



Creating Paths
to Family Justice

Putting research into practice

CREATING PATHS TO FAMILY JUSTICE

Briefing Paper & Report on Key Findings

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Ministry of Justice – Kate Shiner & colleagues

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Relate – Laura Dowson & colleagues

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For more information on Creating Paths to Family Justice see:

<http://socialsciences.exeter.ac.uk/law/research/groups/frs/projects/creatingpathstofamilyjustice/>

For more information on Mapping Paths to Family Justice see:

<http://socialsciences.exeter.ac.uk/law/research/groups/frs/projects/mappingpathstofamilyjustice/>



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Introduction

The family law landscape in England and Wales has undergone fundamental changes in recent years culminating in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) which removed legal aid for advice and assistance from a lawyer (but not for mediation) in private family law cases save in limited circumstances. From the mid-1990s onwards successive governments had promoted mediation as the preferred policy choice for resolving family disputes because they perceived it to be the quickest, most cost-effective and least acrimonious family dispute resolution process (DR). Following concerns about the lack of empirical evidence to support this policy preference and the absence of research comparing the relative merits of other forms of out-of-court DR, from 2011 to 2014 the Economic and Social Research Council (ESRC) funded the *Mapping Paths to Family Justice* study ('Mapping'). This aimed to provide a national evidence base about the awareness, usage, experience and outcomes of three out-of-court Family DRs: solicitor negotiations, mediation and collaborative law. The study included two nationally representative surveys (the CSJPS survey: N = 3700 and the Omnibus survey: N = 2974); in-depth qualitative interviews with 40 DR Practitioners and with 95 parties who had engaged in DR processes between 1996 and 2013 and finally recorded 5 initial solicitor/client interviews, 5 mediations and 3 collaborative law processes (see Barlow et al. (2014) for full details). The study's findings on Family DR also raised important issues for agencies attempting to address the challenges of the post-LASPO era. This led to a joint project to explore how they could be used alongside other expertise to create better paths to family justice within the new landscape.

Mapping Paths to Family Justice – Summary of Relevant Findings

▶ Parties need to be emotionally and practically ready to engage in DR

In all three DRs, often the process ended without agreement because one or both parties had been emotionally unready to cope with negotiations with the ex-partner and/or because they had not been adequately prepared for either the procedure of the chosen DR process or the practical issues surrounding separation more generally.

▶ Parties are increasingly turning to online assistance following separation

Increasingly, parties are searching online for information on separation but they reported feeling overwhelmed by the volume of information available online and frustrated by the lack of guidance on how to choose the best options for their situation. Many found that information was difficult to access and had problems in assessing the credibility of the resources accessed.

▶ There needs to be better, more consistent screening into and out of appropriate DR

Adjudication may be the appropriate forum to deal with some high conflict cases or cases involving domestic violence and abuse (DVA) or coercive control but not all were screened out of DR processes to which they were unsuited.

▶ DR processes are child-focused but rarely child-inclusive

Whilst DR practitioners endeavour to be child-focused, DR processes tended to be dominated by adult agendas and children's voices are marginalised.

Creating Paths to Family Justice Phase 1: Background, Aims and Findings

A major concern of the Mapping academics, shared by those who became the collaborating partners in Creating Paths to Family Justice ('the Creating partners') was that attempts by various agencies to adapt to the new family justice environment had prompted a disparate approach to directing parties who are separating through the various options available to them on relationship breakdown. Traditionally, solicitors managed people through this but, in the absence of legal aid and in a climate of austerity where people do not have or are reluctant to spend money on legal advice, they are increasingly turning to online assistance. Yet there is a confusing array of options online with little guidance on how to make the best choice for their situation. Different agencies were trialling different initiatives to assist but this had proliferated options and confusion. The Mapping academics and Phase 1 Creating partners (Family Mediation Council, Ministry of Justice, OnePlusOne, Relate and Resolution) agreed that a coordinated approach was needed to stem the proliferation tide and provide a cohesive pathway to and through appropriate interventions and DR for those separating and unable to resolve disputes, in line with the Mapping findings. Between April and October 2015, with funding from an ESRC University of Exeter IAA Impact Cultivation Award, the Mapping academics and Creating partners, in two workshops, sought to identify how the gap left by the withdrawal of legal aid might be at least partially filled by a joined-up approach to online self-assessment and screening for mediation or other DR processes, drawing on important aspects of Mapping's findings and collaborator expertise. A summary of Phase 1 findings is below.

Creating Paths to Family Justice Phase 1 – Summary of Findings

- ▶ **Online tools are one key component for filling the access to family justice gap;**
- ▶ **Current online material available to those separating is growing but is confusing, with no real authoritative guidance for users on how to find appropriate support or DR for their situation;**
- ▶ **Adequate screening and signposting in high conflict cases and DVA cases is vital in the move to online information provision and greater use of DR processes, particularly mediation;**
- ▶ **The voice of the child in out-of-court DR, particularly online, needs to be properly considered with input from young people, e.g. through the Family Justice Young People's Board.**

Creating Paths to Family Justice Phase 2: Background and Aims

The Creating partners concluded that a second phase of collaboration work combining and expanding expertise to develop a clear route to and sign-posted pathways for users through to appropriate support and DR processes, particularly Online Family Dispute Resolution processes (OFDR) was needed. For Phase 2 of the project the Creating partners (joined, formally, by Cafcass and DWP) secured a 12-month ESRC funded IAA Impact Co-Creation Project Award to hold 5 themed workshops which commenced in November 2015.

The aims of Phase 2 of the project were to:

- ▶ **Partially fill the gaps left by the withdrawal of legal aid from private family law disputes through a joined-up approach to the provision of better screening for OFDR and signposting to appropriate online and offline support.**
- ▶ **Work with Relate to help review the initial prototype of the 'diagnose, explore and negotiate' phases of the Relate Rechtwijzer online tool.**
- ▶ **Assess and begin to address the plethora of confusing and variable quality online information and advice about family DR by working collaboratively with family policy makers and their digital front-end experts in MoJ and DWP to look at how to provide a clear route to and pathways through appropriate online information and advice for those seeking to resolve family disputes.**
- ▶ **Focus on how the voice of the child can be better captured in the move to online advice and DR, drawing on CAF/CASS expertise.**

In the first two workshops, the Creating partners considered the issues around the provision of online information for those separating including how legal information should be configured in Relate Rechtwijzer (RR), the prototype of the first UK online family mediation service which Relate had been developing with their Dutch technology partner HiiL Innovating Justice, who designed Rechtwijzer 2.0. Launched in October 2014 in The Netherlands, Rechtwijzer 2.0 was an OFDR platform developed with support from the Dutch Legal Aid Board. This innovative venture ultimately proved financially unsustainable and the partnership will be dissolved in July 2017. It is hoped that a new platform, Justice42, funded by social impact investors rather than the Legal Aid Board and focusing primarily on the Dutch divorce market will be launched in September 2017 (Smith, 2017). The partners also considered whether existing professional conduct rules would need amending to allow one lawyer to advise both parties following mediation as envisaged in the 'neutral review' stage of RR. Whilst RR has since been put on hold, valuable lessons for developing and delivering online resources to assist separating parties were learned and are shared below. In the other three workshops, the Creating partners have considered the challenges of appropriate screening into (and out of) OFDR in high conflict and DVA cases, the voice of the child in OFDR and effective signposting to ensure clear routes to and pathways through appropriate online information and advice for users at the point of separation.

Our **key findings** from the workshop discussions, drawing on the Mapping findings, are set out below. They follow the journey taken by parties navigating separation in the post-LASPO landscape, predominantly online. We begin with the parties' emotional readiness to utilise online information and advice effectively at the point of separation then consider the parties' search for information on separation and divorce online. We then discuss issues over screening into appropriate OFDR processes and signposting to suitable support where necessary, particularly in cases involving DVA and high-conflict cases and consider how a joined-up approach might assist in creating a clear route to and pathway through appropriate online information, DR and support where there are no contra-indications. We then examine how young people's voices may be heard in the move to online DR. We conclude the briefing paper with some best practice indications and the policy implications of the Creating proposals. Where appropriate we include conclusions agreed by the Creating partners. Otherwise, the views expressed are those of the Creating academics.

