Understanding Experiences of Child Contact Disputes

FINAL REPORT

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1 INTRODUCTION

1.1 BACKGROUND TO THE RESEARCH

1.1.1 Legal aid is a statutory provision which provides funding for those who would not otherwise be able to afford to get help for their legal problems. Legal aid is accessed through a solicitor who receives payment from the Scottish Legal Aid Board (SLAB) on a case by case basis to undertake approved work on behalf of their legally aided clients. Most civil legal aid solicitors work in private practice, although SLAB also employs a small number of solicitors directly in the Civil Legal Assistance Office. To get legal aid a case has to meet statutory tests, based on the merits of the case and the financial eligibility of the applicant. While SLAB manages the legal aid system in Scotland, the Scottish Government decides legal aid policy and the Scottish Parliament makes and changes legislation.

1.1.2 SLAB's stated purpose is to manage and improve continuously publicly funded legal assistance and to advise Scottish Ministers on its strategic development for the benefit of society. To achieve this, SLAB has four strategic objectives:

1. To deliver improvements to legal aid processes that increase efficiency and improve the experience of system users and customers;
2. To advise Scottish Ministers on the strategic development of legal assistance and its contribution to a Scotland in which rights are supported and disputes are resolved fairly and swiftly;
3. To ensure SLAB has the culture and capability to be responsive to customers, the justice system and developments in legal and advice services; and
4. To build and maintain effective and collaborative relationships with the legal and advice sector and public sector partners as they seek to achieve their purpose and contribute to wider Scottish Government aims.

Civil Legal Assistance

1.1.3 In addition to assistance for criminal and children's cases, SLAB provides financial assistance in civil matters. This helps people to get legal advice and access the services of a solicitor to put their civil case forward in court.

1.1.4 There are two categories of funding for civil legal matters:

- Advice and Assistance (A&A) - this helps pay for a solicitor's advice on any matter of Scot's law, and typically trying to resolve a matter without going to court. In addition to providing clients with general advice, under A&A solicitors can also provide advice about whether there is a legal case worth pursuing, attempt to negotiate with the other party to settle out of court, write letters or seek reports, and advise clients about the potential for legal aid in order to escalate the matter to court; and

- Civil Legal Aid - this helps to pay for a solicitor to act for a client in court. This covers the preparation work, the hearing itself, and can contribute towards the costs of using advocates and experts if necessary.

1.1.5 Depending upon applicants' financial circumstances, as well as the nature and severity of the case, some people will receive only A&A, whilst others will require only civil legal aid and, in certain cases people will require both. In many cases, clients will start with A&A, and if the matter cannot be settled out of court, they will then move to civil legal aid. For civil legal aid a person may have the full costs of the case covered by this funding, or, depending upon their financial circumstances, an applicant may have to make contributions towards the costs.

Funding for Child Contact Disputes

1.1.6 In December 2015, SLAB made changes to the way that applications related to child contact cases are assessed. These changes aim to ensure that the best interests of the child are at the forefront of applicants' consideration about how they want to resolve their dispute, and were designed to ensure that "all reasonable attempts have been made to settle matters without success, and the issues to be considered merit the expenditure of several thousand pounds of public funds"[1]. Further, in June 2016, as part of the civil streamlining work requested by the Scottish Government to review the strategy for legal aid, SLAB made further changes to the availability of funding to support this[2]. A total of six enhancements were made overall, with two having direct impacts on contact cases. These were to make funding available for supervised and supported contact under A&A to assist people to resolve their contact dispute without the need to go to court, and to make funding available for family therapy where this is ordered by the court as a means of a civil court action.

1.2 Research Aims and Objectives

1.2.1 The key aim of the research was to enhance SLAB's understanding of the experiences of people involved in resolving contact disputes where legal aid funding is in place. As such, the research focused on the experiences of the following groups:

- People who received legal assistance to help them resolve a contact dispute before it went to court;
- People who received legal assistance to help them resolve a contact dispute in court;
- People who resolved a contact dispute without legal aid funding;
- Solicitors who work on legally aided and privately funded contact dispute cases; and
- Other relevant professional groups and stakeholders.

[1] Scottish Legal Aid Board (2015) *Revised guidance on legal aid for contact actions*. Accessed at: http://www.slab.org.uk/providers/mailshots/2015/newsfeed/Contact_guidance.html

[2] Scottish Legal Aid Board (2016) *Streamlining the legal aid process for Civil practitioners*. Accessed at: http://www.slab.org.uk/providers/mailshots/newsfeed/Streamlining.html

1.2.2 The research was intended to help SLAB learn more about the journey people go through when they have a child contact dispute and about how the availability and structures of public funding for legal services might affect decision making and outcomes in child contact disputes.

1.3 Methodology

1.3.1 Wellside Research Ltd. was commissioned in December 2017 to carry out the research, with the work being undertaken between February and June 2018.

1.3.2 A series of qualitative interviews were conducted across a range of stakeholder groups, including:

- SLAB staff responsible for civil legal assistance applications;
- SLAB applicants who received A&A and/or legal aid funding previously;
- Individuals that had paid privately to resolve a contact dispute;
- Solicitors who provide services in family law, and who provide services to both legally aided and private clients;
- Sheriffs and civil court clerks who deal with contact dispute cases in court;
- Family mediation services; and
- Third sector support organisations.

1.3.3 In the main, SLAB applicants were contacted via SLAB's database, although a few respondents did also come forward following a SLAB tweet about the research, and via some of the support organisations involved in the research. SLAB also issued a mailshot to civil solicitors registered to provide legal aid services to introduce the research, which resulted in many solicitors volunteering to take part.

1.3.4 Interviews were generally conducted on a one-to-one basis, although a few group interviews were also undertaken where appropriate. Both telephone and face-to-face interviews were utilised, and one respondent provided a written response. Interviews lasted, on average, between 30 minutes and an hour.

1.3.5 Specific topic guides were developed for each respondent group. Topic guides for individual parties sought to explore the route chosen to resolve their contact dispute, their decision making process, their experiences throughout their journey, and the impact the dispute/resolution journey had on them. For professional respondents the topic guides focused on understanding the options and processes available to resolve contact disputes, their perceptions and experiences of these options, to identify any differences in private clients/cases versus legally aided clients/cases, and to consider the impact of the legal aid system on the resolution of contact cases.

1.4 Sample Profile

1.4.1 Over the course of the research, a total of 62 interviews were conducted, gathering the views and experiences from 65 respondents.

SLAB Staff

1.4.2 At the outset of the work a small sample of SLAB staff were interviewed as part of the research. These were largely familiarisation interviews to allow the research team to fully understand the civil A&A and legal aid application processes and how these relate to child contact disputes specifically. These interviews also assisted with the design of later topic guides by identifying issues and challenges that SLAB were already aware of and highlighted gaps in knowledge. Two further follow-up interviews were conducted at the close of the fieldwork in order to further explore some of the issues raised by other respondent groups. Across these pre- and post-fieldwork interviews a total of four different SLAB staff members were involved.

SLAB Applicants

1.4.3 An initial sample of 594 applicants were identified from SLAB's client database (split relatively evenly between those who had received A&A and legal aid), and were sent a letter inviting them to participate in an interview. Around the mid-point of the fieldwork a booster sample was taken, with a further 162 applicants invited to participate. A total of 28 letters were returned as undeliverable, thus providing a total research population of 728. These invitations resulted in 28 applicants volunteering to participate, although a further eight individuals that had received legal aid funding also volunteered via other channels. As such a total of 36 individuals who had received either A&A or legal aid funding volunteered to participate.

1.4.4 Upon contacting respondents to arrange an interview, however, not all were available or still interested in participating and a total of 23 interviews were conducted with this group.

1.4.5 While the sample had been drawn to provide an equal mix of those receiving only A&A funding and those who had received legal aid, and to consist of only those individuals with closed/completed cases, the reality upon contacting individuals was far more complex. In a number of cases, individuals recorded in the sample to have received A&A funding only had since gone on to receive full legal aid while, for others, despite the solicitor having submitted a final account to SLAB, respondents often considered this was still an ongoing matter.

1.4.6 Further adding to the complexity of the sample profile, some SLAB funded applicants had also paid privately for some elements of their case. Some respondents indicated that they had not been made aware of legal aid or their eligibility initially, or had not qualified initially and so had paid privately for the case at the outset, only securing legal aid at a later stage. Likewise, a few also found that legal aid had been withdrawn at some point during their case (typically due to a change in circumstances) and so while legal aid had paid for the case initially they were subsequently funding ongoing action themselves.

Private Parties

1.4.7 A total of four individuals who had privately funded their contact dispute/resolution throughout took part in an interview. These were all fathers who were seeking contact with their child(ren), and were recruited via a third sector support organisation. As noted above, however, a number of SLAB applicants (n=8) had also part funded their cases, either at the outset or following the withdrawal of legal aid funding. This included both male and female respondents and provides additional data in this respect.

Court Based Professionals

1.4.8 While all other interviews were conducted on a national basis, court based interviews with Sheriffs and civil court clerks focused on three courts. This was necessary to manage the sample size and for access reasons. These locations were chosen for inclusion, partly due to their size and thus available Sheriff populations and volumes of family cases dealt with, however, each also provided unique attributes which the research wished to capture.

1.4.9 Across these three locations a total of six Sheriffs and two civil court clerks participated in interviews.

Other Professional Respondents

1.4.10 Following SLAB's mailshot to legal aid registered civil solicitors, 22 responded and volunteered to take part. Of these, a total of 14 solicitors completed an interview.

1.4.11 In addition, four participants had a focus on family mediation. Two employees from Relationship Scotland were interviewed; one representing their headquarters and one local office staff member. A further two respondents were CALM accredited family law solicitor mediators who were, therefore, able to provide perspectives from both the family mediation and solicitor experience.

1.4.12 Finally, six voluntary organisations participated in interviews. These included Families Need Fathers, plus three Scottish Women's Aid offices (one representing head office and two local offices) and two local CEDAR (Children Experiencing Domestic Abuse Recovery) offices.

1.5 Research and Reporting Caveats

1.5.1 Research by Wasoff[3] and the Scottish Government's 2007 Child Contact Survey[4] indicate that most parents who separate manage to reach amicable/informal agreements regarding child contact arrangements, while the number who require formal intervention to help them resolve a contact dispute are in the minority and are, therefore, not 'typical' cases. Similarly, many of the solicitors who participated in the

[3] Wasoff, F. (2006) *Private arrangements for contact with children,* ESRC/Scottish Executive Public Policy seminar, June 2006, Edinburgh.
[4] Scottish Government (2008) *2007 Scottish Child Contact Survey.* Accessed at: https://www.gov.scot/Publications/2008/03/12145638/4

research stressed that most disputes are settled before the case reaches court, and so again those cases that do reach court are 'atypical' compared to the general population.

1.5.2 Response bias is also prevalent within the achieved applicant sample. Very few individuals had received only A&A funding to resolve their dispute (n=3), while most respondents had received/were receiving legal aid. While the recruitment approach did attempt to secure a balanced profile, by inviting equal numbers of those identified in the database as having A&A only and full legal aid, most of the A&A applicants who responded had since received full legal aid. Similarly, very few respondents indicated that they had resolved cases before reaching court, and even those A&A only respondents considered that their case was still ongoing with two planning to proceed to court for a resolution. Further, most individuals who took part in the research described their cases as ongoing, despite SLAB considering the case to be closed (i.e. the final solicitor's bill had been settled by SLAB). As such, the research does not fully capture the experiences of, and reasons for earlier resolution, but rather, focuses more on the experiences of those cases that do proceed to court and prove to be more challenging. This is likely to be a result of self-selection bias, as those individuals most willing to participate were likely to be those with the most difficult cases, while those that had resolved the dispute and moved on were less likely to volunteer to discuss their experiences, having already achieved closure.

1.5.3 It should also be noted that, while pursuers and defenders were interviewed as part of the research, couples were intentionally not matched. The use of matched pairs was considered unnecessary as the research focused on individuals understanding and decision making. This does, however, mean that the information provided captures one side of the dispute and details the respondent's perspective only. While anecdotal information was provided by respondents regarding the other party in their dispute and their actions, it was not possible to confirm/corroborate this with the other party.

1.5.4 In addition, children and young people at the centre of child contact disputes were not interviewed as part of the research. While the work attempted to capture the impact that disputes had on the child(ren), as well as to understand the extent to which their best interests were safeguarded and the processes for including the child(ren)'s voice within the decision making process, the information was gathered vicariously from the pursuers, defenders and professionals involved. Although interviews with children and young people may have added greater depth of understanding around the impacts of contact disputes, this was considered out of scope as the research focused upon factors influencing decision making and choices made throughout the process.

1.5.5 The remainder of this report outlines the key findings in more detail, with Chapter 2 discussing the need for effective communication and the importance of accessing the right services at the right time, and Chapter 3 outlines experiences and perceptions of legal aid in contact cases. Chapter 4 discusses the decision making process, while Chapter 5 identifies the main impacts of contact disputes on both the parties involved and the child(ren), as well as considering the voice of the child(ren). Chapter 6 outlines other key findings that have a less direct link with SLAB and the impact of legal aid funding, and Chapter 7 provides final conclusions.

2 ACCESSING THE RIGHT SERVICES AT THE TIME RIGHT TIME

2.1 NO TYPICAL CASES

2.1.1 All respondent groups considered there to be no typical cases or patterns regarding the timing of events, which resolution methods parties tried and/or which services would be accessed and when, how long parties would engage with particular services/resolution methods, or in how long it takes to reach a resolution and/or close a case. Typically, respondents felt that the direction and progress of cases was very much driven by the personalities and personal circumstances of both parties involved.

2.1.2 What did emerge, however, across the interviews was the importance of communication and the timing in tackling the dispute and accessing services at the appropriate time.

2.1.3 This chapter outlines the main findings around communication issues, as well as the timing and experiences of the different resolution services/methods available.

2.2 COMMUNICATION

2.2.1 Across all respondent groups, it was felt that the main reason why individuals initially seek help and/or legal intervention in relation to a contact dispute, and the need to escalate the case to court, is ultimately due to a breakdown in communication between the parties involved. Typically one side was considered to be 'stonewalling' the other party and refusing to communicate at all, or was refusing to facilitate (or amend) contact with the child(ren):

> *"I had nowhere else to turn… I tried everything else." (Father/Pursuer, LA Applicant No 12).*
>
> *"They come to us when they are faced with a brick wall." (Solicitor No 1).*

2.2.2 The root causes for the breakdown in communication typically included either a specific incident or event that had caused contact to cease abruptly, or where one party wanted increased contact but felt the other party was being unreasonable and/or deliberately obstructive. For some, informal arrangements had become inconsistent or uncomfortable and people felt something more 'robust' and formal was needed to guide the contact arrangements (i.e. legal intervention):

> *"Either they are not getting contact or they are getting contact that is just so inadequate that it doesn't allow them to have a relationship with their child." (Solicitor No 10).*
>
> *"I tried to resolve things on many occasions - just try to meet her in a coffee shop, a public place, and sometimes that had beneficial outcomes, and I got some*

contact, but it's not the way to keep going. You reach a point where enough is enough and you need a regular commitment." (Father/Private Pursuer No 4).

2.2.3 Some solicitors reported that clients often sought their help because they were looking to strengthen existing informal arrangements or create a change in the strength with which they wanted their desires communicated to the other party:

"People want a lawyer's letter to get things sorted out - something official sent to the other person to make them pay attention." (Solicitor No 13).

2.2.4 In some cases, the situation had been exacerbated by wider family members, indeed, solicitors suggested that cases are often confounded by a lack of positive extended family input, or by the use of social media, and/or perceptions of previous attempts to resolve the situation for themselves. In some instances this contact was considered to have escalated the situation, with accusations (often criminal in nature) being made against one or other party, or against other family members, or with ill thought out comments being posted on social media and which could then be used as formal evidence.

2.3 Parties Attempts to Resolve Disputes for Themselves

2.3.1 Both individuals and solicitors were asked about the type and extent of efforts that parties make to try to resolve the situation for themselves, before seeking advice from a solicitor. Attempts included both direct discussions between the parties and indirectly via a friend or family member, phone calls, text messages, social media contact, emails and letters.

