

**Response of the Family Justice Council to the Call for Evidence on**

**Dispute Resolution in England and Wales produced by the Ministry of Justice.**

**Introduction**

1. The Family Justice Council is an advisory Non-Departmental Public Body sponsored by the Judicial Office. It is an inter-disciplinary body responsible for providing independent expert advice on the family justice system to Government, principally through the Family Justice Board. The Council is chaired by the President of the Family Division. The Council arrives at its views collectively, after discussion and debate, as such they do not, necessarily, reflect the views of its Chairman. Its membership reflects all the key professional groups working in the family justice system and includes: judges, lawyers, social workers, Cafcass officers, health professionals and academics.
2. The Council notes that the great majority of issues arising from family breakdown are resolved by the parties outside the court process,[[1]](#footnote-1) either autonomously or with the assistance of solicitors.[[2]](#footnote-2) Where matters cannot be resolved in this way, the Council fully supports access to the range of dispute resolution mechanisms which may assist the parties to reach an agreement. Such mechanisms, if successfully deployed in appropriate cases, hold considerable benefits for participants and their children in reducing delay, saving costs and mitigating high levels of relationship tension.
3. In the context of family law, various forms of dispute resolution are currently available for:
4. financial relief arising out of marital and non-marital breakdown including under the Matrimonial Causes Act 1973, Schedule 1 of the Children Act 1989, the Inheritance (Provision for Family and Dependants) Act 1975, s17 of the Married Women’s Property Act 1882, the Trusts of Land and Appointment of Trustees Act 1996, Part III of the Matrimonial and Family Proceedings Act 1984, and civil partnership equivalents where corresponding legislative provision has been made;
5. private law children issues including with whom children shall live, the time spent with each parent, relocation (within and outside the United Kingdom) and child abduction.
6. Those areas of family law which are currently not amenable to dispute resolution include where the liberty of the individual is at stake (for example in committal proceedings), where decisions are required as to the status of individuals or their relationships, and in child protection proceedings. The Council also notes research which demonstrates that a high proportion of private law children cases involve domestic abuse and/or other serious safeguarding concerns which need to be dealt with in court due to the safeguarding risks involved.[[3]](#footnote-3) The pilot programme conducted by Cafcass in Manchester in 2018 found that only 14%-20% of cases were suitable for diversion from court.[[4]](#footnote-4) Furthermore, Cusworth et al.’s research found a strong link between economic deprivation and private law applications,[[5]](#footnote-5) suggesting that parties coming to court to make child arrangements are unlikely to be able to afford to pay privately for dispute resolution services (as indeed, the rise in litigants in person post-LASPO demonstrates their inability to pay for legal representation).
7. The non-court dispute resolution processes most commonly encountered in family law are mediation, collaborative law, early neutral evaluation and arbitration. Parties are able to take advantage of more than one such process in an attempt to resolve differences.
8. This response looks at each in turn, but there is an overlap between them in terms of objectives, functionality and approach.

