The Family Advice and Information Service:

A Changing Role for Family Lawyers in England and Wales?

Final Evaluation Report

Authors: Janet Walker, Peter McCarthy, Stephen Finch, Mike Coombes, Martin Richards and Caroline Bridge

With

Research Co-ordinator:

Janet Walker  
Newcastle Centre for Family Studies,  
Newcastle University

Research Team:

Peter McCarthy, Karen Laing, Angela Melville  
Newcastle Centre for Family Studies,  
Newcastle University

Mike Coombes, Simon Raybould  
Centre for Urban and Regional Development Studies,  
Newcastle University

Steven Finch, Sarah Kitchen, Natasha Wood  
National Centre for Social Research (NatCen)

Caroline Bridge  
School of Law  
Manchester University

Martin Richards, Shelley Day Sclater, Poppy Webber  
Centre for Family Research  
Cambridge University
Contents

List of Figures .......................................................... v
List of Tables .......................................................... vii
List of Maps ........................................................... xiii
Foreword ................................................................. xv
Executive Summary ................................................... xix

Part 1 Evaluating Changes in Family Law Practice ........................................ 1
Chapter 1 The Research Context ..................................................... Janet Walker 3
Chapter 2 The Research Programme ........................................... Janet Walker 23
Chapter 3 Family Law Practice Before and After FAInS .................. Peter McCarthy and Karen Laing 31
Chapter 4 Client Perspectives on Family Law Practice ................. Sarah Kitchen, Natasha Wood and Steven Finch 57
Chapter 5 The Cost of FAInS Provision ....................................... Mike Coombes, Simon Raybould and Colin Wren 85
Chapter 6 Understanding Family Law Practice ............................ Caroline Bridge 93

Part 2 Exploring and Understanding the Impact of FAInS ......................... 129
Chapter 7 Adopting a Client-Centred Approach to Family Law ........ Angela Melville 131
Chapter 8 The Use of Personal Action Plans ................................. Angela Melville and Karen Laing 159
Chapter 9 A Holistic Service: Solicitors as a Gateway to Other Support Services .......................... Angela Melville 187
Chapter 10 Managing Client Expectations .................................. Angela Melville 207
Chapter 11 Support for Separating Families: Children’s Perspectives Martin Richards, Shelley Day Sclater and Poppy Webber 225
<table>
<thead>
<tr>
<th>Part 3</th>
<th><strong>Learning from FAInS</strong></th>
<th>249</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter 12</td>
<td>Looking to the Future of Family Law Practice</td>
<td>251</td>
</tr>
<tr>
<td><strong>Annexes</strong></td>
<td>275</td>
<td></td>
</tr>
<tr>
<td>Annexe 1</td>
<td>Research Design and the Pre-Pilot Study</td>
<td>277</td>
</tr>
<tr>
<td>Annexe 2</td>
<td>Evaluating the Family Advice and Information Service</td>
<td>295</td>
</tr>
<tr>
<td>Annexe 3</td>
<td>The Generalisability of the Research Findings</td>
<td>321</td>
</tr>
<tr>
<td>Annexe 4</td>
<td>Preparing for FAInS Practice</td>
<td>351</td>
</tr>
<tr>
<td>Annexe 5</td>
<td>Personal Narratives</td>
<td>365</td>
</tr>
</tbody>
</table>
## List of Figures

| Figure 3.1 | Comparison of the characteristics of pre-FAInS and FAInS clients | 34 |
| Figure 3.2 | Comparison of matters involved in pre-FAInS and FAInS cases | 35 |
| Figure 3.3 | Orders applied for | 45 |
| Figure 3.4 | Services to which clients were referred or about which they received advice | 47 |
| Figure 4.1 | Usefulness of the personal action plan | 69 |
| Figure 4.2 | Satisfaction with residence arrangements, for resident and non-resident parents (FAInS clients) | 75 |
| Figure 4.3 | Helpfulness of solicitor: % saying ‘very helpful’ or ‘quite helpful’ | 81 |
| Figure 4.4 | Thinking about the concerns that you had when you first went to see the solicitor, would you say that you are now more worried about them, less worried, or do you feel about the same? | 83 |
| Figure 6.1 | Encouraging mediation for clients in dispute in 2003 | 109 |
| Figure 6.2 | Encouraging mediation for clients in dispute in 2005 | 109 |
| Figure 6.3 | Skills essential for the day-to-day practice of family law | 118 |
| Figure A2.1 | Matters identified during the first meeting between client and solicitor | 305 |
| Figure A2.2 | Developing a theory-of-change model for FAInS | 319 |
| Figure A3.1 | Comparison of research cases with pilot area married populations | 341 |
| Figure A3.2 | Probability of pilot married populations becoming FAInS clients | 341 |
| Figure A3.3 | Distribution of pre-FAInS cases in each category by IMD of home location | 347 |
| Figure A3.4 | Distribution of FAInS cases in each category by IMD of home location | 347 |
List of Tables

Table 3.1  Number of solicitors involved in each phase of the research  33
Table 3.2  Number of cases processed by participating solicitors  33
Table 3.3  Marital status of clients  34
Table 3.4  Employment status of clients  35
Table 3.5  Number of children (including stepchildren and adult children)  35
Table 3.6  Completion of Client Information Forms  37
Table 3.7  Completion of Client Information Forms in each of the study areas  37
Table 3.8  Duration of the first meeting  38
Table 3.9  Regression analysis of the length of the first meeting  38
Table 3.10  Issues discussed at the first meeting  39
Table 3.11  Written information provided to clients  40
Table 3.12  Referral and advice about using other services  41
Table 3.13  Types of services which FAInS clients were advised to use or to which they were referred  42
Table 3.14  The status of cases six months after the first meeting  43
Table 3.15  Work undertaken up to the six-month follow-up  44
Table 3.16  Involvement of other fee earners  44
Table 3.17  Whether client had been referred to, advised to attend or given information about other services  46
Table 3.18  Appointments arranged for clients to attend at other services  46
Table 3.19  Clients’ attendance at other services  46
Table 3.20  Referrals for mediation  47
Table 3.21  Issues discussed at meetings other than the first  48
<table>
<thead>
<tr>
<th>Table</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.22</td>
<td>Completion of work by gender of clients and gender of solicitors</td>
<td>52</td>
</tr>
<tr>
<td>3.23</td>
<td>Most important issues as identified by the solicitor after the first meeting</td>
<td>53</td>
</tr>
<tr>
<td>3.24</td>
<td>Issues discussed during the first meeting</td>
<td>54</td>
</tr>
<tr>
<td>3.25</td>
<td>Referral to other services and completion of a Client Information Form</td>
<td>55</td>
</tr>
<tr>
<td>3.26</td>
<td>Use of public funding and completion of a Client Information Form</td>
<td>55</td>
</tr>
<tr>
<td>3.27</td>
<td>Involvement of other fee earners and completion of a Client Information Form</td>
<td>55</td>
</tr>
<tr>
<td>4.1</td>
<td>Total sample in phase 1</td>
<td>59</td>
</tr>
<tr>
<td>4.2</td>
<td>Total FAInS and pre-FAInS samples in phase 1</td>
<td>59</td>
</tr>
<tr>
<td>4.3</td>
<td>Total FAInS interview sample in phase 2</td>
<td>60</td>
</tr>
<tr>
<td>4.4</td>
<td>FAInS interview sample: response by area</td>
<td>61</td>
</tr>
<tr>
<td>4.5</td>
<td>Follow-up interviews by pilot area</td>
<td>61</td>
</tr>
<tr>
<td>4.6</td>
<td>Gender and age of clients</td>
<td>62</td>
</tr>
<tr>
<td>4.7</td>
<td>When you were first thinking about visiting a solicitor, how did you find out about the firm?</td>
<td>63</td>
</tr>
<tr>
<td>4.8</td>
<td>Why did you choose to go to that particular firm on this occasion?</td>
<td>64</td>
</tr>
<tr>
<td>4.9</td>
<td>Issues and concerns held by clients</td>
<td>65</td>
</tr>
<tr>
<td>4.10</td>
<td>Additional concerns for all FAInS clients whose main issue was divorce/relationship breakdown</td>
<td>66</td>
</tr>
<tr>
<td>4.11</td>
<td>Was the other person involved in the main issue you went to see the solicitor about your …?</td>
<td>67</td>
</tr>
<tr>
<td>4.12</td>
<td>Contact with solicitor since first meeting</td>
<td>67</td>
</tr>
<tr>
<td>4.13</td>
<td>Contact with other solicitors’ firms</td>
<td>68</td>
</tr>
<tr>
<td>4.14</td>
<td>Services solicitors suggested or to which they refer clients</td>
<td>70</td>
</tr>
<tr>
<td>4.15</td>
<td>Contact with services recommended by solicitors</td>
<td>70</td>
</tr>
</tbody>
</table>
Table 4.16  Percentage of clients who contacted services recommended by solicitors 71
Table 4.17  Helpfulness of services contacted (by contacts with services) 71
Table 4.18  All services contacted independently 72
Table 4.19  Helpfulness of services contacted independently (by contacts with services) 73
Table 4.20  Residence arrangements for children 74
Table 4.21  Frequency of contact with non-resident children 74
Table 4.22  Satisfaction with residence arrangements for children 75
Table 4.23  Satisfaction with contact arrangements for children 76
Table 4.24  Reasons for dissatisfaction with contact arrangements 76
Table 4.25  Communication with other parent about children 77
Table 4.26  Services contacted to find help or support for children 78
Table 4.27  Status of case 79
Table 4.28  How issues had been resolved 79
Table 4.29  Likelihood of case going to court 80
Table 4.30  Helpfulness of solicitor in suggesting other services 81
Table 4.31  Overall satisfaction with service from solicitors 82
Table 5.1  Identifying the costs study ‘FAInS cases’ by area and pilot phase 86
Table 5.2  Summary of the Legal Help cases available for the costs study 87
Table 5.3  Legal Help cases of under twelve months’ duration opened in the two research phases: case populations 88
Table 5.4  Legal Help cases of under twelve months’ duration opened in the two research phases: matter type and Legal Help cost 88
Table 5.5  Legal Help cases of under twelve months’ duration opened in the two research phases: Legal Help cost and Certificated cases 89
Table 5.6  Summary of the cost implications of the analyses 91
<table>
<thead>
<tr>
<th>Table</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Table 6.1</td>
<td>Questionnaires sent to solicitors and returned to NCFS at time 1</td>
<td>94</td>
</tr>
<tr>
<td>Table 6.2</td>
<td>Questionnaires sent to solicitors and returned to NCFS at time 2</td>
<td>95</td>
</tr>
<tr>
<td>Table 6.3</td>
<td>Frequency with which solicitors encourage clients to take a stronger stand</td>
<td>104</td>
</tr>
<tr>
<td>Table 6.4</td>
<td>Frequency with which solicitors encourage a conciliatory stand</td>
<td>105</td>
</tr>
<tr>
<td>Table 6.5</td>
<td>Reasons solicitors use mediation</td>
<td>113</td>
</tr>
<tr>
<td>Table 6.6</td>
<td>The importance of skills in day-to-day practice (Mather’s findings)</td>
<td>117</td>
</tr>
<tr>
<td>Table 7.1</td>
<td>Legal issues discussed by solicitors and clients during pre-FAInS observations</td>
<td>154</td>
</tr>
<tr>
<td>Table 7.2</td>
<td>Other issues discussed by solicitors and clients during pre-FAInS observations</td>
<td>155</td>
</tr>
<tr>
<td>Table 7.3</td>
<td>Legal issues discussed by solicitors and clients during FAInS observations</td>
<td>156</td>
</tr>
<tr>
<td>Table 7.4</td>
<td>Other issues discussed by solicitors and clients during FAInS observations</td>
<td>156</td>
</tr>
<tr>
<td>Table 8.1</td>
<td>Issues recorded in the personal action plans</td>
<td>172</td>
</tr>
<tr>
<td>Table 8.2</td>
<td>Client actions listed in the personal action plans</td>
<td>174</td>
</tr>
<tr>
<td>Table 8.3</td>
<td>Agencies to be contacted by the client</td>
<td>175</td>
</tr>
<tr>
<td>Table 8.4</td>
<td>Solicitor actions recorded in the personal action plans</td>
<td>176</td>
</tr>
<tr>
<td>Table 8.5</td>
<td>Services and agencies to be contacted by the solicitor</td>
<td>178</td>
</tr>
<tr>
<td>Table 8.6</td>
<td>Issues recorded on the Progress Update forms</td>
<td>182</td>
</tr>
<tr>
<td>Table 8.7</td>
<td>Client actions recorded on the Progress Update forms</td>
<td>184</td>
</tr>
<tr>
<td>Table 8.8</td>
<td>Solicitor actions recorded on the Progress Update forms</td>
<td>184</td>
</tr>
<tr>
<td>Table A1.1</td>
<td>Research objectives and the researchers contributing to them</td>
<td>278</td>
</tr>
<tr>
<td>Table A1.2</td>
<td>Client consent to further research involvement</td>
<td>282</td>
</tr>
<tr>
<td>Table A2.1</td>
<td>Classifying the candidate areas by supply- and demand-side factors</td>
<td>300</td>
</tr>
<tr>
<td>Table A2.2</td>
<td>Record of First Meeting forms returned</td>
<td>302</td>
</tr>
<tr>
<td>Table A2.3</td>
<td>Marital status of clients</td>
<td>303</td>
</tr>
<tr>
<td>Table A2.4</td>
<td>Age of clients by gender</td>
<td>303</td>
</tr>
<tr>
<td>Table A2.5</td>
<td>Resident children by gender of parents</td>
<td>304</td>
</tr>
<tr>
<td>Table A2.6</td>
<td>Non-resident children by gender of parents</td>
<td>304</td>
</tr>
<tr>
<td>Table A2.7</td>
<td>Topics discussed in first meeting</td>
<td>306</td>
</tr>
<tr>
<td>Table A2.8</td>
<td>Written information given to clients at the first meeting with a solicitor</td>
<td>306</td>
</tr>
<tr>
<td>Table A2.9</td>
<td>Meeting Record forms returned</td>
<td>307</td>
</tr>
<tr>
<td>Table A2.10</td>
<td>Distribution of meetings during phase 1 including FAInS clients in Cardiff and Exeter</td>
<td>307</td>
</tr>
<tr>
<td>Table A2.11</td>
<td>Distribution of meetings during phase 2</td>
<td>308</td>
</tr>
<tr>
<td>Table A2.12</td>
<td>Follow-up questionnaires sent and returned relating to phase 1, including FAInS clients in Cardiff and Exeter</td>
<td>309</td>
</tr>
<tr>
<td>Table A2.13</td>
<td>Follow-up questionnaires sent and returned relating to phase 2 cases</td>
<td>309</td>
</tr>
<tr>
<td>Table A2.14</td>
<td>Observations of initial meetings between solicitors and clients</td>
<td>314</td>
</tr>
<tr>
<td>Table A2.15</td>
<td>Interviews with solicitors</td>
<td>316</td>
</tr>
<tr>
<td>Table A2.16</td>
<td>Number of client interviews conducted</td>
<td>316</td>
</tr>
<tr>
<td>Table A3.1</td>
<td>Estimated distances clients in each area travelled to solicitors</td>
<td>322</td>
</tr>
<tr>
<td>Table A3.2</td>
<td>Profiling the pilot area populations</td>
<td>339</td>
</tr>
<tr>
<td>Table A3.3</td>
<td>Matter types in the LSC caseload data</td>
<td>342</td>
</tr>
<tr>
<td>Table A3.4</td>
<td>The LSC caseload data and the time-frame of the pilots</td>
<td>343</td>
</tr>
<tr>
<td>Table A3.5</td>
<td>Numbers of cases in categories for the generalisability analyses</td>
<td>345</td>
</tr>
<tr>
<td>Table A3.6</td>
<td>Cases with client address adequately postcoded: % of all in category</td>
<td>345</td>
</tr>
<tr>
<td>Table A3.7</td>
<td>Cases from three highest IMD decile neighbourhoods: % of all with postcodes</td>
<td>346</td>
</tr>
<tr>
<td>Table A3.8</td>
<td>% of clients who were female</td>
<td>348</td>
</tr>
<tr>
<td>-------------</td>
<td>-----------------------------</td>
<td>-----</td>
</tr>
<tr>
<td>Table A3.9</td>
<td>% of clients who were aged under 35</td>
<td>348</td>
</tr>
</tbody>
</table>
## List of Maps

<table>
<thead>
<tr>
<th>Map A3.1</th>
<th>Journeys undertaken to see a solicitor</th>
<th>323</th>
</tr>
</thead>
<tbody>
<tr>
<td>Map A3.2</td>
<td>Catchment areas defined as convex hulls</td>
<td>324</td>
</tr>
<tr>
<td>Map A3.3</td>
<td>Pattern of ‘journey to solicitor’ for research cases in Stockton &amp; Hartlepool</td>
<td>326</td>
</tr>
<tr>
<td>Map A3.4</td>
<td>Pattern of ‘journey to solicitor’ for research cases in Leeds</td>
<td>328</td>
</tr>
<tr>
<td>Map A3.5</td>
<td>Pattern of ‘journey to solicitor’ for research cases in Lincoln</td>
<td>330</td>
</tr>
<tr>
<td>Map A3.6</td>
<td>Pattern of ‘journey to solicitor’ for research cases in Basingstoke</td>
<td>332</td>
</tr>
<tr>
<td>Map A3.7</td>
<td>Pattern of ‘journey to solicitor’ for research cases in Cardiff</td>
<td>334</td>
</tr>
<tr>
<td>Map A3.8</td>
<td>Pattern of ‘journey to solicitor’ for research cases in Exeter</td>
<td>336</td>
</tr>
</tbody>
</table>
Foreword

Research Task

In January 2002, a consortium of researchers co-ordinated from the Newcastle Centre for Family Studies (NCFS) at Newcastle University was commissioned by the Legal Services Commission (LSC) to evaluate the new Family Advice and Information Networks which were to be piloted in selected areas of England and Wales. Their introduction followed the decision not to implement Part II of the Family Law Act, and the LSC was tasked with encouraging experienced family law practitioners to adopt a more holistic role in providing information, advice and guidance to publicly funded private family law clients. The evaluation was extended by the LSC when it became clear that the original timetable for the pilots had slipped, and we completed our data collection in March 2006.

Fewer family law practitioners than we had hoped opted in to the pilots, which were rebadged as the Family Advice and Information Service at the end of the pre-pilot phase. Although we have attempted a robust before-and-after study of family law practice, there were a number of constraints on our research design. Nevertheless, we believe that the findings discussed in this final report are sufficiently robust to provide an evidence base for future policy and practice decisions.

Throughout the evaluation, we have worked closely with our funders to ensure regular exchanges about the research and about the policy and practice questions facing the LSC. We held monthly update meetings throughout the data collection period and presented regular and frequent written reports relating to interim findings. The feedback from the evaluation enabled the Commission to modify the pilots as they evolved and the research team to modify its methodology to ensure that our findings have utility. It is fair to say that some practitioners had difficulty understanding exactly what changes in practice FAINs/FAInS were promoting, and that they had little expertise or time to invest in developing a network of local support services as the original policy intent implied. Nevertheless, we have learned a great deal about the issues and tensions in modern-day family law practice and the role of family solicitors when family relationships break down.

Towards the end of our evaluation the future of legal aid funding re-emerged as a matter of some concern and we have endeavoured to place our findings within the context of some continuing uncertainty about the future shape of publicly funded legal services. There are, we believe, lessons to be learned from the evaluation of FAInS regarding the implementation of new initiatives and debates to be had about the appropriate role and remit of lawyers within an area of law which is distinctive in so many ways.

The Research Team

The evaluation has been multi-faceted and complex. In order to ensure that all the aspects of FAInS could be investigated thoroughly we assembled a highly experienced team of researchers all of whom had been engaged either in the evaluation of information meetings or in the evaluation of new mediation provisions, both under the auspices of the Family Law Act 1996. The responsibility for managing the evaluation and for overseeing initial data collection was taken by NCFS and colleagues in other locations developed their work in collaboration with the NCFS team. There has been just one change of membership in the original research consortium: at the end of the pre-pilot phase, Professor Gwynn Davis and his researcher, Hilary Woodward, at Bristol University, left
the project and their work was taken over by Caroline Bridge from the Faculty of Law at Manchester University. As the co-ordinator of this consortium I would like to express my grateful thanks to everyone who has contributed to this study: Professor Gwynn Davis and Hilary Woodward at Bristol University; Stephen Finch, Sarah Kitchen and Natasha Wood at NatCen; Professor Martin Richards, Shelley Day-Selater and Poppy Webber at Cambridge University; Caroline Bridge at Manchester University; and my colleagues at Newcastle University – Peter McCarthy, Karen Laing, Dr Angela Melville, Professor Mike Coombes, Dr Simon Raybould, and Professor Colin Wren. We were ably assisted in the early stages of the evaluation by two of my postgraduate students – Dr Gabriela Misca and Dr Sherrill Hayes – and by Sue Mitchell who was the administrator for the project, and, in the later stages, by the NCFS secretarial team, Janette Pounder and Jane Tilbrook, who have painstakingly prepared successive drafts of this report for consideration by the LSC and our Research Advisory Committee. Michael Ayton, our copy-editor in NCFS, has ensured that our outputs are both accessible and meaningful. It has been an interesting and challenging study at all times.

Acknowledgements

In order to conduct an evaluation of this kind, researchers need the co-operation of many people. Members of the LSC who set these pilots up and nurtured them until we had completed our study were particularly supportive of our endeavours at all times. We would like to record our thanks specifically to Sarah White and Bryan Harvey (both of whom are no longer at the Commission) who initiated FAInS, and to Angela Lake-Carroll, Sara Kovach-Clark, Eleanor Druker, and Nerissa Steel who have worked closely with us. My special thanks go to Sara Kovach-Clark who met with me regularly and ensured that there was regular and open exchange of information at all times. Numerous other members of the LSC have provided information and support at various times over the last five years. Our colleagues in the LSC have had to manage the tension between policy priorities and research requirements, nudging busy solicitors to comply with the evaluation and stay committed to FAInS. We are grateful to all of them.

The Advisory Committee was established under the wise guidance of Professor Dame Hazel Genn and we are grateful to her and to the other members: Gary Barker, Claire Simpson, Rosemary Carter, Phillip Dear, Brian Harvey, Mary McLeod, Margaret Richards and Pascoe Pleasance. They offered helpful advice, particularly during the early stages of the evaluation when we were designing our approach and endeavouring to go beyond a merely descriptive study of FAInS practice.

An evaluation of this kind reflects the experiences of those delivering the programme under study and those receiving it. It would have been impossible to derive the depth of information presented here without the co-operation of family lawyers and their clients. We made further administrative demands of practitioners, requiring them to provide case-level data at several periods during the study, and we took up their time with interviews and in discussions about their work. We are particularly grateful to those solicitors who allowed us to observe them in action with their clients. We know that this is not an easy situation, but we learned a huge amount about their practice by being able to sit in their offices and simply watch them at work. We hope that this report will be rewarding and helpful to them.

The participating solicitors also had to ‘sell’ the research to their clients, many of who were distressed when they first met their solicitor. Not all found this an easy task, but
many secured research consent for us to make contact directly with clients and follow their progress through the separation and divorce maze. Throughout this report, the voices of the clients are evident as are the voices of some of their children (Chapter 10). Their contribution to the research has been tremendous and we are very appreciative of the time families have given us. People who are facing family dissolution and disruption are frequently distressed and vulnerable and we have been pains to acknowledge their generosity in allowing us to talk to them, welcoming us into their homes, and sharing intimate details of their lives.

We offer our heartfelt thanks to everyone who participated in the study. Without their contribution this report would be seriously impoverished. At all times we have endeavoured to reflect their views faithfully though their own words without distorting or compromising the information they gave us. We quote research respondents verbatim wherever possible to illustrate the key themes that emerged during our data analyses. We have changed clients’ names to protect their confidentiality and anonymity and have not identified individual lawyers nor their firms.

This Report

Our final evaluation report was submitted to the LSC in January following discussions and feedback on numerous earlier drafts and decisions to shift much of the technical and descriptive material to annexes. The report is written primarily for policymakers and practitioners but we have tried to make it accessible to a wider audience. The chapters are divided into three sections. The first section describes the evaluation and the policy context and includes the primarily quantitative findings from our before-and-after study of FAINs. In Section 2 we present the primarily qualitative data derived from many hours of observation and interviews with solicitors and their clients. Section 3 contains the concluding chapter and a number of detailed annexes.

The report represents the views of the research consortium, which are not necessarily those of the Legal Services Commission or our Advisory Committee. We approached the evaluation and the preparation of our numerous reports as independent researchers with no vested interest in the findings. We took the policy intent of FAINs as our starting point and developed a theory-of-change model to guide our thinking and understanding. We are in accord about the messages which emerge from the evaluation and our conclusions reflect common understanding of the issues, and of the challenges for the future.

Emeritus Professor Janet Walker
Research Co-ordinator
May 2007
Executive Summary

Janet Walker

In July 2001, the Legal Services Commission (LSC) sought views on the proposal to establish Family Advice and Information Networks (FAINs) which would be spearheaded by family lawyers franchised to conduct publicly funded work. The decision had been taken by the new Labour Government not to implement Part II of the Family Law Act 1996, and ways were being sought to develop services within the existing legislation which would meet the varied needs of people facing relationship breakdown. The new FAINs were to be piloted and an extensive programme of research was designed to provide evidence about changes in legal practice and their impacts on families. During the evaluation, FAINs were renamed as the Family Advice and Information Service (FAInS).

The findings from the evaluation are presented in three sections. In the first section we discuss the research context and present the findings from our before-and-after study of FAInS practice. In Part 2, we present the findings from the qualitative elements which included observations of clients’ first meetings with a solicitor and in-depth interviews with solicitors, clients and children whose parents were participating in the evaluation. In Part 3, we present the conclusions from the evaluation and discuss these in the light of proposed changes in legal services and legal aid funding.

1 Preparing for FAINs and the Evaluation

The Research Context

Research evidence has been accumulating since the 1970s indicating that the separation and divorce of parents can have profoundly negative consequences, particularly for children, and that adverse outcomes can be reduced if parental conflict is minimised and children can maintain a positive and loving relationship with both parents. Reforms in family law in most western jurisdictions have been characterised by a clear concern to reduce the social, emotional, psychological and financial costs of divorce, and the role of family lawyers has been brought into sharp relief as new initiatives and processes, such as family mediation, have endeavoured to keep family law cases out of court and to find other, less damaging, ways of resolving disputes.

The introduction of FAINs followed the publication of two research reports relating to the provision of information and to new arrangements for the delivery of publicly funded mediation. Undoubtedly the provision of comprehensive information had been highly valued by people facing separation and divorce, but a one-size-fits-all approach was not effective and people needed information to be personally tailored to their own individual circumstances. The majority of people in those studies consulted a family lawyer during the process of separation and divorce, and lawyers seemed to be the main gateway to a range of other support services, notably mediation.
For a number of years there had been optimism that the majority of separating couples would choose to settle all their disputes in a conciliatory manner, through family mediation rather than through the courts. Section 29 of the Family Law Act required potential publicly funded applicants to explore the mediation option first, but the evaluation of the new provisions found that they did not lead to a significantly greater take-up of mediation. The biggest barrier to increasing the use of mediation was the difficulty of persuading both parties to attend. Although family law solicitors have been supportive of mediation, they have never regarded it as a process which would suit everyone, and many reported that few clients could be persuaded to try it. Both studies found that, on measures of satisfaction, solicitors scored rather higher than mediators. Moreover, consulting a solicitor was not necessarily indicative of a contentious divorce. The evidence from both studies demonstrated that, if mediation was to be cost-effective, only those cases which could realistically benefit from it should be referred. Since the majority of referrals are made by solicitors, they could be expected to be able to make this judgement and to know when parties are ready to mediate. Family lawyers, therefore, emerged as the most obvious professionals to develop a coherent, co-ordinated approach to accessing a range of services which would enable people to receive advice, information and specialised support at the time they need it.

The Family Advice and Information Networks were conceived as the obvious way forward. They were designed to build on best practice in family law and existing support services and they sought to provide a holistic and comprehensive response to the concerns, difficulties and problems people experience when relationships break down. The idea was to develop a seamless service through which family law clients would receive tailored information, help and advice and be encouraged to use other services whenever it was appropriate to do so. The holistic approach would entail an enhanced first meeting between a solicitor and a client, during which a wide range of matters would be discussed and a personalised action plan (PAP) drawn up. Thereafter, the solicitor would manage the progress of the case, ensuring that appropriate referrals were made to other services. The advent of FAINs provided a timely endorsement of the Family Law Protocol drawn up by the Law Society of England and Wales as a framework for family law practice, and an appropriate vehicle by which it could be fully operationalised.

The Research Programme

The LSC launched FAINs as a pilot programme and the evaluation sought to compare processes and outcomes prior to the introduction of FAINs with those following its implementation. A before-and-after approach was regarded as likely to provide the most robust evaluation and this was confirmed during a pre-pilot phase. The pre-pilot began in 2002 in five areas (Cardiff, Exeter, Milton Keynes, Newcastle upon Tyne and Nottingham). At the end of the pre-pilot, many FAINs solicitors were still attempting to come to grips with what FAINs actually was and how a network of services might be established. Most saw it as little more than a ‘tweaking’ of existing best practice. It was clear that networks did not really exist and were unlikely to be developed without considerable external input. As a result, the LSC decided to change the name from Family Advice and Information Networks (FAINs) to the Family Advice and Information Service (FAInS), taking the emphasis away from the notion of networks and focusing more on the interaction between solicitors and their clients. Nevertheless, the expectation that FAInS practitioners would be the gateway to a range of support services remained central to the new service.
Experienced family solicitors were invited by the LSC to get the new initiative off the ground. These solicitors were likely to be demonstrating already their ability to offer a more holistic approach, but they were required to undertake professional development training to hone their skills. Specifically, they needed to be able to explore their clients’ personal circumstances and the issues concerning them, using a client information form designed by the LSC and by conducting an enhanced, diagnostic first meeting. They would then draw up a PAP, which would aid the client in moving between different services. The primary ethos of the FAInS approach, therefore, was the development of listening skills, a focus on collecting background information from the client, diagnosing the range of problems each client faces, and developing a personal action plan for each client, which might include referrals to a range of other services.

**The Main Pilot**

After the pre-pilot, two of the areas (Cardiff and Exeter) continued as pilot areas and four new areas were selected as pilots for the main study (Basingstoke, Leeds, Lincoln, and Stockton & Hartlepool). Solicitors in these areas were invited by the LSC to participate in the FAInS programme. During the main study we obtained three distinct client data sets:

1. FAInS data from solicitors in Cardiff and Exeter.
2. Pre-FAInS data from solicitors in the four new pilots (‘before’ data).
3. FAInS data from solicitors in the four new pilot areas (‘after’ data) after they had undergone FAInS training.

The evaluation also included a number of other activities both before and after the introduction of FAInS in the new pilot areas: observation of solicitors in action; surveys of family law practice; observation of FAInS training and other FAInS events; follow-up telephone interviews with clients; in-depth interviews with solicitors and with their clients; and in-depth interviews with a small group of children whose parents had agreed to participate in the research. During the main study we:

- conducted 70 observations of solicitors’ initial meetings with clients
- interviewed 19 solicitors before they trained as FAInS practitioners and 22 solicitors after they had gained experience as FAInS providers
- interviewed 916 clients on the telephone some six months after their initial meeting with a solicitor, and a further 44 clients in-depth face to face
- interviewed 18 children aged between the ages of 8 and 16

Participating solicitors in the new pilot areas provided us with information about their new publicly funded family law clients in two time periods: between September 2003 and February 2004 (the pre-FAInS sample), and between June and November 2004 (the FAInS sample). In total, 115 solicitors took part in the first period and 84 during the second. The FAInS solicitors in Cardiff and Exeter provided FAInS data during the first period only. Our analysis of before-and-after practice involved 54 solicitors who participated in both periods and provided both pre-FAInS and FAInS data. Our observations and interviews included a wider range of solicitors, all of whom had
participated in some aspects of the evaluation. During the main pilot, we received information relating to 1,528 clients who saw pre-FAInS solicitors, and 1,954 who saw FAInS solicitors. The majority of clients (72%) were female and nearly half were married, although the majority were living apart from their spouse at the time of their first meeting with a solicitor. By far the greatest number of matters presented related to children’s issues (59%), followed by divorce (40%), finance and property (27%) and domestic violence (20%). Contact with children was discussed in over half of all cases, and residence in nearly a third.

In any evaluation, it is essential to determine the extent to which findings are generalisable to wider populations. Fewer solicitors opted to take part in the pilots than we had hoped and we received information about fewer clients than we had expected. Nevertheless, our work on generalisability indicates that the pilot areas were fairly representative of the country as a whole on most key factors other than the ethnic mix of the resident populations. The research samples were also very close to being representative with respect to gender, although people living in more deprived areas were over-represented. We have concluded that the research findings can be read with a considerable degree of confidence and that they are generalisable to a wider population.

Changes in Family Law Practice

The 54 solicitors in our before-and-after study provided data relating to 1,223 cases during the pre-FAInS period and 1,047 cases in the FAInS period. The clients and their cases were remarkably similar in both phases.

Our analyses of the data provided by the solicitors suggest that FAInS had little impact on what solicitors do with their clients. We found that the content of the first meeting changed little as a result of FAInS and there was no evidence that solicitors undertook wider diagnostic interviewing. Solicitors were just as likely to focus primarily on legal issues connected with residence, contact, housing and protection from violence. We noted that some FAInS first meetings were slightly longer than those pre-FAInS, but there was considerable variation between FAInS practitioners and not all engaged in a longer first meeting.

The FAInS approach was expected to provide information and advice that were tailored to each client’s personal circumstances. Again, we found little discernible difference between pre-FAInS and FAInS practice. There was little change in the provision of information to clients and no increase in referrals to other agencies. Despite the emphasis on FAInS providing a gateway to other agencies, few referrals were made to services other than mediation or services offering help relating to domestic violence. Indeed, fewer mediation referrals were made after the introduction of FAInS. Moreover, the evidence suggests that the FAInS approach has not changed the way cases are managed. It seems that during the first meeting with a new client, the solicitor discusses the case, decides what the key issues are and acts accordingly. Most of the discussion seems to centre on legal issues and solicitors appear to accord little importance to discussing issues such as counselling, welfare benefits, child support, contact with grandparents, health/mental health services and supporting children. Moreover, we found no differences with regard to the progression of cases beyond the first meeting with a solicitor, applications for court orders and the completion of work on a case. We were not altogether surprised that we found little change between pre-FAInS and FAInS practice, and believed that there were a
number of explanations for this. We sought to shed light on our findings and explore the possible explanations for them in other elements in our research programme.

Client Perspectives

A central element in the evaluation of FAInS relates to clients’ experiences of receiving legal services. The FAInS initiative is built on the assumption that clients will make greater use of specialist services and will be satisfied that they have received information and advice tailored to their individual needs and circumstances. We undertook a retrospective survey of clients in both the pre- and post-FAInS periods, approximately six months after their first contact with a solicitor, in order to obtain clients’ views about: the services offered by their solicitors; the take-up of other services; and outcomes in terms of litigation, mediation, agreements and court proceedings. The pre-FAInS and FAInS samples were very similar: the majority of clients interviewed were female and around two-thirds were aged between 25 and 44. Although the main issues clients took to their solicitor related to relationship breakdown or children, they told us about many additional concerns relating to money, debt, pensions, property and domestic abuse. Only a relatively small proportion of clients said that they had had no further contact with the firm since the first meeting, and there was no discernible difference between pre-FAInS and FAInS clients in terms of contact with the solicitor. Around a half said that their solicitor had suggested another agency (most commonly mediation), and FAInS clients were more likely than pre-FAInS clients to say that they had been advised to use counselling services and around three quarters of those who did had found the services helpful. Some clients used other services, such as Citizens Advice Bureaux and GPs, which had not been mentioned by their solicitor. The most common issues with which they had wanted help from other agencies were managing finances and debt and mental health problems. Although most (85%) of the FAInS clients could recall their PAP, its use after the first meeting was limited.

Relationships with Children

One of the main aims of FAInS was to facilitate the dissolution of broken relationships in ways which minimise distress to parents and children and which promote ongoing family relationships and co-operative parenting. Accordingly, we wanted to know how well parents were communicating some six months after their contact with a FAInS practitioner, and whether relationships between separated parents and their children were positive and ongoing.

The majority of non-resident parents interviewed said they had frequent contact with their children, although 46 per cent of FAInS clients who were non-resident parents reported that they did not have any contact with at least one of their children and 53 per cent of FAInS clients who were resident parents said that at least one of their children never saw the other parent. Not surprisingly, satisfaction with residence arrangements was higher among clients whose children were living with them. Satisfaction with contact arrangements was much lower, with 32 per cent of pre-FAInS and 33 per cent of FAInS clients describing themselves as dissatisfied. Fewer than half of non-resident FAInS clients were satisfied with contact arrangements. Moreover, a substantial proportion of both pre-FAInS and FAInS clients did not regard communication with the other parent as being positive. Indeed, 45 per cent of FAInS and 39 per cent of pre-FAInS clients described communication as ‘very poor’. We have concluded that FAInS did not help to
improve communication between parents, which clearly remained a problem for many clients. Our six-month follow-up interviews suggest that FAInS did not realise the LSC’s expectations as regards promoting more co-operative parenting and addressing concerns and disputes about arrangements for children. Many parents felt that their situation had had an adverse impact on their children. Some 46 per cent of pre-FAInS and 41 per cent of FAInS clients had sought help or advice for their children from GPs, schools and child counsellors, but rarely did solicitors help them to access support for children.

Outcomes

In terms of outcomes, there were no significant differences between pre-FAInS and FAInS clients. Over a third of FAInS and 31 per cent of pre-FAInS cases had been resolved through a court ruling by the time we conducted our six-month interviews, although most of these clients had attempted conciliatory approaches first. Neither pre-FAInS nor FAInS clients whose cases had yet to be resolved were optimistic that this could be achieved without resorting to court.

In terms of client satisfaction, pre-FAInS and FAInS clients gave similarly high ratings for most aspects of solicitor services such as giving legal advice, providing information, and identifying client problems. The only significant difference in terms of the rating of solicitor services related to the solicitor suggesting other services. Nearly three-quarters of FAInS clients rated the solicitor as ‘very’ or ‘quite’ helpful in this respect, as against just under three-fifths of pre-FAInS clients.

It is clear that the solicitors involved in the evaluation were, in most cases, already meeting the expectations of clients before they became FAInS practitioners, and adopting the FAInS approach did not increase client satisfaction further. Nor did the FAInS approach influence how clients felt about their situation. Not surprisingly, clients whose cases had been resolved were significantly more likely to be less worried about the concerns they had had at the time of their first meeting with their solicitor, but there was no difference in this respect between pre-FAInS and FAInS clients.

The Cost of FAInS Provision

One of our research tasks has been to examine the financial costs to the LSC of FAInS being implemented across England and Wales in respect of publicly funded cases. We focused on examining the costs associated with firms participating in the evaluation as it was not possible to disaggregate costs to individual practitioners. We relied on information made available to us from the LSC’s information systems, which inevitably had limitations as we were not able to identify FAInS cases as accurately as we had hoped. We undertook two sets of analyses: the first looked at the cases of the 24 firms which had provided both ‘before’ and ‘after’ data; the second used the cases in the ‘after’ cohort (the policy-on cohort), and these were compared with all other publicly funded family law cases opened by all the solicitors in other firms during the pilot period (the policy-off cohort). We had access to a large database of Legal Help cases and a smaller data set of Certificated cases. In our ‘before’ and ‘after’ samples, 17 per cent of all pre-FAInS and 15 per cent of FAInS cases had become Certificated at the time of our six-month research follow-up. One key factor which determines whether cases become Certificated appears to be matter type: cases which involved issues relating to children and property have a higher chance of becoming Certificated.
Our analyses of costs indicate that FAInS may provide a modest cost-saving because FAInS cases appeared to have a lower probability of becoming Certificated. On the other hand, Legal Help costs were higher for FAInS cases. The marginal cost advantage of FAInS cases was fully negated, moreover, when the £140 per case premium paid by the LSC (£100 for providing FAInS and £40 for contributing to our evaluation) was taken into account. We concluded, therefore, that a national roll-out of FAInS would only be cost-neutral if the additional sum paid to FAInS providers were rather less than half that paid during the pilot. Only if the premium paid to FAInS providers during the research period were set aside would FAInS practice have the potential to reduce the costs of public funding for private family law cases. Since practitioners are unimpressed by the general levels of legal aid remuneration it seems unlikely that they would opt in to FAInS, however, without there being some financial incentive to do so.

Understanding Family Law Practice

In order to understand whether FAInS changed legal practice from the solicitors’ perspective, and if so how, we wanted to know more about how solicitors approached their work before becoming FAInS practitioners. We conducted a survey in June 2003 of all new FAInS providers in Cardiff and Exeter and potential FAInS providers in the four new main pilot study areas. We repeated the survey in November 2005 in order to compare responses when the solicitors had all gained experience as FAInS practitioners.

In June 2003, we received 94 completed questionnaires (a response rate of 69%) and in 2005 we received 69 questionnaires (a response rate of 48%). Forty-eight solicitors responded to both questionnaires. The majority of survey respondents worked in firms with between three and seven other family solicitors, and cases involving divorce and post-divorce matters made up around 70–80 per cent of their workload. The solicitors were mostly relatively experienced in family law, most were members of Resolution, and many had trained as mediators.

Solicitors in our study characterised their clients as vulnerable, and noted that family law cases require better case management and more sensitive handling because the emotional content often clouds issues and can render them difficult to resolve. On the whole, the solicitors were overwhelmingly pro-settlement and conciliatory in approach. Solicitors told us that achieving a good and fair settlement provides them with the greatest degree of job satisfaction and that they always have in mind the importance of ensuring that the best interests of children are met. A smaller number alluded to the dilemma of having to balance these interests with achieving as much as possible for their own client. Although the welfare of children was a major priority, this was not the overriding concern of most solicitors, including those with the longest experience of providing FAInS.

The desirability of agreement being reached without recourse to the courts was embedded in the consciousness of solicitors in the evaluation. Nevertheless, solicitors were aware that some clients want revenge and are not always conciliatory when they first come for legal advice. The solicitors were satisfied with the outcome when a fair outcome had been achieved with minimal acrimony, through negotiation rather than the courts. Solicitors were generally supportive of mediation but noted that clients who are prepared to mediate are probably likely to reach agreement through a good solicitor anyway. Some solicitors remained sceptical about the value of mediation and FAInS did not shift this view. Indeed, overall, FAInS practice did not make any significant difference to the way in which solicitors used mediation.
Lawyers or Therapists

Solicitors in the study acknowledged that their job took them beyond dealing with purely legal issues. Although their practice changed very little as a result of FAInS, the majority of FAInS practitioners were particularly conscious of the need to understand clients’ emotional concerns and refer them to another agency for help. Most of these solicitors had been attracted to FAInS because it promotes a holistic approach and they were pleased that the ‘all-around’ service they offered was being formalised. The solicitors regarded being a sensitive listener and a skilled negotiator as two of the essential skills of a family lawyer. By the time of our second survey, FAInS solicitors also regarded knowing about other services as an essential skill. Solicitors were of the opinion that most clients want them to be a lawyer, social worker, therapist and friend, and that most of them frequently misunderstand family law and the divorce process when they first see a solicitor.

The Impact of FAInS

Overall, FAInS had made little impact on practice. The only solicitors who said that their practice had changed substantially were those who had decided to employ a counsellor in-house. They regarded this as very positive. Most solicitors maintained that FAInS is what they have always done and that all that had happened had been a ‘tweaking’ of best practice. Nevertheless, the majority believed that FAInS should be rolled out nationally because it constitutes best practice, but only if there is greater integration of non-legal services. Indeed, many solicitors believed that FAInS can only work where there is a strong network of local services and agencies and solicitors have sufficient information and knowledge about them. If this is achieved, FAInS has the potential, in their view, to bring about a more holistic approach to family law issues. They would not want the administrative burden to increase, however. The overwhelming majority cited administration and paperwork as their main sources of dissatisfaction in their work, and described the LSC paperwork as the worst aspect of publicly funded family law work. Forms were regarded as unnecessarily complex and FAInS had added to the burden and increased the bureaucracy. Some solicitors noted the low remuneration for legally aided work as a further frustration, and remarked that the additional amount paid to FAInS practitioners had been attractive. The additional form-filling had neutralised this perceived advantage, however.

2 Understanding the Impact of FAInS

Our before-and-after approach revealed few differences between pre-FAInS and FAInS practice. We sought to understand the findings further using qualitative methods, involving interviews with families and solicitors and observations of FAInS practice.

Adopting a Client-Centred, Holistic Approach to Family Law

The FAInS approach to client–lawyer interaction stresses the need for family lawyers to adopt a client-centred, rather than an issue-centred, approach. One mechanism for achieving this was the introduction of a client information form, devised by the LSC, for clients to complete in advance of attending their first meeting with their solicitor. Solicitors had mixed views about the form and many simply did not use it. Most did not
find it helpful and it did not enable them to prepare for the first meeting. Our observations
demonstrate that it is often difficult to distinguish clearly between legal and non-legal
issues in family law cases. Although solicitors in both pre-FAInS and FAInS practice
discussed a range of issues with their clients, they tended to do so within a legal
framework. Solicitors practising family law appear to have a rather broad understanding
of what types of issues may fall within a legal framework. Although FAInS solicitors
tended to ask more often about the impact of the client’s situation on the children, FAInS
did not change the way most solicitors interacted with their clients beyond encouraging
them to adopt a more open-questioning style. This technique encouraged clients to tell
their story in their own words, although solicitors were skilled in bringing clients back to
the legal matters in hand if personal accounts went on for too long.

Another mechanism for encouraging a client-centred and more holistic approach was the
use of personal action plans. The PAP was conceived as a document which would be
drawn up by the solicitor and the client to clarify key issues, indicate the actions to be
taken and provide an introduction to the client if other agencies became involved. Few
had used the PAP in the way envisaged by the LSC. During a six-month period in 2004,
we received PAPs relating to 1,218 clients. From these, we selected a random sample of
200 PAPs for in-depth discourse analysis. Solicitors tended to adopt one of three main
approaches to the PAP. One approach, characterised as issue-centred, was to summarise
very concisely the issues at hand with little if any background information. The language
was impersonal and the PAP referred mainly to legal problems. Such documents would
have had little meaning for other professionals who might see the client. The second
approach went a little further to include statements about the roles of the client and the
solicitor. The third approach, which was more client-centred, included a narrative
describing the client’s concerns and summarising the client’s ‘story’. These PAPs were
more personal in tone and written in ways which would inform other professionals about
the client’s situation, thus conforming to the LSC’s expectations. Generally, the PAPs
became an aide-memoire for solicitors rather than a document the clients could use. From
our analysis of PAPs we can discern no strong evidence that they changed solicitors’
practice or their approach to family law clients.

We found considerable differences between the ways in which male and female lawyers
prepared PAPs. Female solicitors were inclined to render PAPs more personal and
informal, and to have recognised the client’s emotional concerns. They were also more
likely to have identified domestic violence as an issue. A number of clients told us they
had been reluctant to discuss domestic abuse, and unless solicitors are able to
identify/uncover problems of abuse they can easily be left undiagnosed. Our quantitative
analysis of the research forms completed by solicitors indicates that clients who presented
their lawyer with concerns about domestic violence were slightly less likely to have had a
PAP completed, perhaps because solicitors are sensitive to recording such details on a
document the client would be taking home.

*FAInS as a Gateway to Other Support Services*

One of the key aims of FAInS is to help clients deal with a range of problems and guide
them towards other support services wherever necessary. The agency to which solicitors
were most likely to refer both pre-FAInS and post-FAInS was family mediation. The
majority of the most senior FAInS practitioners had both trained and practised as
mediators and so were sympathetic to the role played by family mediation in family law
cases. Surprisingly, perhaps, only 14 per cent of pre-FAInS and 16 per cent of FAInS
clients were given information about mediation, advised to use it or referred to a mediator. In our interviews with solicitors who were supportive of mediation almost all of them explained that it is not always appropriate. Moreover, financial issues were considered to be less suited to mediation. The solicitors who thought that mediation was rarely successful pointed to delays in processing cases in mediation and the non-attendance of one party as the causes. During the FAInS pilot, FAInS solicitors were allowed to use their own judgement as to whether they referred a client to mediation. About half of them used the power of exemption and these were generally the solicitors who were less supportive of mediation. Overall, we found no variation between pre-FAInS and FAInS practice in respect of the way in which solicitors described mediation to their clients, although some FAInS practitioners were a little more positive about its potential benefits.

About half the FAInS clients we interviewed in depth could not recall mediation being discussed by the solicitor. Of those who could, most had not attended mediation, either because the other party was unwilling to go or because they could foresee little benefit in attempting mediation. We interviewed only seven FAInS clients who had been to mediation, and it appears that for five of them it had not been particularly successful, for a variety of reasons.

Many pre-FAInS solicitors did not regard it as their role to refer clients to other services, or had experienced problems doing so in the past. The pre-FAInS solicitors who were the most pro-active in referring clients tended to use Relate, CABx and welfare advice agencies most often. Nevertheless, almost all pre-FAInS practitioners had hoped that FAInS would allow them to extend their knowledge of and contact with other services. However, during our observations, we detected very few differences between pre-FAInS and FAInS practice in terms of discussions about other services, although several FAInS solicitors said they were more conscious of the need to consider whether a client would benefit from counselling. We also observed some pre-FAInS and FAInS solicitors backing away from discussing difficult issues such as domestic violence.

When we talked to clients we were in no doubt that many cases were complex, and involved a cluster of legal and non-legal issues. For the most part, when clients had received services this had not been the result of their having discussed the issues with their solicitor. Although wider, non-legal issues may have been discussed in meetings with FAInS solicitors, clients did not give us the impression that their solicitor had actively helped them to access other services. It would appear that the task of offering a seamless holistic service, in which solicitors identify other support services that might be of use to their clients, has met with mixed success. Solicitors who had previously made regular referrals to other services, primarily mediation, had continued to do so as FAInS practitioners. Those who rarely referred clients prior to FAInS did not change their practice after becoming FAInS providers. Clients with complex legal and non-legal issues were more likely to be in contact with other support services through other gateways, rather than through their solicitor. Moreover, while clients appreciated their solicitor’s concerns about those problems, very few had followed up on any suggestions that they should seek help elsewhere. Our interviews and observations highlighted some gaps in service provision: waiting times for Relate and CABx were problematic in some areas; reduced opening hours in some Contact Centres were causing difficulties; some male clients pointed to a dearth of support groups for single or non-resident fathers; and there were inadequate support services for children.
Managing Client Expectations

There is little doubt that separation and divorce can be very stressful for everyone concerned. Most of the solicitors we interviewed felt that clients had unrealistic expectations about what solicitors could do for them, often believing that they could solve all their problems with the wave of a wand. However, clients we interviewed tended to explain that they had expected to receive legal advice and information and that their solicitor would solve their legal problems rather than all of them. Some clients were clearly more focused and more sure than others about what they wanted when they first visited their solicitor.

In observations of practice, we noted that solicitors attempted to shape their clients’ expectations so that they would fit within the existing legal framework. Moreover, solicitors were at pains to point out what outcomes were reasonable to achieve, and often referred to what the court would be likely to decide. Solicitors tended to portray going to court in very negative terms. Discussions about children’s best interests were usually raised only in efforts to sway a client to move towards a particular outcome. Talking about children appeared primarily to be a strategy to urge clients to be reasonable, rather than a way of focusing on future parenting behaviours. Solicitors appeared to be providing advice within the shadow of the law in order to encourage clients to compromise and be less emotional and more rational and ‘sensible’. Solicitors generally wanted to persuade clients to look to the future rather than being stuck on the problems of the past. They also stressed the importance of being flexible.