2.3.2 Only two individuals indicated that they had tried mediation before seeking a solicitor's advice. Similarly, solicitors felt that mediation was only attempted by a minority of clients before they approached them, although they did note that some do indeed try this approach first, then turn to a solicitor either when this fails or where successful but the parties' desire a formal minute of agreement. It is difficult to know, however, whether this reflects a true lack of utilisation of mediation by individuals before seeking a solicitor's advice, or if those individuals who self-refer for mediation at the outset resolve their issues without the need for solicitor input:

"You don't very often see clients who have done anything formal, such as mediation. I think a lot of clients are still very unaware of what mediation is… Most clients will have made some attempts, like using family members, texts, phone calls, etc. before they come and see a solicitor, but these things just haven't generated the response they want, or they've had no response from the other party." (Solicitor No 14).

2.3.3 Individuals (both pursuers and defenders) typically considered that they had tried all they could to resolve the situation for themselves, and while some acknowledged that they had not tried for a significant length of time this was driven by the attitude and

nature (or complete lack) of the response from the other party, typically resulting in a complete breakdown in communication. They felt that they had exhausted all options and needed to escalate the situation to a solicitor. In the case of defenders, they often sought the advice of a solicitor following a letter from the pursuer's solicitor, prompting them to ensure they were suitably advised and represented in return.

2.3.4 Solicitors and support organisations reported that the attempts made by parties to resolve child contact disputes before seeking independent help very much varied between cases. Although some acknowledged that individuals probably felt that they had exhausted all avenues, in reality they had not:

> *"I've had people come to me before the baby is even born - people very rarely try other resorts before coming to me." (Solicitor No 9).*
>
> *"A solicitor is often a first point of call because they feel they have 'rights' - people often don't know that other routes are available to them." (Solicitor No 13).*

2.4 Seeing a Solicitor - Advice and Expectation Setting

2.4.1 All solicitors interviewed stated that they always outline all resolution options available to clients (indeed they highlighted that they had a professional responsibility to consider Alternative Dispute Resolution (ADR) options), and that the options available to clients are consistent regardless of whether they are legally aided or private paying clients. Solicitors indicated that resolution options outlined/discussed with clients generally included:

- Encouraging parties to liaise via a family member or friend;
- Correspondence either with the other party or their solicitor;
- Family mediation;
- The use of contact centres;
- Group meetings (between both parties and solicitors); and
- Collaborative approaches (although only appropriately certified solicitors can undertake this).

2.4.2 Solicitors often reported advising clients to try informal negotiations first:

> *"I really try to persuade clients not to litigate - even trying not to have solicitors' letters, but by using mediation or third parties and really stressing the importance of things for the welfare of the child, not only in the short term, but in the long term too. I do stress that a lot, to try and get people discussing things." (Solicitor No 9).*
>
> *"I advise my clients to take whatever is being offered by the defender because, if they don't start somewhere, then they're never going to get where they want to be. I seek evidence of attempts at communication, mediation, Parenting Apart, use of informal mediators - whatever parties can offer." (Solicitor No 10).*

2.4.3 For those individuals who could remember the details of their first meeting with their solicitor, they generally confirmed that the solicitor had outlined a range of options. Typically, for the individuals who took part, the solicitor had written letters to the other party (or their solicitor) to try to reach an agreement, and although some had agreed to try mediation, in most instances the other party refused and so it was not actually undertaken. Both individuals and solicitors confirmed that, while solicitors did outline/discuss all options, typically they will also use their professional judgement of a case and the parties involved to suggest/recommend a course of action. No individual indicated that they had gone against the advice of their solicitor regarding the route to take to try to solve their dispute, indicating the importance of the solicitor's advice in child contact cases (although some did provide anecdotal evidence that the other party in their case had refused their own solicitors advice or changed solicitors as they did not like the advice given).

Client Expectations

2.4.4 Overall, solicitors reported that clients generally had unrealistic expectations and these needed to be carefully managed. In most cases, people want more than solicitors feel can realistically be achieved. Some discussed having to challenge non-resident parents' initial expectations of achieving full residency of the child(ren), and having to outline the likelihood of contact being granted by a Sheriff to resident parents, thereby trying to encourage early resolution:

> *"To mums you always say that the court is likely to find contact is in the best interests of children, and for dad it's often having to manage their expectations of how much contact they can have. Shared care requests are becoming more common because nobody has 'won' in the parties' view." (Solicitor No 10).*
>
> *"Some people just think it is their right to see their child, and therefore have no real interest in the other options." (Solicitor No 12).*

2.4.5 Views were also expressed by Sheriffs that people can be unrealistic in their expectations, and that their expectations tend to be heavily infused with feelings about their relationship:

> *"Good solicitors act not only as a sounding board but they act as a reality check." (Sheriff No 4).*

2.4.6 Solicitors confirmed that they always try to establish realistic expectations within their clients. It was felt that the length of time that has elapsed between the last contact and the point of seeing a solicitor, as well as the solicitor's perception of how local Sheriffs deal with contact cases and the expected outcome should the case go to court usually determined the advice given around what can be achieved.

2.4.7 Establishing and managing clients' expectations often manifests itself in both managing fears around being refused contact in the non-resident parent and in losing custody of

a child(ren) in the resident parent, as well as managing expectations around the extent and nature of any likely contact arrangements.

2.4.8 Many solicitors also identified their obligation to act in the best interests of the child(ren) and made this clear to their clients. A few also noted that they would refuse to represent a client who insisted on pursuing vastly unrealistic outcomes.

2.4.9 Most individuals who were interviewed confirmed that their solicitor had discussed likely outcomes with them, and felt they were realistic in their expectations. Despite this however, both individuals and solicitors discussed examples where the other party (or other solicitors), appeared to pursue unrealistic outcomes, and/or dismiss all attempts to resolve disputes out of court.

2.5 Alternative Dispute Resolution (ADR) Options

Family Mediation Services

2.5.1 One ADR option open to contact dispute parties is family mediation. This is available to anyone as self-referral is possible; however, it was felt that solicitors and Sheriffs are important gatekeepers for referring clients into the service. As such, it was considered important that good local relationships exist between solicitors/Sheriffs and family mediation service providers, and that solicitors/Sheriffs understand and appreciate the mediation process and the benefits it can offer:

> *"I think the legal profession are the gatekeepers, not in a bad way, but that's the go-to place when people have a problem… There are some areas that have more referrals than others, and I think that has to do with whether the lawyers and Sheriffs in those areas are knowledgeable and supportive of mediation and the service in their local area." (Mediation service 1, Respondent No 1).*
>
> *"Most people's first port of call if they can't sort things out does seem to be to seek legal advice…. I know the vast majority of referrals [to mediation] come from solicitors rather than self-referrals." (Solicitor No 3).*
>
> *"Most times if a solicitor is referring to mediation and they've already discussed the matter with their client then the client is on board… the problem however is, if they're not aware of mediation and understand how it works then people can't 'sell' it properly." (Solicitor/Mediator No 2).*

2.5.2 However, mediation services suggested that, while some solicitors and Sheriffs are very supportive of mediation, others are not. Similarly, solicitors also provided mixed opinions regarding mediation, with some very supportive of their local services and noting that they were surprised by the success they can achieve on occasion, while a few indicated a lack of support/belief in the process:

> *"Some [solicitors] are quite keen on it [mediation] and some are quite seriously opposed to it as they see it as a challenge to their own services… You go to Sheriffs*

at the moment and some will say "I don't believe in it", and others will say "I know all about it, but I do it myself, I mediate when they come to see me", and other Sheriffs who were perhaps mediators or who understand the process say "great idea, off you go" and they'll actually encourage it." (Solicitor/Mediator No 1).

"They're [family mediation and contact centres] good locally, they aren't everywhere. We're very lucky… They try and get it arranged quickly… but then we're probably playing on the good nature of the woman who runs it." (Solicitor No 3).

"I'm not a believer in mediation particularly, because mediation requires… two people who are prepared to come to a resolution and it can be a long drawn out process, whereas I think getting a matter into court can be a much more swift process. And mediation requires two people to eventually agree, the mediator can't impose a resolution." (Solicitor No 2).

2.5.3 Mediation services suggested that they tend to take a longer-term approach to solving the dispute compared to litigious options and court. They perhaps have greater levers available to them (than the courts do for example) in tackling the causes of behaviour and in encouraging behaviour change within the parties. Services indicated that they seek to develop new co-parenting relationships for the future, and attempt to equip parties with tools and techniques that will allow them to avoid and/or resolve parental conflict more generally and not just the issue present at the time:

"[Parties are] fighting about contact because you have no parental relationship, so what we're trying to do is give them a parental relationship so that the issue of contact becomes much easier to deal with." (Mediation service 1, Respondent No 2).

"There's so much more to a contact situation beyond just "What time are you picking up and what time will you be returning?", there's all the stuff about communication, about shared parenting, consistency in how you deal with situations, etc." (Solicitor/Mediator No 1).

2.5.4 As such, success tended to be based on whether there had been a resolution to a dispute and/or whether the parties were more able to communicate and manage conflict better than before entering mediation. Based on this measure, the two mediation services involved in the research indicated that they considered their success rate to be between 65% and 75%. Both mediation services noted, however, that they rarely know the final outcome in contact dispute cases as the parties will leave mediation and, unless they return at a later date, the services will not know whether they have resolved their dispute and are now able to manage future issues themselves, whether they have returned to a solicitor to pursue litigious routes, or have simply given up, moved away, etc.

2.5.5 Mediation services, Sheriffs and solicitors indicated that the most significant factor influencing success of mediation appears to be both the timing of the intervention and the attitude/emotional state of the parties involved. All mediation services stressed the importance of seeing parties early in the dispute, often to try and stop the conflict from escalating and parties from becoming entrenched, although this depended heavily on the parties' emotional state as if they were still too angry and hurt the mediation process would be ineffective:

> *"Ideally, you would like to see them as early as possible to try and stop, or help try and stop some of the issues that will occur as time goes by, but having said that, unfortunately, at the very beginning is the time when they're not always ready to engage with the services." (Mediation Service 1, Respondent No 2).*
>
> *"Mediation works better the sooner it's done in the process. If you go through a lot of solicitors letters backwards and forwards, and then it ends up in court, by then people have got more entrenched positions. So it can still work, Sheriffs can send people back to at least explore mediation and it can still be useful, but we've got a lot more 'undoing' to do then." (Mediation Service 1, Respondent No 1).*

2.5.6 Others, including some Sheriffs and dispute parties suggested that, quite often, people are more willing to try mediation once a court action has started and they realise how challenging the court process can be. Having been to court, they often do not want to go back again and so are more amenable to trying different routes:

> *"Coming to court seems to break the lockdown and makes people realise that they need to get things sorted out." (Sheriff No 3).*
>
> *"Mum agreed to mediation once we got to court but had refused it up to that point." (Father/Private Pursuer No 2).*

2.5.7 A counter view was also put forward by some solicitors and other dispute parties, however that, once court proceedings have started, it becomes too emotive and so mediation is not realistic as a resolution option.

2.5.8 Another important driver of success is the willingness of the parties involved to engage with the mediation process. Mediation services, solicitors and individuals reported that mediation only works if both parties want to do it, and are able to have a conversation:

> *"When it works, mediation is great. But the people have to be in a place where they are able to have a conversation." (Mediation Service 1, Respondent No 1).*
>
> *"We'd be encouraging people to use mediation or use Parenting Apart classes. But some people are not reasonable." (Solicitor No 11).*
>
> *"It's okay if people are talking, but if not, it can just be all out war." (Father/Private Pursuer No 1).*

2.5.9 While mediation services, solicitors and Sheriffs recognised that mediation could be a valuable tool in child contact disputes, they also acknowledged that it was simply unlikely to work in some cases:

> *"Mediation is often not appropriate because there is just too much mistrust and hurt." (Sheriff No 3).*
>
> *"Often they're in court because they can't communicate… the people who would be amenable to resolving these issues by mediation are probably people who would have explored that anyway… without litigation… mediation… is kind of pointless for people who aren't disposed to mediate." (Sheriff No 6).*
>
> *"It's good having a range of supports. Much as I'm a great believer in mediation, it's not going to fix every situation and it doesn't work for everyone. People have to be able to negotiate to some extent, so you need different options." (Mediation Service 1, Respondent No 1).*
>
> *"The opponent deliberately frustrated that process, we were stuck in mediation for about four months, they turned up to the mediation and made no concessions time after time after time, she was doing it simply to thwart my client, he couldn't make any progress because she wouldn't." (Solicitor No 2).*

2.5.10 Similarly, some individuals (including both males and females, pursuers and defenders) had perceptions that it could be difficult to get mediation agreed or for it to be successful:

> *"I just felt that he wasn't going to stick to things… and it was going to be a waste of time… he wasn't going to stick with it… he was just so irregular on everything." (Mother/Defender, LA Applicant No 8).*
>
> *"We went to mediation. That was a disaster…. One session, it was just aggressive." (Mother/Defender, LA Applicant No 11).*
>
> *"I did go [to mediation] because obviously my ex-husband was going to use that against me in court if I didn't… I think we had about three [sessions] and then my husband had a blow-out in the mediation… After that blow-out I had to return for one last mediation because [the other party] was using it against me that I wouldn't engage." (Mother/Defender, LA Applicant No 17).*
>
> *"I think mediation is good if two folk are talking and are nearly there but not quite. But, I think when it's almost like outright war, it's not particularly productive. In the end it became apparent to me that I was just bashing my head against a brick wall. Nearly a year after separation, I decided enough was enough." (Father/Private Pursuer No 1).*

"I offered probably three or four times [to go to mediation] but literally she just refused point blank… so it just wasn't feasible because of the attitude… you've both got to agree to it or it doesn't work." (Father/Pursuer, LA Applicant No 16).

2.5.11 It was also suggested that mediators themselves have an opinion that it will not work after meeting with both parties. These are often the most entrenched cases where the level of animosity is just too great:

"It's usually quite evident if that's the case, and it just won't work, you just have to stop it. If people come along and just have a go at each other, we just stop the mediation and say this is not going to work." (Solicitor/Mediator No 1).

2.5.12 In essence, while solicitors, Sheriffs and support organisations often viewed mediation as a good resource or a helpful part of a wider toolkit, the results were described as variable - sometimes it works well, sometimes not at all, and sometimes it works for a short time but then things go awry. Individuals also supported this view that the success of mediation was 'variable':

"We made some progress but not much. I did manage to get to see my son overnight, but it was still very difficult. I think, when you're dealing with a belligerent individual, it's hard." (Father/Private Pursuer No 3).

2.5.13 Mediation services indicated that they would like to see a requirement for all publicly funded cases to be referred to mediation at an early stage, even if this is simply for parties to attend some form of information meeting:

"We're quite keen that there should be a greater requirement for people to at least have to come and explore what mediation is, what it can offer, what the other services are, what other support we can offer. It may be that they still decide that mediation's not for them, but they've had their eyes opened to a whole bunch of other things… It's just making sure that people have fully understood and are making an informed choice." (Mediation Service 1, Respondent No 1).

2.5.14 They considered that this requirement was necessary as they felt that one of the main barriers to the uptake of mediation was a lack of awareness and understanding of what the process involved, and felt that having the opportunity to speak with dispute parties can often dispel myths/misunderstandings and increase uptake rates:

"A lot of the problem is that people don't know what they're coming to as they've not had much of an explanation beforehand about what it is and how it works. Once we get the opportunity to sit down and have that discussion with them often that can change things substantially." (Mediation Service 1, Respondent No 2).

2.5.15 The same respondents, however, suggested that such a requirement would risk potential ethical issues around people's access to justice, creating a two-pathway

system that requires legally aided clients to attend mediation services while this remains optional/voluntary for private paying clients. Balanced against this is the view (in 2.5.6) that, once parties have experienced court, they may not want to go back again.

