NSA, 1999a). In fact some children saw it as not merely difficult but unfair for parents to ask them to make decisions about matters such as residence and contact (Neale, 1999, p. 19).
- In many families, there are not basic relations of trust between parents and children. In these families the child may need help to make a decision autonomously of their family (ChildLine, 1998; Butler *et al.*, 1999; Neale, 1999, p. 20).
- Any support system must be accessible to children without reference to adults and they need to be treated with confidentiality (Oakley and Masson, 2000).

Successful ways of listening to children

Many factors have been identified by researchers as facilitating more successful communication with children. Adults need to be aware of the difference in power between them and the child, and the impact this has on communication. This can be minimised by taking the following factors into consideration (Hall, 1996, p. 64; Neale, 1999, p. 13).

- Many researchers note that confidentiality is crucial (Brannen and Heptinstall, 1998, p. 3; Butler *et al.*, 1999; Oakley and Masson, 2000; Neale, 1999, p. 13; Roberts, 1999; Roche, 1999, p. 64; Ruegger, 1999). It is empowering and allows the child to speak freely, assured of control of the results of their confidences. If unconditional confidentiality cannot be guaranteed then this should be made clear at the outset so that the child does not feel that confidences have been betrayed.
- It may be misleading to make assumptions on the basis of the child's age; this should be disregarded as far as possible (Neale, 1999, p. 13). Morrow notes that children as young as eight or nine may have the capacity to step outside their own circumstances and to see things from others' viewpoints (Morrow, 1998b, p. 49). However, adults should be *aware* of developmental and cultural factors though they should not make assumptions about the individual child based on this knowledge (Home Office/Department of Health, 1992; Schofield and Thoburn, 1996, p. 42).
- The adult should adopt a non-intrusive style of interviewing, adopting the mode of 'learner' and 'friend' rather than 'protector', 'educator' or 'controller' (Neale, 1999, p. 14). Children's views are thought out and reflect their worlds which the adult may learn about if they are open to this, but not if their tendency is to trivialise children's expressed views. The challenge for adults is to listen to children's opinions and integrate these views into their decision-making (Morrow, 1998b, p. 49).
- The adult needs to bear in mind that the child will need adequate information if they are to express an opinion. Opportunities need to be provided for exploring options (Lansdown, 1992, p. 4; ChildLine, 1998, p. 23; Lyon *et al.*, 1998, p. 53; Ruegger, 1999).
- The adult should reassure the child that there are no right or wrong answers; it is the child's own experiences and opinions that are important (Neale, 1999, p. 14).
- The interview should begin with open, general questions to establish rapport and free discussion and move on to specific, closed questions (Hall, 1996, p. 66). The questions should be simple and direct, based on a shared understanding of the purposes of the interview; indirect questions should be avoided as these are experienced by children as 'unfair' or 'trick' questions (Neale, 1999, p. 14).
- The adult should be non-judgemental and open-minded about children's views and allow the child space to raise their own

agendas as well as responding to those of the interviewer (Neale, 1999, p. 14).

- The adult must learn to allow the child to tell their whole story. Try not to take any negative emotions that are expressed personally. Do not rush to interpret the child's story (Barnes, 1996).
- Younger children may find it much easier to speak if they have a friend with them. One-to-one interviews, especially with an adult who is a relative stranger, may be too pressurising for younger children (Morrow, 1999a, pp. 298–9).
- Good communication is more likely to occur if adults see children's abilities and competencies as being *different* from rather than *lesser* than adult ones. It may be appropriate to use drawing, sentence completion, descriptions of who is important to me, group discussions or other such methods rather than following a question-and-answer format. However, adults must guard against over-interpreting or misinterpreting children's drawings – it is necessary to talk with the child about what they have produced (Morrow, 1999a, p. 299). Vignettes are another very helpful way of encouraging the child to talk (Brannen and Heptinstall, 1998).
- It is important to bear in mind that some children may not want to participate in decision-making at all. Some children find the loss of parental authority which is evidenced in any legal procedures very disturbing. It is crucial to treat each case as unique (Trinder, 1997, p. 303).

- The interviewer should always be alert for any sign that the child is becoming distressed. If the child does get distressed then the interviewer should acknowledge this: 'I can see it upsets you to talk about ... would you prefer not to talk about ...' (Brannen and Heptinstall, 1998, p. 3).
- The adult should be aware that their choice of clothes etc. can serve to emphasise power differentials rather than minimise them (Ross, 1996, p. 96).
- If possible the venue should be chosen by the child. In Smart and Neale's research they found that most children chose to be interviewed in their own bedroom (Neale, 1999, p. 13). If an interview must be in an office then it should be child-friendly (Ross, 1996, p. 96).

Summary

- If adults are to listen to children effectively then they need to rethink radically their attitudes towards children and be aware of the ways that these attitudes inform their practices.
- Professionals need to bear in mind that most children would not choose to talk to 'outsiders' about themselves or their families and many children may not wish to talk to anyone at all.
- If adults want to ascertain the wishes and feelings of children, then in any interviews they must understand the need for: confidentiality; non-judgementalism; direct not indirect

questioning; respect for the child's agenda which may be different from adults' agendas; respect for the child's different competencies; the child to be fully informed of the purposes of the interview.

- The right to participate must include the right not to participate if that is what an individual child wishes.
- Some children may wish to participate but may need support and assistance to do so.
- Acknowledging children's right to be listened to is not the same as giving them the responsibility of making decisions. In the majority of cases children do not want to make the decision.
- Separation and divorce are not single events. Support services for children need to be accessible by them and available as and when they feel that they need them.
- Judicial decisions need to take the complexities of family life into account and the fact that it will keep changing.

In conclusion, in the words of a 15-year-old:

... we are people too and shouldn't be treated like low-lives just because we are younger. I think kids deserve the same sort of respect that we are expected to give to so-called adults. (Morrow, 1999b, p. 25)

Notes

- 1 Alan Cooklin notes the lack of training regarding talking to and listening to

children, particularly young children, of social workers, psychologists, medical practitioners and even child psychiatrists (Cooklin, 1999).

- 2 The main motivation behind this research was the expressed desire of young people who had been attending seminars on law and the family at the Centre for the Study of the Child, the Family and the Law in Liverpool to have some input into the development of any support service for children and young people consequent on the Family Law Act.

The consultation day and the questionnaire that was given to the young people were organised so that they should be as well-informed about the issues as possible before answering the questions. There were opportunities throughout the day for the young people to ask questions to obtain clarification of any of the issues.

The commitment of the young people was demonstrated by the fact that 110 out of 120 of them completed the 12-page questionnaire, a large majority taking the opportunity to express their views in more detail by contributing their own comments as well as answering the closed questions.

- 3 Other researchers have pointed out the importance to children and young people of independent access to written information: 'In their interviews the children and young people generally remarked favourably on being given written information about the process. Although they sometimes reflected that they had not understood leaflets or letters, they liked having them and had kept them. Leaflets had given them information

and had prompted some questions which might not otherwise have been asked' (Masson and Oakley, 1999a, p. 96). 'Lack of written information leaves children and young people dependent on social workers or other adults to provide information about services, these people are themselves unaware of all the services which young people would find helpful' (Oakley and Masson, 2000).

- 4 'Most calls [to ChildLine] are at the beginning or early on in the process; the most acute anxiety and alarm are experienced in the early stages. But the fact that more than 20 per cent of callers were talking about events which had happened more than two years before, some as many as ten, shows that the passing of time does not necessarily resolve matters for children. Indeed, some children feel increasingly alienated and troubled as time passes and further changes occur. Any legal or mediation process of family negotiation which assumes that a settlement can be made in a "once and for all way" is likely to leave some children adrift' (ChildLine, 1998, p. 22).

On the basis of its research with young people, the National Stepfamily Association (NSA) also stresses the importance of ongoing, readily accessible support services. As they point out, the separation and divorce of the child's parents may be only one of many significant family changes that they have to adjust to. Subsequently, they may have to adjust to stepparents, stepsiblings, halfsiblings and so on. There cannot be a once-and-for-all settlement of

family issues after a relationship breakdown (NSA, 1999b).

Trinder makes a similar point where she stresses the importance of meeting children's 'basic substantive rights' to counselling and support which are just as important as any 'right to procedure' (Trinder, 1997, p. 302).