During interviews, solicitors told us that they have to rely on the solicitor for the other party to provide similar advice and take a similar approach if conciliatory strategies are to be successful. All the solicitors in the study were careful to downplay confrontation and adversarialism, although this was not always well received by the clients who wanted to make a stand. All the solicitors told us about other practitioners who were less conciliatory, criticising their confrontational stance and saying there was little a conciliatory solicitor could do in these circumstances to ensure that hostility did not escalate. The FAInS solicitors pointed out that a serious limitation of the pilot was that only solicitors who had already adopted a holistic and non-confrontational approach to family law opted in. We certainly observed evidence of non-FAInS solicitors acting in confrontational ways with their FAInS counterparts. Aggressive letters were the main cause of concern, as these undoubtedly distressed FAInS clients and left FAInS solicitors having to pick up the pieces and advocate calm in the face of obvious hostility from the other side.

Most of the pre-FAInS and FAInS clients we interviewed were very satisfied with the service they received from their solicitors. Indeed, we found little evidence that FAInS had changed clients’ expectations regarding their solicitors or their satisfaction with the service they received. Clients were appreciative of solicitors’ sensitive and caring approach and of the advice they received. A few clients felt that their solicitor had been too conciliatory and too concerned to make compromises and some had changed solicitors when they were not prepared to ‘fight their corner’ for them.

Children’s Perspectives

Two of the main aims of FAInS were to encourage the continued participation of both parents in children’s lives, and to provide appropriate support to children whose parents
split up. We explored the experiences of children and compared the accounts of those whose parent had seen a FAInS solicitor with the accounts of those who had seen a solicitor prior to FAInS training. We found no discernible difference between the experiences of children and young people in the pre-FAInS and FAInS samples. This is not surprising given that solicitors did not talk much about parenting matters beyond the legal issues which needed to be dealt with. The PAPs relating to the parents of children in the FAInS sample did not mention parenting, child participation or support for children.

The difficulty of accessing appropriate help and support for children was a theme across all the interviews. Children tended to be aware that their parents’ resources were limited, and they tried not to add to parents’ problems when parents were having a difficult time themselves. Children were generally very concerned not to make demands on their parents. The children also tended not to seek support from siblings. Jealousies, rivalries and differences of perspective can be obstacles that stand in the way of sibling support. Younger children can also find themselves under pressure to subscribe to a dominant family narrative.

Grandparents can be a significant source of support, but friends frequently offer the best possibility of support for children. There were marked gender differences, however, with boys being less likely to share personal problems with their friends whereas girls can regard the reciprocal sharing of intimacy as a lifeline. A few children in our sample had talked with a welfare worker, a counsellor or a teacher, but not all of them had found this helpful.

We found that where there is a lack of real support children have difficulty making sense of their experiences. Coping strategies can be based on denial of feelings, and the tendency might be for children to act in inappropriate ways that can be harmful for them or hurtful to others. Some children seemed very much alone and unable to share their feelings with anyone. Consequently, they felt powerless to change situations which were unsatisfactory (e.g. those relating to contact) and merely accepted that their views were unimportant. This exclusion of children from processes that impact centrally on their lives has personal consequences and can result in children feeling very sad and defeated. Some children said that they were prepared to go to court in order to make people listen to them. Some of the children were confused, frustrated and angry about being marginalised.

Many of the children said that they had been confused about what was happening in their lives and had been given no real information. They had been deprived of the opportunity to articulate their own stories and coping alone meant trying to put the past behind them, often not very successfully. Children were able to make concrete suggestions about the kinds of support which might have been helpful, including: an accessible professional; peer listeners at school; opportunities to talk about their concerns at school (an ‘inclusion’ room); and information being available at school, including talks from experts. School-based support was a popular suggestion. Not only is it a convenient location in which children can access support, but, crucially, it is a place where they can do so independently of parental gatekeepers. If children have to seek support via parents they have to risk upsetting sometimes fragile family equilibriums.

While we need to be cautious about generalising from interviews with a small sample of children, our findings are consistent with those from previous research. There remains a lack of support for children experiencing parental separation and FAInS has not changed that. Children and parents find it difficult to access appropriate support for children, and the FAInS solicitors were not trained to help them with this, nor did they routinely talk
about children’s needs, wishes and feelings with clients. If children have nowhere to go and no one to talk to, their general well-being is likely to be adversely affected. If on the other hand children are able to voice their feelings and concerns, they can make a positive contribution at times of immense change and emotional vulnerability. As far as we could determine, the more holistic approach envisaged via FAInS had done nothing to focus on children’s issues nor to improve and preserve family relationships.

3 Learning from FAInS and Looking to the Future

The findings of our evaluation all point to a fairly stark conclusion: the Family Advice and Information Service pilots do not appear to have effected much change in family law practice. Although there may have been some subtle shifts in the approach adopted by some FAInS practitioners, they have not been substantial enough for us to be able to detect any major impacts on the behaviour of solicitors or their clients.

It was clearly important to test FAInS out prior to implementing it nationwide. Early in the evaluation, the LSC changed the name of the initiative. It had quickly become apparent that integrated networks of local services did not exist and that solicitors were uncomfortable with the expectation that they might take the lead in developing them. The shift from establishing Family Advice and Information Networks to developing a Family Advice and Information Service might partly explain why we found little evidence that FAInS increased the number and range of referrals to other agencies. The findings of the evaluation raise a number of questions relating to the appropriate role for family lawyers and the extent to which public funding should be committed to resolving private family law issues. While the evaluation does not herald FAInS as an overriding success, it nevertheless provides constructive and practical evidence about the current state of family law practice in England and Wales. It also underlines the gaps in service delivery which need to be plugged if the best interests of children are to remain paramount.

A Holistic Approach?

Perhaps the most significant learning from the pilots relates to what family lawyers do. Some solicitors raised concerns about whether it is appropriate for solicitors to be tackling non-legal issues. The majority of them preferred to maintain a professional boundary and avoid getting too involved in discussions about wider issues and more emotional concerns. Some clients were equally reluctant to raise non-legal issues with their solicitors. It is known that relationship breakdown can be a trigger for other problems and that family law matters can be extremely complex. Solicitors are well aware that family law clients may be emotionally fragile and vulnerable, and that information giving can blend into the giving of advice and support, which then often merges into negotiation. Family law work is rarely confined to the provision of legal advice. It is hardly surprising, therefore, that we did not detect much change in solicitors’ behaviour as a result of FAInS. They were almost all offering what they would describe as ‘a holistic service’ prior to the introduction of FAInS. It was difficult for them to see what else they could do, and they invariably pointed to ‘old-style’ gladiators who should and could have benefited from FAInS training.

The majority of FAInS practitioners described FAInS as little more than ‘tweaking’ best practice, re-emphasising the importance of lawyers taking a client-centred approach. We did see some evidence during our observations of practice that FAInS solicitors had
structured their first meeting to be more client-centred than previously, enabling clients to make a greater input. Solicitors found it difficult, however, to identify any real changes in terms of outcomes. They could acknowledge that the process of engaging with clients might have improved, but the majority of clients in both the pre-FAInS and the FAInS samples had been satisfied with the service they had received. The FAInS holistic approach does not appear to have influenced the way in which cases were handled or resolved.

**Integrating Services**

It has increasingly been recognised by practitioners and policymakers that families facing separation and divorce have needs and difficulties which go beyond the purely legal. Coordinating services so that people’s problems are not dealt with in isolation but in the context of their causes and consequences has remained a challenge. The FAInS approach was meant to uncover problem clusters and increase clients’ access to a range of support services, thereby enhancing access to social justice and minimising the risk of social exclusion. Little was actually said about problem-noticing in FAInS training, however, and we found scant evidence that FAInS solicitors were aware of problem clusters as such, nor did they necessarily regard themselves as the primary gateway to other services. Nevertheless, many FAInS practitioners had been attracted to FAInS precisely because it offered the opportunity for working in collaboration with other services. They had not expected, however, that they would have to establish that collaboration and develop integrated networks. Networks hardly existed in the pilot areas and solicitors did not have the time or know-how to invest in establishing them. The introduction of FAInS did not signify the advent of integrated services, much to the disappointment of many FAInS solicitors. Few services were mentioned by FAInS solicitors to their clients, and those that were included mediation, women’s aid and counselling, all of which were already being used by the solicitors pre-FAInS. Most solicitors were reluctant to recommend services about which they knew nothing and in which they could have no confidence. Many FAInS practitioners were of the view that FAInS would only work well and produce positive outcomes where there was a strong network of local services working in an integrated way. The holistic approach would then be more meaningful. This raises dilemmas about who should take the lead in the development of integrated services. The failure to establish effective partnerships during the FAInS pilots may well have impacted negatively on its success and contributed to the lack of change highlighted by the evaluation. Effective integration of services is one of the major unresolved challenges in the provision of more tailored, seamless, joined-up services in family law. Encouraging clients to use those services will also require innovative thinking. Simply telling clients about other services is unlikely to influence their behaviour. More will need to be done both to uncover problem clusters and to help clients to access other services directly. Referral systems that consist primarily of signposting options are not likely to have much impact. More will need to be done to change the landscape of legal, advice and other support services in order to improve access and ensure that services are tailored to the needs of clients.

**Improving Outcomes for Children**

Improving outcomes for children requires long-term changes in culture and ways of working. The family justice system is a key player in achieving the objectives of *Every Child Matters*. Yet FAInS practitioners were not key players during the pilots: FAInS had
little impact on how parents managed their relationships and nearly half of FAInS clients who were non-resident parents had no contact with at least one of their children some six months after they had seen a FAInS solicitor. Many parents were at a loss as to where to go for help and many found it difficult to consider the impact of parental separation from their child’s point of view. The FAInS approach does not appear to have diminished the potentially adverse consequences for children, nor has it helped parents access appropriate help for children in considerable distress. To a large extent, the children we spoke to felt excluded from processes which had major impacts on their lives; they had nowhere to voice their concerns and no one to turn to. An opportunity to use FAInS to take forward the extensive work undertaken on parenting plans and information for children during previous pilots was missed. The objective of promoting enduring family relationships and co-operative parenting remains another challenge for the family justice system and FAInS has contributed little to addressing it.

Although FAInS was envisaged as a key driver for change, the FAInS model was never clearly articulated and solicitors were not given enough support or training to develop a distinctly different kind of service. We have argued that more would need to be done to incentivise family solicitors to enhance their role even further. There is a tendency for experienced family lawyers to hand cases to more junior staff, particularly in the early stages, because they simply could not afford to do all the work themselves. There is a strong business incentive to delegate publicly funded work to more junior colleagues, and FAInS solicitors argued that all members of family law departments should have been eligible to train as FAInS practitioners. Solicitors want to be able to take responsibility for deciding who can train as a FAInS practitioner.

The Future of Legal Aid

Decisions about the future of FAInS are inevitably intertwined with debates about the future of public funding provision. Lord Carter’s review of the legal aid budget and consultations on the future of funding will inevitably impact on the future role of family lawyers. Current proposals for unified contracts with fewer, larger suppliers will change the landscape of family law practice. The emphasis is on completing cases as early as possible and on removing financial disincentives for solicitors to issue proceedings in the Family Proceedings Court. The new unified contract will specify the work to be done.

It was abundantly clear to FAInS practitioners that legal aid was in a state of flux and there was a considerable degree of uncertainty about the future. Other jurisdictions have tended to spend less on legal aid and instead promote alternative programmes for separating and divorcing couples. Not surprisingly, however, the legal profession is somewhat sceptical about the prospect of a family justice system being able to operate without the input of family lawyers. Nevertheless, frustration with the rates of remuneration, coupled with anxieties about the proposals for reform in legal aid funding arrangements, may well lead some experienced family law practitioners in England and Wales to reconsider their future position. Family law providers will be expected to integrate their core specialist legal services with other providers offering complementary services as part of the new Civil Advice Strategy. The direction, it seems, for publicly funded legal services is for wide-ranging services to be delivered in a more joined-up way with lawyers occupying a central position in Community Legal Advice Centres and Networks.
Managing Change

The piloting of FAInS has shown that it is not easy or straightforward to require solicitors to change the way they practise when they consider that they are already conforming to best practice principles. The danger must be that more family lawyers will opt out of publicly funded work. During the FAInS pilots, solicitors did look to enhance their role and most were enthusiastic about the possibility that FAInS would underscore the value of the work they were doing. We would argue that the implementation of FAInS was not sufficiently robust to convince solicitors that FAInS ended up being anything more than the tweaking of best practice. Unless all family law practitioners are required to adopt a FAInS approach there is unlikely to be much change in practice. The vision of more joined-up, tailored, seamless services may be commendable, but it is unlikely to be achieved via FAInS as it was practised during the pilots. The role family lawyers will play in the future has yet to be decided, but further changes in funding arrangements may increase scepticism and reduce enthusiasm for new initiatives.
Part 1   Evaluating Changes in Family Law Practice

In July 2001, the Legal Services Commission sought views on the proposal to establish Family Advice and Information Networks which would be spearheaded by family lawyers franchised to conduct publicly funded work. The Government had decided not to implement Part II of the Family Law Act 1996, and ways were being sought to develop services within the existing legislation which could meet the needs of people facing relationship breakdown. The new networks were to be piloted and an extensive evaluation programme was expected to provide evidence as to whether they were cost-effective in facilitating the dissolution of broken relationship in ways which minimised distress for parents and children and fostered co-operative parenting, and whether they enabled people to access a range of support services at the times when they were most needed.

One of the main objectives of the evaluation was to examine how the new service affected the way in which solicitors manage publicly funded cases. We sought to capture data about both processes and outcomes as rigorously as possible and from a variety of perspectives. We wanted to know how solicitors were practising family law prior to becoming FAInS providers and to compare their practice then with their practice after they had completed professional development training for the delivery of FAInS. We examined family law cases at two specific periods of time: between September 2003 and February 2004 (the ‘before’ period) and between June and November 2004 (the ‘after’ period). Our intention was to consider the work of the same solicitors in both time periods in order to limit the number of factors which might influence changes in practice beyond the introduction of FAInS. Our research methods were both quantitative and qualitative, and we endeavoured to collect data about two samples of clients (before FAInS and after FAInS) which were sufficiently large for us to undertake robust analyses. One of the key objectives was to discover how clients had experienced their engagement with their solicitor and to discern whether FAInS clients received a markedly different kind of service. We also wanted to know whether solicitors felt that FAInS practice had changed their approach to their work with publicly funded clients and whether the principles underpinning FAInS had been accepted and embedded in their family law practice. We attempted, also, to estimate the cost implications of FAInS practice.

Our report on the evaluation is presented here in three parts. In the first part, we:

1. Discuss the context in which the Family Advice and Information Networks evolved (Chapter 1).

2. Describe the research programme, outline the findings from a pre-pilot study which led to a shift in focus away from Family Advice and Information Networks and a rebranding as the Family Advice and Information Service (FAInS), and indicate the data we were able to collect and the nature of our research samples (Chapter 2).

3. Present the primarily quantitative findings from the before-and-after evaluation (Chapters 3–6).
Chapter 1  The Research Context

Janet Walker

In July 2001, the Legal Services Commission (LSC) published a consultation paper seeking views on the proposed Family Advice and Information Networks (FAINs), the plans for which had been announced by the Lord Chancellor in March 2001. The announcement followed the publication of two research reports some three months previously, relating to the provision of information and to new arrangements for the delivery of publicly funded mediation. These new provisions had been encapsulated within the Family Law Act 1996, which was designed to reform the process of divorce in England and Wales. In January 2001, however, the Government announced that it would not be implementing the Family Law Act 1996 in its entirety and, instead, would build on the evidence provided by research to consider how best to provide families experiencing relationship difficulties, in particular those with children, with the information and support that they want at the time that they need it.

The research evidence had been accumulating for some twenty years, indicating that the separation and divorce of parents could have negative consequences, particularly for children, and that adverse outcomes can be reduced if parental conflict is minimised and children can maintain a positive and loving relationship with both parents. Successive governments have attempted to address growing concerns about the numbers of families who experience separation and divorce each year and to put in place legislation and services which will support parents and children through the painful transitions associated with family breakdown. Family Advice and Information Networks formed a central part of the current Government’s response and were conceived as a result of the most recent research, which had studied divorce processes and the role of family lawyers. In this chapter we trace the key developments in family law in England and Wales over the last 20 years; review, briefly, the relevant research and consider how the research influenced the development of FAINS; and describe the specific characteristics of this new approach to family law practice which we have sought to evaluate.

Changes in Family Law

Family law is, in many ways, distinctly different from other aspects of law. Because family law engages with areas of everyday life which are widely recognised as riven with contradiction or paradox and which promote varying emotional responses, it has had to be
open to its social environment rather more than is usual in other areas of law. Parker has suggested that the field of family law has tended to oscillate between two very different ways of conceptualising law in relation to family matters: on the one hand, law is seen as primarily concerned with the enforcement of human rights between family members; and, on the other, it is viewed as primarily concerned with maintaining constructive relationships and dealing with consequences. In this latter sense, family law involves weighing and balancing different interests in pursuit of an optimal outcome. The lawyers involved with FAINS have been acutely aware of this task, and of the general shift from rules and rights towards discretion and utility. Family law as a whole can be seen to epitomise the ‘new legalism’ across western societies: it presents a body of law which incorporates knowledge and materials from other disciplines, such as sociology and psychology, with the result that its distinctly ‘legal’ flavour may be weakened. Family law practices have been developed within the context of an extremely complex relationship with law and legal rules. As we will demonstrate, FAINS has had to take account of these contextual complexities.

Recent reforms in family law in many western societies have been characterised by a clear concern to reduce the costs of marital dissolution, emotionally, psychologically and fiscally. The role of lawyers has been brought into sharp relief as new initiatives and processes, such as family mediation, have endeavoured to keep family law cases out of court and to find other, less costly, ways of resolving family disputes using utilitarian and consequentialist criteria informed by notions of rights and access to justice. There are, nevertheless, some fundamental tensions between upholding individual rights, achieving fair settlements, and supporting families as a whole. Divorce reform is one area in which these tensions are played out and, throughout our history, there has been a reluctance to change the laws of marriage and divorce.

Nevertheless, there has been a growing focus on the need for divorce reform in England and Wales over the last 40 years. In 1966, the Law Commission argued that a good divorce law should enable the ‘empty shell’ of marriage ‘to be destroyed with the maximum fairness, and the minimum bitterness, distress and humiliation’. It concluded that an offence-based divorce law fails to satisfy this requirement, since it discourages reconciliation where that is possible, tends to embitter relationships, does not achieve fairness, and thereby increases the damaging effects on children. The Law Commission proposed radical reform towards a no-fault principle. The subsequent legislation, the Divorce Reform Act 1969, took up the notion of ‘irretrievable breakdown’ as the ground for divorce, but required it to be proved by reference to one or more of five facts, which included the fault-based facts of adultery, unreasonable behaviour and desertion. The 1969 Act became law in 1971 and was enshrined in the Matrimonial Causes Act 1973, which remains the current law of divorce. Although defended divorces are largely consigned to history and inquiries into the facts are rarely undertaken, ‘quickie divorces’ based on allegations of unreasonable behaviour or adultery are very much the norm. So, the divorce law of England and Wales continues to use fault-based facts as a means to an end, maintaining an essentially adversarial system within a framework which has become

---

increasingly conciliatory. The vast majority of professionals within the field of family law consider this to be deeply unsatisfactory and have advocated change.

As the divorce rate continued to rise in the 1970s and 1980s, attention again focused on the need to reform the existing legislation, particularly as the social and economic costs of divorce were regarded as being far too high. In 1985, the Report of the Matrimonial Causes Procedure Committee concluded that the fault element exacerbated and prolonged the unhappiness experienced by divorcing couples. In 1988, the Law Commission published the first of two reports, arguing that the existing legislation fell far short of its objectives. In the second report, the Law Commission was scathing about the existing law, describing it as discriminatory and unjust, and as provoking unnecessary hostility and bitterness. The Law Commission underlined the reality that divorce is almost always painful, and pointed out that the law provides no opportunity for parties to come to terms with what is happening in their lives or to reflect on arrangements for the future. It put forward a model for reform in which divorce was viewed ‘as a process over time’ in which counselling, mediation and other services could play a constructive role in resolving the problems associated with marital breakdown.

The Conservative Government of the day accepted the Law Commission’s recommendations and embodied them in a Consultation Paper in 1993. The Government believed that the law and legal processes could have a major impact on the way in which separation and divorce are conducted, and on the consequences for those involved. A distinction was made between marriages which might be saved, perhaps through the provision of counselling, and those which were clearly irretrievable. The Green Paper proposed that everyone contemplating divorce should be well-informed about the law and about the procedures and consequences of divorce, and directed to services appropriate to their needs. This was to be achieved through a mandatory personal interview at a single first port of call for everyone wishing to initiate divorce. Legal advice was not to be given at this meeting, however, as this would remain the role of lawyers, who would provide an explanation of how the law applied to the facts of each particular case and recommend a course of action. The proposal was for a distinction to be maintained between legal advice and information and other kinds of information.

The subsequent White Paper confirmed the commitment to no-fault divorce and to there being a first port of call. The individual personal interview had not found favour, however. The Solicitors’ Family Law Association (now called Resolution), in its response to the Green Paper, had argued that it would be impossible in practice to make a distinction between the provision of legal information and legal advice, and that family lawyers were the only professionals equipped to provide such a service. This observation is particularly pertinent with regard to FAINs. Not surprisingly, other professionals, notably counsellors and mediators, were more enthusiastic about the provision of a personal interview which they might be able to deliver. Nevertheless, having noted the concerns about the danger of information giving spilling over into advice giving, the Government moved away from a

13 The Ground for Divorce (1990), Law Commission No. 192.
14 Looking to the Future: Mediation and the Ground for Divorce (1993) Cm 244. (Referred to as the Green Paper.)
personal interview towards a group session which could impart objective information face to face in a cost-efficient manner, involving videos and a range of experts.

The proposals were embodied in the Family Law Bill 1995, many parts of which were highly contentious and subject to considerable amendment as the Bill made its way through both Houses of Parliament. In order to promote the four key objectives of supporting marriage, promoting a conciliatory approach to divorce, reinforcing continuity in parenting, and providing protection from domestic violence and abuse, the Bill proposed the removal of fault as evidence of irretrievable breakdown and replaced it with the requirement for a period of reflection and consideration after attendance at a mandatory information session. Although the no-fault proposal was the most controversial element, the provision was passed on a free vote in both Houses. Only after a period of reflection and consideration and when all future arrangements had been made would the marriage be regarded as irretrievable and its dissolution allowed. It was felt that not only would this ensure that divorces could not be obtained as quickly as they had been since 1971, but it would keep the door to reconciliation firmly open throughout the divorce process. The appropriate length of the period of reflection was a matter on which there was much disagreement, but a minimum period of 12 months from attendance at an information session (18 months when there was a child under the age of 16) was finally agreed.

There was unanimous agreement that providing better information for people contemplating divorce was both sensible and critical if people were to use a period of reflection and consideration appropriately. Nevertheless, the means of conveying the information required also proved to be contentious, and we saw a changing construction as the Bill progressed. The proposed group session gave way to a mandatory individual information meeting, to be followed by the offer of a voluntary meeting with a marriage counsellor which would give the parties the opportunity to access specialist services in attempts to save the marriage if they so wished. Both the information meeting and the counselling session were to be free for those eligible for public funding for legal aid, and were intended to focus on encouraging people to think carefully before proceeding down the road to divorce. In support of this position, it was suggested in Parliament that the information presenter should possess counselling skills in order to enable people to explore whether the marriage could be saved and to cope with the trauma of divorce.

Alongside the focus on supporting and saving marriage was an emphasis on facilitating conciliatory divorce. Whereas the Law Commission and the Government, in its Green and White Papers, had promoted family mediation as central to a reformed process of divorce, members of both Houses were more circumspect about its role and advocated the belief that mediation must remain a voluntary option. Real concerns were expressed that mediation might become an inevitable option for those parties who could not afford legal advice: in other words, it would become a second-class service. While the Conservative Government saw mediation as capable of reducing bitterness and tension, improving communication and reducing cost, during debates in parliament members of both Houses were not in favour of a presumption that promoted mediation over legal representation. Nevertheless, the requirement for a party to attend a meeting with a mediator before receiving public funding for legal representation remained. It was claimed that these meetings would
allow parties to make an informed decision on the basis of the facts, and in the process learn of the considerable benefits of mediation for the parties and the children.16

The Act which emerged from the parliamentary process and received Royal Assent in July 1996 was substantially different from the Bill which had been introduced in November 1995.17 The Family Law Act 1996 was both complex and conceptually unusual because of the considerable emphasis on the provision of counselling and other support services.18 Critics were sceptical as to whether the predicted benefits could be delivered and were anxious about the reliance on counselling and mediation.19 The Act, however, sets out four general principles which now provide the framework for policy and practice in the sphere of family law in England and Wales:

(a) that the institution of marriage is to be supported;
(b) that the parties to a marriage which may have broken down are to be encouraged to take all practicable steps, whether by marriage counselling or otherwise, to save the marriage;
(c) that a marriage which has irretrievably broken down and is being brought to an end should be brought to an end
   (i) with minimum distress to the parties and to the children affected;
   (ii) with questions dealt with in a manner designed to promote as good a continuing relationship between the parties and any children affected as is possible in the circumstances; and
   (iii) without costs being unreasonably incurred in connection with the procedures to be followed in bringing the marriage to an end; and
(d) that any risk to one of the parties to a marriage, and to any children, of violence from the other party should, so far as reasonably practicable, be removed or diminished.

The Act can be seen as attempting to reassert traditional family values within the context of divorce, hence the emphasis on promoting a new era of co-operative post-divorce parenting.20 Individual information meetings emerged as the device for changing both the rhetoric and reality of divorce process. As Eekelaar pointed out, there was an implicit belief within the provision that behaviour

is fundamentally rational, people will respond to information and reasoned argument; therefore, to achieve desired policy goals, all you need do is to explain them effectively and people will follow them.21

Eekelaar argued that legal attempts to maintain or promote particular patterns of behaviour, especially with regard to family living arrangements, have not been very

---

19 ibid.
successful in the past,\textsuperscript{22} and he was sceptical about whether information meetings would achieve the desired objectives.

The Government acknowledged that the new provisions were distinctly novel and that the details for implementation would have to be carefully considered. It had always been the Government’s intention to pilot the new provisions in the Family Law Act prior to its implementation, therefore. Operationalising Part II of the Act, which contained the new provisions for no-fault divorce, information meetings and the meeting with a marriage counsellor, was never going to be easy and its implementation was delayed so that pilot projects could be established and tested. Parts III and IV of the Act, relating to mediation and domestic violence respectively, were to be implemented, but further pilots were established to test the provision of publicly funded mediation. The evaluations of both sets of pilots provided valuable data about information provision and mediation and about how people respond to these services. We examine the evidence from both evaluations in turn, with particular emphasis on the findings which influenced the development of FAINs.

\textbf{Information Meetings}

The evaluation of information meetings and the meeting with a marriage counsellor was designed to inform policymakers about the implementation of Part II of the Family Law Act, providing answers to ‘how’ rather than to ‘whether’ questions. The focus was on examining different models for providing the information. The study began in 1997 and the report was published in 2001.\textsuperscript{23}

During the pilots, 7,690 people who attended an information meeting took part in the research, in which over 6,000 research interviews were conducted. People came to information meetings from a wide variety of personal circumstances, and at different stages in the difficult, stressful and frequently lengthy process of marriage breakdown. Some had no idea what they should do about a marriage which had got into difficulty; others were clear that they wanted a divorce and had little idea how to proceed; and some were already well advanced down the road to divorce but wanted to know how best to deal with specific issues. These different states of ignorance had far-reaching implications for the timing and content of information meetings, and for the impacts which the provision of generalised information could be expected to achieve. One of the conclusions from the research was that a major challenge for the future would be to ensure that appropriate information, relevant to each person’s circumstances, is made available to people at the optimum time during their journey through the separation process. The evidence was clear: if information is to be both meaningful and understood it must be both relevant and sensitive to the needs of the person receiving it. This indicated that a one-size-fits-all model of information provision would not work, and that standardised formats for delivering pre-packaged information would be unlikely to influence behaviour or to be regarded as particularly useful by those receiving the information.

\textsuperscript{22} ibid.

\textsuperscript{23} See J. Walker (ed.) (2001), \textit{op. cit.}
One of the objectives of providing information was to encourage people to think carefully about whether divorce was the only and inevitable option. However, few people who attended an information meeting were persuaded to consider reconciliation – between 5 and 10 per cent of people might have been influenced to turn back from the brink of divorce. The meeting with a marriage guidance counsellor was particularly helpful, however, in moving people from ‘stuck’ positions, enabling them to move forward feeling better able to face the future either with their spouse or in a life apart. Being able to reflect on the relationship and understand where and how it had gone wrong was seen as an enormously helpful process, and one which might make it less likely that the mistakes of the past would be repeated in future relationships.

Most people who attended an information meeting consulted a solicitor at some stage in the divorce process. The vast majority expressed satisfaction with the advice provided by their lawyer, and considered it to be the right thing to do to seek legal help. Even those people who had opted to use mediation also saw it as inevitable that they would need to consult a solicitor. Indeed, mediators, solicitors and mediation users did not view mediation as an either–or choice but saw the roles of family mediators and family lawyers as essentially complementary. In reality, relatively few people used mediation – far fewer than the Government had anticipated. Although most people appreciated the information they were given about mediation, were aware of the location of mediation services and wanted to conduct their divorce in a conciliatory manner, the majority decided that mediation was either unnecessary, because there were no real disputes to be resolved, or inappropriate because their spouse would not attend with them, thus negating it as a realistic option. Seeking the help of mediators rather than lawyers is often a less attractive alternative to one if not both parties. The evidence from the research indicated that many people tried, with varying degrees of success, to manage their divorce amicably, and to reach acceptable settlements through a conciliatory process, often with the support of lawyers rather than mediators.

Much of the urgency behind the proposals leading to the introduction of the Family Law Bill was generated by concern about the impact of family break-up on children. The majority of people who attended an information meeting had dependent children and most responded positively to the information they were given about children’s needs, wishes, feelings and welfare. The information about the impact of divorce on children and ways of minimising distress had a considerable impact on parents and some actively attempted to change their behaviour to give more consideration to their children’s needs and best interests. Parents were given parenting plans in order to focus their minds on the issues they would need to discuss and the matters they would need to agree. Few parents actually filled the plan in, but most found it to be a very valuable aide-memoire.

The information meeting pilots also provided an opportunity to test the provision of age-specific information about separation and divorce written specifically for children and young people. While the children who received the information leaflets valued them and spoke positively about being told what might happen and how they might express a view, the majority of parents did not pass the leaflets on to their children, and the research concluded that more work needed to be done to help parents understand how and when to talk to and consult with children and to be able to recognise the benefits of doing so.
The evidence from the information meeting pilots, therefore, led to a number of key conclusions, all of which were relevant to the development of FAINs:

1. The provision of information enabled people to become more knowledgeable and more focused, and to look at things differently at a particularly vulnerable moment in their lives.

2. People valued the information they were given and user satisfaction was extremely high (only four out of 4,000 who attended an information meeting said they would definitely not recommend it to others in a similar situation).

3. A one-size-fits-all model of information provision is much less effective than a model which is flexible and allows for personal tailoring of the content of the information and the timing of its delivery.

4. People did not want generalised information – the bare facts – but information that would be more immediately relevant to their specific circumstances and more usable. People wanted answers to practical questions from professionals who were technically competent.

5. Information needs to be able to reflect different cultural, religious and ethnic circumstances, and people with special needs require more specific information.

6. Information provision must be sensitive to the stage in the separation process each party has reached and to their particular needs.

7. Written information without the provision of personal advice and support has limited impact on behaviour.

8. There are various ways in which parties may attempt to separate and divorce in a conciliatory manner, and no one route or professional service has a monopoly on facilitating a conciliatory approach.

9. Lawyers have an important role to play in representing individual interests, encouraging a conciliatory approach, and minimising hostility and conflict. They also act as a gateway to other support services, enabling their clients to access help from a range of experts.

10. Mediation may prove to be a cost-effective option in resolving some disputes, but timing of the mediation process is critical, and it is unlikely to be a majority choice.

11. Effective multi-disciplinary partnerships are beneficial in providing services for people who may need different kinds of advice and support at different stages: co-operation among the divorce-related professionals is central to effective service delivery.

12. More needs to be done to ensure that children are informed about changes that affect their lives and that they are given the opportunity to express their concerns, wishes and feelings.
Publicly Funded Mediation

The Family Law Act 1996 required prospective legal aid applicants to explore mediation as a way of resolving disputes before public funding for legal representation could be obtained. The new mediation provisions were also piloted prior to full implementation of Part III of the Act so that an evaluation could determine the most efficient ways of contracting for: the provision of publicly funded and quality-assured mediation; the level of quality-assured legal advice necessary to support publicly funded mediation and the best arrangements for providing it; and the relative costs/benefits for the party and the taxpayer of the new arrangements compared with the existing arrangements.

Since the late 1970s, family mediation has emerged as an alternative dispute resolution process which could reduce the acrimony between the parties and result in more durable settlements. Claims, largely unproven, were also made that mediation would be a cheaper option than the more traditional route through the courts, via partisan lawyers. By the early 1990s, the policymakers were convinced that all these benefits were desirable and that emphasis should be given to the role of mediation in a reformed process of divorce. This appeared to be a logical development given the fact that, over the years, lawyers and mediators had worked more closely together and many family lawyers had trained as mediators. As Davis put it:

So we have mediation in the law, and we have the law in mediation; or to put this another way, we have deflection from the formal and we have formalisation of the informal.

The question facing the researchers could be couched in terms of which mediation services, or what combination of services, would deliver reasonable outcomes for a substantial section of the population, at reasonable cost. The Government had been optimistic that mediation would be an attractive option, chosen by the majority of separating couples, and that this would herald a wholly different approach to the resolution of matrimonial disputes. Family mediation had evolved since the 1970s to embrace the resolution of all issues consequent on separation and divorce, and previous research had indicated that ‘comprehensive’ mediation could render substantial benefits for couples providing each party was willing and able to mediate. Its attractions lay in the focus on reducing conflict and improving communication between the parties through a problem-solving approach which facilitates private ordering. Mediation has sought to offer an alternative to arm’s-length negotiations by lawyers and to adjudication through the courts. It is not and was never intended to be a substitute for legal advice. Nevertheless, the Government expected that more people would choose mediation than previously and, as a result, would rely on partisan lawyers rather less. This did not happen.

The advent of public funding for mediation did not have an immediate impact on the numbers of couples opting to mediate. The implementation of section 29 of the Family Law Act, requiring potential publicly funded applicants to first explore the mediation option, did result in an increase in the numbers of people attending what was called an ‘intake’ interview. This in itself did not lead to a significantly greater take-up of mediation beyond the intake interview, however. The majority of the cases (85%)

---

24 Davis, G. et al., op cit., p. 3.
involved disputes about children, normally about residence and/or contact arrangements; and 35 per cent of cases had financial or property disputes as one component.

The experience of those who went to mediation was largely positive, with mediation on children’s issues rated as either ‘very helpful’ or ‘fairly helpful’ by 70 per cent of mediation users. Nevertheless, many people were sceptical about their former partner’s real commitment to resolving issues through mediation. The research about information meetings also found that the biggest obstacle to increasing the numbers of couples who mediate disputes was the difficulty of persuading both parties that it was the best option and that each could trust the other sufficiently to believe that settlements reached would be adhered to.26

The majority (70%) of referrals to mediation came via solicitors, some because of the need to adhere to the requirements of section 29, while others were purely voluntary. Some 12 per cent of cases were referred by courts and the remainder were self-referrals. Mediators were of the opinion that those who attended an intake interview via section 29 were less amenable to mediation. Certainly, solicitors were very uncomfortable about section 29, believing that unsuitable cases were being diverted to a mediation intake interview unnecessarily, thereby increasing the costs of the divorce process and wasting valuable resources. Solicitors were clear that they already adopted a conciliatory approach to family matters and did not necessarily believe that mediation was a better option than bilateral negotiation by lawyers. Although family law solicitors have been generally supportive of mediation over the last 30 years, they have never regarded it as a process which would suit everyone, and many reported that few clients could be persuaded to try mediation even when it was publicly funded. It was evident in the information meetings research that if solicitors were positive and enthusiastic about mediation their clients would be more likely to try it, but even the most enthusiastic lawyers were selective about who they recommended should use mediation. Solicitors and their clients alike tended to regard mediation as a good idea in principle but were less sure that it would work in their particular case.

The study of publicly funded mediation found that about 30 per cent of section 29 referrals continued into mediation. This was under half of the rate for other solicitor referrals, 61 per cent of whom undertook mediation. About 65 per cent of court referrals and 52 per cent of self-referrals became mediation cases. Approximately half of those couples who did proceed into mediation did not return after the first mediation session, indicating either that the disputes were quickly resolved or that one or both parties dropped out of the process. According to mediation providers, about 50 per cent of cases about children’s issues and 34 per cent of cases involving financial disputes resulted in agreement being reached. The information meetings evaluation found that mediation users were not convinced that they had received wider benefits if agreements were not reached.27 Satisfaction with mediation varied, but some 33 per cent of people were dissatisfied in some way, primarily because there was no legal framework for advice, agreements were not binding and the mediation process had generated bad feeling between the parties. Most of those who used mediation also consulted a solicitor at some point, indicating that mediation was used as an optional extra to legal services. The researchers concluded that the majority of people choose a solicitor as their main path through divorce. Consulting a solicitor is not necessarily indicative of a contentious divorce and, indeed, some people are anxious that solicitors may escalate hostility rather

27 ibid.
than defuse it. Most people do not want a contentious divorce. On the whole, however, solicitors are regarded as an authoritative and legitimate source of information and advice in respect of family matters and their services tend to be highly valued. Davis et al. argued:

The presentation of solicitors as aggressive troublemakers (with mediation, in comparison, as the embodiment of reasonableness and compromise) is a caricature which deserves now to be regarded as of historical interest only.  

He and his colleagues found that, on measures of satisfaction, solicitors scored rather higher than mediators. The information meetings study replicated these findings. Both studies concluded that expectations about the proportion of separating and divorcing couples who would use mediation had been unrealistic and that usage would remain selective. Moreover, solicitors were likely to dominate the legal process for the foreseeable future, with mediators providing a valuable service to some couples. People who had attended an information meeting during the pilots were often looking for the kind of service which could offer high-quality legal advice and comprehensive information, could suggest what is a fair settlement for both parties, and does not encourage acrimony.

The evidence from both studies indicated that, if mediation is to be cost-effective, only those cases which could realistically benefit from it should be referred. This requires good case selection, securing the engagement of both parties, and making the referral at the optimum time when parties are able to work on issues and reach settlement, which for different couples may be at different stages of the divorce process. Since the majority of referrals to mediation are made by solicitors, they could be expected to be able to judge which cases are suitable and when the right time to refer them would be. Moreover, since the majority of family law cases involve some level of engagement with one or more solicitors, they might also be best placed to offer the tailored, individualised information and legal advice which people had said they wanted. Solicitors have substantially changed their approach to family law practice over the last decade. Lewis and Abel referred to a framework in which family lawyers engage in a range of activities. They provide legal and practical knowledge, speak for clients to other agents, provide emotional support, identify what the law can and cannot offer, and ensure that conflict is not escalated. The majority now take a conciliatory stance, considering the needs of children and families as well as those of the individual client. It has been argued that family lawyers do much which could be regarded as at the margins of social work practice. Eekelaar, Maclean and Beinart set out to examine the work of family lawyers and to challenge the widely held perception that managing divorce through lawyers and the courts and, by implication, through the application of legal norms is unhelpful and costly. They found that solicitors can both pursue the interests of their clients and also observe and respond to the wider interests at stake:

The picture of family lawyers’ work in a variety of settings which emerges from our observational data is one of informed guidance, support, and expert facilitation through the divorce transition process within the legal frame.

---

28 Davis, et al., op cit., p. x.
32 ibid., p. 187.
Eekelaar et al. echoed the earlier work of Lewis and Abel when they described the work of solicitors as offering minute by minute support and reassurance combined with advice and action and teaching the client how to act for himself.33

The image of family lawyers that emerged from their study was of professionals who combined skills similar to those of a general medical practitioner with those of a social worker ‘with clout’. They concluded that family law work has a very important part to play in the lives of many people and that good solicitors can and do offer expert advice and assistance in managing family transitions sensitively and appropriately. Not surprisingly, therefore, a new initiative which would place family lawyers at the centre of a more holistic service began to emerge as an alternative to mandatory information meetings.

**Paths to Justice**

An earlier research study34 had drawn attention to the pivotal role played by solicitors in all aspects of civil justice. Genn’s research on the paths to justice illustrated that the most common problems faced by the public have a tendency to appear in clusters. So, for example, divorce is often accompanied by problems relating to children, money and housing, and just over 80 per cent of those experiencing divorce problems obtain advice from a solicitor. Genn’s study found that there was a heavy emphasis on wanting advice about legal rights, divorce procedures and financial matters. The problem cluster may require different remedies and different professionals to help with different problems. So when a new client presents at a family law firm he or she may well present with a wide-ranging cluster of problems which may require the expert services of a number of agencies.

Divorce inevitably involves huge disruption and multiple transitions in the daily lives of all family members and decisions have to be taken, often when emotions are raw, relating to a number of critical matters. This had been well recognised in the thinking behind the Family Law Act 1996, but by 2001 the new Labour Government had decided that the Act, in its current form would not meet its intended objectives. So the substantial revisions to divorce law heralded by the Act were abandoned, meaning that provisions for no-fault divorce, attendance at an information meeting and the opportunity to meet with a marriage counsellor would not be implemented. With hindsight, it could be argued that the Act attempted to do too much, but the pilots had provided extensive evidence, supplemented by other research, about what people want and need when they are considering the dissolution of a marital relationship. There remained a commitment by policymakers, practitioners and the Labour Government to introduce more modest changes within the existing legislative framework. The provision of information, the availability of mediation and access to justice are all important elements in the Government’s strategy to modernise civil justice and support families. The infrastructure of civil justice plays an important role in realising social justice and tackling social exclusion.35

33 ibid.
In 1999, the Access to Justice Act heralded the establishment of a Legal Services Commission with responsibility to develop a Community Legal Service focused on everyday issues and concerns. The lack of access to legal advice was seen as a contributing factor in creating and maintaining social exclusion. The LSC has an important role in helping people to address justiciable problems through the provision of publicly funded legal assistance. Navigating the legal process can be a daunting task for people who have little knowledge of how the legal system works, their legal rights, and the options open to them. Navigating the advice maze was also recognised as a serious difficulty for many people in Genn’s study. One of the challenges, therefore, was to consider how best to support people through these various mazes and ensure that they could access advice, information, and the courts and thereby attain fair and just outcomes.

Moreover, there was a renewed policy emphasis on supporting parents irrespective of living arrangements and marital status, to provide a stable, loving family environment for children. In 1998, the Home Secretary launched a consultation document entitled Supporting Families. It proposed a number of new developments, including dedicated helplines, Sure Start programmes, parent education, family-friendly employment practices, suggestions for strengthening marriage, and support for families with specific problems. The proposals were welcomed and a plethora of initiatives have since been implemented. Although family-oriented political action is constantly changing as a result of political formulation and changing constructions of family life, the Labour Government has sought to strike a balance between intervention and unnecessary interference in the private realm of the family. There are inevitable tensions and these have emerged during discussions about the role of family lawyers in ‘diagnosing’ family issues as FAInS practitioners. Changes in all aspects of everyday life present challenges, and policymakers tend to react to these challenges by trying to create some sense of order and continuity, which inevitably means that certain sets of values are reinforced and promoted.

Promoting and protecting the best interests of children remains at the heart of family policies. Seeing family life as a continual process in which transitions and life events, such as divorce, are part and parcel of the experience can be more productive than looking for one-off solutions, legal or otherwise. Walker et al. have argued that strategies for the provision of information and advice need to be carefully planned and that a more coherent, co-ordinated approach to accessing a range of professional services is needed if people are to receive the advice, information and specialised support they need at the time they need it. The Family Advice and Information Networks were conceived as the obvious development which could build on the available evidence in 2001, and their development coincided with substantive shifts in the provision of legal aid.

New Approaches to Legal Aid

The reform of public funding for legal services began under the Conservative Government, and in 1996 the Lord Chancellor, Lord Mackay of Clashfern, produced proposals for capping legal aid expenditure. Family law work entails expenditure of

---

large sums of public money and concerns had been rising about the escalating cost to the taxpayer of increasing numbers of divorces and family law cases. In the White Paper laying out reforms which were enshrined in the Access to Justice Act 1999, the Government proposed that legal aid expenditure would be controlled through a system of block grants made contractually between law firms and the new Legal Services Commission, following a process of competitive tendering. In 1999 a new funding code introduced seven categories of service, four of which were available in family cases:

1. Legal Help (equivalent to the old form of legal advice provided under the Green Form Scheme).
2. Approved Family Help (which may be either General Family Help or Help with Mediation).
3. Legal Representation.
4. Family Mediation.

The changes in public funding became effective on 1 January 2000 and were expected to have a considerable impact on family law practice: only contracted firms would be able to undertake publicly funded family law work and the number of practitioners has been diminishing; a separate application would be required to go beyond advice into assistance and representation in the early stages; and it would be necessary to consider mediation (and comply with section 29 of the Family Law Act 1996). Eekelaar, Maclean and Beinart argued that these requirements would disrupt the flow of legal assistance for many clients and prolong the process. They expressed concerns that there may not be enough family lawyers to undertake publicly funded work and that the administrative burden on family lawyers would be considerable. We return to these issues later in the report since they are relevant to how new initiatives such as FAINs might be taken forward, and discuss them in the context of current proposals for changes to legal aid provision.

Developing Family Advice and Information Networks

It was against this background of changes to the contracting of family law services and the provision of public funding that the new Family Advice and Information Networks were conceived. The FAINs were designed to take account of the research findings from the piloting of information meetings and family mediation arrangements, and to meet the needs of those involved in family law proceedings which had been highlighted in a range of research studies. The FAINs expected to build on existing best practice in family law and existing support services. The aim of the new initiative was to enable people to access a range of services through a single point of reference, initially through family lawyers. It was acknowledged that, in time, other agencies might also act as an access point to a range of advice and support services.

The FAINs sought to provide a fully co-ordinated, comprehensive and interdisciplinary approach to the concerns, difficulties and problems experienced by families when marital and parental relationships are in danger of breaking down or have already broken down.

41 Eekelaar, et al., op. cit.
The idea was to develop and secure a seamless service tailored to the needs of any individual, couple or family experiencing family relationship problems. When the LSC published the results of its consultation in January 2002, outlining the vision, aims and objectives of FAINs, it described how the new service should enable families to address and deal with the issues they face, confident that they have received the information and support appropriate to their circumstances.

The overall aims of FAINs were described as being to:

- facilitate the dissolution of broken relationships in ways which minimise distress to parents and children and which promote ongoing family relationships and co-operative parenting
- provide tailored information and access to services that may assist in resolving disputes and/or assist those who may wish to consider saving or reconciling their relationships

The LSC anticipated that FAINs would:

- provide tailored information to those seeking help and advice
- help to identify issues requiring legal advice and action
- encourage the use of relationship counselling for those who want it
- encourage the use of mediation services where appropriate
- offer support to parents in talking to children
- offer support to children who need it, through referral to expert children’s services

These aims and objectives were to be achieved by means of family law solicitors adopting a more 'holistic' approach to family law matters. The remit covered a broad range of family matters as defined in section 26 of the Family Law Act 1996. The holistic approach would entail an enhanced first meeting between a solicitor and a client, during which a wide range of matters would be discussed and a personal action plan drawn up. Thereafter, the solicitor would manage the progress of the client’s case, ensuring that appropriate referrals were made to other services. This approach was viewed as satisfying the demand for information and advice which is personally tailored and takes full account of each client’s particular circumstances, and as addressing the fact that there may be a cluster of problems to be resolved, which may require the expertise of other professionals. Family solicitors may be expected to make the referrals necessary and steer their client’s case through the divorce maze.

The Law Society of England and Wales and the Solicitors’ Family Law Association (now known as Resolution) had also been working to formalise and enhance the expertise of family lawyers. While the provision of good legal advice is a key priority, family law specialists are used to dealing with the anger and emotional distress which often

---

43 ibid., p. 4.
44 ibid., p. 5.
45 Legal Services Commission (2001), op. cit.
accompany the dissolution of cohabiting and marital relationships. They also have to balance the needs of their clients with the paramountcy principle, which renders the best interests and welfare of any children involved as the paramount consideration for the courts. There has been a growing expectation that the family law solicitor can encompass a range of activities in his or her work with clients with relationship/matrimonial difficulties. In 2002, a new Family Law Protocol provided a framework for family lawyers which:

- encourages a constructive and conciliatory approach to the resolution of family disputes
- encourages the narrowing of disputes and their effective and timely resolution
- endeavours to minimise risks to the parties and/or children
- has regard to the interests of children and long-term family relationships
- endeavours to ensure that costs are not unreasonably incurred

It requires family law practitioners to conduct their work in ways which encompass:

- an exploration of the prospect for reconciliation
- the consideration of other support services which can assist clients to address problems which underlie the relationship breakdown
- a consideration of whether family dispute services (including mediation) may be appropriate, and the provision to clients of explanation and information about the options available
- the need to screen for potential or actual harm associated with domestic violence and child abuse
- consideration of urgent issues and the possible remedies
- an exploration of the needs and rights of children and protecting their safety
- the provision of pertinent information tailored to the clients’ needs
- advice on possible outcomes and the promotion of realistic expectations of what can be achieved and how long it might take
- an exploration, explanation and assessment of the availability of, eligibility for and requirements of public funding, and of the statutory charge

The Protocol provides a benchmark of good practice with which all solicitors practising in family law in England and Wales should comply. It could be argued that the advent of FAINS provided a timely endorsement of the Protocol and an appropriate vehicle by which it could be fully operationalised. Nevertheless, the Protocol and FAINS were conceived against a background of increasing concern about the poor remuneration rates

for publicly funded legal advice and the retreat from legal aid work. Research suggested that experienced family law solicitors had been withdrawing from publicly funded work and reallocating it to legal executives and more junior colleagues. Yet the skills required to deliver an enhanced, more holistic service would almost certainly require practitioners to have considerable practice experience and a high degree of commitment to helping clients to resolve complex multi-faceted family relationship problems, both legal and otherwise. Not surprisingly, perhaps, the LSC, working in consultation with the Legal Consultation Group, agreed experience levels required for participation as a FAINs supplier which disqualified more junior practitioners. This presented a considerable conundrum for the LSC and for family law firms which wanted to embrace a new role for family lawyers that encourages them to take even more responsibility by providing an enhanced service, yet which find that the economic climate forces them to reallocate publicly funded clients to less experienced colleagues. We return to this issue later in the report.

It is within this context of enhancing family law practice that FAINs was developed and evaluated. In order to launch FAINs, experienced family law practitioners were selected for their particular expertise by the LSC. They were likely to be demonstrating, already, their ability to offer a more holistic approach to family matters and to embrace a wider, enhanced role as envisaged within the Family Law Protocol. The LSC wanted FAINs practitioners to extend their practice in order to:

- listen and reflect
- gather wide-ranging information
- assess potential risk
- ‘separate the problem from the person’
- determine the client’s agenda
- assess the need for a bespoke package of information, signposting and appropriate advice
- devise the next steps with the clients
- deliver an agreed ‘agenda for action’ and assist in the development of a personal action plan

While all FAINs practitioners were required to undertake specifically designed professional development training, it was clear from the outset that they needed to be highly experienced and committed to a vision in which family law solicitors would be at the heart of a network of professionals who could deliver a seamless service.