**Family Mediation and Collaborative Law**

1. Family mediation is a process whereby an independent, trained professional assists parties in reaching agreement about relationship breakdown issues such as parenting arrangements and finances. **Collaborative** practice is a process whereby each party appoints their own collaboratively trained **lawyer**, and the parties and lawyers meet to negotiate resolution of relationship breakdown issues. Both are voluntary processes. Research and experience suggest that mediation is more widely used than collaborative practice, which is less well known and less commonplace.[[6]](#footnote-6)
2. Parties typically engage in mediation before issue of proceedings, or after the first court hearing at which the judge will sometimes encourage the use of meditation. The collaborative process is typically undertaken before issue of proceedings, and indeed its central aim is to avoid the issue of any proceedings.
3. In addition to the general advantages of dispute resolution outlined above, mediation is particularly suited to deal with issues where the deployment of court resources would be disproportionate; typical examples would include where the handover of children from one parent to another should take place, or the precise time for handover. Whilst important to both children and parents, such issues should not ordinarily require court intervention where there are no domestic abuse or other safeguarding concerns. The disadvantages of mediation include the risk of ongoing coercion or control by a party, deliberate delaying tactics, incomplete disclosure, the inability of mediators to give legal advice, and the fact that mediation is not binding. An experienced mediator will usually be alert to a situation where one of the parties is attempting to misuse or abuse the process and if concerns arise, they should deem the mediation inappropriate. The other perceived disadvantages, however, are more structural.
4. Mediators are usually members of, and regulated by, the Family Mediation Council. The Family Mediation Council will shortly be taking responsibility for the complaints procedure. However, membership of the Family Mediation Council is not compulsory, and a mediator may undertake mediation activities without being professionally qualified, registered or affiliated to any organisation. It is suggested that this may affect public confidence in mediation.
5. Collaborative lawyers (usually solicitors) are governed by Resolution and the SRA, and subject to regulatory requirements, including a well-established complaints procedure.
6. It is generally accepted that those who attend mediation with suitable support, having had the benefit of at least some legal advice, counselling, or therapy, achieve better outcomes.[[7]](#footnote-7) In the absence of such support, however, parties may be reluctant to engage with mediation or struggle with the process, particularly if they are emotionally and/or practically unready to mediate.[[8]](#footnote-8)
7. Parties are often motivated to mediate by referrals from solicitors, encouragement by judges or suggestion by Cafcass. There is, however, no obligation on any of the above to suggest mediation, nor any obligation on the parties to engage in mediation.
8. Cost is a significant factor for people to consider when entering mediation or collaborative law. Public funding is available for MIAM appointments subject to the usual means testing requirements. Provided at least one party can secure public funding, the other party is entitled to receive the MIAM appointment free of charge. The MIAM appointment is an information and signposting meeting, not a mediation process in itself. Public funding for mediation is available, subject to means testing requirements, but, unlike MIAMs, a non-publicly funded party must pay for his/her attendance privately save for the first session which is free of charge to the non-eligible party. The average length of the mediation process is three sessions, and many cannot or will not commit to meeting the cost if they are not in receipt of public funding. It is frequently cheaper for a litigant in person to attend court than to engage in mediation; lack of funding is therefore a considerable barrier to mediation in many cases.
9. There is no public funding for collaborative practice, which is charged at the usual hourly rate of the participating lawyer. Research has established that this is a key reason for the low take-up of collaborative law, although alongside affordability, the other main determinants of parties choosing collaborative law are awareness of the process and access to two collaboratively trained solicitors.[[9]](#footnote-9)
10. In order to ameliorate funding issues in relation to mediation, the Ministry of Justice on 26 March 2021 set up a £1m Family Mediation Voucher Scheme, run by the Family Mediation Council, under which £500 has been provided towards mediation costs for about 2100 separating parties. It has recently been announced that the scheme is to be extended with a further £800,000 of funding. While the scheme ameliorates the cost disincentive for non-legally-aided parties to some extent, the limitation of vouchers to £500 means that mediation may still be truncated when the funding runs out. Alongside the continuation of the scheme, the Council would welcome a full evaluation which seeks to determine its cost-benefit and its success in enabling people who would not otherwise be able to access mediation to reach a mediated agreement.