2.5.16 Family mediation services also discussed system issues in relation to the current funding/payment model for services which could create barriers to access. It was noted that there is no mechanism in place to allow those who would be eligible for legal aid to access such funds to pay the costs for mediation services without having secured the services of a solicitor first[5]. Only solicitors can apply for and manage most legal aid funds, which means that parties must first contact a solicitor before they can access ADR services, unless they are able/prepared to pay the costs themselves. This gatekeeper system was perceived to limit parties' ability to access such services without first seeking a solicitors advice, and, it was suggested, risks ultimate use of mediation depending upon the views and preferences of the chosen solicitor:

> *"At the moment for somebody to come to mediation that is legal aided, and we do frequently get contacted by clients without solicitors, and I ask them if they are eligible [for legal aid] and one says "yes, I am" and I have to tell them to go and see a solicitor. We cannot certify for legal aid. And if they go to a solicitor that's not supportive of mediation then you've lost them… If we were allowed to certify for legal aid then I think that would be easier… Having a way that people could access mediation without necessarily going to a solicitor." (Solicitor/Mediator No 1).*

2.5.17 Further, it was noted by mediation services and a few solicitors that the inability to submit invoices directly to SLAB once mediation is complete can cause payment delays and potentially impact on solicitors referrals into mediation. One respondent noted that when the service is paid for via A&A there can be a significant delay in payments being received as, often, the bill would not be paid until the case is closed or moves onto full civil legal aid[6]. Alternatively, the solicitor must pay the bill before receiving funds from SLAB, thus requiring them to carry this debt on their books until such times as the final bill is settled (or permanently where there may be disputes over the payment of this element). This could be considered as a possible disincentive for solicitors to refer clients into such services:

> *"The other thing is in terms of payment for services like us… If however, this is being done under Advice and Assistance, even if it's over £150 that can't be claimed by the solicitor until the case is concluded or until civil legal aid is granted… but what that really means is you submit the account and you might get paid two years later when that case is finished." (Mediation Service 1, Respondent No 2).*

[5] It should be noted that this is likely to be more of an issue for CALM and less so for Relationship Scotland services where, in some areas at least, mediation can be provided free or via a donation.

[6] It should be noted however, that SLAB indicated that a process is in place for the reimbursement of outlays before a case concludes.

> *"SLAB should pay the invoices for mediation directly - cut out the middle man. You just do it anyway - do the best for the client - but you can be shooting yourself in the foot. I would be persuading [clients] a lot harder if I thought mediation services were invoicing SLAB directly. It would also allow the Legal Aid Board to keep a tighter rein on it." (Solicitor No 9).*

Contact Centres

2.5.18 Contact centres are another ADR option open to contact dispute parties, again however, there were mixed views and experiences in relation to these.

2.5.19 There are 44 contact centres[7] available across Scotland, however there are some gaps in geographic coverage in more remote rural areas, for example along the north west coast and on the islands (although a centre is provided in Orkney). It was noted by Relationship Scotland staff that contact centres were felt not to be as robustly funded as family mediation services as they largely rely on Big Lottery funding and charges payable by clients (rather than Government funding which covers some of the costs in relation to the provision of family mediation services).

2.5.20 Contact centres are available for self-referral, and/or referral by solicitors (and can be paid for via legal assistance funding if appropriate), however it was felt that the largest proportion of clients are referred by the courts. It was noted by contact centre staff that those parties using contact centres tend to have more complex and/or entrenched cases (compared to those using family mediation):

> *"Contact centre cases tend to be more complex cases, there tends to be more substance abuse, more of a history of abuse, multiple relationships, and while that does happen in mediation as well, these cases tend to be much more complex." (Mediation Service 1, Respondent No 1).*

2.5.21 Contact centre staff also highlighted that, in some centres at least, a dedicated support worker was provided, whose role was to try and establish contact where the child(ren) is the party refusing contact with the non-resident parent. They undertake significant levels of observational and one-to-one work with the family, and were reported to have good success rates.

2.5.22 Waiting lists for access to contact centres appears to be somewhat problematic, in some areas at least. Solicitors and Sheriffs indicated that the waiting times required to access contact centres could, in some areas at least, be longer than the period set for the next court date, meaning that court ordered contact centre visitation had not occurred before the review date:

[7] https://www.relationships-scotland.org.uk/child-contact

"The problem we have with contact centres is they're under-resourced, there's not enough people at them and not enough funding available at them, and there are massive queues." (Solicitor No 1).

"It is a problem. If the only way forward is a contact centre and the contact centre is 12 weeks away that can be a problem. It can build frustration, irritation, and things can go wrong in other forums… so that is a definite difficulty." (Sheriff No 1).

2.5.23 While some individuals reported no problems with the contact centres used, several legal aid applicants, typically pursuers, commented on the difficulties they had experienced. Such issues included a dislike of the formal setting, the poor quality and/or range of toys on offer, the costs incurred in travelling to/from the centres, delays in accessing a centre, and a delay for one respondent in getting legal aid set-up in time to cover the costs of early contact centre visits meaning they had to pay for this themselves:

"A year at the contact centre… it's no nice seeing your children in a closed environment." (Father/Pursuer, LA Applicant No 2).

2.5.24 It was also noted that formal progress/feedback reports were provided by the contact centre to the courts when supervised contact was used, however, there was no equivalent report provided under supported contact, which created frustration for one pursuer:

"[If I could do it differently now] I would have asked for supervised contact… so the contact centre staff could have given to the Sheriff information that's valuable to the outcome… It's crazy… they're professional child care workers who could have given some form of information - which they do under supervised contact direct to the courts." (Father/Pursuer, LA Applicant No 5).

2.5.25 There was a suggestion by mediation and contact centre providers that perhaps some cases had spent too long using contact centres, and stressed that contact in centres should never be a long-term solution or substitute for more 'natural' contact arrangements:

"I think there has been a continue culture, where you just continue cases and see how it goes. I think we have had cases in the [contact] centre for longer than necessary, which again engenders frustration in those parents that want to move it on." (Mediation Service 1, Respondent No 2).

"Contact centres are meant to be a stepping stone, they're not meant to be a lifelong solution." (Mediation Service 1, Respondent No 1).

2.5.26 While Sheriffs or solicitors were not asked specifically whether they considered that the time spent in contact centres was appropriate or not, they did discuss contact centre use, with all such respondents discussing this as an incremental progression towards moving out of the contact centre setting to more natural arrangements. They did not view their use as a long-term solution.

Parenting Apart

2.5.27 Relationship Scotland also outlined Parenting Apart. While this does not directly focus on dispute resolution it is a further service offered to parties who are experiencing a contact dispute (in addition to other clients). This typically provides a three hour groupwork session focused on helping parents to understand what they themselves are going through as well as the impact on their child(ren), how to help their child(ren) cope, how to work together as parents, and how to plan for the future. Where both parties wish to attend they would typically attend different sessions.

2.5.28 Relationship Scotland noted that this course can often help parties to see the other side's perspective and the groups are mixed in terms of gender and pursuer/defender characteristics. They also noted that the course could have positive changes to participants' behaviour in terms of how they communicated with the other party, and that this had led to the other party attending at a later date.

2.5.29 Others who had experience of Parenting Apart, including applicants who had attended the service and Sheriffs and solicitors who had referred clients to the service, also spoke positively about this service:

> *"It does seem to be a very effective way of making parents focus on the child and making them consider how they can resolve things in the best interests of their child. And, also, it can be a useful way of opening up the possibility of mediation for those who may not have considered it previously." (Sheriff No 3).*

2.5.30 Although this course does not aim to resolve contact disputes directly, it was reported by some respondents to have the potential to exert a positive impact, both on the case and parties' ongoing future relationship as parents.

Lack of Alternative Non-Legal Support

2.5.31 Outwith the practical ADR services discussed above (e.g. family mediation, contact centres, and Parenting Apart), solicitors, individuals and support organisation felt that there was a lack of specialist/trained non-legal support services to provide a listening ear. In practice, this means that solicitors are often those who are most familiar with their case and seem like the only viable option for someone to turn to when needing advice, assistance, or simply someone to listen. In this respect, parties feel forced to engage with solicitors more than might be necessary if other support organisations who specialised or understood about child contact dispute cases were more available/widespread.

2.5.32 Solicitors mentioned that they would often refer women and children to services such as local Women's Aid offices, where appropriate, as well as services that work specifically with women from black and minority ethnic backgrounds where specialist support may be required. For the victims of domestic abuse, social services, the police and voluntary sector support organisations typically provide the main support, however, it was reported that they often seem insufficiently confident or knowledgeable about the legal processes and stages that can be involved in child contact disputes. Few specialist services, such as CEDAR, exist and more guidance for professionals involved in the legal system is needed, perhaps. This includes more training in identifying and working with domestic abuse challenges for solicitors, it was felt. One mother also suggested that SLAB could play a role in more directly advertising support services at the point that legal aid applications are made as a way of letting women know where additional non-legal support could be found.

2.5.33 Families Need Fathers was also cited as a service that had been used by clients at the suggestion of their solicitor, although this service was perhaps more widely advertised via word of mouth from those facing contact disputes. Others used basic internet searches to find out what support was available.

2.5.34 One father commented that he had sought help from his local MP, MSP, One Parent Families Scotland and Families Need Fathers. Overall, it was felt that there was a dearth of publicly and readily available information about support services for parents experiencing disputes.

2.6 Court as a Last Resort

2.6.1 It was felt that there will always be a need for court intervention in some cases. Across all respondent groups, however, this was seen as a last resort and only appropriate/necessary when all other routes have failed or are seen as inappropriate.

2.6.2 Across all individuals who went to court, they felt that it had been necessary and the only way to get a resolution to their case. Solicitors echoed this sentiment, with many stating that court should always be considered as a last resort, and that for those cases that do end up there, this level of intervention is necessary. There was a general view among solicitors that most clients did not want to go to court, although some commented that a minority of clients were single-minded and had only court in their minds when seeking legal help:

> *"For most clients, court is the last resort. Most clients don't come in immediately wanting to raise a court action." (Solicitor No 13).*
>
> *"I think people come to court because they have to, it's a last resort." (Sheriff No 1).*
>
> *"I didn't want to go to court - I'd heard experiences of other people that it is a slow and laborious process and that it's not very father friendly, so I just hoped things would calm down and get better, but they didn't." (Father/Private Pursuer No 1).*

"The whole court experience is just so scary." (Mother/Defender, LA Applicant No 23).

Child Welfare Reports

2.6.3 When contact dispute cases go to court, the Sheriff can instruct a Child Welfare Report in order to gather necessary information to help them make a decision. This is prepared by a child welfare reporter who is appointed by the court. The Sheriff will set out what they want the reporter to do and who the reporter should interview, which could include each of the dispute parties, other family members, the child(ren), and/or the child(ren)'s GP, health visitor, or school. While the report will often include recommendations it is the sheriff or judge who will decide whether to make an order and if so what order to make[8].

2.6.4 Mixed levels of usage and importance were placed on Child Welfare Reports among Sheriffs who took part in the research. Some viewed these as a powerful and valuable tool in Child Welfare Hearings, allowing the Sheriff to review evidence and views gathered from the child(ren) themselves as well as other relevant parties to help them determine the truth of a situation and what will be in the child(ren)'s best interests. In most cases, it was felt that this report can also help to avoid the need for a full proof hearing, which was considered to be more time consuming for all involved and ultimately more expensive:

"They [Child Welfare Reports] are very helpful, and if you're very lucky a good report may, in a certain class of case, resolve it." (Sheriff No 1).

2.6.5 Importantly, one Sheriff noted that a skilled and experienced Child Welfare Reporter could also help to resolve a case themselves, by providing truly impartial consideration of each party's situation and of the child(ren)'s views and wellbeing. One example given illustrated situations where resident parents may be unwilling for their child(ren) to visit non-resident parents at their home, suspecting the accommodation would be unsuitable. They noted that, where resident parents would not believe the word of the non-resident parent or anyone connected with them, they would be more likely to be convinced by the feedback from/photographs taken by the Reporter, with their assessment, on occasions, being enough to convince them the accommodation was suitable and for the case to be quickly and easily resolved thereafter:

"There are some reporters and some curators who, basically through their experience can end up brokering a deal just by virtue of their appointment and involvement, and that is quite often a very useful and effective tool to achieve resolution… So it's not formally a resolution process, far from it, but in practice it will sometimes happen." (Sheriff No 1).

[8] More information about Child Welfare Reports can be found at: https://www2.gov.scot/Resource/0049/00498001.pdf

2.6.6 One individual also noted that the Child Welfare Report conducted in their case had helped to progress the situation:

> *"There was a point where another lawyer was involved, who came and interviewed myself and [the child] and my ex-husband because there was too much to-ing and fro-ing with the lawyers, so this was put in place to try and resolve things. That was probably the point of where things did become more resolved because that guy came out and listened." (Mother/Defender, LA Applicant No 17).*

2.6.7 Other Sheriffs, however, made less use of Child Welfare Reports, indicating that where one Sheriff can be allocated to a case and see it through from start to finish (as far as possible), this allowed the Sheriff to build up a reliable picture of the case and parties involved, and facilitated informed decision making, and thus reduced the need for Child Welfare Reports.

2.6.8 A few others, including both third sector support services and individuals questioned the reliability of the Child Welfare Reports and the likelihood the outcomes will be adhered to. For example, some had concerns over the Reporters discussions with the child(ren) and how open and honest the child(ren) would be. They noted that it can take a long time for specialist services to get a child to trust them enough to truly open up, and so questioned the reliability of the Reporter's findings in this regard following just one or two discussions:

> *"If that child doesn't know the solicitor, a strange person that's asking them questions… you're not going to disclose all that. It sometimes takes us a very long time to build up that relationship with a child." (Support Service No 6).*

2.6.9 Some individuals also felt that the Child Welfare Reports conducted in their case had been a waste of time and money, but only because the outcome had not been adhered to by the other party. In two cases, the Child Welfare Report supported the respondents' (in these cases the resident parents') concerns and led to only limited contact being granted by the court with the non-resident parent, however, the non-resident parent did not accept the findings. In one case the non-resident parent returned to court several times, resulting in several Child Welfare Reports being conducted in an attempt to amend the contact levels, while in another the non-resident parent simply ignored the court ordered contact agreement and continued to seek contact at their convenience. However, this is perhaps more an issue of enforcement of the court order rather than a limitation of the Child Welfare Report itself.

2.7 Importance of Third Party Intervention

2.7.1 It was felt that some cases necessarily require the intervention of a solicitor to resolve a case, or for a Sheriff to make a decision regarding contact where parties simply cannot agree between themselves and/or where they desire a formal and binding agreement:

"Most people do try to resolve things themselves, but when it becomes obvious that that just isn't going to work, they come to us, in the hope that we can get things resolved." (Solicitor No 12).

"People sometimes just take things more seriously because a Sheriff has said it." (Sheriff No 4).

"Sometimes they've already been to mediation before they come to court and they've tried to resolve it and can't, and they just need someone to make a decision for them." (Sheriff No 1).

"There are some people… that will need someone to make a decision for them, they will not be able to reach an agreement." (Sheriff No 2).

2.7.2 Some solicitors and Sheriffs noted that cases can go to court where the parties are so entrenched in their positions that they cannot reach an agreement themselves, either in general or simply over one element of the contact arrangements (for example arrangements for school holidays, or the ability for the child(ren) to go on holiday with the non-resident parent, etc.). In such cases, it is necessary for an impartial authority figure to make a legally binding decision.

2.7.3 A few individuals also noted the necessity of a Sheriff in their particular case. One respondent highlighted several instances throughout their case where the other party had refused to take the advice of their own solicitor and/or to believe what they were being told around the arrangements for the contact with their child(ren), and that they had to keep returning to court simply so that they could hear it from the Sheriff:

"We did need a court in our case I think, to say "No, that's not happening." We needed a judge to do that." (Mother/Defender, LA Applicant No 19).

2.7.4 Some, however, discussed the discomfort with having someone else making life-altering decisions for them and their family. They were deeply uncomfortable about someone outside of the situation, and who did not know them, their child(ren), or the other party making decisions. However, for some it appears that this was the only way to resolve the situation.

2.7.5 Some mediation providers also felt there may be a risk that once parties have entered the court process they feel they have lost control of the situation and that the Sheriff will make the final decision regardless of whether they can reach an amicable agreement or not:

"I think there's also a perception that once you're into the court process then the court has to make the decisions, so we do quite a lot of work to tell them that, as parents if they can decide about your children, and as long as the children are safe and well cared for, then the courts aren't going to disagree… I think there's a sense

that once you're in the court process you've lost your responsibility." (Mediation Service 1, Respondent No 1).

2.7.6 Regardless of the options available to contact parties to resolve their dispute there will always be cases that will need to go to court, however, it would appear that caution is needed to ensure that parties understand and are confident/empowered to make decisions together (wherever possible) regardless of the stage of the process they find themselves engaged in.