---

The Specific Characteristics of FAINs Practice

Although FAINs was described by the LSC as a new holistic service which was building on best practice in family law, it was essential to discern the specific characteristics of the new service in order to differentiate it from existing (best) practice. In the Professional Development Pack issued by the LSC, solicitors preparing to be FAINs providers were told:

… you will be assessing the issues, making a ‘diagnosis’ as to the steps to be taken and managing the client’s process and progress …

… it is likely that you will have built up a network of services/agencies to whom you may refer your client once you have made your initial ‘diagnosis’ or assessment of their individual needs, and that you will ‘case manage’ progress through such a referral and deal with the outcome as part of the overall conduct of their case.

… you will be able to refer your client as appropriate, in order that their progress through the process of separation or divorce includes access to a range of specialist information, advice or support … you will manage the client’s progress in a co-ordinated way.48

In these excerpts we can detect three key characteristics associated with the new service:

1. Diagnosis and assessment.
2. Referral to a range of network services.
3. Case management.

It was acknowledged by the LSC that many solicitors already used their skills to make a diagnosis, but that FAINs would enable them to ‘utilise and refine’ their skills. In the skills development programmes offered to FAINs solicitors, emphasis was placed on extending and enhancing the first meeting between the solicitor and a new client. Several factors were suggested that would change the nature of this meeting:

1. It was anticipated that the solicitor would obtain fairly detailed information from the client about personal circumstances and the issues which need to be considered in advance of the meeting so that the solicitor could think about the client’s situation and potential needs beforehand.
2. The meeting itself was expected to take longer than previously because the solicitor would spend more time listening to the client and exploring issues and concerns which went beyond purely legal matters.
3. The solicitor, having explored whether the client needed information, advice and support beyond that which he or she would normally give, would recommend how the client could get help from other agencies and might also make referrals on the client’s behalf. The objective would be to provide the client with advice and information tailored to the specific needs identified during the meeting, and to help the client access other services as appropriate.

4. Towards the end of the first meeting, the solicitor and the client would draw up a Personal Action Plan (PAP), which would summarise the client’s situation and the concerns in respect of which they wanted information, advice or support. The PAP would also aid the client in moving between referrals effectively. In other words, the PAP was intended to be a document unique to FAINs practice which the client would take away from the first meeting.

Family law specialists were clearly expected already to have developed some kind of network of services for interdisciplinary working, including ‘CABx, mediation services, welfare benefit agencies, child contact centres and counselling services’, but as FAINs providers they would be expected to extend their network to embrace other services such as debt counselling, community alcohol and drug abuse services, and Government initiatives that support families and family members such as Connexions or SureStart.

The LSC clearly anticipated that forming and maintaining good working relationships with other agencies, perhaps through a local forum, will be an essential part of family advice and information services.

Moreover, solicitors were being asked to use a range of skills while ensuring that their family lawyer role was not confused (e.g. with counselling and mediation) or weakened. Advising the client remains the key role of the family lawyer, having made an assessment of each client’s needs. A series of case studies in the professional development pack illustrated how the enhanced role might work in practice, as the FAINs solicitor provides general and specific information, support in assessing other family services and expert legal advice, as appropriate.

Essential to the process of delivering FAINs was the development by the LSC of two new documents: Client Information Forms and Personal Actions Plans. Solicitors were expected to ask clients for information using a client information form prior to meeting them for the first time, so that the solicitor could consider the characteristics of each case and prepare for the first meeting. The client information form collected data about the personal characteristics of the client, the family, the concerns to be discussed, emotional issues and so on. Its completion would require solicitors to be in contact with new clients in advance of the first meeting and require clients to do some ‘homework’ before meeting the solicitor. During the first meeting the solicitor would draft a Personal Action Plan ‘to aid the client in moving between referrals effectively’ and avoid them having to repeat their story at each new agency used. So, in addition to the new process characteristics of the enhanced first interview, two specific documents were to be used by solicitors and their clients.

During our evaluation we endeavoured to investigate the extent to which all the specific characteristics had been implemented in the pilot areas and to determine whether there had been a distinct and observable change in family law practice. We took account of all

49 ibid., p. 21.
50 ibid.
51 ibid., p. 23.
52 ibid., p. 72.
these features in designing our methodology, as well as the legal, policy and practice contexts in which FAINs had been developed.

Since the evaluation began in 2002, a number of other changes and developments have taken place relating to family law practice and the provision of publicly funded legal services, and in family policy, all of which have impacted on the development of FAINs. We discuss these in the final chapter and consider the implications for the future provision of legal services in the light of the findings from the evaluation. Family Advice and Information Networks appeared to be a rational solution to the issues raised by previous research and a significant step towards meeting the wide-ranging needs of people facing marital dissolution and other transitions which accompany family change. Our aim was to be able to provide regular feedback to the LSC in order that the programme could be ‘tweaked’ and reviewed as the various phases of the FAINs pilot were rolled out. In the next chapter we describe the research programme, briefly discuss the findings from the first (pre-pilot) phase of FAINs implementation, and outline the data sets we have used for the evaluation.
Chapter 2  The Research Programme

Janet Walker

The LSC launched FAINs as a pilot programme, expecting it to determine:

(a) The relative benefits and cost effectiveness of contracting for the provision of publicly funded and quality assured family advice and information services through a network of suppliers, primarily and initially family lawyers compared with current arrangements.

(b) The effectiveness and potential benefits of providing a single point of access linked to a full network of specialist services for those experiencing relationship or family difficulties.

(c) The appropriate quality assurance systems necessary for the delivery of enhanced family services.

(d) The appropriate contracting arrangements for the delivery of publicly funded family advice and information.

(e) The number, type and nature of quality assured suppliers necessary to create a viable network and the most cost effective means for providing it.

(f) The necessary links with the Local Community Legal Service Partnerships and Regional Legal Services Committees. 53

The research envisaged by the LSC was expected to consider and address the following issues:

- The usefulness and efficacy of an enhanced solicitor role for clients.

- The take-up, ease of access and usefulness (or otherwise) of the range of information, support (generalist/specialist) and advice services linked to the project.

- Whether and what evidence there may be of increased take-up and use of relationship and marriage support services.

- The levels of agreement reached and whether pilot use of FAINs lowers the percentage of litigated proceedings and enhances the opportunities for co-operative co-parenting and cohesive family relationships post-separation/divorce.

- The appropriateness and efficacy of the referral network/s and the most efficient and cost effective means of ensuring successful client referrals and service take-up.

- The overall effectiveness of each service accessed by clients and key indicators as to those preferred/most useful and effective from the point of view of the client consumer and FAINs solicitors.

- The effectiveness of the range of information (in all media) produced to support and inform clients as to available services and the role/functions of FAINs.

The cost of provision of such a service overall and how it compares with the effectiveness and cost efficiency of the current arrangements.\textsuperscript{54}

Furthermore, the LSC expressed its interest in research which would consider the provision of information to and direct services for children and young people.

Since a key aim of the research was to analyse outcomes in a way which would make it possible to identify what difference FAINs had made, we believed that we needed to develop an analytical framework in which FAINs clients could be compared with clients who had not seen a FAINs solicitor. We thought that a before-and-after approach would effect the most robust kind of comparison, and proposed that we should test the feasibility of doing this during a pre-pilot phase. In this chapter we summarise the results of the pre-pilot study before briefly describing the methods adopted for the main study. A fuller account of the pre-pilot activities can be found in Annexe 1.

Learning from the Pre-Pilot

In 2002, the LSC launched the FAINs pre-pilot in five areas: Cardiff, Exeter, Milton Keynes, Newcastle upon Tyne, and Nottingham. We collected data about clients from the FAINs solicitors who had been selected by the LSC to work in the pre-pilot phase in these areas and non-FAINs solicitors in the same firms, observed their day-to-day practice, and interviewed solicitors and clients who agreed to participate in the research.

We found that clients who attended a meeting with a FAINs solicitor tended to get a little more time (around thirteen minutes) than those who did not. Nevertheless, there were significant variations between solicitors, and it was clear that they were allocating different priorities to the first appointment (see Annexe 1). While most FAINs practitioners welcomed the additional time allowed for the first meeting, most felt that it was not always appropriate to have a lengthy first appointment and that referrals to other agencies might be more useful at a later date. The indications were that most clients were happy with their first meeting with a solicitor irrespective of whether they had seen a FAINs provider or not. Clients who had seen a FAINs solicitor were more likely to have been told about other services, but there was no evidence that this made any difference to their subsequent actions. This was not altogether surprising since the evidence from the evaluation of information meetings\textsuperscript{55} illustrated just how difficult it is to change people’s behaviour as a result of providing information. It seemed unlikely, therefore, that the pre-pilot version of FAINs was going to be suitably robust, or that it provided a sufficiently different approach to legal practice to make an identifiable impact on clients. Indeed, solicitors reported that FAINs had made little difference to the way they practised family law.

At the end of the pre-pilot many FAINs solicitors were still attempting to come to grips with what FAINs actually was and how a network of services might be established. Not all could describe the specific characteristics of the new approach, and most saw it as little more than a ‘tweaking’ of existing practice. It became clear that without some kind of developmental activity in each area, networks would not suddenly emerge simply


because solicitors had embraced a FAINs approach. All the solicitors were aware of mediation and marriage counselling services, but had little knowledge about what else might be available locally. We concluded that a good deal of work was still needed if agencies were to come together to form cohesive networks which could offer information, advice and support to clients in a seamless fashion.

One of the fundamental shifts that resulted from the findings from the pre-pilot was the LSC’s decision to change the name from Family Advice and Information Networks (FAINs) to the Family Advice and Information Service (FAInS), taking the emphasis away from the notion of networks and focusing more on the interaction between solicitors and their clients. Nevertheless, the expectation that FAInS practitioners would be the gateway to a range of support services remained central to the new service.

Preparing for FAInS Practice

As a result of findings from the pre-pilot, the LSC refined the professional development training for FAInS practice and clarified its expectations regarding the changes the introduction of FAInS would make to professional practice in family law. The FAINs programme had originally been presented as an initiative which was building on the positive outcomes from previous experiments and changes. The enhanced role identified for solicitors embraced the notion of a more holistic approach involving them in exploring clients’ wider issues and concerns consequent on the breakdown of their relationship, and then referring them to services which might provide the most appropriate support. To help them to execute this wider role, the LSC had designed a client information form which solicitors could use to gather detailed information in advance of first meeting their clients, and a personal action plan to ensure clarity of the issues identified during the first meeting and to act as a document clients could present when accessing other support services. Solicitors were expected to use these new forms and to continue to allow additional time for the first meeting so that the wider issues could be explored.

Throughout the period of the evaluation, including during the pre-pilot, we observed the professional development days and network meetings organised by the LSC in the pilot areas. The preparation for FAInS practice had three complementary components:

1. A distance learning pack prepared for potential FAInS practitioners by the LSC and sent out in advance of the professional development day.

2. Attendance at a professional development seminar (accredited for Law Society LPD hours) focusing on FAInS practice and including mediation awareness for those not trained as mediators.

3. Additional opportunities for professional development aimed at complementing particular skills and practice.

Our early observations and a survey of pre-pilot solicitors indicated that, although the distance learning pack had been a little daunting (it was a weighty document), it had been helpful, and that the professional development days had enabled solicitors to think about the skills they would need as FAINs practitioners. Although most had understood the emphasis on addressing emotional issues in their meeting with a new client, several remained unclear as to what being a FAINs practitioner would entail. The trainers were
inclined to portray the essence of the FAINs approach as a therapeutic one, with solicitors being encouraged to get to the heart of a client’s problem by addressing underlying issues. Since many of the participating solicitors felt that they did this anyway, they were uncertain as to whether FAINs offered anything new.

There were a number of mixed messages for solicitors throughout the pre-pilot and their preparation for FAINs practice. On the one hand, FAINS was described as being about ‘best practice’; on the other, it was described as a ‘wholly new approach’ which required an enhanced first meeting and the use of the new forms. Much of the training was delivered in the discourses of social work and counselling rather than that of legal practice, and some solicitors were concerned about the extent to which they were expected to act as social workers. We return to the issue of boundaries between law and social welfare and the appropriate roles for family lawyers in our final chapter.

A primary ethos of the FAINS approach was the development of listening skills. Some solicitors regarded these as essential to being a good lawyer anyway. ‘Listening’ was a skill already recognised and valued by FAINS trainees. Nevertheless, the remit to provide a more holistic service heightened solicitors’ concerns over the maintenance of appropriate professional boundaries. (For a more detailed discussion of the training for FAINS and the dilemmas it raised, see Annex 4.)

As the FAINS programme was rolled out, the professional development was further modified and refined as a result of our ongoing evaluation and feedback from the solicitors. Towards the end of our evaluation, FAINS was described as: providing tailored information; identifying issues; focusing on relationship counselling and encouraging mediation; and offering support to parents in talking to children and offering support to children. We examine these themes and the tensions surrounding them during the remainder of this report.

Evaluating the Family Advice and Information Service

Our primary purpose during the pre-pilot period was to test our research methods. It became clear that we needed to capture information about the whole process of engagement between solicitors and their clients, as well as to find ways of measuring outcomes attributable to FAINS practice. We describe in detail in Annex 2 the research methods we adopted. The main feature of our approach was a before-and-after study, which meant that we would examine the work of family law solicitors over a six-month period before they trained as FAINS providers and then again over a further six-month period after they had become FAINS practitioners. The choice of pilot areas was undertaken towards the end of the pre-pilot, in partnership with the LSC. We tried to select areas that would provide a reasonable geographic spread and offer a foretaste of the variation in local circumstances which would be evaluated in a national roll-out of FAINS (see Annex 2). Two of the original pre-pilot sites, Cardiff and Exeter, continued their work in the main pilot (although there could be no before-and-after study since FAINS was already up and running), and four new pilots were selected for the evaluation. These were located in Basingstoke, Leeds, Lincoln, and Stockton & Hartlepool. Two of these areas (Leeds and Lincoln) were expected to act as between-area comparators to Cardiff and Exeter respectively. Our approach yielded three distinct data sets:
1. FAINS data from Cardiff and Exeter.

2. Pre-FAInS data from the four new pilots (‘before’ data).

3. FAINS data from the four new pilots (‘after’ data).

In addition to obtaining data about all new clients in the before-FAInS and FAInS periods, we undertook:

- observations of FAINS professional development training and other events
- two surveys of family law practice (at the beginning and end of our study period)
- observations of solicitors in action both before and after FAInS
- interviews with solicitors in both periods
- follow-up telephone interviews with clients some six months after their first meeting with a solicitor
- in-depth interviews with a subset of clients
- interviews with a small group of children whose parents had agreed to follow-up interviews

We were keen that as many firms and lawyers as possible in each pilot area should take part in FAINS, and hoped that most if not all of those undertaking publicly funded work in the study areas would opt in to FAINS. We pointed out that without sufficient numbers in each pilot area, our robust comparator study was in danger of being undermined. In the event, far fewer solicitors participated in FAINS than we had hoped, and we have had to be realistic about the extent to which we can discern major impacts of FAINS.

**Quantitative Data Sets**

Participating solicitors in the four new pilots were required to provide us with information about all new publicly funded family law clients in two time periods: the first (phase one) between September 2003 and February 2004 inclusive (the pre-FAInS sample), and the second (phase two) between June and November 2004 inclusive (the FAInS sample) after solicitors had undertaken FAINS training. The FAINS practitioners in Cardiff and Exeter provided FAINS data during the phase one period only. In total, 115 solicitors took part in the study during phase one; of these 34 were FAINS providers in Cardiff and Exeter and 81 were pre-FAInS solicitors in the new study areas. During phase two, 84 FAINS solicitors provided research data in the new pilot areas. Thirty of these solicitors, however, had been recruited after phase one had been completed and so had not provided any pre-FAInS data. The FAINS providers in Cardiff and Exeter did not participate in phase two of the data collection. Our analyses of before-and-after practice, reported in Chapters 3 and 4, have included only the 54 solicitors who participated in both phases and provided both pre-FAInS and FAINS data. We included the wider range of solicitors in our interviews and in our observations of practice, however.

In Annexe 2 we describe the research data provided by all the solicitors who participated in the full pilot. In summary, we received information relating to a total of 3,482 clients who were seeing their solicitor for the first time during the two phases of the full pilot: of these, 1,528 saw pre-FAInS solicitors and 1,954 saw FAINS solicitors. The majority of
clients (72%) were female and nearly half were married, although the majority were living apart from their spouse when they had their first meeting with a solicitor. The ages of clients ranged from 12 to 86, although the majority were in their twenties and thirties. By far the greatest number of matters presented related to children’s issues (59%), followed by divorce (40%), finance and property (27%) and domestic violence (20%). Contact with children was discussed in over half of all cases, and residence in nearly a third. The records supplied by solicitors showed that the majority of clients (75%) had only one meeting with their solicitor. The maximum number of meetings relating to one client in the pre-FAInS phase was fifteen, and in the FAInS phase seven.

The solicitors were asked to introduce the evaluation to their clients in both the pre-FAInS and FAInS periods by giving them information that we had prepared. Clients were invited to participate in the research and to give consent which would allow us to contact them at a later date. Our intention was to draw a sample of clients for telephone interview some six months after their first meeting with the solicitor and a smaller sample for an in-depth face-to-face interview. The telephone interview sample is described in Chapter 4.

**Qualitative Data Sets**

The qualitative elements of the research were designed to shed light on and gain more in-depth understanding of family law practice. Unlike in the quantitative before-and-after study, which has been as scientifically rigorous as possible, we have not been in a position to follow strict sample selection criteria in the qualitative elements. We present the primarily qualitative findings in Part 2 of the report. We believe that the qualitative aspects of the evaluation enable us to understand the quantitative findings and contribute to discussions about how family law practice might develop in future.

Our qualitative activities were various in both the pre-FAInS and FAInS phases of the full pilot (see Annexe 2). First, we conducted 70 observations of solicitors’ initial meetings with their clients (30 pre-FAInS and 40 FAInS). Second, we conducted observations of other activities involving the solicitors, such as training days and network meetings. Third, we interviewed 19 solicitors, before they trained as FAInS practitioners, about their family law practice in general and then, in phase two, we interviewed 22 FAInS solicitors about their experiences of FAInS in particular. Fourth, in order to find out what clients thought about their experiences of legal services we interviewed 44 people during the course of the evaluation, 12 pre-FAInS clients and 32 FAInS clients. Of these clients, 29 were female and 15 male. All had children under 18, and the majority had at least one child living with them. There was no discernible difference between the clients forming the in-depth interview sample and the total sample of clients, except in respect of the criteria by which they were selected. The clients who took part in an in-depth interview were more likely to have presented their solicitor with a matter concerning children (79.5%, as against 58.5% of all clients). This is to be expected given that this sample was selected on the basis of parenthood, primarily because we wanted to secure a sample of children for interview, and because we wanted to know whether FAInS clients were given help and support to talk to children and to ensure that parental responsibilities would be ongoing.

In reality, it proved impossible to draw a sample of children from the parent interview sample, and we followed up with parents who had taken part in the six-month telephone follow-up interview. We were able to interview nine children from six families in which one of the parents had seen a pre-FAInS solicitor and nine children from four families in
which one of the parents had been to a FAInS solicitor. The details of the children involved and the findings from the interviews are presented in Chapter 11.

**Theoretical Framework**

We adopted a theory of change model (see Annexe 2) to help us delineate key inputs, outputs and outcomes for FAInS. During the evaluation we have asked a variety of research questions using this model, including the following:

1. In what ways is the solicitor’s role enhanced?
2. Do solicitors’ attitudes change, and if so how?
3. Do clients behave differently, and if so how?
4. Does the use of other agencies change, and if so how?
5. Is it easier for clients to access information, advice and support?
6. Is it easier for solicitors to access information, advice and support?
7. To what extent, and how, is distress minimised?
8. What changes are there in post-divorce relationships?
9. In what ways is parenting improved?
10. To what extent are disputes settled through mediation/negotiation?
11. Do children receive appropriate and adequate information and expert help?
12. What costs are associated with the enhanced solicitor role?

We attempt to answer these questions in the chapters that follow.

**Generalisability**

In any evaluation, it is essential to determine the extent to which findings from the study are generalisable to wider populations. Understanding the representativeness of our samples and the generalisability of the data were critical elements in the research programme. As we have indicated, we had hoped that all family lawyers undertaking publicly funded work in the study areas would participate in the study, allowing us to make a number of assumptions about the robustness of the before-and-after design. This did not happen, and we describe our subsequent work on generalisability in some detail in Annexe 3. It included an examination of the catchment areas of the pilot solicitors, the profiling of the characteristics of the pilot area populations, and a comparison of the research cases with the wider area populations and with the national LSC caseload of publicly funded family law cases. The evidence suggests that the pilot areas were fairly representative of the country as a whole on most key factors other than the ethnic mix of the resident populations. The research samples were also very close to being
representative with respect to gender, although people living in more deprived areas were over-represented in the research data sets. The distinctiveness of the research sample stems largely from FAInS’ firms having client bases with higher proportions of deprived people. This is hardly surprising given that the solicitors were likely to do a significant proportion of publicly funded work. We concluded that the research data presented in the following chapters are closely representative of the FAInS client base profile. In our view, the findings that follow can, therefore, be read with a considerable degree of confidence.
One of the main objectives of our evaluation of FAInS has been to examine how the introduction of FAInS has affected the way in which solicitors manage publicly funded cases. This has required us to compare the practice of solicitors after they became FAInS providers with their practice prior to FAInS training. We adopted a before-and-after approach to the research in four case-study areas, Basingstoke, Leeds, Lincoln and Stockton & Hartlepool, in order to make this comparison. Solicitors who expressed a willingness to become FAInS practitioners were asked to participate in the evaluation, beginning in September 2003, prior to receiving FAInS training. They were required to provide information about all their new publicly funded clients in the period 1 September 2003–29 February 2004. In the months between March and May 2004 the solicitors then received FAInS training, and we subsequently required them to provide exactly the same kind of information about all their new publicly funded cases during the period 1 June–30 November 2004.

In order to make comparisons between the ‘before’ and ‘after’ periods, we needed to obtain basic information, during both data collection periods, about all publicly funded clients who had a first appointment with a participating solicitor. Solicitors were asked to complete three data-collection forms:

1. Record of the First Meeting Forms, which provided information about the client and their first meeting with the solicitor.
2. Meeting Record Form, which provided information about meetings other than the first one.
3. Six-Month Follow-Up Form, which provided information about the progress of the case.

At their first meeting with a publicly funded client, solicitors were asked to provide the client with written information about our research and encourage them to complete a consent form in order for us to engage in follow-up evaluation of their case. This follow-up was scheduled to take place six months after the first interview between the client and the solicitor and was in two parts:

1. A telephone interview with the client.
2. A questionnaire (Six-Month Follow-Up Form) sent to the solicitor.

Without a client’s consent, we did not have access to the name of the client and could not track the case over time. We did, however, receive all Record of First Meeting Forms and Meeting Record Forms, since these were anonymised and did not contain the names of clients. This meant that we had, in theory, access to some information about all the

---

56 The forms were kept as brief as possible so as not to overburden solicitors with administrative activities that were not an essential element of FAInS.
57 The results of the client interview survey are discussed in Chapter 4.
publicly funded clients who attended a first meeting with a participating solicitor during the two periods in which we were collecting information about new clients.

The Alternative Comparator

In addition to the before-and-after study, we used two areas (Cardiff and Exeter) in which FAInS was operating at the same time as the ‘before’ study was taking place in our four case-study areas as alternative comparators. Although the comparison that this afforded was far less robust than that adopted in the before-and-after study, it enabled us to obtain early indications about how the FAInS model was working. It also accorded us an opportunity for testing our analytical procedures before data relating to FAInS provision in the four main study areas became available. The results from our analysis using the alternative comparators, which were the subject of several interim reports to LSC, provided indications of marginal differences between FAInS and pre-FAInS solicitors. We found that FAInS providers seemed to spend more time on the first meeting with clients, were more likely to obtain information about the client’s circumstances in advance of the first meeting, tended to discuss a slightly wider range of issues with clients, and were marginally more likely to provide clients with information about other services. Differences in outcomes could, however, generally be explained in terms of differences between socio-legal cultures or case-mix differences. When we controlled for these factors, differences between FAInS and pre-FAInS practice tended to disappear. Advice and information, for instance, seemed more likely to be offered if the cases involved issues connected with children or finances, and it appeared that little changed as a result of the FAInS approach. These findings were consistent with those from the pre-pilot.

We also found considerable variation within our sample of FAInS providers. Several FAInS solicitors did not obtain pre-meeting information from clients or give advice and information about other services, whereas others routinely did.

The Before and After Sample

One hundred and fifteen solicitors took part in the first phase of the full pilot study. This figure includes 34 FAInS providers in Cardiff and Exeter who were included in Phase 1 of the full pilot to provide the alternative comparator sample and whom we did not need to include in Phase 2. In addition to the Cardiff and Exeter solicitors, a further 27 solicitors from our four case-study areas who provided pre-FAInS data did not participate in Phase 2 of the evaluation. This is clearly unfortunate, as we have no information about their practice as FAInS providers. Furthermore, 30 solicitors became FAInS providers during the second phase despite not having been involved in the pre-FAInS phase of the research. Clearly, we have no pre-FAInS data relating to their cases and their practice before they became FAInS practitioners. As Table 3.1 shows, just 54 solicitors from 24 different firms in the four study areas participated in the before-and-after study. It is this group of solicitors which has provided us with the data for our before-and-after study, the analyses of which are reported in this chapter.

The 54 solicitors who participated in both phases processed 1,223 cases during the pre-FAInS period and went on to process 1,047 cases in the period following FAInS training (Table 3.2). The 27 solicitors who participated in Phase 1 of the full pilot but opted out of Phase 2 processed 303 pre-FAInS cases, and the 30 solicitors who participated only in the
second phase of the study processed 472 FAInS cases. Those cases were not included in our before-and-after analysis, which focuses on those solicitors for whom we have data for the pre-FAInS period as well as for the period following FAInS training.

Table 3.1  Number of solicitors involved in each phase of the research

<table>
<thead>
<tr>
<th>Location</th>
<th>Phase 1 only</th>
<th>Phase 2 only</th>
<th>Both phases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basingstoke</td>
<td>3</td>
<td>2</td>
<td>9</td>
</tr>
<tr>
<td>Leeds</td>
<td>16</td>
<td>20</td>
<td>23</td>
</tr>
<tr>
<td>Lincoln</td>
<td>3</td>
<td>2</td>
<td>7</td>
</tr>
<tr>
<td>Stockton &amp; Hartlepool</td>
<td>5</td>
<td>6</td>
<td>15</td>
</tr>
<tr>
<td>Cardiff</td>
<td>14</td>
<td>n.a.</td>
<td>n.a.</td>
</tr>
<tr>
<td>Exeter</td>
<td>20</td>
<td>n.a.</td>
<td>n.a.</td>
</tr>
<tr>
<td>Total</td>
<td>61</td>
<td>30</td>
<td>54</td>
</tr>
</tbody>
</table>

Table 3.2  Number of cases processed by participating solicitors

<table>
<thead>
<tr>
<th>Location</th>
<th>Solicitors in both phases</th>
<th>Solicitors in one phase only</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>pre-FAInS (phase 1)</td>
<td>FAInS (phase 2)</td>
</tr>
<tr>
<td>Basingstoke</td>
<td>182</td>
<td>189</td>
</tr>
<tr>
<td>Leeds</td>
<td>439</td>
<td>392</td>
</tr>
<tr>
<td>Lincoln</td>
<td>121</td>
<td>77</td>
</tr>
<tr>
<td>Stockton &amp; Hartlepool</td>
<td>481</td>
<td>389</td>
</tr>
<tr>
<td>Cardiff</td>
<td>n.a.</td>
<td>n.a.</td>
</tr>
<tr>
<td>Exeter</td>
<td>n.a.</td>
<td>n.a.</td>
</tr>
<tr>
<td>Total</td>
<td>1,223</td>
<td>1,047</td>
</tr>
</tbody>
</table>

Comparing Case Types

The profile of solicitors’ caseloads during the second phase of the study was remarkably similar to that of caseloads in the pre-FAInS period. As Figure 3.1 indicates, there was no difference between ‘before’ and ‘after’ FAInS caseloads in terms of clients’ gender or ethnicity and whether or not clients were receiving state benefits or had disabilities. The two sets of cases were also similar in terms of the marital status of clients (Table 3.3), their employment status (Table 3.4) and the number of children they had (Table 3.5).
Figure 3.1  Comparison of the characteristics of pre-FAInS and FAInS clients

Table 3.3  Marital status of clients

<table>
<thead>
<tr>
<th>Marital status</th>
<th>Pre-FAInS cases</th>
<th>FAInS cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single</td>
<td>28%</td>
<td>25%</td>
</tr>
<tr>
<td>Cohabitng</td>
<td>6%</td>
<td>7%</td>
</tr>
<tr>
<td>Divorced</td>
<td>10%</td>
<td>10%</td>
</tr>
<tr>
<td>Widowed</td>
<td>0%</td>
<td>1%</td>
</tr>
<tr>
<td>Married – living with spouse</td>
<td>11%</td>
<td>11%</td>
</tr>
<tr>
<td>Married – living apart</td>
<td>35%</td>
<td>36%</td>
</tr>
<tr>
<td>Separated – previously cohabiting</td>
<td>9%</td>
<td>9%</td>
</tr>
</tbody>
</table>

Number of cases (100%)  1,222  1,040

Chi-squared = 6.61; p = ns.
Note. Deviations from 1,047 FAInS cases and 1,223 pre-FAInS cases are due to missing data.
Table 3.4  Employment status of clients

<table>
<thead>
<tr>
<th>Employment status</th>
<th>Pre-FAInS cases %</th>
<th>FAInS cases %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employed full-time</td>
<td>14</td>
<td>13</td>
</tr>
<tr>
<td>Employed part-time</td>
<td>17</td>
<td>21</td>
</tr>
<tr>
<td>Self-employed</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Unemployed</td>
<td>49</td>
<td>49</td>
</tr>
<tr>
<td>Homemaker</td>
<td>12</td>
<td>11</td>
</tr>
<tr>
<td>Retired</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Other</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Number of cases</td>
<td>1,219</td>
<td>1,043</td>
</tr>
</tbody>
</table>

Chi-squared = 5.83; p = ns.

Table 3.5  Number of children (including stepchildren and adult children)

<table>
<thead>
<tr>
<th>Number of children</th>
<th>Pre-FAInS cases %</th>
<th>FAInS cases %</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>One</td>
<td>30</td>
<td>30</td>
</tr>
<tr>
<td>Two</td>
<td>28</td>
<td>30</td>
</tr>
<tr>
<td>Three</td>
<td>16</td>
<td>17</td>
</tr>
<tr>
<td>More than three</td>
<td>14</td>
<td>13</td>
</tr>
<tr>
<td>Number of cases</td>
<td>1,223</td>
<td>1,047</td>
</tr>
</tbody>
</table>

Chi-squared = 1.79; p = ns.

Similarities between pre- and post-FAInS cases were also evident when we examined the matters involved (Figure 3.2).
The data which we were able to compare suggest a marked similarity between time periods in terms of the types of clients and the types of cases processed by solicitors. This means that there is no evidence which indicates that implementation of FAInS affected the allocation of cases within participating firms. The similarity between pre-FAInS and FAInS cases simplified data analysis, since there was no need to control for case differences.

The First Meeting Between Solicitor and Client

Gathering Client Information in Advance of the First Meeting

One of the defining features of FAInS is the expectation that solicitors will collect information from clients via a questionnaire (the Client Information Form\textsuperscript{58}) which would provide solicitors with information about the client’s circumstances in advance of the first meeting. The LSC has described the purposes of the Client Information Form as threefold:

1. Helping to focus the client on the things that they’d like to discuss with [the solicitor] in the first meeting.
2. To provide [the solicitor] with some baseline information about the client and to save [the solicitor] from having to collect this information in the meeting.
3. To introduce the client to a two-way process between [the solicitor] and them, whereby they will take some responsibility for providing [the solicitor] with information, as well as [the solicitor] taking responsibility for providing them with advice and information.\textsuperscript{59}

Solicitors were given the following instructions about when to ask clients to complete a Client Information Form:

1. Where possible and when appropriate, the form can be mailed out to the client in advance of the meeting, giving the client time to reflect on their issues and priorities.
2. The client can fill the form in whilst sat in the [solicitors’] waiting room, before they see [the solicitor].\textsuperscript{60}

As Table 3.6 shows, most FAInS clients (73\%) completed a Client Information Form, but usually did so immediately prior to the meeting rather than in advance of it. Almost a quarter of clients (22\%) brought a completed form with them when they attended the meeting, but around half completed a form at the solicitor’s office immediately before the meeting took place. Clients who completed a form immediately before the meeting may have reflected beforehand about their ‘issues and priorities’, but it seems unlikely that their solicitor would have been able to assimilate the information contained in the forms in advance of the meeting, which was the LSC’s original intention. More than a quarter of FAInS clients (27\%) did not complete a form at all.

\textsuperscript{58} The LSC designed the Client Information Form. It was not an evaluation instrument and completed forms were not available to the evaluation team.
\textsuperscript{59} Guidance notes for the completion of FAInS documentation, Legal Services Commission.
\textsuperscript{60} ibid.
Clients who attended meetings with solicitors prior to the implementation of FAInS clearly did not complete the Client Information Form, since it was introduced with FAInS. Some solicitors, however, were already using forms of their own – 17 per cent of clients completed a similar kind of information form devised by solicitors, prior to meeting their solicitor for the first time.

Table 3.6 Completion of Client Information Forms

<table>
<thead>
<tr>
<th>Form completed</th>
<th>Pre-FAInS cases</th>
<th>FAInS cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>In advance of the meeting</td>
<td>8%</td>
<td>22%</td>
</tr>
<tr>
<td>At the solicitor’s office</td>
<td>9%</td>
<td>51%</td>
</tr>
<tr>
<td>Not at all</td>
<td>83%</td>
<td>27%</td>
</tr>
<tr>
<td>Total (100%)</td>
<td>1,205</td>
<td>1,032</td>
</tr>
</tbody>
</table>

Chi-squared = 718.52; p < .001.

We noted a distinct variation between firms in practice relating to the FAInS Client Information Form. In only five FAInS firms did the majority of FAInS clients bring a completed Client Information Form to the meeting. By contrast, in four firms the majority of FAInS clients neither brought a completed form to the meeting nor completed one at the solicitor’s office immediately before the meeting. Thus, the responses of practitioners and firms to this element of FAInS procedure were clearly mixed. The difference between firms also reflects differences between areas. Table 3.7 examines completion of the FAInS Client Information Form and indicates that the forms were least likely to be completed at any time by clients attending a meeting with a solicitor based in the Lincoln area, and least likely to be completed in advance of attending a meeting by clients going to see solicitors in Basingstoke.

Table 3.7 Completion of Client Information Forms in each of the study areas

<table>
<thead>
<tr>
<th>Form completed</th>
<th>Basingstoke</th>
<th>Leeds</th>
<th>Lincoln</th>
<th>Stockton/Hartlepool</th>
</tr>
</thead>
<tbody>
<tr>
<td>In advance of the meeting</td>
<td>11%</td>
<td>23%</td>
<td>24%</td>
<td>24%</td>
</tr>
<tr>
<td>At the solicitor’s office</td>
<td>60%</td>
<td>53%</td>
<td>15%</td>
<td>52%</td>
</tr>
<tr>
<td>Not at all</td>
<td>29%</td>
<td>24%</td>
<td>61%</td>
<td>24%</td>
</tr>
<tr>
<td>Total (100%)</td>
<td>188%</td>
<td>386%</td>
<td>76%</td>
<td>382%</td>
</tr>
</tbody>
</table>

F = 71.33; p < .001.

The Length of the First Meeting

The new, holistic approach heralded by the introduction of FAInS provided practitioners with more time in which to conduct the first meeting with the client. The LSC anticipated that solicitors would need to spend more time exploring a wider range of issues than previously. The data we obtained from our before-and-after study shows that, in reality, the first meeting between solicitors and clients lasted on average eight minutes longer after the introduction of FAInS than it had done beforehand (Table 3.8).
Further analysis shows that the length of meetings was not simply attributable to whether or not the solicitor was a FAInS practitioner. Other factors appeared to affect the length of meetings. For instance, as the regression model shown in Table 3.9 indicates, first meetings tended to last around 11 minutes longer if domestic violence issues were involved, 7 minutes longer if children’s issues were involved, and 6 minutes longer if finances/property issues were involved. Meetings with female clients lasted an average of approximately 5 minutes longer than those with male clients, while female solicitors spent an average of 9 minutes longer on the first meeting than male solicitors. The first meeting tended to require an additional 5 minutes if the client was not receiving Jobseeker’s Allowance or Income Support, probably owing to the additional administrative work required to obtain information about the client’s income for public-funding purposes.

The absence of a Client Information Form seems to have affected the length of first meetings between clients and FAInS providers. If a form had not been completed, FAInS providers needed to allocate an additional five minutes to the first meeting.

### Table 3.9 Regression analysis of the length of the first meeting

<table>
<thead>
<tr>
<th></th>
<th>Regression coefficient</th>
<th>Standard error</th>
<th>Standardised coefficient</th>
</tr>
</thead>
<tbody>
<tr>
<td>FAInS case</td>
<td>7.4</td>
<td>0.90</td>
<td>.16</td>
</tr>
<tr>
<td>Male client</td>
<td>- 4.8</td>
<td>1.04</td>
<td>-.10</td>
</tr>
<tr>
<td>Male solicitor</td>
<td>- 8.7</td>
<td>1.02</td>
<td>-.17</td>
</tr>
<tr>
<td>Domestic violence case</td>
<td>11.3</td>
<td>1.12</td>
<td>.21</td>
</tr>
<tr>
<td>Finances/property case</td>
<td>5.7</td>
<td>1.11</td>
<td>.11</td>
</tr>
<tr>
<td>Children issues case</td>
<td>6.8</td>
<td>0.94</td>
<td>.15</td>
</tr>
<tr>
<td>Client on benefits</td>
<td>- 4.6</td>
<td>0.96</td>
<td>-.10</td>
</tr>
</tbody>
</table>

Adjusted R² = .161; p < .001. For each of the individual factors p < .001.

### Content of the First Meeting

The LSC anticipated that the content of the first meeting between a new client and a solicitor would change as a result of FAInS practice. Not only would lawyers talk about the legal issues relating to the case, but they would also explore other personal concerns and problem clusters which might impact on the case and/or the client’s well-being. In fact, our data show that the content of the first meetings changed little as a result of FAInS. Following implementation of FAInS, solicitors were just as likely as they had been during the pre-FAInS period to focus primarily on legal issues connected with
residence, contact, housing and protection from violence during their first meeting with their clients (Table 3.10). The only significant differences related to discussions about the residence of children and about personal counselling.

It seems that discussion of issues such as counselling, grandparents, getting help for children, and health and mental health services continued to be rare. While FAInS training may have resulted in some solicitors paying more attention to the collection of advance information about clients’ circumstances, and to some of them spending more time on their first meeting with clients, this did not seem to extend the issues addressed during, or the main focus of, the first meeting.

Table 3.10 Issues discussed at the first meeting

<table>
<thead>
<tr>
<th>Issues discussed</th>
<th>Pre-FAInS cases</th>
<th>FAInS case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact</td>
<td>56</td>
<td>57</td>
</tr>
<tr>
<td>Residence of children</td>
<td>29</td>
<td>33</td>
</tr>
<tr>
<td>Housing</td>
<td>26</td>
<td>27</td>
</tr>
<tr>
<td>Protection from violence</td>
<td>24</td>
<td>25</td>
</tr>
<tr>
<td>Costs and outcomes</td>
<td>26</td>
<td>25</td>
</tr>
<tr>
<td>Parental responsibility</td>
<td>24</td>
<td>24</td>
</tr>
<tr>
<td>Mediation</td>
<td>17</td>
<td>20</td>
</tr>
<tr>
<td>Maintenance</td>
<td>20</td>
<td>19</td>
</tr>
<tr>
<td>Potential orders for children</td>
<td>21</td>
<td>18</td>
</tr>
<tr>
<td>Reconciliation</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>Marriage counselling</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>Child support</td>
<td>11</td>
<td>12</td>
</tr>
<tr>
<td>Welfare benefits</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Personal counselling</td>
<td>5</td>
<td>9</td>
</tr>
<tr>
<td>Broader family issues</td>
<td>7</td>
<td>8</td>
</tr>
<tr>
<td>Wills or pensions</td>
<td>9</td>
<td>8</td>
</tr>
<tr>
<td>Grandparents</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>Getting help for children</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Contact centres</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Health/mental health services</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Stepfamilies</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Debt counselling</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Number of cases</td>
<td>1,223</td>
<td>1,047</td>
</tr>
</tbody>
</table>

Note: Items in italics indicate significant difference (p < .05) between case types.

**Provision of Written Information**

The provision of information within the FAInS approach is expected to be a two-way process. In discussing a wider range of issues and alerting clients to the kinds of services which might help them, solicitors would be expected to offer a range of information to their clients. However, there was little change in the provision of written information to clients. Solicitors were more likely after FAInS training to provide clients with written information about mediation, but as Table 3.11 demonstrates the change was small: from 13 per cent of clients to 18 per cent. So far as providing information about other issues is concerned, there was no change whatsoever.
Table 3.11  Written information provided to clients

<table>
<thead>
<tr>
<th>Written information provided</th>
<th>Pre-FAInS cases</th>
<th>FAlnS cases</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>Mediation</td>
<td>13</td>
<td>18</td>
</tr>
<tr>
<td>The divorce process</td>
<td>10</td>
<td>12</td>
</tr>
<tr>
<td>The role of solicitors</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Other</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Parenting after separation</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Domestic violence</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>The Children Act</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Finances, property or pensions</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>CAFCASS</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Marriage counselling</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Child Support Agency</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>For young people</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Number of cases</td>
<td>1,223</td>
<td>1,047</td>
</tr>
</tbody>
</table>

Note: Items in italics indicate significant difference (p < .05) between case types.

Referring Clients to Other Services

A major element of FAlnS is the gatekeeping role family lawyers are expected to adopt in respect of the other services available to clients. Previous research\(^{61}\) has raised the potential value of there being a one-stop shop for family law clients, who may benefit from a range of support services during the difficult and stressful process of divorce. To some extent, FAlnS envisaged that lawyers could provide an informed gateway to these other services, particularly as the majority of people contact a lawyer for help at some stage during the divorce process. Therefore, FAlnS practitioners could be expected to introduce other services to their clients and to go as far as helping them to make appointments with their providers. Nevertheless, as Table 3.12 shows, there was no evidence of change over time as regards the propensity of solicitors to arrange for clients to attend other services, or to advise them to use other services. Only 5 per cent of FAlnS clients were referred to other services (i.e. the solicitor arranged an appointment for them). A further 12 per cent were advised to use such services, although an appointment was not made for them to do so.

---

Table 3.12  Referral and advice about using other services

<table>
<thead>
<tr>
<th></th>
<th>Pre-FAInS cases</th>
<th>FAInS cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Referred to other services</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Advised to use other services</td>
<td>10</td>
<td>12</td>
</tr>
<tr>
<td>Referred to mediation</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Advised to use mediation</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Number of cases</td>
<td>1,223</td>
<td>1,047</td>
</tr>
</tbody>
</table>

During an introductory meeting that members of the LSC held in study areas, representatives from a wide range of local services were invited to take an interest in FAInS. The leaflet about FAInS, designed by the LSC, lists a number of services which might be relevant to FAInS clients and these services were mentioned during FAInS training. During the pre-pilot we noted the difficulties solicitors had in determining which services were relevant and whether they existed locally, and reported that solicitors felt they needed more help to establish networks and relationships with services other than those they knew well. Most family law solicitors are aware of mediation services, and most know about the work of domestic violence units/services. Their knowledge of other agencies is patchy. If we look at the types of services FAInS clients were advised to use, or to which they were referred by their solicitors (Table 3.13), we see that, despite the emphasis on FAInS providing a gateway to other agencies and professionals, few referrals were made to services other than mediation or services offering help relating to domestic violence.

When services other than those offering mediation or help regarding domestic violence issues figured in discussions between solicitors and clients, solicitors tended to advise clients to make use of them rather than directly making referrals. It seems that such advice was rare, however, since only 6 per cent of FAInS clients were advised to use services other than mediation or those concerned with domestic violence, and less than one per cent of clients were actually referred to such a service.
Table 3.13  Types of services which FAInS clients were advised to use or to which they were referred

<table>
<thead>
<tr>
<th>Type of service</th>
<th>Advised to use %</th>
<th>Referrals made %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mediation</td>
<td>36</td>
<td>63</td>
</tr>
<tr>
<td>Domestic violence</td>
<td>18</td>
<td>27</td>
</tr>
<tr>
<td>Welfare advice</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>Counselling for children</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>Help for children</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>Benefits advice</td>
<td>13</td>
<td>4</td>
</tr>
<tr>
<td>Marriage counselling</td>
<td>10</td>
<td>2</td>
</tr>
<tr>
<td>Other counselling</td>
<td>13</td>
<td>2</td>
</tr>
<tr>
<td>Social services</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Contact centre</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Debt counselling</td>
<td>7</td>
<td>2</td>
</tr>
<tr>
<td>Citizens Advice Bureaux</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Doctor</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Housing</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Religious advice</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Immigration</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Support group</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Mental health service</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Employment advice</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Drug/alcohol service</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Number of cases</td>
<td>143</td>
<td>56</td>
</tr>
</tbody>
</table>

Ongoing Contact between Clients and Solicitors

Tracking Cases

In some cases, the first meeting proved to be the only contact between a client and a solicitor. In others, it was the start of regular solicitor–client interaction. In such cases, the Record of the First Meeting provided only limited information about case management. Several solicitors told us during the pre-pilot study that they rarely refer clients to other services at the first meeting but may do so during subsequent meetings. In order to obtain a fuller picture of the management of cases we needed to obtain information over time. The issue of the length of time over which it is appropriate to follow cases is a complex one. We wanted to allow sufficient time for cases to be completed, but were restricted by project timetables. Given the evaluation timetable, we were unable to follow cases for more than six months, which is far shorter than we would have wished.

We were able to glean additional information about meetings other than the first through Meeting Record Forms provided by solicitors. From those solicitors who had participated in both phases of the study, we received 521 Meeting Record Forms relating to the pre-FAInS period and 480 relating to the FAInS period. We could seek six-month follow-up information about only those clients who had given their consent to participate in the research. We sent 903 follow-up forms to solicitors relating to cases processed during the period preceding FAInS training and received 678 completed forms back. For the FAInS
period, we sent 861 follow-up forms and 616 of these were completed and returned. We found no difference between the periods as regards the characteristics of consenting clients in terms of gender, employment status, ethnicity, marital status, the issues about which they were consulting a solicitor, sources of funding, the number of children and the age of the clients.

**Matter Types**

It is evident that definitions of matter types change over time. For instance, 506 cases for which we received follow-up information had been classified as divorce matters at the time of the first interview, but six months later, 7 per cent of them apparently no longer involved divorce. Conversely, 5 per cent of the 820 cases which did not involve divorce at the first meeting did so six months later. Only 70 per cent of the 263 cases that were originally classified as concerning domestic violence issues continued to be characterised as such six months later. Thus the issues concerned change over time: some matters are resolved while new ones come to take precedence.

**Work Done by Solicitors**

As Table 3.14 shows, 39 per cent of pre-FAInS and 43 per cent of FAInS cases were still ongoing six months after the first meeting between solicitor and client. Only around one in four cases had been closed with all work completed, while a further 29 per cent had been closed without the work having been completed. Differences between time periods were not significant. Clearly, a large proportion of cases were ongoing six months after the first meeting between solicitors and clients. This suggests that, ideally, a longer period is required for tracking cases than was available to us for this evaluation, which is something that the LSC may need to consider in advance of commissioning other research of this kind.

<table>
<thead>
<tr>
<th>Status of case</th>
<th>pre-FAInS</th>
<th>FAInS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Work completed</td>
<td>26</td>
<td>25</td>
</tr>
<tr>
<td>Case closed, work not completed</td>
<td>31</td>
<td>27</td>
</tr>
<tr>
<td>Transferred to other firm</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Ongoing</td>
<td>39</td>
<td>43</td>
</tr>
<tr>
<td>Don’t know</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Total (100%)</td>
<td>678</td>
<td>616</td>
</tr>
</tbody>
</table>

Chi-squared = 3.68; p = ns.

**Meetings between Solicitors and Clients**

Forty per cent of clients did not meet with their solicitor after their first meeting. Others, however, had frequent meetings during our six-month follow-up period, as Table 3.15 demonstrates. In one case, a client met with her solicitor 20 times. In addition to meeting at solicitors’ offices, 15 per cent of clients met their solicitor when attending court. One client met her solicitor at court nine times. The frequency of meetings between solicitors
and clients, whether in or out of court, did not vary over the two time periods. There was also consistency over time regarding the frequency of telephone calls made, and letters written, to and by solicitors.

Table 3.15 Work undertaken up to the six-month follow-up

<table>
<thead>
<tr>
<th></th>
<th>Meetings (other than at court)</th>
<th>Meetings at court</th>
<th>Phone calls</th>
<th>Letters</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>pre-FAInS</td>
<td>pre-FAInS</td>
<td>pre-FAInS</td>
<td>pre-FAInS</td>
</tr>
<tr>
<td>Mean number</td>
<td>2.4</td>
<td>2.5</td>
<td>0.36</td>
<td>0.31</td>
</tr>
<tr>
<td>Minimum</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Maximum</td>
<td>18</td>
<td>20</td>
<td>9</td>
<td>7</td>
</tr>
<tr>
<td>% greater than zero</td>
<td>100</td>
<td>100</td>
<td>16</td>
<td>15</td>
</tr>
</tbody>
</table>

The Involvement of Other Members of Participating Firms

As Table 3.16 shows, around one in four cases involved other fee earners, and there was no significant difference between time periods. The finding that around one in four publicly funded clients have meetings with fee earners other than the solicitor who conducts their first meeting points to the importance of involving all members of a legal firm in initiatives such as FAInS rather than selecting individual solicitors for participation.

Trainee solicitors were seldom involved, but were marginally more likely to be involved during the FAInS period (10%) than they had been before FAInS (7%). There seemed to be most involvement of trainee solicitors in the Leeds area, where 14 per cent of cases received the input of a trainee.

Table 3.16 Involvement of other fee earners

<table>
<thead>
<tr>
<th>Were other fee earners involved?</th>
<th>pre-FAInS %</th>
<th>FAInS %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>23</td>
<td>25</td>
</tr>
<tr>
<td>No</td>
<td>77</td>
<td>75</td>
</tr>
<tr>
<td>Total (100%)</td>
<td>678</td>
<td>616</td>
</tr>
</tbody>
</table>

Chi-squared 0.68; p = ns.

Applying for Court Orders

In 43 per cent of pre-FAInS and 46 per cent of FAInS cases, an application for a court order had been made. The difference between time periods was not significant and, as Figure 3.3 shows, there was some similarity between time periods with regard to individual applications. The most frequent applications were those relating to dissolution of marriage, although no such application had been made in 40 per cent of the cases in which divorce was stated as being the issue.
Applications other than for dissolution of marriage had been made in 25 per cent of cases. The most common of these related to residence and contact (Figure 3.3). However, only 30 per cent of cases in which there were issues about children led to an application for a court order in the six-month period.

Counsel had been instructed in only 4 per cent of cases and, in this respect, there was no difference between time periods. Barristers seemed most likely to be involved in cases involving domestic violence, 13 per cent of which involved the appointment of a barrister.

![Figure 3.3 Orders applied for](image)

**Figure 3.3 Orders applied for**

**Referring Clients to Other Services**

Because solicitors had told us that they do not necessarily discuss referrals to other services at their first meeting with a client, we wanted to know whether FAInS practitioners were more likely to make referrals as the case progressed. On the Six-Month Follow-Up form, we asked solicitors whether they had referred a client to another service, advised them to use another service or given information about other services. As Tables 3.17–3.19 show, there were no significant changes following the implementation of FAInS.