11. In cases in which mediation may be appropriate for the parties (i.e. where an exemption does not apply and the mediator does not determine that mediation is unsuitable), a frequent difficulty is that the respondent chooses not to engage and does not attend a MIAM. One way of addressing this problem would be to broaden out the MIAM into an initial meeting which would signpost a variety of different dispute resolution and/or support options for the parties rather than offering a choice only of mediation or the court process.[[10]](#footnote-10) The Family Solutions Group went further in recommending the introduction of an early ‘Information and Assessment Meeting’ to assess and respond holistically to the family’s needs, including the provision of legal information and consultation with children.[[11]](#footnote-11) Council also notes that the forthcoming pathfinder courts pilots will trial a model of child arrangement proceedings which involves an initial child impact assessment and report with recommendations for either court-based next steps or referral of the parties to an out-of-court service.[[12]](#footnote-12) In the view of the Council, such holistic approaches would justify mandatory participation by the respondent.
12. In the absence of such an approach, the Council’s view is that consideration should be given to having mediators in the court precinct, or available online at the first hearing, to talk to parties about mediation and other forms of dispute resolution in cases which are suitable for mediation. It is possible that the presence of a mediator at court, and under court auspices, rather than selected by one of the parties, would be seen as more neutral and balanced. And although the Manchester Pilot was largely unsuccessful in engaging parties in non-court dispute resolution between the issue of proceedings and the first hearing,[[13]](#footnote-13) once they are experiencing the court process for the first time, it is possible that parties may be more inclined to consider dispute resolution. Should the parties appear receptive to embarking upon out of court procedures, the court could exercise its powers to adjourn the proceedings in order to allow dispute resolution to proceed.
13. The Council appreciates the difficulties for gatekeepers in encouraging MIAM attendance and mediation in the absence of safeguarding information, especially where litigants in person are involved. However, reinforcement to judges of the value of encouraging and promoting such processes in the right cases, once sufficient information is available, may be required.
14. Although not directly part of the mediation process, in children disputes the Separated Parents’ Information Programme is another service potentially available to assist parties in cases which do not raise safeguarding concerns. The court has the power to direct attendance, in which case the programme is provided to parties free of charge. Alternatively, Cafcass sometimes suggests such a programme directly to the parties, but cannot require them to attend due to the fact that without a court direction parties would have to pay for the programme themselves. The Council urges that consideration should be given to the funding of SPIPs so that they could be made more readily available prior to the commencement of proceedings.
15. The Nuffield FJO report, “Who’s coming to court in England?” found that 24-27% of parties return to court within 3 years of a final order.[[14]](#footnote-14) A new service being developed in England and Wales in this regard is parenting coordination. A range of models of parenting coordination exist in the USA, Canada and some other jurisdictions to assist highly conflicted parties with the implementation of court orders and the resolution of disputes that arise subsequent to their court proceedings, although there is a dearth of evidence as to the relative effectiveness of the various models, and quite different practices concerning the relationship between parenting coordinators and the court. At present, the number of parenting co-ordinators in England and Wales is thought to be about 12, but increasing. They are generally qualified practitioners and mediators with at least 5 years post qualification experience. The Council would welcome steps to evaluate the processes and outcomes of parenting coordination in order to inform future developments. The Council also notes that as with collaborative law, the cost of parenting coordination for the parties may be a barrier to its availability to any but reasonably well resourced parents. Any evaluations should address the question of costs and consider whether there is a case for public funding of such a service.
16. In the view of the Council, it would be helpful to record on the face of all consent orders (whether financial or children’s issues), whether agreement was arrived at through the process of mediation, or any other form of dispute resolution, and for this data to be captured in HMCTS administrative data systems. Further data could be usefully obtained from the Family Mediation Council as to the number of successful/ unsuccessful mediations in a similar way that Resolution carries out such an exercise for the collaborative model. The C100 form could also record whether mediation has been attempted (as well as whether a MIAM has been attended) prior to the commencement of court proceedings, in order to better understand parties’ pathways where mediation is unsuccessful.
17. Unlike financial remedy applications, the full fee in children’s cases is required when applying for a consent order. By contrast, in some other jurisdictions (e.g. Australia) it is possible to apply for consent orders for financial and children’s matters in the same way. While the no-order principle militates against this in England and Wales, further consideration of how to address the disincentive to mediation of agreements not being readily convertible into enforceable orders would be welcome.
18. It is noted that Resolution is supporting a new approach, the Certainty Project; <https://resolution.org.uk/learning-at-home/new-approaches-in-dr/the-certainty-project/>. Under the scheme, the parties enter into mediation but additionally nominate an arbitrator as a “long-stop” should mediation not be successful. It is too early to know whether the certainty of timetable and process will encourage parties to enter into mediation, or whether the potential cost of this option will result in it becoming a ‘niche’ family law product alongside collaborative law and arbitration itself.