2.7.7 It was felt that there may be scope for the provision of more non-court options where an authority figure can still provide binding decisions. It was suggested by a few respondents (including solicitors, Sheriffs and mediation providers) that perhaps the Family Law Arbitration Group Scotland (FLAGS) model could be adapted to provide such a function in suitable child contact dispute cases. All were clear to stress that, FLAGS in its current form (which is typically employed for financial disputes) was not suitable for child contact cases, but some felt there may be scope to further develop this type of approach to accommodate contact cases:

"It [FLAGS] does offer, perhaps in a slightly less formal way, a process that can make a decision where parties just cannot decide, as you are dealing with someone who would be an expert in family law… But I guess the downside with arbitration is that it is still another legal process, there are still rules and regulations and it is still to some degree adversarial." (Solicitor/Mediator No 1).

2.7.8 One solicitor also noted that time itself can be helpful in resolving contact disputes. They felt that, once a basic level of contact could be established, the situation would, over time resolve itself as contact was gradually increased and as the child(ren) grew older and was better able to communicate their wishes:

"Time is a great fixer of all contact disputes. Many horrendous contact disputes they simply resolve themselves over time… Usually in my experience it's when the child gets very talkative and can say what's happened, that's usually the key." (Solicitor No 1).

3 LEGAL AID IN CONTACT CASES

3.1 CIVIL LEGAL AID APPLICATION PROCESS

Timings for the Application Process

3.1.1 The importance (and indeed prevalence) of obtaining legal aid funding (where eligible) early in the process was stressed across all respondent groups.

3.1.2 Most applicants indicated that granting A&A or applying for legal aid was one of the first things the solicitor did for them. For a few, however, a civil legal aid application came later in the overall case meaning that they were responsible for the costs of early negotiation work undertaken (presumably as they were not eligible for A&A to cover these costs). Solicitors largely confirmed this perception, stating that it was often easy to identify early on if a client would be eligible to apply for legal aid and that this was often the first thing to be established.

3.1.3 Applicants had varying experiences of how long the process of applying for and being granted legal aid took, from 'weeks' to more than a year. On average, the process of applying for legal aid seemed to take 2-3 months[9] to reach a final decision. Some suggested that during this period, all work by the solicitor to negotiate/secure contact for pursuers ceased, the inference being that solicitors could/would not represent their clients whilst a legal aid application was pending.

3.1.4 It was suggested by several solicitors and individuals that one party awaiting the outcome of a legal aid application may ignore all solicitors' letters until they know if they can afford to get legal representation to respond. This can stall the whole process and also lead to delays in the time between last contact with the child(ren) and new arrangements being put in place. One pursuer noted that the other party's solicitor had not responded to their own solicitors' letters for over two months, citing the need to hear the outcome of a legal aid application as the reason for no response.

Ease/Difficulty of Application Process

3.1.5 To receive civil legal aid funding, the application process involves a merits application completed and submitted to SLAB by the solicitor which outlines the legal merits of their client's case. This application also outlines any previous resolution attempts so the applicant may have to supply the solicitor with relevant evidence of this. In addition, the client/applicant also completes a financial information form (although in some cases solicitors may assist with this form or complete it on their client's behalf). Both of these applications must be successful for legal aid to be granted. No application

[9] SLAB figures indicate applications take an average of 28 days to provide a decision if no continuations are required, and 83 days where continuations are required. Only 22% of cases can be assessed without a continuation. Where applications are refused initially and seek a review, the average total time taken to get a final decision is 120 days (which includes the timescale for the initial application). For all applications there is a minimum of 14 days fallow time to allow the opponent the chance to comment on the application, or 28 days if the opponent is out with the UK.

process is required for A&A as this is granted by legal aid solicitors providing they are satisfied that clients meet the financial eligibility requirements.

3.1.6 Those respondents that had received A&A funding suggested this had been straight forward, however, mixed views were reported in relation to the ease/difficulty of the legal aid application process.

3.1.7 Many legal aid applicants indicated that the solicitor had done everything for them, and suggested that they had only needed to provide them with the required evidence (e.g. bank statements, wage slips, any correspondence (e.g. texts, emails, social media posts, etc.) with the other party aimed at resolving the dispute, etc.) and so they had found the process to be simple and easy.

3.1.8 For those who found the legal aid application process straightforward, and where applications were successful on the first submission, applicants typically reported no problems regarding the time taken to process the application and considered that there had been no real impact on, or delay to their case:

> *"I think it was relatively quick, a couple of weeks maybe, I don't think it was long… I had to hand in bank statements and that sort of stuff, but it was pretty straight forward, the process itself for Legal Aid was fine… Compared to some of the other organisations I've had to deal with Legal Aid were pretty easy actually." (Mother/Defender, LA Applicant No 19).*
>
> *"I would say they were quite thorough… and very professional… I found them quite helpful." (Father/Pursuer, LA Applicant No 12).*
>
> *"There's one woman that I've been dealing with at the Legal Aid Board and she's been wonderful, she's been lovely." (Mother/Defender, LA Applicant No 17).*

3.1.9 A minority of applicants, however, found the application process frustrating, stressful or difficult, with a few indicating they had found the financial forms long and confusing. Where the process took significant time for clients to identify all of the information required, or was subject to requests for additional information or required an appeal, respondents felt that the process took too long, delayed their ability to progress with the case, and for pursuers, meant that contact (or increasing contact) with their child(ren) was delayed:

> *"It [getting legal aid in place] took too long, it should've been a bit quicker, especially when there's children involved. It took far far too long and there were too many loopholes." (Father/Pursuer, LA Applicant No 16).*

3.1.10 A few solicitors also perceived the financial application form to be challenging and not as straight forward as it could be, particularly for clients not on passported benefits or who are self-employed. However, confirming the financial eligibility of applicants for legal aid funding is a statutory necessity to ensure that public funds are spent

appropriately. One solicitor indicated that they felt SLAB were sometimes unfairly blamed for the delays with applications:

> *"It can take several weeks to get a legal aid certificate through, but there are emergency measures that can be taken… When I do meet people [via a reporting role] where there's been a delay they pin it on the Legal Aid Board, but I'm not always convinced it's always the Boards fault, they do take a while but not over a year." (Solicitor No 4).*

Elements Causing Frustration for Parties and/or Solicitors

3.1.11 Several applicants felt it was inappropriate to allow the other party to comment/input regarding their application. Several defenders and pursuers noted that they had been given the opportunity to provide information related to the other party's application, and while they thought this was inappropriate they were also deeply uncomfortable at the implication the same would be done in relation to their own application. Some applicants suggested that information given to SLAB by the other party regarding an application may have been inaccurate or fabricated. However asking for input from other parties is a necessary part of ensuring that public funds are spent appropriately and information provided by other parties is investigated by SLAB.

3.1.12 A frustration reported by solicitors was when legal aid applications were refused on the basis that insufficient efforts have been made to resolve the dispute before taking legal action. Those representing defenders commented that, if the pursuer had already served a writ against their client, they were helpless to suggest alternative ways of resolving the dispute:

> *"The other problem with legal aid that I've had, if someone raises a court action against someone for contact and the mother's in favour of contact they won't give you legal aid, I've had that. They write back and say "…you should negotiate." But the problem with that is you're faced with a writ which is calling in court in two days' time with Child Welfare Hearings and all the rest of it, so are we really suggesting that these people should just go along and do it themselves?" (Solicitor No 3).*

3.1.13 In some situations, this frustration may, in reality, be created by their client's previous actions (or inactions), where they have ignored all previous attempts by the other party (and potentially their solicitor) to engage, rather than a failing of the legal aid system itself. SLAB indicated that they accept evidence of attempts to negotiate between the parties themselves, i.e. before the solicitors' involvement and/or the writ was raised, and that the requirement is designed to encourage parties to negotiate and to reduce the risk that parties simply ignore all attempts to resolve the issue until they are served with a writ. They did note, that should a party be served with a writ without any proper attempts to negotiate they should be made aware of this within the application process. SLAB also noted that receiving a writ did not necessarily mean that negotiation could not be attempted at that point, indeed SLAB's Handbook outlines the agreed policy

guidance for defenders, and states: *"give details of all attempts made to settle the dispute by agreement which must include providing copies of all correspondence entered into between the parties. An action being raised will not be viewed as a bar on attempts being made to achieve a negotiated settlement"*.

3.1.14 On the whole solicitors felt that SLAB needed to have more trust in solicitors' discretion at determining those cases that merited a legal aid application to go to court and/or for the need for reports/experts/etc. once in court. At present, the evidence required to show that sufficient attempts had been made to resolve disputes was considered by some to be 'too stringent' and caused frustration to some solicitors. Several solicitors commented that they had previously felt undermined by SLAB who had questioned their decision to pursue legal aid for court action, and that the requirement to provide evidence of attempts to resolve things without recourse to court were viewed as a slight on solicitors' professional judgement:

> *"I don't apply for it [legal aid] until I'm sure they've done enough… Whatever it is [the threshold for previous attempts to resolve before applying for legal aid] the Legal Aid Board don't seem to think you've reached it most of the time." (Solicitor No 3).*
>
> *"SLAB sometimes ask for so much evidence... They should trust that we have made sufficient attempts... I do not think they need to scrutinise things so much if it delays decisions and delays court proceedings as that simply delays the period of non-contact unnecessarily[10]. As experienced solicitors, we know the cases where we need to go to court, and they should trust that." (Solicitor No 14).*
>
> *"I know early on if a case is going to need to go to court or not." (Solicitor No 11).*

3.1.15 However, other professional respondents, including some Sheriffs and mediation providers were in favour of the need to provide evidence of previous resolution attempts in support of legal aid applications:

> *"It's a good initiative… You should have to justify that, and its right that you should. I approve of that initiative, as long as it's recognised that there are a tiny handful… that would have to go straight to court." (Sheriff No 2).*

3.1.16 SLAB must apply statutory tests on the financial means of the applicant and the merits of the case before public funding can be made available, meaning that a certain level of friction will be part of the day-to-day running of a case-by-case legal aid scheme. A few solicitors expressed frustration due to perceived inconsistency in the decision making from SLAB, whilst recognising that all cases are unique. They indicated that sometimes cases go through with ease, and others do not, even where they are

[10] It should be noted however, that if there was a contact arrangement in existence but contact had stopped or if parties have recently spilt up and no contact is offered then Special Urgency cover would be made available in order to allow things to progress immediately.

considered (by the solicitor) to be comparable. These solicitors noted that some issues that are cited as problematic for applications in one case are not a problem in another:

> *"It depends on who looks at it, sometimes you submit an application thinking this won't be granted and that'll be the end of it, but it comes back granted. Then more often than not, it's the ones that you think really need legal aid and it's refused." (Solicitor No 3).*

3.2 Providing Access to Justice

3.2.1 Despite the challenges respondents' had encountered during their cases, where legal aid was granted most applicants expressed enormous gratitude, stating that they would not be able to either pursue contact or defend themselves and their child(ren) against unsuitable contact without it. One applicant said that A&A had 'inspired' them to fight for their child and that they were 'proud' of a society that provided such support:

> *"The legal aid system was brilliant for people who need it like myself." (Father/Pursuer, LA Applicant No 5).*
>
> *"I don't' feel there were any issues… just lucky to get legal aid." (Mother/Defender, LA Applicant No 8).*
>
> *"I really appreciate them taking it on... I'm just really grateful it's there." (Mother/Pursuer, LA Applicant No 13).*
>
> *"I'm just grateful that I got legal aid to be perfectly honest, it's just a shame that it's had to come to that." (Grandmother/Pursuer, LA Applicant No 15).*
>
> *"I'm very very grateful that they were able to assist me." (Mother/Defender, LA Applicant No 17).*

3.2.2 Indeed, it was seen as necessary to ensure that familial contact could be retained:

> *"Sadly it is necessary. Without it there would be many, many children who would not be able to retain any form of relationship with one or other of their parents, or indeed other family members… It is, and will always remain a necessary scenario." (Mediation Service 1, Respondent No 2).*

3.2.3 Further, despite suggestions that legal aid could be used by some individuals to manipulate/delay their case (discussed further at Chapter 4), one Sheriff noted that legal aid provides a highly valuable social function. They felt that, because of this, the funding provided should not simply be considered on a narrow case-by-case basis, but should also consider the wider societal benefits brought by resolving child contact cases. Two Sheriffs noted that, if contact disputes were not being dealt with by solicitors, mediators and the courts, then families would continue to suffer and situations may

escalate until someone ended up in the criminal justice system or a child protection issue arose, thus also requiring the input of public services/money. If familial conflict is allowed to continue, they suggested that this can negatively impact on the child(ren) in terms of their development and behaviour, thus perhaps resulting in increased need for public or third sector support or experiencing similar difficult relationship challenges in later life:

> *"I would suggest that the function of the Legal Aid Board in relation to family cases should be seen differently from its function in non-family cases because it is providing an enormous social good in helping to manage these sorts of things… If we don't manage them then what happens… No one's looking at the big picture, which is effectively what can we do to support children in circumstances where there is familial discord… In the long run I believe there would be a saving to the public purse in getting these things fixed, because if you have unhappy and distressed children they will make unhappy and distressed adults. Some of them end up in court themselves. So there is a real benefit to linking up all these different bits of the jigsaw." (Sheriff No 1).*
>
> *"Some of those cases that end up in the family court you have to stop and think, if they weren't in the family court where would they be, they might be in the Children's Hearing System with compulsory social work involvement… and sometimes if they end up in fights between parents at hand-over time quite often they end up in the domestic abuse court, so I think… what you have to think about is what is the most helpful and cost effective intervention. And I have a feeling that if we just said "You're not coming to court until you've done x, y and z" then the problems would just come out sideways and they'll end up in other services." (Sheriff No 2).*

3.2.4 It was felt by one Sheriff that there was a need to consider and develop a more holistic approach to contact dispute cases, and that closer partnership working may be needed between the various child welfare agencies in order to deal with the issues more robustly:

> *"I think one of the great problems is that everybody in this area is constrained to work within their own disciplines. You've got the Legal Aid Board doing its bit in terms of its responsibilities, you've got the children's referral system which overlaps with all of this, we have got local authorities who are involved in child care cases… there is also the criminal side... Now each one of them is doing their own bit but not looking sideways. Now if you're looking at the interests of children in the round, which I think we should and we are not, I think we might approach things differently." (Sheriff No 1).*

3.3 Potential Consequences of Not Obtaining Legal Aid

3.3.1 Applicants were asked to consider what they might have done had legal aid not been available/granted, however, most found this very difficult to articulate. As they had received funding, and had pursued their case down the route they felt they had to (it was seen less as a choice and more of a necessity), they found it difficult to consider alternative options should they have not had funding. This was particularly challenging for defenders whose cases went to court as they felt they had not chosen this route but rather had been 'dragged' there, and as such would not have had the opportunity to choose a different path in any event.

3.3.2 One defender stated that they would have agreed a weekly/monthly payment plan with the solicitor in order to fight their case, but did not feel that they would have changed the way they progressed the case. Others, however, felt that they would simply not have been able to do anything, or would have had to give up on their case before obtaining a satisfactory outcome. For pursuers this meant resigning themselves to little or no contact with their child(ren) and/or continuing to try and negotiate with the other party (which they felt would not result in a positive outcome). Meanwhile, for defenders this generally meant they would either have to agree to contact they considered unsuitable or would have to represent themselves in court:

> *"I was on the point where I really thought I had to quit… [but] however exhausted I was… how can any mother walk away from their child?" (Mother/Defender, LA Applicant No 3).*
>
> *"I would have nothing to do, I don't have anything and no one can help me, because what I'm earning is not enough. How could we pay these costs, I don't earn enough and I don't have savings." (Mother/Defender, LA Applicant No 18).*
>
> *"I don't know because I just don't have any money. I'd maybe have had to defend myself, but I don't know. He took everything and left me with nothing, so I genuinely don't know what I would have done." (Mother/Defender, LA Applicant No 19).*
>
> *"[Legal aid] gave me a chance, but without that I wouldn't have had a chance. I wouldn't have afforded that [to pay privately]… I would have been up for [self-representation], but I know I'm not educated for a courtroom so I know I could have been made a mockery, but I would have been up for it." (Father/Pursuer, LA Applicant No 12).*
>
> *"I probably wouldn't have done anything [without legal aid], I probably would have had to walk away because I wouldn't be able to afford it, God knows how much this has cost so far, but I wouldn't be able to afford that. It sounds cruel and awful, but being realistic I couldn't afford it." (Father/Pursuer, LA Applicant No 16).*

3.3.3 For those that had paid privately before they had been granted legal aid, one respondent indicated that they had borrowed money from family members to finance

the solicitor and court process. However, once these savings had been exhausted legal aid was granted and the case continued, so it is difficult to know what might have been done differently at this stage. Similarly, for another who lost legal aid (due to a change in circumstances) they had paid privately to defend themselves in ongoing court action. The costs were considered to be crippling them financially, pushing them into debt, and limiting available funds to care for the child(ren). This individual was a defender who was taken back to court several times by the other party and so they felt they had no other choices available to them as all previous attempts to resolve the issue outwith court (and even in court) had failed.