Background

It is estimated that approximately 88% of adults in the UK use the internet (ONS, 2016). As the first generation of those 'born digital' (Palfrey, 2008) come of age in the current decade, reliance on internet-based information by those separating from intimate relationships is likely to increase. Online sources of information on family breakdown have proliferated in recent years creating what Leanne Smith has described as a 'hall of mirrors' (Smith, 2014) that makes it difficult for those trying to navigate the plethora of online information on relationship breakdown to differentiate between reliable and less reliable resources.

In their study of litigants in person (LiPs), Trinder et al. (2014) conclude that the main support needs identified by LiPs were for information (process and procedural), support (practical and emotional) and tailored legal advice. The needs identified are likely to be equally pertinent to those seeking to resolve family disputes predominantly online.

The withdrawal of legal aid from cases where specified evidence of domestic violence is not present was justified, in part 'because advice is available online to help couples to navigate the divorce process' (MoJ, 2010: 4.156). This presupposes that the material available online is advice (rather than generic information) and that the information and advice available online is accessible, accurate and adequate to enable parties at the point of separation to make equitable, lasting decisions concerning their children and finances. It further assumes equality of bargaining power between the parties and that at the point of separation parties are emotionally capable of navigating online information, advice and support competently. The evidence from the Mapping in-depth party interview data does not support these assumptions. In the sections that follow, drawing on evidence from Mapping and from the Creating partners' discussions in the themed workshops, we suggest how family justice and family law processes might be reimaged to use digital opportunities creatively in the resolution of family law issues. This includes incorporating the safeguards necessary to ensure that the needs of all parties, including those in high conflict or DVA cases, are protected adequately and that children's voices are not marginalised in the move to online information, advice and support. The identities of all party and practitioner participants have been anonymised and any names of participants referred to in our findings below are pseudonyms.

'EMOTIONAL READINESS', PRACTICAL PREPAREDNESS AND OFDR

Introduction

Since intimate partners tend to uncouple '*asymmetrically*'; that is, to be at different stages of the grieving process over the breakdown of the relationship (Vaughan, 1990), asymmetry in emotional readiness to engage in a DR process is likely to be commonplace. When parties at different stages in the grieving process try to negotiate, this asymmetry can lead to 'his' and 'her' versions of the divorce as well as 'his' and 'her' versions of how the children are coping with the divorce. The parents then become polarised in their positions, each strategically invoking the rhetoric of children's rights to advance and legitimise their own immutable positions (Emery, 2012).

'Emotional readiness' and DR: evidence from Mapping

A key Mapping finding was that parties need to be emotionally and practically ready to engage in DR. Attempts to engage in DR often break down where one or both parties are not emotionally ready to engage (Barlow et al. 2014).

Processing information

Parties who are not emotionally ready to engage in DR find it difficult to assimilate information:

'I don't want to do [solicitor] a disservice. He could have explained it incredibly well, but at that point in time... it's really hard to know what the hell's going on.' (Glenys)

Reasons for rejecting a DR process

Some, like Tracy, rejected mediation because they felt too raw to cope with the process initially and lamented that there was insufficient therapeutic support offered or available to people in that position.

Emotional unreadiness and delay

Some emotionally unready parties engaged in delaying tactics, often to their regret with hindsight:

'I think a lot of the problem was that I couldn't make my mind up, I didn't really want a divorce and I think it sort of dragged on, you know, trying to delay matters a little bit and after paying a lot of money out, I couldn't see any way round the situation at all... I don't think I was ready [initially], but unfortunately you pay for that, which is the real downside.' (Freda)

Emotional unreadiness and the emotionally ready party

Some emotionally ready parties recognised, to their frustration, that their former partner was emotionally unready to negotiate:

'We obviously had been battling now coming on a couple of years and I felt that what happened in the end could have happened a lot sooner. Possibly my ex-wife wasn't ready, who knows... I suppose every case is different isn't it, when emotions are running high and certain people are not ready to negotiate, especially my ex who was very bitter and very sore.' (Jason)

Practitioners' responses to emotional unreadiness

Many practitioners were mindful of how difficult it is to resolve a case when one or both parties are not emotionally ready to do so, and recommended delaying decisions in such cases. David Leighton stressed that when there is asymmetry in emotional readiness it is important to explain to the emotionally ready party the benefits of pausing the process until the other

Emotional readiness:

Key messages

- **Asymmetry between parties in readiness to engage in DR processes is normal.**
- **Clients' emotional state needs to be factored into information delivery about options.**
- **Attempting DR before both parties are emotionally ready may lead to rejection of the process, delay, the process breaking down or unjust outcomes.**
- **Where one party is emotionally unready to negotiate, it may be necessary to make temporary arrangements only.**
- **Passage of time is sufficient for some parties to feel ready to enter a DR process but for others therapeutic intervention is required.**
- **Parties may be emotionally ready to deal with one issue but not another.**
- **The pacing of DR process engagement is critical to success.**

party is ready (reduced costs, more productive negotiations and a better post-separation parenting relationship). As noted above this can be a 'hard sell' to the party who is emotionally ready and who may be resistant to delay.

Best practice in cases involving asymmetry in emotional readiness is to make temporary arrangements only until both parties are ready to make long-term agreements. Parties may also be emotionally ready to deal with one issue but not another and the process should proceed accordingly.

The Mapping evidence suggests that if DR is attempted before both parties are emotionally ready the process risks breaking down. Equally, substantial delays can lead to parties becoming entrenched in their positions, particularly if court proceedings are issued in the interim. Pacing is key:

'You have to bring people to their decisions at a time when everyone is able to make the decisions or you are just going to waste your time.' (David Leighton, solicitor, mediator and collaborative lawyer).

The experience of DR processes when emotionally unready

When mediation is attempted before both parties are emotionally ready this can lead, as in the case of Rebecca, to a deeply traumatic experience of the process. It also often leads to parties taking entrenched positions in relation to children, as graphically illustrated in the three recorded mediation sessions over children that ended without an agreement.

Emotional unreadiness and outcomes

In DR processes over finance or children that ended without settlement, emotional unreadiness to engage in the process was often a feature. Worryingly, there was evidence of a deleterious effect on outcomes if parties reached agreement before one was emotionally ready. Some, like Jim and Kay, (both primary carers of minor children) agreed settlements that were substantially less than they may have achieved after an adjudicated outcome because of their emotional state at the point of settlement. As Caroline Underwood, a highly experienced solicitor, mediator and collaborative lawyer succinctly put it, if parties attempt to engage in DR before they are ready decisions made risk being 'dictated by the... wrong sort of emotions.'

DR processes for the emotionally ready

Some parties had counselling to help them come to terms with the relationship breakdown which empowered them to engage in a DR process. For some parties, like Robert and Malcolm, the passage of time brought healing to raw emotions, allowing them to build or regain trust in their former partner where necessary and bringing them to a place where negotiation was possible. Unsurprisingly, when DR was attempted once both parties were emotionally ready to engage in the process then this led to more supportive experiences of the process and a greater chance of the parties reaching fair and lasting agreements.

Practical preparedness and DR: evidence from Mapping

In addition to emotional readiness, the evidence from Mapping was that parties needed to be practically ready to engage in DR processes. Wendy used several online and offline sources to become better informed following the breakdown of her cohabiting relationship including separated friends, Citizens Advice, Wikivorce, Mumsnet and Netmums. She summarised the benefits of information to aid practical preparedness well:

'I think if people have got that information [on finances], you know, they can start to make plans and get things into place, rather than just being

Practical readiness: Key messages

- **Parties need to be practically prepared to engage in DR processes productively; parties need thorough explanations of procedures and process and a good understanding of the practical decisions that will need to be made following separation.**
- **Ensuring that parties are practically prepared to engage in DR may result in some parties becoming more emotionally ready to participate.**
- **Thorough practical preparedness increases the likelihood of parties agreeing to engage in DR and enhances the parties' experience of DR.**

kind of catapulted into some horrific situation.'

When practitioners prepared clients with respect to the practical issues clients would need to address following separation and gave clear information on procedure, then parties reported feeling supported through the process. Some, like Charlotte, had not heard of mediation prior to instructing a solicitor but when her solicitor 'very clearly explained' the mediation process to her she felt able to attempt the process and was highly satisfied with her experience of mediation. The removal of solicitors' vital gatekeeping role post-LASPO is therefore a matter of concern. The mediator's explanation of the possibility of shuttle mediation allayed Kim's concerns about being in the same room as her husband which enabled her to engage in mediation. Joshua, who used solicitor negotiation for his first divorce but the collaborative process for his second divorce found the clear verbal explanation of the collaborative process, given jointly to the parties avoided the worry and uncertainty of waiting for information by letter that he had experienced in his first divorce. Good explanations of the process can, in some cases, move emotionally unready parties towards readiness. Stella, for example, who was in a 'bad way' emotionally when she first instructed her solicitor found her solicitor's explanation of the solicitor's role and of 'the whole process' of solicitor negotiations 'empowering'.