**Early Neutral Evaluation**

1. Any financial remedy claim proceeding in the court system has to be referred to an FDR (financial dispute resolution) appointment before trial. Part 9, rule 17 of the FPR (Family Procedure Rules 2010) provides that the FDR appointment is to be treated as a without prejudice hearing before a judge held for the purpose of discussion and negotiations. Such hearings have been developed as a means of reducing the tension which inevitably arises in family disputes and facilitating settlement of those disputes. FDRs have proved to be a very successful tool in the family court’s armoury in achieving settlement and avoiding the cost (both financial and in human terms) of the impending trial.
2. About ten years ago the success of the FDR hearing and the delays encountered in fixing such hearings in busy court lists led family law practitioners in London to ‘copy’ the FDR hearing and have a ‘private’ FDR hearing instead before a retired judge or QC specialising in the financial remedy field. Initially private FDRs tended to be held in London cases involving high net worth parties, or ‘big money’ cases.
3. The private FDR hearing has gathered considerable momentum over the last ten years. It is anecdotally said to be successful, and a more popular ADR option for financial remedy work, surpassing mediation and arbitration, although there is no research-based evidence to confirm this. It covers the entire ambit of family financial claims, viz: financial remedy claims post domestic divorce and foreign divorce if Part III of the Matrimonial and Family Proceedings Act 1984 applies, claims on behalf of children under Schedule 1 of the Children Act 1989 and claims against estates under the Inheritance (Provision for Family and Dependants) Act 1975.
4. Opting for a private FDR as a means of settling the case has become the default position for many London based practitioners. It is also becoming increasingly widespread in provincial legal centres principally, Manchester, Leeds and Birmingham. The use of private FDR is not confined to the big money cases - more modest financial cases are also being resolved at private FDR hearings before junior members of the Bar acting as the private FDR judge. Nevertheless, it is still likely to be beyond the means of many litigants.
5. Another development that has emerged over the last few years has been for parties to opt for an ENE (early neutral evaluation) in a private FDR hearing *before* either party has issued a financial remedy claim. The solicitors prepare the case as if it was proceeding in the court system, and a financial remedy claim is only issued as a last resort if the parties are unable to reach a settlement at the private FDR hearing.
6. Although there are no formal records of the outcomes of private FDRs, practitioners who regularly act as private FDR judges claim to have achieved a settlement[[15]](#footnote-15) in between 80% to 90% of the cases they have evaluated. A clear advantage of private FDR hearings is that they avoid long delays in the court system, thereby saving legal costs and reducing the emotional drain on the litigants. Anecdotally, they are perceived by family lawyers and litigants as being a fair and cost-effective process, as well as a civilised method of resolving financial disputes in an emotional arena.
7. There are no formal rules or practice directions governing the conduct of the private FDR. Practitioners follow the same procedure and protocol provided in the FPR for the conduct of a court -based FDR. Broadly, this means:
* Private FDRs take place after the First Appointment and after financial disclosure has been provided by the parties and asset values have been agreed or formally valued.
* All relevant documentation is delivered to the private FDR judge in advance to enable pre-reading.
* The parties are expected to have exchanged offers in good time before the hearing.
* The hearing is formal in structure with counsel instructed to make submissions (having provided position statements and asset schedules in advance of the hearing).
* There is no oral evidence from the parties.
* The entire hearing is conducted on a without prejudice basis: nothing said at the hearing can be referred to in the future.
* The evaluation is not binding on the parties.
* The focus of the hearing is on achieving a financial settlement.
1. Private FDRs have been a relatively easy hearing to accommodate on a Zoom/Teams video platform during the COVID pandemic. It is very rare in a private FDR hearing, however, to have one or both litigants in person. Legal representation is the norm. As a model, the private FDR is not best suited to accommodate self-representing litigants who do not appreciate how the hearing operates and who are unlikely to be able to afford the cost of a private FDR judge.
2. Some London based judges at the First Appointment have been encouraging the parties to opt for a private FDR rather than a court-based FDR in order to ease the congested court lists. Unlike the CPR which enables the court to order the parties to use ADR, the FPR has no equivalent powers: the family court can encourage but not insist on the parties resorting to a private FDR. Any compulsion, or even strong judicial encouragement, for parties to engage in a dispute resolution process which would require them to incur additional costs would need to be very carefully considered.
3. The Family Justice Council would welcome research on and evaluation of the process and outcomes of private FDRs in order to inform future developments.