3.3.4 The situation was similar for private pursuers. Despite the significant costs incurred few said that they would have changed their course of action, in retrospect:

> *"I don't think that having legal aid would have changed how I proceeded, but it certainly would have had a significant impact on my life and my children's lives… it's an additional stress, you get tortured for legal fees and you're left with nothing. Legal aid would have been a massive help to avoid the amount of debt I am in, but it would not have changed the route of my case." (Father/Private Pursuer No 2).*

3.3.5 Solicitors who were asked to comment on whether they felt their clients would have chosen different routes had their funding streams been different also said it was difficult to comment, since they often did not see parties again if a legal aid application was unsuccessful. There was an assumption that parties would either approach a different solicitor or try to resolve things themselves.

4 Decision Making Process

4.1 Decision Making Criteria for Parties

4.1.1 Most pursuers felt that the pathway of their case had been determined after consideration of their solicitor's advice and by the nature and attitude of the other party (either due to the lack of communication or by the tone of earlier communication, or due to their refusal to try/engage with other methods such as mediation). Typically, individuals had consented to try solicitor correspondence, and whether they offered to try mediation services or not depended heavily on whether they thought the other party would agree and/or engage appropriately. In some instances offers of mediation were made in the full knowledge that the other party would refuse, but this was seen as a necessary part of the overall process and/or legal aid requirements.

4.1.2 Defenders, on the other hand, typically felt the pathway had been largely chosen for them by the other party and that they had little or no control over the route taken. Some noted that they received a letter from the other party's solicitor stating they had started court proceedings, and as such they felt they were not in control of the situation and had no other choice. Some defenders did respond with a letter of their own offering mediation, but this was typically rejected by the other side in favour of progressing to court.

4.1.3 One defender noted that much of their decision making was driven by fear, and that a close family member had had to remind them to keep thinking of best interests of their child(ren):

> *"Fear took over a lot for me because I was terrified because he initially was trying to take my [child] away from me, he was trying to get full parental responsibilities. I probably nine times out of ten reacted out of fear. A lot of my decisions were probably based on the fear factor." (Mother/Defender, LA Applicant No 17).*

4.1.4 This respondent noted that, without that help and advice from their family they would most likely have made decisions based on their own relationship with the pursuer rather than considering the best interests of their child:

> *"I had my [family member] by my side who kept things quite real and they kept me acting in the best interests of my [child]… When you've been through what I've been through you can't get away from how you've been treated. So probably a lot of decisions I would have made would have been based on my relationship with my ex as opposed to the relationship my [child] had with him." (Mother/Defender, LA Applicant No 17).*

4.1.5 At least two respondents indicated that they had taken decisions in order to get a reaction from the other party. In these situations, this was typically the decision by a resident parent to stop all contact with the non-resident parent either due to threats

of child abduction (or actual instances of this) and/or the infrequent, erratic and short-notice nature of their requests to see their child(ren). As such, they wanted to force them to seek/agree to more formal and regular contact arrangements:

> *"The last time the child went to see his dad he said he was just going to keep him, so I went to see a solicitor to ask if we could get something formal in place, but not done through the courts." (Mother/Defender, LA Applicant No 1).*
>
> *"I decided that I would stop the contact because I thought, if I do that it's going to invoke a reaction, and it was the only way I knew how to get a reaction in order to move things forwards." (Mother/Defender, LA Applicant No 17).*

4.2 Perceived Impact of Costs/Funding Method on Parties

4.2.1 Professional stakeholders were asked to identify any possible differences between legally aided and private parties/cases and discuss the perceived impact such differences have on the decision making process.

4.2.2 In the main, Sheriffs and solicitors viewed that the issues presented by private and legally aided clients were the same, that they treated both types of client the same and that the source of funding did not influence decisions made on the course of action taken and/or the decisions made in court. Clients were considered to have the same drive/determination, regardless of funding routes:

> *"There's not a huge difference in what drives people to come to us. If they are privately funded the client has the extra cost factor to take into account - sometimes it makes people pause for thought, but if someone is set on getting contact, there's not much difference in what they will pursue." (Solicitor No 11).*
>
> *"Legal aid and private clients get exactly the same service from us." (Solicitor No 13).*

4.2.3 Some professional respondents also felt that there was little difference in the decision making between private and legally aided clients. They considered that the decision making process depended more on the nature of the individuals involved rather than funding sources:

> *"You would guess that legally aided people would be less motivated to resolve the dispute because it's not going to cost them anything to go to court, but I think there's so much more to the process than just the cost, there's the angst, the impact it has on them, the stress, the kids, so I think there's a lot of other issues rather than just the cost." (Mediation Service 1, Respondent No 1).*

4.2.4 Other professional stakeholders, however, felt that the cost and whether this had to be paid privately or via legal aid could, in some cases at least, impact on clients' decision making. There were perceptions that private clients may proceed to court quicker than

legally aided clients, but also that legal aid clients were more likely to go to court to resolve their dispute than private clients. It was also suggested that private clients would be more likely to attempt and seriously engage with other resolution formats (such as mediation) compared to legally aided clients due to the cost of alternative options.

Timeliness of Accessing Court

4.2.5 Some solicitors indicated that, in their experience some private cases do, on occasion, proceed to court quicker because there is no need to evidence earlier resolution attempts, and so exchanges of letters and attempts at mediation can be avoided where it is considered that they will have no effect. Similarly, there is no need for lengthy legal aid applications or delays created by the need to seek legal aid sanctions during a case (although, if the other party is legal aid funded then delays can still ensue):

> *"Private clients are a lot easier for us because they just pay and we do it. There's no waiting around for sanctions from the Legal Aid Board." (Solicitor No 10).*
>
> *"If you've got clients that are [both] fee paying they are much more likely to want to try and move things on more quickly and do away with some of the faffing about." (Mediation Service 1, Respondent No 2).*

4.2.6 A few solicitors perceived that the current legal aid system, therefore, creates injustice/inequality in the overall justice system by delaying court action for legally aided clients where this is the only realistic option. However, it should be noted that SLAB operate a statutory service which requires them to be accountable for the spending of public funds, and that special urgency provisions are in place to allow certain legally aided cases to go to court immediately. It should also be highlighted that no private pursuers interviewed as part of this research confirmed the perception that private clients were keen to get to court quickly, with all indicating that they had tried alternative methods and did not want to go to court but felt it was their only option due to the obstructive position of the defenders.

Propensity to go to Court

4.2.7 While some felt that private clients could get to court quicker, some solicitors and Sheriffs felt that legal aid clients were more likely to ultimately end up in court, albeit that it would still be a minority of cases that progressed to court. This was partly attributed to the design of the legal aid system, with some respondents suggesting that the limited eligibility criteria for A&A funding meant that pre-court routes could not be fully explored and exhausted, and/or that simply because legal aid funding was available/granted clients (who did not have to make contributions) would be more likely to go to court as it did not cost them anything. Others felt that some legal aid clients who end up in court were more likely to lack the communication/negotiation skills (or lacked confidence in their ability in this regard) required to resolve the dispute at an earlier stage, and/or had become so entrenched that they required someone else to make the decision for them:

"There is a propensity towards people who can acquire legal aid will have an argument in court about the arrangements for their children, but it's more rare for that to happen if it's privately funded… the granting of legal aid of itself sets up a propensity for that." (Solicitor No 4).

Use of Mediation

4.2.8 There was also a suggestion by some solicitors and mediation services that private clients may be more willing to fully engage with family mediation and other ADR methods as they are more affordable than court proceedings. It was felt they may be more focused on obtaining a resolution and less likely to use the opportunity to continue arguing:

"I guess if people are paying for it themselves they are going to be very alert to the cost and making good use of that." (Mediation Service 1, Respondent No 1).

4.2.9 One solicitor felt that, while mediation could be beneficial for both private clients and legally aided clients, they indicated that mediation could often be more successful in resolving cases for private clients, while legal aid clients may still require a court intervention, albeit less prolonged than otherwise may have been required:

"I'd say for legal aid clients it's [mediation] not always successful, but while they might still end up in court it will often still avoid an evidential hearing. For private clients though it [mediation] will often bring it [the dispute] to an end." (Solicitor No 4).

4.2.10 While legally aided clients are required to consider the use of mediation ahead of court proceedings, this does not necessarily translate into greater uptake or engagement levels, with most legal aid applicants who participated in interviews indicating that they had not attended mediation ahead of court proceedings due to one or both parties refusing. Further, family mediation services noted there was little observable difference in the levels of engagement or success mediation has between privately funded and legally aided clients where parties were motivated and prepared to fully engage in the process. Rather they considered that the main drivers for attendance and success were the nature and personalities of the two parties rather than funding sources:

"I can't say I've noticed any difference from that aspect [successful outcomes between legally aided and private clients]. If people, either fee paying or otherwise, get to the stage where they are actively engaging in the process for the right reasons then the chances of success are pretty good." (Mediation Service 1, Respondent No 2).

Client Management Issues

4.2.11 Many solicitors indicated that private clients were generally less demanding of their time due to the cost implications. However, there were also some solicitors and Sheriffs who indicated that private clients could, on occasion, be more challenging, especially if the party feels that paying for services means that it should go their way:

> *"They [private clients] are less likely to email me about the minutiae if they are paying privately, whereas legally aided clients will contact you every five minutes, because they have nothing to lose." (Solicitor No 14).*

> *"Private parties expect to have more of a say in what happens, but sometimes that is not necessarily helpful. Sometimes there can be a sense of entitlement - "I'm paying good money to get this sorted out!" - and that can be a problem in itself." (Sheriff No 3).*

4.2.12 There was also a perception among some solicitors that some legal aid clients projected a sense of entitlement due to their legal aid status:

> *"Legal aid clients tend to think that you're earning a fortune on the back of this so they're worth a pot of gold to you, so every time they phone you should just drop everything and speak to them, which you just can't do." (Solicitor No 4).*

Consideration of Costs in Decision Making

4.2.13 Some solicitors said that they worked with very few private clients simply because telling people how much their case was likely to cost often makes people reconsider their position:

> *"I tell people, if you are funding a court action privately, the time in court and the time spent with solicitor's costs a lot of money." (Solicitor No 14).*

4.2.14 One solicitor said that they estimate £10-£15k for the average privately funded case[11] and often don't see people back in their office again once this figure has been quoted. If they do come back, it is usually after they have tried everything else open to them, and the desire to see their child(ren) means that they have borrowed or scraped together sufficient funds to pursue the case. Another indicated that the costs can often cut short a case for private clients leaving them without access to their child(ren), not because a resolution has been reached, but rather they have exhausted their funds. As such, legal aid offers a valuable resource to allow parents to have contact with a child(ren) which they otherwise might have no relationship with:

> *"Private client cases will finish more quickly, by and large… they will finish more quickly than a legal aid one and that's because you have to bill your client every*

[11] This compares to an average of around £3.5k for legally aided cases.

month to make sure you get paid, and quite often, especially dads who are not getting contact will throw in the towel because they just can't afford to keep it going, and so they don't have contact with the kid." (Solicitor No 4).

4.2.15 Conversely, it was suggested that there is a risk/perception that those receiving legal aid (and who do not make contributions) do not have to give any consideration to the costs of the case. It was felt that this can lead to legal aid parties being obstructive, delaying/drawing out cases, and refusing to engage as there are no financial consequences, whereas those paying privately may have their actions curtailed by costs:

"If it's a private client there'll be a flurry of activity, you'll maybe negotiate something on an interim basis, and then you render a bill and the client realises what it was costing them and they'll think "I'm going to try and sort this out myself." But if they're not paying for it they feel "I don't have to, it's no skin off my nose if I feel this needs to take a bit longer, or I'm going to get in the way of it"." (Solicitor No 5).

"If a particular angle has not worked in prosecuting an argument for a legal aid client they are more prepared [than private clients] to go on to another complaint… I'm not saying that they're a better quality of client, it's just that they have to pay for what they're saying." (Solicitor No 4).

"If you are up against a legally aided party, you do sometimes get the impression that they will just keep things going, because there is no loss to them, whereas for the privately funded client, every second counts. You do definitely get an impression that some people with a legal aid certificate are just deliberately trying to prolong proceedings." (Solicitor No 11).

4.2.16 In particular, it was felt that, where one party was in receipt of legal funding and the other was not, this had the potential to bias things in favour of the legally aided party - a view expressed by individuals, solicitors, Sheriffs, and mediation services alike:

"If one person has legal aid and the other person does not, the [legally aided person] just needs to sit back and watch as the solicitors and the other party spends all their money." (Solicitor No 14).

"I suppose at its crudest, a legally aided party may try to wear down a non-legally aided party… [the non-legally aided party] ends up giving up because it's too expensive, and that is fundamentally wrong." (Sheriff No 1).

"Your [ex-]partner can just delay, delay, delay if they are on legal aid, and they are watching you spend, spend, spend. It doesn't seem fair." (Father/Private Pursuer No 3).

"I think the whole process has been dragged out because of legal aid. If she didn't have legal aid then she would have been forced to discuss things, she would have been more inclined to go to mediation, but her solicitor was just being really awkward and really difficult." (Father/Private Pursuer No 4).

"If she had to pay it would have been resolved." (Father/Pursuer, LA Applicant No 16).

"Where you have one legally aided client and one private client, there's a disparity between the two, that can cause issues." (Mediation Service 1, Respondent No 1).

4.2.17 One solicitor indicated that they use fee notes to remind private clients that their actions have financial consequences, which can often result in them amending their approach and being more focused, whereas they do not have the same levers available for legally aided clients:

"When private paying clients are phoning you constantly or are involved in lengthy meetings, one way of getting across a message to them that they need to start thinking in a different way is actually to send them a fee note where you bill them for all the time… once they realise how much it's costing them they're a bit more focused. With legal aid clients, once they have got legal aid I don't think they have that same consideration… they tend not to have that sharp focus." (Solicitor/Mediator No 1).

4.2.18 It should be noted, however, that perceptions of delaying and time wasting, while potentially accurate, could also have been informed by differing expectations of how a case would/should proceed:

"If one is and one isn't [legally aided], often there is frustration from the one who is not legally aided at the fact that, in their perception, the other person is dragging their feet, not dealing with it quickly and not moving it forward as quickly as they would like. Now that sense is probably right to a certain degree, but there is also an issue that their sense is heightened due to the fact that they are paying for it, so their expectation may well be higher than it actually should be in the circumstances." (Mediation Service 1, Respondent No 2).

4.3 Legal Aid System Issues which Risk Impacting Solicitors' Decisions

4.3.1 There was a suggestion by some solicitors and Sheriffs that the way the legal aid system is set-up could potentially encourage solicitors to promote more litigious routes. It was felt that the eligibility criteria, the way the funding is provided, and the payment structures for solicitors for undertaking legal aid work promotes this risk. While none of the solicitors who took part in interviews suggested that they personally took this view or approach to cases, they identified this as a risk:

"The way it is set up encourages you to be more litigious because you don't get paid for all of the stuff that you do trying to negotiate with parties. You're better to just put in a motion." (Solicitor No 12).

"I think they [the Scottish Government sets the eligibility criteria] could make more eligibility for Advice and Assistance because there are people who just can't afford it and if they're not getting Advice and Assistance and they can't afford the private fees, then [there is a risk that solicitors will] try and get them into court because that's the only way they can deal with it." (Solicitor No 6).

"I think there is an issue with which the way current legal aid funding is structured, whether it encourages solicitors to fully explore all the [alternative processes such as mediation, joint meetings and collaborative approaches]… the impression I have is that there's quite limited Advice and Assistance expenditure which is basically for doing things before you're applying for legal aid to go to court." (Sheriff No 2).