Since, as outlined above, many parties found it difficult to take in information at the outset, several parties mentioned how helpful it had been for verbal information to be followed up by written information. A number of parties were grateful for the recommendations their practitioners gave them on books that could further explain either the process of mediation or assist them through the grieving process of separation. They were particularly grateful for written information that helped them understand what their children may be going through or for books/resources that they could give to their children to help them through the process. As outlined below, many sought information on process online, often in vain. Since parties often find it difficult to assimilate information at the outset, it is important that information on process is reinforced throughout. Norah was grateful that the mediator 'checked every step of the way' that she and her ex-partner were happy with the process and understood its limitations so that the parties had 'no false expectations'. Conversely, Stan was angry that the lack of enforceability of a mediated settlement had not been explained to him at the outset and he consequently felt that engagement in mediation had been 'pretty much a waste of time'.

Asymmetry in practical preparedness

Asymmetry in practical preparedness can lead one party to reject a process. In Zoe's case, her solicitor explained mediation to her fully and she then explained this to her ex-partner 'as best [she] could' but, because (in her opinion) he did not understand the process sufficiently he refused to engage, leading to contested court proceedings over children. This underlines the need for both parties to potential mediation to receive adequate information on the process from the mediation provider rather than relying on one party explaining the process to the other.

Asymmetry in emotional readiness is often reflected in asymmetry in practical readiness. Sheila's husband was ahead of her emotionally when mediation was attempted. She found the mediator's explanation of mediation 'quite confusing'. She felt 'all at sea' in mediation initially and, like many others, found it difficult to take in information. Her husband, in contrast, was 'clued up' having read several books on the divorce process and mediation.

Next steps

- **Better training of practitioners to recognise and respond to emotional unreadiness.**
- **Increased funding of MIAMs to allow for a thorough assessment of each parties' emotional readiness to engage in mediation.**
- **Provision of information on processes and process choices needs to be in a variety of formats: verbal, written, online etc. to ensure that parties are practically prepared to enter a DR process.**
- **Given the difficulty of assimilating information and deciding on process choice when emotions are raw, providers must be prepared to repeat information delivery as needed. In an OFDR offering such information needs to pervade the offering not just be given at the outset.**
- **The DR provider/OFDR platform must give a systematic explanation of processes and procedure to each party (rather than relying on one party to explain the process to the other).**

Consequently, Sheila felt disadvantaged in the process. Mediation broke down and the parties attempted the collaborative process. Sheila reported that the first of her two collaborative lawyers had not explained the collaborative process well or prepared her adequately for the first collaborative meeting and she felt 'very disempowered' during that meeting. Her experience of the process improved given the clear steer her second collaborative lawyer gave her aided, Sheila acknowledged, by her having moved on emotionally, having a better grasp of the process and knowing the questions to ask.

Power imbalances due to one person having a better grasp of the parties' finances can also lead to the other party feeling ill-prepared to engage in mediation. As Lorna put it, because her husband held the information on the parties' finances going into mediation, 'he just held all the power.' The mediators interviewed were confident that these types of imbalance are, as Yvonne Newbury (mediator and former solicitor) put it, 'quite easily redressable' in mediation by ensuring that the necessary information is shared and that any gaps are filled. It seems perfectly feasible to do this online as well as offline. Mediators also addressed this type of imbalance in practical preparedness to engage in mediation 'by making sure that you go at the pace of... the less experienced person... that you are bringing that person up to a level where they feel confident that they understand.' (Jane Davison, mediator and former solicitor).

Creating Paths: OFDR and emotional and practical readiness

Given the Mapping evidence on the need for emotional readiness, a priority within Creating Paths has been to explore how parties' readiness to engage in OFDR processes could be assessed adequately online and whether online tools and information could assist in bringing parties to the point of emotional and/or practical readiness. As outlined below, Mapping and others have found that there is an appetite amongst those facing family justice issues for a centralised source of tailored, online information. An OFDR service, if it became the 'go-to' resource for those at the point of separation, could provide extensive information on the necessary practical arrangements on separation and on process choices. It could explain in detail the process options, drawing on the Mapping findings around suitability of parties and cases to each process choice (see Hunter et al. 2014). This could help parties to make informed choices about the process appropriate to their circumstances thereby reducing the likelihood of the process breaking down. Parties could be signposted to other sources of support, online or offline where needed to help address parties' practical preparedness to engage in an OFDR process productively. Ensuring that parties are practically prepared to mediate online may move some parties towards emotional readiness. An OFDR service could do much to normalise the range of emotions that parties may feel on separation and to assess the parties' emotional readiness to engage in the service. The Creating partners pooled expertise to consider what might be possible to transfer to the online space and where best practice might lie. In addition, the Creating academics worked with OnePlusOne, who are working on a tool to assess how emotionally ready each party is to engage in mediation and with Relate on the OFDR tool they were developing based on the Dutch 'Rechtwijzer' model.

Assessing emotional readiness for mediation online

OnePlusOne's proposed tool, informed by research on relationship psychology and conflict resolution, will analyse parties' responses to questions about their view of the situation to gauge the party's emotional

- **Availability of counselling or other therapeutic interventions to support emotionally vulnerable parties before they enter a DR process, online or offline.**
- **Better information and explanations of the impact of emotional readiness on process and outcomes to improve parties' understanding of the benefits of pausing until both parties are emotionally ready to engage in a DR process.**
- **More flexibility in mediation to allow for temporary arrangements, pausing the process, and/or signposting to therapeutic support where needed with a concomitant enhancement of public funding of the process to allow for this.**
- **Improved assessment of each party's emotional readiness to assimilate online information and engage in OFDR.**
- **Development and testing of online tools to assess emotional and practical readiness to engage in DR, online and offline.**

readiness to engage in negotiation to resolve their dispute. The tool uses a traffic light indicator -red, amber and green- to inform parties, mediators or advisers whether the party is ready to negotiate. Green indicates readiness. Red ('emotionally unready') or amber ('partially ready/ not yet fully ready') would indicate that a party needs counselling, time or other support before they can make real progress. Red might also indicate that out-of-court DR processes, online or offline, are not appropriate due to DVA or other contraindications such as mental health issues or substance abuse. Flagging amber or red might indicate that temporary arrangements only should be made with support engaged to equip parties to make long-term arrangements. The assessment tool has been designed to feed into OnePlusOne's online service, 'Splitting Up? Put Kids First' which includes a 'communication skills' component and an online parenting plan. The assessment could also provide key information for the mediator conducting a MIAM or a substantive mediation. This could therefore be used as part of a system of online self-assessment leading to triage and referral to appropriate DR processes where possible. In time, we would like the assessment to be expanded to include an element of gauging the other party's emotional readiness. Helping the parties to understand the other's emotional readiness might prevent conflict escalating and the 'emotionally ready' party issuing proceedings in response to frustration over perceived lack of progress. The online tool is still under development. In the interim, in collaboration with OnePlusOne, the Creating academics have produced some role-play video clips demonstrating emotional and practical readiness to engage in mediation. It is anticipated that these clips could be used for training DR practitioners and informing parties considering family mediation. The video resource can be accessed on the Creating Paths to Family Justice website and at: https://www.youtube.com/watch?v=RkTz_9AM3Mo. Online tools for assessing emotional readiness, greater awareness by parties and practitioners of the need for parties to be emotionally and practically prepared to engage in DR processes and a re-pacing of mediation to facilitate time for readiness to be achieved where unreadiness has been detected either through an online assessment or in a MIAM might reduce the instances of processes breaking down due to parties' emotional unreadiness to engage.