**Arbitration**

1. Family law arbitration was launched by the Institute of Family Law Arbitrators (“IFLA”) in 2012. There are separate schemes for both financial remedy and children disputes. The authority for the schemes derives from the Arbitration Act 1996, and the relevant rules. Family law arbitration can only take place when the parties agree to submit to it. Unlike mediation and early neutral evaluation, the arbitrator imposes a decision (or “award”) on the parties, which is thereby binding.
2. Arbitration has several advantages over court proceedings. The parties have the choice of a specialist arbitrator from an approved list. Arbitration is generally much swifter than the court process. The venue is a matter of choice for the parties. The arbitration is entirely confidential (unlike court proceedings, the media may not attend). It is a flexible system enabling the parties to identify the issues to be arbitrated.
3. A high number of experienced solicitors and barristers (nearly 200), all with expertise in family law, have completed the relevant training and become arbitrators under either or both IFLA schemes. Parties therefore have a wide choice of specialists in the field to act as arbitrators.
4. One of the drawbacks of arbitration is that, although conducted in a less formal manner than a court hearing, it generally adopts a similar approach with written and oral submissions, and oral evidence. It is therefore akin to a final hearing in court. It also tends to be towards the end of the process i.e., after parties have exhausted other means of attempting to resolve their dispute. Arbitration has its place, but is not usually deployed to attempt to achieve early resolution, unlike mediation and early neutral evaluation. Thus, the legal costs can be comparable to those incurred in the court process, and parties also bear the additional cost of paying for the arbitrator. The costs of arbitration render it practically inaccessible to a significant proportion of parties with family law disputes.
5. This helps to explain why, despite the many advantages of arbitration, the resource back-up offered by the IFLA and the availability of numerous expert arbitrators, there appears to have been a relatively modest take-up of arbitration by parties since the start of the scheme in 2012. No data has been made publicly available by the IFLA, but it is commonly understood to be the case that the number of cases proceeding to arbitration is a small percentage of the total number of family disputes which proceed to court and/or are resolved by other means. This is contrary to the experience of other areas of law, particularly commercial disputes where arbitration is commonplace.
6. It is widely thought that there are three further reasons for the limited number of arbitrations in family law. First, until the recent landmark Court of Appeal decision in **Haley v Haley [2020] EWCA Civ 1369**, the grounds for challenging an arbitrator’s award in court were very restricted, essentially confined to error of law and procedural irregularity. Parties are generally thought to be reluctant to enter into a commitment to arbitrate without any meaningful ability to appeal or challenge a decision. Second, and linked to the first reason, solicitors are thought to be reluctant to recommend arbitration for fear that the client will be dissatisfied with the award of an arbitrator recommended by the solicitor. And third, it does not appear that parties are widely aware of arbitration, and many solicitors and barristers have little knowledge of how it works. This may be because there is a lack of information about the arbitral process. There is, for example, next to no signposting or provision of such information by the courts, whether at the point of issue of an application, or at any court hearing, or otherwise. All that said, the same reasons could be said to apply to commercial disputes, but there is no such reticence to submit to arbitration in that field. This points to further differences in family law, including the different types of issues involved, the different types of parties and their generally lower resources.
7. The Court of Appeal in **Haley (supra)** determined that, unlike other areas of law (for example, commercial disputes), the family court retains an independent jurisdiction to decline to uphold an arbitration award, and substitute its own award, if it is satisfied that the award was “wrong”. Thus, parties to an arbitration now have the right to seek a remedy if dissatisfied by the award for reasons other than error of law or procedural error. However, it is not yet clear whether this new ability to challenge an award will lead to a higher number of cases where parties agree to submit to arbitration.
8. As stated above in relation to parenting coordination and early neutral evaluation, the Family Justice Council would welcome research on and evaluation of the process and outcomes of family arbitration in order to inform future developments.

**The Voice of the Child in Non-Court Dispute Resolution**

1. The Council notes that mediation is the only one of the non-court dispute resolution processes discussed which explicitly provides for consultation with children. In the early-to-mid 2010s, Barlow et al. found that child-inclusive mediation rarely occurred in practice.[[16]](#footnote-16) Surveys conducted by the Family Mediation Council, however, found that the use of child inclusive mediation increased from 14% of cases in 2017 to 26% of cases in 2019. Recent research by Barlow and Ewing on the experience of child inclusive mediation found that children cited benefits of the process including validation of their opinions and feelings, reduction in their anxieties about their parents’ separation, improved communication with their parents and feelings of empowerment.[[17]](#footnote-17)
2. More generally, children’s desire to participate in decisions about their future has been widely documented.[[18]](#footnote-18) The Council would welcome developments in other non-court family dispute resolution processes to fully implement Article 12 of the UN Convention on the Rights of the Child and to routinely incorporate consultation with children.