4.3.2 Several specific examples were provided of where solicitors felt that they risked either not being paid for work at all, or felt they would not be fully recompensed for the work undertaken.

4.3.3 Several solicitors commented that clients who are not in receipt of passported benefits often cause difficulties at the application stage, with them requesting the solicitor completes the legal aid application (either the merits application or both merits and assistance with financial applications as required by the client) and then, when unsuccessful/determined ineligible, abandoning the case, often leaving solicitors 'out of pocket.' Similar issues were reported to occur when contributions towards the legal aid costs are required and clients refuse to pay, thus bringing legal aid to a halt - again, solicitors considered that this could leave them out of pocket:

"In these cases, do you help clients to try and pull together the information, when you know you may not be paid for the time you put in?" (Solicitor No 9).

4.3.4 One solicitor gave the example that, if they spent 40 minutes providing advice verbally, and then put that into a letter after the meeting, they would be paid for the meeting and not the letter. Solicitors are required to justify that all work was necessary and the solicitor considered that attempts to help clients in this way - to make things clearer, more transparent, help their understanding of the system, and keep things clear and auditable, etc. - would not be paid[12]:

"There's this constant view that you're trying to rip people off, or whatever. But, a lot of my work is legal aid and it seems to always be constant attempts by them to reduce the bill as much as possible. They will not pay you for calls that they say

[12] SLAB's handbook sets out the circumstance in which such a letter would be paid in addition to the meeting. See https://www.slab.org.uk/providers/handbooks/Civil/part5chp6#6.12.

were just advice or calming people down, they'll only pay you once for 'advice' and that's not realistic." (Solicitor No 13).

"Having a letter helps clients have something that they can go back to again and again. Time spent helping people think through the consequences of their actions is a legitimate way to spend time, but it is not paid for." (Solicitor No 12).

4.3.5 In addition to the 'standard' pre-court services offered by solicitors to assist clients in resolving child contact disputes, several solicitors mentioned that they would spend time with clients assisting them with trying to maximise their benefits (since often separation of families results in extreme hardship for one party in the short to medium term), and offering general out of hours support/a listening ear, which again, they considered they were not remunerated for:

"I spend hours and hours of phone calls, just listening, to try and make things better. And you don't get paid for any of that, you just get a block fee. Friday nights, when everything has gone wrong, and they've [the client] got no one else to turn to." (Solicitor No 11).

4.3.6 Some solicitors indicated that the need to raise a court action before they could extract a fee acted as a barrier to negotiations immediately following the granting of legal aid:

"If you get a legal aid certificate but negotiate a resolution before you raise the court action, because legal aid's been granted that can often induce the other party to back down, then the lawyer's paid nothing for negotiating because you've not started the court action, you have to start the court action to get paid, so how does that encourage negotiation once you've got a legal aid certificate." (Solicitor No 5).

4.3.7 Several solicitors also indicated that, once court proceedings had started they perceived that they were not remunerated for any further (out of court) negotiations that take place. This suggests, that amongst some solicitors at least, there are misperceptions around the scope of the block fees. SLAB indicate that these fees are intended to cover all work, including negotiation, once court proceedings have begun, however, some solicitors tend to perceive these fees as only intended for/covering the litigation. This may be because the fees are viewed as being too low to cover the range of work intended. Such perceptions raise potential implications for the resolution of cases and questions about the suitability of the fees structure, however, when supporting lengthy negotiations and client management in family cases.

Quality of Service Received by Parties

4.3.8 While respondents were not directly asked about the quality of service they received from their solicitor some individuals did discuss this aspect within their interviews when asked about how they felt each of the organisations and agencies involved had helped them to resolve the contact dispute. Mixed views were provided in relation to the

service provided by and/or the relationship that individuals had with their solicitor, notably about level of engagement and motivation.

4.3.9 A few individuals indicated that they had no confidence in solicitors because they felt they were often driven by the monetary gain (or otherwise) of a case. Perceived differences in the quality of service and/or how they were treated by their solicitor were also noted by a few individuals. They suggested that they felt like 'second class citizens' because of the perceived difference in approach (levels of commitment and respect) by solicitors once they knew that a potential client was going to be legal aid funded, with at least three applicants suggesting that once they were receiving legal aid, the approach or quality of the work of the solicitor somehow changed:

> *"I wasn't too impressed with [the first lawyer]… You were no sooner in the office than she was trying to get you back out… That first lawyer… didn't seem to have the time or make the time… it was the bare minimum and I think it maybe was because I was getting legal aid." (Father/Pursuer, LA Applicant No 12).*
>
> *"We [the solicitor and respondent] came to an agreement [that legal aid was necessary]… The level of service diminished… I got his younger, more junior member of staff." (Father/Pursuer, LA Applicant No 9).*
>
> *"Once you get legal aid… they [solicitors] totally change." (Mother/Defender, LA Applicant No 7).*

4.3.10 Other individuals were, however, very happy with the service provided by their solicitor. They felt they had been listened to, been well advised, kept informed of options and progress, that they had set realistic expectations over timescales and likely outcomes, and that they had generally been very helpful:

> *"I really liked the solicitor, I felt he was compassionate and his advice was always good and he was always willing to listen." (Mother/Defender, LA Applicant No 11).*
>
> *"She [respondent's solicitor] was pretty good actually to be honest, she was very very good." (Father/Pursuer, LA Applicant No 16).*
>
> *"I had a good solicitor who was very helpful." (Mother/Defender, LA Applicant No 19).*

4.4 Issues of Control

4.4.1 Although there were no obvious (or reliable) differences in the methods that private and legally aided parties chose to pursue, levels of engagement, time spent on particular methods, or outcomes, it was highlighted that contact disputes could be being pursued (or indeed defended) for the wrong reasons, and that often people were either trying to delay the case or were trying to control the other party through the

case. Tactics regarding how clients progress their case were discussed as being used by both defenders and pursuers.

Delaying Tactics

4.4.2 A common theme to emerge from the interviews was the perception that some individuals would employ delaying tactics in an attempt to thwart the other party's case. While this could be a tactic employed across all cases, regardless of funding mechanisms, it was considered to be a greater risk in cases involving full legal aid (i.e. where there are no contributions required) as the legally aided party was not financially responsible for the costs of the case.

4.4.3 Some solicitors, individuals, and even mediation providers shared perceptions/ experiences where mediation, both suggested as an ADR method and court ordered mediation could be used as a delaying tactic. Some noted that they had offered to go to family mediation before considering court proceedings, but that the other party had refused, only for them to offer this once court proceedings had been started. It was often anticipated that the resident parent would suggest mediation in an attempt to further delay the non-resident parent from having contact with the child(ren), but then not engage or even turn up to the mediation sessions, and thus push back the date of a first court hearing. In addition, some pursuers stated that court ordered mediation had not been attended by the defender, and felt that agreeing to attend as part of a court order had been used as a delaying tactic. Since attendance is not mandatory, and compliance with court ordered mediation is not enforceable, this was seen as a strategy that could be employed at low risk to damaging the defender's case. It should be noted that, in some cases it was highlighted that the pursuer did not attend, or did not engage with court ordered family mediation, however, this was not considered a delaying tactic on their part:

> *"Some people maybe use mediation as a delaying tactic, they say that they'll come but they're not really taking the process seriously, but I think they're in the minority." (Mediation Service 1, Respondent No 1).*
>
> *"I think if both parents were forced to have to pay for the use of any service they would in the main be much more focused on making it actually be value for money." (Mediation Service 1, Respondent No 2).*

4.4.4 Similar delaying tactics were also suggested to occur with the offer of contact centre usage at the outset of the process. One solicitor suggested that, if a defender offers, even very limited contact to a pursuer in a contact centre, this could be relied on by SLAB to refuse their legal aid application to progress to court. This was considered to be unfair to the pursuer, where unreasonably low offers may be considered as reasonable, and suggests eligibility rules can be used by defenders in such situations:

> *"I believe that some parties use the contact centres deliberately to stall and impede contact, and that is because, if, for example, [the child] lives with his dad and the*

mum says I want contact every weekend for 24 hours, if dad says "No, I'm not giving you that but you can go to a contact centre for two hours every second Saturday morning and you can see [the child] then." I will not get legal aid for that mum to take the matter to court because a 'reasonable' offer of contact has been made for contact via the contact centre, so it is my belief that people purposefully use an offer of contact centre contact to thwart the opponent being able to take the matter to court and get a proper level of contact." (Solicitor No 2).

4.4.5 Cases can also be delayed in court where parties change solicitors and the new solicitors need to get up to speed with the case. Some individuals suggested that this was another delaying tactic used by parties. This was reported to happen both with defenders and pursuers, with defenders accused of delaying proceedings in order to delay contact, and pursuers seen to be delaying in order to continue to control the defender and in withholding closure for them. Some solicitors also confirmed that, when they receive cases with a long history it can take some time for them to review this and get up to speed, however, they did not link the need for a change in solicitors to attempts to delay the case.

Situation Used to Try to Hurt or Control the Other Party

4.4.6 What emerged from discussions with applicants was the likelihood that seeking contact (or not) with the child(ren) was only one part of the jigsaw, and indeed that some parties were using the contact issue as a means of hurting the other for other reasons, namely an irretrievable breakdown in relations, (this was true for both parental relationships but also for wider family disputes as well where grandparents were seeking contact).

4.4.7 In the cases that were discussed within these research interviews there was usually intense animosity between the parties, often manifest as anger, distrust and/or frustration. This resulted in some going to great lengths to undermine the character of the other party and/or other close relatives in order to undermine their case, usually through alleging/reporting criminal behaviour. Although a minority of those interviewed had previous convictions, most suggested that the accusations made against them during the contact dispute were spurious and manipulative. For pursuers in particular, several suggested that, in effect, they were the 'defenders' of their characters, rather than pursuers of greater access to their child(ren):

"[My ex's] lawyer would rip me to shreds… My wife had made allegations that during my contact with my daughter I did nothing with her, spent no quality time with her, so I had taken in photographs when we were doing things… Every allegation she made I felt I had to prove different." (Father/Pursuer, LA Applicant No 12).

4.4.8 Indeed, there were general feelings expressed by many pursuers that the court/legal system was biased against non-resident parents in that they need to provide justification for contact while the resident parent does not:

"You're standing in court and grovelling to a stranger to get to see your children and the mother never gets asked once why she needs to see those kids - it's just taken as given. She doesn't have to justify spending 12 days out of 14 with them, but I have to justify scraping just a couple of days with them. As a father, or mother in that situation, it's wrong… There should be more of a presumption that both parents get a reasonable amount of contact." (Father/Private Pursuer No 2).

4.4.9 However, defenders also outlined ways in which they felt the court/legal system facilitated/could be exploited by controlling ex-partners to continue to exert influence over their lives and cause them stress and hurt, and that no mechanisms appeared to exist to call a halt to this:

"It was a platform for him to continue the abuse. The system absolutely allows it." (Mother/Defender, LA Applicant No 17).

4.4.10 Strategies to exert control over the defender were cited to include pursuers making false complaints to SLAB that the defender had means that were not being disclosed, trying to get ex-partners' benefits stopped to make legal aid applications harder, and applying for legal aid themselves at various points during breaks in proceedings, even in the knowledge that it would not be granted, in order to cause delays. However, it should be noted that this last scenario was cited by both pursuers and defenders alike:

"Every time he didn't get legal aid he would put in an anonymous complaint saying that I was fraudulently claiming legal aid." (Mother/Defender, LA Applicant No 19).

"My [ex-] partner is claiming to have no money, and I know that she has, so the whole legal aid application from her is just a stalling tactic." (Father/Private Pursuer No 3).

4.4.11 Other tactics considered to be employed by pursuers to exert control over the defender included not attending court hearings, not responding to solicitors' letters, and appealing decisions or repeatedly returning to court when decisions did not go their way.

4.4.12 Solicitors and third sector support agencies also indicated that some individuals will seek a court order for contact, and then use this to 'beat the other party with'. For example, any failure by the resident parent to facilitate contact (for example when the child(ren) is ill or has other appointments/commitments on the contact day) was considered to be breaching the order and the police would be contacted. Similarly, non-resident parents seeking a one-off change to the contact arrangements would be refused without any consideration resulting in no contact occurring that week/period. As such, in some cases at least, it would appear that court ordered contact does little to improve the working parental relationship between parties going forwards.

4.5 Perceived Lack of Sanctions for Time Wasting

4.5.1 Private pursuers who took part in the research expressed strong views that some defenders are deliberately obstructive and/or waste time and that the current process is not sufficiently robust at identifying this and/or punishing such behaviour. They felt that the current legal aid system offered no sanctions against time wasting, obstruction, and/or using legal aid to pursue trivial matters, and that this was a flaw in the current system:

> *"There should be punishment for parties who waste time - you've lost time with your children and been dragged through the courts and there's a huge amount of stress and misery and you've been put through a grinder, but the other party has no punishment for making you go through that. You just get your contact and off you go. There's no comeback for all the time they have wasted, and all the lies they have told." (Father/Private Pursuer No 2).*

> *"It has enabled her to stall, delay and create difficulties without a financial sanction. Had it been privately funded on the other side, then this would have stopped a long time ago, because with legal aid there is no incentive to stop. There is no liability. You can just keep messing around." (Father/Private Pursuer No 3).*

> *"I would suggest that SLAB maybe had a tougher line on cases that they are funding where there is clearly breach of court orders and someone who is being vindictive and wasting public funds. There just aren't any sanctions for that kind of behaviour at the moment." (Father/Private Pursuer No 1).*

4.5.2 One private pursuer described how he had been forced to employ a court psychologist as a result of a court order and that initial costs were split with his legally aided ex-partner. Even when the psychologist found in favour of the pursuer, the defender was able to request, and be granted, a second court order for a child psychologist to get involved in the case, and the costs had to be split again. Experiences such as these suggest that, in some cases at least, parties can continue to make requests during the court process which cost them nothing (on legal aid) while the privately funded pursuer keeps paying, even where evidence has already been provided to support their own position:

> *"Being privately funded, I have several professionals and a Sheriff all on my side, but because of my partner's refusal to give up, and the need to go to Proof, I may have to give up on seeing my son, simply because I can't afford it. I don't believe I will, but that's the decision I'm faced with." (Father/Private Pursuer No 3).*

4.5.3 It was also noted by some individuals (typically pursuers) that there were no real consequences for failure to adhere to the court order. The only real options available include a fine and/or prison sentence, however, it was noted that Sheriffs are very reluctant to issue either as it impacts upon the money a family has available for the care of their child(ren) and/or removes a carer from the child(ren), neither of which

would be considered to be in the best interests of the child(ren). As such, it was felt that were was very little incentive for parties to comply, or protection in cases of non-compliance:

> *"There is the issue of the non-compliant parent… You can go for contempt of court but frankly contempt of court is a very large blunderbuss which rarely hits the target, and it's an enormously complicated and expensive procedure, and it's expensive for the [pursuer] who has to bring all these procedures." (Sheriff No 1).*

4.5.4 Several individuals (typically defenders) also highlighted that there was little protection for them against being repeatedly "*dragged*" back to court, simply to allow the pursuer to continue to exert control over them, or to continue to pursue unrealistic outcomes. They felt that the system was designed to support the pursuer and that no one (including SLAB, solicitors, and Sheriffs) had any power to stop cases from going to court unnecessarily. Some cited situations where they had been taken back to court over trivial matters, or simply because the other party would not take the advice of their own solicitor but rather, would only believe information from the Sheriff. Others cited returning to court because the other party would not accept the findings of Child Welfare Reports or the court ordered contact arrangements and so put them through it all again, even leading to the Sheriff being visibly frustrated in one case but seemingly powerless to stop the case being brought:

> *"I'm being dragged through the courts basically on the whim of some controlling ex-husband, so every tiny little detail that he didn't agree with he'd take me to court over it, and legal aid were having to pay for [to cover the defenders costs]… I thought there would have been somewhere in the process where someone would have went "Hold on a minute, this is getting silly now."" (Mother/Defender, LA Applicant No 19).*

4.5.5 One Sheriff, however, suggested that case management rules had been improved recently to allow Sheriffs to refuse requests within cases which could assist in addressing some of the issues discussed above. Although they acknowledged that it remained very difficult to stop people from coming back to court repeatedly:

> *"I think the new case management rules have helped… my colleagues and I have started, in the last year, to say "No, we're not allowing that expert. No, we're not instructing a child psychologist. No, we're not allowing those witnesses. No, you're not having a Proof, I'm just making an Order."… But you will always in a family court have… a handful of really difficult and entrenched, disturbed, angry and determined people, and it's quite difficult in a family case to say "You're effectively a vexatious litigant and you're not coming back to court."" (Sheriff No 2).*

4.5.6 In a few cases, solicitors were sometimes perceived to be making the most of legal funding by delaying cases and/or bringing new/escalated motions in order to be paid

more. This view was expressed by a variety of respondent groups, including privately funded parties, legally aided parties and solicitors (when discussing experiences of other solicitors locally), however it should be noted this was suggested by a minority of respondents in each group:

> *"I get frustrated that the other side's solicitor can present the case in the way that they are because everyone can see what is happening here - the sheriff, my solicitor, her solicitor… but I would say that the solicitors have made the most of things - and she has had several different solicitors." (Father/Private Pursuer No 1).*

4.5.7 Interestingly, a few solicitors expressed views that they often felt that some of their own clients were undeserving of legal aid, but they felt a conflict regarding the appropriate action to take. Indeed, several solicitors said that they had faced situations where they felt conflicted about representing their clients but protecting the public purse:

> *"You sometimes feel that client's legal aid certificates should be taken away but it's difficult to say that to the Board when it's your client. You have your duty to the client and your duty to the public purse, and that can be difficult to manage, sometimes." (Solicitor No 10).*

4.5.8 A few solicitors indicated that when letters are sent to SLAB suggesting that they suspend legal aid because the case isn't progressing (due to lack of cooperation from clients), there was a perception that these were sometimes ignored. Closer monitoring by SLAB of the number of court orders imposed and what happens with compliance from a party who is legally aided is needed, it was suggested. This would help to stop what was currently seen by some as a potential avenue for abusing the system.