- 5 The process of facilitation is described in detail in Marshall, 1997, pp. 96–8.
- 6 Smith gives details of her interviews with young people who felt that their parents had had a 'good divorce'. What had made the experience positive for the young people was that at the time there had been open communication and at all times their feelings had been respected; other major changes, such as repartnering, had happened gradually, not all at once; they had retained contact with their fathers but this arrangement was flexible and they had more control of it as they got older; their parents developed more positive relationships towards one another after the separation and the conflict that was present in the marriage was avoided post-divorce. The children knew that they were loved and supported by both parents (Smith, 1999b, pp. 70–75).
- 7 Smith (1999b) describes children's groups which have been set up in some areas to help children who are going through the separation/divorce of their parents. The groups are voluntary; children come because they have seen leaflets about the group (sometimes given to parents by mediators). The groups provide an opportunity for children to talk about their

Listening to children's views

feelings, and to listen and be listened to by other children of roughly the same age. The group leaders make it clear that everything is confidential – no notes are taken and parents are not party to the group's activities. Groups can help children to come to terms with what has happened, to look to the future and to become more confident. Such groups are very positive for some children; some children may not wish to take part and they may need individual counselling (Smith, 1999b, pp. 85–92).

4 Summary of the seminar on 5 July 1999

The original purpose of the seminar on 5 July 1999 was to discuss the findings from current research on the issues of listening to children and considering their best interests. This was in the context of the Lord Chancellor's Department (LCD) being in the process of developing court rules in relation to section 11 of the Family Law Act. But, because of the Lord Chancellor's announcement of 17 June 1999 regarding the postponement of the implementation of Part II of the Act, this concern was not so immediate and the seminar ranged more widely. There were very general concerns about, for example, the need for deep-seated cultural changes so that children's rights to information and participation are accepted. There were also specific suggestions for ensuring that children's voices are heard when families break down. In order to make the wide-ranging contributions to the seminar accessible, they have been organised under the following headings: 'Children's rights'; 'Children's right to information'; 'Listening to children'; 'Supporting children and families'; 'The role of court welfare officers in listening to children'; 'The role of solicitors in listening to children'; 'The role of mediators in listening to children'; 'Representation of children'; 'Statement of Arrangements'; 'Parenting plans'; 'Broader cultural issues'; and 'Summary of ideas for promoting change'.

Children's rights

- All children have a right to be informed and to be listened to about matters that affect their lives. This is true irrespective

of whether their parents are married or whether they are involved in a private law or a public law case.

- The UN Convention on The Rights of the Child operates on four levels: (1) the child's right to information so that they know what is happening; (2) the right to express a view, even if this makes matters more complex; (3) the right to express a view that might influence the adults' decisions (this will be linked to age and ability); and (4) the right to make decisions. Adults often confuse the first level with the fourth one and this puts them off allowing children any involvement at all on any level.
- In the drafting of the UN Convention the child's right to be heard in judicial and administrative proceedings was originally in article 3, which is about 'interests', and not in article 12. If children's interests were to be the primary consideration then they should have a right to speak or contribute in judicial and administrative proceedings which concern them. When a decision is being made that is supposed to be in the interests of the child then, if the child has a view about this, they should be heard.
- There are fundamentally opposed value systems in society: on the one hand the child is a bearer of rights; on the other hand the child is seen as a minor and adults are assumed to be able to judge the child's interests better than the child.

- There is a lot of resistance to giving information to children. There is a clash here between what is acceptable in our society and what is enshrined as the rights of the child.
- Parents may come to arrangements about their children which may not be in the interests of the children and about which the children have not been consulted. Although this infringes the rights of the child, the state does not intervene.

Children's right to information

- The best place for children to get information and support is within their families and this role of parents should be supported and encouraged.
- It is not just the child involved in court processes but all children who have a right to information on matters affecting them.
- Past experience of leaflets produced for children indicates that producing the leaflets is not enough (see Lyon *et al.* (1998) research showing that information leaflets produced by the Department of Health for children involved in divorce proceedings are not reaching them).
- At present the Department of Health is not proactive in the distribution of the leaflets it produces – it responds to local authorities' requests.
- These leaflets were written for children with a reading age of 14 – a lot of children in care and others will not be able to read them.

- However, it is valuable for children to have information in the form of leaflets – they can choose who to take them to for help in understanding them. It may be hard for children to retain oral information or formulate questions in the immediate situation.
- It is important that leaflets take account of the variations in practice in different parts of the country or they may be very misleading.
- The experience of attempting to implement the principles of the UN Convention in Scotland regarding giving children information shows the importance of this information being age-appropriate – much of that information was incomprehensible to its target audience.
- There is a problem about getting information to children from families with poor literacy standards who may themselves be poor school attenders.
- Children need information before they are in the midst of a crisis.
- The Internet and CD-ROMs may be more accessible to children than leaflets.

Listening to children

- Most children would choose to talk with their families rather than any outsider. Parents may need help and encouragement to do this, particularly when they are going through the trauma of family breakdown.

- The differing perceptions that adults have of children and childhood affect the ways in which they communicate with children and understand what the children are saying.
- Practitioners may have difficulty listening to children, partly because of the pain and distress that children may express and partly because the focus of the court may be the 'implacably hostile parent' rather than the child.
- Adults may confuse listening to the child with asking the child to make decisions; children are able to distinguish 'having their say from having their way'.
- It is important for adults to be aware that they do *not* always know best; the child's view may be their construction of what is the 'least worst' scenario – the only way that is tolerable for them.
- It can be a relief for children to talk to someone outside the family about distressing things.
- It is of value to listen to children – it has positive mental health outcomes and increases their social competence.
- Careful listening takes time and there are therefore resource implications. Legal aid available is very limited.
- It is not enough simply to give children the opportunity to be listened to; the context in which they are seen (e.g. away from younger siblings; not in the presence of parents) and the way that they are spoken to should facilitate good communication.
- Professionals need to be aware that children may express views which are intended to placate adults; these may not be their own views.
- Professionals very often do not have the skills to help children to talk.
- Professionals need to be aware that children may not have a sense of how things evolve over time; their experiences of change may be limited. Professionals need to be aware of this possible lack of experience when talking with a child and it may be helpful to talk of 'what if?' and refer to the shared experiences of peers and siblings.
- Children should always be listened to if they do not want contact with a parent. This may be a child protection issue and any decisions may be crucial in determining how a child copes in the long term.
- Children should be allowed to say no, to change their minds and to make mistakes. It is through making mistakes that we can learn.
- It is important that it is apparent to the children why it's useful to talk to the practitioner.
- It is difficult for a basically bureaucratic system to be available to a child when the child is ready to speak.
- Listening should not be solely about verbal communication – children communicate also by behaviour. It is also important to be attentive to what is not being said.

- Listening is not the same as understanding. Practitioners need to listen, reflect back what they have understood, see whether they are correct. If all this is done properly then the practitioner is in a much better position to say the child's wishes and feelings have been heard (whether or not the court follows them).
- It is harmful to suggest that you are listening when in fact you have no intention of doing so.
- It is very helpful if children can be debriefed – 'we thought about what you said but there were other factors to take into account ...'
- Query whether Family Group Conferences would be a good way of enabling children to be heard. It was pointed out that children may find it very hard to speak up in that kind of group and also such Conferences may replicate the power imbalances within families and this will negate the possibility of helpful communication (this latter point was also made about mediation).

Supporting children and families

- Preparation for parenting is very important so that people are prepared to face future crises, helped to cope with change and receive information that helps them to accept their responsibility for talking to their children about difficult issues and considering their children's views. Some parents may not be able to

do this on their own and then professional help may be needed. It is important that this help is to facilitate parents communicating with their children, compulsion is unlikely to work well.

- People who are involved with children already on a day-to-day basis (teachers, medical and social work practitioners) should be encouraged to 'expand their role' to make it a fuller, more caring and sympathetic one. It is unhelpful to assume that involving more specialised, highly trained people is the answer to crises and difficulties facing families.
- Parents phoning ParentLine often ask for help in talking to their children about separation/divorce. The parent is asked to reflect on how they have managed other changes in their lives. This helps them to appreciate that they have some skills which will help them to cope.
- Work with children in schools, in groups and individually, shows that children can gain a lot of confidence from realising that they are not alone and this can lead to them initiating discussion with their parents.
- There is at present no training course teaching the skills needed by people working in this way with children. There is a need for thinking about the core competencies involved.
- Children find it very helpful to talk to other children who have been through similar experiences.

- All schools should have a counselling service with access to someone whose job it is to provide information for children, see children on an individual basis, create support groups to help them to deal with change, etc. It should be accessible in a non-stigmatising way.
- Children want information to be provided by specialists, not teachers.
- Certain subjects which are at present taught in schools lend themselves to dealing with issues of change (e.g. art, English, drama, PSE).
- One of the problems for schools is that teachers are very wary of doing anything with the children that they think might upset the parents.
- It would be helpful to work towards a situation where services are provided within an umbrella that provides information and education to parents and children on things such as conflict resolution, management of the emotions and how to communicate effectively. This is necessary before a crisis occurs.
- Any agreements reached should be revisited as the children get older. This should be a service to help people through a crisis and tide them over its aftermath.