**Conclusions**

1. On the basis of the above review of the landscape of non-court dispute resolution for family cases, the Council’s view is that a number of matters need to be considered to strengthen the options available to parties and their children in cases where non-court dispute resolution is safe and appropriate:
2. The principal challenge is how to ensure that parties, and their legal teams where parties are represented, have sufficient knowledge and understanding of the different available options, and their respective benefits and drawbacks, to exercise a considered decision whether or not to enter into dispute resolution. This may require signposting to comprehensive websites and/or information guides, together with appropriate support and guidance, prior to issue, at the point of issue and/or at each stage of the court process. This is particularly important for litigants in person.
3. The Council considers that a more joined up approach to the various different dispute resolution processes is called for. In particular, it is suggested that both lawyers and mediators are well placed to signpost other dispute resolution options to the parties, and should therefore be fully aware of such options, how they work, their benefits and costs.
4. The Council notes that all or most of the non-court dispute resolution process work most effectively when they are accompanied by legal advice and/or representation. The Council considers that the provision of early free or low-cost legal advice for all parties would enhance both the take-up of non-court dispute resolution and the benefits that parties would derive from those processes.
5. The Council considers that research is required on the processes and outcomes of parenting coordination, early neutral evaluation and arbitration in order to provide a clear understanding of and evidence base for the role they might play as dispute resolution options, and for the benefit of any future policy- and/or rule-making.
6. The Council would be keen to see a robust evaluation of the family mediation voucher scheme in order to determine its impact and cost-benefit.
7. The Council also considers that further data is required on the use of mediation (including non-legally-aided mediation), the outcomes of mediation, and the extent to which mediation leads away from or into court proceedings.
8. The Council observes that significant cost barriers exist for almost all of the non-court dispute resolution options and considers that increased funding of dispute resolution is a priority, including funding for the Separated Parents’ Information Programme prior to court proceedings.
9. The Council considers it imperative that all non-court dispute resolution processes incorporate and facilitate consultation with children in appropriate cases.

**Family Justice Council**

27 October 2021

1. Blackwell, A and Dawe, F, *Non-residential parental contact* (2003); Lader, D, *Omnibus survey report no 38: Non-residential parental contact, 2007/8* (2008); Peacey, V and Hunt, J, *Problematic contact after separation and divorce? A national survey of parents* (2008); Summerfield, A and Freeman, L, *Public experiences of and attitudes towards the family justice system* (2014); Goisis, A et al., *Child outcomes after parental separation: Variations by contact and court involvement* (2016); Cusworth, L et al., *Uncovering private family law: Who’s coming to court in Wales?*  (2020); Cusworth, L et al., *Uncovering private family Law: Who’s coming to court in England?* (2021). [↑](#footnote-ref-1)
2. Barlow, A et al., *Mapping paths to family justice: Resolving family disputes in neoliberal times* (2017), p.85. [↑](#footnote-ref-2)
3. See Barnett, A, *Domestic abuse and private law children cases: A literature review* (2020), p. 20; Cafcass,’Support with making child arrangements programme: Six-month pilot evaluation report’ (2019). [↑](#footnote-ref-3)
4. Cafcass, ibid. [↑](#footnote-ref-4)
5. Cusworth et al. (2020), above n 1, p. 23-24, (2021), above n 1, p. 27-29. [↑](#footnote-ref-5)
6. See, e.g. Barlow et al., above n 2. [↑](#footnote-ref-6)
7. The DWP’s “Reducing Parental Conflict Programme” confirms this experience; <https://www.gov.uk/government/publications/reducing-parental-conflict-challenge-fund-learning-from-the-first-phase>. [↑](#footnote-ref-7)
8. See Barlow et al., above n 2, p. 122-138 Barlow et al., ‘Creating Paths to Family Justice’ Project: Briefing Paper and resources, available at <https://socialsciences.exeter.ac.uk/law/research/groups/frs/projects/creatingpathstofamilyjustice/>. [↑](#footnote-ref-8)
9. Barlow et al., above n 2, p. 88. [↑](#footnote-ref-9)
10. See, e.g. Barlow, A et al., *Mapping paths to family justice: Briefing paper and report on key findings* (2014), p. 32-33. [↑](#footnote-ref-10)
11. Family Solutions Group, *What about me? Reframing support for families following parental separation* (2020), p. 50-56 [↑](#footnote-ref-11)
12. Sir Andrew McFarlane, ‘Speech by the President of the Family Division: Supporting families in conflict – there is a better way’, an address to the Jersey International Law Conference (2021), p. 9. [↑](#footnote-ref-12)
13. Cafcass, above n 3. [↑](#footnote-ref-13)
14. Cusworth et al. (2021), above n 1, p. 36. [↑](#footnote-ref-14)
15. Settlement could be on the day of the private FDR hearing or within a few weeks thereafter, the litigants having reflected on the evaluation. [↑](#footnote-ref-15)
16. Barlow et al., above n 10, p. 11. [↑](#footnote-ref-16)
17. Barlow, A et al., ’Mapping paths to family justice: Resolving family disputes involving children in neoliberal times’, in *Children’s health, custody conflicts, and alternative dispute resolution* (eds. Kaldal, A et al., forthcoming 2022). [↑](#footnote-ref-17)
18. See Nuffield Family Justice Observatory, *Children’s experience of private law proceedings: Six key messages from research* (2021), p. 7. [↑](#footnote-ref-18)