

Resolution

Vision for Family Justice

Executive Summary

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Vision for Family
Justice



Introduction

The family justice system in England and Wales is at a crucial turning point, and demand on family courts has never been higher. Across the country, practitioners are supporting families dealing with issues like divorce and separation, arrangements for children, and financial disputes; as well as supporting vulnerable children and adults at risk of harm and families involved in child protection matters.

Yet these practitioners are currently hampered by a combination of factors. Family courts are massively overstretched, causing significant delays, whilst many people struggle to access the justice system and are denied early legal advice and information.

Despite the nature of family life continuing to evolve across England and Wales, the current laws have not kept pace.

Vision for Family Justice

To mark our 40 year anniversary, Resolution has published our 'Vision for Family Justice' setting out our vision for where and how changes need to be made to address the current issues facing the family justice system.

The recommendations in the Vision are based on views and experiences of over a thousand Resolution members through surveys, focus groups, and discussions within our specialist and regional committees. This engagement has ensured that Resolution's campaigning and lobbying work acts as the leading, authoritative voice of the family justice sector.

The vast majority of our members identified cohabitation as the next priority area for reform. The other main priority was funding for early legal information and advice. These key issues will form the crux of Resolution's campaigning activities over the coming months and years, with the rest of the Vision forming the building blocks for ongoing and future policy development.



About Resolution

Resolution is a community of over 6,500 family justice professionals who work with families and individuals to resolve issues in a constructive way. For 40 years, our members have been supporting couples to reduce conflict, creating more amicable, long-lasting solutions to benefit them and – crucially – any children they may have.

We've worked with charities and other organisations to provide affordable advice services, and have successfully campaigned for improvements to the law, including the recent landmark introduction of no-fault divorce.

Cohabitation

In 2022, cohabiting couples accounted for almost 1 in 5 families in the UK. "Opposite-sex cohabiting couple" was the fastest growing family type over the last 10 years.

In 2022, "Opposite-sex cohabiting couple" was the fastest growing family type over the last 10 years, making up 18% of all families – at 3.6 million families, an increase from 2.9 million in 2012. This increase of almost 700,000 families accounted for almost three-quarters of the total growth in the number of families in the UK over the ten-year period.

Cohabiting families are the fastest growing family type in the UK, increasing by 144% between 1996 and 2021. Despite this, cohabiting couples in England and Wales currently have little legal protection when they separate, with no safety net legislation in place to protect those left vulnerable on relationship breakdown. What's more, many believe they are protected via being in a "common-law marriage" – in reality, no such thing exists.

Resolution believes the law should better reflect modern society and provide solutions for all types of families, including unmarried families. We are calling for a legal framework of rights and responsibilities when unmarried couples who live together split up, to provide some legal protection and secure fair outcomes at the time of a couple's separation.

These need not necessarily be the same rights afforded to married couples, but one thing is clear: without reform, many cohabitants – predominantly women - will be left vulnerable and without even basic legal rights if they separate. Family life in England and Wales is changing – and our laws need to catch up.

More public funding for early legal information and advice

Since the cuts to legal aid in 2013, many people facing separation or divorce are left without access to early legal information and advice. Numbers of those representing themselves in court have risen substantially over the last decade, and fewer people are accessing family mediation, because they're not able to find out about it until it is too late.

The importance and positive impact of early access to legal advice is well recognised; early legal advice helps people understand their legal rights and responsibilities, and understand more about resolving matters outside of court where possible and appropriate; as well as managing expectations on outcomes. One study found that for every £1 spent on legal aid in family cases, the state as a whole saved £5 elsewhere (through, for example, reduced court spending and fewer people relying on benefits).

The Government should look at scaling up services which enable separating families to access publicly funded legal information and early advice such as Affordable Advice, run by Law for Life working with Resolution, to increase capacity and support Litigants in Person.

Tailored legal advice also encourages the use of mediation and makes mediation more robust, as well as helping identify other methods of resolving disputes out of court. This would therefore help reduce the demand on family courts, freeing up valuable court time for those cases which most need judicial input.