The role of court welfare officers in listening to children

- Several contributors made the point that the practice of court welfare officers

(CWOs) with regard to listening to children is more *varied* across the country than the research would suggest – in some services the focus is very clearly on the children, taking their wishes and feelings into account in making decisions and recommendations. It was felt that this inconsistency is primarily an organisational matter and highlights the need for confident practitioners and good leadership. It was pointed out that it is difficult for managers to encourage CWOs and ensure that they operate in a consistent way. However, it was pointed out that it is still very unclear what the relationship between CWOs and children should be; the focus remains on adults. Even where children are specifically named in Family Assistance Orders there is still no direct contact between the CWO and the child.

- The CWO may not see the child because the parents don't bring the child with them; sometimes the child is not seen because the parents reach an agreement and want to settle the case quickly.
- According to National Standards, the CWO should always ascertain the wishes and feelings of the children; however, this is in tension with the requirement to complete the report within 12–13 weeks. It is very difficult for CWOs to engage in realistic discussion with children in a fraught situation when they are working to such time constraints.
- There is some uncertainty about the purposes of the conversations with the

children and where they fit into the work of the CWO.

- The *role* of the CWO is not clear. It is defined for them by other people in the family justice system and CWOs are more or less susceptible to these pressures.
- CWOs seem to be increasingly reluctant to make definitive recommendations to the courts. This may be because they work within the ethos of trying to get parents to agree – making recommendations is seen to be the prerogative of the judiciary.
- The finding from research is that CWOs generally believe that they could operate more effectively if their role were enhanced. It was pointed out that this would probably require more resources, although it was also suggested that, if CWOs used their time in a more differentiated way, according to the particular case, then they could deliver a better service.
- As part of the probation service, the court welfare service has a broad statutory responsibility to the community and should be initiating relevant projects. For example, the court welfare service in Dudley has invested partnership money in developing a project with a school in Dudley about using new technology to enable children to access information.

The role of solicitors in listening to children

- In terms of the Children Act, every

solicitor should have the welfare of the child as the paramount consideration.

- A solicitor made the point that where she had to decide on the competence of a child to instruct a solicitor it would be very helpful if there were more funding so that she could see the child with the CWO or, alternatively, so that the CWO could see the child and report back to the solicitor.
- It was suggested that the forms which solicitors complete for divorce/separation proceedings should include questions indicating how the wishes and feelings of the children had been ascertained.
- Various difficulties with this suggestion were mentioned: solicitors represent individuals, not families; there is likely to be more than one solicitor involved in any one case; children going in to see solicitors is at odds with solicitors' professional practice about conflict of interest and on this ground alone would not be possible; and cost.
- Solicitors are not trained in social work skills and do not feel able to make judgements on the best interests of the child.
- Most people who go to solicitors have already sorted out issues regarding the children. If any problems regarding the arrangements for the children become apparent in this first meeting then this is the time for the solicitor to suggest counselling.

The role of mediators in listening to children

- The College of Mediators is trying to develop guidelines on the involvement of children in mediation – should they be involved directly/indirectly? Who should see them? How should this be carried out, etc?
- The quality assurance system which is part of franchising for legally aided clients should ensure that the code of practice for mediators (to encourage parents to consult the wishes of children and consider whether the children should be involved in the mediation process) is working.
- However, it is important to be realistic about these regulatory mechanisms and their ability to affect practice – in effect it is just a tick box system and that is inadequate.
- Is the code of practice for mediators clear enough about the role of children?
- Why is it so rare for mediators to consult children?

Representation of children

- From the research, it is clear that children want separate legal representation only where circumstances demand it (the children in the research felt that professionals working within the system should be able to identify such cases). By and large, children want to talk to parents

or people who will help them to come to a decision.

- In practice, representation for children does not work out like representation for adults. Representatives find it very challenging to follow what children want when the representatives think that this would not be in the child's best interests.
- It is important not to lose sight of the need to protect children and their access to separate legal representation may be one important way of doing this.
- Problem of funding – resources to pay for separate representation of children?
- There is a tension in the Family Law Act. It is predicated on mediation and settlement-seeking, yet section 64 opens up the possibility of nightmare scenarios of children and parents being separately represented which could do enormous long-term damage to family relationships. This makes it vital that children's wishes and views are more fully represented to the court than they are at present.
- Given the fact that most disputes are in fact settled by conversations between solicitors and not in mediation, should solicitors see children so that their wishes and feelings are ascertained?
- Should there be a children's ombudsman to represent them?
- At present in private law cases, the judicial decision on whether children should be separately represented is made on the basis of age (but there are no strict

rules). It was suggested that competence is more linked to experience than age; very young children may have relevant knowledge and experience. This viewpoint was disputed by other contributors.

Statement of Arrangements

- The general view was that these are virtually worthless in their present form: even if alarm bells ring for the judge, this rarely leads to action; they seem to be mostly written by solicitors.
- It was suggested that they could be used differently so as to make the exercise of some value. The point in time in which they are done may be crucial in their value. Parents could be asked to certify that the arrangements have been discussed with their children.

Parenting plans

- There is enormous cultural resistance to the involvement of children in parenting plans.
- There was a suggestion that the Statement of Arrangements procedure should be scrapped and instead some form of parenting plan, to which the children are a party, could be used. The court should follow up if the views of the children are in conflict with the parents' plans.
- Australian experience of parenting plans indicates that registering plans in court is

a disaster because they will then be written by solicitors, not parents.

- The research into parenting plans and information meetings shows that many parents welcomed information on how to help their children through the process.

Broader cultural issues

- What do children actually want? Not more and more leaflets, more and more professional helpers but help from the people they know best and see daily. One view was that teachers should play a more active role in helping and that this is an educational responsibility. Children are being excluded from schools because they are going through the trauma of family breakdown and this has not been taken on board by schools. The assumption that teachers and schools already have too much to do is leading to more legal and social work, more law-and-order work, a greater division of labour and professionalisation when it is the people who are in everyday contact with children who should be helping them to cope with change.
- The first stage should not be getting professionals involved, we should be helping parents to accept their responsibility to talk with their children about difficult things.
- People should be prepared for parenting and this will include learning that there will be change, such as divorce or separation.

- We need a change of culture in our society so that there is an acceptance of a culture of information, accessible by children, without prejudice.
- In our culture, asking for help is seen as a sign of failure; in other cultures, asking for help is a positive sign of being responsible. Information meetings were seen more as 'this is where you go to be told and not this is where you go for help, support and advice'. It is vital that our culture moves in the direction of seeing asking for help as being a positive way of being a good parent.
- Despite the Children Act, the culture of parental rights is still very strong in our society.
- The cultural frame of mind that you fight for your rights, rather than seek to compromise, is deeply entrenched. Change is needed at this fundamental level before information meetings and mediation can be successful.
- As noted, there was enormous cultural resistance to children being in any way involved in parenting plans. The view that children should be consulted is very far from being generally accepted.
- This cultural resistance is not found just amongst the 'general public' or 'practitioners' but also amongst the legal profession, solicitors and judges.
- In our culture, we tend to identify problems, label some people as less competent than others. People need their concerns addressed but also need praise,

encouragement and help to get through some difficult changes.

Summary of ideas for promoting change

- It would be helpful to work towards a situation where services are provided within an umbrella that provides information and education to parents and children on things such as conflict resolution, management of the emotions and how to communicate effectively. This is necessary before a crisis occurs.
- Listening is not enough: adults who are endeavouring to understand children must listen carefully and reflect back to check their understandings; adults need to be aware of other ways in which children communicate their feelings; adults also need to be aware that because of the child's lack of experience they may have difficulty projecting into the future and may need help with this.
- Children should be debriefed so that, even if things don't work out exactly as they wished, they know that they were listened to.
- Children need information as a right and if they are to be proactive about participating in decisions which affect them. Leaflets for children must be freely accessible, of a suitable reading age and should reflect the local practices of the area. The Internet and CD-ROMs have great potential in providing children with information without prejudice.

Listening to children's views

- Preparation for parenthood is vital and should include guidance on managing change and communicating with children so that people are able to deal with crises with some confidence that they will be able to come through them.
- Parents may need ongoing help, support and encouragement to enable them to deal with difficult family issues and to communicate with their children. Any arrangements that have been agreed should be revisited periodically as the children get older.
- The mental and physical well-being of children is an educational matter – schools and teachers should be more involved. Every school should have a counsellor responsible for providing information to children, creating support groups, etc.
- One school's community project invited all parents at the beginning of the school year to come and talk about problems. This can lead to engagement with the whole family and may be a way of reaching families of low literacy skills who may not be able to access other support services.
- Children who have been through family breakdown may be the best people to help other children cope. Opportunities should be created to facilitate this.
- There are issues to do with the training and competence of people who are involved in helping children cope with family breakdown and other life changes.