- **More creative use of the online space to provide information to those considering a DR process to inform decisions on process choice.**



**Creating Paths
to Family Justice**

ACCESSING ONLINE INFORMATION

Introduction

In an age of austerity and following LASPO, it is likely that the internet will be increasingly turned to as a source of information, and potentially advice, by those experiencing family justice issues. Reporting on the second wave of the CSJS in 2013 (pre-LASPO), Balmer notes that 24% of respondents had used the internet for advice seeking for all justiciable problems compared to 4% in the 2001 CSJS (Balmer, 2013: iii). This growth is likely to have continued apace amongst those facing family breakdown post-LASPO. Certainly, the information available online has increased exponentially in recent years. In 2016 the MoJ mapped over 100 websites providing information and/or advice and support for separating families (MoJ, 2016). Whilst some good quality information is available, the Government's attempts to provide information online via 'Sorting out Separation' was criticised by the DWP-commissioned review of its effectiveness for being too generic (Connors and Thomas, 2014). Much of what is available is of variable quality and is provided by unregulated providers (Maclean, 2015) leading to concerns over 'knowledge asymmetry' between potential clients and the service provider (Webley, 2015:318). Some unregulated providers, Webley notes, use terms such as 'lawyer' that are suggestive of professional standing whereas the provider may have little or no formal legal training which is misleading for parties. The sheer number of websites available make it challenging for parties to determine the most authoritative resources (Pereira et al. 2015).

The utility of online information is constrained by the quality and relevance of the information provided. High ranking listings in response to queries in Google or other search engines is no indicator of relevancy to the nuances of the user's need; popularity does not equate to pertinence (Bilal and Boehm, 2013). Information available online can be conflicting, partial or out of date (Vaughan and Merola, 2017). The capacity of the user to access and utilise online information in a meaningful way is also critical to whether online information is beneficial (Denvir, 2016). Research on how users engage with online information indicates that people tend to 'bounce', that is they tend to view only a few web pages from the vast numbers available and generally do not return to the same website very often, if at all (Nicholas et al. 2007). Significant work, drawing on the research on user engagement in online information, will be needed to maximise user engagement with any online offering developed.

There is an appetite for an authoritative, online 'one-stop-shop' (Connors and Thomas, 2014; Pereira et al. 2015). However, many parties prefer to supplement online information and/or advice with face-to-face advice (Pereira et al. 2015; Troubridge and Williams, 2015). Parties who are unable to locate clear online advice turn to face-to-face legal advice (Pereira et al. 2015) or litigate in person (Trinder et al. 2014).

Online information for separating parties: evidence from Mapping

In the Mapping national data, media and the internet was the largest source of awareness of mediation for the general public (36% Omnibus, 45% CSJPS) with solicitors as the source of awareness in only 11% (Omnibus) and 10% (CSJPS) of cases. In the divorced and separated Omnibus sub-sample (n = 315), however, solicitors played a critical role in raising awareness of mediation. For these parties, a solicitor was the most likely way they had first heard about mediation (39%) with only 15% becoming aware of mediation via media and the internet.

Online information:

Key messages

- On separation, parties require and have a strong appetite for clear, authoritative, accessible online information, advice and support.
- Online information for separating families has increased exponentially in recent years but is of variable quality and is provided mostly by unregulated providers.
- The plethora of online information for those divorcing or separating is confusing, difficult to access and to navigate and is overwhelming for parties at the point of separation.
- Parties find it difficult to assess the credibility of the websites they access.
- The utility of online information is dependent on both its quality and the ability of the user to engage with and apply the online information in a meaningful way.
- If parties are unable to access reliable online advice they seek face-to-face legal advice or litigate in person.

The party participants interviewed in depth had sought information from a variety of offline sources (friends, family, the radio and books such as the Which? and the Telegraph Guides to Divorce). They had also turned to a variety of online resources which Esther described as, ‘a good... anonymous way of reading information’. Online sources accessed included the CSA, Direct Gov, Families Need Fathers, Fathers for Justice, The Freedom Programme, Just Answers UK, Mumsnet, Netmums, Relate, quickie-divorce.com and Wikivorce. However, the internet tended to be used to supplement rather than replace legal advice or mediation:

‘I think the internet is a great place to gather information and to kind of see what’s out there, but I would still prefer a face-to-face situation.’ (Annette, aged 46-55, separated 1996-2000)

Many interviewees voiced concerns over credibility of online information:

‘If the [internet] resource was kind of credible, then that would have been a lot better. As it was, there were people just saying, yeah, here’s my ha’penny-worth and you’ve got no real idea whether it’s a credible source or not, just somebody spouting something they heard in the pub.’ (Stuart, aged 36-45, separated 2006-2012)

Some thought that a ‘government-backed’ website would help allay those concerns ‘because you know, the internet is full of information and it’s hard to decipher what’s true and what’s not.’ (Porter, aged 36-45, separated 2006-2012).

Several interviewees were overwhelmed by the sheer volume of online information:

‘I mean yeah, it’s just basically internet searching other sorts of groups that can help you and give you free like legal advice and everything, but it’s all so overwhelming really.’ (Robert, aged 26-35, separated 2006-2012)

Parties found accessing information difficult:

‘It’s very hard to get sort of any sort of- It’s all so disjointed... I think that is what’s extremely hard... I suppose more information that it’s possible that you could get access to would be better, really.’ (Sara, age not disclosed, separated 2006-12)

Others, like Deanna, thought that people do not always access the best information or that the people who need it most do not access information online.

As others have found, there was an appetite amongst the Mapping party participants for an online single port of call.

The prerequisites of an online information hub were that it should provide:

- ▶ **A single point of contact (Stuart)**
- ▶ **Clear, unambiguous, easy-to-assimilate information (Ernest)**
- ▶ **Signposting to relevant court forms (Leo)**
- ▶ **Easy access to communities of experience (George)**
- ▶ **Somewhere to ask questions to find out if you’re heading in the right direction (Gloria)**
- ▶ **Information located where people can find it easy enough (Charlie)**
- ▶ **Links to other supporting services (Monica)**
- ▶ **Better information on procedure within processes (Jane)**
- ▶ **A clear view on likely court outcomes (Simon)**
- ▶ **Guidance on approaching children matters, including case law (Paul)**

Next steps

- **Parties require clear and trusted online pathways to information followed by well-defined routes through the appropriate DR options, online or offline with signposting to trusted support where needed.**
- **An authoritative ‘one-stop-shop’ website should be developed as a priority.**
- **The website would need adequate, long-term funding to ensure that it remains relevant and accurate.**
- **There needs to be a joined-up approach by key family justice organisations to ensure that parties are consistently signposted to the ‘one-stop-shop’ website with links out from the centralised website to these organisations.**
- **Evidence from the research on how users engage and stay engaged in online information and how they then apply this information must inform the development of any online offering.**

Online information and OFDR services: Creating Paths to Family Justice

Drawing on the Mapping findings, the Creating partners agreed that an authoritative centralised source of relevant, tailored information and advice is one way of filling (at least partially) the identified gaps left by the withdrawal of legal aid from private family law disputes. The partners agreed that this centralised source should ideally provide an end-to-end service with few barriers. Parties in a state of emotional distress need clear and trusted online pathways **to** information followed by well-defined routes **through** the appropriate DR options, online or offline. This end-to-end service should include information on the range of DR options and their suitability for different types of parties and cases (drawing on the Mapping findings), assessment of parties' emotional (and practical) readiness to engage in OFDR (or other DR services) and signposting to (and where relevant back from) appropriate support services as needed. We endorse calls from Citizens Advice for online tools and services that are simple and intuitive, that enable parties to make informed decisions about the process that is most suited to their needs and that provide tailored signposting and information so that parties have an idea of what lies ahead (Vaughan and Merola, 2017). Information of the practicalities and procedure should pervade the online offering. The Ministry of Justice have drawn on the excellent work of Liz Stokoe and colleagues, 'CARM- text', for the wording and phrases that are likely to encourage people to mediate in the marketing of mediation on the MoJ website (Stokoe, 2014; 2014a) and the designers of any OFDR platform should consider drawing on the 'CARM' research.

Where DR online is considered, this will require careful and appropriate screening of parties' suitability to engage in OFDR processes as discussed below. There would also need to be mechanisms to ensure that children could be heard within any OFDR offering but with stringent checks to authenticate the child's voice. Rigorous user testing and practitioner feedback would be essential before public launch of such an online offering and, at least until the technology advanced sufficiently to ensure stringent, consistently accurate screening, OFDR should be reserved for relatively amicable cases where there are no contra-indications. Should the platform wish to offer a neutral review by a lawyer of agreements reached by parties, either in online negotiation or mediation as the Relate OFDR offering proposed, then the Creating partners were confident that it should be possible to amend the regulatory rules to accommodate neutral review by a lawyer in a family matter or for the parties to jointly instruct one lawyer as a 'single joint expert'.