This has recently had parliamentary attention when the House of Commons Justice Committee recommended that the Government invest in early legal advice as part of their inquiry into the future of legal aid in 2021. The Committee noted that *"there are positive signs that the Government recognises the value of early legal advice. However, the measures taken so far, including the Legal Support Action Plan, only appear to scratch the surface of the problem."*

Resolution has consistently made the case for funding for early legal advice. At a time when the family courts and the judiciary are suffering from a lack of resources and a massive backlog - we believe early legal advice is a vital part of the solution.

Ensuring the family courts meet the needs of families

According to Resolution members, aside from the changes we are calling for in the Vision, family law is broadly fit for purpose. However, it is the operation of the family justice system as a whole that needs review and improvement. In particular, the lack of resources and general state of our family courts is having a negative impact on children and families.

Delays have increased dramatically, with children waiting nearly a year on average for the courts to determine which parent they live or spend time with, what school they go to, and other issues – for a child, a year is an interminable period to have your family's whole life on hold.

There should be no further family court closures, and more resources should be made available to ensure our family court processes and administration are smooth running, accessible, contactable and responsive.

Funding for early legal information and advice will also help reduce the demands on the court, as well as funding for and better information about alternatives to court. In 2022 the Justice Select Committee said they 'agree with Resolution that the Government needs to ensure that there are a range of options available to separating families.'

From surveying our members, we know that:

- 1 in 5 (20%) of our members said court delays caused their clients to rely on state benefits.
- A third (34%) said they'd referred a client to a counsellor or therapist to help cope with stress caused by court delays.
- 9 in 10 (90%) said court backlogs were causing unnecessary stress and pressure for clients.

In addition, more online processes and digitisation of the courts are being put into practice. While these can bring many benefits and have an important role to play, they are not the only solution and Resolution calls on government to take an evidence-based approach.

What else is the Vision for Family Justice calling for?

Resolution's full Vision for Family Justice calls for a whole raft of other changes to policy, legislation and processes in order to improve the lives of children and families in England and Wales. These include reform of surrogacy laws; better protection of victims of domestic abuse in the family court; changes to child arrangement proceedings; and consideration of reform of the law relating to financial remedies on divorce.

For more information about the Vision for Family Justice or Resolution, please contact communications@resolution.org.uk.

1 RECOGNISING THE CHANGING FACE OF FAMILIES UNMARRIED COUPLES

- a. The law relating to cohabiting partners on separation needs to be reformed
- b. The legislative framework in Schedule 1 of the Children Act 1989 should also be reviewed
- c. In the event of the death of a cohabiting partner, their partner should have an entitlement of intestacy

MODERN FAMILIES

- d. All types of family formation should be recognised in law
- e. Surrogacy law is in need of reform

2 HELPING FAMILIES TO FIND SOLUTIONS

- a. There should be more public funding for early legal information and advice
- b. Co-parenting programmes should happen earlier
- c. Replace statutory Mediation Information & Assessment Meetings (MIAMs) with Advice and Information Meetings (AIMs) delivered by a range of suitable family justice professionals

3 PROTECTING THE VULNERABLE

- a. More needs to be done to support and protect victims of domestic abuse in the family court
- b. Ensure legal aid is available for those who would otherwise be denied access to justice
- c. Ensure children affected by family law matters are supported

4 ENSURING THE FAMILY COURTS MEET THE NEEDS OF FAMILIES

- a. There should be no further family court closures
- b. Online processes need to be evaluated on a case-by-case basis
- c. Contested financial remedy cases under a certain value should be fast tracked

5 MAKING FAMILY LAW FIT FOR PURPOSE

- a. The way child arrangements are handled should be improved
- b. More resources should be made available to improve the public children law system
- c. Reform of the law relating to financial remedies on divorce should be carefully considered
- d. The rules governing cross-jurisdictional issues within the UK should be clearer and simpler

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