A list of core skills and competencies could be drawn up.

- Should there be a children's ombudsman to meet the need for separate representation?
- The role of the CWO regarding children needs to be clarified. There are also issues regarding skills and training. The best of current practice needs to be adopted widely so that it becomes the norm.
- The court welfare service could be proactive in supporting children, as in the Dudley example.
- Should there be more funding so that solicitors can liaise with CWOs regarding children?
- Should there be somewhere in the divorce forms for the solicitor to document how the wishes and feelings of the children were ascertained?
- The Statement of Arrangements procedure could function more effectively if it were done at a different point in the process and if the parents had to certify that the children had been involved in the discussions.
- Research on adults who as children experienced divorce/ family breakdown and have coped well could enable us to identify the significant factors at work.

Addendum

Harriet Bretherton, a senior CWO, who opened the second session on 5 July, would like to share

some of her further reflections on the issues discussed.

- Children who are involved in legal proceedings need professional help to enable them to say what they want and learn what the likely outcomes are. What is the most helpful way of providing this help in the context of the Children Act and the Family Law Act?
- It may be more helpful to talk about *communication* rather than *information*

giving and listening. 'Communication with children' may be a better starting point than 'Listening to children'.

- She suggests the formation of two groups: the first group would concentrate on the needs of all children who are experiencing family breakdown for information and support; the second group would focus on the needs of children who are subject to court proceedings.

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Appendix: Research summaries

Julia Brannen, Ellen Heptinstall and Kalwant Bhopal, 'Children's views and experiences of family life', funded by the Department of Health

Aims

- To examine children's views about being parented and cared for.
- To ascertain their views on their contribution to care and family life.

Methodology

Both extensive and intensive methods have been employed to analyse the experiences of children aged 11–13 living in four types of family or household context: two-parent (birth) families; lone-parent households; step families; foster care. In the first stage of the study, 941 children aged 11–13, who were either about to start or were recent entrants to secondary school, took part in a survey by means of a questionnaire administered in class time. On the basis of the first study, a sample of children were selected for the second stage of the study which will consist of case studies of children and their key carers, according to different family types, including foster care.

Findings

- Children's views of family life were strongly child-centred. They were concerned that their mothers and fathers should 'be there' for them.
- Few children favoured parents splitting up; most expressed a preference for parents to try other solutions than divorce in the first instance.

- The great majority of children were in favour of adults having children and viewed parenthood largely in terms of love rather than duty.
- When children were very young, most children thought *both* parents should be at home rather than working.
- Parents, mothers before fathers, were reported to be the most important people in children's lives. Children who were not living with their fathers were less likely to mention them than children who were.
- Children reported spending time with their family: 27 per cent 'most of the time', 41 per cent with both family and friends.
- Children wanted more of their fathers' time, especially if their fathers did not live with them, but many preferred not to answer this question. Children wanted more of both parents' time, especially when they worked full time.
- Children's views and experiences of being parented were generally non-gendered, with high proportions of those living in two-parent families mentioning a variety of different kinds of parenting activities carried out by both parents, including expressive and emotional care.
- Children reported being concerned for others and making a considerable contribution to family life.
- The great majority of children reported carrying out *caring* activities within the past week.

- The great majority of children reported carrying out *household tasks* within the last week. Children were more likely to do 'self-care' tasks frequently (e.g. tidying own bedrooms) than 'family care' tasks (e.g. hoovering).
- The majority of children said that they did household tasks without being asked, especially self-care activities.
- The great majority of children believed that they should have a say in everyday personal matters and some input, with their parents, into major family life decisions which affect them, notably divorce, moving house and choosing a secondary school. Children's views vary by ethnicity, age, number of siblings, etc. but tend to depend on the particular decision.
- Seventy per cent thought that children should have some input into decisions about divorce. Almost half thought that the decision about who to live with after divorce should be shared between parents and children. Twenty-eight per cent thought that children should decide themselves.
- The amount of autonomy children were granted by their parents is variable. More boys than girls had autonomy outside the home. Asian children, especially girls, were least likely to have external freedom; black children were most likely to.
- Children reported variable contact with non-resident fathers and considerable

amounts of contact with wider kin. White children were more likely to see their non-resident parents frequently compared with black children. Children's contact with kin was more frequent than contact with non-resident parents. Black and Asian children were more likely than white children to see their kin more frequently.

- Children generally favoured talking to adults about their problems. The persons reported to be most helpful in relation to starting secondary school were: best friends, teachers, mothers, parents and siblings. Girls and primary school children were more likely than boys and secondary school children to mention support from members of their family. Asian children were more likely to perceive siblings and parents as helpful compared with other ethnic groups. One in ten children expected no one to be helpful.

Joan Hunt and James Lawson, 'Integrating support services for the family jurisdiction', funded by the Nuffield Foundation

Published as *Crossing the Boundaries: The Views of Practitioners with Experience of Family Court Welfare and Guardian ad Litem Work on the Proposal to Create a Unified Court Welfare Service* (National Council for Family Proceedings, 1999).

Aims

The study aimed to inform the policy-making process regarding the possible future

amalgamation of the court welfare service, guardian *ad litem* service and the children's work of the Official Solicitor to create a unified court welfare service. In order to do this the study researched the perspectives of practitioners with experience of both court welfare and GAL work.

Methodology

A sampling pool of 77 practitioners was identified by means of a survey of every GAL panel and probation service in England and Wales. Face-to-face interviews were conducted with 38 informants, all but seven of whom were fieldworkers rather than managers.

Findings

- The needs of children and families in private law cannot always be met under current arrangements.
- The role of the CWO should be more child focused.
- CWOs should have a more central role in proceedings.
- CWOs should be able to call on expert advice.
- Improvements are needed in court welfare practice, particularly in working with children and in the understanding of child care and child protection.
- Unrealistic workloads are a serious problem.
- Nearly all the informants favoured making the legal representation of children more widely available in private law.

- Representation of children would focus the attention of the parties on the children and strengthen the child's position in the proceedings by: the ability to instruct experts; bringing a legal perspective to the child's case; advocacy and negotiation.
- The courts should be able to retain the discretion to order separate representation according to the circumstances of the case. The CWO should be able to recommend separate representation, perhaps on the basis of preliminary enquiries.
- The general view was that the public law model of the GAL and solicitor working in tandem was the most appropriate one to follow.

Conclusions and recommendations

- Section 64 of the Family Law Act 1996 should be implemented as soon as possible.
- There should be guidelines on the circumstances in which legal representation might be appropriate, but not restrictive criteria.
- The CWO should be required to consider and should be empowered to recommend separate legal representation.
- Children's interests should be safeguarded by a spectrum of provision ranging from a welfare report to full representation by a solicitor and a GAL.

- The role of the CWO should be strengthened to include the power to commission expert reports.
- It should be made clear that the CWO's overriding duty is to protect and promote the interests of the child even though this may be done, in the first instance, by working through the parents.
- The capacity of CWOs to deliver an adequate service to the courts and to families needs to be enhanced by appropriate training and a workload review.
- Integration of the court welfare and guardian services is an appropriate way forward. However, it needs to be made plain that the primary aim of the service is to promote the welfare of children in the family courts and that this is a service for children involved in court proceedings, rather than a service for the courts about children.

Harriet Bretherton, Anne Buchanan and Joan Hunt, 'Welfare reporting in contested applications for orders under s.8 of the Children Act 1989: family perspectives on process and outcomes', funded by the Nuffield Foundation

Aims

Sixty thousand children per year are the subjects of welfare reports by CWOs. At present little is known about whether the decisions made in proceedings do promote the welfare of children. This research aims to contribute to the knowledge base on the consequences for

children and parents of decisions made in contested s.8 proceedings and the processes by which decisions are reached.

The Family Court Welfare Services have agreed to participate in the study, which will run for two years from March 1999.

Methodology

This study will follow up parents and children after a decision has been made in contested s.8 applications and where a welfare report has been ordered. There will be face-to-face interviews with 50 mothers and 50 fathers within three months of the completion of proceedings. Subsequently, the CWO will be interviewed by telephone and the welfare report will be read. Twelve months later parents will be re-interviewed. At this second stage, permission will be sought to interview children aged nine and above.

