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Rise in divorce actions puts extra strain on children, solicitors warn

- Legal system 'clogged with emotional disputes'
- Family court welfare service facing backlog

Afua Hirsch
The Guardian, Monday 9 November 2009
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 - Afua Hirsch
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Rise in public law case requests to family courts, already struggling after increase in care proceedings after Baby P. Photograph: Public Domain

The number of [divorce](#) and separation cases being fought in the courts that involve [children](#) has risen, with £151m of legal aid money being spent on litigation, according to figures released today.

The distress experienced by children whose parents are divorcing is cause for increasing concern, experts say, as the rising number of cases places a further burden on the struggling family court system.

Research by solicitors Mishcon de Reya shows that more than half of parents going through divorce and separation went to court to challenge issues relating to their children. Figures from the Legal Services Commission, which manages the government's legal aid budget, show last year's costs rose more than 5% on 2007.

Lawyers say the rise in divorce cases is alarming and putting further strain on the court system, already under pressure from an increase in care proceedings after the Baby Peter case.

"The court system is becoming more and more clogged with litigants who are fighting over emotional issues which the courts cannot police," said Sandra Davies, a partner at Mishcon de Reya, who specialises in family [law](#).

Last month Cafcass, the family court welfare service, published quarterly figures showing a 60% rise in public law case requests, with 4,236 requests made between April and September compared with 2,608 in the same period last year. The strain on Cafcass, which recently announced it was restructuring to cope with its backlog, led its chief executive, Anthony Douglas, to admit last month the organisation was on "emergency footing" as a result of the rise in care proceedings.

The increase in proceedings is causing delays to private law cases, a panel of experts will hear at a debate in parliament today, with alarming implications for children involved.

The research also shows that some children have turned to drug and alcohol abuse and committed crime and truancy as a direct result of experiencing family conflict involving court proceedings.

The debate comes as both the government and the courts have emphasised the need for more families to undergo mediation and avoid the courts.

"The breakdown of a family is an extremely distressing time for all involved, particularly children, which is why I am determined that courts should be the last resort", said the legal aid minister, Lord Bach. "Sadly that is currently not the case, with only one in five legal aid clients experiencing a family dispute opting for the benefits that mediation can bring.

"Mediation is proven to provide a much quicker and less traumatic process than appearing in a family court for many, and so provides a more satisfactory conclusion for all involved as a result."

But others claimed that mediation, which last year accounted for only £13.8m of the £150m spent on divorce and separation, was failing to work in the best interests of children.

"Mediation is mandatory in order to get legal aid but it's much more of a box-ticking exercise," said Davies.

"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 article was amended on Monday 9 November 2009. The legal aid minister is Lord Bach, not Back. This has been corrected.