4.6 Adversarial Nature/Impact of the Court/Legal System

4.6.1 It was felt by some respondents (largely mediation providers and support services, although some solicitors also held the view) that the system itself was designed in such a way to encourage adversarial approaches. They suggested that the process, from instructing a solicitor to going to court, does little to tackle the anger and resentment parties may feel towards each other but rather promotes confrontational and defensive attitudes:

> *"And a lot of that [anger, frustration and unrealistic expectations] is a result of being in this adversarial process, from the moment you instruct a solicitor you're in that… There's nothing in there that engenders bringing people together, all it does is push them further apart." (Mediation Service 1, Respondent No 2).*
>
> *"The court process does cause damage, I think. It's not wilful by any means, it's just the structure of it, it's an adversarial process, and despite the best efforts of Sheriffs and solicitors, and even Child Welfare Hearings where it's slightly less formal, it's just designed to be adversarial… So people get aggressive because it's*

adversarial but they also put a big barrier up and become defensive and then there's no communication." (Solicitor/Mediator No 1).

4.6.2 Some individuals also noted the adversarial nature of the court system, highlighting the negative impacts they considered this to have had on their family:

"It has torn my family apart and I know that now, and in the future, it will adversely affect the lives of my children. The family court system at the moment is very adversarial - its winner takes all. Predominantly dads have to almost audition to be a parent once the family breaks down and that costs thousands of pounds. It has devastated my family unit - me, my ex-wife and the children. There are no winners." (Father/Private Pursuer No 3).

4.6.3 Some solicitors also noted that there were certain solicitors they knew of who appeared to pursue confrontational routes fairly consistently, solicitors who seemed resistant to mediation and other ADR approaches, and those that seemed to follow their client's requests no matter how unreasonable. It is unclear whether these were in isolated cases or whether this was a more general pattern of case management for such solicitors, but it suggests that, at least some of the time, there is a perception that some solicitors encourage highly confrontational approaches:

"So you get solicitors who say "This is what my client wants" and they'll try and achieve it, regardless of the interests of the child. Some even go for what I call the nuclear option, where they go for it and go for it and go for it, but if they don't get it they get nothing." (Solicitor No 3).

4.6.4 It was suggested by mediation services that there was a need for ADR to become more embedded within the system in order to lessen the levels of conflict, and help parties develop new working relationships and lessen the need for cases to go to court:

"ADR needs to be more embedded in our legal process… but that really involves changing the adversarial process and saying that court really is a last resort… So the whole mind-set of the stakeholders, and that's not just clients but also Sheriffs and solicitors would change and there would be a much better approach at looking how to resolve things before you get into the court process." (Solicitor/Mediator No 1).

5 Impact of the Dispute and Voice of the Child

5.1 Impacts on Parties

5.1.1 All individuals discussed the significant levels of stress and anxiety the dispute had caused, not least for those defenders who were compelled to attend court and had never been in a court setting before. For the resident parent there were high levels of fear that the outcome would see them losing custody of their child(ren). Meanwhile, non-resident parents were often frustrated at the process and the time involved:

> *"The impact it's had on me is very distressing… I just feel stuck." (Father/Pursuer, LA Applicant No 2).*
>
> *"It was horrific… The whole process… aged me in years and gave me sleepless nights…" (Mother/Defender, LA Applicant No 4).*

5.1.2 Several indicated that the experience had impacted negatively on their physical or mental health, often citing suffering from (or worsening) periods of depression and anxiety.

5.1.3 Others noted that it had meant huge financial losses (both for fully private clients and for legally aided clients that had to pay privately at certain times), and for all who took part in an interview it had meant a worsening of relations with the other party which may have also impacted vicariously on the child(ren):

> *"I never thought for a second that it would end up costing me around £45k to see my kids." (Father/Private Pursuer No 2).*
>
> *"If you're a dad, and you go to court, even if you win, you still lose. You win the contact but the child is living with a mum who is not happy with the outcome, so that has to impact on them, even when its right and they want to see you." (Father/Private Pursuer No 4).*
>
> *"I've had mums in very well paid jobs and are highly educated and they are now in thousands of pounds of debt because they are £15k later after a court fight, so that's then the added stress of debt on top of everything else." (Support Service No 6).*

5.2 Perceived Impact on the Child(ren)

5.2.1 In relation to the impact the disputes had on the child(ren), this was more mixed. Some parents indicated that they had tried to shield their child(ren) from the dispute and what was happening in the case, and felt that the child(ren) was therefore relatively unaffected. However, not all were sure that the other party had adopted the same approach. Others noted that, while they had tried to shield them, they had still noticed

a deterioration in the child(ren)'s behaviour, attitude, and general happiness/wellbeing. Some older children were reported to have suffered from stress and anxiety ahead of court dates or arranged contact visits with the non-resident parent (including siblings not subject to the contact dispute), with others noting behavioural issues upon the child(ren)'s return after a visit with the non-resident parent:

> *"My [child] has developed two personalities, they have a personality for when they're with me and a personality for when they're with dad… But I deal with a lot of behaviour issues when he comes back." (Mother/Defender, LA Applicant No 17).*

5.2.2 Some professional respondents also discussed the impact that contact disputes can have on the child(ren) caught up in them. Some outlined the immediate impacts, such as being unsettled or exhibiting bad behaviour, etc., while others highlighted the detrimental link between levels of familial conflict and the longer term impacts this can have as the child(ren) grows up:

> *"I have a lot of mums who say that they really struggle to get the child settled, and they have a child who's becoming aggressive and having tantrums, or wetting the bed, or not engaging, or disengaging, and that has an impact on the mum because she's then stressed." (Support Service No 6).*

5.3 Voice of the Child(ren)

5.3.1 Importantly, all professionals interviewed were keen to stress that the best interests of the child(ren) were paramount, and should be at the forefront for both parties and professionals throughout the dispute and resolution attempts:

> *"Of course, we have an obligation to our clients, but overall we have an obligation to the best interests of the child and I put that at the forefront in any case." (Solicitor No 9).*
>
> *"I try to avoid bringing people back to court constantly, because I think it just ups the tempo and creates a sense of more fight, more fight, more fight… And that's just not good for the children." (Sheriff No 4).*
>
> *"You will always try and do what you think is in the best interests of the child, that is what your responsibility is, and that's the principal purpose of the exercise. So you will fashion an outcome as best you can in order to have regard to the interests of the child." (Sheriff No 1).*

5.3.2 Views were expressed that all too often, fighting parties lost sight of the interests of the child(ren) and that solicitors, Sheriffs and support services played a vital role in reminding conflicted parents of this. It was suggested that SLAB could further endorse the key principle of placing the best interests of the child(ren) at the centre of any contact dispute via their communication to parties in order to remind all parties of this:

"In quite a significant proportion of cases… [parties] are approaching the matter from the perspective of their own wishes and interests rather than making any effort to focus on the welfare of the child… whatever the real issue between the parties is [it's] not really the child." (Sheriff No 6).

"What we're talking about is the interests of the child, so what the parents want, and sometimes they don't quite see this, but some parents, not all, but some will look at contact as a win and lose." (Sheriff No 1).

"If we can help to shift people in a positive direction and get them to think about the children. That's the core of all the work we do, we're bothered about the children… People who are perfectly fine parents lose a bit of their capacity to parent... and generally they both want their children not to be impacted, so family mediation is perhaps a bit easier than some other forms of mediation as the children provide common ground." (Mediation Service 1, Respondent No 1).

5.3.3 Despite professionals' attempts to safeguard the interests of the child(ren), there was a perception by support organisations that the voice of the child(ren) is perhaps not adequately considered in the current pre-court and court experience. While Sheriffs mentioned that they would, where appropriate, seek the views of a child(ren) either directly or via a Child Welfare Report or by appointing a curator, this was not a regular occurrence and support organisations cited that, often, the child(ren) has no opportunity to input to proceedings and can feel "*overlooked*" in the process:

"One of the key issues is that children don't have a voice in court, and even when they do have it's not listened to." (Support Service No 6).

"It's something we don't do enough of is coming from a human rights based approach for children. It's not just about their safety, it's about their voice and about being valued as a human being." (Support Service No 6).

"The most informed decision is the best decision, and so I think that means taking on board children's views." (Support Service No 3).

5.3.4 Sheriff's did indicate that they valued the opportunity to speak with the child(ren), and parents too said that their cases had progressed more satisfactorily where their child(ren) had been able to communicate their views and experiences to the judiciary:

"Children quite often have a very unique perspective which is very important to hear." (Sheriff No 3).

"The Sheriff asked to speak to the children and get their viewpoint and from that day it was very, very clear that they did not want any contact with their father, and that made the case a lot easier." (Mother/Defender, LA Applicant No 23).

> *"People really do need to take on board more of what the children are saying." (Support Service No 2).*

5.3.5 It is worth noting that views were expressed that *"not every Sheriff is comfortable talking to children" (Sheriff, No. 4)* and this may influence whether they are invited to give views as part of the process. It was also noted that the Sheriff's perception of what is in the child(ren)'s best interest could vary from both parents:

> *"The Sheriffs view should be, obviously in terms of the Children Scotland Act, should be the best interests of the child, the welfare of the child be paramount, but their view of what's best for that child probably will not be what either of those parents think is in their child's best interest." (Mediation Service 1, Respondent No 2).*

5.3.6 While giving the child(ren) a voice was seen as key, some support services argued that court appearances/speaking to Sheriffs could be intimidating and, for those that may have experienced domestic abuse this may also be re-traumatising. In such cases, allowing third sector support organisations to speak on behalf of the child(ren) may be in the child(ren)'s best interests, it was felt. The importance of having an independent party to speak to the child(ren) (particularly in cases where domestic abuse is alleged/involved) was stressed by support workers who were interviewed. Where a specialist support service was already involved with a family/child(ren), it was felt they would have a good oversight of the case and have already established trust with the child(ren) meaning that they may be able to speak on their behalf. However, it was felt that this was often blocked because of perceptions by solicitors and the courts that such support services were not 'impartial'.

5.3.7 Education teams, schools, social work and the police were all seen to be effective at identifying children at risk and for referring them to appropriate services, and solicitors too were praised as putting the needs of the child(ren) at the forefront of discussions. Again, it was felt that some parents may start to lose sight of this once cases become entrenched and lengthy, however, and may need reminding of the rights of the child(ren):

> *"Solicitors need to keep reminding parents that, yes, they've got rights, but so do the children." (Support Service No 1).*

5.3.8 Specifically, in relation to court proceedings, comments were made that the F9 form[13] for children was not user-friendly in its current design. Some parents had been contacted by schools who had been asked to assist a child(ren) filling in the form but felt unable or uncomfortable to do so. Others spoke of their child(ren) receiving the form directly and not knowing what to do and feeling anxious because they were unable to ask for help from their parents. Others said that their child(ren) felt that they were lying or being deceitful filling in forms without their parents. Often other family

[13] It should be noted that this form should be used in all relevant cases (i.e. Section 11 cases in the Sheriff Court) whether legally aided or not.

members and friends were asked to oversee the child(ren) completing forms. In addition to being non-child friendly, some parents commented that they felt the F9 forms were not taken seriously by solicitors or Sheriffs. The Scottish Government is currently undertaking research which may include further perceptions of this[14].

5.3.9 Some respondents (including parents and support organisations) felt strongly that the voice of the child(ren) should be heard more formally at the very early stages of any contact dispute and that this may bring more cases to a quicker resolution. They suggested that there should be the ability/requirement to seek and consider the views of the child(ren) during the application process for legal aid in order to avoid approving funding for parents who are seeking inappropriate/unsafe contact:

> *"When the Legal Aid Board are considering applicants, they should consider the views of the child first, because they could save a lot of money. Children are far less likely to make false allegations and it could just save a lot of time, a lot of money and a lot of heartbreak." (Mother/Defender, LA Applicant No 22).*
>
> *"I think there needs to be an acknowledgement by the Legal Aid Board that for quite a lot of the cases contact is just not safe, and we shouldn't be having to prove evidence beyond a reasonable doubt that it's not safe, you just need to listen to the kids." (Support Service No 6).*

[14] https://news.gov.scot/news/improving-experiences-of-family-justice

6 Other Issues Identified

6.1 Other Issues

6.1.1 Whilst not specifically targeted or extensively explored within the research a number of other issues were also discussed by respondents, these include:

- Issues relevant to/the experiences of self-representing party litigants;
- Issues relevant to domestic abuse cases;
- Issues relevant to black and minority ethnic (BME) families; and
- Issues relevant to other vulnerable clients.

6.1.2 While this chapter outlines the results from these discussions it is stressed that the data provides an indication of some of the potential issues these groups may face, it does not claim to provide exhaustive coverage. The report does not draw any conclusions in this respect, but rather includes this information as a point of interest for any future research in these areas.

6.2 Self-Representation/Party Litigants

6.2.1 For those not eligible for legal aid but who feel they cannot afford to pay a solicitor, self-representation is an option. Solicitors and Sheriffs, however, were in agreement that party litigants, or parties who represent themselves in court, stood little chance of success. Nonetheless, they recognised that this was the only option open to some parties.

6.2.2 For two respondents who had represented themselves, the experience was described as "*shocking*" and "*overwhelming*":

> *"This whole thing is a learning process - family law. I was very naïve - I thought that I had a right to see the children and they have a right to see me, and that if I go to court, the judge will slap down a hammer and get it sorted. But it just doesn't happen that way." (Father/Private Pursuer No 1).*

6.2.3 One private pursuer recalled having to take a colleague to court to help him take notes while his legally aided ex-partner appeared to have several solicitors present at the hearing. The same pursuer did comment, however, that the court clerks had been very helpful in guiding them through the process and that they had employed the services of a solicitor to review his paperwork before submitting anything to the court.

6.2.4 Another private pursuer had not had such a positive experience at court:

> *"A party litigant should be treated fairly, but I felt that the Sheriff just got tore into me for daring to go to court without a lawyer." (Father/Private Pursuer No 4).*

6.2.5 It was also noted that there is very little support or information available for people having to represent themselves. Based on feedback from party litigants the best, and maybe only, advice available often comes from peers, i.e. garnering the views and experiences of people who have attempted the same action previously.