---

62 By referral, we mean a solicitor making an appointment with another service on the client’s behalf.
Table 3.17  Whether client had been referred to, advised to attend or given information about other services

<table>
<thead>
<tr>
<th></th>
<th>pre-FAInS</th>
<th>FAInS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>Yes</td>
<td>23</td>
<td>25</td>
</tr>
<tr>
<td>No</td>
<td>77</td>
<td>75</td>
</tr>
<tr>
<td>Total (100%)</td>
<td>678</td>
<td>613</td>
</tr>
</tbody>
</table>

Chi-squared = 0.92; p = ns.

Note. Solicitors’ and clients’ perceptions of this differ (see Chapter 8). This may be due to the samples not representing parallel groups of cases or to clients having different interpretations of events from those of solicitors.

Table 3.18  Appointments arranged for clients to attend at other services

<table>
<thead>
<tr>
<th></th>
<th>pre-FAInS</th>
<th>FAInS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>Yes</td>
<td>12</td>
<td>9</td>
</tr>
<tr>
<td>No</td>
<td>88</td>
<td>91</td>
</tr>
<tr>
<td>Total (100%)</td>
<td>678</td>
<td>619</td>
</tr>
</tbody>
</table>

Chi-squared = 1.33; p = ns.

Table 3.19  Clients’ attendance at other services

<table>
<thead>
<tr>
<th></th>
<th>pre-FAInS</th>
<th>FAInS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>Yes</td>
<td>7</td>
<td>5</td>
</tr>
<tr>
<td>No</td>
<td>92</td>
<td>95</td>
</tr>
<tr>
<td>Total (100%)</td>
<td>678</td>
<td>619</td>
</tr>
</tbody>
</table>

Chi-squared = 3.2; p = ns.

Figure 3.4 shows the proportion of clients who were referred to, advised to attend, or provided with information about a service. It confirms that little was going on apart from discussions about mediation. Fourteen per cent of clients were referred to, advised to use or given information about mediation in the pre-FAInS period, as against 16 per cent during the FAInS period. As regards services providing help with domestic violence issues the proportions were 2 per cent and 3 per cent respectively, while for personal counselling they were 3 per cent and 1 per cent. Other services, which featured in referrals, advice and information in less than one per cent of cases, included housing advice, school admissions, support groups, financial advice, benefits advice, relationship counselling, child contact centres, debt counselling, and drug and alcohol services.
More than eight in ten referrals (i.e. the solicitor making an appointment for a client) were to mediation services. As Table 3.20 shows, mediation referrals were fairly consistent across time periods, although it seems that fewer mediation referrals were made after the introduction of FAInS.

Table 3.20  Referrals for mediation

<table>
<thead>
<tr>
<th></th>
<th>pre-FAInS</th>
<th>FAInS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>9</td>
<td>7</td>
</tr>
<tr>
<td>No</td>
<td>91</td>
<td>93</td>
</tr>
<tr>
<td>Total (100%)</td>
<td>678</td>
<td>619</td>
</tr>
</tbody>
</table>

Chi-squared = 0.867; p = ns.

Sources of Funding

Most cases were funded through Legal Help and some of those clients went on to receive other forms of funding. After six months, 17 per cent of the pre-FAInS and 15 per cent of the FAInS cases had moved from legal help to legal representation. The difference between FAInS and pre-FAInS cases was not statistically significant.

Issues Discussed during Meetings

Meeting Record Forms which solicitors were asked to complete at the end of each meeting with a client after the first one focused on information about the topics discussed between solicitors and clients. The most common subjects for discussion were those
which were likely to be associated directly with legal issues (i.e. contact, residence and protection from violence) (Table 3.21). Little ongoing discussion seems to have occurred about subsidiary matters such as broader family issues, stepfamilies, health services, getting help for children and debt counselling. The data suggest that FAINS solicitors were more likely than pre-FAInS solicitors to discuss housing matters, but were less likely to discuss parental contact with children and the potential orders regarding children. In each of these instances, the before-and-after difference was small.

Table 3.21 Issues discussed at meetings other than the first

<table>
<thead>
<tr>
<th>Topics discussed</th>
<th>Pre-FAInS</th>
<th>FAINS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Contact</strong></td>
<td>55</td>
<td>43</td>
</tr>
<tr>
<td>Protection from violence</td>
<td>23</td>
<td>15</td>
</tr>
<tr>
<td>Residence of children</td>
<td>22</td>
<td>18</td>
</tr>
<tr>
<td><strong>Housing</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Costs and outcomes</td>
<td>12</td>
<td>11</td>
</tr>
<tr>
<td>Potential orders re children</td>
<td>18</td>
<td>11</td>
</tr>
<tr>
<td>Divorce</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>Maintenance</td>
<td>12</td>
<td>16</td>
</tr>
<tr>
<td>Mediation</td>
<td>9</td>
<td>10</td>
</tr>
<tr>
<td>Finances</td>
<td>2</td>
<td>9</td>
</tr>
<tr>
<td>Parental responsibility</td>
<td>9</td>
<td>7</td>
</tr>
<tr>
<td>Broader family issues</td>
<td>7</td>
<td>5</td>
</tr>
<tr>
<td>Other arrangements for children</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>Child support</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>Reconciliation</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>Wills or pensions</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>Marriage counselling</td>
<td>5</td>
<td>8</td>
</tr>
<tr>
<td>Welfare benefits</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Contact with grandparents</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Health or mental health services</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Contact centres</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Personal counselling</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Getting help for children</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Debt counselling</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Ancillary relief</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Stepfamilies</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Care proceedings</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Other issues</td>
<td>9</td>
<td>11</td>
</tr>
<tr>
<td>Number of meetings</td>
<td>512</td>
<td>448</td>
</tr>
</tbody>
</table>

1. Italics indicate a significant difference \( (p < .01) \) between FAINS and pre-FAInS cases.

2. Each of the ‘other issues’ was discussed at less than 1 per cent of meetings. They included school admissions, personal belongings, care proceedings, injunctions, public funding applications, home contents, name change, court affidavits, social services involvement, separation, harassment, psychiatric assessment and paternity.

Explaining Approaches to Case Management
Our analysis of data provided by solicitors suggests that FAInS has had little impact on what solicitors do with their clients. Following implementation of FAInS, some solicitors were more likely to obtain information about their clients’ circumstances before meeting with them and tended to have longer first meetings with clients. This did not, however, change the range of issues that were discussed at first or subsequent meetings, or lead to changes in the number of meetings that took place, or in the provision of information, advice about or referrals to other services, applications for orders, instruction to counsel, involvement of other fee earners and case completion.

The evidence suggests that the FAInS approach has had little impact on case management. This leads to questions concerning which characteristics of cases might affect how solicitors manage these cases. In an attempt to address such questions, we examined further the responses to the six-month follow-up forms provided by solicitors. Since there was no evidence of FAInS cases being managed differently, we conducted this analysis using all the cases processed in all six study areas (including Cardiff and Exeter, where FAInS practitioners participated only in Phase 1) during both time periods. This provided a database of 1,973 cases processed by 114 solicitors from 48 legal firms in the six areas.

We conducted an exploratory investigation of outcomes for which we felt the data were sufficiently robust for multivariate analysis, using stepwise logistic regression to identify the factors that had statistically significant relationships with particular outcomes. The outcomes we examined were:

1. Whether the case progressed beyond the first meeting.
2. The forms of funding other than Legal Help that were drawn on.
3. Whether more than one fee earner was involved in the case.
4. Whether an application had been made for a court order, other than for dissolution of marriage.
5. Whether the client was referred to, or was advised to use, another service.
6. Whether all work on the case was completed.

We examined the impact on outcomes of the following potential explanatory factors:

1. The client’s gender (male 29%, female 71%).
2. The solicitor’s gender (male 28%, female 72%).
3. Whether the client was receiving state benefits (Jobseeker’s Allowance or Income Support) (yes 50%, no 50%).
4. Whether the client had a disability (yes 10%, no 90%).
5. The client’s ethnicity (White 93%, Other 7%).

---

63 The percentages refer to cases involving a solicitor of each gender, not to the percentages of male and female solicitors.
64 According to their solicitor.
6. The client’s marital status (single 27%, cohabiting 7%, divorced/widowed 11%, married 46%, separated from cohabitation 9%).

7. The study area (Basingstoke 11%, Cardiff 6%, Exeter 4%, Leeds 43%, Lincoln 4%, Stockton & Hartlepool 32%).

8. The matters at issue:65
   (a) divorce (yes 38%, no 62%);
   (b) Children’s issues (yes 54%, no 46%);
   (c) Domestic violence (yes 16%, no 62%);
   (d) Financial/property issues (yes 22%, no 78%).

The statistically significant relationships that we found are described below. If potential explanatory factors are not referred to in connection with outcomes, it is because our analysis found no evidence of a relationship.

**Going Beyond a First Meeting**

Sixty per cent of cases progressed beyond an initial meeting to further meetings between solicitor and client. The propensity of cases to go beyond an initial meeting related only to the type of issues involved. Second meetings were more likely in cases involving divorce (74% of which progressed beyond a first meeting) or financial issues (73% of which so progressed). Other issues, and client characteristics, had no effect on whether cases involved additional meetings between clients and solicitors.

**Accessing Other Sources of Public Funding**

Twenty per cent of clients who were initially funded through Legal Help went on to access other forms of funding (i.e. Legal Representation, Help at Court, Emergency Representation or Help with Mediation). Clients were more likely to make use of other funding if their cases involved issues of domestic violence (38%) or children (31%), while use of further funding was less likely if a case involved divorce (10%). There was some variation between areas, the figures being: Basingstoke 22%; Cardiff 10%; Exeter 30%; Leeds 26%; Lincoln 16%; Stockton & Hartlepool 21%.

**Involving Additional Fee-Earners**

One in four cases involved other fee earners. This was more likely if a client was seeking a divorce (32% of which cases involved more than one fee earner), domestic violence (32%) or children’s issues (27%). There was also variation between areas, with other fee earners being more likely to be involved in Basingstoke (25%), Leeds (26%) and Stockton & Hartlepool (25%) than in Cardiff (14%), Exeter (11%) and Lincoln (15%).

---

65 As indicated in the six-month follow-up form.
Applications for Court Orders

We examined applications for orders other than those relating to dissolution of marriage. Applications for such orders had been made in 25 per cent of cases. Applications were more likely when domestic violence issues were involved (38% of which cases involved an application for an order) or issues involving children (31%), and less likely when divorce was an issue (17%). Since, however, divorce cases were more likely than others to be ongoing after six months some applications for court orders may have been pending.

Referring or Advising Clients To Use Other Services

Twenty-six per cent of clients were referred to another service or were advised to use one. This was more likely when a case involved financial/property issues (37% of such cases led to referral or advice) or children’s issues (32%). Clients with a disability (33%) were more likely to be referred, but referral was less likely if the client was receiving state benefits (22%). There was also a difference between areas, with referral rates being higher in the areas that participated only in the first phase of the research (Cardiff 39%; Exeter 49%) than in those which participated in both phases (Basingstoke 29%; Leeds 24%; Lincoln 24%; Stockton & Hartlepool 23%).

Female solicitors were more likely than male solicitors to refer clients to or advise them to use other services, the figures being 29 and 20 per cent respectively. While the gender of clients seemed to make little difference to female solicitors’ referrals, male solicitors were more likely to refer to or advise men to use other services. They referred 24 per cent of their male clients, as against 18 per cent of their female clients.

We asked FAInS providers to record whether clients had made use of various services before they attended the first meeting. It seems that 5 per cent of clients had previously used marriage counselling, 8 per cent had experienced individual counselling, 6 per cent had used Women’s Aid, 11 per cent had used a Citizens Advice Bureau and 4 per cent had used mediation. One in four clients had made use of at least one of these services. The probability of being referred to, informed about or advised to use other services was higher among those who had used other services previously than among those with no experience of other services: 37 per cent as against 26 per cent.

Completing Work

Twenty-two per cent of cases were closed with all work completed within the six-month follow-up period. Work was most likely to be completed on cases involving issues relating to domestic violence (35% of which were completed), and less likely to be completed if divorce or finances/property were at issue (where the figures were 14 and 12% respectively). There was variation between areas, completion rates being higher in Stockton & Hartlepool, where 29 per cent of cases were completed, than in Basingstoke (16%), Cardiff (15%), Exeter (21%), Leeds (20%) and Lincoln (19%).

Work was more likely to be completed if the client was female and had a female solicitor. As Table 3.22 indicates, there was significant correlation in this respect between the client’s and the solicitor’s genders. For men, the gender of the solicitor made no
difference but female clients were more likely to have all work on their case completed if they had a female solicitor.

Table 3.22 Completion of work by gender of clients and gender of solicitors

<table>
<thead>
<tr>
<th></th>
<th>Male client</th>
<th></th>
<th>Female client</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>male solicitor %</td>
<td>female solicitor %</td>
<td>male solicitor %</td>
<td>female solicitor %</td>
</tr>
<tr>
<td>All work completed</td>
<td>18</td>
<td>18</td>
<td>17</td>
<td>29</td>
</tr>
<tr>
<td>Work not completed</td>
<td>82</td>
<td>82</td>
<td>83</td>
<td>71</td>
</tr>
<tr>
<td>Total (100%)</td>
<td>162</td>
<td>319</td>
<td>335</td>
<td>825</td>
</tr>
</tbody>
</table>

Chi-squared 0.25; p = ns.       Chi-squared 16.68; p < .001.

The average completed family law case involved 2 meetings between a solicitor and client, 3 phone calls and 12 letters. In addition:

- 24 per cent of cases had involved other fee earners
- 37 per cent of cases had involved an application for a court order other than for divorce
- 33 per cent of clients had drawn on sources of funding other than Legal Help
- 18 per cent of clients had been referred to, advised to use or given information about another service

**Identifying the Key Determinants**

Data about cases provided by solicitors indicate that their assessments of the matters at issue are the main determinants of the case-management outcomes that we examined. It seems that solicitors discuss the case with their client, decide what the key issues are and act accordingly. Nevertheless, other issues affected some of the outcomes. For instance, the gender of clients and solicitors affected the probability of referrals and case completion, while we identified some differences between areas concerning the applications for other forms of funding, referral to other services and the proportion of cases that are closed with all work completed within six months. These variations persist despite our controlling for the effect of the variables outlined above. Thus, one needs to look for other explanations for the apparent differences associated with local legal cultures.

**Discussing Issues with Clients**

The data we collected from solicitors provided clues concerning what the determinants of case-management outcomes may be. It pointed to the significance of the issues involved. The 145 solicitors who completed 3,469 Record of First Meeting forms began identifying what these issues were during their first meeting with clients. This seems likely to have influenced what they then decided to do, although their identification of the key issues will often fluctuate over time as issues are resolved and new ones arise. Consequently, the
nature of the discussion at the first meeting will inevitably have an influence on the future actions of both the solicitor and the client. Table 3.23 shows the issues that solicitors identified at the first meeting as being the most important ones relating to the key matters involved.

The issues outlined in Table 3.23 reveal considerable emphasis on legal issues. For clients involved in divorce cases the divorce proceedings were the most important concern, but there were also concerns about housing/property, wills and pensions and parent–child contact. Cases identified as involving children issues generated most concern around parent–child contact and residence of children. There was little reference in such circumstances to issues concerning contact with grandparents, child support or getting help for children. Indeed, as Table 3.24 indicates, these issues were seldom discussed at all during the first meeting, even in cases were children’s issues were paramount.

Table 3.23  Most important issues as identified by the solicitor after the first meeting

<table>
<thead>
<tr>
<th>Matters involved</th>
<th>divorce</th>
<th>children</th>
<th>finances/property</th>
<th>domestic violence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Most important issues</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>Contact</td>
<td>16</td>
<td>58</td>
<td>14</td>
<td>27</td>
</tr>
<tr>
<td>Residence</td>
<td>6</td>
<td>21</td>
<td>6</td>
<td>8</td>
</tr>
<tr>
<td>Other arrangements for children</td>
<td>7</td>
<td>9</td>
<td>7</td>
<td>6</td>
</tr>
<tr>
<td>Divorce proceedings</td>
<td>65</td>
<td>13</td>
<td>37</td>
<td>16</td>
</tr>
<tr>
<td>Housing/property</td>
<td>23</td>
<td>10</td>
<td>40</td>
<td>17</td>
</tr>
<tr>
<td>Wills or pensions</td>
<td>21</td>
<td>6</td>
<td>35</td>
<td>5</td>
</tr>
<tr>
<td>Protection from violence</td>
<td>9</td>
<td>14</td>
<td>10</td>
<td>67</td>
</tr>
<tr>
<td>Maintenance</td>
<td>5</td>
<td>3</td>
<td>9</td>
<td>1</td>
</tr>
<tr>
<td>Reconciliation</td>
<td>4</td>
<td>2</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Costs</td>
<td>3</td>
<td>1</td>
<td>3</td>
<td>*</td>
</tr>
<tr>
<td>Personal belongings</td>
<td>3</td>
<td>1</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Debt counselling</td>
<td>2</td>
<td>1</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Marriage counselling</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Broader family issues</td>
<td>1</td>
<td>3</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Welfare benefits</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>*</td>
</tr>
<tr>
<td>Getting help for children</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Mediation</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Child support</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>*</td>
</tr>
<tr>
<td>Potential orders for children</td>
<td>1</td>
<td>4</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Parental responsibility</td>
<td>*</td>
<td>7</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Contact with grandparents</td>
<td>*</td>
<td>2</td>
<td>*</td>
<td>1</td>
</tr>
<tr>
<td>Total (100%)</td>
<td>1,317</td>
<td>1,919</td>
<td>888</td>
<td>642</td>
</tr>
</tbody>
</table>

* indicates a percentage between 0 and 0.5.

Divorce proceedings were an important concern for some clients involved in cases involving financial or property matters, and concerns were also expressed about housing/property and wills and pensions. In two-thirds of domestic violence cases, protection from violence was a major concern, and it is not clear why it was not a major concern in the other third. Also of concern were parent–child contact, housing/property and divorce proceedings.

---

66 We asked solicitors to identify up to three issues which they regarded as being of most concern to the client.
Tables 3.23 and 3.24 indicate that solicitors appear to accord little importance to issues such as counselling, welfare benefits, health/mental health services and getting help for children. Indeed, the indications are that they rarely discuss such issues. It is not surprising, therefore, that few clients were advised to use services that provide help in dealing with such issues.

<table>
<thead>
<tr>
<th>Issues discussed</th>
<th>divorce</th>
<th>%</th>
<th>domestic violence</th>
<th>%</th>
<th>children</th>
<th>%</th>
<th>finances/property</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact</td>
<td>45</td>
<td></td>
<td>56</td>
<td></td>
<td>83</td>
<td></td>
<td>46</td>
<td></td>
</tr>
<tr>
<td>Residence of children</td>
<td>31</td>
<td></td>
<td>31</td>
<td></td>
<td>45</td>
<td></td>
<td>34</td>
<td></td>
</tr>
<tr>
<td>Housing</td>
<td>46</td>
<td></td>
<td>32</td>
<td></td>
<td>18</td>
<td></td>
<td>62</td>
<td></td>
</tr>
<tr>
<td>Protection from violence</td>
<td>19</td>
<td></td>
<td>90</td>
<td></td>
<td>23</td>
<td></td>
<td>22</td>
<td></td>
</tr>
<tr>
<td>Costs and outcomes</td>
<td>45</td>
<td></td>
<td>26</td>
<td></td>
<td>25</td>
<td></td>
<td>53</td>
<td></td>
</tr>
<tr>
<td>Parental responsibility</td>
<td>13</td>
<td></td>
<td>27</td>
<td></td>
<td>41</td>
<td></td>
<td>18</td>
<td></td>
</tr>
<tr>
<td>Mediation</td>
<td>28</td>
<td></td>
<td>16</td>
<td></td>
<td>25</td>
<td></td>
<td>34</td>
<td></td>
</tr>
<tr>
<td>Maintenance</td>
<td>34</td>
<td></td>
<td>15</td>
<td></td>
<td>20</td>
<td></td>
<td>45</td>
<td></td>
</tr>
<tr>
<td>Potential orders for children</td>
<td>12</td>
<td></td>
<td>23</td>
<td></td>
<td>33</td>
<td></td>
<td>11</td>
<td></td>
</tr>
<tr>
<td>Reconciliation</td>
<td>35</td>
<td></td>
<td>18</td>
<td></td>
<td>13</td>
<td></td>
<td>31</td>
<td></td>
</tr>
<tr>
<td>Marriage counselling</td>
<td>29</td>
<td></td>
<td>13</td>
<td></td>
<td>8</td>
<td></td>
<td>23</td>
<td></td>
</tr>
<tr>
<td>Child support</td>
<td>19</td>
<td></td>
<td>13</td>
<td></td>
<td>17</td>
<td></td>
<td>27</td>
<td></td>
</tr>
<tr>
<td>Welfare benefits</td>
<td>19</td>
<td></td>
<td>15</td>
<td></td>
<td>11</td>
<td></td>
<td>24</td>
<td></td>
</tr>
<tr>
<td>Personal counselling</td>
<td>8</td>
<td></td>
<td>16</td>
<td></td>
<td>8</td>
<td></td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Broader family issues</td>
<td>8</td>
<td></td>
<td>9</td>
<td></td>
<td>11</td>
<td></td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>Wills or pensions</td>
<td>16</td>
<td></td>
<td>8</td>
<td></td>
<td>7</td>
<td></td>
<td>22</td>
<td></td>
</tr>
<tr>
<td>Grandparents</td>
<td>3</td>
<td></td>
<td>5</td>
<td></td>
<td>11</td>
<td></td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Getting help for children</td>
<td>2</td>
<td></td>
<td>5</td>
<td></td>
<td>6</td>
<td></td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Contact centres</td>
<td>2</td>
<td></td>
<td>7</td>
<td></td>
<td>8</td>
<td></td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Health/mental health services</td>
<td>3</td>
<td></td>
<td>5</td>
<td></td>
<td>3</td>
<td></td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Stepfamilies</td>
<td>2</td>
<td></td>
<td>2</td>
<td></td>
<td>3</td>
<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Debt counselling</td>
<td>4</td>
<td></td>
<td>3</td>
<td></td>
<td>2</td>
<td></td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>Number of cases</td>
<td>1,376</td>
<td></td>
<td>668</td>
<td></td>
<td>2,008</td>
<td></td>
<td>926</td>
<td></td>
</tr>
</tbody>
</table>

1. Some cases involved more than one matter.

**Adopting FAInS Principles**

The findings from our before-and-after evaluation relating to the data provided by solicitors indicate that the introduction of the FAInS approach had little impact on the issues that family solicitors discussed with publicly funded clients or on how they managed their publicly funded cases. This may be due to some variation in the extent to which participating solicitors adopted FAInS principles. For instance, as we outlined above, solicitors varied in terms of whether they expected clients to complete the Client Information Form, which was an important element of the FAInS approach. We examined whether completion of these forms, either before attending a meeting or at the solicitor’s office, affected client outcomes. The findings indicate no differences with regard to progression of FAInS cases beyond the first meeting, applications for court orders and completion of work. There do, however, appear to be relationships between the completion of the Client Information Form and referrals or advice regarding other services (Table 3.25), use of other forms of funding (Table 3.26) and the involvement of
additional fee earners (Table 3.27). Contrary to expectations, however, each of these outcomes was more likely when clients did not complete a form. Thus, provision of advance information seems to render it less likely that a client will be referred to or advised to use another service, have additional solicitors involved in their case, or require funding additional to that provided through Legal Help. Obviously, these results require some kind of exploration.

| Table 3.25 Referral to other services and completion of a Client Information Form |
|-----------------------------------------------|------------------|------------------|------------------|
| Client referred to or advised to use another service | Client Information Form completed |
| | in advance | at solicitor’s office | not at all |
| Yes | 19% | 27% | 33% |
| No | 81% | 73% | 67% |
| Total (100%) | 260% | 448% | 186% |
| Chi-squared = 11.49; p = .003. |

| Table 3.26 Use of public funding and completion of a Client Information Form |
|-----------------------------------------------|------------------|------------------|------------------|
| Case progressed to other source of funding | Client Information Form completed |
| | in advance | at solicitor’s office | not at all |
| Yes | 21% | 19% | 32% |
| No | 79% | 81% | 68% |
| Total (100%) | 263% | 450% | 188% |
| Chi-squared = 14.48; p = .001. |

| Table 3.27 Involvement of other fee earners and completion of a Client Information Form |
|-----------------------------------------------|------------------|------------------|------------------|
| Other fee earners involved in case | Client Information Form completed |
| | in advance | at solicitor’s office | not at all |
| Yes | 17% | 24% | 39% |
| No | 83% | 76% | 61% |
| Total (100%) | 261% | 448% | 187% |
| Chi-squared = 27.6; p < .001. |

It seemed unlikely that clients would have been referred to other services or another solicitor, or would have required additional funding, simply because they did not complete a Client Information Form. It seemed more likely that particular types of client would not have completed a Client Information Form. We examined client characteristics and the matters their cases involved and were unable to find any factors that explained the variations in form completion. Moreover, we do not know whether the non-completers opted out of completing a form provided by a solicitor, or simply did not receive a form to complete.
As things stand, on the basis of the quantitative analyses reported in this chapter there is no evidence that the lack of impact of the FAInS initiative is due to variable commitment on the part of solicitors towards obtaining advance information from clients. We have no way of knowing from the quantitative data provided by solicitors whether participating solicitors failed in other ways to give full commitment to FAInS principles. We sought to examine these questions more deeply in our qualitative interviews with solicitors and during our observations of practice. We also addressed the question about changes resulting from the implementation of FAInS in our solicitor survey conducted at the end of the study, in order to shed light on the findings reported in this chapter. All these themes are taken up in later chapters.
Chapter 4  Client Perspectives on Family Law Practice

Sarah Kitchen, Natasha Wood and Steven Finch

A central element in the evaluation of FAInS relates to clients’ experiences of receiving legal services. It was essential that we discovered what clients made of the services they received from their solicitors, how they used the information and advice they received, and how they subsequently behaved and with what outcomes. The FAInS initiative was built on the assumption that FAInS clients would make greater use of specialist services and would be satisfied that they had received information and advice which was tailored to their individual needs and circumstances.

We undertook to conduct a retrospective survey of clients in both the pre- and post-FAInS periods, approximately six months after their first contact with a solicitor. The survey was designed to address the following research areas:

1. The usefulness and efficacy of the enhanced solicitor role, as perceived by FAInS clients.

2. The take-up of the information, support and advice services offered through FAInS suppliers, and the usefulness of these services as perceived by clients.

3. The extent to which clients receive advice and information from sources other than their solicitors, and how these fit with the advice and information provided by solicitors.

4. The incidence of different outcomes for couples who use FAInS services, in terms of litigation, mediation, agreements and court proceedings.

5. The extent to which client perceptions and the incidence of different outcomes are affected by the introduction of FAInS.

Questions were also asked about parenting issues which could inform Professor Richards’ work relating to children.

Careful consideration was given to the timing of the retrospective survey. We believed that contacting clients some six months after their initial contact with their solicitor would be sufficient for mapping key contacts and early outcomes, while the first involvement with the solicitor would not be too distant for clients to recall. A database of clients who had consented to be contacted by the research team was forwarded from NCFS to NatCen at appropriate points in the research programme, enabling NatCen to make contact, first by letter and then by telephone, to arrange a time to conduct the computer-aided telephone interview. This methodology was successfully tested during the pre-pilot. Clients had few problems with recall, and found the interview highly acceptable. Moreover, the interval of six months between the first meeting with a solicitor and our follow-up interview was appropriate: it was sufficiently long for a number of issues to have been resolved during it, yet was usually sufficiently short for respondents’ recall difficulties to be kept to acceptable levels.

Originally, we had intended to select samples of clients for follow-up interview employing rigorous sampling methods. The much lower than expected throughput of
cases in both phases of the full pilot rendered this approach impossible, however. Instead, we have attempted to contact all the clients who consented to a follow-up interview. In regular research reports to the LSC we have rehearsed the implications of the smaller sample numbers. Of particular concern have been the obvious limitations for the before-and-after design of the study as a whole. The smaller the sample size, the less likely we are to be able to detect differences in impact as a result of FAInS. Not only have throughput numbers been lower than we had hoped, but we have found significant variations between solicitors in respect of client consent, indicating that some solicitors were comfortable introducing the research to clients while others were less comfortable and, sometimes, less committed to research participation. We have been totally reliant on solicitors acting as gatekeepers to recruit clients for the research and solicitors in the pilot areas have been highly variable in terms of the extent to which they have executed their research gatekeeping role effectively.

The NCFS data show that, overall, some 75 per cent of FAInS clients agreed to a follow-up interview, but this varied considerably between areas, with Lincoln achieving the lowest consent rate and Leeds the highest. Within areas, there was considerable variation between firms. Some achieved high consent rates, with two Leeds firms reaching 97 and 99 per cent client consent. Other firms elsewhere did not do as well, with two firms reaching just 41 and 46 per cent client consent. On an individual basis, 18 FAInS solicitors in the second phase of the full pilot achieved 100 per cent consent from their clients while five solicitors did not manage to obtain consent from any of their clients.

The Interview Sample

All consenting clients in both phases of the full pilot were contacted by NatCen for follow-up interview. In the first phase of the full pilot, FAInS solicitors in Cardiff and Exeter also provided data as FAInS practitioners, alongside those provided by solicitors in the other four areas who were collecting pre-FAInS data. Clients from all six pilot areas who consented to research participation were contacted by NatCen for interview between April and August 2004. A total of 502 follow-up interviews were achieved from a total potential sample of 1,221 consenting clients in phase 1. Table 4.1 indicates the process whereby interviews were arranged.
Table 4.1  Total sample in phase 1

<table>
<thead>
<tr>
<th>Description</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of consenting clients</td>
<td>1,221</td>
</tr>
<tr>
<td>Number with addresses</td>
<td>1,131</td>
</tr>
<tr>
<td>% of all consenting with address</td>
<td>93%</td>
</tr>
<tr>
<td>Number with phone (issued sample)</td>
<td>852</td>
</tr>
<tr>
<td>% of all consenting with phone</td>
<td>70%</td>
</tr>
<tr>
<td>Number disconnected/moved/not known on number</td>
<td>210</td>
</tr>
<tr>
<td>Number contactable</td>
<td>642</td>
</tr>
<tr>
<td>% of all consenting contactable</td>
<td>53%</td>
</tr>
<tr>
<td>Number of full interviews conducted</td>
<td>502</td>
</tr>
<tr>
<td>% of contactable clients interviewed</td>
<td>78%</td>
</tr>
<tr>
<td>% of all consenting clients interviewed</td>
<td>41%</td>
</tr>
<tr>
<td>Refusal</td>
<td>29</td>
</tr>
<tr>
<td>No contact made (minimum 12 calls)</td>
<td>76</td>
</tr>
<tr>
<td>Other unproductive outcome</td>
<td>35</td>
</tr>
</tbody>
</table>

Table 4.2 indicates the distribution of interviews between FAInS clients in Cardiff and Exeter and pre-FAInS clients in Basingstoke, Leeds, Lincoln and Stockton & Hartlepool.

Table 4.2  Total FAInS and pre-FAInS samples in phase 1

<table>
<thead>
<tr>
<th></th>
<th>Pre-FAInS</th>
<th>FAInS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issued sample (with address)</td>
<td>884</td>
<td>247</td>
</tr>
<tr>
<td>No phone number</td>
<td>221</td>
<td>58</td>
</tr>
<tr>
<td></td>
<td>(25%)</td>
<td>(23%)</td>
</tr>
<tr>
<td>Disconnected/moved/not known on number</td>
<td>172</td>
<td>38</td>
</tr>
<tr>
<td></td>
<td>(19%)</td>
<td>(15%)</td>
</tr>
<tr>
<td>Interviews conducted</td>
<td>377</td>
<td>125</td>
</tr>
<tr>
<td>% of all contactable clients interviewed</td>
<td>77%</td>
<td>83%</td>
</tr>
<tr>
<td>Refusal</td>
<td>23</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>(3%)</td>
<td>(2%)</td>
</tr>
<tr>
<td>No contact made (minimum 12 calls)</td>
<td>60</td>
<td>16</td>
</tr>
<tr>
<td></td>
<td>(7%)</td>
<td>(6%)</td>
</tr>
<tr>
<td>Other unproductive outcome</td>
<td>31</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>(4%)</td>
<td>(2%)</td>
</tr>
</tbody>
</table>

It can be seen from Table 4.2 that 377 interviews were achieved with clients of solicitors who had not yet been trained as FAInS practitioners. It is this group of interviews which
has formed the basis for our comparative analysis. The 377 interviews represent a response rate of 77 per cent for those clients who were contactable.

In the second phase of the full pilot which involved FAInS practitioners in the four study areas but not those in Cardiff and Exeter, 414 follow-up interviews were conducted with clients, which represents a 69 per cent response rate for clients who were contactable. Table 4.3 indicates how these 414 interviews were achieved given a total potential sample of 1,074 consenting clients.

Table 4.3   Total FAInS interview sample in phase 2

| Number of consenting clients | 1,074 |
| Number with addresses (issued sample) | 1,033 |
| Number with telephone | 814 |
| Number disconnected/moved/not known on number | 216 |
| Number contactable | 598 |
| % of consenting contactable | 56% |
| Number of full interviews conducted | 414 |
| % of contactable clients interviewed | 69% |
| % of consenting clients interviewed | 39% |
| Refusal | 47 |
| % of contactable | 8% |
| No contact (after 12+ calls) | 100 |
| % of contactable | 17% |
| Other unproductive outcome | 37 |
| % of contactable | 6% |

There were some differences between areas (Table 4.4). Basingstoke had the highest proportion of contactable clients (76%) while Stockton & Hartlepool had the lowest (49%). A lower proportion of contactable clients in Stockton & Hartlepool were interviewed, largely because in this location there was a higher proportion of clients with whom no direct contact could be made during the fieldwork period. All the interviews for phase two of the full pilot were conducted between January and June 2005.
Table 4.4  FAInS interview sample: response by area

<table>
<thead>
<tr>
<th>Area</th>
<th>Basingstoke</th>
<th>Leeds</th>
<th>Lincoln</th>
<th>Stockton &amp; Hartlepool</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number issued</td>
<td>125</td>
<td>512</td>
<td>59</td>
<td>337</td>
</tr>
<tr>
<td>Number with telephone</td>
<td>112</td>
<td>415</td>
<td>47</td>
<td>240</td>
</tr>
<tr>
<td>Number disconnected/moved/not known on number</td>
<td>18</td>
<td>108</td>
<td>15</td>
<td>75</td>
</tr>
<tr>
<td>Number contactable</td>
<td>94</td>
<td>307</td>
<td>32</td>
<td>165</td>
</tr>
<tr>
<td>% of issued contactable</td>
<td>76%</td>
<td>61%</td>
<td>56%</td>
<td>49%</td>
</tr>
<tr>
<td>Number of full interviews conducted</td>
<td>75</td>
<td>225</td>
<td>27</td>
<td>87</td>
</tr>
<tr>
<td>% of contactable clients interviewed</td>
<td>80%</td>
<td>73%</td>
<td>84%</td>
<td>53%</td>
</tr>
<tr>
<td>% of issued clients interviewed</td>
<td>60%</td>
<td>44%</td>
<td>46%</td>
<td>26%</td>
</tr>
<tr>
<td>Refusal</td>
<td>7</td>
<td>28</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>% of issued</td>
<td>7%</td>
<td>9%</td>
<td>0%</td>
<td>7%</td>
</tr>
<tr>
<td>No contact (after 12+ calls)</td>
<td>8</td>
<td>43</td>
<td>4</td>
<td>45</td>
</tr>
<tr>
<td>% of issued</td>
<td>9%</td>
<td>14%</td>
<td>13%</td>
<td>27%</td>
</tr>
<tr>
<td>Other unproductive</td>
<td>4</td>
<td>11</td>
<td>1</td>
<td>21</td>
</tr>
<tr>
<td>% of issued</td>
<td>4%</td>
<td>4%</td>
<td>3%</td>
<td>13%</td>
</tr>
</tbody>
</table>

Table 4.5 indicates the distribution of follow-up interviews between the pre-FAInS and FAInS clients interviewed in the four comparative areas. The largest number of interviews was with clients who had visited solicitors in Leeds (182 pre-FAInS and 225 FAInS clients), while the lowest number was with clients who had visited solicitors in Lincoln (18 pre-FAInS and 27 FAInS clients).

Table 4.5  Follow-up interviews by pilot area

<table>
<thead>
<tr>
<th>Area</th>
<th>Pre-FAInS</th>
<th>FAInS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stockton &amp; Hartlepool</td>
<td>111</td>
<td>87</td>
</tr>
<tr>
<td>Lincoln</td>
<td>18</td>
<td>27</td>
</tr>
<tr>
<td>Leeds</td>
<td>182</td>
<td>225</td>
</tr>
<tr>
<td>Basingstoke</td>
<td>66</td>
<td>75</td>
</tr>
<tr>
<td>Total</td>
<td>377</td>
<td>414</td>
</tr>
</tbody>
</table>

In this chapter we examine the impacts of FAInS practice on the outcomes of cases and experiences of clients by comparing data provided by clients who had visited the research
solicitors before the FAInS training (the pre-FAInS client sample) with data provided by those who visited the solicitors after FAInS training (the FAInS client sample). A total of 377 pre-FAInS clients and 414 FAInS clients were interviewed. Analysis comparing the pre-FAInS and FAInS samples includes only the clients of the 54 solicitors who participated in both the pre-FAInS and FAInS stages of the research. Analysis of FAInS clients only (i.e. without comparison with the pre-FAInS sample) includes all FAInS cases.

Client Characteristics

The majority of clients interviewed (71% of pre-FAInS and 79% of FAInS clients) were female (Table 4.6). Around two-thirds of clients (67% FAInS and 65% pre-FAInS) were aged 25–44 (at the time of their first meeting with research solicitors). Most were white (94% FAInS and 95% pre-FAInS), only a small proportion being from non-white groups. It can be seen that the two samples were very similar, and appropriate for comparative analysis.

Table 4.6: Gender and age of clients

<table>
<thead>
<tr>
<th>Gender</th>
<th>Pre-FAInS (%)</th>
<th>FAInS (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>28</td>
<td>21</td>
</tr>
<tr>
<td>Female</td>
<td>71</td>
<td>79</td>
</tr>
<tr>
<td>Missing</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Age</td>
<td></td>
<td></td>
</tr>
<tr>
<td>24 and under</td>
<td>12</td>
<td>9</td>
</tr>
<tr>
<td>25–34</td>
<td>31</td>
<td>28</td>
</tr>
<tr>
<td>35–44</td>
<td>34</td>
<td>38</td>
</tr>
<tr>
<td>45–54</td>
<td>9</td>
<td>15</td>
</tr>
<tr>
<td>55–64</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>65+</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Missing</td>
<td>8</td>
<td>4</td>
</tr>
<tr>
<td>Base: all</td>
<td>312</td>
<td>281</td>
</tr>
</tbody>
</table>

Choosing a Solicitor

Clients were asked a series of questions regarding their choice of solicitor’s firm. Nearly a third (31%) of FAInS clients, and 28 per cent of pre-FAInS clients, had used the firm participating in the research on a previous occasion. Pre-FAInS and FAInS clients who had not previously used the firm used similar means to find the firm. Personal recommendation, or knowing someone who had used the firm, was the most common way of hearing about the firm, with nearly half (47%) of FAInS clients and 53 per cent of pre-FAInS clients saying they had found out about the firm this way (Table 4.7). Around a fifth of both pre-FAInS and FAInS clients saying they had found the firm through having seen its premises before. Telephone directories or other directories had been used by a further fifth (21%) of FAInS clients and 14 per cent of pre-FAInS clients.
Table 4.7  When you were first thinking about visiting a solicitor, how did you find out about the firm?

<table>
<thead>
<tr>
<th>Reason</th>
<th>Pre-FAInS (%)</th>
<th>FAInS (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Was recommended to me/someone I knew had used them</td>
<td>53</td>
<td>47</td>
</tr>
<tr>
<td>Saw its premises</td>
<td>22</td>
<td>19</td>
</tr>
<tr>
<td>Listed in the phone book</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>Listed in other directory</td>
<td>8</td>
<td>9</td>
</tr>
<tr>
<td>Saw an advertisement for them</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>Found them on the Internet</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Knew the individual solicitor</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Heard about them from the police</td>
<td>*</td>
<td>1</td>
</tr>
<tr>
<td>Heard about them from social services</td>
<td>*</td>
<td>1</td>
</tr>
<tr>
<td>Heard about them from the CAB</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>Referral from other firm</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Firm is local</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Other</td>
<td>1</td>
<td>2</td>
</tr>
</tbody>
</table>

Base: all who had not used the firm previously

Pre-FAInS and FAInS clients also gave similar reasons for choosing to use the particular firm on this occasion (Table 4.8). The most common reason was, again, personal recommendation, cited by 35 per cent of both pre-FAInS and FAInS clients. The location of the firm also played a part, with around a quarter (24% of pre-FAInS and 22% of FAInS clients) saying that they had chosen the firm because it was convenient in terms of where they lived. Previous contact with the firm also influenced choice, with 15 per cent of pre-FAInS and 20 per cent of FAInS clients saying that they always used that firm, or had used it before. A further 13 per cent of pre-FAInS and 5 per cent of FAInS clients said that they had chosen the firm because it had done a good job when they had used it previously. Around one in ten clients (11% pre-FAInS and 10% FAInS) said that the firm’s reputation had been a reason for their choosing it.
Table 4.8  Why did you choose to go to that particular firm on this occasion?

<table>
<thead>
<tr>
<th>Reason</th>
<th>Pre- FAInS (%)</th>
<th>FAInS (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommendation from someone else</td>
<td>35</td>
<td>35</td>
</tr>
<tr>
<td>Convenient location for home</td>
<td>24</td>
<td>22</td>
</tr>
<tr>
<td>Convenient location for work</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Convenient location for other reason</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Always use this firm/used firm before</td>
<td>15</td>
<td>20</td>
</tr>
<tr>
<td>Firm did a good job when I used them previously</td>
<td>13</td>
<td>5</td>
</tr>
<tr>
<td>Firm has a good reputation</td>
<td>11</td>
<td>10</td>
</tr>
<tr>
<td>Firm does family law/deals with cases like mine</td>
<td>9</td>
<td>8</td>
</tr>
<tr>
<td>Firm takes legal aid cases</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Able to give appointment/see client quickly</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>First firm found/no reason</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Knew the solicitor</td>
<td>*</td>
<td>2</td>
</tr>
<tr>
<td>Firm offered free consultation/advice</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Needed to go to different firm from partner</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Wanted female solicitor</td>
<td>2</td>
<td>*</td>
</tr>
<tr>
<td>Other</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Don’t know/not answered</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Base: all clients</td>
<td>312</td>
<td>281</td>
</tr>
</tbody>
</table>

*Indicates percentage below 0.5 but above 0.

Clients’ Concerns

The FAInS approach seeks to identify the range of concerns clients may have when they visit a solicitor and provide the client with the means to address these concerns. Clients were asked in the interview about both the main issue in respect of which they had gone to the solicitor and any additional concerns or problems they may have had. The profile of pre-FAInS and FAInS clients in terms of issues and concerns was very similar (Table 4.9). The ‘main issue’ clients said they had gone to see the solicitor about usually related to relationship breakdown or children. Divorce or relationship breakdown was the main issue for half the FAInS clients (50%) and 44 per cent of the pre-FAInS clients. When we include those clients with a different ‘main issue’, we find that divorce or relationship breakdown was a concern for two-thirds (66%) of pre-FAInS and nearly three-quarters (74%) of FAInS clients.

Contact arrangements for children were the main issue for nearly a fifth of clients (18% for both pre-FAInS and FAInS) and, overall, contact was a concern for more than half the clients (55% pre-FAInS and FAInS). Child residence was a concern for more than a third (38% pre-FAInS and 33% FAInS) of clients, and was the main issue for 16 per cent of pre-FAInS and 12 per cent of FAInS clients. More than a quarter of the clients, (29% pre-FAInS and 26% FAInS) were concerned about childcare arrangements, although this was very rarely the main issue.
Financial concerns were less commonly mentioned by clients as their main issues, but were cited as additional concerns. The division of money, pensions or property was a concern for 30 per cent of pre-FAInS clients and more than two-fifths (42%) of FAInS clients. Debt, child support payments, maintenance payments and managing money were concerns for more than one in ten clients.

Although domestic violence issues were cited as the main issue by only a small proportion of clients (5% pre-FAInS and 4% FAInS), when asked if ‘suffering violence or abuse from a partner/ex-partner’ was a concern 30 per cent of pre-FAInS and 29 per cent of FAInS clients said that it was. More than one in ten clients (11% pre-FAInS and 13% FAInS) were concerned about their children suffering violence or abuse.

Table 4.9  Issues and concerns held by clients

<table>
<thead>
<tr>
<th>Issue</th>
<th>Main issue</th>
<th>Main issue or additional concern</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>pre-FAInS (%)</td>
<td>FAInS (%)</td>
</tr>
<tr>
<td>Divorce or relationship breakdown</td>
<td>44</td>
<td>50</td>
</tr>
<tr>
<td>Contact with child(ren)</td>
<td>18</td>
<td>18</td>
</tr>
<tr>
<td>Child custody/residence order/where children should live</td>
<td>16</td>
<td>12</td>
</tr>
<tr>
<td>Parental responsibility for child(ren)</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Childcare arrangements</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Division of money, pensions or property</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Debt</td>
<td>*</td>
<td>1</td>
</tr>
<tr>
<td>Welfare benefits</td>
<td>*</td>
<td>0</td>
</tr>
<tr>
<td>Maintenance payments (excluding payments for children)</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Child support payments</td>
<td>*</td>
<td>0</td>
</tr>
<tr>
<td>Meeting rent or mortgage payments</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Finding somewhere to live</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Managing your money</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Domestic violence issues</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>Children suffering violence or abuse</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Other</td>
<td>7</td>
<td>5</td>
</tr>
<tr>
<td>Missing</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Base: all</td>
<td>312</td>
<td>281</td>
</tr>
</tbody>
</table>

*Indicates percentage below 0.5 but above 0.
Additional Concerns for Clients Presenting with Divorce or Relationship Breakdown

Table 4.10 shows the additional concerns for all FAInS clients whose main issue was divorce or relationship breakdown. The most common additional concern was the division of money, pensions or property, mentioned by 56 per cent of clients. More than a third (36%) were concerned about contact arrangements for children, while just over a fifth (21%) were concerned about where children would live. After the division of money, the most common financial concerns were child support payments (25%) and meeting rent or mortgage payments (20%). More than a quarter (27%) of FAInS clients presenting with divorce or relationship breakdown as the main issue were concerned about suffering violence or abuse from a partner or ex-partner.

<table>
<thead>
<tr>
<th>Concern</th>
<th>FAInS (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Division of money, pensions or property</td>
<td>56</td>
</tr>
<tr>
<td>Contact with child(ren)</td>
<td>36</td>
</tr>
<tr>
<td>Domestic violence issues</td>
<td>27</td>
</tr>
<tr>
<td>Child support payments</td>
<td>25</td>
</tr>
<tr>
<td>Child custody/residence order/where children should live</td>
<td>21</td>
</tr>
<tr>
<td>Meeting rent or mortgage payments</td>
<td>20</td>
</tr>
<tr>
<td>Maintenance payments (excluding payments for children)</td>
<td>18</td>
</tr>
<tr>
<td>Debt</td>
<td>17</td>
</tr>
<tr>
<td>Welfare benefits</td>
<td>17</td>
</tr>
<tr>
<td>Finding somewhere to live</td>
<td>15</td>
</tr>
<tr>
<td>Managing your money</td>
<td>15</td>
</tr>
<tr>
<td>Childcare arrangements</td>
<td>14</td>
</tr>
<tr>
<td>Children suffering violence or abuse</td>
<td>10</td>
</tr>
</tbody>
</table>

Base: all FAInS clients with divorce/relationship breakdown as main issue 196

The Other Party Involved

The other party involved in the case tended to be a current or former spouse or partner. Nearly half (48%) of FAInS clients and 42 per cent of pre-FAInS clients stated that the other party was their spouse, while more than one in ten clients (11% pre-FAInS and 13% FAInS) said it was a former spouse (Table 4.11). Around a third (34%) of FAInS clients
and 37 per cent of pre-FAInS clients said that the case involved a partner or ex-partner. For a small minority of clients the other party was another family member.

### Table 4.11 Was the other person involved in the main issue you went to see the solicitor about your …?

<table>
<thead>
<tr>
<th></th>
<th>Pre- FAInS (%)</th>
<th>FAInS (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Husband/wife</td>
<td>42</td>
<td>48</td>
</tr>
<tr>
<td>Ex-husband/ex-wife</td>
<td>11</td>
<td>13</td>
</tr>
<tr>
<td>Partner</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>Ex-partner</td>
<td>32</td>
<td>30</td>
</tr>
<tr>
<td>Son</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Daughter</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Son’s partner/daughter in law</td>
<td>0</td>
<td>*</td>
</tr>
<tr>
<td>Parent of grandchild</td>
<td>*</td>
<td>*</td>
</tr>
<tr>
<td>Grandchild</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Other relative</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Other non-relative</td>
<td>2</td>
<td>*</td>
</tr>
<tr>
<td>No one</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Missing</td>
<td>1</td>
<td>0</td>
</tr>
</tbody>
</table>

**Base:** all 312 281

### FURTHER CONTACT WITH SOLICITORS

In this section we examine the kind of contact clients had with their solicitor and their firm following the first meeting, and the contact they had with other solicitors’ firms concerning the same issue. Most clients (84% pre-FAInS and 89% FAInS) had had some form of contact with the named solicitor since their first meeting (Table 4.12). Nearly a quarter (23%) of FAInS and almost a fifth (19%) of pre-FAInS clients had been in contact with another solicitor in the same firm, most of them about the same issue. Only a relatively small proportion of clients (14% pre-FAInS and 8% FAInS) had not had any further contact with the firm since the first meeting. The most common reason given for this was that the issues clients had first visited the solicitor about had been resolved.

### Table 4.12 Contact with solicitor since first meeting

<table>
<thead>
<tr>
<th></th>
<th>Pre- FAInS (%)</th>
<th>FAInS (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact with same solicitor</td>
<td>84</td>
<td>89</td>
</tr>
<tr>
<td>Contact with other solicitors in firm</td>
<td>19</td>
<td>23</td>
</tr>
<tr>
<td>No further contact with firm</td>
<td>14</td>
<td>8</td>
</tr>
</tbody>
</table>

**Base:** all 312 281

The FAInS clients were no more likely than pre-FAInS clients to have had further face-to-face meetings with the solicitor. Almost seven in ten FAInS clients (69%) and pre-
FAInS clients (68%) had had at least one further face-to-face meeting with the firm. Almost two-thirds (64%) of pre-FAInS and 65 per cent of FAInS clients had had telephone contact with the firm, while most had been contacted by letter (80% of pre-FAInS and 86% of FAInS clients).

Only a small proportion of clients had been to another firm before visiting the firm taking part in the research, with FAInS clients slightly less likely than pre-FAInS clients to have done this (10% as against 16%) (Table 4.13). Most of these clients visited only one other firm. Few clients had been to another solicitor’s firm since visiting the research firm (6% pre-FAInS and 3% FAInS), and almost all of these had been to only one other solicitor. The most common reason given for going to another firm was dissatisfaction with the service received from the research firm.