Since the utility of online information and advice is constrained not only by the quality of the information but also the user's ability to apply the information obtained online in a meaningful way to their situation then careful thought needs to be given to both the content of an online offering and to how the user will engage, and remain engaged, with the offering.

The online platform will need adequate, long-term funding from the government to ensure that it is financially sustainable. The architects of such a platform should consider carefully the lessons to be learned from the now defunct Dutch model, Rechtwijzer 2.

A good online source of DR/support/information for separating couples:

- takes away the 'blocks' that stop a person engaging;
- copies the best of off-line user scaffolding;
- is a centralised source of information;
- uses specific yet understandable language;
- normalises users' emotions and manages their expectations;
- provides tailored, relevant information and advice;
- provides an end-to-end service;
- Incorporates 'touch points' for signposting and referring where needed.

SCREENING AND SIGNPOSTING INTO APPROPRIATE DR

Introduction

Perhaps the most difficult issue to grapple with in the move to OFDR is how to ensure that parties are screened adequately for abuse and control so that only those entering the process equally, without fear or coercion use an OFDR service. Concerns over mediators' tendency to marginalise disclosures of domestic violence when mediating offline are not new (Greatbatch and Dingwall, 1999; Hester et al. 1997 and Davis et al. 2000). More recently, Morris questioned the adequacy of probing for possible abuse in the MIAMs she recorded with NFM mediators (Morris, 2013: 453). The physical distance between parties using OFDR may be a comfort to some but does not remove risk and the lack of proximity risks further marginalisation of abuse. Difficulties over authenticating the genuine voice of parties in an online setting are an additional hurdle.

The Family Mediation Council's Code of Practice provides that the MIAM can be conducted jointly or separately, but must include an individual element with each participant to allow the mediator to undertake domestic abuse screening (FMC, 2016: 6.1). In response to the growing interest in OFDR services the FMC have issued 'Guidance for Online Video Mediation' which states, 'It is expected that mediators will develop their own criteria for suitability for use of online mediation with their participants.' (FMC, 2016a:2). We discuss the adequacy of this laissez-faire approach below.

Screening and signposting in DVA and high-conflict cases: evidence from Mapping

Practitioner views

As one would expect, the practitioners we interviewed in Mapping acknowledged universally the need to screen comprehensively for DVA. There were however differences in practitioners' responses to disclosures of domestic violence. Some felt more comfortable mediating DVA cases than others, often as a result of prior professional experience in this area. Some were mindful, particularly in anticipation of LASPO, of the lack of alternatives other than court if the couple did not mediate. Few endorsed a 'blanket ban' on mediation when abuse was disclosed but would assess on a case by case basis depending on:

- ▶ whether the parties themselves wished to mediate despite the domestic violence;
- ▶ the length of separation;
- ▶ whether a party expressed fear;
- ▶ whether the case involved 'separation violence' or historic violence;
- ▶ whether the perpetrator had acknowledged the violence and was contrite.

Parties' experiences of mediating in DVA cases and outcomes

Ten of the sixty interviewees who had experienced mediation reported not having been asked about DVA in their intake or MIAM. In cases where DVA was not an issue (so screening questions were possibly brief) or if interviewees were in a state of emotional turmoil at the time of the MIAM, some may not have specifically recalled overt screening. Given Morris's report of NFM mediators' MIAM assessment of DVA lasting a mere three minutes (Morris, 2013:453) and the indirect nature of the questions asked, it is perhaps unsurprising that some did not recall being screened.

Screening and signposting in DVA and high conflict cases: Key messages

- Some cases may be both high conflict and have DVA issues but it is necessary to distinguish between the two. Suitability for DR and safeguarding/ signposting responses depend on whether one or both are a feature of the case.
- Assessments for screening should be based on objective judgements about severity and type of violence derived from established risk assessment tools rather than the client's subjective perception of risk.
- Screening for DR processes, online or offline, must be a continuous process not a discrete event.
- Inadequate screening may lead to traumatic mediation experiences and/or unfair or dangerous outcomes.

Some interviewees normalised the violence they had suffered. Wendy, for example, said that until she had talked to a solicitor, sought assistance from Women's Aid and undertaken the 'Freedom Programme' run by Women's Aid she 'hadn't realised quite how abused [she] had been'.

There were several cases in which mediation was recommended by solicitors, parties were referred to mediation by a judge or accepted by mediators where there had been violence. Unsurprisingly, inadequate screening led to traumatic mediation experiences and, on occasions, outcomes which were unfair in relation to finances and potential dangerous to children. Monica, who mediated in 2010, complained that the severe emotional abuse she suffered at the hands of her husband prior to mediation was not acknowledged by either the solicitor or the mediator. Her experience of one mediation session with a lawyer-mediator who, in Monica's view, had failed to stem the tide of vitriol that her former husband levelled at her during mediation left her 'traumatised' and 'propelled [her] into a sort of breakdown'. Immediately following the mediation session she 'caved in' and agreed to shared care of their children with the husband staying in the five-bedroomed former matrimonial home and Monica moving to rented accommodation.

Sara went to a solicitor in 2010 for a divorce and a domestic violence injunction but was told an injunction was not possible because the abuse was not physical. Her solicitor sent her to mediation 'to save costs' but told her to ask for separate rooms. The day before the mediation Sara's former husband threatened to 'get her' in the mediation session and she reported this threat to the solicitor. At the intake session her ex-husband arrived first and insisted they be seen together which Sara was too afraid to object to. She was the primary carer of the children yet she agreed to leave the former matrimonial home:

'I agreed to leave 'cos I was scared of him. So I said yes to everything... Because I was so scared because I'd got to go home and be with this man that I'm too scared to say anything else.'

Tilda, whose former husband had been violent and recently threatened her with a car jack, was referred in 2012 to a solicitor by a domestic violence service. The solicitor then referred her to mediation, where she had a joint intake in which she felt unable to disclose the violence and despite encouragement from the co-mediator to 'say what she wanted' Tilda felt 'too intimidated' in the mediation session to do so. On her former husband's insistence Tilda agreed a 50/50 split of finances and to pay half of the husband's private mediation costs even though she was legally aided. Lorna, summing up the feelings of the abuse victims we interviewed, told us that '[mediation] was just another arena to be bullied in.' Whilst these cases were the minority, they were nevertheless disturbing.

Creating Paths: Screening and signposting to OFDR services in DVA and high-conflict cases

All mediation bodies include domestic violence screening in their core training and have resources for practitioners (e.g. Resolution's Screening toolkit) and for parties (e.g. NFM's Domestic Violence and Mediation leaflet). The various mediation bodies do not rule out mediation in DVA cases provided it is judged safe but a review of their websites by the Creating Academics in June 2016 revealed a variation in emphasis between the mediation bodies. Resolution's 'Guide to Good Practice in Domestic Abuse Cases' indicates that sometimes allegations of domestic abuse may be better addressed through a court-managed procedure rather than through DR processes. FMA emphasises that

- **If parties opt for online mediation, then there must be separate individual screening sessions (by webcam but if case flagged 'amber' then face-to-face).**
- **As referrer of first source an OFDR provider has a responsibility to ensure that it refers to appropriate sources of support.**
- **If DVA is disclosed by an individual using an OFDR platform then this creates a duty of care and the response should include follow-up of the at-risk individual.**

mediation will not proceed if **the mediator** does not believe it is safe whereas NFM's approach is that where there is a history of violence mediation may proceed after screening and safeguarding checks if **the victim feels safe and the mediator agrees** (our emphasis). The FMC should work on reaching broad consensus between the member bodies on the indicators of suitability/unsuitability for different DR processes (see Hunter et al. 2014 for suggested criteria for suitability). This should include an agreed set of contra-indices for OFDR. The tendency for victims of abuse to normalise their situation as found in Mapping and elsewhere (see Piper and Kaganas, 1997) leaves parties ill equipped to judge whether DR processes, online or offline, are appropriate in their circumstances.