Adrian L. James and Louise Sturgeon-Adams, 'Family Assistance Orders', supported by the Joseph Rowntree Foundation

Published as *Helping Families after Divorce. Assistance by Order?* (Policy Press for the Joseph Rowntree Foundation, 1999).

Aims

In the light of previous research about the variations in the practice of the family court welfare service both within and between probation areas, this study asked the following questions about FAOs.

- Are there variations in local *policies* concerning the use of FAOs?

- Are there variations in local *practices* concerning the recommendation of FAOs in welfare reports, independent of local policies?
- To what extent are either of these the product of negotiations, either formal or informal, within local courts?
- What do courts and CWOs regard as the purposes of FAOs and what criteria do they use when considering the use of FAOs in individual cases?
- How do courts and CWOs regard the 'exceptional circumstances' requirement?
- In those areas which make little or no use of FAOs, are alternative services available to families?
- What work is done by CWOs in the context of FAOs?
- What are the main problems which are the focus of the work done with children and families in the context of FAOs?
- To what extent do FAOs give children a voice in the post-divorce readjustment of family life?

Methodology

The research design consisted of four main elements: a national survey of probation services' family court welfare policies; a study of reports and case records in areas selected because of their markedly high or markedly low use of FAOs; interviews with practitioners, managers and judges in each of these areas; and a telephone survey of a sample of other areas.

A questionnaire was sent to all 54 probation areas in England and Wales seeking information

about their policies and practices in relation to FAOs and requesting copies of relevant policy documents and protocols. The response rate was 78 per cent.

Fieldwork was undertaken in four of the probation areas with the highest rate of use of FAOs and in four of the areas where it seemed that there had been little use made of FAOs. Much of this work consisted of a study of case records. In all, 244 files were examined – 168 FAO case records in which an FAO had been made and 76 cases in which there had been at least one court welfare report and an addendum.

A total of 55 interviews were conducted – 12 with judges, 11 with senior CWOs and 32 with family CWOs.

In order to increase the reliability and generalisability of the data, telephone interviews were conducted with middle and senior managers in a further ten probation areas.

Findings

- The official statistics regarding FAOs are unreliable.
- The vagueness of formal definitions and guidance gives courts considerable discretion regarding FAOs. Some CWOs had avoided them altogether – by never recommending them and by never having one imposed by the court. The majority of CWOs had made recommendations in some cases and in others had experienced FAOs being made by the court without recommendation. In the latter case, they were reluctant to supervise them and had reservations about their value.

- There is little clarity about any aspect of FAOs – purposes, circumstances in which one may be imposed, appropriate ways of carrying out the order, etc.
- There is no agreement over the definition of ‘exceptional circumstance’. Decisions are reached by a combination of judicial discretion and the orientation of the CWO. Only 37 per cent of FAOs were recommended by CWO; the majority were imposed by the courts.
- There is a variety of family welfare services throughout the country. Some areas have access to more services than others. There is no clear evidence that areas making less FAOs make more use of partner services.
- *National Standards* are supposed to regulate the work done in the context of FAOs. However they are not always followed. There are a large number of FAOs where there appears to be no contact made with the children, despite their being named in the order. There is a variety of views regarding the appropriateness of working with children.
- A wide variety of work is undertaken under the provision of the FAO. A common aim is to move the parents from a less to a more ‘healthy’ position in terms of the parental relationship for the benefit of the children, based on the assumption that the children should have a continuing relationship with the absent parent.

- Interviews with judges and CWOs revealed that there is disagreement about the boundaries between social services and the family court welfare service. A common view was that social services have so much high priority child protection work that they are unable to deal effectively with FAOs.

Conclusions

- There is a need to establish clear policies about the definition and use of the FAO, the circumstances under which they should be made and the purposes of such orders. There is at present no clear policy, resource or practice framework governing services for families and children post-separation/divorce.
- A standard definition of FAOs is essential if reliable statistics are to be collected.
- Funds should be allocated for FAOs to discourage the present situation where in many probation areas FAOs are avoided because there is no funding attached.
- The nature and extent of the role of social services departments in the supervision of FAOs should be clarified.

Christina M. Lyon, Edward Surrey and Judith E. Timms, 'Consultation with children and young people, welfare professionals, legal professionals on support services for children and young people experiencing the breakdown of their parents' relationship', funded by the Gulbenkian Foundation

Published as *Effective Support Services for Children and Young People when Parental Relationships Break Down. A Child-centred Approach* (University of Liverpool, 1998).

Aims

- To ascertain the need for a support service for children experiencing their parents' relationship breakdown.
- To ascertain the views of children and young people about the sorts of services which they felt might be helpful to them.
- To identify what problems were experienced by children and young people whose parents have been involved in private law proceedings.
- To consult with four groups (children and young people; welfare professionals; legal practitioners; judges and magistrates) as to the need, if any, for the formal provision of the services of information, consultation and separate representation for children and young people.
- To consult with the four groups as to the situations when such service provision might be appropriate, and also how young people could be referred to services or access services independently.

Methodology

A consultation group of legal and welfare practitioners and young people was set up to discuss and determine details regarding matters such as the sending out of invitations, the format of consultation days and the format of the questionnaires.

Letters were sent to head teachers and also to all the young people who had been involved in seminars at the Centre for the Study of the Child, the Family and the Law. The young people who agreed to participate in the consultation day came from a variety of socio-economic backgrounds.

The questionnaires that were distributed to legal and welfare practitioners ('service providers') and the judiciary ('decision-makers') in advance of their consultation days were in essence the same as those which were given out to the young people on their consultation day.

The young people's questionnaire included briefing information on the roles of CWOs, GALs, mediators and children's panel solicitors. This information was supplemented on the young people's consultation day by presentations by staff at the Centre. The young people's questionnaire was 12 pages long and included space for their own comments. It was optional whether they put their names on the questionnaire.

There was a consultation day with the judiciary and lawyers when there were presentations, debate, feedback and consideration of the questionnaires.

Fifty questionnaires were distributed to the judiciary; 11 were completed. One-hundred-and-fifty questionnaires were sent out to solicitors who work in family law; 38 were completed.

There was a separate consultation day for 71 welfare professionals when there were presentations, group discussions on the presentations and on the questionnaires, which were completed on the day. A total of 78 questionnaires were completed by welfare professionals.

One-hundred-and-twenty young people attended their consultation day, some in the role of group leaders. There were presentations, group workshops, opportunities throughout the day for asking questions and questionnaires were completed, with group leaders answering questions rather than filling in questionnaires. One-hundred-and-ten questionnaires were completed.

Findings

The young people

- A large majority of the young people expressed the need for a readily accessible information service for young people affected by the separation, divorce or relationship breakdown of their parents.
- The young people expressed the need for support services whose functions and responsibilities were clearly intelligible to children/young people.
- A large majority of the young people expressed the need for a consultation service. A minority felt that it was not always best to consult a child.
- Nearly half the young people felt that children and young people should always have access to separate representation in these situations; around a quarter

believed it should be available only where it was definitely needed; over a quarter felt that children/young people would not be mature enough to express themselves and thus could be denied the possibility of separate representation.

Welfare professionals

- The majority were in favour of: a comprehensive children's support service, which should be non-legal and should encompass: an information service; a consultation service in the majority of cases and, in a minority of cases, separate representation of children.
- The main reasons given for these services were: to help the child to access relevant services; to help the child to understand what is going on; to assist them in making decisions; to help the child where their views are in conflict with the parents' views; to ensure the child is heard; to help the child express their views; to minimise the impact on the child; and so that the child is not ignored.

The lawyers

The large majority believe:

- that information should be provided for children/young people in all or a majority of cases
- consultation should be provided in all cases or a majority of cases
- separate representation should be provided in a minority of cases.

The judiciary

- All 11 judges felt that there should be an easily accessible support service for children affected by private law proceedings. Reasons given were: so child understands what is happening; to minimise the impact on the child; to provide emotional support; to promote the welfare of the child.
- Most of the judges believed that information should be provided for children/young people; all believed that consultation should be provided in some cases and that separate representation was needed in a minority of cases.

Judith Masson and Maureen Winn Oakley, 'Out of hearing: the representation of children by guardians *ad litem* and solicitors in public law proceedings', funded by the NSPCC

Published as *Out of Hearing. Representing Children in Care Proceedings* (John Wiley and Sons, 1999).

Aims

A small, in-depth study of the representation provided for 20 children and young people aged between nine and 15 involved in 'specified proceedings' under the Children Act 1989. The research aimed to find out what the children/young people's experiences and understanding of the proceedings were.

Methodology

The researchers observed 63 meetings between children/young people and their

representatives (guardians *ad litem* and solicitors). Interviews were conducted after the completion of the cases with the children/young people, 12 GALs and 12 solicitors.