Table 4.13  Contact with other solicitors’ firms

<table>
<thead>
<tr>
<th></th>
<th>Pre- FAInS (%)</th>
<th>FAInS (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Saw another firm before named solicitor</td>
<td>16</td>
<td>10</td>
</tr>
<tr>
<td>Saw another firm after named solicitor</td>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td>Base: all</td>
<td>312</td>
<td>281</td>
</tr>
</tbody>
</table>

The Personal Action Plan

The Personal Action Plan (PAP) is one of the central elements in the FAInS approach, and the use of PAPs is discussed more fully in Chapter 8. As we indicated in Chapter 1, FAInS solicitors were expected to draw up this document with the client at the first meeting, setting out the actions to be taken (e.g. other services to be contacted or legal action to be taken). The client was expected to retain a copy of the PAP, which they could take to other services to which they were referred. The PAP could be added to at future meetings.

Questions about the PAP were only asked of FAInS clients in the sample since the document would not have been used with pre-FAInS clients. Data presented in this section are based on all 414 FAInS clients interviewed. Recall of the PAP was high, 85 per cent of FAInS clients saying that they remembered having seen the document. Just over half (53%) of the clients who remembered the PAP had discussed it with their solicitor since the first meeting, while less than a quarter (23%) said that their PAP had been changed or added to since the first meeting. Although use of the PAP after the first meeting seems to have been limited, most (83%) of the clients who remembered it still retained a copy of it. The PAP was not, in most cases, shown to other services. Only 13 per cent of FAInS clients who had had a meeting with a service to which they had been referred, or which they had been advised to use, by the solicitor had shown their PAP to this service, while 7 per cent had shown their PAP to a service they had contacted without a referral. The FAInS clients viewed the PAP positively, most (84%) saying that they had found it ‘very useful’ or ‘quite useful’ (Figure 4.1).
Another key element of the FAInS approach was the placing of greater emphasis on referring clients to appropriate services so as to help them address any other problems or concerns they may have. Adoption of the FAInS approach might therefore be expected to have resulted in a higher incidence of referrals to other services. The research team was given information relating to suggestions about attending other services and referrals made by the solicitor in the first meeting. These facts were confirmed with the client in the interview. Clients were then asked if the solicitor had suggested any other services that might help them, and follow-up questions were asked about contact with any of the suggested referral services recorded by the solicitor or mentioned in the interview.

More than half (56%) of FAInS clients told us that their solicitor had suggested a referral to another agency or made a referral on the client’s behalf (Table 4.14). This was slightly higher than for the pre-FAInS sample (48%), although the difference is not statistically significant. The most common type of service clients were advised to attend was mediation, with nearly a third (32%) of FAInS and 26 per cent of pre-FAInS clients saying they were told about a service of this kind. Other services to which smaller proportions of clients were referred or which they were advised to attend included domestic violence support services, marriage counselling, personal or other forms of counselling, social services and welfare advice services. The incidence of suggestions to clients to attend, and solicitor referrals to each kind of service, was similar for pre-FAInS and FAInS clients, although FAInS clients were slightly more likely to be directed to personal or other counselling services (10%, as against 4% of pre-FAInS clients).
Table 4.14 Services solicitors suggested or to which they referred clients

<table>
<thead>
<tr>
<th>Service</th>
<th>Pre-FAInS clients (%)</th>
<th>FAInS clients (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mediation</td>
<td>26</td>
<td>32</td>
</tr>
<tr>
<td>Domestic violence support</td>
<td>6</td>
<td>8</td>
</tr>
<tr>
<td>Marriage counselling</td>
<td>4</td>
<td>7</td>
</tr>
<tr>
<td>Personal/other counselling</td>
<td>4</td>
<td>10</td>
</tr>
<tr>
<td>Social services</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Child Support Agency</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Citizens Advice Bureaux</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>Debt/financial advice</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Welfare advice</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>Housing advice</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>GP</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Any referral</td>
<td>48</td>
<td>56</td>
</tr>
</tbody>
</table>

Contact with Referral Services

With respect to the services mentioned or recommended by solicitors, FAInS clients made contact with 43 per cent of them while pre-FAInS clients made contact with just under half (49%) (Table 4.15). In just over a third (36%) of these referrals, FAInS clients had seen someone at the agency mentioned or referred to in person, while 40 per cent of pre-FAInS clients had done so. In a small proportion of cases advice was given over the telephone by the agency without the client seeing someone in person (4% of pre-FAInS and 5% of FAInS referrals). In nearly a third of cases (31%) where contact had been made with a service mentioned by the solicitor, FAInS clients were planning to use the service again, as were 42 per cent of pre-FAInS clients.

Table 4.15 Contact with services recommended by solicitors

<table>
<thead>
<tr>
<th>Service</th>
<th>Pre-FAInS referrals (%)</th>
<th>FAInS referrals (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact made</td>
<td>49</td>
<td>43</td>
</tr>
<tr>
<td>Saw someone in person</td>
<td>40</td>
<td>36</td>
</tr>
<tr>
<td>Advice given by telephone</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>

Base: referrals to clients 196 228

In respect of the total numbers of clients who had made contact with services recommended by solicitors, less than two-thirds (62%) of FAInS clients had made contact with the services, as against 66 per cent of pre-FAInS clients (Table 4.16).

Table 4.16 Percentage of clients who contacted services recommended by solicitors

Base: referrals to clients 196 228
There were no significant differences in the views of pre-FAInS and FAInS clients regarding the helpfulness of these services. Three-quarters (75%) of contacts made by FAInS clients were felt to be ‘very’ or ‘quite’ helpful, as against 73 per cent of those made by pre-FAInS clients (Table 4.17).

### Table 4.17 Helpfulness of services contacted (by contacts with services)

<table>
<thead>
<tr>
<th></th>
<th>Pre-FAInS clients (%)</th>
<th>FAInS clients (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very helpful</td>
<td>44</td>
<td>50</td>
</tr>
<tr>
<td>Quite helpful</td>
<td>29</td>
<td>25</td>
</tr>
<tr>
<td>Not very helpful</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Not at all helpful</td>
<td>16</td>
<td>14</td>
</tr>
<tr>
<td>Not applicable</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Don’t know</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Base: all contacts with referral services</td>
<td>86</td>
<td>94</td>
</tr>
</tbody>
</table>

In only a small proportion of cases where the client had not made contact with the service by the time of our six-month interview were they still planning to do so (19% pre-FAInS and 20% FAInS). The most common reason clients gave for not contacting a service they had been told about was that the problem had been resolved, while other reasons, given in a smaller number of cases, included the client thinking it would not be useful and the client’s partner refusing to attend with them (usually mediation).

### Other Services Contacted

A minority of clients had been in touch with other services as well as those suggested by the solicitor. A fifth (20%) of FAInS and pre-FAInS clients had contacted at least one other service that had not been mentioned by the solicitor (Table 6.18).

The most common services FAInS clients contacted independently were Citizens Advice Bureaux (6%) and a GP (3%). In nearly three-fifths (58%) of cases where FAInS clients had contacted another service they had been using this service prior to their first meeting with the solicitor. In cases where these services had been suggested to the client by someone else, the most common source of the suggestion was a solicitor, a friend or
relative, or a doctor. It is important to note that the contact pre-FAInS clients had with other services did not differ significantly from that of FAInS clients.

Those FAInS clients who had contacted services without a suggestion from the solicitor were asked about the issues with which they had wanted help. The most common issues mentioned were mental health problems, managing finances and debt.

Table 4.18  All services contacted independently

<table>
<thead>
<tr>
<th>Service</th>
<th>Pre-FAInS (%)</th>
<th>FAInS (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Citizens Advice Bureau</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>Child Support Agency</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>GP</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Mediation</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Personal/other counselling</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Domestic violence support</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Social services</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Council</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Housing service</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Psychiatrist</td>
<td>*</td>
<td>1</td>
</tr>
<tr>
<td>Marriage counselling</td>
<td>*</td>
<td>1</td>
</tr>
<tr>
<td>Contact centre</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Debt counselling/financial advice</td>
<td>1</td>
<td>*</td>
</tr>
<tr>
<td>Other service</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>No other services used</td>
<td>80</td>
<td>80</td>
</tr>
</tbody>
</table>

Base: all clients 312 281

Note. Percentages do not sum to 100% as clients could have contacted more than one service.

* Indicates percentage below 0.5 but above 0.

The FAInS clients felt that the services they had contacted independently had on the whole been helpful in resolving their problems. More than two-fifths (44%) of contacts with services were rated ‘very helpful’ by FAInS clients, while just over a fifth (21%) were rated ‘quite helpful’, giving a total of 65 per cent of contacts with services which were rated ‘very’ or ‘quite’ helpful (Table 4.19). Pre-FAInS clients had similar views about the other services used, with two-thirds (66%) of contacts being rated ‘very’ or ‘quite’ helpful. The proportions of contacts for which no rating could be given were 28 per cent in the case of pre-FAInS and 14 per cent in the case of FAInS clients. This figure was significantly higher than that for services used after a solicitor had suggested the service or made a referral: in this case only 4 per cent of both pre-FAInS clients and FAInS clients were unable to rate the service for its helpfulness or said that the question...
was not applicable. This might suggest that suggestions and/or referrals made by the solicitor were more likely to be closely tailored to addressing a specific problem than approaches to services made directly by clients.

Table 4.19  Helpfulness of services contacted independently (by contacts with services)

<table>
<thead>
<tr>
<th></th>
<th>Pre-FAInS (%)</th>
<th>FAInS (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very helpful</td>
<td>31</td>
<td>44</td>
</tr>
<tr>
<td>Quite helpful</td>
<td>35</td>
<td>21</td>
</tr>
<tr>
<td>Not very helpful</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Not at all helpful</td>
<td>9</td>
<td>11</td>
</tr>
<tr>
<td>Not applicable</td>
<td>16</td>
<td>8</td>
</tr>
<tr>
<td>Don’t know</td>
<td>12</td>
<td>3</td>
</tr>
<tr>
<td>Not answered</td>
<td>0</td>
<td>3</td>
</tr>
</tbody>
</table>

*Base: all contacts with services by pre-FAInS clients not referrals from solicitor*

Relationships with Children

Two of the stated aims of the FAInS pilot are to:

- facilitate the dissolution of irreparable relationships in ways which minimise distress to children, young people and parents *and*

   *promote ongoing family relationships and cooperative parenting when relationships break down.*

The follow-up client interviews collected information about the children of clients, including the number of children, their ages, and the residence and contact arrangements in place for them. This information was also used by Cambridge University and NCFS to select cases for the in-depth interviews with parents and children.

Most of the issues covered in the client interviews involved parents of children aged under 18. Three-quarters (75%) of FAInS and 76 per cent of pre-FAInS clients whose cases involved a partner or ex-partner had children under the age of 18.

Residence and Contact Arrangements

There was a similar profile of residence and contact arrangements in respect of pre-FAInS and FAInS clients. In 73 per cent of pre-FAInS and 76 per cent of FAInS cases, the children lived with the client who was interviewed. In 25 per cent of pre-FAInS and 21 per cent of FAInS cases, they lived with the other parent (Table 4.20).
Table 4.20  Residence arrangements for children

<table>
<thead>
<tr>
<th></th>
<th>Pre-FAInS clients (%)</th>
<th>FAInS clients (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child lives with me</td>
<td>73</td>
<td>76</td>
</tr>
<tr>
<td>Child lives with other parent</td>
<td>25</td>
<td>21</td>
</tr>
<tr>
<td>Child spends equal time with each of us</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Child lives with someone else</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

Base: all who had children with other party involved in the case 197 188

Table 4.21 shows that the majority of non-resident parents in both the pre-FAInS and FAInS samples reported that they had frequent contact with their children. Eleven per cent of pre-FAInS clients who were non-resident parents saw at least one of their children every day, while 38 per cent saw one child at least once a week. Among the pre-FAInS sample, a third (33%) of pre-FAInS clients who were non-resident parents had a child they never saw. Eight per cent of FAInS clients saw at least one non-resident child every day, while nearly two fifths (38%) saw a child at least once a week. However, nearly a third (31%) of non-resident parents in the FAInS sample said that they never saw any of their children. Some parents had contact with one child but no contact with another. In total, nearly half (46%) of FAInS clients who were non-resident parents reported that they did not have any contact with a child who did not live with them. Similarly, over half (53%) of FAInS clients who were resident parents said that at least one of their children never saw the other parent.

Table 4.21  Frequency of contact with non-resident children

<table>
<thead>
<tr>
<th></th>
<th>Pre-FAInS clients (%)</th>
<th>FAInS clients (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Every day</td>
<td>11</td>
<td>8</td>
</tr>
<tr>
<td>At least once a week</td>
<td>38</td>
<td>38</td>
</tr>
<tr>
<td>At least once a month</td>
<td>19</td>
<td>13</td>
</tr>
<tr>
<td>Less often than once a month</td>
<td>11</td>
<td>10</td>
</tr>
<tr>
<td>Never</td>
<td>21</td>
<td>31</td>
</tr>
</tbody>
</table>

Base: all who had non-resident children with other party involved in the case 63 48

In a minority of cases, residence and contact arrangements also involved children from previous relationships. A small proportion of clients not living with the other party (3% pre-FAInS and 1% FAInS) said that children from a previous relationship of theirs lived with the other party. A similar proportion (1% pre-FAInS and FAInS) said that children from a previous relationship of the other party lived with them.

Pre-FAInS and FAInS clients recorded similar levels of satisfaction with arrangements for residence and contact. Most clients were satisfied with the arrangements they had regarding where their children lived, with more than three-fifths (62%) of FAInS clients
and 59 per cent of pre-FAInS clients saying they were ‘very satisfied’ (Table 4.22). A small proportion (13% pre-FAInS and 10% FAInS) described themselves as ‘very dissatisfied’. The most common reasons clients gave for being dissatisfied with the residence arrangements were: they wanted the child to live with them; they thought the other parent was not suited to looking after the child; they never saw their child; the other parent made contact difficult.

Table 4.22   Satisfaction with residence arrangements for children

<table>
<thead>
<tr>
<th></th>
<th>Pre-FAInS (%</th>
<th>FAInS (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very satisfied</td>
<td>59</td>
<td>62</td>
</tr>
<tr>
<td>Satisfied</td>
<td>24</td>
<td>24</td>
</tr>
<tr>
<td>Dissatisfied</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Very dissatisfied</td>
<td>13</td>
<td>10</td>
</tr>
<tr>
<td>Don’t know/not answered</td>
<td>0</td>
<td>1</td>
</tr>
</tbody>
</table>

Base: all who had children with other party 198 189

Satisfaction with residence arrangements was higher among clients whose children were resident with them. Most (93%) of all FAInS clients who had at least one child living with them described themselves as being ‘very satisfied’ or ‘satisfied’ with residence arrangements, as against 71 per cent of those who had a child who lived with the other parent (Figure 4.2). Just under a quarter (24%) of non-resident parents in the FAInS client sample were ‘very dissatisfied’ with residence arrangements.

![Bar chart showing satisfaction with residence arrangements](image)

Base: all who had children living with them (resident parents) and/or children living with the other parent (non-resident parents).

Note. Parents could be both resident and non-resident if arrangements differed for different children.

Figure 4.2   Satisfaction with residence arrangements, for resident and non-resident parents (FAInS clients)
Pre-FAInS and FAInS clients recorded lower levels of satisfaction with contact arrangements. Just over a third (35%) of FAInS clients and 40 per cent of pre-FAInS clients said that they were ‘very satisfied’ with contact arrangements (Table 4.23). A fifth of clients (20% pre-FAInS and FAInS) described themselves as ‘very dissatisfied’.

Table 4.23   Satisfaction with contact arrangements for children

<table>
<thead>
<tr>
<th></th>
<th>Pre-FAInS (%)</th>
<th>FAInS (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very satisfied</td>
<td>40</td>
<td>35</td>
</tr>
<tr>
<td>Satisfied</td>
<td>28</td>
<td>31</td>
</tr>
<tr>
<td>Dissatisfied</td>
<td>12</td>
<td>13</td>
</tr>
<tr>
<td>Very dissatisfied</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>Don’t know</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Not answered</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td><strong>Base: all who had children with other party</strong></td>
<td><strong>198</strong></td>
<td><strong>189</strong></td>
</tr>
</tbody>
</table>

The reasons clients gave for being dissatisfied with contact most commonly related to the extent or the frequency of the contact (Table 4.24). The reasons non-resident parents gave included wanting more contact or not having any, while resident parents were dissatisfied because they wanted their child to have more contact with the other parent or because the other parent did not make contact. Some clients complained of the other parent obstructing contact arrangements, either by making contact difficult or by not keeping to arrangements.

Table 4.24   Reasons for dissatisfaction with contact arrangements

<table>
<thead>
<tr>
<th></th>
<th>Pre-FAInS (%)</th>
<th>FAInS (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Would like children to have more contact with other parent</td>
<td>18</td>
<td>18</td>
</tr>
<tr>
<td>Would like more contact with child</td>
<td>16</td>
<td>16</td>
</tr>
<tr>
<td>Other parent doesn’t make contact</td>
<td>15</td>
<td>16</td>
</tr>
<tr>
<td>Other parent makes contact difficult</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>Don’t have any contact with child</td>
<td>13</td>
<td>15</td>
</tr>
<tr>
<td>Other parent doesn’t keep to arrangements</td>
<td>8</td>
<td>15</td>
</tr>
<tr>
<td>Other reason</td>
<td>28</td>
<td>21</td>
</tr>
<tr>
<td><strong>Base: all dissatisfied with contact arrangements</strong></td>
<td><strong>62</strong></td>
<td><strong>62</strong></td>
</tr>
</tbody>
</table>

Unsurprisingly, non-resident parents were less likely to be satisfied with their arrangements for contact. Fewer than half of the non-resident parents in the FAInS client sample (47%) described themselves as ‘very satisfied’ or ‘satisfied’, while just over a third (35%) said they were ‘very dissatisfied’.

76
A substantial proportion of both pre-FAInS and FAInS clients did not perceive communication with the other parent as being positive. More than two-fifths (45%) of FAInS clients and 39 per cent of pre-FAInS clients described communication as ‘very poor’, while just 18 per cent of FAInS clients and 17 per cent of pre-FAInS clients described it as ‘very good’ (Table 4.25). This indicates that the FAInS approach has not helped to improve communication between parents, which clearly remained a problem for many clients.

Table 4.25 Communication with other parent about children

<table>
<thead>
<tr>
<th></th>
<th>Pre-FAInS (%)</th>
<th>FAInS (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very good</td>
<td>17</td>
<td>18</td>
</tr>
<tr>
<td>Fairly good</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Adequate</td>
<td>23</td>
<td>18</td>
</tr>
<tr>
<td>Fairly poor</td>
<td>11</td>
<td>7</td>
</tr>
<tr>
<td>Very poor</td>
<td>39</td>
<td>45</td>
</tr>
<tr>
<td>Don’t know</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Not answered</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>197</td>
<td>188</td>
</tr>
</tbody>
</table>

Base: (1) all who had a child with the other party; (2) all who had a child of the other party living with them; (3) all who had a natural child living with the other party.

These findings are all consistent with those of previous research relating to arrangements for children. Resident parents are usually more satisfied with contact arrangements than non-resident parents, but many would like their children to have more contact with the non-resident parent. Non-resident parents often feel cheated as regards the amount of contact time available to them. Communication is also a well-known difficulty in separated and divorced families, yet is a vital ingredient in ensuring children’s well-being and co-operative parenting. The follow-up interviews suggest that FAInS has not realised its expectations as regards promoting more co-operative parenting and addressing concerns and disputes about arrangements for children.

Services for children

Many clients felt that the issues they faced had an adverse effect on their children. More than half of FAInS clients with children (56%) and 46 per cent of pre-FAInS clients with children thought that the process in which they were engaged had upset their children ‘a

lot’ or ‘a fair amount’. Of those clients who felt that their children had been upset, 46 per cent of pre-FAInS and 41 per cent of FAInS clients had sought help or advice independently specifically for the children. As Table 6.26 shows, the services FAInS clients contacted most commonly were GPs, schools and child counsellors. The in-depth interviews conducted by the Cambridge team shed light on these findings, and these are discussed more fully in Chapter 11.

Table 4.26 Services contacted to find help or support for children

<table>
<thead>
<tr>
<th>Service</th>
<th>Pre-FAInS %</th>
<th>FAInS %</th>
</tr>
</thead>
<tbody>
<tr>
<td>GP</td>
<td>27</td>
<td>39</td>
</tr>
<tr>
<td>School</td>
<td>25</td>
<td>37</td>
</tr>
<tr>
<td>Child counsellor</td>
<td>10</td>
<td>29</td>
</tr>
<tr>
<td>Social services</td>
<td>33</td>
<td>18</td>
</tr>
<tr>
<td>Child psychologist</td>
<td>6</td>
<td>18</td>
</tr>
<tr>
<td>Mediation service</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>Citizens Advice Bureau</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>Family</td>
<td>13</td>
<td>2</td>
</tr>
<tr>
<td>Church</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>CAFCASS</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Health visitor</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Other</td>
<td>19</td>
<td>2</td>
</tr>
<tr>
<td><strong>Base: clients who sought help for children</strong></td>
<td><strong>48</strong></td>
<td><strong>49</strong></td>
</tr>
</tbody>
</table>

Outcomes

The FAInS approach might be expected to result in fewer cases being resolved through court rulings and greater recourse to discussion and negotiation. The client interviews therefore collected information at the six-month stage on the outcomes of cases and the use of third-party or direct negotiation and discussion.

Unfortunately, the majority of cases had not been resolved by the time of the interview. Just over two-fifths (42%) of FAInS clients said that their case was finished, as did 39 per cent of pre-FAInS clients (Table 4.27).
There were no significant differences between pre-FAInS and FAInS clients in terms of how issues had been resolved. As Table 4.28 shows, reconciliation with a partner had concluded a minority of the completed cases (12% for both pre-FAInS and FAInS clients). Over a third (37%) of FAInS and 31 per cent of pre-FAInS cases had been resolved through a court ruling. Discussion involving a third party had resolved cases for 29 per cent of FAInS clients and 28 per cent of pre-FAInS clients. A smaller proportion of cases (17% of pre-FAInS and 16% FAInS) had been resolved through discussions with the other party involved.

A majority of pre-FAInS and FAInS clients whose cases had been resolved through court rulings had made efforts to reach resolution through discussion before going to court. Thirteen of the 41 FAInS clients whose cases had been resolved in court had attempted to resolve matters through discussion with the other party, while 14 had tried to resolve them through third-party discussions. A similar number of pre-FAInS clients whose cases had gone to court had previously attempted resolution in these ways.

Among clients whose cases had not yet been resolved, a similar proportion of pre-FAInS and FAInS clients (72% and 70% respectively) had tried to resolve their case through discussion. A little under a third (32%) of FAInS clients and 29 per cent of pre-FAInS clients had tried to resolve the dispute through discussion with the other person. Just under two-fifths (37%) of FAInS clients and just over two-fifths (43%) of pre-FAInS clients said that they had tried to resolve the dispute through discussions involving a third party. In most cases (the figure was 84% for pre-FAInS and 83% for FAInS clients), these attempts at resolution were ongoing.

Despite the efforts being made through discussions and third-party negotiations, clients with unresolved cases were not optimistic that they would be able to resolve the matter.
without resorting to court. Pre-FAInS and FAInS clients had similar views on this issue. Nearly three-fifths (58%) of both pre-FAInS and FAInS clients thought that the case would ‘definitely’ or ‘probably’ go to court (Table 4.29).

<table>
<thead>
<tr>
<th></th>
<th>Pre-FAInS (%)</th>
<th>FAInS (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definitely will</td>
<td>37</td>
<td>43</td>
</tr>
<tr>
<td>Probably will</td>
<td>21</td>
<td>15</td>
</tr>
<tr>
<td>Probably will not</td>
<td>24</td>
<td>22</td>
</tr>
<tr>
<td>Definitely will not</td>
<td>9</td>
<td>14</td>
</tr>
<tr>
<td>Don’t know</td>
<td>9</td>
<td>6</td>
</tr>
<tr>
<td><strong>Base: all clients with issue unresolved</strong></td>
<td><strong>188</strong></td>
<td><strong>162</strong></td>
</tr>
</tbody>
</table>

**Client Views**

If FAInS achieves its stated aim of minimising distress, clients might be expected to have more positive views of the process and of their contact with the solicitor. In this section we examine the views of clients in relation to the service they received from the solicitor and their feelings about their experiences as a whole.

**Views on Helpfulness of Solicitors**

Pre-FAInS and FAInS clients gave similarly high ratings for most aspects of solicitor services. Solicitors were rated as ‘very’ or ‘quite’ helpful in terms of their giving of legal advice by 95 per cent of pre-FAInS and 94 per cent of FAInS clients (Figure 4.3). More than nine in ten clients (95% pre-FAInS and 92% FAInS) said that the solicitor was helpful in providing information. Although identifying client problems is a key element of the FAInS approach, solicitors were already highly rated as regards this aspect of their service by clients at the pre-FAInS stage, with 89 per cent rating them as ‘very’ or ‘quite’ helpful, and just under this proportion (88%) of FAInS clients giving this rating.
The only significant difference between pre-FAInS and FAInS clients in terms of the rating of solicitor services related to the solicitor suggesting other services. Nearly three-quarters (74%) of FAInS clients rated the solicitor as ‘very’ or ‘quite’ helpful in this respect, as against just under three-fifths (59%) of pre-FAInS clients (Table 4.30). Pre-FAInS clients were more likely to say that suggesting other services was ‘not applicable’; 31 per cent said this, as against 15 per cent of FAInS clients. This indicates that the FAInS approach has made clients more likely to see suggestions to use other services as being part of the solicitor’s role.

**Table 4.30  Helpfulness of solicitor in suggesting other services**

<table>
<thead>
<tr>
<th></th>
<th>Pre-FAInS (%)</th>
<th>FAInS (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very helpful</td>
<td>46</td>
<td>53</td>
</tr>
<tr>
<td>Quite helpful</td>
<td>14</td>
<td>21</td>
</tr>
<tr>
<td>Not very helpful</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>Not at all helpful</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Not applicable</td>
<td>31</td>
<td>15</td>
</tr>
<tr>
<td>Don’t know</td>
<td>0</td>
<td>*</td>
</tr>
</tbody>
</table>

* Base: all 312  281

Note. Percentages do not sum to 100% as clients could have contacted more than one service.

* Indicates percentage below 0.5 but above 0.

**Overall Views of Experience**

Overall satisfaction with the service received from the solicitor (captured at the end of the telephone interview) was high among both pre-FAInS and FAInS clients (Table 4.31).
Seven in ten pre-FAInS and FAInS clients said that overall they were ‘very satisfied’ with the service they had received from their solicitor. Nearly a quarter (24%) of FAInS and 20 per cent of pre-FAInS clients were ‘quite satisfied’. This suggests that the solicitors involved in the research were in most cases already meeting the expectations of clients before being trained as FAInS practitioners, and that adopting the FAInS approach had not further increased client satisfaction.

Table 4.31 Overall satisfaction with service from solicitors

<table>
<thead>
<tr>
<th></th>
<th>Pre- FAInS (%)</th>
<th>FAInS (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very satisfied</td>
<td>70</td>
<td>70</td>
</tr>
<tr>
<td>Quite satisfied</td>
<td>21</td>
<td>24</td>
</tr>
<tr>
<td>Not very satisfied</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>Not at all satisfied</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Don’t know</td>
<td>1</td>
<td>*</td>
</tr>
<tr>
<td>Not answered</td>
<td>–</td>
<td>*</td>
</tr>
<tr>
<td>Base: all</td>
<td>312</td>
<td>281</td>
</tr>
</tbody>
</table>

Another measure of the success of the client’s contact with the solicitor is whether they feel better about the problems they had when they went to the first meeting. There were no significant differences between pre-FAInS and FAInS clients in this respect (Figure 4.4). Just over three-fifths (62%) of FAInS and 63 per cent of pre-FAInS clients said at the end of the telephone interview that they were now less worried about the issue than they had been when they had first visited the solicitor. Just under one in ten FAInS (9%) and 11 per cent of pre-FAInS clients were more worried than they had been. This indicates that the FAInS approach did not influence how clients felt about their situation.

Not surprisingly, clients whose cases had been resolved were significantly more likely to say they were less worried about the concerns they had had at the time of their first meeting with a solicitor. Eight in ten clients (83%) whose cases had been resolved were now less worried, while only 2 per cent were more worried. In comparison, just under half (46%) of clients whose cases were unresolved were now less worried about their original concerns and 14 per cent were more worried.
Figure 4.4 Thinking about the concerns that you had when you first went to see the solicitor, would you say that you are now more worried about them, less worried, or do you feel about the same?

**Clients’ Perspectives on Lawyers’ Services: Concluding Comments**

The implementation of the FAInS approach does not appear to have had significant impacts on the experience of family law clients or on their views of the experience. The PAP was well-received by FAInS clients, although, in most cases, limited use was made of it after the first meeting. The FAInS approach does not seem to have had a significant effect on the likelihood of solicitors suggesting other services to clients, or on the kinds and range of services that were suggested to clients. The FAInS approach also did not appear to be influencing the way in which cases were resolved or the use of discussion and negotiation to resolve issues.

Both pre-FAInS and FAInS clients had positive views about the service they had received from the solicitor. The solicitors received high ratings for helpfulness from both the pre-FAInS and FAInS clients on most aspects of service, including identifying problems or concerns, which is one of the key elements of FAInS delivery. Overall satisfaction with the solicitor was high among both the pre-FAInS and the FAInS clients, suggesting that client expectations were in most cases already being met by the solicitors before they underwent FAInS training.
Chapter 5  The Cost of FAInS Provision

Mike Coombes, Simon Raybould and Colin Wren

One of our research tasks was to examine the financial costs associated with FAInS and, by implication, to indicate the effect on costs to the LSC of FAInS being implemented across England and Wales. We were interested only in determining the costs to the LSC in respect of publicly funded cases. This necessitated that we focus the analyses not on individual solicitors, but on the whole caseload of firms involved in the FAInS evaluation. This enabled us to identify the relevant costs in the LSC databases of payments to firms. All the information used for the costs study was made available to us from the LSC’s information systems.

Analysis Strategy

The vast majority of FAInS cases were first registered for Legal Help provision; a small minority of these later become Certificated cases and the cost per case under this funding can be very high. A key issue for the costs study was whether the proportion of FAInS cases becoming Certificated was significantly lower than the equivalent proportion of non-FAInS cases among the comparator groups. Although the Legal Help cost per case has a low ceiling, there is still room for variation: this means that another key issue to be addressed was whether delivering FAInS – perhaps through spending more time with clients – caused the FAInS cases to have higher average Legal Help costs than comparator cases. Another financial cost difference between FAInS cases and others is that a premium was paid by the LSC for every FAInS case delivered during the evaluation. This included reimbursement for time spent providing research data. Our aim was to estimate the overall cost increase, or saving, for the LSC in respect of these cost elements.

In the research planning stage, we expressed our hope that unique research identifiers (UFIDs) would be attached by the LSC to research cases in the LSC databases, but this turned out not to be possible. This meant that we were not able to identify FAInS cases as accurately as had been hoped, and that we have had to be all the more careful in tackling the core problem of choosing comparator cases. Two different approaches were adopted:

1. The first approach involved analyses which depended entirely on the cases of the 24 firms in the four pilot areas which provided both pre-FAInS and FAInS research cases.

2. The second approach used the same cases as those that made up the ‘after’ cohort – a ‘policy on’ cohort of cases. In this second form of analysis, the ‘policy off’ cohort comprised all cases opened by the solicitors of any other firm in the main study pilot period. This can be described as a cross-sectional form of analysis. In principle, the cross-sectional approach avoids a possible disadvantage of the ‘before’ and ‘after’ analyses, which is that other changes between the two periods could have an effect on the costs of cases which would be difficult to disentangle from the impact of FAInS. In practice, in the wider evaluation we have not found any changes likely to have this kind of effect.

68 We are very grateful to Eleanor Drucker and Adela Ghinn of the LSC for their advice and for making available very large anonymised data sets in a form never previously released for research of this kind.
Another clear advantage of the second approach is that its ‘policy off’ cohort of cases is numerically very large.

In Chapter 2 and Annex 1 we discuss the key issues in relation to comparisons between the pilots and the wider LSC caseload. We were concerned about selectivity: in addition to the selectivity involved in piloting in a small number of areas, there was further selectivity because the pilots involved only some solicitors in some of the firms in those areas. We concluded that, broadly speaking, the bias due to area selection was the lesser of the two problems. The possible impacts of the selectivity of firms delivering FAInS have been considered as far as the data sets allow. Without UFIDs attached to case records, the FAInS cases identified for the analyses include all cases opened in the relevant time periods by any solicitor working for one of the 24 firms in which at least some solicitors participated in both the pre-FAInS and the FAInS phases in the full pilot. This includes some non-FAInS cases opened by solicitors in those firms. We do not believe that this will greatly dilute any distinctiveness of FAInS, although this cannot be quantified.

The top line of the right-hand column in Table 5.1 shows the location of the cases for the costs study. These are the ‘after’ cases for the before-and-after comparison; they are also the ‘policy on’ cases for the other form of comparison used here. As regards the first approach, the comparator (before) cases are in the top line of the middle column. For the second (cross-sectional) approach, the ‘policy off’ comparator cases are defined by the three lower lines in the right-hand column. It is important to note that this second comparator cohort does include some FAInS cases, as follows:

- cases of FAInS firms in the four areas which provided no ‘before’ research cases
- cases of FAInS providers in Exeter or Cardiff
- cases of FAInS providers in non-research pilot areas

These cases are not numerous enough to materially affect the values for the non-FAInS comparator, as will be seen from the sheer number of cases involved.

<table>
<thead>
<tr>
<th>FAInS phase</th>
<th>Pre-pilot and/or pre-FAInS (phase 1)</th>
<th>Main pilot (phase 2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>24 firms in Basingstoke, Leeds, Lincoln, Stockton &amp; Hartlepool</td>
<td>Pre-FAInS cases</td>
<td>FAInS cases</td>
</tr>
<tr>
<td>FAInS firms in Exeter/Cardiff</td>
<td>not costs study cases</td>
<td>not costs study cases</td>
</tr>
<tr>
<td>FAInS firms in other areas (e.g. Mansfield)</td>
<td>not FAInS</td>
<td>not costs study cases</td>
</tr>
<tr>
<td>Non-pilot areas</td>
<td>not FAInS</td>
<td>not FAInS</td>
</tr>
</tbody>
</table>

Both forms of analysis focus in part on cases opened during the main pilot. Unfortunately, there was relatively little time after the end of the main pilot for these cases to be closed: only after a case has been closed is its final cost to the LSC known and recorded in the data. In effect, the cases we could use were ‘time-censored’, and some more protracted cases were excluded. Cases which finished more quickly are expected to cost less, so this is a potential bias which cannot be ignored. This problem was dealt with by excluding from all the main analyses of cases on the Legal Help database any case with a closure date over twelve
months after the opening date. Only a minority of cases were excluded as a result of this, but the clear benefit is that there can be more confidence that ‘like-with-like’ comparisons have been made.

In addition to the very large database on Legal Help cases, the smaller data set on cases which were Certificated has also been included in the costs analyses. Certificated cases vary much more in cost, not least because they may involve paying for legal representation. In our analysis of this data set we have aimed to find the typical level of cost involved in cases becoming Certificated: this was linked to the calculation of the probability of any cohort of cases moving on from relatively low-cost Legal Help to higher-cost Certification, so as to estimate the overall cost impact of differences between FAInS and the comparator cases on the probability of cases becoming Certificated. In the before-and-after research sample, 17 per cent of all the pre-FAInS cases, and 15 per cent of the FAInS cases, had become Certificated at the time of our six-month research follow-up.

We are aware also that in Chapter 2 we showed that FAInS providers tended to have a somewhat distinctive caseload, and it is possible that this distinctiveness could produce a distinctive cost profile. Given the limited information about each case in the available data, we analysed sub-groups of cases which tended to have different cost profiles. The key to this approach has been to classify by matter type: the analyses cover all family matter cases, excluding only those relating to public law children cases.

**The Case Cohorts**

Table 5.2 shows the basic statistics on the cases in the Legal Help database which were available for the costs analyses. All the family matter cases, numbering over a million, were closed by 30 November 2005. The last column shows that 14 per cent of all the cases became Certificated and so the proportions seen in the research sample are close to the national average figure. The second set of figures breaks down the full caseload by the date when the case was opened, suggesting that the probability of cases becoming Certificated increased slightly over time. It is important to remember that the database only includes closed cases, so the set of recently opened cases which are reported here cannot include any cases of very long duration. The significance of this can be seen in the last row of the table, which covers only the cases which had closed within a year. The probability of these cases becoming Certificated is somewhat higher than that for all cases and, given the very large numbers of cases involved, this is a highly significant difference statistically. As was indicated above, it is the cases closed within twelve months which form the basis for the main analyses which follow.

<table>
<thead>
<tr>
<th>Case duration</th>
<th>Research phase</th>
<th>Number of cases</th>
<th>% becoming certificated</th>
</tr>
</thead>
<tbody>
<tr>
<td>(any length)</td>
<td>(any time)</td>
<td>1,026,416</td>
<td>14.1</td>
</tr>
<tr>
<td>(any length)</td>
<td>pre-FAInS</td>
<td>146,159</td>
<td>17.6</td>
</tr>
<tr>
<td></td>
<td>FAInS</td>
<td>137,043</td>
<td>19.3</td>
</tr>
<tr>
<td></td>
<td>other times</td>
<td>743,214</td>
<td>12.4</td>
</tr>
<tr>
<td>&lt;12 months</td>
<td>(any time)</td>
<td>798,432</td>
<td>17.6</td>
</tr>
</tbody>
</table>

We sharpened the focus to look at the cases which were closed within twelve months and had been opened during the pre-FAInS or the FAInS research periods: over 200,000 Legal Help cases are included on this basis (Table 5.3). The first two rows in Table 5.3 show that
the increasing tendency over time for cases to become Certificated – which had been observed when case length was not considered (Table 5.2) – applies also when the case length is limited to a year. The last two rows reveal that the cases of FAINS firms are less likely to become Certificated. However, because the cases here come from both research phases, this particular analysis includes both pre-FAInS and FAINS cases of the 24 firms. We cannot conclude, therefore, that this trend is a result of FAINS practice. One key factor which determines whether cases become Certificated appears to be matter type (Table 5.3, middle three rows). The cases which are categorised as involving both children and property (FCPR) prove to have an almost three-in-ten chance of becoming Certificated, whereas for other divorce cases (FDIV) the chance is less than one in ten, with the sum of the other matter types closely matching the overall average probability. This means that it is necessary to be aware of the matter type mix of different case cohorts, because in analyses where the probability of cases becoming Certificated is at issue this matter type mix can have a strong influence on the results. The other key finding is that there was a slight increase over time in the probability of cases becoming Certificated, and this is relevant to the ‘before and after’ form of analysis.

Table 5.3 Legal Help cases of under twelve months’ duration opened in the two research phases: case populations

<table>
<thead>
<tr>
<th>Research phase</th>
<th>Matter type</th>
<th>FAInS cases (are included)</th>
<th>Number of cases</th>
<th>% certificated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-FAInS</td>
<td></td>
<td>112,119</td>
<td>17.6</td>
<td></td>
</tr>
<tr>
<td>FAInS (either phase)</td>
<td>FDIV (are included)</td>
<td>81,871</td>
<td>8.8</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>81,795</td>
<td>29.0</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>51,724</td>
<td>17.2</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>FAInS firms cases</td>
<td>3,308</td>
<td>17.7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>non-FAInS cases</td>
<td>21,2082</td>
<td>18.5</td>
</tr>
</tbody>
</table>

In Table 5.4 we present the final preliminary analysis, which looked at average Legal Help costs relating to the same categorisation of cases. Once again, there was a slight increase over the two time phases, and there was a slight difference between the cases of FAINS firms and those of other firms, but matter type proves to be the key discriminating factor. The cases categorised as FDIV have the highest Legal Help cost, but because they were very unlikely to become Certificated they may well result in the lowest cost to the LSC.

Table 5.4 Legal Help cases of under twelve months’ duration opened in the two research phases: matter type and Legal Help cost

<table>
<thead>
<tr>
<th>Research phase</th>
<th>Matter type</th>
<th>FAInS cases (are included)</th>
<th>Legal Help cost (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-FAInS</td>
<td></td>
<td>169</td>
<td></td>
</tr>
<tr>
<td>FAInS (either phase)</td>
<td>FDIV (are included)</td>
<td>217</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>148</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>131</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>FAInS firms cases</td>
<td>176</td>
</tr>
<tr>
<td></td>
<td></td>
<td>non-FAInS cases</td>
<td>170</td>
</tr>
</tbody>
</table>
Comparative Analyses

The understanding gleaned from these preliminary analyses implied that the main analyses should be carried out with due regard to the mix of matter types in each set of cases. Table 5.5 applies this approach: the middle block of rows reports data on the key FAInS set of cases, the upper block shows the pre-FAInS comparator set, and the lower block shows the non-FAInS comparator cases opened during the main research phase. To put this another way, comparison between the top and the middle sets of data provides the ‘before and after’ comparison, whereas comparison between the middle and bottom sets of data provides the nearest possible version of a ‘policy on vs policy off’ form of analysis. If we look only at the sub-total rows in each block of data, it seems that FAInS cases had a very slightly higher Legal Help cost than either of the comparator sets of cases. This extra cost may be more than compensated for by the proportion of FAInS cases becoming Certificated being slightly lower than for both the two comparator groups. This difference in the ‘before and after’ comparison is all the more interesting when put in the context of the earlier finding (Table 5.3) that the probability of cases becoming Certificated has tended to rise slightly over time.

### Table 5.5  Legal Help cases of under twelve months’ duration opened in the two research phases: Legal Help cost and Certificated cases

<table>
<thead>
<tr>
<th>FAInS firms</th>
<th>Phase</th>
<th>Matter</th>
<th>Number of cases</th>
<th>Legal Help cost</th>
<th>% certificated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>pre-FAInS</td>
<td>FDIV</td>
<td>610</td>
<td>233</td>
<td>6.7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>FCPR</td>
<td>677</td>
<td>150</td>
<td>28.4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Rest</td>
<td>484</td>
<td>130</td>
<td>18.6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1,771</td>
<td>173</td>
</tr>
<tr>
<td>Yes</td>
<td>FAInS</td>
<td>FDIV</td>
<td>556</td>
<td>238</td>
<td>7.0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>FCPR</td>
<td>537</td>
<td>162</td>
<td>28.7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Rest</td>
<td>444</td>
<td>127</td>
<td>15.8</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1,537</td>
<td>179</td>
</tr>
<tr>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>FAInS</td>
<td>FDIV</td>
<td>38,964</td>
<td>218</td>
<td>9.3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>FCPR</td>
<td>39,030</td>
<td>148</td>
<td>30.3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Rest</td>
<td>23,740</td>
<td>132</td>
<td>18.6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>101,734</td>
<td>171</td>
</tr>
</tbody>
</table>

The fact that the two comparator groups of cases, which were drawn in very different ways, provide results that are far closer to each other than they are to the FAInS cases gives us confidence in these findings. In addition, despite the two sets of cases from the FAInS firms having to be based on relatively modest numbers, the cost differentials between matter types closely echo the main results, and this too suggests that the findings are robust. One further, but vital, bolstering of confidence in these results comes from the fact that the mix of matter types is very similar across three sets of cases: the narrow range of 34–9 per cent covers the proportion of cases which are FDIV and also the proportion which are FCPR in all of the three blocks of data.

The final question we addressed related to the cost of Certificated cases, and this question had to be answered with analyses of a different data set. It is fortunate that the matter type mix of the FAInS and comparator sets of cases proved to be so similar, because it is not
possible to break down the data from the Certificated database by this dimension. There is no comparative element here, so it was not appropriate to limit this analysis to include only those cases closed within twelve months; instead it was essential to include long cases so as to gain adequate coverage of the cases which might well cost the most. In fact, of nearly 150,000 Certificated cases for which the costs were known, well under half were closed within twelve months of opening. Whereas the overall data set shows an average cost of £2,627 per case, the cases of less than a year’s duration had an average cost of less than half that (£1,208). In this respect, the Certificated cases are very different from the Legal Help caseload, in which most cases had been closed within twelve months and there was little cost difference between those which had and had not been closed.

There seems to have been a slight rise over time in average Certificated case costs, although this is not a trend which is consistent between annual cohorts of cases (identified by start date). In fact, this trend analysis could not be carried out fully, because the very lengthy, and, probably, high-cost, cases are increasingly missing as the analysis selects later cases of cohorts. (For example, the cases opened in 2004 which had lasted more than two years could not be included in the set of cases reported at the end of 2005.)

Conclusions from the Costs Study

Table 5.6 brings together the key findings from the analyses within a single overall analysis of financial costs. The results are summarised as comparisons of the likely cost to the LSC of three representative sets of 100 cases, one set being the FAInS cases and the other two sets being comparator cases. These three sets of cases are identified in the same way as before (Table 5.5), except in Table 5.6 they read from left to right rather than from top to bottom. Thus the two forms of analysis were carried out as follows:

1. The before-and-after analysis involved comparing the pre-FAInS cases (left-hand column) with the FAInS cases (middle column).

2. The cross-sectional analysis utilised the ‘policy off’ or non-FAInS cases (right-hand column) as the comparator to the FAInS cases (middle column).

In practice, the results of the two forms of analysis can be taken together, because there is a highly encouraging similarity in the results which emerge from them. Table 5.6 initially looks at the impact on the three case cohorts of cases becoming Certificated and, as a result, incurring substantial additional costs. It seems that FAInS provides a cost saving in this respect, owing to this cohort having a lower probability of becoming Certificated: the middle column of data shows that the Certificated costs of the 100 FAInS cases is under £45,000, and this is notably less than the £49,000+ and £51,000+ for the pre-FAInS and non-FAInS caseloads respectively (Tables 5.5 and 5.6 provided the data used here). Although the Legal Help costs are higher for FAInS cases (Table 5.5), adding this element to the total does not prevent the 100 FAInS cases still posing a lower cost burden than either of the two comparator sets of cases so far as the sum of these two elements of Legal Aid costs goes (Table 5.6, central block of data).

In Table 5.6, the lowest block of data shows that the cost advantage from the FAInS cases is fully negated if the £140 per case premium paid to firms participating in the delivery of FAInS is taken into account. This sum included £100 premium for providing FAInS and £40 for contributing to the FAInS evaluation. One way of drawing out the implications of this analysis is to focus on the difference between FAInS and non-FAInS cases (i.e. the cross-
sectional comparison, which is numerically the more robust form of analysis although the sample of FAlnS cases remains relatively small). If the aim was for the total financial cost to the LSC of the FAlnS cases to be no more than that estimated for the non-FAlnS cases, the premium paid would have to be cut to under £55 per case. This figure should be regarded as, at best, the central value in a wide range of plausible estimates. It might be safer to conclude that a national roll-out of FAlnS would be unlikely to be cost-neutral unless the additional sum paid to FAlnS providers were rather less than half the amount paid during the pilot.

Table 5.6  Summary of the cost implications of the analyses

<table>
<thead>
<tr>
<th>Estimated cost (£) for 100 cases</th>
<th>Pre-FAlnS</th>
<th>FAlnS</th>
<th>Non-FAlnS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of cases expected to be Certificated</td>
<td>19.0</td>
<td>17.1</td>
<td>19.5</td>
</tr>
<tr>
<td>Average cost of a Certificated case</td>
<td>2,627</td>
<td>2,627</td>
<td>2,627</td>
</tr>
<tr>
<td>Cost of Certificated cases</td>
<td>49,913</td>
<td>44,922</td>
<td>51,227</td>
</tr>
<tr>
<td>Legal Help costs</td>
<td>17,322</td>
<td>17,948</td>
<td>17,078</td>
</tr>
<tr>
<td>Total Legal Aid costs</td>
<td>67,235</td>
<td>62,870</td>
<td>68,305</td>
</tr>
<tr>
<td>FAlnS ‘premium’ fees</td>
<td>0</td>
<td>14,000</td>
<td>0</td>
</tr>
<tr>
<td>Final total</td>
<td>67,235</td>
<td>76,870</td>
<td>68,305</td>
</tr>
</tbody>
</table>

Two possible caveats should be recorded here. The first highlights the various limitations of the data sets and analyses used, but we would suggest that these problems have made for little identifiable distortion of the results, although there may have been some distortions which were not anticipated. The second concerns interpretation. The basic approach used suggests that the differences which can be observed between the FAlnS cases and the two comparator case cohorts are due to a ‘FAlnS effect’, but there will always be the possibility that some other unanticipated and unobserved influences have caused at least some of these differences. Nevertheless, some confidence about the robustness of the results and their interpretation can be drawn from the fact that two very different forms of analysis, using two very different comparator case cohorts, have given similar evidence on the distinctiveness of the FAlnS cases and their costs. While we recognise the limitations of the data available, the analyses which we have been able to carry out suggest that if the premium paid to FAlnS providers during the research period is set aside, FAlnS practice has the potential to reduce the costs of public funding for private family law cases.
In order to understand whether FAInS changed legal practice, and if so how, we wanted to know more about how family law solicitors approached their work before becoming experienced as FAInS providers. We were aware particularly that solicitors in Cardiff and Exeter had been specifically targeted to participate in FAInS because they already exhibited best practice in family law work. In the main pilot, however, this kind of selection did not take place and family law practitioners undertaking publicly funded work in the four new study areas were all invited to become FAInS practitioners. We might assume, however, that they would be more likely to volunteer if they were sympathetic to the FAInS approach and the notion of more holistic practice. Nevertheless, we believed it important to attempt a classification of approaches to practice and to locate the views and experiences of FAInS practitioners within their own field of practice.

Using a survey methodology used previously in the USA, we decided to conduct a survey of all new FAInS providers in Cardiff and Exeter and potential FAInS providers in the four new full pilot study sites as they prepared for the implementation of FAInS (in June 2003). Our expectation was that we could apply Mather’s classification of family law practitioners in the USA. She and her colleagues distinguished divorce lawyers in terms of two different aspects of their work: the achievement of legal outcomes, and effecting change in the lives of their clients. They found that lawyers varied in terms of the emphasis they placed on one or the other of these aspects, and in the role they play. Their classification placed lawyers in one of three categories:

- legal-craft-oriented
- client-adjustment-oriented
- a combination of the two

We had originally anticipated that the majority of family solicitors in each of the pilot areas would opt to participate in the FAInS pilot. The survey would then enable us to develop a profile of practice in each pilot area. In fact, relatively few family lawyers participated in the FAInS pilots, and it has not been possible to develop a profile on a pilot-by-pilot basis. Nevertheless, the survey has provided detailed information about how the participating solicitors viewed their work and roles prior to gaining experience as FAInS providers. Moreover, we planned to repeat the survey when the solicitors had achieved at least nine months of FAInS practice in order to understand whether their practice had changed over time and if so how, and to consider the extent to which the FAInS pilot has been instrumental in achieving these observed changes. This survey, conducted at two time periods, was an additional element within the evaluation: the first survey was conducted in June 2003, and the second survey was conducted in November 2005. In this chapter, we report on the key findings from the first survey, conducted in 2003, and compare them with the findings from the second survey conducted in 2005.

---

In June 2003, survey questionnaires were mailed to 137 solicitors participating in the evaluation. Table 6.1 indicates the responses we received. The overall response rate was 69 per cent, the highest response rate being from solicitors in Basingstoke and the lowest from solicitors in Exeter. In terms of average response rates to postal surveys this is very respectable. We have conducted our analysis on the 94 questionnaires returned to NCFS.