The Creating partners agreed that screening for DR processes, online or offline, must be a continuous process not a discrete event. Screening online has some possible benefits: it avoids proximity and is therefore potentially physically safer, parties may be more prepared to make disclosures online and screening online is arguably more transparent than screening offline. Information about coercive control could pervade an online offering which, given the tendency of parties to minimise or normalise coercive control or abuse, could help parties to recognise these features in their relationships. An online platform could provide information on the availability of legal aid and signpost effectively to sources of support, online and offline. However, the partners shared the Creating Academics concerns over the difficulty of ensuring that the parties are entering the process freely. As Sara's experience in Mapping reminds us, controlling partners may try to manipulate the situation so that the other party is unable to disclose their concerns even in a face-to-face situation. The potential for manipulation is greater still in an online environment especially since there may not be the ability to prompt in the same nuanced way as face-to-face screening when DVA or coercive control is initially disclosed. Controlling behaviour is not ameliorated just because parties are in a different environment.

Parties need lots of information on coercive control and DVA upfront in any online offering with flagging that alerts parties to the fact that DVA is something that the system is alert to. A welcome feature of the RR platform was that a pop-up reassured a party who disclosed potential risk that the other party would not be informed of this disclosure. This feature should be carried over into any future online offering.

In the move to OFDR processes it is vital to ensure user safety. If an OFDR platform like RR is launched in the future then before parties are able to negotiate direct online they must be screened for suitability. The 'Doors 1' assessment questions developed by Professor Jennifer McIntosh and colleagues (McIntosh, 2011), the SafeLives DASH risk checklist (SafeLives, 2014), the Barnardo's Domestic Violence Risk Identification Matrix (Barnardo's, 2011) or a similar empirically-tested screening tool which includes risks to children as well as adults should be adapted for this purpose. The traffic light system that we suggest above to gauge emotional readiness should also apply to assessments for suitability to use an online platform. If parties wishing to negotiate trigger an 'amber' alert then parties should be warned to proceed with caution and signposted to legal and other appropriate support. As referrer of first source an OFDR provider has a responsibility to ensure that it refers to appropriate sources of support. 'Red' alerts would denote unsuitability to negotiate online and appropriate referral to alternative support. If parties opt for online mediation, then there must be individual screening sessions. These could be by webcam but if the case is flagged 'amber' then face-to-face. There must be an immediate and

Next steps

- **Skilling mediators to deal with domestic violence screening and to deal with high conflict cases where mediation may be a possibility should be a priority for the FMC.**
- **The FMC should consider a specialist accreditation scheme for mediation for high conflict cases.**
- **The FMC should develop a protocol of screening questions and safeguarding responses to be agreed and adopted by all member bodies.**
- **Any online screening tool must undergo rigorous user-testing in both private and public Beta versions ahead of public launch.**
- **Member bodies of the FMC should work on reaching broad consensus on the indicators of suitability/unsuitability for different DR processes to include an agreed set of contra-indices for OFDR in high conflict and in DVA cases.**

appropriate response to disclosures of DVA including a full, face-to-face risk assessment using one of the tools listed above, together with referrals to legal advice and support. Once DVA is disclosed then a duty of care is created and the response should include follow-up of the at-risk individual. There should be rigorous user-testing and analysis of screening tools proposed for an OFDR platform in both private and public Beta versions ahead of public launch.

We have advocated elsewhere for screening assessments to be based on objective, a priori judgements about severity and type of violence rather than, for example, the client's subjective perception of risk (Barlow et al. 2017: 100). Whilst concerns over the robustness and consistency of offline domestic violence screening across the profession persist and when technology is not yet sufficiently advanced to allay fears over the capacity to screen appropriately online, screening for suitability to engage in online mediation should be carried out individually and, save for cases in which no safety or control issues are detected in the initial intake (i.e. the case has been flagged 'green') then assessments should be face-to-face.

The FMC should develop agreed criteria outlining when cases involving high conflict may be suitable for OFDR processes. Cases involving high conflict must be distinguished from those involving DVA (although conflict may also be present in DVA cases). In high conflict cases the parties are entrenched in mutual antagonism, whereas DVA is marked by the efforts of one party to control and restrict the autonomy of the other. Thus, the appropriate response to high conflict in an OFDR offering will differ to the response to DVA. Some cases may be high conflict because one or both parties have not emotionally come to terms with the separation. The appropriate response to these cases is outlined above. Parties may be high conflict because they hold deeply entrenched incompatible values and views, often on what is in the best interests of the child. In such cases it is necessary to consider whether the parties are motivated by a need to 'win' and/or whether they are intractably stuck in conflict. In both cases reaching a compromise in online or offline DR is unlikely and the case may require adjudication. Similarly, cases involving fundamental conflicts of fact that may determine outcomes, for example issues over whether a party is abusing drugs, or where there is a conflict of ends, for example in a relocation case, are likely to be unsuited to OFDR. However, for parties who have difficulty interacting calmly but are motivated to reach agreement and who are perhaps temporarily entrenched, online mediation may be appropriate. In such cases additional offline legal advice or counselling might help the parties to move forward. Mediation services need to become more creative, offering 'bundled packages' of mediation and support; legal, financial or therapeutic as needed in complex or high conflict cases drawing on the collaborative law model of 'buying in' services as needed (Barlow, 2017).

Ultimately, the mediator must ask whether mediation online is likely to be a constructive process and be prepared to decline to act where necessary.

The FMC should prioritise skilling mediators to deal with domestic violence screening and to deal with high conflict cases offline and online. The FMC should also consider an accreditation scheme similar to that of Resolution or the Law Society for particular expertise in high conflict cases.

- **Mediation services need to offer 'bundled packages' of mediation and support; legal, financial or therapeutic as needed in complex or high conflict cases drawing on the collaborative law model of 'buying in' services as needed.**



THE VOICE OF THE CHILD IN ONLINE DR

Introduction

The move to increased provision of information and DR processes online creates opportunities to improve young people's access to information online following parental separation but risks marginalising the child's voice within the negotiations or the online DR unless carefully managed. On parental separation, young people report that they want both general and specific information and to be consulted on the arrangements to be made concerning their futures (Fortin et al. 2012). They want a 'voice' but not necessarily a 'choice' (Parkinson and Cashmore, 2008).

The issues over quality of online information discussed above apply to young people as well as adults but arguably young people face additional constraints. Firstly, young people primarily use Google rather than search engines designed for their age levels and, since ranking does not take account of the profile of the enquirer, what is ranked at the top of retrieved hits may not be pertinent to children's information needs (Bilal and Boehm, 2013). This is exacerbated by the tendency of young people to assume that sites listed on Google are trustworthy (Ofcom, 2016). Secondly, research suggests that school age children (and, but to a lesser extent, undergraduates) investigating civil law problems online struggle to generate appropriate search terms, fail to recognise the jurisdictional relevance of websites and are more likely to be drawn to commercial sites or to experiential content on discussion boards rather than more reliable government sources (Denvir, 2016). The recent report by the 'Growing Up Digital Taskforce' acknowledges that 'much more needs to be done to create a supportive digital environment for children and young people' (Children's Commissioner, 2017:3). This supportive digital environment should extend to improving young people's journey to appropriate online information, enhancing the quality and relevance of the online information available to young people following parental separation and creating space for them to be heard within OFDR processes.

The voice of the child in out of court DR processes: evidence from Mapping

In a minority of cases, parties reported that the practitioner had provided them with written resources for the parties' children to help the children to deal with the breakdown of their parents' relationship. However, there was no sense that provision of such information was universal. None of the parties disclosed signposting to online support for their children. Parents are the gatekeepers of information provision and provision was haphazard.

The evidence from Mapping reflects the findings of previous research; namely that whilst mediation is child-focused it is rarely child-inclusive. Most parties agreed that the practitioner had focused on the child's best interests. Practitioners stressed that the child's best interests are 'fundamental' to out of court DR processes and the mediators in the recorded sessions were child focused, searching for 'a solution that has [the child]'s best interests at heart' rather than a solution that is specifically geared [towards the parents], because that's the most important thing' (co-mediation session, 210). However, whilst 20 of the 31 mediators interviewed were qualified to provide direct consultation with children only 2 practised direct consultation relatively frequently and around half had had only one or two cases ever. Reasons cited for little or no practice included lack of opportunity, cost, concerns over the quality of training, concerns over potential attempts by parents to influence a child and concerns over how the child's views would be fed back. Whilst some felt that direct consultation helped children to feel heard and parents to see

Online information and OFDR processes and the voice of the child: Key messages:

- **Mediation needs to be increasingly child-inclusive not just child-focused.**
- **Parents are the gatekeepers of information provision to their children in current DR practices. This provision is haphazard and is generally written rather than online.**
- **Online information and/or support on family breakdown tends to be aimed at adults rather than children.**
- **Online information for young people is difficult to access, and uses language that is difficult for young people to understand.**

Key messages from the FJYPB members:

- **It is better to not ask for our views than to ask but not listen to us.**
- **We want to know if our parents are mediating; it shows us they are trying to sort things out.**

things from the child’s perspective, others thought that the parents could represent their children’s views adequately:

‘I have never found the need to bring children into mediation because my practice seems to work quite well on the basis that the children’s voice is heard but it’s the parents that will bring that voice.’ (Ed Jamieson).