Findings

- The majority of the children and young people were isolated from their families, friends and communities, living in temporary foster homes or residential placements during some or all of the proceedings. Few had good relationships with social workers who knew them well. Consequently, many children and young people valued the support of adults who would discuss their concerns and advocate their interests.
- Children and young people were very concerned about the day-to-day arrangements for their care, where they would be living and go to school, and when they would move. Contact with relatives or friends was a major issue for more than half of them.
- Little written information about the proceedings taken for their protection was given to the children and young people. Most had none. The leaflets which are currently available are misleading and current practices amongst GALs, solicitors and the courts are very diverse.
- Children and young people had a general understanding of the role of the GAL and trusted them. GALs are skilled at establishing rapport with children and young people, and sensitive to their anxiety.

- Solicitors relied on GALs for guidance; most GALs had strong views on how they wanted solicitors to act. GALs usually introduced the solicitor to the child or young person.
- Children and young people had less understanding of the role of the solicitor. Half saw their solicitors only once. Half only saw their solicitor with the GAL.
- The young people in the study who were involved in secure accommodation proceedings related strongly to their solicitor. They attended court, had more dealings with their solicitor and were clear about their solicitor's role. All but one had limited involvement with their GAL.
- GALs were reluctant to attend case conferences. Where they did so they saw themselves as observers. Solicitors rarely attended case conferences when acting for children but did so if they were representing parents.
- Most children saw only limited parts of the GAL's report and did not have opportunities to discuss the report with their solicitor. Almost all were dissatisfied with the access they had to the GAL's report.
- Most of the children and young people accepted the need for a court order. Ten disagreed with major aspects of the local authority's plan for their care, e.g. where they were to live or contact arrangements.
- For at least five children and young people, the outcome of the case left major issues unaddressed.
- The GALs and solicitors worked to avoid children and young people instructing the solicitor directly.
- GALs and solicitors were reluctant to talk to children and young people about attending proceedings because of the negative attitudes towards this.
- The children and young people were equally divided between those who wanted opportunities to participate in the proceedings and those who did not.
- Arrangements to inform children and young people about the outcome of cases were haphazard. Some heard the outcome of the case only from others involved in the proceedings.

Conclusions

The problems identified in this research are a result of the structure of the system itself, attitudes to children and young people, and the limitation of substitute care for children and young people who need protection. The uneven distribution of power between courts and local authorities, solicitors and GALs, and GALs and social workers undermines the system's ability to deliver outcomes which are responsive to the concerns of the children and young people involved and therefore it cannot make their welfare paramount.

Although all children and young people are parties to the proceedings, they rarely receive the service adult clients expect. In practice the child's solicitor acts for the GAL. Young people would benefit from a solicitor who engaged with them by explaining the process, helping them to understand it and discussing their participation.

Recommendations

- Age-appropriate information should be given to all children and young people in such proceedings.
- Older children who wish to attend hearings should have the opportunity to do so.
- Children should be informed of the outcome of proceedings.
- Young people should have access to the GAL's report after the proceedings.
- Parents and other parties should be represented only by specialist lawyers.
- Solicitors should attend case conferences on behalf of their clients.
- The form and content of the care plan should be regulated.
- The court's powers regarding the care plan should be extended.

**Maureen Winn Oakley and Judith Masson,
Official Friends and Friendly Officials
(NSPCC, 2000)**

Aims

The study aimed to ascertain the knowledge, understanding and experiences of children and young people regarding those who are appointed under the Children Act to 'visit, advise and befriend' them. This is a requirement of the local authority for any children it is looking after where this would be in the child's best interests and where communication between the child and its parents or those with

parental responsibility is infrequent or non-existent.

The Children Act requires local authorities to establish a complaints system. A number of diverse schemes have developed to provide support, advocacy or representation for children in public care raising concerns or making complaints. Some local authorities employ children's rights officers. The National Youth Advocacy Service and the Voice for the Child in Care provide representation services to a number of authorities on an *ad hoc* basis. Also, some areas are served by local advocacy schemes.

Little is known about how children find out about and access all these different services or what they gain from using them. Claims for these services have been made by service providers. This study aimed to find out more on the perspectives of service users and potential users.

Methodology

The children and young people in the sample came from different ethnic backgrounds and included some with disabilities. It included those who had independent visitors and those who did not. Interviews were semi-structured and discursive.

Findings

- Information for children and young people about their rights and services is generally lacking; leaflets which have been produced are poorly distributed. Those in foster homes are unlikely to have them.
- Lack of written information leaves children and young people dependent on

social workers or other adults to provide information about services. These people are themselves unaware of all the services which young people would find helpful.

- Where they existed, children's rights officers were a good source of written information and advice about rights and existing services.
- Independent visitor schemes varied widely in their size, scope, recruitment methods and their policies, particularly in relation to visits by young people to their visitor's home and whether the visitor should advocate on behalf of their young person.
- The unavailability or restricted scope of independent visitor services operates to conceal the need for such services. There is a reluctance to inform children and young people where these services are not provided.
- All the young people who had an independent visitor were positive about the experience. They enjoyed new opportunities, a wide variety of activities and the individual attention that this relationship brought them. They particularly valued being able to confide in someone who did not have professional responsibility and would not record their concerns.
- Independent visitors' roles ranged from the entirely social to relationships where they took on wider responsibilities, advocating for the young person within the care or education systems and

attending their reviews. The role played by the independent visitor depended on the young person, the independent visitor's willingness to take on the care system and the policy of the scheme within which they operated.

- Although schemes were not able to guarantee continuity by an independent visitor and some appointed visitors on short-term contracts, well-matched relationships provided continuity often lacking from social workers.
- Advice, representation and advocacy services were valued by the young people who have access to them. The availability of support did not necessarily give young people the confidence to raise concerns or make complaints; the lack of opportunity for confidential discussions was one reason for this. The need to justify seeking a representative or children's rights officer limited some young people's access to these services.
- There is general confusion about differences between similar sounding schemes and similar sounding titles – befriender, mentor and independent visitor schemes; independent visitors, independent representatives and independent persons. The term advocacy is capable of different interpretations. Clarification of roles and the provision of consistent terminology is the first step to providing understandable and accessible services.

Virginia Morrow, 'Attending to the child's voice: children's accounts of family and kinship', funded by the Joseph Rowntree Foundation

Some publications arising from the study are: 'The ethics of social research with children: an overview', *Children and Society* (1996) Vol. 10, No. 2, pp. 90–105 (with M.P.M. Richards); *Understanding Families: Children's Perspectives* (National Children's Bureau / Joseph Rowntree Foundation, 1998); 'Understanding families: children's perspectives', *Childright* (1998), Vol. 149, pp. 17–18; 'My animals and other family: children's perspectives on their relationships with companion animals', *Anthrozöös* (1998) Vol. 11, No. 4, pp. 218–26; "'If you were a teacher, it would be harder to talk to you'": reflections on qualitative research with children in school', *International Journal of Social Research Methodology: Theory and Practice* (1999) Vol. 1, No. 4, pp. 297–313 "'It's cool ... 'cos you can't give us detentions and things, can you?!'": reflections on researching children in school', in P. Milner and B. Carolin (eds) *Time to Listen to Children: Personal and Professional Communication* (Routledge, 1999); "'We are people too". Children's perspectives on rights and decision-making in England', submitted to *International Journal of Children's Rights*.

Aims

- To explore how a sample of 'ordinary' (i.e. non-clinical) children perceive and make sense of the concepts of 'family' and 'kinship' in the context of rapidly changing family forms.
- To review ethical guidelines for social research with children.

- To explore how, methodologically, children's views can be elicited in an appropriate and satisfactory manner, according to age, gender and ethnic background.
- To analyse how 'the family' is represented to children in school curricula, media and literature, and how children make sense of such representations.

Methodology

The research is based on empirical data gathered in schools from 183 children aged between eight and 14 in two parts of East Anglia: a rural area and a large town with a population of British Muslims originating from Mirpur and Azad Kashmir in Pakistan.

Structured activities included: draw-and-write on 'who is important to me?'; sentence completion on 'what is a family?' and 'what are families for?'; a short questionnaire asking whether or not five one-sentence descriptions of family type counted as family.

Open-ended group discussions explored more closely children's responses to the questionnaire. Group discussions also focused on media images of families, children's involvement in decision-making and the extent to which they felt listened to, generally, in families, schools and the wider community. Discussions were taped and transcribed.

Findings

- Children can be constructive and reflective commentators about the concept of 'family'.