6.3 Implications for Domestic Abuse Cases

6.3.1 A number of agencies involved in supporting victims of domestic abuse participated in the research, as did a number of women who had been victims of such abuse. They highlighted several ways in which the legal aid system specifically, and/or wider civil legal system more generally, was not well suited to dealing with child contact disputes in such situations. While it should be noted that some of these issues are more widely applicable, they will be more acutely relevant where there has been a history of abuse.

Implications for the Legal Aid System

6.3.2 One potential complication for victims of domestic abuse can be a lack of evidence to support their legal aid application around means, especially if they are not in receipt of passported benefits. One mother spoke of never having been allowed her own bank account, not knowing what resources were available to her and having no way to evidence what she did or did not have (now or historically):

> *"When I was able to track down my partner's bank account, I wasn't eligible because we had got money… albeit I had never seen any of that money and I have no penny to my name now." (Mother/Defender, LA Applicant No 23).*

6.3.3 For this party, court proceedings did not go ahead initially because the solicitor did not have legal aid funding in place and was not prepared to work without that financial agreement in place. Once it had been established that she personally had no means, the legal aid system did "*kick in*" and worked well, but the time taken to get legal aid in place was seen as "*too long*":

> *"I wish the Legal Aid Board would pay more attention to personal circumstances, instead of just focussing on the financial. They don't seem to ask, "Why are you in that mess?" I was never able to explain to them that I was never allowed my own bank account, or that I have never been allowed to work and that he had now taken all of my money." (Mother/Defender, LA Applicant No 23).*

6.3.4 SLAB noted awareness that in domestic abuse situations it might not be possible for an applicant to provide the normal level of verification asked for and indicated that they had mechanisms in place to allow for this. When made aware of such circumstances the assessment for legal aid would be completed with the limited information available at that point in time. SLAB also has discretion in the legislation to disregard capital held within bank accounts if made aware of the circumstances. Each case would be considered on its own merits, but requires all relevant information to be provided by the solicitor or applicant upon application.

6.3.5 Women who have been abused and are in employment as well as being the resident parent were perceived (by support services) to suffer disproportionately - working to earn money in order to provide for their child(ren) and also having to defend themselves against an abusive partner (either via contributions towards legal aid or being ineligible as they earn too much), despite being a victim. Sometimes, it was felt that the eligibility for legal aid was too 'finance' focussed and did not take account of extenuating circumstances:

> *"The legal aid criteria now is really really tight and we're finding that a lot more families don't meet the threshold for that, and so that's one of the barriers in terms of people trying to fight their contact, they don't want their child to have contact with this person that's been very abusive but at the same time they can't afford to do it either." (Support Service No 6).*

6.3.6 It should be noted that this may indicate a lack of awareness regarding the financial eligibility criteria; these underwent an extensive change in 2009, when the upper limit for disposable income was increased from £10,306 to £25,000. The current upper income limit for eligibility is £26,239[15].

6.3.7 Another significant issue facing victims of domestic abuse is the need to provide evidence that they had attempted non-legal routes to resolution. Some cases were 'clear cut' and abuse could easily be evidenced to SLAB meaning that they did not have to show these efforts, whereas others found it more difficult, especially if the abuse had not been reported to police or had been psychological and emotional, rather than physical. One support service suggested that some solicitors advised clients not to raise issues of domestic abuse as this would complicate their case at court and they felt this was wrongly silencing victims to try and achieve speed/efficiency through the courts.

6.3.8 Further, both individuals and support services suggested there needed to be greater sharing of information between the criminal and civil systems - both for SLAB and the courts (again, this is an issue currently being explored in more detail via Scottish Government research[16]). While recognising that some people would tell lies in an attempt to block contact by the other party, it was felt that more should be done to work with those who have legitimate claims, especially where a solicitor can evidence this in the application via earlier police reports, criminal charges, etc.:

> *"The other party, who has been so harmful and so abusive, why can SLAB not check his criminal record and see what the background to this case is? That's my biggest issue with the Legal Aid Board." (Mother/Defender, LA Applicant No 23).*

6.3.9 It should be noted, however, that SLAB apply statutory tests and so are constrained in what information can be accessed/reviewed. Such checks may be more appropriate

[15] https://www.slab.org.uk/public/civil/eligibility/index.html#More_information_about_civil_legal_aid
[16] https://news.gov.scot/news/improving-experiences-of-family-justice

for the courts to carry out, however, this would still result in cases getting to court where some feel this is inappropriate.

6.3.10 It was also suggested that SLAB could establish a list of solicitors who are specialists in dealing with domestic abuse cases and make this available to relevant parties. This may help some of the most vulnerable defenders find a reliable solicitor and someone who would be sympathetic to and cognisant of the complexities involved in such cases.

Implications for Other Parts of the Civil Legal System

6.3.11 There was some perception that courts could be too eager to put contact in place and dismiss any allegations of abuse by the other party. Indeed, several women and support organisations spoke of "*the system*" being closed to allegations of abuse and lacking awareness of domestic abuse issues and how this should impact on the way that cases are handled. This lack of awareness was seen as systemic and evident across various stages of the pre-court and court experience:

> *"We don't have people with the skills to pick up on the subtleties of abuse in court reports - we could do with something more specialist." (Solicitor No 14).*
>
> *"Some of our Sheriffs are pro-contact I would say… so the client's expectations are that, unless there's a great amount of criminality and proven criminality and domestic abuse, that the Sheriff's going to award contact." (Support Service No 6).*
>
> *"One solicitor said that it wasn't likely to go to court if it was just tit-for-tat. I would say that having to go to hospital to get my head glued because he had hit me was more than just tit-for-tat." (Mother/Defender, LA Applicant No 21).*

6.3.12 While not a victim of domestic abuse, one applicant was uncomfortable about the need to read out addresses in court. They were happy for the Sheriff to be made aware of this information but felt it should not be read aloud so that others (including the pursuer) can hear this. This was also highlighted by support services as a particularly significant issue for victims of domestic abuse, they considered this could risk the victim's safety and potentially undermine previous work to find safe accommodation. It should be noted however, that the system already allows for the use of 'care of' addresses to be used, so perhaps this highlights a lack of awareness in this respect.

6.3.13 It was also stressed that mediation was not appropriate in cases of domestic abuse:

> *"One of the main things for us is that these women should never be forced to attend mediation - it's just another way of controlling them, and it's just not appropriate." (Support Service No 3).*

6.3.14 Women who had been in abusive/controlling relationships often said that fathers were wrongly motivated in their child contact efforts and that they were using access to the child(ren) to try and keep control over the mother and her movements. Similar views were expressed by support organisations:

"My son started coming to me and telling me that his dad had told him it was my fault we were divorcing and his whole personality towards me changed, and that was a case of his father using contact to alienate him against me." (Mother/Defender, LA Applicant No 21).

"A lot of the fathers will use the children to get to the mum. And, that's emotional abuse and manipulation of the kids just to help them [fathers] get what they are wanting." (Support Service No 5).

6.3.15 Some also commented that abusers had been able to continue their threatening behaviour or intimidation in court as they were not separated from victims at civil hearings. One mother spoke of having to share the waiting area with her ex-partner and them using this as an opportunity to intimidate her, as well as being intimidating in the court room (e.g. laughing while she gave evidence, blocking her route to the public toilets, blocking in her car in the court car park, etc.). It was felt that something should be done to prevent such vicarious trauma or abuse.

6.4 Implications for BME Families

6.4.1 Some professional respondents discussed the implications for BME families. They commented that there was an increasing number of cases in court that involve at least one parent from minority ethnic backgrounds. Unique challenges are presented if they do not speak English and they can find the court system particularly challenging, due to the language used, etc.

6.4.2 People living in minority ethnic communities can also have a lack of informal social support if they have moved to Scotland away from their families in other countries, and this can make non-legal negotiations more challenging. In some communities, 'elders' or others were cited as playing an important role in trying to keep families out of court:

"In some cases, and in some cultures there seem to be efforts made by wider family members to try and broker some sort of resolution. Sometimes people who are in authority in those communities can try and broker a solution, but this does not always work." (Sheriff No 3).

6.4.3 Interviews with one Sheriff and one support organisations suggest that, sometimes, involvement of such adults can be problematic, however, if the parties are being penalised for not following cultural norms, and so community supports are not always impartial.

6.4.4 Issues of relocation can be particularly relevant here if one party wishes to leave the country with the child(ren). Courts will often attempt to speed these cases through the judicial process, it was seen, however this was not always possible. Solicitors may also be more reluctant to take such cases on board, especially if there is ambiguity around where cases will be heard and if legal aid will apply in other jurisdictions, etc.

6.5 Other Vulnerable Clients

6.5.1 While the research did not focus on the 'management' of vulnerable clients going through the civil legal system, this was raised by some of the solicitors and support organisations interviewed.

6.5.2 Parties experiencing mental health challenges may find the system especially difficult and as a result might require additional advice and support which the current civil legal system does not take into account, it was perceived by some solicitors and support organisations. Solicitors and support services commented that these are often the most vulnerable clients yet no extra provision appear to be put in place (including, for example, additional time spent with solicitors to explain things in more detail, extra counselling or support from third parties or extra help to understand and manage outcomes of cases).

6.5.3 Cases that involve significant drug or alcohol abuse by one party can also complicate proceedings and mean added delays where parties fail to attend hearings or solicitor meetings due to being incapacitated. Arguing that there is a lack of parental responsibility in such cases, especially where the defender has a problematic drug or alcohol habit, is difficult it was suggested by solicitors and support organisations.

7 CONCLUSION

7.1 DISCUSSION OF THE KEY FINDINGS

7.1.1 Overall, it would seem that there are no typical contact dispute cases - each case is different, with parties' respective expectations, willingness to engage, personal, social and financial circumstances all impacting on progress, and is dealt with by the professional services based on its own merits. This means that approaches taken and timescales involved necessarily vary significantly from one case to the next and systems need to be sufficiently flexible to account for this.

7.1.2 Despite this, there was a common consensus that, at the root of most child contact disputes was a communication problem between the two parties which required assistance from external sources. Indeed, all available services (solicitors, family mediation and courts) appear to assist with and/or facilitate the conversation and negotiations that are required. Further to this, the emotional state of the parties (i.e. the level of hurt and anger prevalent) was a key driver for the suitability of certain approaches.

7.1.3 Accessing the right support at the right time was considered crucial to finding a successful outcome. For example, mediation services noted that this approach works best when tried early in the dispute, however, it will not be suitable in situations where emotions are still running high. Similarly, many solicitors noted that they would have to spend considerable amounts of time allowing clients to vent their frustrations before they could begin to move the process forward. Meanwhile, in other cases, the intervention of a Sheriff (as an authority figure) is required, regardless of the passage of time, and typically this is necessary in the most entrenched cases.

7.1.4 The timely access to legal aid funding was also seen as crucial, as delays to securing this risked further prolonging breaks in contact, leading to frustration and the further entrenchment of views, and perceptions among the opposing side of deliberate delaying on the part of the applicant. While a few perceived that providing financial evidence as part of the application process was challenging, most individuals however, had found the application process itself fairly straightforward.

7.1.5 Those granted legal aid expressed enormous gratitude and relief as this provided their only chance to obtain professional advice and pursue/defend against contact. Respondents noted that they would have had no other options had legal aid funding not been available to them, thus leaving many non-resident parents with no/limited/unsuitable contact to their child(ren), or resident parents trying to defend themselves in court or having to agree to unsuitable/unsafe contact arrangements. Similarly, professional respondents highlighted the social function that legal aid serves in helping parents to maintain relationships with their child(ren) and in helping families to avoid situations escalating and requiring the intervention of other services, such as social work, domestic abuse services, or the criminal justice system.

7.1.6 Perceptions of differences in terms of the decision making process between private and legally aided parties was mixed. There was a perception among all groups that where one party is legally aided and the other is not, the legally aided party may be more inclined to be obstructive or delay progress of the case, or draw out the proceedings. Whether this is a deliberate tactic employed to frustrate the other party's efforts (or in the hope that the action is dropped as the other party runs out of money), to exert control over the other party, or is more a consequence of a lack of focus/urgency on resolving the case (which can often be provided by reminding private clients of the costs), or higher expectations on the part of the private client is not clear, and indeed may vary from case to case.

7.1.7 Ultimately, although the research did not set out to measure levels of success of each resolution method, it seems this would be very difficult to achieve as in many cases parties simply stop using a service and there is no understanding why: they might have reached an agreement and the arrangements are suitable to both parties, they might have dropped the case, or they might have relocated and started using services elsewhere. Even where cases are technically closed following a court order many parties do not consider the matter resolved or satisfactorily concluded. Indeed, several respondents indicated they had been back and forward to court over a number of years, requiring the court to take decisions at each stage. This suggests that for some, at least, the process does not develop new parental relationships, and/or that greater time is required to elapse before such relationships can become embedded. It may be that as the child(ren) gets older and is able to effectively communicate their preferences to both parties that conflict may lessen, however, due to the selection criteria of cases for inclusion in this research, this work has been unable to assess the experiences or such an impact over the longer term.

7.2 Issues for Further Exploration

7.2.1 The research revealed some suggestions that the way the legal aid system is set up may nudge clients and solicitors into litigious routes and/or to bring motions to move to court quicker than is perhaps necessary or desirable. The nature of the funding requirements/payment protocols perhaps makes court action more attractive for solicitors, although it should be noted that all solicitors involved in this research indicated that they would always try and adopt the best approach for their client and the child(ren) involved and were not driven by money/funding. Exploring whether the current statutory funding/fee structure is suitable across all case types, and whether all necessary work is considered/captured is something to consider.

7.2.2 There was also a strong sense across the research that more needed to be done to identify when and where legal aid funding is being abused or misused, for example by helping a recipient be obstructive, deliberately delay cases, and/or continue a vendetta against the other party. It was suggested that SLAB needed to be more alert to this activity and proactive in identifying and penalising such abuse of funds. There is currently a perception among some of those interviewed that not enough is done to tackle this, and this requires to be changed to give parties greater confidence in the

legal system and the use of legal aid funds. Similarly, it was felt there is currently a lack of consequences/sanctions for breaching court orders, and this is perhaps an area for the courts to consider in order to provide greater confidence in the system overall.

7.2.3 It also seems that, for those who require legal aid funding in order to deal with their contact dispute, there is a perceived barrier to ADR options as A&A or legal aid funding for mediation or contact centres cannot be accessed without first employing a solicitor. As such, it was considered that people are forced into more adversarial situations and/or risk the pursuit of such ADR options depending upon the views of the solicitor. In such situations, solicitors may also be acting as administrators for the process, dealing with the application process and forwarding the bill from the service to SLAB, without any significant professional input from themselves (which may act as a disincentive for solicitors to get involved). An alternative, therefore, may be for some mechanism to be developed to allow other relevant services to invoice SLAB directly for eligible individuals, or for alternative sources of public funds to be made available to facilitate access without the need for solicitors to facilitate this.

7.2.4 In addition, attendance and engagement with mediation services, court ordered or otherwise, is not enforceable. While the nature of the mediation process likely necessitates a voluntary process, this may again act as a barrier to earlier ADR options. Mediation services suggested implementing a requirement to attend an intake meeting/information session ahead of pursuing a litigious route as this may assist in improving the uptake of mediation. This, combined with the ability for public funding to pay for mediation and contact centres separate to SLAB funding routed via solicitors would be advantageous, it seems. However, considerations would have to be given to whether this requirement could be implemented in all child contact cases and not just those where SLAB funding is being provided in order to avoid disparities in the system.

7.2.5 The voice of the child(ren) was also highlighted to be of paramount importance to all professionals involved in contact cases. While those parties that took part in the research were also highly alert to the need to protect their child(ren)'s rights (either to protect them against unsuitable contact or to exercise their right to have contact with both parties), it was suggested by many professional groups that often the best interests of, and the voice of the child(ren) can be overlooked, with parents losing sight of this once the conflict becomes entrenched. It was suggested that there was a need to develop more effective, standardised, and frequently used methods for engaging with the child(ren) about their views, experiences and preferences during the course of child contact disputes.

7.2.6 Overall, from the interview responses it would appear that there are no winners in child contact disputes. While the legal aid system is working well to allow many of the most vulnerable people to try and reach satisfactory conclusions in their disputes, some parts of the system might benefit from review. This research is one element within a larger landscape of work currently being undertaken in this field and it is suggested that these findings be read alongside other pieces of research and narrative in order to help improve understanding of the pressures at play in resolving child contact disputes, to everyone's mutual benefit.