

Briefing 3: Impact of delay in Family Court

Timeline of unintentional damage by the Family Court

The Family Court does a vital job in dealing with high-conflict cases and cases of abuse. However, most observers agree that far too many families unnecessarily end up in court when their case should be resolved elsewhere.

This briefing explains a common timeline.

A common problem

Parents A and B have separated and come to an informal agreement on contact and finances. However:

- mediation and other non-court agreements, are not legally binding, so there are no consequences for the parent who breaches the agreement.
- there is no legal obligation to maintain contact

The typical course of a Children Act case is as follows:

- Parent A is unjustifiably cut off from seeing the child by Parent B.
- Parent A has little choice but to go (reluctantly) to family court.
- Parents take part in statutory mediation assessment (MIAMs).
- Parent B does not cooperate (there are no consequences).
- Parent A then files a C100 to open the court process.
- Cafcass does a safeguarding letter, based on short phone conversations with both parents. This can take up to 8 weeks.
- The bond with parent A is breaking.
- The case goes to First Hearing and Dispute Resolution Appointment (FHDRA) often with 3-4 month delay. This is supposed to be for dispute resolution but is now only 30-45 minutes long.
- Most cases are heard by lay magistrates with court legal advisor.
- The Cafcass letter may contain allegations of Domestic Abuse by Parent B (or by both parents) which were not raised at the MIAMs.
- The judge/magistrate instructs each party to do a 'Scott Schedule' outlining their claims. These often contain exaggerated and/or inappropriate allegations to be made which tint the rest of the proceedings if not investigated thoroughly and quickly for the veracity the claims.
- Due to the allegations, the court orders a fact finding.
- The fact finding can take months or years to resolve.
- By the time Parent A is able to show their innocence, the bond with their child is broken. Court may then order that the status quo is maintained.
- The bond with Parent A remains broken.

Potential solution

- Give non-court-ordered agreements a legal status. This would help to ensure that parents engage in the process.
- Impose a legal obligation on both parents to uphold the child's right to a relationship with both parents (or go to court to explain why not).
- When couples go to court, the judge's first instructions are to check that they have been through all the 'divert' processes.

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