Only 2 parties disclosed that their children had been directly consulted. Even though direct consultation broke the impasse reached over choice of secondary school for his daughter, Ernest had reservations about direct consultation, concluding that in his view there are ‘better ways of bringing the child ... I think the jargon now is "into the room"’. Sandra reported that her suggestion that the children were consulted directly was resisted by the lawyers and her husband in the collaborative process, although agreement was reached when the children were consulted subsequently after the collaborative process broke down. Offline out-of-court DR processes in Mapping were child-focused but rarely child-inclusive.

Young people and online information/OFDR: Creating Paths to Family Justice

To gain insights into the information available online for young people the Creating academics conducted two searches on 26th August 2016 using a computer with a clear browsing search history (clearing the search history between searches). Given that young people asked to research a legal issue online tend to use search terms that do not suggest a characterisation of the issue as legal (Denvir, 2016), we used straightforward wording that a young person might adopt: ‘my parents are separating’ and ‘my parents are splitting up’ (see Tables 1 and 2 below). This innocuous change of wording made a significant difference to the websites listed with Cafcass listed first in the first search but outside of the top ten when the search term was changed subtly.

- **Take our wishes and feelings into account; respect our opinions and keep us informed.**
- **Parents need to understand that they are making decisions affecting the rest of our lives.**

Key message from young people to other young people in this situation:

- **Don’t let choices in your life be made by someone else; it’s your life.**

Table 1- Top 10 search results for: ‘my parents are separating (UK)’

1. Cafcass	6. Gov.uk
2. childsupportlaws.co.uk	7. separateddads.co.uk
3. divorce.co.uk	8. Royal College of Psychiatrists (factsheet on divorce and separation)
4. rightsofwomen.org.uk	9. Resolution
5. Childline	10. CAB

Table 2 - Top 10 search results for: ‘my parents are splitting up (UK)’

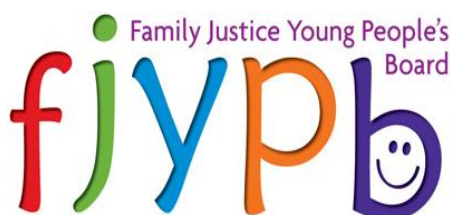
1. Childline	6. Splitting Up Putting Kids First
2. motherandbaby.co.uk	7. Voices in the Middle [Ad]
3. OnePlusOne	8. CAB
4. forums.netdoctors.co.uk	9. cyh.com [Australian site for youth health]
5. Reachcyp.org [takes you to iRelate]	10. supernanny.co.uk

Only a minority of the sites are directed at children and young people specifically. The others are aimed at parents and whilst most are helpful and conciliatory in tone, information and advice tended to be static and generic. Despite including 'UK' in the search term, the search results include a website from Australia, which is concerning as young people often find it difficult to distinguish whether the information is from a different jurisdiction (Denvir, 2016). Often there is little support for young people on the landing page. Finding information specific to the search queries within the website pages was time consuming and required persistence. A young person, often in an emotional and confused state following parental separation, is likely to find the search for answers to their many questions frustrating at this difficult period. The issues with online information for adults on separation outlined above are mirrored but amplified for young people.

Young people's experience of family disputes: how they got information

The Creating partners gained insights into young people's experiences of the family justice system from five members of the FJYPB who spoke eloquently at one of the Creating Paths workshops. The Board members' experiences of the family justice system had been frustrating. Few had been consulted over arrangements for their futures. Several had heard about plans for them from siblings or through eavesdropping on adult conversations. They had felt that their parents and the professionals involved in their cases had not sufficiently involved them in the decision-making process. Some were aggrieved that decisions were made about their futures without explanation. The party participants interviewed in depth for Mapping had wished to shield their children from the process but the Board members were clear in their desire to be involved but indicated that they had chosen not to broach concerns with their parents as they were conscious of not wanting to upset their parents. Boys tended not to confide in friends as they did not want to show weakness or vulnerability. The Board members felt disenfranchised.

Most of the Board members reported that they had not accessed information online primarily because they did not know what was available. Some were reluctant to search online for fear that parents might check search history. They had been reluctant to search Childline's website because, even if opened in private browsing, visits can be traced if monitoring software is installed on the computer used. Some were under the misapprehension that Childline was not relevant to their circumstances as the situation was difficult but not abusive. Chiming with the Exeter academics search attempts outlined above, the young people who had searched for information online reported that information is too spread out across various websites, is geared primarily towards adults rather than young people and uses language that is difficult for young people to understand.



Next steps:

- **The recommendation in the Voice of the Child DR Advisory Group's Final Report for a website and online tools developed with young people to provide a 'place to go' for young people experiencing parental separation should be implemented as a matter of priority.**
- **The development and running costs of a 'go to' website must be fully funded.**
- **A media campaign is needed to promote awareness of the dedicated website aimed at young people and key gatekeepers: parents, teachers, social workers etc.**
- **Both the dedicated website and, in the interim, family justice organisations, should consider providing an online space for young people to relay their experiences and discuss and draw support from their peers by way of forums and discussion boards.**

The young people called for an authoritative website covering a range of issues relevant to young people including parental separation so that it could be accessed discreetly and, preferably, anonymously. Given the strong online safety messages taught in schools, they thought that their peers would trust an official site like Gov.uk. The website's format should be similar to sites like 'BBC Bitesize' with videos, pictures and live chat. They thought more generally that technology could be harnessed to better effect to support young people through parental separation by way of YouTube videos, Facebook adverts, online games or facilities allowing young people to contact professionals involved in their case via WhatsApp.

How information and support should be provided to young people

Denvir (2016) concludes that given young people's preference for experiential online content, third sector organisations should consider a space on their websites for young people to discuss their situations with their peers. Family Law in Practice, a niche private family law practice in London, has created, 'Divorce Diaries' in which clients relate their experiences of the separation journey, as well as lessons learned, for the benefit of others in similar circumstances (see Ditz, 2016). A number of family law private practices and mediators have collaborated to produce a similar website for young people, 'Voices in the Middle' which aims to provide young people with 'immediate reassurance from other young people and pointers to further help if they want it.' This is admirable, and a much needed resource given the lack of online support for young people whose parents separate, but the provision of a 'go to' website with relevant, up to date information for young people, peer support and signposting to support services that we envisage above will require secure, ongoing funding to maintain it, media campaigns to promote it and investment in search engine optimization to ensure that young people are able to access it easily. Private practice cannot be expected to meet these costs. In its response to the Final Report of the Voice of the Child Dispute Resolution Advisory Group, the Government endorsed the Report's recommendation for the development (in collaboration with young people) of an authoritative website and online tools supported by a range of services to provide a dedicated 'place to go' for all children and young people at all stages of their parental separation journey (MoJ, 2015). However, this endorsement fell short of any commitment to fund such a resource. This commitment is required in our view.

In the move to greater use of OFDR services, it is essential that parents are signposted to good online information to help them to appreciate what children need in terms of information and support and, as gatekeepers to their children, that parents are equipped to signpost their children to good quality information and advice online.

The joined-up approach advocated above to signposting of adults to appropriate online information and support is equally pertinent to the signposting of young people. Those tasked with developing a 'go to' site for young people should borrow from the public and patient involvement methods employed increasingly in the field of health to ensure that young people are involved and consulted at all stages of the development of a dedicated website.