<table>
<thead>
<tr>
<th>Area</th>
<th>Number of questionnaires sent</th>
<th>Number of questionnaires returned to NCFS</th>
<th>Response rate %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cardiff</td>
<td>21</td>
<td>14</td>
<td>67</td>
</tr>
<tr>
<td>Exeter</td>
<td>24</td>
<td>15</td>
<td>62</td>
</tr>
<tr>
<td>Basingstoke</td>
<td>14</td>
<td>11</td>
<td>79</td>
</tr>
<tr>
<td>Leeds</td>
<td>42</td>
<td>28</td>
<td>67</td>
</tr>
<tr>
<td>Lincoln</td>
<td>12</td>
<td>8</td>
<td>67</td>
</tr>
<tr>
<td>Stockton &amp; Hartlepool</td>
<td>24</td>
<td>18</td>
<td>75</td>
</tr>
<tr>
<td>Total</td>
<td>137</td>
<td>94</td>
<td>69</td>
</tr>
</tbody>
</table>

Reasons given for not completing and returning the questionnaire included the following:

- two firms had decided to withdraw from the research
- seven solicitors had decided to withdraw from the research
- a few solicitors were on maternity leave at the time of the survey
- one solicitor explained that she did not undertake legal aid work any more

In November 2005, we mailed a second survey to all the FAInS providers in Cardiff and Exeter and in all our four study areas. Table 6.2 indicates the numbers of questionnaires sent and returned. The response rate was somewhat lower, at 48 per cent, but some of the solicitors were no longer involved in the pilots and may well have felt less committed to providing research data. The second survey asked questions very similar to those in the Time 1 survey and included an additional section which focused on the experiences of the solicitors in terms of their FAInS practice.

The findings discussed in this chapter relate to 93 of the returned survey 1 questionnaires and 68 of the returned survey 2 questionnaires. Forty-eight solicitors in total responded to both the questionnaires (in 2003 and 2005). One questionnaire in survey 1 was only partially completed and was eliminated from our initial analysis.

Of the 93 solicitors whose questionnaires we analysed at Time 1, 67 (including three from legal executives) were female and 26 were male. Of the 48 who responded to both questionnaires, 11 were male and 37 female. A handful were sole practitioners, but the majority worked in firms with between three and seven other family solicitors, while a much smaller number worked in firms with ten to twelve other family solicitors. For the majority, cases involving divorce and post-divorce matters made up around 70–80 per
cent of their workload, with the percentage of publicly funded clients ranging from 15 to 98.

<table>
<thead>
<tr>
<th>Area</th>
<th>Number of questionnaires sent</th>
<th>Number of questionnaires returned to NCFS</th>
<th>Response rate %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cardiff</td>
<td>25</td>
<td>8</td>
<td>32</td>
</tr>
<tr>
<td>Exeter</td>
<td>19</td>
<td>7</td>
<td>37</td>
</tr>
<tr>
<td>Basingstoke</td>
<td>13</td>
<td>8</td>
<td>62</td>
</tr>
<tr>
<td>Leeds</td>
<td>52</td>
<td>24</td>
<td>46</td>
</tr>
<tr>
<td>Lincoln</td>
<td>11</td>
<td>4</td>
<td>36</td>
</tr>
<tr>
<td>Stockton &amp; Hartlepool</td>
<td>24</td>
<td>18</td>
<td>75</td>
</tr>
<tr>
<td>Total</td>
<td>144</td>
<td>69</td>
<td>48</td>
</tr>
</tbody>
</table>

Twenty-one solicitors within the sample had less than five years’ experience of working as a family lawyer while sixteen had 20 years or more. Twenty-four had 6–10 years’ experience, 25 had 11–15 years’ and 7 had 16–20 years’. The sample of solicitors can be broadly characterised as relatively experienced. Unsurprisingly, all but two of the very senior solicitors were men and the vast majority of the most junior practitioners were women.

One characteristic of the sample of solicitors was their membership of specialist professional groupings: 55 solicitors from across the sample (including almost all the more senior solicitors) were members of Resolution, 34 (again, primarily the most experienced) were members of the Law Society Family Panel (two described themselves as ‘advanced members’), and 20 were members of the Law Society Children Panel. Those with five years’ experience or less were less likely to be members of a panel.

In terms of background and other work experience relevant to the role of a family lawyer, the solicitors overwhelmingly cited their own experiences as parents as being highly relevant to family law. Other professional experience included work as teachers, as mediation trainers, and as lawyers in the fields of banking, crime and immigration. Several female solicitors were involved with women’s aid groups and domestic violence forums and some were on the management committees of women’s refuges. Several of the more senior male solicitors had sat as deputy district judges while another was chair of disability living allowance and attendance appeals tribunals. The majority of the more senior solicitors (seventeen in all) stated that they had both trained in and practised family mediation. A handful of others noted that they had trained and practised in marriage and personal counselling and advice work.

The questionnaire in Survey 1 was divided into three sections. The first section included questions about the solicitor’s training and experience, perception of clients, and views on the process of family law and those who practised in it. These questions were designed to find out: where solicitors placed themselves on the continuum of advances in family law practice; what they saw as their overall objectives; what they enjoyed, or otherwise, about the practice of family law; the criteria they used to measure their own success; their approaches to negotiation and settlement; and their overall assessment of the qualities that go to make up a ‘good divorce settlement’. The questions in the second section asked
about: client misunderstandings in relation to the legal process; client expectations; client/solicitor interactions and the nature of the advice given; and the advantages and disadvantages of mediation and understandings about agreements. The third section focused primarily on eliciting responses from solicitors about themselves and their style of practice as well as their views on the practices of other family lawyers.

The questionnaire in Survey 2 used the same questions as those in Survey 1, but with the addition of a new section which gave solicitors an opportunity to articulate their views on the FAInS experience and focus specifically on FAInS practice, their reasons for becoming FAInS providers, and the consequences of their having done so. The questions sought to elicit comments about the reasons solicitors gave for becoming FAInS providers, the extent to which the solicitor’s family law practice had changed, if at all, as a result of FAInS, and whether they would continue to use the FAInS approach when the pilot ended. Solicitors were asked to define the main characteristics of FAInS, express views as to whether or not it should be rolled out nationally, and flag up the other services that should be available locally. Views were sought as to the usefulness of the forms (the client information form and the personal action plan) and whether these would be used in the future. Finally, solicitors were asked in a more general way to give their views of FAInS including any suggestions about future initiatives that should be implemented in family law.

The data from the questionnaires have enabled us to offer a snapshot of solicitors’ practice in family law in 2003, and again in 2005 after two years of FAInS practice. The data have highlighted the distinctive nature of legal practice and its interior workings, its aims and objectives, its satisfactions and pitfalls, and solicitors’ perceptions of client expectations and understandings. This chapter places the findings from both questionnaires within a context which encompasses the broad legal landscape of family law, including case law, statutes, judicial directions and socio-legal policy. The second survey has enabled us to consider whether FAInS practice has changed the ways in which family solicitors approach and think about their work, and provides data about their experiences of being FAInS practitioners. Before presenting our findings, however, it is important to understand the context in which FAInS providers are working.

The Current Legal and Social Landscape

Solicitors working in the family justice system today operate in an area of law remarkable for its relatively recent specialism and distinctiveness. Training, accreditation and membership of specialist professional groupings such as Resolution\(^70\) have become the norm rather than the exception; judges across the tier of courts from the now highly specialised family proceedings courts to all the superior courts are selected and trained to ensure that they have the appropriate skills; and the restructuring of the courts dealing with family matters has resulted in a truly specialist court system. There are, of course, specialist law reports, journals, seminars, conferences and research projects, and a range of essential and specialist mediation and welfare services.\(^72\) There is also the relatively

\(^{70}\) Currently around 5,000 members.

\(^{71}\) The main contribution to family law work is made by a group of around 2,600 women and 1,300 men who specialise in family law; see Eekelaar, J., Maclean, M. and Beinart, S. (2000) *Family Lawyers: The Divorce Work of Solicitors*, Hart, p. 42.

\(^{72}\) In 2001, the Children and Family Court Advisory and Support Service (CAFCASS) was established, and brought staff from a range of services together to provide welfare reporting and support services for family proceedings.
recently established Family Justice Council. In other words, the family justice system is a
highly specialist structure, and solicitors working in family law now operate within a
well-defined and distinctive professional context. Nevertheless, as Eekelaar et al. point out, policymakers have entertained and encouraged a perception of the work of family lawyers that bears little relationship to reality; instead of ‘shoals of sharks waiting to exploit the system’ the real task is how to keep on getting these dedicated specialists to continue to bid for LSC contracts and thus provide ‘the expert advice and assistance in managing family transitions which the good family solicitor can offer’.

The range of disputes coming under the remit of family lawyers has exploded in recent years. While the courts have become increasingly occupied with the monitoring of the decision-making processes of local authorities, they are also increasingly concerned with family breakdown and its consequences. The latter issue, the increase in shattered intimate relationships and the corresponding rise in children issues being presented to the courts, is particularly apposite to the current study of family solicitors’ work in the area of divorce and separation. According to the Office for National Statistics, the number of divorces granted in the UK increased by 0.2 per cent to 167,116 (from 166,737) in 2003 when we were beginning to collect data about family law practice. This was the highest number of divorces since 1996 and the fourth successive annual increase. Contact and residence litigation has grown, as has litigation in respect of the children of unmarried parents. The current social landscape is dominated by the increase in numbers of couples living outside of marriage and producing children. Non-married relationships seem to be less stable than marriage and thus more prone to breakdown. Of course, this burgeoning litigation has to be seen within the context of the growth of a rights-based philosophy, reflected in the incorporation of the European Convention on Human Rights and Fundamental Freedoms 1950 into domestic law by the Human Rights Act 1998, and the recent cultural changes with respect to fatherhood. Men are increasingly likely to want to assert a role for themselves in bringing up children and believe they have the right to do so. Correspondingly, and in line with the Human Rights Act 1998, the courts have increasingly viewed children’s welfare as being served equally well by either parent. Certainly, if mothers still retain their primary role as the resident parent, fathers are increasingly likely to assert their rights – mostly to the benefit of children – in terms of

---

73 See Roberts, S. ‘Family mediation in the new millennium’, in S. Cretney (ed.) (2000) Family Law: Essay for the New Millennium, Family Law. However, Mather, McEwen and Maiman (op. cit.) make the point (p. 84) that in the USA divorce lawyers face the daunting task of persuading their colleagues at the bar, their clients, the general public and themselves that they are indeed professionals with particular expertise. It would be difficult to make the same point in relation to England and Wales.
75 Office for National Statistics (2003b) Divorce in 2002, ONS.
76 In 2004, 69 per cent of divorces were granted to wives and the most frequent fact on which the divorce petition was based was the unreasonable behaviour of the husband. When the husband was granted the divorce it was invariably based on separation for two years with consent.
77 This is despite the no order principle in s. 1(5) of the Children Act 1989, which removed routine order making from the courts.
78 Speaking at a Bar Council lecture in December 2005, Dame Elizabeth Butler-Sloss noted that statistics showed that marriage remained the most stable of all relationships between men and women, despite the divorce rate.
contact. Once the growth of ethnic minority communities is combined with the undoubted ascendancy of the cult of individualism and personal choice, the pace of change for the family solicitor can only be seen as increasingly rapid.

While family law and the framework within which it is conducted have become increasingly specialised and the range of potential litigants ever greater, the nature of the problems confronting the family solicitor on a day-to-day basis has become increasingly distinctive. Family law is different. The clients of matrimonial and divorce lawyers are quite distinctive when set against solicitors’ clients in other areas of law. When family solicitors responding to the present research were asked to characterise their matrimonial/divorce clients, an overwhelming number stated that they were different from others, on account of their emotional issues and the consequent spin-off from these. Such clients often present themselves as confused, upset and even traumatised when they attend a first meeting with a solicitor.

Solicitors in the study often characterised their clients as vulnerable, and as generally appearing more intense than others owing to the current stress in their lives. As a consequence, these clients need more support, sympathy and reassurance than others from their solicitor, and the support is often emotional and social rather than legal. They are also more demanding, because of the stress caused by their particular problems and because they have become more dependent and anxious than others. Consequently, solicitors noted that they require better case management and more sensitive handling, and that because the emotional element often clouds issues for them it takes more time to discern their issues and resolve them. Decisions are often difficult for the client to make and advice is sometimes difficult to swallow, yet the nature of the problems (e.g. domestic violence) means that speed in dealing with the issue is of the essence.

The characteristics of the matrimonial client and the manner in which they present to the solicitor raise many and varied questions. Where personal and intimate issues are involved – thus giving rise to a whole tangled web of complex matters and a multiplicity of diverse issues – the family solicitor, in reality, is being confronted with human and emotional matters rather than purely legal ones. These matters cannot always be resolved satisfactorily by legal means. A solicitor in the second survey noted that even when a client’s issues and problems are identified as personal or debt- or mental-health-related and assistance is offered from an outside agency or service, the client still insists on seeking a legal solution. The control of human passions may require therapeutic assistance or the intervention of other advice agencies, and even where a legal resolution is achievable the forward thinking and planning required in the attempt to keep relationships amicable for the sake of children means that the solicitor must always have his or her eye on the future rather than on the past: forwards not backwards, in line with the ethos of the Family Law Act 1996, is the requirement.

These special and distinctive characteristics of matrimonial and divorce clients, the nature and style of their problems, and their expectations of family lawyers have raised questions


84 Question 10 of the questionnaire asked whether matrimonial/divorce clients were generally similar to or different from other types of clients and, if different, in what way.

85 63 solicitors stated that their clients were different from other legal clients and 14 stated that they were similar to others.

86 More female than male clients were categorised in the study as ‘vulnerable’.
about current legal and social policy and structures. In recent years, doubts have arisen as to whether disputes between individuals are apt for the courtroom and whether lawyers are the best people to deal with them. The view abounds among clients that the law can provide answers to all their problems, yet human and emotional problems are not always susceptible to remedies imposed by judgment in a court of law. Even where a dispute is a strictly legal one it is likely to have additional dimensions for the parties in terms of emotional well-being. In the latter part of the twentieth century, this dilemma gave rise to widespread interest in mediation as an alternative way of handling the consequences of relationship breakdown. Encouragement to reach agreement rather than to litigate became the goal.\(^{87}\) Significant research in the 1990s indicated that lawyers had become very strongly disposed towards settlement at the earliest stage possible.\(^{88}\) An American study reached the same conclusion – lawyers were overwhelmingly pro-settlement.\(^{89}\) As for the courts, they came to be seen, officially, as ‘sponsors of settlement’, and ‘judicial case management’ became the way to ‘encourage settlement of disputes at the earliest appropriate stage’.\(^{90}\)

**Promoting Conciliatory Divorce**

This shift in the legal landscape of family law is reflected in both legislation and the jurisprudence that has emerged from the courts in recent years. Nowhere was the shift more evident than in the Family Law Act 1996. The Law Commission Report *The Ground for Divorce*\(^{91}\) highlighted the fact that the current law of divorce, the Matrimonial Causes Act 1973, fails to reflect the reality of the divorce process. The Commission believed that the law should concentrate on bringing the parties to an understanding of the practical reality of divorce, with marital breakdown being inferred from a period of time spent in consideration of and reflection on the practical consequences of separation and marital dissolution. The scheme was enshrined in Part II of the Family Law Act 1996, accompanied and underpinned by a set of principles in Part I. The scheme promoted what Helen Reece described as ‘a drive to deregulate divorce’, with divorcing couples deciding for themselves, using their own criteria, whether their marriage had irretrievably broken down.\(^{92}\) The provision of information and mediation were to be key components in supporting relationships and in bringing a failed marriage to an end with the minimum of distress and in such a way as to promote a good continuing relationship between the parties and their children. This was law attempting to meet those human and emotional needs without recourse to any courtroom. The cultural shift from legal advocacy to the apparently civilised and civilising process of mediation was incorporated into statute. But the radical changes to a no-fault, non-adversarial system were not to be. With the change in government, the new Lord Chancellor announced, in 2001, that implementation of Part

---


\(^{90}\) See Lord Woolf’s *Interim Report to the Lord Chancellor on the Civil Justice System in England and Wales*, 1995, para II.5.16, the Civil Procedure Rules 1998 (which enhanced court control and helped reduce delay), the *President’s Direction* [2001] 1 FLR 949 and *Practice Direction (Case Management)* [1995] 1 FLR 456.


II would be indefinitely postponed.\textsuperscript{93} We had witnessed what Reece describes as the rise and fall of a post-liberal divorce law.

The consequence of the abandonment of Part II has not, however, meant a return to the caricature of courtroom duels and hostile advocates. Codes of Practice laid down by Resolution and statements of good practice as set out in the Family Law Protocol\textsuperscript{94} have exhorted solicitors to adopt a non-adversarial and more conciliatory stance and to continue to seek settlement by negotiation between lawyers. Practice Directions,\textsuperscript{95} Statements of Good Practice\textsuperscript{96} and government circulars, although not strictly ‘law’, direct the way in which legal practice takes place. The President’s Private Law Programme\textsuperscript{97} sets out objectives in relation to ‘continuous and active case management’ and aims, \textit{inter alia}, to avoid delay, monitor and review outcomes, enforce court orders and control the use and cost of resources. The guidance also requires best interests decisions and agreements to be facilitated by the use of parenting plans, and CAFCASS officers are expected to facilitate the working of both agreements and orders. That said, of course, the vast majority of financial and children’s arrangements are not adjudicated by a judge but settled by negotiation between the parties, often with the help of their lawyers. Mediation, which had been one of the underlying planks of the Family Law Act, was viewed as a way of helping divorcing couples reach agreement, reduce conflict and minimise the disruption to their children. Consequently, the Access to Justice Act 1999 provides that an applicant for legal aid in proceedings relating to family matters generally must first provide information to a mediator in order that his or her suitability for mediation be assessed. Funded assistance can then be refused if the otherwise ‘suitable’ applicant declines to engage in mediation.\textsuperscript{98}

While the Government has offered no hint that further substantive divorce law reform is in the pipeline, other legislative developments in family law have been relentless in recent times and contribute to the picture of the current legal climate. Shifts in thinking about family relationships have been promulgated by the Human Rights Act 1998 and the jurisprudence issuing from the European Court of Human Rights. We now have new ideas about what is ‘fair’ when it comes to assessing the claims of individuals against each other. The Adoption and Children Act 2002 came fully into effect at the end of 2005. Although its ambit is well removed from separation and divorce, the principles in section 1 enhance the objective of maintaining a child’s contact with his or her natural family, whether instead of adoption or after adoption has taken place. The Civil Partnership Act 2004 and the Gender Recognition Act 2004 have both demonstrated a parliamentary readiness to provide for non-traditional families, with the former arguably enhancing the very concept of marriage or long-term commitment. Further legislative initiatives such as the Children (Contact) and Adoption Bill and the government paper \textit{Parental Separation: Children’s Needs and Parents’ Responsibilities: Next Steps}\textsuperscript{99} are indicative of the push towards settling childcare arrangements following separation and divorce in a conciliatory

\textsuperscript{93} Parts I, III and IV of the 1996 Act were implemented. Part I sets out principles which direct the law towards promoting reconciliation and supporting marriage; Part III provides legal aid for mediation; and Part IV deals with domestic violence and housing issues.

\textsuperscript{94} Law Society (2002).


\textsuperscript{96} E.g. \textit{The Private Law Programme: Guidance Issued by the President of the Family Division}.

\textsuperscript{97} ibid., p. 2.

\textsuperscript{98} Access to Justice Act 1999 s 8(3) and Community Legal Service Funding Code Part II Procedures, s. 7: Referral for Family Mediation.

manner and in the best interests of children. It is not planned to make mediation compulsory, but rather parties will be ‘strongly encouraged to attend mediation’. The recent thrust of the law towards avoidance of litigation by facilitating early agreement between the parties is further promoted by these particular initiatives.

In 2004, The Department for Education and Skills promoted a Family Resolutions Pilot Project as part of the Government’s response to the Children Act Sub-committee’s Report *Making Contact Work*. The project, which was tested in courts in Brighton, London and Sunderland, aimed to help separating or separated parents reach agreement about contact and residence for their children without needing formal family court proceedings. It aimed to promote good, quality contact while safeguarding children from the risks of domestic violence, abuse and the adverse effects of their parents’ conflict. The pilot provided information and skills guidance in planning for co-operative parenting, expecting parents to work together to draw up plans for parenting.\(^{100}\) The programme involved group meetings, group workshops on conflict management and support from CAFCASS in post-separation parenting planning. The project was not without vociferous critics,\(^{101}\) and it was brought to a somewhat premature end. The results of the evaluation are important in assessing whether this kind of court-based initiative has the desired outcomes, particularly as the project was terminated. Quite clearly, the cases referred to in the Family Resolutions Pilot Project were not easy. Prior to the intervention, parents had reported a wide range of contact problems and low levels of trust and communication. Because of the difficulties experienced in getting cases started in the project, the overall agreement rate was low. Nevertheless, parents who completed the programme were more likely than others to say that parental relationships had improved. The researchers concluded that the pilot was a mixed success which did not provide a clear blueprint for the future. They suggested that the family justice system should develop a range of parenting interventions.\(^{102}\)

Senior members of the judiciary have added their voice to the call for more mediation in the interests of achieving a result for the parties as well as for the longer-term welfare of children and, where property is concerned, the avoidance of prolonged and costly litigation. *Al-Khatib v. Masry*\(^{103}\) is an example of successful use of the Court of Appeal mediation service. The Court of Appeal encouraged the parties to try mediation again following its failure during the trial process, but this time with the mediators judicially appointed and supervised by a Lord Justice of Appeal. This time it resulted in an agreed order. In approving the order, the Court of Appeal emphasised the availability and importance of mediation at the appellate level. Thorpe LJ stated that ‘there is no case, however conflicted, which is not open to successful mediation … even if mediation has failed during the trial process’. Similarly, in *Moore v. Moore*,\(^{104}\) a case which involved substantial property in England and France, the Court of Appeal exhorted courts considering applications for leave to appeal to take note of the mediation procedure operating in the Court of Appeal. This, the court said, was preferable to continuing expensive litigation on wide fronts in two jurisdictions.

---


\(^{101}\) See e.g. Willbourne, C., ‘Family resolutions v early initiatives’, *Family Law*, vol. 34, pp. 835–6.


\(^{103}\) [2005] 1 FLR 381, CA. The assets available for redistribution after divorce were huge and further capital was needed by the wife to secure the return of the children from Saudi Arabia.

\(^{104}\) [2005] 1 FLR 666, CA.
Although there is no compulsion on parties to mediate within the arena of the superior courts, the Court of Appeal clearly endorses the specialist, judicially supervised service and encourages parties to make use of it. Where parties might become trapped in protracted and complex litigation the exhortation to use skilled mediators indicates the widespread and far-reaching nature of the concept of ‘agreement rather than litigation’.  

The Court of Appeal’s endorsement of mediation has been extended to other out-of-court information and advice services, which is significant in the context of FAInS. In Re S (Contact Dispute: Committal),\textsuperscript{106} for example, the Court of Appeal made some strong suggestions to the trial judge with respect to finding a long-term solution to a seemingly intractable contact problem. In order to achieve some ‘rationality and objectivity’ it was suggested that a CAFCASS officer from the Muslim community be enlisted, that the mother be referred to the local mental health services and that mediation be attempted even though the case hardly bore the hallmark of one that was suitable for mediation. Arden LJ suggested that, in the long term, mediation would give the parents the best chance of success since the mediator would be able to listen to the mother, help her find solutions, and help build up trust. The skill of the mediator in achieving these outcomes is clearly crucial.

### Settlement or Litigation?

One of the major themes that emerged from our surveys was the desirability of settlement over litigation. Solicitors noted that achieving a fair and reasonable settlement is the most desired outcome in a divorce case; achieving a ‘good’ and ‘fair’ settlement provides them with the greatest degree of job satisfaction. They believed that their success as family lawyers is at its highest when clients are happy with an agreed solution. Settling matters without recourse to the courts is the goal most solicitors said they always aim for.\textsuperscript{107} Almost as many stated that reaching a fair settlement is the major goal and that its achievement is enhanced when the best interests of children are provided for. A smaller number noted that getting as much as possible for their client is always the objective. This last finding points to one of the dilemmas for solicitors – while believing in the value to the client of a good settlement, the lawyer is also partisan and often wants to achieve as much as possible for their own client.

Solicitors’ responses to the second survey showed no discernible differences in terms of the desirability of settlement over litigation. Neither were solicitors in the Exeter and Cardiff surveys, who had been practising according to the FAInS approach for four years, more or less enthusiastic about settlement as opposed to litigation. What was stressed throughout the second survey was the need for a fair resolution to be reached quickly, without undue delay, and for a resolution which promoted a compromise that both parties could live with. Mediation is often the means by which the parties take ‘ownership’ of the agreement. Equally, it is regarded as important that clients do not incur extra legal costs, that the agreement is enforceable as well as fair, and that it is practical in the sense of enabling clients to move forward with their lives. The desirability of agreement being reached without recourse to the courts is overwhelmingly embedded in the consciousness of solicitors.

\textsuperscript{105} See also C v C (Brussels II: French Conciliation and Divorce Proceedings) [2005] 2 FLR 14, FD, which highlights the significance of conciliation in the French divorce process.

\textsuperscript{106} [2005] 1 FLR812, CA.

\textsuperscript{107} Question 16 asked solicitors about the goals of settlement and, in particular, what their goals always tended to be.
But what of client expectations? According to solicitors many clients anticipate divorce as an acrimonious process and believe it will always involve a battle. As one solicitor noted:

\[\text{Divorce is about point-scoring and getting as much as possible.}\]

Solicitors thought clients often focused on winning, wanted revenge, and wanted to ‘take their spouse to the cleaners’. They suggested that men in particular think that the courts would allow a wife to take a man ‘to the cleaners’. Because of this belief in a ‘winner takes all’ situation, solicitors felt that many clients did not understand that financial matters could be resolved without a court hearing, and consequently clients expected that they and even their children would be required to attend court. Court appearance is thought to be so central to divorce that there is little understanding of out-of-court settlement as opposed to litigation.

Solicitors also raised the issue of unreasonable clients. Most solicitors stated that there were always some of these – people who want to keep the same old dynamics with their partner going and who want to litigate just to have their day in court. Such clients refuse to see that this behaviour has a detrimental impact on children and they are sometimes quite prepared to use children as a weapon. These clients sometimes become entrenched and embittered and reach an impasse in their thinking. Litigation in such circumstances, said solicitors, only has the effect of making matters worse.

**Can Settlement be Partisan?**

When solicitors propose mediation for the purposes of reaching a settlement, they find that some clients misunderstand this concept in terms of how it relates to the role they expect their lawyer to play. Is their solicitor acting for them if he or she is encouraging settlement? Is a solicitor who encourages settlement working properly for the client? One of the great difficulties for solicitors is reconciling the notion of settlement with what clients expect of them. When asked what clients expect of them, solicitors overwhelmingly stated that it was ‘to be there for them’, to articulate their case clearly and compellingly. Clients expect their lawyers to be ‘a champion for them’, ‘someone who will attack the other side’. Clients primarily want their solicitor to ‘fight their corner’ and ensure that their case is heard, in court if necessary, to do the best for them and to be on their side. Clients, so solicitors believe, want totally partisan and tailor-made advice.

Clients expect the best possible outcome and the best deal possible. Generally they want their affairs resolved quickly and successfully and to their best advantage: ‘a good settlement for next to nothing’. Solicitors noted that client expectations tend to centre almost entirely on clients themselves. They want to be ‘listened to and understood’; they want their expectations of ‘winning’ to be met and their interests protected; they want to be supported and advised, and to have the legal process explained, and instructions anticipated. Solicitors believe that clients expect them to bring order to the chaos of their lives and fix everything, both legal and non-legal. Clients expect that solicitors will be

---

108 Question 21 (2003) and Question 22 (2005) asked solicitors to state what they thought clients generally expected of them in a divorce case.

109 It was noted also that some clients want the solicitor to act as a ‘mouthpiece’ for them in order that they can achieve what they want despite the legal advice they are given.

110 The Information Meetings Pilot reached this conclusion.
able to provide a structure and support. Solicitors are resentful of these demands, especially where the client wants them to ‘punish’ the other party through depriving them of the child, severely reducing their financial means or otherwise acting aggressively. Overall, however, the solicitors’ task was described as being to marry up a ‘good outcome’ with a completely ‘partisan approach’. What clients expect is that the solicitor will act entirely in their best interests and get a good outcome. Solicitors in both surveys responded with the same comments.

It would appear that the solicitors’ task is often to persuade the client of the advantages of agreement/mediation/negotiation/settlement, and that through such means the best outcome for them will be achieved. Eekelaar et al. have described how

a great deal of the early exchanges of information and advice between client and lawyer could be categorised as their own internal negotiations which both precede and accompany negotiations with the other side.

Eekelaar et al. had expected to see negotiation towards settlement as a primary part of the lawyers’ work, but had not expected to see so much negotiation taking place between solicitor and client. They concluded that the client/lawyer negotiation represented, in effect, the lawyer trying to ‘modify the client’s expectations’. Given the nature of solicitor/client ‘internal negotiation’ as revealed by our survey, the same conclusions can be reached. Several solicitors, in both the first and second surveys, commented on how they try to change client expectations during the case and thus, hopefully, end up with the client expecting the lawyer to be a ‘competent negotiator who they can trust to help them arrive at a fair deal’. Underlying this expectation is a realisation on the part of some solicitors that some clients are equally interested in obtaining a good settlement – a good outcome.

In this connection, the answers to the following two questions are revealing. Question 23 in the first survey asked solicitors how often they would find themselves encouraging a client to take a stronger stand on issues. The same question was answered again by 42 solicitors in the second survey, in 2005. The responses are presented in Table 6.3.

<table>
<thead>
<tr>
<th>Frequency</th>
<th>2003 (%)</th>
<th>2005 (%)</th>
<th>Total (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very often</td>
<td>6.5</td>
<td>2.4</td>
<td>5.2</td>
</tr>
<tr>
<td>Sometimes</td>
<td>80.4</td>
<td>90.5</td>
<td>83.6</td>
</tr>
<tr>
<td>Rarely</td>
<td>13.0</td>
<td>7.1</td>
<td>11.2</td>
</tr>
<tr>
<td>Never</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Total (100%)</td>
<td>92</td>
<td>42</td>
<td>134</td>
</tr>
</tbody>
</table>

There was no significant change over the period of FAInS practice. The responses in total thus suggest that solicitors sometimes need to encourage clients to ‘take a stand’ – effectively, to stand up for their legitimate rights and entitlements. They indicate that solicitors, rightly, are seeking to get the best for their client even when that sometimes means taking a stronger stand on issues.

111 Eekelaar et al., op. cit.
Question 24, however, asked solicitors in both surveys how often they found themselves encouraging a client to take a more conciliatory stand on issues and to accept a compromise (Table 6.4). Clearly, solicitors are more likely to need to encourage conciliation and the acceptance of a compromise – a finding supported by the previous analysis. The second set of questionnaires does not reveal any significant change following the introduction of a FAInS approach. Three solicitors altered their answer from ‘sometimes’ in 2003 to ‘very often’ in 2005, but overall there was no apparent trend towards more frequent encouragement to conciliation. Apparently, solicitors do not often need to dissuade clients from seeking a court hearing.

Table 6.4  Frequency with which solicitors encourage a conciliatory stand

<table>
<thead>
<tr>
<th>Frequency</th>
<th>2003 (%)</th>
<th>2005 (%)</th>
<th>Total (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very often</td>
<td>38.5</td>
<td>33.3</td>
<td>36.8</td>
</tr>
<tr>
<td>Sometimes</td>
<td>60.4</td>
<td>66.7</td>
<td>62.4</td>
</tr>
<tr>
<td>Rarely</td>
<td>1.1</td>
<td>0.0</td>
<td>0.8</td>
</tr>
<tr>
<td>Never</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Total (100%)</td>
<td>91</td>
<td>42</td>
<td>133</td>
</tr>
</tbody>
</table>

These findings are entirely in accordance with overall trends in family law practice, with the exhortations towards settlement found in practice directions, guidance, and encouragement by the senior judiciary, and with the ‘divorcing responsibly’ thesis propounded by Helen Reece.

**The Qualities of a Good Settlement**

So, what do solicitors think of as being the qualities of a good settlement? Solicitors articulated six qualities:

1. It should be fair and reasonable.
2. Children should be protected.
3. It should provide a fresh start.
4. Disclosure is central to a workable solution.
5. The resolution needs to be speedy and inexpensive.
6. Settlement should be attained by means of a fair process.

We examine each of these in turn.
**Fair and Reasonable**

A majority of solicitors believe that a good divorce settlement is an outcome, solution or compromise which is felt to be fair, reasonable and satisfactory to both parties.\(^{112}\) It has to be something both parties can live with, understand and appreciate, and which broadly constitutes an equal compromise. It also has to be agreed by the parties, preferably through mediation, as then the parties take ‘ownership’ of the agreement and counsel are not involved.\(^{113}\) The qualities of a good settlement were summed up by the terms ‘fair’, ‘reasonable’, ‘equitable’, ‘dignified’, ‘constructive’, ‘proper’ and ‘agreed by the parties’. A good settlement, however, also caters for the needs of children, with priority being given to their housing and emotional needs. The point that children’s needs should be paramount was made in the second survey, but not significantly more than in the first. The consequences of a good settlement are thus that the parties are left feeling happy and secure, with neither believing they have won or lost. The settlement will have incorporated the priorities of both parties and the children, and will have been both seen and felt to be fair. In this way, the chances of future bitterness are considered to be minimised. Facilitating such an outcome for a matrimonial client is the aspect of their work that solicitors said they most enjoyed, and the one that they said provides them with the most job satisfaction.\(^{114}\)

Equally, solicitors measured their own success as family lawyers in terms of the knowledge that a fair outcome, and one with which the client is pleased, has been achieved. They are, however, particularly satisfied when that outcome has been reached with minimal acrimony, has been achieved by negotiation, and has been as stress-free as possible for both sides.\(^ {115}\)

**Protection of Children**

Many solicitors cited proper financial provision and concern for children as a major quality of a good and fair divorce settlement. The protection of children’s financial needs within the context of a fair financial solution was seen as regarding their interests as the paramount concern. The protection of children’s needs also extended to their housing requirements, and a ‘good divorce settlement’ is one that meets those needs. Additionally, a good settlement is seen as one that facilitates rather than undermines the absent parent’s relationship with the children. It is one that encourages both parties to support the other in parenting and does not impact unfairly on the child’s relationship with the other parent. Good communication with children is seen to be vital to achieving a settlement which enables clients to parent effectively. The practice of FAInS over two or four years, as revealed by the second survey, did not bring about any alteration in priorities regarding children. Children were undoubtedly one of the major priorities, but their welfare was not the overriding concern.

---

\(^{112}\) This emerged as the major answer to Question 19, ‘What are the qualities of a good divorce settlement?’

\(^{113}\) Reference to mediation came through slightly more in the second survey.

\(^{114}\) This was ascertained in Question 12 in 2003 and question 13 in 2005, both of which asked solicitors what aspect of work as a family solicitor they most enjoyed and why. There was no perceptible difference between the two surveys in terms of the answers given.

\(^{115}\) Question 14 asked solicitors what criteria they used to measure their own success as family solicitors. As well as the above, reputation among clients, peers and the judiciary also featured significantly as a solicitor’s yardstick of success.
Providing a Fresh Start

Solicitors regarded a good divorce settlement as one that provides a fresh start for the parties. Therefore, allowing both parties to move on in their lives was seen as highly desirable, and this usually comes about as the result of an agreed settlement that is seen by both to be fair. The parties are thus less likely to feel bitter because they can see that they can restart their lives as single persons or separated parents, in the knowledge that they can afford to live without crippling the other side financially. The fresh start is both financial and emotional, leaving the parties feeling dignified and, hopefully, happy that justice has been done. Where an amicable settlement is arrived at with as little acrimony as possible, the parties can move on without destroying their existing relationship. This was seen as vital, in that as a parent each party may need to see the other for many years afterwards in that capacity. An agreed settlement also illustrates for solicitors their hope that the parties have learned to talk constructively, and this augurs well for their future communication about the children. As we have seen in this study and as is evident in previous research, being able to communicate constructively with an ex-partner is rarely easy, and many parents find it impossible to maintain co-operative relationships. Nevertheless, the concept of a good divorce settlement enabling the parties to get off to a fresh start is very much in accordance with the notion of looking forward rather than backwards.

Part of the reason solicitors in both surveys gave for why they enjoyed facilitating a good settlement for their clients was that they were able to witness a better tone being set for the parties’ future relationships. They felt it to be rewarding to help people through a difficult time in their lives. Solicitors gain satisfaction from helping couples through a stage of life when the problems seem insurmountable, but which ultimately results in a constructive outcome, with the parties moving forward and regaining control of their lives. Being able to offer help at an early stage enhances solicitor job satisfaction because it enables clients to go forward with a positive perspective even more readily. The second, post-FAInS survey offered no indication that an enhanced awareness of other agencies and services for client referral at an early stage added to the solicitor’s job satisfaction or to the achievement of a ‘good divorce settlement’. A good outcome or resolution is most satisfying when it comes at an early stage, because only then are unnecessary hardships avoided for the client, legal costs minimised and children’s interests best preserved. Contact and residence cases are regarded as particularly satisfying since they are usually settled without going to court – and settlement per se is enjoyable. Settlement also means stability, and this in turn imparts a sense of certainty and finality to the issues between the parties. Solicitors can see that loose ends are tied up and that the parties are able to move on. Research suggests that solicitors may be overly optimistic about their clients’ ability to do this, however.

Disclosure as Crucial to a Workable Solution

Practicality, workability and enforceability were noted by solicitors as key elements in a good divorce settlement. Workability means being acted on, and a settlement is more likely to be acted on, and in the right spirit, if it is agreed by the parties. The sense of certainty and finality inherent in an agreed settlement is seen to be heightened if there has been full and frank disclosure resulting in transparency and visible fairness. While

---

disclosure is viewed as integral to an agreed settlement, its lack is nevertheless perceived as one of the failings in respect of mediation. In the normal run of mediation – as compared to the judicially supervised mediation scheme in the Court of Appeal where disclosure has invariably already occurred – there is no compulsion, even though there is an expectation to give full and frank disclosure. But, as was noted in the second survey, clients often know that their spouse or partner will not give full and frank disclosure at mediation. As well as the fact that solicitors consider some clients unable to negotiate finances, agreements can often be reached at mediation without proper disclosure and thus client and solicitor alike will see them as being fundamentally unfair. In such cases there is no transparency, and consequently the sense of certainty and finality crucial to moving on and putting the past behind them is unlikely to result for such clients.

Clients themselves, solicitors believe, often misunderstand the need for the disclosure of assets. Even before mediation takes place, there is a widespread belief among clients that assets can be divided and advice given as to division, without disclosure. Some solicitors believe that clients fear an increase in legal fees if they give a full disclosure, but the majority of clients who misunderstand the nature of disclosure believe that divorce is an acrimonious and adversarial process and that the other party will gain an advantage if disclosure is full and frank.

A Speedy and Cheap Resolution

Solicitors told us that a good divorce settlement needs to be reached relatively quickly and cheaply – as opposed to the process being peppered with time-consuming court proceedings and contested, expensive final hearings. Mediation itself can lead to delay, particularly where one party feels bullied into the process. Speed and cost are of the essence in a good divorce settlement. Solicitors stated that an agreement reached quickly and, of course, without the need for protracted litigation and greater expense has the most chance of working. In terms of their own job satisfaction, solicitors claimed that a good outcome reached in court is not regarded as a measure of their success. Instead, most believed that a speedy resolution which is fair to both parties and reached through negotiation is the most desirable outcome. When this has been achieved, solicitors were of the view that they have succeeded as family lawyers.117

Settlement Achieved by Means of a Fair Process

Finally, a good settlement is regarded not only as one that is fair but as one that is achieved by means of a fair process: a process that is simple and clear yet comprehensive, one that needs to be clearly defined, easy to understand, and made up of realistic goals. Mediation, some solicitors argue, may constitute a fair process for some clients but for others it can mean delay, a knowledge that the other party is not giving full and frank disclosure of assets, a sense of being bullied into settlement and a resulting unfair settlement.

117 Nevertheless, solicitors valued their reputation highly and measured their success in terms of the extent to which they gained respect from colleagues, barristers and judges as well as from their clients. The judges and the courtroom were significant in solicitors’ perceptions of their own worth and influenced word of mouth in peer circles. Knowing, and advising clients of, the outcome which the judge finally decided on was considered a measure of success.
In 2003, solicitors were asked whether they encouraged clients who were in dispute with the other party to go to mediation. Their responses are shown in Figure 6.1. Forty-four solicitors answered the same basic question again in 2005. This time, however, the question asked solicitors to indicate the area of dispute (residence of children, contact with children, finances, occupancy of the family home). The responses (Figure 6.2) show...

118 Question 27.
that mediation was high, though not overwhelmingly so, on the solicitors’ agenda in terms of dispute resolution mechanisms for their clients in the first survey. The second survey of the same solicitors revealed a slightly higher incidence of willingness to refer clients to mediation. This was particularly the case in respect of contact with children. However, consideration of what solicitors saw as the advantages and disadvantages of mediation is crucial to this decision-making.¹¹⁹

**Perceived Benefits of Mediation**

It is reasonable to expect that solicitors who encourage clients to go to mediation do so because they expect a settlement/agreement to be achieved. This was not among the advantages of mediation that solicitors listed. They did, however, make the point that mediation enables negotiation with both parties to occur at an early stage, that it raises the possibility of agreement occurring more quickly, and that it avoids court proceedings, but added the qualification that clients who are prepared to mediate are probably likely to reach agreement through a good solicitor anyway.

Other advantages solicitors listed focused on what might be termed the ‘therapeutic’ aspect of mediation. Some regarded mediation as providing new ways for the parties to communicate with each other and learn to adjust to the changed situation and solve their own problems: as one lawyer put it, it avoids ‘sterile point-scoring and positioning’. Others described mediation as a more amicable means than court proceedings of settling a dispute, and considered that this would be better for the future relationship between the parties, and thus in the interests of the children. Mediation can result in ‘more robust’ agreements in relation to children issues. Some solicitors also noted that mediation gives clients a greater sense of control, and a realisation that the outcome is a matter of choice rather than something imposed by the court. Because they were able to discuss matters with the other party directly, clients felt they were part of the process itself and not at the mercy of correspondence. Solicitors saw mediation as being able to take the heat out of a situation: it has the advantage of immediacy, and encourages openness and trust as well as the taking of responsibility. Recent research which has asked mediation users about the benefits of mediation suggests that these therapeutic benefits are not necessarily achieved.¹²⁰ As mediators have had to comply with the requirements of public funding, there has been an increased expectation that agreements will be reached speedily. There is evidence that the other benefits, such as reducing conflict and improving communication between the parties, may have slipped down the agenda in recent years – a concern many family mediators are already addressing.

Other advantages of mediation solicitors cited included the transparency of the mediation process, which has the consequence of shattering any idea that lawyers encourage animosity and of ensuring that any agreement reached is more likely to be adhered to as the parties have entered it willingly and made the decision for themselves. Moreover, the face-to-face process enables the other party’s voice to be heard and the mediator is regarded as being an impartial third party. Those who cited the latter point as an

¹¹⁹ Question 28 (2003) asked solicitors what advantages, if any, they thought mediation had for their clients over and above what a family lawyer could do.
advantage were counterbalanced by those who cited the lack of partisanship as a
disadvantage. Finally, some cited cost as an advantage, one solicitor noting that
‘agreement can be reached more cheaply through mediation – even for a paying client’. It
has to be noted, however, that mediation research has not proved mediation to be a
cheaper option than lawyer services.

Disadvantages of Mediation

Five solicitors in the first survey (male and female, experienced and less experienced)
commented that mediation provides no advantages at all, but often has the disadvantage
of taking longer, enabling one spouse to prolong the process to wear down the other party
and ‘selling the woman short’. Four solicitors in the second survey (male and female)
stated that mediation provides no advantages. The remaining few sceptical solicitors have
not changed their opinions as to any possible advantages mediation might have for their
clients as a result of FAInS practice. Solicitors in both surveys reported that an agreement
reached at mediation had sometimes proved to be unworkable and incapable of being
‘translated into a court order’. These solicitors noted, in particular, that mediators
sometimes ignored joint endowments, and solicitors for the other party had readvised
after an agreement had been reached at mediation and put in Calderbank offers seeking
more. These same solicitors also noted that the mediators’ lack of legal knowledge,
especially when one party took the lead in mediation, sometimes produces an agreement
which is unfair to the weaker party and leaves that person feeling unable to backtrack.
There is a general sense that the quality of mediators varies to the extent that some of the
less competent can end up producing damaging outcomes for clients:

Clients complain about the quality of the CAFCASS [mediation] service, being
bullied, forced into meeting abusers and a lack of understanding of the relevant
history. (FAInS practitioner)

When solicitors noted other disadvantages to mediation, the word ‘intimidation’ cropped
up frequently. This was especially so in the context of potential power struggles at
mediation and initial imbalances of power. Solicitors are of the view that a power
imbalance can result in an unfair settlement and can be destructive of relationships when
one party ends up agreeing to a settlement in order to reach a compromise and please the
mediator – to ‘do the right thing’. Given the extent to which solicitors assert legal rights
and entitlements, they are unlikely to risk their client’s position if there is a fear of a
power imbalance which militates against their client’s position. We received numerous
comments from solicitors such as the following:

A weaker party can be forced to listen to yet further criticism from the dominant one.

A weaker party can be browbeaten without the mediator being aware.

The stronger one [party] can use it [mediation] to stay in the life of the other by
prolonging the negotiation.

Mediation can place one party in a position of power after the meeting and provide
an occasion for exploitation.

These points were listed frequently alongside the comment that, at mediation, a client is
without the solicitor whom they trust and who is acting for them, which one solicitor
described as ‘intimidation without solicitor support’.

111
Disadvantages cited also included the pressure to reach agreement. Solicitors are concerned that this is particularly so for the vulnerable client, who may feel forced or pressured into agreeing to a detrimental or unfair settlement. However, a mediated agreement is not enforceable in the absence of a consent order. Consequently, solicitors noted that, in their clients’ best interests, they might need to go to court anyway.

Delay was also perceived to be a problem with mediation. One solicitor in the second survey noted that ‘time could be lost through mediation in an unsuitable case, assets thus dissipated and a status quo develop[ed] with respect to the children’. Solicitors noted that mediation often prolongs matters where it is already obvious that things are not going to be resolved. When delay is caused by mediation it then has the knock-on effect of delaying negotiations between solicitors and so wastes even more time. Waiting for an appointment for mediation after referral creates a further delay so far as some solicitors are concerned.

Solicitors also noted that a mediated agreement is not always comprehensive. This may be due in part to the inability of a client to negotiate finances, particularly given that mediation provides no compulsion to make full and frank disclosure. Agreements are often reached at mediation without proper disclosure.

**The Importance of Skills**

One senior solicitor stated that there are no disadvantages to mediation as long as the mediator is skilled at controlling any power imbalance, and any financial agreement is examined by a family lawyer for any pitfalls it may present. The skill of the mediator is regarded as key. One solicitor suggested that an incompetent mediator could produce a damaging result for a couple:

> A poor mediator can simply create a waste of time whereas a good mediator can provide an excellent way forward.

This view is implicit in the judgment of Lord Justice Thorpe, in which his Lordship commented on the need for skilled mediators. The personality, skill and expertise of the mediator are all factors crucial to the success of mediation. Solicitors noted that too many mediators profess to have expertise. Nevertheless, almost all the disadvantages solicitors listed can be eliminated if the mediator is highly skilled. A skilled mediator will have sufficient legal knowledge (or is already a solicitor), can thus assist the parties in coming to a workable agreement that can translate into a court order, can recognise power imbalance and act to compensate for it, and can resist placing pressure on one party to reach a compromise. As one solicitor noted, ‘[a] good mediator can provide an excellent way forward’.

**Referrals to Mediation**

Solicitors, including the 48 who filled out questionnaires in both 2003 and 2005, were asked about their reasons for using mediation and about three particular reasons for which they might have used it: as a perfunctory gesture or step in the divorce process; to find out about the other side’s position; or to put one or both clients in a good light. These responses are compared in Table 6.5.

---

121 ibid.
Table 6.5 Reasons solicitors use mediation

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>As a perfunctory gesture or step in the divorce process</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Often</td>
<td>29</td>
<td>21</td>
<td>6</td>
<td>5</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>Sometimes</td>
<td>38</td>
<td>38</td>
<td>44</td>
<td>32</td>
<td>42</td>
<td>32</td>
</tr>
<tr>
<td>Rarely</td>
<td>25</td>
<td>31</td>
<td>36</td>
<td>42</td>
<td>35</td>
<td>46</td>
</tr>
<tr>
<td>Never</td>
<td>8</td>
<td>10</td>
<td>15</td>
<td>22</td>
<td>18</td>
<td>15</td>
</tr>
<tr>
<td>Total (100%)</td>
<td>89</td>
<td>42</td>
<td>87</td>
<td>41</td>
<td>88</td>
<td>41</td>
</tr>
</tbody>
</table>

These responses indicate that there was some change in behaviour, and that solicitors are, themselves, both perfunctory and pragmatic in their use of mediation. There is an underlying agenda here, whether it be to show the client in a good light, to find out about the other party’s position, or simply to make a gesture in the divorce process. Between a third and two-thirds of the solicitors used mediation in these ways on occasion. Whether FAInS had been practised over two or four years did not make any significant difference to the way in which solicitors used mediation.

Lawyers or Therapists?

One of the great dilemmas for family solicitors, and the one that distinguishes their work from that of other legal practitioners, is the apparent overlap between the client’s need for legal advice and his or her possible need for emotional support, or perhaps even personal counselling. Family law is unique in this respect. The specific nature of each client and their intimate relationship problems has taken family law into a specialised realm, with a raft of specialised personnel, including judges, counsellors and mediators, specialist courts, and requirement for the specialist skills necessary to bridge the gap between straightforward legal advice and client support of a more personal kind.

This particular issue/dilemma is highlighted in solicitor responses to the surveys. Family solicitors are primarily lawyers who take satisfaction in solving problems by legal means. They want to use their legal skills and value these as the asset that can achieve a resolution of their clients’ problems. At the same time, solicitors recognise the twofold role of the family lawyer and derive professional meaning and satisfaction from being able to offer their clients emotional support, genuinely helping them, and seeing changes in well-being occur. When asked where their greatest professional enjoyment lay, solicitors responded that providing emotional and personal help to clients came second to achieving a good outcome. But a ‘good outcome’, as already noted, consisted of a fair, equitable, dignified and constructive solution, preferably negotiated between the parties without recourse to court. The two aspects, then (a good outcome for the client coupled with personal growth and independence for the client), were closely interlinked, with the latter often being a by-product of the former. There is professional meaning and reward in achieving child contact arrangements, for example, as one solicitor said:

---

122 Question 12 (2003) and Question 13 (2005) asked solicitors what aspect of their work as family solicitors they enjoyed most and why.
Seeing parents who start off poles apart come closer together, enabling some mothers to see sense so that fathers could see the children too.

Analysis of the second questionnaires from solicitors in Exeter and Cardiff (those who had been practising FAInS for four years) supported these conclusions. The twofold role of the family lawyer was very pronounced in the responses, with solicitors expressing their satisfaction in seeing a case through to a successful conclusion:

It’s satisfying to see a change in a situation which can often start off quite badly. And then see the results of your advice and hard work.

The most enjoyable part is making a real difference to people’s lives and giving them options where they felt they did not have any.

Many solicitors in both surveys expressed the view that professional satisfaction is gained through bringing about an improvement in the client’s life and seeing them ‘get back on their feet’, and they enjoyed the fact that this resulted from the use of their particular legal skills. The combination of legal skills and personal support is crucial to solicitors’ professional sense of reward and satisfaction. Part of this professional satisfaction is achieved via interacting with clients, working in partnership with them, assisting in understanding and being the shoulder that they can cry on. Solicitors basked in the sense of reward and pleasure delivered from being credited with their client’s apparent personal growth and progress. They enjoyed being thanked by clients for making their situation more bearable and being told that their legal advice had helped. The combination of skills is important. Although solicitors overwhelmingly listed achievement of a good outcome as the aspect of work giving the most professional reward, the value of the legal skills being used was heightened by their conjunction with the personal skills involved in providing emotional support and advice. The latter ride on the back of the former and do not stand alone.  

Emotional Counselling: Part of the Job?