- Children have a pragmatic view of family life, and are aware of a wide variation in family practices and structures.
- From children's point of view, love, care and mutual respect and support were the key characteristics of 'family'. This was the case regardless of gender, ethnic background and location. Overall, children appeared to have an accepting, inclusive view of what counts as family and their definitions did not centre around biological relatedness or the 'nuclear' norm.
- There were some differences between age groups, in that younger children seemed to present concrete explanations while older children were more generalised in their use of language and drew on complex abstract notions of quality of relationships.
- The centrality to children of parents, especially mothers, as providers of physical and emotional care, emerged clearly.
- Sibling relationships were also important and, while such relationships are rarely conflict-free, they are often underpinned by a good deal of mutual affection and support.
- For some children, regardless of ethnic background, social life appeared to revolve around relatives and extended kin.
- Friendships became more important the older the children were. Girls in particular described their close friends as

central for emotional support, though this was the case for some boys too.

- In response to questions exploring 'being listened to', children wanted to be able to 'have a say' in what happens to them, rather than to make decisions themselves. Some children did feel they are listened to within their families, others did not, and others showed a sophisticated awareness that decision-making may not be straightforward.

Conclusions

- Narrow definitions of 'the family' as nuclear are ethnocentric and obscure a wide diversity of family forms and family practices.
- Similarly, children are not a homogeneous category. Children of different ages described 'family' in different ways. Younger children used concrete examples and older children were more abstract, but there was wide variation and some eight and nine year olds could generalise beyond their own experiences and see things from a different point of view.
- Overall, children had an accepting and inclusive view of what counts as family. Their definitions did not centre around the 'nuclear norm' or genetic ties. Children's households appeared to provide a supportive setting and these households could encompass a range of significant others, including pets. The people who matter to children are the people who are available to them and around them.

M. Murch, Gillian Douglas, Lesley Scanlan, Alison Perry, Catherine Lises, Kay Bader and Margaret Borkowski, 'Safeguarding children's welfare in uncontentious divorce: a study of s.41 of the Matrimonial Causes Act. Report to the Lord Chancellor's Department, funded by the Lord Chancellor's Department

Aims

Under s.41 of the Matrimonial Causes Act, details concerning the proposed arrangements for the children of divorcing couples have to be provided to the court in a Statement of Arrangements form. A similar process will happen under the Family Law Act.

The aims of this study were:

- to provide a picture of how s.41 works in practice
- to evaluate whether the information given on the Statement of Arrangements form is an effective means of highlighting possible concerns relating to post-divorce arrangements for children in uncontentious cases (i.e. where there has not been an application under s.8 of the Children Act regarding the children)
- to determine to what extent parents may be colluding in the submission of false or misleading information on the Statement of Arrangements.

The study also looked at current practices regarding mediation to ascertain the extent to which parents ensure that their children understand and, where appropriate, contribute to decisions about them.

Methodology

Data from 'uncontentious' divorces where there were one or more children under the age of 16 were collected from ten different court areas.

Data were collected from 353 files. This represents about 4.5 per cent of divorces in the ten selected courts where couples have one or more children under 16. This sample is at least comparable to the specific population from which the sample was drawn.

Sixty-three parents who had recently divorced were interviewed.

Thirty-five district judges from the ten court areas were interviewed. The judges had been dealing with special procedure divorces for between one and 21 years; just under 40 per cent of them said they deal with from 400 to 500 per year.

Forty solicitors were interviewed, four from each of the ten court areas. Experience of dealing with divorce cases varied from under four years to 25 years; 82 per cent had had seven or more years' experience. Seventy-seven per cent estimated that divorce accounted for 50 per cent or more of their workload.

For the mediation audit, a postal questionnaire was sent to all known family mediation providers – 719 returned completed questionnaires, a response rate of 47 per cent.

Findings

- There is general scepticism among district judges and solicitors as to the utility of the current law, although there is an acceptance (shared by parents) that the state has a role to play in safeguarding children's welfare in divorce.

- District judges vary as to the issues they identify as potentially problematic and the action they should take in consequence.
- District judges rarely take action after scrutinising the written details, largely because they do not consider there is much they can usefully do to 'solve' any problems they have identified.
- The Statement of Arrangements form is not well designed to elicit information which might be expected to enable the court to gain a clear insight into the child's welfare.
- There was no evidence of significant attempts by either parents or their solicitors to 'conceal' information or to present a misleading picture to the court.
- Respondents do not usually contribute to the completion of the petitioner's Statement of Arrangements.
- Parents would welcome more support and advice during the divorce process and would be happy for 'someone' to talk directly to their children about their wishes and feelings.
- Mediators are well aware of the importance of children's welfare, wishes and feelings, but seek to address these indirectly through encouraging parents to think about their children's position, rather than directly by talking to the child themselves. Those mediators who are prepared to involve children directly in mediation only do so occasionally.

- Mediators are more likely to rate improving communication between parents as extremely important in mediation, than helping parents reach agreement.

Ian Butler, Gillian Douglas, Frank Fincham, Mervyn Murch, Margaret Robinson and Lesley Scanlan, 'Children's perspectives and experience of the divorce process', funded by the Economic and Social Research Council

Aims

Divorce law reform stresses the importance of safeguarding children's interests during and after divorce. Through listening to children talk about living through their parents' divorce the project:

- helps build a fuller picture and better understanding of children's experience of family breakdown
- provides information of relevance and benefit to professionals working with families
- provides information of interest and value to parents and children.

Methodology

A random, representative sample of recently divorced families was drawn from six court areas in South Wales and the South West of England. One hundred and four children aged eight to 15 years were interviewed within 14 months of decree nisi. Each child agreed to participate and was guaranteed full confidentiality. Each child was interviewed in

their own home. Each child talked alone with the interviewer. Qualitative and quantitative data were collected from children and parents.

Progress

The analysis of data is in the early stages.

National Stepfamily Association, 'Children and young people project', funded by the National Lotteries Charities Board

Aims

- To give children and young people experiencing family change an opportunity to express their views so that they can directly influence the services and policies that affect them.
- To consult professionals (teachers, youth workers, counsellors, social workers, etc.) and national agencies who work with and are concerned with children and young people about ways of developing more appropriate services to meet the identified needs of children and young people.
- The ultimate aim of the project is to identify models of good practice in supporting young people experiencing family change so that these can be disseminated nationally.

Methodology

Through questionnaires, workshops and discussion groups in schools, youth clubs and play schemes the views of young people who have experienced family change are being elicited.

Findings

- Children and young people's resilience through family change (separation, divorce, repartnering) is very much dependent on how sensitively these changes are handled by the adults involved. They are much more resilient if parents are amicable and not hostile or in conflict with one another. Such hostility is very difficult for children and young people because they feel loyalty to both parents.
- Most children and young people feel powerless in situations of family change. They find themselves in situations which they are forced to accept and yet they feel that they have had no say in them. When a new family is formed they may have to accept different rules and discipline, often without negotiation.
- Children and young people want to be consulted in the decisions that affect them; they want to be listened to, not to have the ultimate responsibility for decision-making.
- Many children and young people will put their parents' feelings before their own. This inhibits communication.
- Children and young people want their parents to be open and honest, to take time to discuss the situation, and to allow the child an opportunity to talk about their feelings and needs and to be truly listened to. Children and young people who are not allowed to express their feelings, including feelings of anger,

admit that they sometimes resort to bad behaviour to get attention.

- Many children and young people feel isolated and would like to know that they are not alone. They may feel scared and lonely during situations of family change.
- Many children and young people blame themselves for their parents splitting up. They do not feel able to express these feelings to their parents and so parents cannot reassure them.
- Many children and young people have found it useful to talk to someone (youth workers, neighbours, teachers, counsellors, ChildLine, NSPCC, etc.) in order to explore and practise ways of talking to parents and step-parents. The large majority of children talk to family, especially grandparents, and friends.
- Many children and young people want to talk to others who have had similar experiences and who therefore understand and are in a position to give support and offer advice. Some children and young people did not talk to friends because they did not think that they could understand if they had not been through similar experiences.
- Children and young people want to be able to access information, advice and support easily and independently.
- Many young people do not use the term stepfamily when describing their situation.
- Young people welcome the opportunity to talk about issues around family change

in the form of general discussion, not necessarily talking about personal situations.

- Children and young people are more resilient through periods of family change if there is as much stability as possible in other areas of their life.
- There are many difficulties for children and young people in adjusting to step-parents: it makes it clear that the parents are not going to reunite; it may take a lot of time to adjust to the parent's new partner; sometimes it seems that the parent is putting their own needs and the new partner's needs before the child's needs; there are problems regarding jealousy / favouritism surrounding step- and half-siblings; there may be different rules and discipline.