Young people are increasingly becoming 'mobile first' in how they choose to access information (Livingstone, Carr and Byrne, 2015). In the UK in 2016, 49% of 8-11 year olds owned a tablet and 32% had a smartphone. Of 12-15 year olds, 49% owned a tablet and 79% had a smartphone. Smartphone ownership outstrips tablet ownership from the age of 12. Personal ownership of a mobile

- **Work is needed to educate parents on the better outcomes for young people who are consulted on plans for their futures and to equip parents to discuss these matters with their children.**
- **A joined-up approach to clearer signposting to and availability of age appropriate resources online and offline for young people should be a policy priority.**
- **The best online resources for parents and young people should be made universally available free of charge e.g., the Separated Parents Information Programme's 'What Children Need' video.**
- **Smarter use of the latest research on search engine optimisation relating to young people's search for information online is required to maximise the chances of young people reaching the most appropriate websites for their needs.**
- **Online resources need to be developed with young people for young people and presented in an engaging format.**
- **The website developed should be scalable so**

phone does not vary by socio-economic group or gender. Tablets are the most often-used device for going online for all age groups except 12- 15s. This age group mostly use a smartphone. Laptop use fell below smartphone use as the most often-used device for going online for 5-15 year olds for the first time in 2016 (Ofcom, 2016). It is important therefore that any website developed is scalable so that it can be optimised to be used on a smartphone or tablet. This can then be released as an app without further development costs.

Development in this way maximises the options for accessing information and would ensure access for the minority of young people who do not have the use of a tablet or smartphone. Technology develops rapidly as does the way in which young people choose to engage with technology. Attempts to respond to these changes, such as the app for young people, 'For Me', recently launched by Childline are commendable. 'For Me' has been developed with young people and is designed to blend in with other apps the young person may have. It can also be locked with a pin for privacy so addresses some of the concerns we raise above. A 'go to' site would need to be nimble so that it can respond to technological advances, scalable so that it can be released as an app and have the infrastructure and funding to evolve as necessary.

that it can be optimised to be used on a smartphone or tablet and released as an app without further development costs.



**Creating Paths
to Family Justice**

BEST PRACTICES

Through the analysis of the Mapping findings and discussions in the Creating workshops we identified a number of best practices in the move to OFDR processes, many of which have been highlighted in previous sections of this Briefing Paper. This section provides a consolidated summary of the best practices identified.

Emotional Readiness and OFDR

Given the Mapping findings on the impact of emotional unreadiness on DR processes and outcomes it is vital, in the move to OFDR processes, that the parties' readiness to engage in OFDR is accurately assessed at the outset (and kept under review as appropriate). A tool to assess emotional readiness could be used by practitioners and as a self-assessment aid. If one or both parties are not emotionally ready the OFDR should be paused with essential temporary measures put in place and the unready party referred to counselling or other therapeutic support services as required. An OFDR offering could do much to manage users' expectations and normalise users' emotions. An OFDR platform should include clear, accurate, neutral information on process choices (online and offline) and on procedure to help practically prepare parties.

Providing 'Joined-up' Support

The 'delegalized space' in which so many separating parties find themselves post-LASPO requires a joined-up response from the various government agencies working in family justice, the third sector, the legal profession and mediation community. Rather than working in competition or proliferating online information, the scale of the problem requires collaborative working, as with Creating. A centralised, trusted, authoritative source of online information that would become the 'go to' website for separating parties is needed. This should set out the strengths and weaknesses of the various out-of-court options including OFDR, for different types of cases and parties, drawing on Mapping's compendium of best practices in identifying appropriate processes and screening for and responding to domestic violence and other potentially contra-indicated matters in mediation (Barlow et al. 2014).

It is vital that the initial signposting should lead on to a joined-up and effective signposting to other services which would themselves offer to undertake a nuanced triage process, online or offline, rather than just abandon people at the next landing page. This could then signpost out to support and expertise as needed to provide a smoother, end-to-end user journey with clear routes to and pathways through appropriate online information, support and advice.

The mediation community should unite as a profession to provide a joined-up service across the private and not-for-profit sectors. The ability to provide joined-up support is enhanced by the establishment of co-operative relationships between mediators, lawyers, the third sector, counsellors, financial advisors and child consultants and the move to OFDR creates opportunities for novel and collaborative multi-disciplinary online work practices.

Effective screening and OFDR

Effective screening for client and case suitability combined with appropriate responses to the situation is a prerequisite of any OFDR offering. As well as screening for risk in domestic abuse and/or child abuse cases, the OFDR system should be alert to: coercive control; drug and alcohol and mental health issues; power imbalances; the potential strategic use of OFDR by a dominant or controlling partner; high levels of conflict between the parties; and whether the dispute raises intractable factual issues.

Separate rather than joint MIAMs should be the default position for both online and offline DR processes.

The voice of the child and OFDR

Young people need anonymous access to online information that is tailored, accessible, understandable, engaging and age appropriate from a trusted online source, containing other topics of interest directed at their age group and including forums for peer discussions and support. The move to online provides opportunities to provide information and research evidence to parents on the benefits of hearing from their children on decisions around post-separation child arrangements so that hearing from children becomes the norm over time. OFDR platforms in development should include innovative ways for children to express their views on arrangements for them within the parental negotiations.

POLICY IMPLICATIONS

This final section draws out the policy implications of our findings including the policy changes that would be necessary in order to support fully the best practices identified in the previous section.

An authoritative first port of call

The proliferation of generic online information of variable quality in recent years has confused and overwhelmed those facing family breakdown. There is an appetite for a nationally trusted website to provide initial advice and information on the range of dispute resolution options. Creating clear and trusted online pathways to information followed by clear routes **through** the appropriate dispute resolution options must be a policy priority and we welcome the commitment of MoJ Digital and their colleagues in MoJ policy, starting with the content on Gov.uk, to develop or improve informational tools and services and then to develop and pilot triage services initially for more straight forward cases (MoJ, 2016). We agree that steps to ‘improve the front door to justice’ (Harbott, 2016) are critical.

Funding OFDR

OFDR is not a panacea but it is a useful addition to the existing DR options for parties who require a structure within which to negotiate and who are willing and able to negotiate online in good faith. The government should fund, via the Legal Aid Agency or similar, the development, launch and maintenance of an OFDR platform to ensure a secure, long-term financial footing.

The Role of Family Courts

While court proceedings should be seen as a last resort for most separating couples, it also needs to be recognised that they are the first and most appropriate resort in some categories of cases, as identified in Mapping. An OFDR offering must provide a balanced portrayal of the role of the court and signpost to an adjudicated outcome where necessary.

MIAMs to DRIAMs

We have previously suggested that MIAMs should become DRIAMs (Dispute Resolution Information and Assessment Meetings) provided independently of substantive DR services with a full explanation of the range of DR options to those experiencing family breakdown, and offering a genuine choice of processes, guided by the suitability criteria we identified in Mapping (Barlow et al. 2014; Hunter et al. 2014). Once available and fit-for-purpose the options menu should include OFDR. To encourage attendance DRIAMs should be free (i.e. publicly funded) for everyone and the time allocated extended to allow for thorough screening (with a consequent uplift in fee paid to the provider). Separate rather than joint DRIAMs should be the default and, in an OFDR offering, held by Skype (but if initial intake questions flag the matter as ‘amber’ then face-to-face).

Closing the ‘LASPO’ Gap

We have suggested elsewhere that the provision of public funding should be reimagined to ensure that those for whom mediation is unsuitable but who do not qualify for legal aid under the current regime are not left in limbo (Barlow et al. 2014). Funding for counselling for those judged emotionally unready to engage in an OFDR or other out-of-court DR process should be made available to avoid the emotional and economic cost to both the parties and the public purse of these cases otherwise ending up in the court system. Public funding should also be made available as required to cover the cost of parties using an OFDR offering. Funding for legal advice, including for proceedings, should be made available for all cases flagged ‘red’ following screening for OFDR.

Specialist Accreditation of Mediation

Finally, we endorse the FMC’s efforts, since 2014, to ensure that all FMC mediators work towards accredited status (‘FMCA’) and re-accreditation every 3 years. To achieve our vision of clearer pathways we would support better signposting of parties to the FMC’s register of mediators so that parties have a centralised source of FMCA status mediators to instruct. In addition, since mediators are expected to mediate cases that they may have referred to legal advice pre-LASPO, there should be a system of specialist accreditation for mediators along the lines currently operated for family lawyers by Resolution and the Law Society to include specialism in high conflict cases. The scheme should be instituted and regulated directly by the FMC which would oversee the training and practice requirements. Continuing Professional Development (CPD) requirements for all mediators should also be put in place to ensure that best practice is updated and regularly shared by all. Core training and CPD should draw from the Mapping findings on emotional and practical readiness and should include training on the specific challenges of OFDR.

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