It is clear that emotion and anger are frequently demonstrated at a first meeting between the client and solicitor when divorce is on the agenda. This is something that has to be dealt with whether the lawyer is one who prides him- or herself on providing emotional counselling or not. Mather et al. noted that clients see the divorce through an ‘emotional lens’, leading to unrealistically high or low expectations. For these reasons, lawyers in the Mather study believed that they had to invest considerable effort in shifting the perspectives and expectations of clients. Responses to our survey are open to a similar analysis. The degree of the misconceptions about the law and legal rights held by clients indicates that, at a first meeting, solicitors must deal in some way with the emotional component and the unrealistic expectations concerning the legal process (some of which are too low as well as too high).

Solicitors reported that the overwhelming majority of clients want to talk about personal problems. Slightly more clients were said to want this ‘very often’ than wanted it

123 Although one of the lawyers studied in Mather et al. (op. cit., p. 39) ‘evaluated her work in relation to her client’s overall emotional and social adjustment to divorce and its aftermath, rather than in terms of the attainment of a legal outcome’, the emphasis in England and Wales is predominantly on a combination of the two and not on the former aspect alone.

124 ibid., p 92.
‘sometimes’. In the Exeter and Cardiff second questionnaires, the overwhelming majority (73%) of solicitors said that their clients wanted to talk about personal problems. Even those who rarely want to talk about personal problems sometimes need emotional support. The same point applied to those in the second survey. When clients wanted to talk about their personal problems solicitors said they usually included these in discussions (giving the client a reasonable amount of time, depending on the cost to them, though some solicitors said they kept it short), listened, and, if necessary, referred them to other agencies (or suggested that others might assist). Some gently reminded the client of their legal role and suggested alternative outlets, while others listened to the personal story and then steered the client back on course, telling them that time was limited. Solicitors giving these responses said they would refer the client to a counselling agency only if there was a serious problem. Otherwise, they aimed to get the discussion back to the law. One solicitor said he would not talk about personal problems unless they were relevant to the legal issues, while others wanted to move on and deflect the client back to the legal issues. There was a general consensus that the client should not be allowed to ramble.

In summary, the solicitors’ response to clients wanting to talk about personal problems was, as one solicitor put it, to

- listen, have a short discussion to see if it’s a problem the solicitor could deal with,
- identify the nature of the problem and refer, if necessary, to a doctor, counsellor or other support network, then get back to the law.

Getting back on track means getting back to the legal issue. As Mather et al. note:

... divorce clients must be moved from their emotional concerns to focus on more pragmatic ones.127

None of the solicitors in the first survey said they would allow the client to monopolise the meeting with personal problems, and many stressed that they were a legal advisor, not a counsellor. Time and costs restraints and lack of expertise were key factors, although solicitors would spend more time on the problem if it were related to the legal issue. As a result of the FAInS experience a different response frequently emerged from the second questionnaires. Solicitors began advising that referral to another agency such as a GP, Relate, a psychologist or a counselling service would be appropriate. In particular, solicitors from a firm which had employed an in-house counsellor with the financial proceeds of four years of FAInS practice referred clients to the counsellor when the client needed to explore personal problems and found it to be extremely valuable.

This highlights a significant area of change brought about in family law practice by FAInS. The majority of solicitors in the second survey noted that their practice had not changed ‘a lot’, but had changed ‘a little’.128 When clients want to talk personally, at length and without particular relevance to their legal problems, solicitors are conscious of the need to think about referral to an outside agency. The change in practice is probably due to them getting more practice in making referrals, becoming more aware of the need for referrals as a result of the more detailed instructions taken, and gaining greater knowledge and awareness of local agencies and services. This is clearly an element that

125 Responses to Question 25 (2003).
126 Responses to Question 25 (2005) for Exeter and Cardiff.
127 op. cit., p. 109.
128 Question 36 in the second survey asked solicitors whether FAInS had changed their practice.
solicitors enjoyed – and the longer FAInS proceeded the greater was the enjoyment and satisfaction. For example, of 36 solicitors who completed the second questionnaire as well as the first (not including those from Exeter and Cardiff) 14 (39%) stated that they were pleased they had become FAInS providers. The reasons given by those who were ‘pleased’ were that the ‘holistic approach’ encouraged by FAInS is a good idea and is better for clients, and secondly that they had made extra money.

The solicitors from Exeter and Cardiff, on the other hand, were overwhelmingly pleased that they had become FAInS providers (four were still unsure and, unlike the others, none regretted having become a provider). The reason for their more positive stance centred on two core attributes of FAInS: the promotion of the ‘holistic approach’ and the consequent increased use of, and interaction with, local agencies and services. These solicitors felt they were offering a more ‘all-round’ service and even those who said they were only doing what they already believed to be good family law practice found it satisfying to have the ‘holistic approach’ formalised and recognised. These solicitors clearly enjoyed and benefited from what one described as

forging closer links between the firm and local services thus enabling the firm to build up a data base of networks.

Solicitors in both surveys pointed out that there is a difference between clients wanting to talk about personal problems and needing emotional support. Clients were likely to need such support either ‘very often’ or at least ‘sometimes’. When faced with this situation solicitors stated that they try to listen sympathetically and refer to other agencies or to mediation, or simply to encourage greater reliance on family and friends. They stated that they discuss with the client where he or she could get support and try to avoid becoming an emotional crutch for the client, making sure that the client knows that the solicitor is a legal advisor and not a counsellor. In searching for any gender bias in solicitors’ responses to the question, we encountered some slightly ironic comments from men: the advice of one male solicitor as regards when clients start crying was ‘Be wary’; another noted that this was ‘tissues and sympathy time’. Some solicitors, both male and female, said they allowed as much support as possible, particularly in cases involving child and domestic violence issues. Others in the second survey stated that they allowed the client to talk for as long as they needed and, although referrals were quite high on the agenda of the solicitors who responded a second time, these same solicitors indicated that they had somewhat more time for dealing with their clients’ emotional problems than they had previously indicated. Apparently FAInS practice has heightened awareness of emotional problems as well as of the opportunity to refer such people on. This should be regarded as a positive outcome.

**Legal Skills**

While solicitors take satisfaction in knowing that good outcomes and client well-being have both been achieved, the surveys indicated that particular satisfaction arises from the knowledge that this has been the result of legal skills. Solicitors derive particular enjoyment from using the law to help people gain control. They enjoy highlighting to

---

130 Question 25 (2003) asked solicitors whether certain situations, such as the client needing emotional support, ever arose in divorce work. Thirty-nine said ‘Yes, very often’, 26 said ‘Sometimes’, and no solicitor said that clients rarely or never needed such support. In 2005 solicitors answered the same question: 27 said ‘Very often’, 14 said ‘Sometimes’ and 1 said ‘Rarely’.

116
clients that it is the law that made the difference, that helped them regain control and confidence, and promoted informed choice. Solicitors clearly take pride in their knowledge of the law and their ability to use it to empower clients. They believe that their ability to use the legal process results in better outcomes and in clear and robust advice being given, and confers the benefits of defining and evaluating key issues at an early stage.

Solicitors told us that they enjoy putting their legal knowledge, and the analytical skills that are part of the trade mark of the good lawyer, to use in specialised areas of family law. Examples given were the use of good analysis in discerning complex issues and eliciting evidence, and the use of numeracy skills in the forensic accounting aspects of ancillary relief cases. The challenge of complex legal work, particularly in cases which present varied financial issues or the difficulties of adoption or childcare matters, was cited as rewarding. The overcoming of legal challenge emerged as a key component of satisfaction, as one solicitor noted in speaking of

getting to grips with facts and issues and working on the discovery and research part of the legal process.

For some, the enjoyment of court and advocacy work is a rewarding part of professional life. The use of status and knowledge to produce solutions that are ‘legally and economically sound’ is especially rewarding. Mediation, too, is an enjoyable factor because of the ‘high level of responsibility in guiding two people to a decision’ that it involves.

But legal expertise is only part of the equation. For the family lawyer it is a key skill, but one that sits alongside being a sensitive listener and a skilled negotiator, which are essential attributes of day-to-day legal practice. Comparison with the responses to a similar question put to family lawyers in the study by Mather et al. confirms this point. In the Mather study, lawyers’ ratings of the importance of skills in the day-to-day practice of divorce law were recorded on a scale of 1 (not important) to 5 (essential). The results are presented in Table 6.6.

<table>
<thead>
<tr>
<th>Skill</th>
<th>Mean rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Being a sensitive listener</td>
<td>4.30</td>
</tr>
<tr>
<td>Being a skilful negotiator</td>
<td>4.27</td>
</tr>
<tr>
<td>Being a skilful litigator</td>
<td>3.97</td>
</tr>
<tr>
<td>Being expert in divorce law</td>
<td>3.68</td>
</tr>
<tr>
<td>Knowing other judges</td>
<td>3.50</td>
</tr>
<tr>
<td>Knowing the other lawyers</td>
<td>3.25</td>
</tr>
</tbody>
</table>

131 op. cit., p. 67. These mean scores that lawyers gave to each of the six skills show a consensus regarding the two most important skills: the ability to listen sensitively to clients and the ability to negotiate problems effectively.
We put the same question to the solicitors in our survey and asked them to tick the skills they considered essential in the day-to-day practice of family law. The results are presented in Figure 6.3. The findings are remarkably consistent with those from Mather’s study.

The results are presented in Figure 6.3. The findings are remarkably consistent with those from Mather’s study.

The same question in the 2005 survey was extended to ask about the skill of ‘knowing about other services in the locality which might be of help to your clients’. Of the 14 Exeter and Cardiff solicitors, 11 stated that this skill was essential, with three stating that it was somewhat important. Slightly more than half of the others noted the point about knowledge of services as being essential. Litigation skills were, then, ranked equal to knowledge about local services in the 2005 survey. A clear message was that knowing about services for the purposes of referring clients with problems outside the purely legal was regarded as essential or, at least, somewhat important for solicitors once they had experienced FAInS practice.

In terms of order of importance in their professional work, family lawyers on both sides of the Atlantic accorded the same significance to the same skills in the 2003 survey. The Mather study, however, ranked legal expertise a ‘distant third’, and thus concluded that a relative lack of importance is attached to black-letter law: that although technical legal expertise is supposed to be central to the professional identities of lawyers, participants in the study did not see it that way. The same does not appear to be so in our survey, in which two-thirds of the family lawyers listed the law as an essential component. The questionnaire responses discussed above can be seen as supporting the holistic or multifactorial approach – the argument that listening skills (the emotional/personal support

---

132 Question 15 (2003), Question 16 (2005). The results noted above for the 2005 survey comprised responses from the 56 solicitors who answered both questionnaires.

133 ibid., p. 72.
factor) plus skills in negotiation (reaching an outcome without recourse to court), plus use of the legal process in achieving this (being an expert in divorce law) and (in 2005) knowledge about local services, amount to all-round success for the client and the greatest professional satisfaction for the family solicitor.

There is, however, a downside. When asked what causes lack of enjoyment in the work of a family lawyer, a minority of solicitors focused on financial provision and ancillary relief work. Financial resolution was considered the most difficult factor, as it presents the most problems, particularly with respect to long and complex paperwork, a great many forms to deal with, time limits, and clients seeking unachievable outcomes. Clients in money cases are sometimes seen as being over-optimistic and thus bound to be disappointed. This rebounds on the solicitor, who is then regarded as having failed the client and thus is denied the satisfaction of having met with client approval. (Solicitors sometimes had to accept blame for a process and outcome which they had advised against from the outset.)

As regards the less satisfying areas of law to work in, a small minority cited public childcare work, because of the nature of child abuse and because social services are considered to be difficult to work with. A small minority of others found private child disputes difficult, owing to the frustration resulting from parents not putting their children first and using them to score points off each other. Solicitors do not want to become players in that kind of drama. This is particularly so where clients refused to see the damage they were doing to the children. Some found this area also not sufficiently legally challenging – the issues could be trivial and time-wasting.

When solicitors were asked, in the 2003 survey, about the three most important qualities an effective family solicitor should possess, they put legal knowledge first, closely followed by good negotiation skills and empathy with clients. In 2005, legal knowledge and the ability to listen and empathise with the client were considered the most important qualities, while the Exeter and Cardiff solicitors mentioned knowledge of other services and an understanding of the range of psychological and emotional issues affecting clients. Experience of FAInS practice has definitely impacted on solicitors’ views about the personal attributes of a good family lawyer. The ability to deal with the psychological and emotional aspects of separation and divorce in a sympathetic and reassuring way has become as important as having a good knowledge of law and practice.

Client Satisfaction

We have already noted that solicitors regard a good divorce settlement as one that enables the parties to move on and gives them a fresh start. An agreement rather than a court-imposed solution is ‘good’ as opposed to ‘bad’, and is more likely to be taken up in the right spirit. But that is at the end of the line. Providing help and emotional support along the way is regarded as key to this achievement, and solicitors place a high value on these. Solicitors placed client satisfaction at the top of the list when asked what criteria they used to measure their own success as family solicitors.134 Their perception of client satisfaction has both a subjective and objective element. As regards the first, solicitors see the satisfied client as one who can move on, has gained emotionally from their encounters with the solicitor, is planning their life more successfully and has come to terms with their new circumstances. More objectively, solicitors discerned client satisfaction in terms of

legal outcomes, but even here that satisfaction was only fully realised when the result had been achieved in a way that embraced the best of the subjective qualities. Solicitors derive great professional satisfaction from helping to realise the emotional well-being of their clients. There was no discernible difference in responses post-FAInS, although the Exeter and Cardiff solicitors in particular placed their own reputations among clients, peers and the judiciary alongside client satisfaction as a measure of success.

At the same time, handling emotionally charged clients who are unreasonable and border on exhibiting abusive or violent behaviour can be exceedingly demanding, particularly for young and inexperienced solicitors. Even the most senior practitioners find such clients difficult – they are, in the words of one, ‘emotionally demanding, manipulative, often hard to placate and waste a lot of time’. Even so, solicitors, as in the Mather study, cited being a sensitive listener as the most essential attribute of a family solicitor. They clearly set a high value on listening skills – they focus on the personal emotional needs of the reasonable and unreasonable client along with the need to elicit the legal issues. Our study supports this view.

Solicitors derive their greatest professional sense of meaning and reward from client satisfaction in its various forms, and in order to achieve that result client expectation and satisfaction must be met. The ‘therapeutic’ or non-legal component of a solicitor’s work clearly centres on providing the emotional support clients expect. A great deal of ‘hand-holding’ is expected. Solicitors believed that clients expect them to ‘see them through a difficult time’ and, above all, listen, understand, support and advise. Listening was the major requirement clients had, and solicitors expressed this in terms of their being ‘a shoulder to cry on’ and someone to complain to and confide in. Clients expect loyalty, sympathy and moral support, and sometimes a solution to their personal relationship difficulties – the latter being something solicitors regard as being impossible to achieve. These expectations run alongside the expectation that the solicitor will articulate the client’s case compellingly in a partisan way, ‘fighting their corner for them’, and achieve the best possible outcome. Solicitors’ perceptions of what clients expect did not change post-FAInS.

As well as describing these more quantifiable characteristics expected of the solicitor, solicitors told us that clients also expect a range of personal attributes. Brisk legal efficiency, accuracy and competence are uppermost, but sit alongside certain anticipated personal skills. These are the skills one might expect of a therapist or ‘life coach’. Clients expect to be able to trust their solicitor totally, confide in them, have matters explained and rendered simple, and look on the solicitor as a professional advisor and friend. Above all, clients expect the solicitor to, as they put it, ‘bring order out of the chaos that has engulfed them’ and ‘provide a structure for their lives’. The expectations of clients can be expressed in terms of their wanting the solicitor to be a lawyer, social worker, therapist and friend. This multi-functional image is the one solicitors believe most strongly that clients expect. Even clients whose expectations are not so far-reaching at the outset change as their case progresses. What might begin as a professional relationship with the client seeking complete confidence in the solicitor often moves to one of the clients wanting the solicitor to sort out their entire life. The ‘lawyer, social worker, therapist, friend’ model is embraced more profoundly the more a case progresses.

135 Questions 21 (2003) and 22 (2005) asked solicitors to state what they thought clients generally expected of them in a divorce case.
Clients’ Perceptions of the Law

Solicitors were asked whether their clients generally understand or misunderstand the legal process when they first meet with their solicitor. In 2003, all but 15 solicitors stated that clients generally misunderstand the legal process. Of the 42 solicitors who also completed the second questionnaire in 2005, all but 8 said that clients generally misunderstand. As we had expected, FAInS practice had no impact on initial client understanding of the legal process. The misunderstanding that exists relates very clearly to several common key areas, and provides interesting information on general misconceptions about the law and, consequently, on how those misconceptions add to the work of the solicitor – particularly at the first interview.

In general, solicitors see clients as lacking knowledge about the divorce process and as lacking relevant information. Some clients are said to base their perceptions of the law on American TV dramas and American court styles, while others are unable to separate the concept of divorce itself from ancillary relief, believing that divorce simply means a financial settlement. Clients often do not realise that divorce is mainly a paper procedure, separate from finance. In particular, solicitors noted that clients are often surprised to learn that something more than irreconcilable breakdown is required, and are not aware, for example, that evidence of unreasonableness or intolerability might be necessary to initiate a divorce. Some clients believe that a divorce can be granted on the basis of their own adultery, that no grounds are needed if they have not separated, and many think that all divorce is now non-fault-based. There is often a feeling of surprise that it has to involve the other party. Clients also have widely differing misconceptions as to the time the divorce process will last. Some think it will last merely days, while others think it will last years. In terms of costs, some think these will be enormous while others think they will be minimal.

One of the misconceptions leading to difficult explanations for solicitors is associated with the notion that past conduct is the key to any financial settlement – that conduct is directly relevant to finances. Solicitors told us that, even when the basis for financial redistribution is explained, many clients cannot accept that conduct and blame for the marriage breakdown are not directly relevant to the financial settlement. Some solicitors noted that their clients perceive the law as being framed in terms of good and bad, right and wrong, punishment and guilt.

These issues received widespread publicity recently, albeit in relation to big-money cases, when the House of Lords gave its long-awaited decision in Miller v. Miller and McFarlane v. McFarlane. In one of the two leading judgments, Baroness Hale of Richmond stressed that the ultimate objective of property redistribution is to give each party an equal start on the road back to independent living. This is an approach which looks to the financial future for the parties rather than one which reflects back on the rights and wrongs of the marriage. Their Lordships also emphasised that fairness of outcome does not require consideration of the parties’ past conduct and upheld the conception of marriage as an equal partnership with both husband and wife sharing its fruits.

Many clients apparently believe that every settlement is equal, with a fifty–fifty split. This is despite needs, the number and age of the children, the length of the marriage or

---

137 ibid. at para. 144.
any other factor. This belief is based on a view that there are set rules for reallocation of property and even for the residence of children. Very often, clients know someone who has achieved an equal split and view this as a norm applicable to all. Overall, clients do not realise that division of assets is tailored to the individual, but believe that a set format is followed. A smaller number of clients apparently do not know what they might be entitled to or believe that assets will be split according to who has bought what during the marriage.

On the other hand, solicitors told us that some clients believe financial matters will not be equal, but rather will be biased in favour of the wife and mother. This is said to be a widespread misconception. Some clients believe that the wife receives all the assets after divorce and that, if there is a fight, the courts will always make the award to the wife: ‘the mother will always win’. Coupled with this view is an even more overwhelming misunderstanding in relation to cohabitation. Many clients believe that after a period of time they become the common law wife or husband of the other party and thus acquire rights akin to those of married couples. This is generally thought to occur after six months of cohabitation, and it is women who generally tend to think that they acquire financial entitlement as a ‘common law wife’. The advent of the Civil Partnership Act 2004, which stopped short of including heterosexuals within its remit, will have done nothing to allay the misconception: if same-sex couples can secure similar rights to those of married people, it would not be unreasonable for cohabiting couples to consider that a similar provision already exists for them. Dame Elizabeth Butler-Sloss, speaking at the Bar Council in November 2005, noted that the omission of cohabiting couples from the Act ‘was a mistake that left many people at risk’.  

Solicitors also noted that misconceptions are sometimes accompanied by a blatant refusal to understand. Such clients are categorised by solicitors as ‘unreasonable’ and dealing with them constitutes one of the least satisfactory aspects of family lawyers’ lives. Highly experienced practitioners in particular noted that good advice can simply fall on deaf ears. It can be very difficult giving advice that is not what the client wants to hear, particularly when stubbornness results in an unwillingness to compromise, even when the solution is obvious. This is often the case in financial provision cases, where some clients refuse to accept that one pot of money split between two people cannot yield what they want – the desired outcome is simply unachievable. It is also the case that some clients refuse to consider the welfare of their children or argue over the minutiae of contact arrangements. This too is very frustrating for solicitors who seek to protect the interests of children. Managing unrealistic and inadvisable client outcome expectations takes time and expertise of a non-legal kind, and solicitors characterised it as one of the two least enjoyable aspects of their work. The burden of administration and paperwork was the other least enjoyable aspect and drew many complaints from solicitors in both surveys.

**Characteristics of the Family Lawyer**

The vast majority of solicitors in our study concluded that there are ‘distinct types of family law solicitors’, although eleven thought that solicitors are all pretty much the same.  

The characterisation by ‘distinct types’ is telling. The language solicitors use to describe the dichotomy refers to ‘old-style’ solicitors – the ‘destructive’ ones – and ‘new-style’ solicitors – the ‘constructive’ ones. The ‘old-style’ solicitors are variously

---


139 This was in response to Question 32 (2003 and 2005), which asked whether solicitors thought that there were distinct types of family law solicitors, and if so how were they characterised.
described as ‘litigious and aiming to win’, ‘adversarial’, ‘hard litigators’, ‘too aggressive/bullish to begin with’, ‘confrontational’, ‘in favour of court proceedings’, and ‘old unreconstructed dogs of war’. The ‘new-style’ lawyers are characterised as ‘more facilitative’, ‘aiming for settlement’, ‘negotiators’, ‘conciliators’, and committed family lawyers (‘Resolution types’) trying to achieve fairness. The old-style types did not fare well against the new-style. Overwhelmingly, the latter are placed on a pedestal.

A few remnants of other ‘types’ were presented. They were characterised as ‘airy-fairy’, or ‘merely dabbling’. They were incompetent. They included those who were either too busy or lacked knowledge, those who were lazy and inept, ‘cost-builders’ (as opposed to those who are prepared to do legal aid work), and those who are ‘passive and reactive’.

When asked to characterise themselves, however, all solicitors, in both surveys, saw themselves as falling entirely within the ‘new-style’ bracket. They described themselves as follows:

facilitator
promoting amicable agreement
firm but fair
reasonable
only aggressive when all else fails (and as a last resort this may be appropriate)
a down-to-earth discusser
one with common sense who is always willing to negotiate
trying to reach a resolution without hostility
one who remembers that there are two sides to every story
conciliatory
competent and diligent
a listener
client-minded
sympathetic
able to vary the approach according to the client

None of the solicitors placed themselves alongside the ‘old unreconstructed dogs of war’; rather, they all saw themselves as new ‘Resolution types’. Perhaps they all were. Certainly, we were given the strong message that this was a them-and-us situation, them being the ones who did not play according to the rules.

The Burden of Practice and Administration

The burden of administration, the unreasonableness of some clients and demanding and difficult areas of legal practice constitute the major areas of dissatisfaction for solicitors.
in the surveys. The overwhelming majority, however, cited administration and paperwork as the two main sources of dissatisfaction. Solicitors’ frustration and lack of enjoyment of their work overwhelmingly stem from the burden of administration and paperwork, particularly that emanating from the Legal Services Commission. Elaboration of this frustration somewhat ironically focused on the fact that the paperwork and form-filling required for the purposes of legal aid prevent solicitors from spending sufficient time with clients. The LSC requirements, in other words, are regarded as impacting directly on the amount of time solicitors have to spend on the substantive issues presented by their clients. They were said to drain time away from clients, particularly at a first meeting when so much time is needed for form-filling just at the point where clients are most vulnerable. The LSC bureaucracy is considered excessive and the worst aspect of publicly funded family law work. It is not so much more time that solicitors feel they need as that less of the available time should be taken up with LSC requirements. One noted:

Fighting with the LSC, arguing for every penny and arguing all the time for extensions detracted from the real job.

The LSC forms were cited as too complex (unnecessarily so), too repetitive, and particularly difficult to understand for those who fell on the borderline in terms of being able to apply for public funding. According to the solicitors, assessing which clients qualify for public funding is regarded as very complex; it takes months to complete, and the rules appear arbitrary to clients. Many responding to the second survey regarded much of the administrative burden associated with publicly funded work as unnecessary and overly time-consuming. One very experienced solicitor who had been practising FAInS for four years noted:

The least enjoyable aspect was having to spend three times as long on legal aid work to earn the same money as private work. I am not free to develop the practice or provide the excellent service I would like to provide while having to spend so much of my time and effort on financial matters and dealing with unnecessary and burdensome administration.

The experience of FAInS provision has only added to that burden. For example, those solicitors who were ‘not pleased’ that they had become FAInS providers stated that this was due to the ‘added paperwork’; FAInS, they said, had simply added to the bureaucracy involved in taking on legal aid work. Many of those whose family law practice had changed ‘a little’ because of FAInS cited a negative reason for this – the burden of administration had simply been added to by the need for more form-filling. For many, the only change brought about in their family law practice was an increase in administration occasioned by FAInS. Many also cited the main characteristic of FAInS as being the requirement for ‘more paper-work and form-filling’.140

Billing is also considered difficult and requires mathematical competence. In general, dealing with the LSC is considered tiresome and repetitive, and tends, therefore, to prevent effective settlement. Some experienced solicitors complained that it was frustrating to expend time and effort on such work when they were experienced enough to know how to act at least public cost.

Solicitors complained that client expectation is frustrated as well, and that many clients react angrily when they believe that the solicitor who is filling out the LSC forms during the initial interview is not listening to them – listening being a crucial attribute of the

---

140 Question 37 (2005) asked solicitors to describe the main characteristic of FAInS.
solicitor in meeting client expectations. Many solicitors noted that clients do not think the solicitor can listen and write at the same time, when in fact they can and need to, since it is not possible to claim separately for both form-filling and attendance.

Alongside complaints about the paperwork required by the LSC were complaints about administration in general. The filling in of forms takes time away from clients and keeping up with the law and legal practice; file reviews are regarded as tedious, and franchising is perceived as detracting from casework and impeding progress on cases. Administration is regarded as altogether too time-consuming and onerous, so that solicitors have a sense of always dealing with ‘red tape’ and ‘jumping through hoops’. Very often a case cannot be dealt with until the LSC has made its decision.

A minority of solicitors noted the ‘astonishingly poor rates of pay’ for legally aided work in the Family Proceedings Court. This was sometimes coupled with frustration at: uncertain outcomes in family litigation and the legal system generally; the differences between district judges; the demands of advocacy (particularly among the younger and less experienced solicitors, who prefer to instruct counsel); the difficulty of case management and time spent waiting; and, in court, the lack of time and opportunity to explain the background of a client’s life. These factors make life difficult for the family solicitor, who, as Eekelaar et al. concluded, ‘thinks about the firm as a business’, yet only ever approaches clients in a ‘professional manner’, and is concerned with discovering what their wishes are and guiding them towards achieving ‘as much of the game-plan as possible’ within the legal framework. Many solicitors cited the extra remuneration as a factor in deciding to train as a FAInS provider, but views about the value of the extra money were divided: some believed it was insufficient for the amount of extra work involved, while at least one firm used it to fund an ‘in-house’ counsellor to deal with the non-legal issues their clients presented. Overwhelmingly, however, the additional administrative burden accompanying FAInS provision was cited as a major downside.

The FAInS Experience

The impact of FAInS is most apparent in answers to the questions in the final section of the second survey. This section was completed by 68 solicitors, of whom 42 had also completed the first survey, and focused on reasons for and satisfaction with FAInS, the extent to which it had changed legal practice, views about whether it should be rolled out nationally, the future of FAInS in the solicitor’s own practice, and views about the future direction for publicly funded clients. Overall, this section revealed only slight changes in solicitors’ practice, objectives, satisfaction and measurements of success.

As regards changes in practice, the majority of solicitors stated that this had changed ‘a little’ while others stated that their practice had ‘not changed at all’. Only two concluded that their practice had changed ‘a lot’ as a result of FAInS, but in both cases this was due in part to the employment of the in-house counsellor to whom clients could be referred. The practice of these two solicitors had changed because the counsellor had helped end the ‘tradition of “stuck clients”’ – those unable to move forward’. For the majority, however, there were both positive and negative reasons for the changes. On the positive side, solicitors said they were more conscious of the need to make referrals to outside agencies and services, and had become more proficient at doing this. They have become more aware of local agencies and the diversity of what is on offer and, because of this

141 op. cit., p. 195.
enhanced knowledge, more detailed instructions taken during FAInS and the ‘active’
listening thereby encouraged, are more aware of the need for referrals. The extra
information gathered on the forms means that vulnerable clients are more readily
identified, and the FAInS format, too, makes sure that basic information is obtained,
recorded and shared and that alternatives to litigation are looked at regularly.

On the negative side, many solicitors noted that their practice had changed because of the
need for more form-filling and administration. Change for them was simply the addition
of a further bureaucratic burden. Many stated that paperwork and extra form-filling were
the main characteristic of FAInS; it resulted in them, as one put it, ‘doing work they
already did but filling out twice the number of more complex forms’.

For these solicitors, FAInS involved too much paperwork for it to be rolled out nationally,
and even for those who believed that its principles are sound the form-filling was
‘onerous’. Overall, very few solicitors stated that they will continue to use the FAInS
forms at all, though some will continue with the client information form alone and others
with the personal action plan alone, even if in an amended form. A surplus of forms
does not suit all clients. As one solicitor pointed out, ‘a large proportion of clients are
illiterate, don’t speak or read English and do not engage with paperwork’. In general,
solicitors regarded the forms in a negative light, with many noting that one way to
improve FAInS would be to reduce the amount of paperwork.

The majority of those who did not think their practice had changed at all said this was due
to the fact that FAInS was what they did anyway:

I’ve done it for the last twenty years; it simply reinforces best practice.

Even those who stated that their practice had ‘changed a little’ noted that the change was
only slight because they were already following best practice. They already practised in
the ‘holistic way’ encouraged by FAInS, although their awareness of the potential for
referral to outside agencies had been raised. In that sense FAInS was not new: it was
simply a ‘tweaking’ of best practice. Nevertheless, that ‘tweaking’ is valuable and serves
clients’ interests well when a network of services is well-established.

When asked whether they would continue to adopt the FAInS approach, solicitors
overwhelmingly replied in the affirmative – even if this was only because it was what
they had always done. Others noted that it worked for clients and focused the solicitor’s
mind: it had become a ‘useful discipline’. Many solicitors noted that they would like to
continue with FAInS, but only if they could ‘ditch the forms’. The administrative burden
clearly soured the FAInS experience for many. Of the 14 Exeter and Cardiff solicitors, 13
stated that they would continue to adopt the FAInS approach because it had become a
habit, was what they enjoyed doing, and was best practice anyway.

Some solicitors were unsure whether or not they would continue with FAInS. The reason
for this goes to the heart of FAInS: it can only work where there is a strong network of
local services and agencies and solicitors have sufficient information and knowledge
about them. For solicitors in Exeter and Cardiff, FAInS had resulted in better links being
forged with the local agencies. Clearly, such links take time to solidify, but when they do
the results are beneficial and satisfying. Where, however, the state of local services was
seen as ‘dubious’ solicitors were, understandably, not sure they could continue with

\[142\] Of those who answered both questionnaires only six stated that they would continue with both
forms, unamended.

126
FAInS. The availability of a full support network with a well-established infrastructure is considered vital to the primary nature of FAlNS – family law practice as a ‘holistic service’.\textsuperscript{143} But a holistic service can only be offered where there is a full support network to help promote best practice. Solicitors can only become part of a network of support and operate a solicitor-based referral system where good links have been established. Solicitors are of the view that legal and non-legal services must be brought together, and where this occurs, the work good solicitors are already doing in accordance with the Family Law Protocol is further enhanced. While FAlNS theoretically enhances solicitors’ awareness of the potential for referrals, the practicalities require the existence of a range of good services.\textsuperscript{144} These include: child guidance and counselling for children going through family breakdown; relationship, mental health and debt counselling; psychiatric and psychological services; more CAFCASS officers to support contact; drug and substance abuse counselling; domestic violence support and anger management; mediation; parenting classes; and accountants, surveyors and pension advisors. Solicitors felt that if this range of services were readily and locally available to solicitors across the country, and a directory of the local branches made available to solicitors, the FAlNS approach would achieve a more widespread holistic, and thus better, service for clients. Solicitors would have more time to advise clients on all their issues (not simply those they came in with), to look at their needs in their entirety, and to refer where appropriate. Clients would thus receive the extra non-legal assistance that solicitors might be unable to provide. As one solicitor affirmed, ‘Clients can be helped – not simply with legal problems’.

The majority of solicitors believed that FAlNS should be rolled out nationally. A slightly smaller number did not think so, and a smaller number still were unsure. Those who believed that FAlNS should become a nation-wide approach to family law practice highlighted a consistency of service delivery, continuity in the holistic approach, more negotiation for the benefit of clients, and enhancement of best practice. The overall view is that the FAlNS approach constitutes best practice in any event, even though the pilots had brought about a ‘tweaking’ of best practice in terms of outside agencies and networks. This same line of reasoning, however, led many solicitors to comment that FAlNS had not made enough difference to warrant rolling it out nationally. These solicitors said that FAlNS was what they did anyway, and ‘it was thus difficult to see what had been achieved’. They also noted that a greater integration of non-legal services had been expected, that other agencies knew nothing about FAlNS, and that clients had consequently been unable to make use of their personal action plans. Local services and agencies were thus again the key: their availability has the potential to enhance existing best practice, but those services have to be in place, and solicitors have to know about them. Those who were unsure whether FAlNS should be rolled out nationally focused on these same reasons: that it was what they did anyway and that, without an improvement in local services, including a directory of these, little would be gained.

**Reflections on Family Law Practice**

At the beginning of this chapter we looked at the classification of Mather et al. in their US study and noted how divorce lawyers there varied in the emphasis they placed on one aspect or the other of the role they played. The Mather study categorised the lawyers as

\textsuperscript{143} When asked what they considered to be the main characteristic of FAlNS, solicitors who were positive about the experience stated that it was ‘primarily a holistic service’.

\textsuperscript{144} Leeds and Basingstoke were described as well supplied with a variety of services and an excellent local directory.
legal-craft-oriented, client-adjustment-oriented or a combination of the two. The distinctions evolved from the fact that working as a family lawyer involved the achievement of legal outcomes alongside the bringing about of change in the lives of clients.

This three-part typology provides an equally valid approach to categorising the roles of family solicitors in our own study. As was noted above, family solicitors, at the beginning of the full pilot, achieved a great deal of satisfaction from using their legal knowledge to secure good outcomes that, at the same time, advanced or protected their clients’ interests. That particular satisfaction remained the same for solicitors at the end of two and four years of FAInS practice. The solicitors regard their job as providing legal advice and deploying their legal knowledge during the process of negotiation in a way that improves the lives of their clients. This comes about by achieving a legal result that enables clients to move forward emotionally and in a practical way, freed from the problems associated with their separation or divorce. In terms of the Mather typology the family solicitors in our study fell firmly within the ‘combination’ category: they saw their role as providing legal advice and assistance and being realistic about legal goals, while at the same time they expected to deal with, and gain satisfaction from, the human problems and emotions they are confronted with and seek to resolve. A well-established network of services and additional solicitor time to help identify any non-legal problems would enhance this ‘combination’ role: it would clearly benefit clients and improve the job satisfaction of family lawyers. The introduction of FAInS could result in what some solicitors in our study described as ‘joined-up thinking’, the view being that, in the words of one solicitor, it ‘should become the norm for family practice as long as it [is] funded properly and not done on the cheap’.
Part 2 Exploring and Understanding the Impact of FAInS

Having compared family law practice before and after the introduction of FAInS from a variety of perspectives, we wanted to be able to explain the variations we had observed. Although we had obtained detailed information from solicitors about individual cases and their approach to family law work, and had followed up with as many of the clients as was possible in the time available for the study, we were keen to understand aspects of solicitors’ practice in greater depth. Using qualitative methods, we observed solicitors during their FAInS training and during their work with clients, and interviewed solicitors, clients and some of their children in order to explore some of the more subtle aspects of family law work and the needs and expectations of people who approach a solicitor for help and advice.

In Part 2 we present the findings from our in-depth qualitative research. These findings are more descriptive than those presented in Part 1 and we have no way of knowing how representative they might be of a wider population of solicitors and clients. Nevertheless, we believe that the analyses shed a good deal of light on some of the current issues in family law practice and help us to understand why the introduction of FAInS does not appear to have made a substantive difference to the way in which lawyers in our study approach their work. We have looked specifically at the extent to which solicitors took a client-centred approach to family law practice (Chapter 7) and the use they made of personal action plans after they became FAInS providers (Chapter 8).

One of the expectations regarding the FAInS approach was that solicitors would act as a gateway to other support services, referring clients to other professionals who might assist them with wider issues and concerns which impinged on the matters being dealt with by their lawyers. As we have seen in Part 1, lawyers did not change their practice much in respect of referring clients to other services, and we explore the reasons for this in Chapter 9. How solicitors respond to clients is influenced in part by the kinds of problems clients present and the expectations they have as to what the lawyer will do for them. We consider how solicitors manage their clients’ expectations and how they endeavour to follow FAInS principles in different kinds of situations in Chapter 10.

Two of the main aims of FAInS were to encourage the confirmed participation of both parents in their children’s lives, and to provide appropriate support to children whose parents separate. Previous research has highlighted the difficulties parents face when trying to reformulate parental roles and responsibilities and the lack of services for children. It was important, therefore, to attempt to ascertain the views of the children of parents who had been to see a solicitor during our study. In Chapter 11 we present the accounts given by eighteen children aged between 8 and 15, and indicate the kinds of support that may have been helpful to them. This research confirms the findings of many previous studies, highlighting the need to find better ways of both involving children in decision-making and supporting them through family transitions.
Chapter 7  Adopting a Client-Centred Approach to Family Law

Angela Melville

The FAInS approach to client–lawyer interaction stresses the need for solicitors to adopt a client-centred, rather than an issue-centred, approach when dealing with their clients. This involves an understanding that clients’ legal problems are often connected with other problems and issues in their lives. A client-centred approach also involves acknowledging the client’s emotions, actively listening to the client, and generally developing a relationship of rapport and trust between the solicitor and client. In this chapter, we draw on our observations of solicitors in the pre-FAInS and FAInS phases of the full pilot, and on interviews with them and with their clients, to explore the extent to which solicitors participating in the project put a client-centred approach into practice.

Structuring the First Meeting with the Client: Pre-FAInS

In our research interviews, solicitors explained that they liked to conduct their first meeting with a new client according to a structure. In over half of the pre-FAInS observations (18 out of 30), the solicitor started by completing the public funding forms and collecting personal information about the client. Some clients appeared impatient with this initial process of information-gathering and form-filling, and looked as if they wanted to tell the solicitor their story immediately. The solicitors tried to stress to the client that they would have an opportunity to talk, but that the paperwork needed to be completed first. Solicitors told their clients that they needed to ‘take down some boring details’, explaining that ‘it takes a while to fill in the form’ and making statements such as ‘It might seem a little harsh to discuss public funding, but we need to’, ‘Just let me finish’, and ‘We’ll get to that [the client’s story] in a minute’. Several solicitors also provided non-verbal clues that they felt that filling in the forms was a tedious task: for example, they often sighed dramatically once they had completed the form.

This dislike of form-filling is not surprising: some authors have described the ideal, client-centred initial meeting between solicitor and client as starting with a ‘problems and concerns stage’. During this stage, the client is encouraged to outline their problems, and explain how the specific issues they face are connected to other problems and concerns in their lives. The solicitor is not yet going into a full, detailed exploration of the facts, but is attempting to develop a sense of what happened and what it has meant for the client. It would appear, however, that most of the initial meetings we observed did not start with this stage. Instead, the need to fill in public funding applications appeared to disrupt the flow of the meetings.

For the most part, these pre-FAInS solicitors did not move on to ask the client about their more general problems and concerns. Instead, the solicitor remained focused on obtaining the facts concerning the specific issues at hand. The solicitor often covered quite a number of issues in the discussion, but did not leave the client with much opportunity to move beyond the pre-set structure of the interview or to raise other problems. In most of

---

the observations, the solicitor used short, closed questions, and did not allow the client to expand beyond the point at hand. In only four of these observations did the solicitor allow the client to tell their story in narrative form.

In six cases we observed, however, the meeting started with the client providing a narrative that explained their situation. For the most part, these clients provided a long, emotional story about their recent separation from their partner. During research interviews, several solicitors explained that some clients need to ‘pour out all their emotions’ and ‘tell their story’ before they can move on to the main part of the interview. As one solicitor explained:

How the first meeting is run depends on the client. Some clients just want to pour it all out. I’ll let them go for a while and then say, ‘I’ve got a sense of it now. Now I need to get more background material in order to advise you properly, and we’ll deal with all the issues as we go along.’ (experienced female solicitor)

In these cases, the clients were also able to bring up other concerns and problems beyond the specific issue at hand. The meeting started with the client presenting the problem from their point of view, rather than starting with a tightly controlled structure. In another two cases, the solicitor started the first meeting by allowing the client to tell their story, but guided the client into telling the history of the case through a chronological structure, whereas most other clients told their story without much guidance from the solicitor.

In three cases, the solicitor commenced the meeting by giving a brief history of the case so far. Two of the cases were already in court and the client had either changed firms or had been trying to represent herself, and the solicitor had attempted to establish the chronology of the court case. In another case, the client had returned to the same solicitor after her matter had been reactivated, and the solicitor had started the meeting with a brief summary of the previous matter, before establishing what had occurred since she had last seen the client.

In one case, the solicitor moved straight to providing advice. This solicitor had represented the client previously, although she did not summarise the previous case. The secretary had collected personal information from the client prior to the interview. The client did not appear to be very communicative, although the solicitor did not provide her with an opportunity to express her story.

When solicitors were asked how they approached the first meeting with a client, most responded by describing the structure they used, regardless of the specific case. Only a few emphasised that the way that they approached the meeting depended on the client. For most solicitors, the purpose of the first meeting was to gather all the facts, obtain a history of the matter, collect all the necessary personal details concerning the client, and set out an initial plan. Some solicitors use a ‘checklist’ or ‘pro-forma’ to aid them in this, while other solicitors did not use a form but still kept to a particular structure:

I don’t have a pro-forma, but the structure is still there. First, get all the personal information, everything that is needed for the divorce petition, then ideally give advice at the end, although this isn’t always the case, depending on the client. Mostly you tend to deal with issues as you go. So, for example, you start with children’s details and so you deal with the children’s issues. (experienced female solicitor)

For this chapter we have categorised solicitors according to their years of experience as family law practitioners as follows: ‘very experienced’ means 10+ years’ experience; ‘experienced’ means 5–10 years’ experience; ‘less experienced’ means less than 5 years’ experience.
In the first meeting, I try to identify the issues, break down the problem into bite-size chunks, set out an initial plan. (experienced female solicitor)

We need to know all of their personal information, information about the children, a brief history of what has happened. If it is a divorce, identify how they are going to proceed, who is going to petition, who isn’t … It’s just trying to get as much information as you possibly can. (less experienced female solicitor)

I have a client checklist that covers everything. So they then come in and tell us about their particular problems … I take the checklist, which covers all of the bits of information that I want, and then they get advice about peripheral things like making wills, welfare benefits advice if they need that, directing to, if they need, some sort of mediation or counselling, and debt advice or things of that nature. So they get that as part of the package of the first appointment usually. (very experienced female solicitor)

The FAInS solicitors tended to emphasise the need to identify the ‘legal issues’ during the initial meeting with a client, and only a few solicitors explicitly discussed the client’s situation rather than the issues. A few solicitors explained that it was important to ensure that they had established what the client wanted, and that they had answered all the client’s questions. A few also discussed the importance of establishing a relationship with the client. One of these solicitors emphasised the importance of gathering the facts, while establishing a relationship with the client:

Well, I need to get all the facts. You know – I need to get a history of the case, a background, so that I know what has been going on. But, also, I need to also establish a relationship with the client. The first meeting is when you have to get the client to trust … to talk to you. And also, I need to get over to the client where we are going to go from here. I explain the procedure, the legal procedure, although I also go over other aspects of the case. I then give initial advice. It may be that they don’t even want me to do anything. Some don’t want action straight off, some just want some initial advice, to know where they stand. But once I get all the facts, we can take it from there. (less experienced female solicitor)

For another solicitor, the need to establish a relationship with the client during the initial interview appeared to be foremost in her approach:

I think that when you first see someone it is important to listen, to identify exactly what it is that is concerning them. The first meeting with a client should always last an hour, I think, although we do operate a free half-hour scheme, so that people come specially knowing that it is a half-hour preliminary talk. So that is perhaps slightly different. But when it is a meeting where someone is coming, and their intention is that they really want you to act for them, whether it is publicly funded or not, so you know there is going to be some definite action at the end of that meeting, for the first fifteen or twenty minutes I would tend not to write anything down really … I would let them talk, and just talk to them generally to establish exactly what it is that they want, and exactly what the areas are, before I take full instructions. (very experienced male solicitor)

The way in which some solicitors approached the first interview with a client appeared to depend on the emotional state of the client, and whether the case involved an ongoing matter or the client was seeing a solicitor for the first time. Some solicitors, however, appeared to keep to their structure regardless of the client’s emotional state. Although ensuring that the interview is structured has advantages, adhering too rigidly to a structure can be problematic. Solicitors who may be concerned more about sticking to their interview script than about listening to the client fail to respond to a client’s specific
concerns, insist on using the script regardless of its relevance, and ultimately may alienate the client. While clients did not raise these issues in the research interviews, in observations of solicitors who rigidly stuck to interview scripts we noted that, by the end of the meeting, clients appeared reluctant to express themselves and exhibited relatively closed and defensive body language.

**Structuring the First Meeting with the Client: FAInS**

*The Client Information Form*

The FAInS approach involved solicitors using two new forms: the client information form and the personal action plan (PAP). These forms could be expected to have an effect on the ways in which FAInS providers approach their initial meetings with clients. We report on solicitors’ use of the PAP in Chapter 8. In this chapter we refer specifically to the use of the client information form.

The client information form was described during the FAInS training as a means of assisting clients to become focused on defining and clarifying their issues. Clients were described as being dependent on solicitors to ‘do everything for them’, and so the client information form was a means of encouraging clients to think about the issues independently of their solicitor and ultimately help them towards taking responsibility for resolving their problems. Clients were also described as being ‘in a fog’, where they were not able to see clearly what their problems were. They were said to come into the solicitor’s office, and ‘dump’ all their problems on their solicitor, and expect them to resolve the issues. The client information form was intended to encourage clients to see their problems more clearly and so lift them out of the fog.

Solicitors were told that client information forms should be sent out to clients, although trainers acknowledged that this was not always possible. For example, a client may not want correspondence from a solicitor to be sent to their home address. In this case, solicitors were told to ask the client to nominate another safe address. Most solicitors (although not all) were also told that it was acceptable for them to ask the client to come in a little early for the first appointment and complete the client information form in the waiting room.

Solicitors raised a number of objections to using the client information form. All of these were based on the practicalities of getting clients to fill the form in. There were no objections, or even queries, about the underlying aim of the client information forms. Solicitors simply felt that clients would not return the forms. They were also concerned that clients with low literacy levels would not be able to complete the forms. Several solicitors protested that sending out the client information forms would place too great a burden on their already overworked administrative staff. The majority of initial FAInS meetings we observed involved a client who had attempted to fill in a client information form. Not all clients had done so, however. One client who had failed to bring the form to the first meeting with the solicitor was told by the solicitor to return to the waiting room in order to fill in another form. Another client was given a form to complete in the solicitor’s office, and the solicitor did not begin the interview until the client had done so. Indeed, most of the client information forms (23 out of 31) were filled in by clients in our observation sample in the waiting room prior to the meeting. Several firms provided the client with a separate room so that they could complete the client information form in private. We observed, however, that not all clients filled in the form themselves. For
instance, if they were accompanied by their partner or mother they often they handed the form to them to complete.

During our research interviews, some solicitors explained that they are not always able to get the client to fill in a client information form:

Well, we try and use it. My secretary hands it out to the clients. When I say we try to use them, we don’t always. Sometimes my secretary is unable to hand them out. The other day she was off sick, so obviously she couldn’t then. And sometimes we don’t have time, or the client is running late. So it all depends a little. (experienced female legal executive)

We send them out to clients when they first make an appointment if there is enough time. If they don’t bring it back in, or if we are too pushed for time to send it out, then we get them to do it in the waiting room. But sometimes we are just too pushed for time, and so we don’t bother with it at all. (less experienced female executive)

The only time when we don’t fill it in could be say for instance if a client comes in off the street and wants an injunction. And then there’s a limit to how many forms you can fill in, and you haven’t got the time to get the client to fill it in if you’ve got a busy schedule and then wait for the client to fill it in when he comes into the office. (very experienced male solicitor)

In every case you use a client information form, although there are exceptions because there have been occasions when the clients find it difficult to read and write in that situation, and believe it or not there are a few of these and there’s nothing you can do about it. They can’t read and write so I just put at the top of the client information form ‘This client can’t read or write’. (very experienced female solicitor)

While these solicitors still gave out the client information forms to most of their clients, a few solicitors had decided not to use the client information form at all. These solicitors stated that they already used their own forms to elicit the same information, and that they sometimes asked their clients to fill these in:

We don’t use the client information form. We have our own key information form – sometimes I get the client to fill them in. A lot of my clients, a lot are OK, but quite a few of them aren’t quite comfortable with writing, don’t really want to do it and sort of struggle, sort of put their name and very little else … But the idea of them completing something saying why they want advice I think is good, though often clients may not have sorted out in their own minds exactly what they want. They know they want help and they know they need a lawyer, but they’re not sure after that. (very experienced female solicitor)

Some solicitors had decided not to use the client information forms as they felt that they were already overwhelmed with paperwork. They appeared to have associated the client information forms with the rest of the paperwork related to legal work in general, and with publicly funded work more specifically:

It is a concern for lots of solicitors. There is loads more paperwork. This is really too much. And you don’t do it always all of it at the initial meeting, because you’ve got – if it’s an emergency or something – you’ve got your court paperwork. And your whole aim is to get the client the remedy and get into court as soon as possible, and that’s your primary focus … (very experienced female solicitor)

The solicitors who were using the client information forms for all their clients seemed more optimistic about their clients’ willingness to fill in the forms:
I have been surprised by the success of the client information form. I first questioned the usefulness of getting the secretary to send out the form, but we were told that this was the LSC-preferred way of doing it, so I had to, except for the clients that walk in, or come and make an appointment to see someone for the next day. I was surprised. Very few clients haven’t brought them in. (very experienced female solicitor)

While clients may be willing to fill in the client information forms, not all of them appeared capable of completing the entire form. Of the 31 clients observed who eventually attempted to fill in a client information form, some obviously struggled to complete it. It was not possible for us to look at all the client information forms that were filled in, but in several cases it was clear that the client had only completed the first page. In one case, the client appeared quite concerned that the client had struggled to fill in the form. The client returned the form to the solicitor, commenting that they were ‘not sure that the form was OK’. The solicitor reassured the client that ‘whatever you have written will be fine’. In another case, the client had sent the form back prior to attending the meeting, and when she turned up she appeared anxious that ‘the issues [had] changed’, and that the form was out of date. During training, solicitors were told not to complete or correct forms for the clients, and no solicitors were observed doing so.