Caroline Sawyer, 'Rules, roles and relationships: the structure and function of child representation and welfare in family proceedings', funded by the Berks, Bucks and Oxon Child Care Group

Published under the above title by the Centre for Socio-Legal Studies, University of Oxford.

Aims

How is the position of the child in family proceedings addressed by the professionals?

Methodology

Semi-structured interviews were carried out with 12 panel GALs, 12 Children's Panel solicitors and eight CWOs in the Thames Valley area.

Findings

Public law

- There is some evidence of 'cosiness' between solicitors and GALs.
- There are also certain areas of uncertainty or friction.
- There are few practical problems despite the fuzziness around the welfare/representation division.
- There is little or no evidence of duplication of work or time wasted.
- GALs' independence of operation was highly valued.
- Their connection with local authorities was invidious.

Private law

- CWOs were under severe pressure to bring about settlements on a pre-stated model.
- They could not withstand cross-examination on their views and recommendations either as to legal provisions or as to social work recommendations.
- They generally expressed similar views on the principles of the law and of social work research but were unable to substantiate those views.
- Parental rights overwhelmed any view of the child as a person.
- The preconceived notions of child 'welfare' were judicial in origin.

- CWOs' working structures did not allow or equip them to resist the judicial ideology even where they believed they were not working in children's best interests.
- They would not necessarily see children.
- Children dissenting from the approved settlement of the case would not be taken seriously and would be categorised as repeating parental concerns or as mentally ill.

Public law and private law practices compared

- Solicitors found CWOs to be less thorough, independent and child-focused than GALs and most attributed this to their working practices rather than to the arena of their practice.
- GALs usually, not invariably, made criticisms of CWOs' practices similar to those made by solicitors.
- CWOs usually had little idea of what GALs did.
- The researcher found it remarkably difficult to persuade CWOs to address the question of the child's individual personality.
- CWOs (mirroring judicial attitudes) were much less ready than GALs to accept the idea of reasonable dissent and dispute from anyone, especially children, but also parents.

Conclusions

- The processes for hearing the voice of the child in public law and private law operated on entirely different principles.
- Judicial ideology in private law obscured the voice of the child beneath a near-irrebuttable assumption that parents would behave appropriately towards children. Dissent, where seen as opposition to the presumption of contact, was characterised as bad or mad; children so dissenting would have their views attributed either to pressure from the caring parent or to mental illness. Similar madness or badness would be attributed to dissenting adults. As the outcome of the case was known before the facts of the case, those facts became irrelevant and attempts to argue against the presumption of contact on the basis of facts, such as past sexual abuse by the applicant parent, would be further evidence of unreasonableness, intransigence or insanity on the part of the caring parent.
- In private law, the voice of the child, or the factual situation of the child, was therefore wholly irrelevant to the prevailing judicial culture of family privacy on a specific model, which was so strong that the social work personnel were unable to resist it. In public law, however, the judicial culture was, if anything, opposed to the private family structure, and the social work personnel were in any event organisationally and culturally more independent, being child- rather than court-based.

Carol Smart, Bren Neale, Amanda Wade, 'Post-divorce childhoods: perspectives from children', funded by the Nuffield Foundation; 'New childhoods? children and co-parenting after divorce', funded by the ESRC

Some publications arising from the study are: Neale, Wade and Smart, "'I just get on with it': children's experiences of family life following parental separation or divorce', Working Paper No. 1 (Centre for Research on Family, Kinship and Childhood, Leeds University, 1998); Neale and Smart, 'Agents or dependants? Struggling to listen to children in family law and family research', Working Paper No. 3 (Centre for Research on Family, Kinship and Childhood, Leeds University, 1998); Smart and Neale, *Family Fragments* (Polity Press, 1999); Smart, Neale and Wade, *Changing Childhoods, Changing Families* (Polity Press, due out 2000)

Aims

- To explore children's experiences under the prevailing conditions of post-divorce family life.
- To explore their agency within their families and to bring their perspectives centrally into policy debates around post-divorce family life.

Methodology

Nuffield study

Fifty-two children living in a variety of post-divorce arrangements (with varying degrees of contact, from reliable through to no contact) were recruited via their parents who had previously taken part in a study of post-divorce parenthood.

ESRC study

Sixty-five children in co-parenting arrangements (dividing their time between two homes), plus a control group of ten children in 'intact' families, were recruited via their parents using a variety of methods, including advertisements and personal contacts. The samples were diverse and non-clinical, balanced across the boundaries of age, gender, class and locality (but not in terms of ethnicity; the researchers could recruit only a handful of ethnic minority children into the samples). The children had lived for at least one year (but, in most cases, more than three years) in separated households. The age range was four to 22, with most clustered in the middle age range of eight to 16. The researchers divided them into older children of high-school age and younger children of primary-school age.

In-depth, qualitative interviews, usually on a one-to-one basis, were carried out in the children's own homes. Confidentiality was guaranteed. A conversational style of interview supplemented by written activities as a way of drawing out the children's accounts was used. Children's direct experiences and their values about family life using hypothetical scenarios (vignettes) were explored.

Findings

- The families were diverse in structure and membership. Children were aware of formal structures (legal and blood ties, household composition, frequency of contact) but defined the essence of family in terms of the quality of relationships and how these relationships were practised. They used flexible notions of

family, which could include blood and non-blood relationships and wider kin (e.g. grandparents), but which could also exclude a parent or a new partner (who might be seen in terms of friendship not kinship).

- Children valued good relations of care within their families (ties of love and affection in which parents had time for them, and prioritised and met their needs). Children also valued good relations of trust and mutual respect with family members, and fairness for all. They aspired to democratic relations built on open communications and meaningful dialogue.
- These relations of care and respect were reciprocal. Children gave care/respect as well as received them and actively participated in sustaining good family relations. Following divorce they had a heightened awareness that relationships could not be taken for granted. As moral agents they creatively balanced their own needs against the needs of others.
- Children wanted relations of mutual respect (if not of care) to operate between their parents (and between parents and new partners) so that they could be part of a network of supportive relationships. Children hoped that their parents would be 'adult' enough to be civil to each other, for their sake, although they recognised that this wasn't always possible.
- The majority of the children in our sample enjoyed good relationships in their families and regarded their families

as perfectly normal. They did not feel stigmatised by divorce. But children who did not have good relations of care/respect for themselves or were embroiled in parental/adult conflict expressed regret or unhappiness about their families.

- Children did not necessarily feel the same way about their mothers and fathers. Many had good relations with both parents, but even where they valued them equally they often related to them in different ways. There was a tendency to rely on mothers more than fathers for confiding in and for emotional and day-to-day support, reflecting the current gendered patterns of parenting. Where children had a difficult relationship with one parent they relied heavily on the other parent for support and to negotiate/advocate on their behalf. In these circumstances, they preferred to live with/spend more time with their supportive parent and, where possible, they modified residence and contact arrangements accordingly.
- Children did not go on giving unconditional love and respect to a parent who did not reciprocate or who disrupted good relations, either directly or indirectly. Eleven children/young people opted to pare down their family by not seeing a parent who had acted oppressively and/or had embroiled them in conflict. This was sometimes a permanent solution. Others, however, saw it as a temporary solution. Some older children in our sample eventually

rekindled such relationships when they could do so on their own terms.

- Children wanted to participate in family decision-making but drew a distinction between participation and self-determination. They were aware that decisions over residence and contact affected all family members and were best decided democratically. Younger children could trust their parents to decide for them while older ones participated more fully and expected their views to carry weight. They valued flexible arrangements which they could negotiate themselves and which could be fitted in around their social lives.
- Where democratic decision-making was practised, children did not necessarily want or need outside intervention at separation, divorce or subsequently. Nor did they necessarily need this at times of parental conflict as long as they were not embroiled in the dispute or otherwise manipulated by a parent. Where they wished to change arrangements, this too could be achieved within the family as long as they had at least one parent who respected their wishes and could negotiate/advocate effectively on their behalf.
- Children valued outside support where they were unhappy about their families and lack of good relations prevented them from changing things. This might occur at any time. As a first step, they opted to talk to wider kin or friends because they could remain in control of

Listening to children's views

the process and their confidentiality was guaranteed.

- Children's experiences of professional support were less than positive. In most cases they had had little choice about participating. They did not receive but would have valued: an informed choice about whether, when and how to participate; knowledge of their rights and what support was available; a flexible

range of services (legal and non-legal) tailored to their needs, which offered independent access as and when needed; confidentiality; counselling; consultation over how a problem could be managed (not necessarily a legal route); and, perhaps most crucially, respect from adults who ignored or re-interpreted their definitions of the problem and failed to acknowledge their wishes and feelings.