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Too many children suffer in divorce courts: we need more mediation

The emotional strain of family breakdown will never be solved by lawyers alone

 Jane Robey
The Guardian, Thursday 19 November 2009
Article history

You report that "the distress experienced by children whose parents are divorcing is cause for increasing concern" and that "the rising number of

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The emotional strain of family breakdown will never be solved by lawyers alone



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- [Jane Robey](#)
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You report that "the distress experienced by [children](#) whose parents are divorcing is cause for increasing concern" and that "the rising number of cases puts a further burden on the struggling family court system" ([Rise in divorce actions puts extra strain on children, solicitors warn](#), 9 November).

Sandra Davies, a partner at the [law](#) firm Mischon de Reya, which carried out the latest research, is right that courts are not the best place for family breakdown issues to be resolved. But she ignores the fact that a proven alternative – family mediation – already exists.

I have worked in the family justice system since 1989, originally as a family court welfare officer, and have been chief executive of [National Family Mediation](#) since 2004. Davies says mediation is "more of a box-ticking exercise": but where that's the case, it is largely a result of the financial incentives for family lawyers to keep the case going rather than find a mediated solution.

Just last week I took a call from a man who wanted to talk to his ex about their young children. He had received a letter from her solicitor inviting him to mediation. He duly contacted a local mediation service but was told his ex would not attend, therefore mediation could not proceed. I wonder what "advice" she was given by the lawyer – was it merely a "a tick box exercise" to demonstrate that mediation had been offered, so that legal aid could be accessed?

No doubt the legal profession will maintain that it works in the best interests of clients and aims to resolve matters swiftly. The evidence suggests otherwise, as the [Children and Family Court Advisory Support Service](#) (Cafcass) slowly grinds to a halt under the strain of numbers applying.

There is, however, a fundamental issue that Davies has articulated: "The court system is becoming more and more clogged with litigants who are fighting over emotional issues which the courts cannot police." With 45% of marriages ending in [divorce](#), family breakdown is big business. The legal aid bill of £151m quoted in the article is the tip of the iceberg: the divorce market is worth up to £4bn to the legal profession. The National Audit Office identified a potential saving of £74m if family mediation were better used.

The 60% rise in public law case requests which you report is surely no surprise following the tragic case of Baby P. Understandably, the priority has to be the welfare of those vulnerable children most at risk, with divorce and separation matters dropping down the list. But this is all the more reason to enlist allied skills, such as family mediation, to support families. You report claims that mediation is "failing to work in the best interests of children". That is not my experience: children's needs are paramount in any negotiation.

Davies concludes: "The better way is to try to encourage parents to focus on their children in a less acrimonious litigious and confrontational atmosphere, to reduce pressures on the courts, and avoid pressures on Cafcass." This is exactly what we do. How much longer can the legal profession ignore family mediation?