During interviews, solicitors continued to raise concerns about clients not being able to fill in the forms:

They fill in the front page. I don’t think they have any problems with the front page. They may then get on to the second bit … be a bit hit-and-miss, but generally speaking they fill one in. They might lose interest by [the end]. (experienced male solicitor)

I always look at the form, but it is only useful if it has been filled in. There are too many open questions. They will tick a box if there is a box to be ticked. They don’t usually identify the three most important issues, they usually just don’t fill it in. (less experienced legal executive)

We get the clients to fill them in as well as they can. But they can’t identify the issues, they don’t think that way. (very experienced male solicitor)

In approximately half of the observations where the client had filled in a client information form (15 out 31) the solicitor did not look at it at all. In the remaining observations, solicitors generally looked over the client information form quickly before putting it to one side. Some solicitors transferred information from the client information form to their attendance note, but did not say anything to the client. Others used the form as a means of asking further questions about the client’s income and, in several cases, the solicitor wrote the client’s responses on the back of the form. Only a few solicitors used the client information form as a prompt to start the interview: they turned to where the client had identified issues and asked the client to elaborate on them.

Solicitors were asked to give their opinion of the client information forms. Most solicitors responded that the forms were not particularly useful. Their comments suggest that they saw the form primarily as a means of eliciting information for their own use rather than as something that might help the client clarify their thinking. In this respect, it offered little benefit to solicitors, since they generally ask the same questions during the initial appointment with the client:

In truth probably no, I wouldn’t say they are useful. The only time I think they are useful is occasionally if I’ve forgotten to take a telephone number down and you think ‘Oh, what’s the number? It’s on there’, and that’s being truthful with you. I
have my own way of taking instructions and everything that’s on there is on my instructions … but I’m not about to change the way I do things, because I’ve already got some information on the form. I suppose maybe they should be more useful, but to me they’re not. (experienced male solicitor)

If they have filled in all of the forms, yes they are [useful]. But only as far as the form goes. It doesn’t have all the information that one needs … It doesn’t really ask about their funding situation. And that is what I need to ask first of all. And I have to transfer the information from the form to my own file. So I end up having to do it twice. (experienced female legal executive)

The clients can’t fill them in. They get upset, confused, intimidated by the forms. I ask for all the information anyway during the interview. I don’t want to spend the first part of the interview with my head down filling in a form. You need to look at the client, develop a relationship, let them know that you are listening and that they can trust you. And you can’t do that if they think that all you are interested in is treating them like another form to be filled in. I think you have been in the game for too long once you start to treat clients like that. I spend twenty minutes each interview filling in forms, which I should be spending talking to the client. (experienced female solicitor)

These remarks suggest that some solicitors had completely misunderstood the purpose of the client information form and viewed it merely as another form they had to get through and complete during the first meeting. They did not see the form as one which should be completed by the client as a means of focusing their own mind and thus helping the solicitor understand the case and focus on the key issues prior to the first meeting.

Even when explicitly asked if they thought the client information form could be useful in helping the client to focus on the issues, only a few solicitors directly answered the question. Those who did generally felt that the client information form was unnecessary:

I’m not sure that the forms really assist the clients [in the way you suggest] – that they come in and see me, having had the form and ticked the boxes, saying, ‘Well, this is what we need to look at.’ No, I don’t think that happens. The clients already have in their head what it is that is important to them, what they want to discuss, regardless of what’s on that form, and I think they simply view the form [thinking] ‘If I want legal aid I’ll have to fill this form in’ … Really, they’re just filling the form in rather than actually focusing on what that form is saying and what it’s raising. (experienced male solicitor)

Only a few solicitors expressed enthusiasm for the client information form, and they considered that the aim of the form was primarily to assist in providing them with information:

I’ve found it very useful, the new client information form, as a way of, when people first come in the office, to get some basic information. I use that actually with private clients now as well. The idea of giving them that to be filling out in the waiting room actually has improved my appointments with clients. Because one of my downsides always used to be that people come into the office and start telling you all about these problems they’ve got and then you’re trying to help them with them and giving them some guidance on the issues. And then they walk out and I realise that I haven’t even got – you know – their postcode or whatever. So that has worked quite well. (very experienced male solicitor)

Only two solicitors appeared to consider that the client information form was useful in achieving its aims as outlined during the FAInS training, and even their comments suggest that this aim was secondary. One solicitor stated:
Even clients that are not particularly literate, even then, they really have a go at doing them. That works quite well. And I think it does work well in focusing people’s minds before they come in to see you about what the major issues are. I think it is a good way of settling them down a bit as well because people are normally quite worked up before they come. (very experienced male solicitor)

That only one of the solicitors we interviewed felt that the client information form fulfilled the purposes it was designed to achieve represents a somewhat damning verdict on the form.

**Practice Compared**

Most of the pre-FAInS initial meetings between solicitor and clients involved the solicitor collecting personal details and filling in the public funding forms. By contrast, in most of the FAInS meetings the solicitor looked over the client information form, and then encouraged the client to give an overview, or narrative account, of their problem. During the pre-FAInS observations, some solicitors and clients had expressed impatience with having to fill in the public funding forms prior to turning to the issues. This impatience was even more evident in our observations of FAInS cases. Almost all the solicitors who started the interview by filling in the public funding forms apologised to their client, and indicated that once they had got over the ‘hurdle’ of filling in the forms the client could have their say. The remarks solicitors made to their clients included the following:

- Excuse me while I collect this.
- Do you mind if I write some things down, and then you can tell your story?
- Like life in general, there is an awful lot of form-filling.
- This is a hurdle that we have to jump over.
- Sorry about that, but the paperwork all needs to be done properly.

In our observations we found that after becoming FAInS practitioners the solicitors appeared to structure the first meeting somewhat differently. They seemed frustrated at having to ‘do the paperwork’ rather than being able to get straight on with asking the client to tell their story. Some solicitors often left the completion of the required LSC paperwork to the end of the first meeting so that they did not have to start the interview with a form-filling exercise. Others, as we have seen, still did the paperwork but apologised to their clients for this intrusion. Some solicitors explained that the increased amount of paperwork bound up with FAInS meant that it was easier for them to complete all the paperwork associated with public funding at the end of the interview. Some of these solicitors had started their pre-FAInS meetings with clients by filling in the public funding forms but were now leaving the forms until the end of the appointment. These solicitors commented that it was unfair to the client to start the interview by looking at the client information form, and then filling in the public funding forms, as the client would start to feel that the solicitor was uninterested in their problems.

During the pre-FAInS observations, most solicitors used a range of strategies for eliciting information, including the use of some open-ended questions. Open-ended questions do not restrict the client’s response, and are useful in allowing the client to raise the issues that are most important to them and settle more quickly into the interview, and in giving
the client some control over the interview. Despite the potential usefulness of open-ended questions, in nearly half of the pre-FAInS observations the solicitors used closed questions almost exclusively. Closed questions are useful because they keep the client focused, elicit information that the solicitor considers relevant to the case, and keep the interview and the client under control. In two of the pre-FAInS cases, there was very little examination of the issues, the client did not say very much, and most of the interview consisted of the solicitor providing advice. Two solicitors appeared to use closed questions very deliberately to keep the interview under control. The cases they were dealing with were quite complex, and the clients tended to move away from the topic very easily. These interviews were also very long, and at times the clients had become quite emotional. In another two cases, by contrast, the interaction between the solicitor and client was almost conversational. Both the solicitor and the client asked and answered questions, and while most questions were quite specific, the client responded by explaining the issues, clarifying what was wanted and exploring the available options.

In the remaining pre-FAInS observations, the solicitors structured the initial meeting quite tightly, and cut off the clients if they attempted to move away from this structure. After several of these interviews, the solicitors appeared uncertain about what the client really wanted, or felt that the client had not been entirely forthcoming. The clients’ body language in these interviews also tended to remain tense and defensive. Several clients were unable to recall basic details, such as the date of their marriage, and the age and date of birth of their children. These lapses were most obvious with clients who appeared very stressed and upset. Some male clients, also, did not appear to have as much knowledge concerning their children, while some female clients were uncertain about their financial situation. Several clients were also unsure about details concerning the other party, such as their contact details or whether they had legal representation. Solicitors were generally reassuring if clients forgot details, and explained that they would ‘work it out later’. It would appear that while solicitors were keen to collect as full a picture of the case as possible from the initial interview, they also left more detailed probing to a later meeting.

Some texts on legal interviewing suggest that lawyers should start with closed questions in order to collect personal details and define issues, and then move to open-ended questions in order to explore issues further. These texts also stress the importance of the solicitor retaining complete control over the interview, and not allowing the client to move from the script. This questioning approach was the style most commonly employed during our pre-FAInS observations. By contrast, most publications which direct solicitors on how to take a client-centred approach, as well as those written for other professionals, suggest that practitioners should begin with open-ended questions and move on to closed questions. This question progression, which is usually referred to as ‘narrowing’, is considered useful in assisting the client to feel comfortable, in imparting a sense of control to the client, in allowing the client to identify what is more important and relevant to them, and in allowing the practitioner to locate the client’s problems within a broader context.

148 ibid.
149 ibid.
Six pre-FAInS solicitors started with open-ended questions, before moving to more closed questions. In these cases, the clients looked quite worried and tense, and their initial answers were quite reserved and short. After several questions, the client opened up and was more forthcoming with their responses. These solicitors appeared to use open-ended questions in order to encourage the client to start talking. A few solicitors used open-ended questions almost exclusively. These interviews involved cases that were ongoing, and the client had returned to see the same solicitor. The interviews largely followed the client’s structure, with the solicitor focusing on issues as the client raised them. Solicitors tended to move to closed questions if the client became upset. In this way, the solicitor allowed the client an opportunity to get their emotions under control. Solicitors also moved to asking closed questions if the client became confused, in order to clarify a point raised by the client or to guide the interview in a particular direction. In four of the pre-FAInS observations, the solicitor had been explicit about why they had asked a specific question. In one of these observations, the solicitor had explained the process, including the structure of the interview that she intended to follow. These forms of explanation are useful in alleviating any sense of disconnection or confusion that a client may feel when being asked a question by a solicitor. Explanations are also useful for orienting the client, for building empathy, and for conveying respect for the client’s dignity and privacy. Despite these benefits, very few solicitors used this form of explanation.

Research into interviewing techniques warns that interviewers should avoid questions that can confuse the respondent or produced vague and misleading responses. In particular, questions that refer to abstract concepts or hypothetical situations, or that contain several parts, can lead to confusion. Our observations showed that solicitors were careful to ensure that their questions were clearly stated, unambiguous, short, and not misleading. Solicitors also rarely used questions that were intended to produce a yes/no response. Research into interviewing techniques has shown that these questions often disrupt the flow of the interview and can be confronting and intimidating. Thus, it would appear that solicitors were already using effective questioning techniques, which they also adapted to suit each client’s emotional state and ability to answer the questions.

Observations of FAInS practice suggest, however, that some solicitors changed the types of questioning strategies they used. Whereas almost half of the pre-FAInS observations involved the solicitor using closed questions only, during FAInS observations only a quarter used closed questions only. Of the solicitors who continued to use closed questions exclusively, one appeared to be attempting to tailor her language to suit the client in the meeting we observed. The client was a young working-class man, who spoke in very short, blunt sentences. The solicitor appeared to adapt both her words and her sentence structures to mirror the style of speech used by this client. In three cases, the clients were very emotional, talkative and volatile, and the solicitor appeared to be using closed questions in an effort to retain control over the interview. In another case, the solicitor started with an open question, and the client simply did not respond. The solicitor then asked a closed question, which produced a response.

We noted a marked shift towards a greater use of more open-ended questioning and the encouraging of clients to tell their story in their own words since the implementation of FAInS. The change in questioning style may reflect the differences in the ways in which solicitors have structured the initial meeting with their FAInS clients. Since solicitors

152 Boyle et al., op cit.
153 ibid., p. 260.
tended to allow their clients greater leeway in telling their story, it was likely that they would also favour using open-ended questions.

This change did not mean that all solicitors allowed their clients to talk freely. We observed several FAInS meetings where the solicitor used closed questions only and the client responded with very short answers. In these meetings, the solicitor did not ask the client to elaborate or expand. Thus the meeting consisted of a series of short, quite blunt exchanges between the solicitors and their clients, and the clients were defensive throughout the interview and certainly did not seem at ease.

**Giving Advice to Clients**

During the pre-FAInS observations, solicitors used a number of strategies to ensure that the client understood the advice that was given. The most common strategy was summarising what had been said. Solicitors would generally sum up the issues involved and what the client had said. They would also summarise by providing a brief outline of their advice and what action they intended to take. Solicitors appeared very mindful that their clients should not feel completely bewildered by the initial appointment. Several solicitors also stressed to their clients that they should ‘go home and think’ about their options and the solicitor’s suggestions. They told their clients that a great many matters had been covered, that they had been ‘bombarded’ with a lot of information and that they might well be feeling overwhelmed. Solicitors reassured their clients by explaining that they would receive a client care letter, which would explain all the points covered in the meeting.

Several clients obviously felt that they should record and understand immediately everything that the solicitor had said. Some clients brought notebooks to record what the solicitor said. Some also explained that they had brought someone else with them (invariably their mother) who could help them remember what the solicitor had said. In these instances, the solicitor reassured the client that it was usual for people to feel somewhat overwhelmed, and that the client letter would provide further information.

During our interviews with clients, several clients expressed anxiety about having to remember everything that had been said in their meetings with solicitors. For instance, one woman (a FAInS client) explained that she asked her mother to attend the meeting with her so that she would not forget details. She also expressed a sense of being overwhelmed:

> I took my Mum with me every time. She was there for moral support, and because she is good at remembering details. She is on her third husband. For me it was all unfamiliar. I didn’t know where I was going, what I needed to do. I wanted to stay in the house, but that was all I knew. I felt very vulnerable, uncertain, not very strong, very uncertain – I would have liked to know which direction to turn. I was in limbo, it was all unknown. Having made the decision that I was going to leave, it had taken all that time to make the decision. It was a huge decision, then I wanted to know where to go from there. I saw a family lawyer because I wanted advice, I wanted to be able to gather my thoughts. (resident mother, one child aged 8)

This client had felt considerably relieved and reassured after seeing her solicitor. If clients asked questions in the meeting most solicitors answered them, although several solicitors cut the client’s question off, or deferred it until later in the interview. Only five pre-FAInS solicitors explicitly asked the client if they had any further questions. These solicitors also asked the client if they had understood what had been said. For the most
part, these solicitors checked on the client’s understanding throughout the interview rather than just at the end. Most of the other pre-FAInS solicitors, however, did not explicitly check that the client had understood what they were saying. Several solicitors provided the client with a business card and explained that if they had any further questions they should phone. Another solicitor also suggested that the client should start to make a list of questions to bring in next time.

Texts on good interviewing skills emphasise the importance of checking that clients understand what is being said in the interview. Checking helps the solicitor to review the issues and identify any that may need further exploration, confirms the accuracy of their understanding of what the client has said, clarifies any misunderstandings, and indicates to the client that the solicitor is interested in what they are saying. During research interviews, several people expressed appreciation of this process. These clients felt they could approach their solicitor if there was anything they did not understand. One FAInS client stated:

She’s really good … she explains everything for me because I’m stupid. (resident mother, one child aged 2)

Several FAInS solicitors tailored their language to match the style used by their clients. Solicitors’ ability to use language that is appropriate to their clients was remarked upon during the research interviews. Several FAInS clients said that their solicitor had been careful not to use jargon that they could not understand. For instance:

She would listen to me, and the words she used in the letters were quite firm, straight to the point. She would listen, then put it down in the way that you would say it, not in the jargon … If I didn’t understand some points, the secretary would explain it to me. The letters from the lawyer, though, made sense. They were forceful, but I could still understand them. (resident mother, three children 14, 16 and 22)

Not all of the clients we interviewed, however, agreed that their solicitor was skilful in explaining what was happening in their case. One woman, a pre-FAInS client, explained that she had tried to tell her solicitor that she was struggling to understand the legal jargon:

I said, ‘Sorry about the misunderstanding but I don’t know what you’re saying. You have to tell me in layman’s terms, I don’t understand in the big languages you come out with.’ I said, ‘I’m sorry if you think that I’m being difficult, but I don’t understand what you’re saying …’ At first I didn’t know what these big words were and stuff like that, I hadn’t got a clue, ‘cos like I said, I’ve never been in court in my life and I didn’t know. I’m not – how can I put this? – I’m not a very good reader myself and I’m not a very good writer myself. So I have a lot of struggling to do. I can read, I’m not saying I can’t read, but these big long words – I could read them but I couldn’t pronounce them, ‘cos they didn’t sound like anything I’d heard before … I said to her [the solicitor], ‘I’ll tell you in my way and in my words, then can you tell me what’s going on, so that I can understand.’ And it got to the stage, I hadn’t got a clue what they were on about half the time, especially when they’re speaking in court. You need a degree now to understand what they say, and the language they want to come out with. And I said, ‘Look, all I know is that I didn’t do none of that. I didn’t say none of this, I said this’, and I told them what I said. And [my solicitor] at the time turned round and said ‘Don’t worry about it’ and I said ‘Yeah, but it’s not your kids, is it? It’s my kids I am worried about it’, I said. ‘Because he’s not getting them, I don’t want him to have them’, I said. I did not know that he can put in for the kids. I did not know all this, I did not get told all this.

I thought, 'cos I left and took the kids, I thought automatically they were mine and stuff like that. Even my Mam got upset because she couldn’t even understand, and she’s a lot older than me and she couldn’t understand half of it. (resident mother, two children aged 12 and 14)

This last client eventually went to see another solicitor before deciding that her case was too advanced for her to change solicitors, and so she returned. Although she did not express any outright dissatisfaction with her solicitor, she certainly implied that the solicitor had not spoken to her in a way she could understand. Dissatisfaction with the way in which some solicitors talked to their clients was not limited to pre-FAInS clients, and a couple of FAInS clients expressed similar sentiments, suggesting that FAInS has not made a huge difference to some solicitors’ practice. Several clients, both pre-FAInS and FAInS, also stated that while their solicitor was very good at explaining what was going on the solicitor acting for the other party had written letters that they did not understand. These clients took these letters to their solicitor in order to have them ‘translated’.

The strategies solicitors used during the FAInS observations to ensure that their clients had understood their advice were very similar to those used during the pre-FAInS meetings. Most solicitors continued to summarise their advice, and to provide clients with reassurance should they start to feel overwhelmed. Solicitors also continued to check back with their clients that they had understood. This did not always happen, however. In one observation the solicitor used quite complicated language, and it appeared that the client struggled to follow her advice. The client, however, had continued to ask questions until she seemed satisfied that she understood the answers. While the solicitor was checking back with this client that she had understood the information, she did not simplify her language.

Whereas some pre-FAInS solicitors seemed insistent on sticking to their structure regardless of their client’s responses, solicitors during the FAInS observations were somewhat more flexible. Solicitors did not defer their client’s questions or cut them off if they did not fit into the solicitor’s interview structure. Instead, they were more likely to respond to the client’s questions as soon as they were raised.

**Listening to Clients: Pre-FAInS**

Literature on client-centred lawyering stresses that solicitors need to develop interviewing skills that facilitate a relationship of trust with their client and allow the client to take an active role in managing their own case. Client-centred lawyering involves more than just listening to the client in responsive ways. Solicitors should also act empathically and, if appropriate, listen to the client sympathetically. Our observations of pre-FAInS cases showed that solicitors were generally responsive listeners. Solicitors indicated that they were listening through the use of ‘listening sounds’, such as saying ‘Mmm’, ‘Yes’ and ‘OK’. Solicitors also used sounds and short phrases to prompt their client to continue talking, for example ‘Go on’, or ‘Very interesting’. The other main way in which solicitors indicated that they were listening was through the use of non-verbal communication.

---

Solicitors also responded to their clients by summarising and paraphrasing the substance of what the client had said or implied. In this way, the solicitor indicated to the client that they had listened to what the client had said. Several solicitors also asked ‘OK?’, or raised the tone of their voice at the end of the summary, giving the client an opportunity to clarify any points if the solicitor had misunderstood. Some solicitors also summarised or repeated the client’s words in an effort to prompt the client and encourage them to continue talking. Observations suggested that, while solicitors were usually responsive to the substantive content of what their clients were saying, they did not always show they were responsive to the client’s emotional state. Acknowledging the emotional content of the client’s statements is one way in which solicitors can demonstrate empathy with their clients. Through it, the solicitor demonstrates that they are able to understand what it feels like to be in the client’s situation. It has been argued that showing empathy with the client is an essential skill in taking a client-centred approach.

In just over half of the pre-FAInS observations the solicitor appeared to be empathic. These solicitors tended to be the same solicitors as those who favoured open-ended questions and allowed their client to tell their own story. Generally, solicitors simply summarised what the client said without committing themselves: for example, ‘I understand that you feel frustrated’. In approximately a third of the observed first meetings pre-FAInS solicitors provided reassurance to the client, acknowledged their feelings and normalised their experiences. Solicitors tended to use these skills when talking to female clients, who often presented in a rather upset and vulnerable state. Generally, these clients looked considerably relieved towards the end of the initial meeting with the solicitor. Some solicitors also appeared to favour these skills more than others – especially solicitors who had had mediation training, or had expressed strong support for mediation, or were very experienced in dealing with family law cases.

Only a few solicitors made direct comments indicating that they understood the client’s feelings: for example, ‘I know that you have had problems that aren’t really your fault’; ‘The court has not treated you fairly’; ‘I know that you are a good mother’; ‘You have done the right thing’; ‘It has all happened at a bad time for you’. These comments were generally made to clients who had been experiencing an especially difficult situation, such as a stressful court case where they had attempted to represent themselves, or who had left a relationship after being subjected to domestic violence. These clients appeared quite uncertain of themselves, and the solicitors described them as lacking self-esteem and confidence. The solicitors responded to more vulnerable clients with comments that legitimated their actions, thus boosting their confidence. Nevertheless, most solicitors expressed the need to maintain a professional boundary between themselves and the client.

**Listening to Clients: FAInS**

Although the FAInS training did not focus on the development of active listening skills, trainers did discuss the differences between empathy and sympathy. Solicitors were encouraged to show their clients empathy, but not to be overly sympathetic. They were warned that to be too sympathetic was to cultivate client dependency, and eventually they would feel as if they were being persecuted by the client. Solicitors were told that they should avoid ‘sympathetic subjectivity’, which occurs when they relate too closely with their clients, and instead should approach a client with ‘empathetic objectivity’. Solicitors

---

157 Dinerstein et al., *op cit.*
should maintain a professional attitude towards their clients, which involves not becoming emotionally involved or feeling sorry for clients.

Thus, it might be expected that FAInS solicitors would continue to demonstrate responsive and empathic listening skills. Observations confirmed that solicitors did continue to show that they were responsive listeners. They continued to summarise, reflect back, repeat and paraphrase the content of what clients said, and they generally made listening sounds as the client spoke. Some solicitors used humour and small-talk to put their clients at ease. During interviews with clients, several commented that their solicitor had listened to what they had said without passing judgement. For instance, one FAInS client stated:

She was so patient. She gave me as much time as I needed. 'Cos it wasn’t easy. There was a lot that I hadn’t told anyone else before. And there were times when I just couldn’t say it. I’d try but then I couldn’t, it was too hard and I would just start to choke and cry. It was dreadful, the things that I said. But she let me talk. She gave me all the time I needed, and just listened. She didn’t judge or anything, but let me go on. (resident mother, two children aged 11 and 13)

A similar proportion of FAInS solicitors were sympathetic listeners as of pre-FAInS solicitors. Solicitors acknowledged what their clients were feeling, making comments such as ‘I know how you feel’, ‘I see what you mean’, ‘I know you are frustrated’. In one case, the solicitor acknowledged the client’s feelings, but did not state whether she agreed or disagreed with the client. The client appeared to want more of a commitment from the solicitor, and repeated her statement to the solicitor, suggesting that the solicitor had not heard her. This client became increasingly emotional and aggressive during the interview, and the solicitor indicated that, although she was listening, she did not necessarily find the client’s behaviour reasonable.

For the most part, solicitors appeared to be non-judgmental, although in three instances the solicitor spoke to the clients in quite an abrupt manner. In one case, the solicitor did not believe the client’s story, and so confronted her with a series of rather blunt and direct questions. Eventually the client admitted that there was more to the case than she had first disclosed. In the second case, the client was evasive whenever the solicitor asked him about his partner’s accusations that he had been violent. This solicitor also confronted the client, who eventually admitted that he had ‘perhaps’ been violent towards his partner. In the third case, the client wanted to change contact arrangements. The solicitor quite bluntly told the client that she should not stop the other party from seeing the child. The solicitor told her that she might think the child’s father unreliable and irresponsible, but that she was not being realistic. He then stated ‘He may not be an ideal father, but he sounds better than some other fathers’, and ‘He may not be the best, but of the clients I’ve had he is a long way from the worst’. The client agreed with the solicitor, and promised that she would ensure that contact occurred.

While the FAInS trainers encouraged solicitors not to overstep their professional boundaries and become too sympathetic, several FAInS solicitors appeared to offer their clients more than empathy. Several solicitors indicated their approval of the client’s actions: ‘You have done the right thing’; ‘You are doing the sensible thing’; ‘I think you did well to keep cool’. A few also made remarks about the other party, suggesting to the client that they shared their attitude. Two solicitors also made some form of personal disclosure to the client, indicating that they knew how the client felt, as they also had children. One solicitor told the client that she had also been through a divorce. While displays of sympathy were limited during the initial meeting between solicitor and client,
comments made during research interviews with clients suggest that solicitors became closer to the client as the case proceeded. For instance, several clients were aware of personal information about their solicitor, and this personal disclosure appeared to have generated a closer relationship between them. One client stated:

Well, everybody seems friendly as well, and I think … she’s got a little kiddie herself – makes you feel that they understand what you say, that … even though she’s never really met with him [my son] she still is understanding … my solicitor, she were really good. She understands it. And she even wanted a picture of me as she were leaving to take with her … Yeah, she were dead easy to talk to and understanding. (resident father, one child aged 5)

Several clients felt that the solicitor’s gender was also important in making them feel as if the solicitor could understand their situation. Two women (both FAInS clients) stated:

I suppose, being a woman, it’s nice to have another woman to talk to. It’s easier, sometimes, to talk to another woman rather than a man. (resident mother, five children)

A woman lawyer is much easier … I don’t know if she had a family, but I think that female lawyers understand more. She listened to me. (resident mother, three children aged 14, 16 and 22)

Several clients also commented that their solicitor had explained to them that, although their case might have been resolved for the time being, the file would remain open. These FAInS clients seemed to consider that the solicitor would still be there if they needed further help. These clients appeared to have developed a rather familiar relationship with their solicitor:

The case remains an open file so, if there’s any problems, I’d just ring them up and go back. I mean they do see me whenever. You know – I don’t really have to make an appointment, I can just call in, you know. (non-resident father, seven children)

I know if I’ve got any problems I can always ring. Like if the contact didn’t go very well I can ring her [the solicitor] up and say, well, there’s no point me going down in October ‘cos this one didn’t go well … She’ll most probably ring me up after I get back to find out how we got on. (resident mother, five children)

Not Connecting with the Client

During approximately half of the pre-FAInS observations the solicitor tried to ‘connect’ with their client, mainly by encouraging the client to talk and by using empathic listening. The other observations involved cases where the solicitor was clearly disconnected from the client. In sixteen observations, the solicitor cut the client off while they were speaking or whenever they attempted to move away from the interview structure. In one case, when the client attempted to go into her own narrative the solicitor cut her off immediately. The solicitor stated that he did not have to listen to the client’s story. ‘That will be in the papers’, he said; ‘let’s get on.’ The solicitor did not tailor his language to the client, who appeared to be struggling to understand some of the questions. The solicitor would repeat questions, rather than rephrasing. He also attempted to clarify points with quite sharp, abrupt directions, such as ‘Can you say that again?’, ‘Repeat that’, ‘Say that again’. By the end of the interview, the client’s body language was closed and defensive, and she appeared to be looking for some reassurance. She stated ‘I don’t know who to trust’, and
attempted to say something else when the solicitor spoke over her, saying ‘I’ll have to stop you there’. The client then fell silent, and the meeting was concluded.

In four instances, the clients were cut off by solicitors every time they attempted to raise a non-legal issue. One client attempted to discuss the failure of his marriage, his sexual problems with his wife, and his health problems, but the solicitor prevented him from elaborating. By the end of the meeting, the client looked clearly frustrated, and stated ‘I should have brought my sister in’, implying the solicitor might have listened to her.

In another case, the client started the meeting by explaining that she had left her husband and that she thought the relationship was over. Further through the meeting, the client stated that she was not entirely sure if the relationship really was over, and that perhaps she would like to consider a reconciliation. The solicitor cut her off very abruptly, stating ‘But you said that you didn’t love him’. From that point on, whenever the client attempted to return to this point, or to any other non-legal issue, the solicitor cut her off. This kind of exchange very clearly exemplifies the criticisms made by relationship counsellors that by the time people go to a solicitor there is little chance they will be offered the option of considering a reconciliation and seeking appropriate support.

In five instances, the solicitor asked the client what they wanted them to do, and then before the client responded the solicitor defined the action to be taken. In one instance, the solicitor asked ‘What do you want me to do?’, and then immediately continued, ‘I’ll write you a letter.’ The client had been very agitated, and the solicitor appeared to be trying to get the client to realise that they could not continue to act in such an aggressive manner towards the other party. In another case, the solicitor again asked the client ‘What do you want me to do?’, and before she answered the solicitor interrupted by stating, ‘I don’t understand.’ He was reading through some documentation that the client had brought in, and was thinking out loud rather than actually listening to whether the client was going to answer the question.

In another observed meeting, the solicitor asked the client ‘What do you think about the long-term residence of the child? I don’t want to put words in your mouth, but …’, and then continued by telling the client what she should do. Next, the solicitor asked ‘You tell me, what do you want in terms of contact?’, and then immediately told the client what contact she should aim for. In this case, the client appeared to be especially passive, and barely responded to any of the solicitor’s questions.

The most obvious difference between the pre-FAInS and FAInS meetings that we observed was that FAInS solicitors were more strongly connected to their clients. Very few cut their clients off and, for the most part, solicitors seemed content to listen to the client until they stopped speaking. This may reflect the change in the meeting structure and more frequent use of open-ended rather than closed questions. When using open-ended questions, the solicitor would expect an answer that was longer and more comprehensive. Solicitors who had asked closed questions, which were more common during the pre-FAInS observations, became impatient with answers that were not focused and short. Rather than using closed questions FAInS solicitors employed a number of strategies to encourage clients to tell their stories.

We encountered only two instances where a FAInS solicitor appeared to disconnect from the client. In the first, a trainee was sitting in with the solicitor. At one stage the solicitor turned to the trainee and made an ironic comment about the client. In the second, the
client attempted to expand on a point, but the solicitor cut him off and moved to the next question. Overall, however, there was a distinct and observable shift in practice.

Acknowledging Emotions

In approximately half of the pre-FAInS observations, the solicitor explicitly encouraged the client to express their emotions. Solicitors appeared to encourage their clients to express their emotions, for several reasons. First, some clients were clearly upset and, as solicitors stated in the interviews, appeared to want to ‘offload’. Once prompted by their solicitor, these clients provided a narrative of the relationship breakdown. Several solicitors explained that this was the first opportunity some clients had had to talk about the relationship breakdown and, once the client started talking, ‘it just blurs out’.

During the interviews with FAInS clients, several explained that they had been very emotional and upset when they had first seen their lawyer and that their solicitor had allowed them to talk through their problems:

She listened to me babble on 'cos you know, like I say I haven’t got many friends up here. It doesn’t bother me, but I haven’t. (resident mother, five children)

During FAInS observations, several clients actually said that they had not discussed issues with anyone else prior to seeing the solicitor, and that they felt relieved that they could finally tell someone what had been happening. Several clients also expressed a combined sense of relief and guilt that they had finally disclosed that their relationship was in trouble, or that their partner had problems with alcohol or drug abuse. The solicitors who listened to their client’s emotional narratives tended to be the same ones as stressed the importance of developing a relationship of trust with the client. Several of these solicitors had explicitly stated that the best way to develop rapport was to listen to the clients’ stories.

Some solicitors encouraged their clients to discuss their emotions because their emotional state was relevant to the case. In these meetings, the solicitor explained that it may be necessary to explain to the court how the client’s emotional state influenced their behaviour, or how the way they felt was an outcome of the other party’s actions. The solicitors reassured their clients that they were not being judgmental but that they ‘needed to know’ how the client felt about specific issues.

Some clients were reserved and uncommunicative and, in some meetings, the solicitor encouraged the client to express their feelings about their case in order to try to gain a fuller understanding of what was happening. The solicitors admitted, after the meetings with the clients had finished, that they were not entirely sure what the underlying issues were, and that they had attempted to prompt their clients in order to get them to ‘open up’. Most of these cases involved financial issues, especially debts.

Some clients clearly were not used to openly discussing their emotions. Relatively young, male clients seemed very reluctant to discuss anything beyond immediate legal issues, and their responses to their solicitor’s questions were often monosyllabic. Some women, generally described by solicitors as ‘battlers’ and ‘copers’, also appeared reluctant to discuss their emotions. These women stated that they did not want to talk about their feelings, that they had wanted to ‘stick to the issues’; and they only admitted that they were finding their situation emotionally difficult after considerable prompting from their solicitor. These clients were very businesslike and to the point, and they also appeared to
have made up their minds about what they wanted from the other party and what they wanted their solicitor to do for them.

Solicitors sometimes encouraged clients to express their emotions as a means of approaching an issue which the solicitor appeared to be reluctant to ask about directly. For instance, one client was involved in a case that was already in court, and had decided to change solicitors. She alluded to being unhappy with her previous lawyer, but did not directly explain the problem. The solicitor asked her several questions about how she felt about being represented by the other lawyer, and whether she felt comfortable with the solicitor and in control of her case, but she did not directly ask the client what had gone wrong when she had seen the other solicitor.

For the most part, clients who were encouraged to discuss their emotions had turned up to see a solicitor immediately following separation from the other party. The solicitors asked them why they had separated, how the parties currently felt about each other, how they felt they were coping, and, in some instances, how they felt about the possibility of reconciling.

In several other cases, apart from issues involving separation solicitors also encouraged clients to discuss their emotions. Solicitors spent time exploring the client’s emotions in cases in which, for instance, the client had suffered from post-natal depression, was feeling stressed because they were raising a disabled child, or suffered from a mental health problem. Solicitors also gently prompted their clients to express their emotions if they had been the victim of domestic violence. In some cases, the client seemed very reluctant to admit that they had been abused, and in these cases the solicitor spent time talking to them about the other party’s behaviour and about how it made the client feel. In several instances, it was clear that the meeting had been the first occasion on which the client had admitted that they had been subjected to domestic violence, and that this admission had obviously been very difficult. The problem of getting clients who had experienced domestic violence to talk about it was also raised by solicitors during research interviews:

Any issues to do with domestic violence we need to know about, because a lot of women can be quite cagey at the first appointment, and then only when you start asking do they say ‘Well, yes, he did hit me’. (less experienced female solicitor)

One of the FAInS clients to whom we spoke explained how difficult it had been to tell her solicitor the full details of the violence to which she had been subjected:

Walking out of there [the house] was the most difficult thing I have ever done … it was so hard, the most hard thing, and I was terrified. He had told [me] that I would never be able to leave him, and much worse. I don’t like to even think about it now, just how bad it was. But I had to go. I don’t know what he would have done to me and to the baby if I had stayed. It wasn’t just for me, it was also for the baby. He used to say things, to try to make me stay, to scare me, you know, into not leaving. And I had to tell her [the solicitor] why I had left. And that was hard as well. And I was there all afternoon, well maybe not that long, but that’s how it felt. Crying and sobbing, and just, you know, just getting it all off my chest. The terrible things, and getting out and, well, and just everything. And not even everything, really, but just what I could admit to myself. It has taken a long time, but I am only now able to think and talk about it. But even now there are some things that I can’t say. I couldn’t tell them to her [the solicitor]. It was too, just too hard, to be able to say it. (resident mother, one child aged 2)
FAInS solicitors encouraged their clients to discuss their emotions by asking direct questions, which were usually put to the client in a rather broad, open-ended manner. This form of questioning generally indicates to people that a more expansive answer is permissible. Once the clients started to discuss their emotions, these solicitors looked attentive, asked follow-up questions, actively prompted the client, acknowledged how they felt, and expressed empathy. Solicitors did not allow their clients to discuss their emotions for the entire duration of the interview, however. They generally allowed their clients to speak for a while, then started to focus them back on the issues at hand. They did this by starting to ask questions so as to separate the client’s narrative into distinct issues. Some solicitors explained to their client that they needed to ask questions, and to ‘focus on the issues’ and to ‘obtain all the information’.

In this way, FAInS solicitors ensured that the first meeting followed some form of structure. In research interviews, most solicitors stressed that while it is important for the solicitor to develop a relationship with the client, and to give them an opportunity to discuss their feelings, the aim of the initial interview is generally to collect as full a picture of the case as possible:

> It is a fact-finding session. I like to ask the questions. The clients sometimes go off on a tangent, so I have to guide them. I tell them ‘I’ll ask you the questions’. You need to stop them from taking over, so I guide them, in a gentle way. I tend to ask very specific questions. I will also ask them if they want to raise something.

(experienced female solicitor)

These comments were also echoed by one client when we interviewed her:

> And more of it, really, was being supportive, allowing me to go through that phase of falling apart literally and then allowing me to pick up the pieces. So I can think of some meetings where I’d been totally useless, really, from a solicitor’s point of view, and there have been times where he’s had to be very firm with me and say ‘Now hang on a minute’, because I’d gone off at a tangent on a personal wave-length and he’s had to sort of drag me back … [My solicitor] would just sit there and let me download it if you like or dump it on him, and then he would very quickly just say something that brought you right back to where you should be and he’ll allow you to go off at a tangent for a certain length of time, and then it’s hang on a minute, we’re getting drawn back again.

(resident mother, four children aged 4, 6, 10 and 12)

In approximately half of the pre-FAInS observations, solicitors did not actively encourage their clients to discuss their emotions. The solicitors sometimes did not maintain eye contact with their clients but instead read through documents, and they generally did not ask questions. In two cases, the client became quite agitated during the meeting, and in these instances the solicitor appeared to try to keep the client focused on the legal issues and not to talk so much about their emotions. Whereas most observations involved the solicitor imposing their structure in a rather gentle manner, in these cases the solicitor had to work harder to ensure that the meeting remained focused. These cases involved clients who seemed to be more focused on talking about their problems than on looking for solutions.

The pre-FAInS solicitors were observed to use several strategies to try to calm their clients down and remain focused. By the end of many interviews, the solicitor’s and the client’s body language had come to mirror each other. In encounters involving a more agitated client, however, the solicitor’s body language was often very contained, restricted and ‘small’, whereas the client’s body language was expansive, expressive and ‘big’. When faced with a loud client, solicitors tended to lower their voices, and speak
slowly and softly. Their voices were calm, with a flatter and less expressive tone. These solicitors also stressed to their client the need to ‘be calm’, to ‘be reasonable’, and to ‘think about the consequences’ of their behaviour. Despite their softly-spoken words, the way in which they delivered their advice was more direct. They would stress quite strongly that their advice was in the client’s best interests.

In five pre-FAInS cases, neither the solicitor nor the client discussed emotive issues. Generally, these cases involved the resolution of a relatively minor issue following a separation or divorce that had occurred several years ago. The client appeared to be quite focused and businesslike, and either there was no contact with another party or the relationship between them and the other party was very amicable. In interviews, several pre-FAInS solicitors explained that some clients want emotional reassurance, whereas others are much more businesslike and unemotional:

You get to know the different types of clients. Some are very businesslike. They expect you to tell them, as a solicitor, what will happen in their case. (experienced female legal executive)

It depends on the client. Some are already well along. They have made up their minds what they want. They have it clear. Sometimes they have even spoken to the other party about it. And they come in, and they may be calm, often they give good instructions, and you can get on with it straight away. (experienced female solicitor)

They either know what they want – they are in an amicable relationship with the other party, they are able to talk to each other, they are calm, collected, dispassionate – or they don’t know what they want. They have just busted up, and are very tearful. (experienced male solicitor)

Some are calm. Some are OK. At least on the outside. Some have given it a bit of thought, and they know what they want. They can be sometimes quite businesslike. Some others, though, are a complete mess. In some of the care cases, it’s like their whole world has collapsed around them. Like the world has been turned upside down. It can take them quite a while to come to terms with that, and so you have to just support them and help them through it. (experienced female solicitor)

In most observations, the client entered the solicitor’s office looking tense and nervous, but by the end of the meeting they generally looked more relaxed. Some clients thanked the solicitor, stating that they had been nervous about coming in but that they now felt relieved. During interviews, several pre-FAInS solicitors acknowledged that their clients had often been tense when they had first presented:

A lot of people are very nervous. Some people are worried, anxious, because they think that you are going to make them do something that they don’t want to do. (very experienced male solicitor)

They are nervous, unsure of themselves, often embarrassed. They can be tearful, confused – they don’t want to be there. (less experienced female solicitor)

In the observations which involved relatively non-emotional issues and calm, businesslike clients, the clients generally looked at ease through the entire interview. In other observations, where the client was not encouraged to discuss their emotions, they tended to look nervous and less at ease throughout the entire interview. We observed that some pre-FAInS solicitors did not necessarily provide the reassurance that the client seemed to want. For instance, during one meeting the client was obviously struggling to control her emotions. At one point she became quite tearful, and her body language suggested that she was very tense and anxious. The solicitor passed her a tissue, but did not say anything.
Nor did the solicitor ask her how she felt, but instead the meeting focused only on legal issues. By the end of the meeting the client looked just as tense and worried as she had at the beginning.

The clients who appeared to be looking for the opportunity to express their emotions, but were not encouraged to do so by their solicitors, were both male and female. For the most part, these cases involved clients who had recently separated. The solicitors acting in these cases tended to be less experienced. The most experienced pre-FAInS solicitors appeared the most willing to let their clients talk for a while, before bringing them back to the issue at hand. These solicitors were also more likely to discuss the need to develop a relationship of trust with the clients, and to stress the need to ensure that the client felt as if they had been listened to. The more experienced solicitors tended to explain that they varied their approach depending on the nature of the client and their relationship. For instance:

They [the clients] are completely different. They are confused, upset, they haven’t come to terms with it. Sometimes the first that they know that something is going on is when they get a letter from the other side. And these, they are often men. They are caught unawares. And they sometimes, they just go into denial, and dig in their heels. You need to give them a bit of a push, try and get them to accept that they will have to take some form of action. They sometimes can’t believe that this can be happening to them. And I guess there are some others who want to do something, but they aren’t really sure what. They are unhappy, and maybe something has happened to make them think ‘I’ve had enough’, but they aren’t all that sure that this really is the end. These clients, they don’t necessarily want action. Some want someone to talk things over with, to try and articulate how they feel. Sometimes they just want to know their options, what they could do, and to get some information. (experienced female solicitor)

By contrast, some of the less experienced pre-FAInS solicitors appeared to adopt more of an issue-centred approach, rather than a client-centred one. For these solicitors the state of the client appeared less important, and instead they tended to describe their role as family lawyers as primarily involving identifying issues:

They come and present their heap of problems to you, and expect you to pick out the problems and tell them that, right, ‘This is a legal problem. This is how we solve this, this is how we sort these other problems out for you.’ They just come in with a whole bag of problems and expect you to then sort it out for them. (less experienced female solicitor)

In just over half of the observations of FAInS first meetings, solicitors were encouraging their clients to express their emotions. These FAInS solicitors talked to their clients about their emotions, allowing them to get things off their chest before moving on to other issues. They attempted to get the client to ‘open up’ in a belief that a client’s emotions are relevant to the case, thus enabling clients to broach a topic that otherwise was too difficult or sensitive to discuss directly. Like the pre-FAInS observations, most of the FAInS meetings in which the solicitor actively encouraged their clients to discuss their emotions involved clients who had recently separated. In these cases, the solicitor asked their client how they felt about the relationship, whether there might be a possibility of reconciliation, and how they felt they were coping. In addition, solicitors discussed other personal matters which were important to the clients, such as post-natal depression, problems with alcohol, drugs and/or gambling, and their experiences of being subjected to domestic violence. As in the pre-FAInS observations, clients were sometimes reluctant to admit that they had experienced some of these problems until they were prompted by their solicitor to open up.
In general, FAInS practitioners displayed the same range of skills and strategies when encouraging their client to discuss their emotions as they had during pre-FAInS practice. Solicitors listened actively to their clients, provided direct statements of sympathy or empathy, and were reassuring. When providing reassurance, solicitors appeared careful to be supportive and encouraging but, at the same time, not to promise anything they might not be able to deliver. The solicitors generally allowed their client to talk for a while, before trying to focus their client.

The only really notable difference between the pre-FAInS and FAInS observations of clients who were actively encouraged to discuss their feelings was that, during the pre-FAInS observations, solicitors did not ask how the child felt about the situation. By contrast, three FAInS solicitors asked the client how they thought the child felt about the client’s separation.

We observed FAInS meetings in which the client attempted to discuss their emotions but were cut off by their solicitor, or the solicitor had changed the topic or spoken over the client. As in the pre-FAInS meetings, the clients involved in this type of client–solicitor interaction appeared to be tense throughout the entire interview. They alluded to non-legal and emotional aspects of their lives which the solicitor did not follow up, and by the conclusion of the meeting they appeared somewhat quiet and withdrawn. In one case, the client attempted to express to the solicitor the emotional effort it had taken to come in to see him. She said ‘It has taken all I had’, but the solicitor made no response. This client appeared to be looking for some form of emotional support or validation from the solicitor which she did not receive. She kept saying that she was not sure if she had done the right thing, but the solicitor did not respond. Despite this, most of the FAInS clients who were interviewed felt that their solicitor had allowed them to talk. One told us:

… bless her, she’s ever so nice, she really makes you feel welcome when you go in to see her, she really does … she helps me – you know, lets me talk. (resident father, five children)

Several FAInS solicitors explained that it is important to establish a sense of rapport with the client right from the beginning of the first meeting, and so they delay talking about public funding and eligibility until later in the meeting:

I ask them what they’ve come in for, to start … It is no good, it is not a good time to fill in forms. (very experienced female solicitor)

I would let them talk to start. I would not immediately rush into getting them to sign a legal help form or getting their details, or asking for their marriage certificate, starting to take a detailed pro-forma for a divorce – I think that I would give them time to talk, personally. Get comfortable. I think people appreciate that, because they are nervous and tense. If you begin immediately to ask very formal questions in terms of the pro-forma, and say ‘I have got to get this legal aid form filled in’, then the process becomes very sterile. (very experienced male solicitor)

In several of the FAInS observations, the solicitor turned to the forms or starting asking factual questions if the client became particularly upset. One notable difference between the pre-FAInS and FAInS observations was that FAInS solicitors were less likely to allow their client to launch into their narrative immediately. Instead, most looked over the client information form, and some were also more likely to fill in the public funding forms at the beginning of the interview. Some clients did indeed appear impatient to tell their story. Several became distracted from answering the solicitor’s questions, and would start to tell
the solicitor about their problems, and the solicitor would have to rein them in. Nevertheless, FAInS providers often acknowledged the importance of enabling clients to speak about their situation, and sought to reassure clients that they would have an opportunity to speak during the meeting.

**Discussing Non-legal Issues: Pre-FAInS**

As we noted in Chapter 1, Hazel Genn’s research has demonstrated that family law clients may present their solicitor with a specific legal issue, but underlying this issue there is often a ‘cluster’ of other issues, which may include other legal issues as well as non-legal problems.\(^{158}\) One of the objectives of FAInS was to encourage solicitors to explore with their clients the cluster of problems. The FAInS was based on the assumption that if the client is offered a holistic service that helps them deal with all the issues they face, they are more likely to reach a resolution that endures than clients who are provided with assistance in resolving a specific legal issue which constitutes only a small part of their overall problem.

Our observations of pre-FAInS cases demonstrated that it is often difficult to distinguish clearly between legal and non-legal issues in family law cases. The legal issues solicitors and clients discussed in the cases that we observed are summarised in Table 7.1. In addition to these issues, solicitors also discussed a large number of factors relevant to the case. These are summarised in Table 7.2.

| Legal issues discussed by solicitors and clients during pre-FAInS observations (N = 30) |
|---------------------------------|-------------------------------------------------|
| Property/financial issues/matrional home | 15 |
| Grounds for divorce/separation/divorce order | 14 |
| Contact | 13 |
| Residence | 9 |
| Child protection | 6 |
| Specific issues (relocation, taking child on holiday, passports, change of surname) | 4 |
| Adoption | 1 |
| Parental responsibility | 1 |
| Total | 63 |

In most of the cases that we observed, the ‘other issues’ listed in Table 7.2 had a clear bearing on the case and had a strong legal focus. For example, solicitors would discuss the client’s experience of being subjected to domestic violence by the other party as part of their discussions about resolving a contact issue. In cases involving a client who had recently separated, the solicitor would often begin the interview with a discussion about the client’s immediate housing needs.

Table 7.2  Other issues discussed by solicitors and clients during pre-FAInS observations (N = 30)

<table>
<thead>
<tr>
<th>Issue</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic violence</td>
<td>9</td>
</tr>
<tr>
<td>Client’s mental or physical health</td>
<td>8</td>
</tr>
<tr>
<td>Factors influencing the other party’s behaviour (e.g. drug use, alcohol abuse, gambling)</td>
<td>7</td>
</tr>
<tr>
<td>Client’s housing needs</td>
<td>6</td>
</tr>
<tr>
<td>Child support/maintenance</td>
<td>6</td>
</tr>
<tr>
<td>Income support (e.g. tax benefits)</td>
<td>5</td>
</tr>
<tr>
<td>Client returning to work/延长工作时间</td>
<td>5</td>
</tr>
<tr>
<td>Specific needs of the children (e.g. disability)</td>
<td>4</td>
</tr>
<tr>
<td>Childcare arrangements</td>
<td>3</td>
</tr>
<tr>
<td>Client’s ‘support networks’</td>
<td>3</td>
</tr>
<tr>
<td>Total</td>
<td>56</td>
</tr>
</tbody>
</table>

Only in a few cases (7 out of 30) did solicitors concentrate on a very specific legal issue, and in most of these instances the case involved a problem with contact. In these cases, the solicitor just focused on a single issue, and cut off the client if they attempted to discuss any other issue. These solicitors indicated to their clients that their discussion was to be ‘focused’: ‘I’m not interested in that, I’m only interested in what I can tell the judge’; ‘I think you’ve lost the point here’; ‘We need to focus on the current situation’; ‘We are only looking at the factors that will be considered by the court’. These solicitors appeared to be attempting to work within a relatively narrow legal framework.

The majority of solicitors, however, discussed a range of issues with their clients even though they were working within a legal framework. These solicitors appeared to take a broader view regarding the issues that could be included with this framework. Several solicitors appeared to have a mental checklist of issues that they worked through, which ensured that they had a ‘holistic’ picture of the case. This checklist included issues such as wills, joint tenancy, tax benefits, income support, maintenance and pensions, and for these solicitors going through all these issues was part of providing a good-quality legal service.

In several instances, the solicitor appeared to step out of the legal framework. In these cases, they generally indicated clearly that they were discussing non-legal issues, telling their clients ‘We’ll get to the legal issues in a minute’, or ‘Let’s talk about some other issues’. They then discussed issues such as the client’s behaviour, the client’s need for retraining so that they could get back to work, childcare arrangements that were available in the local area, and the impact of the other’s party violent and controlling behaviour on the client’s mental health. Solicitors tended to instigate these discussions at the beginning of interviews, before starting to focus the client on more legal issues.

**Discussing Non-legal Issues: FAInS**

The legal issues discussed by solicitors and their clients during our observations of FAInS cases are summarised in Table 7.3. Other issues that were raised during our observations are presented in Table 7.4.
Table 7.3 Legal issues discussed by solicitors and clients during FAInS observations (N = 40)

<table>
<thead>
<tr>
<th>Issue</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grounds for divorce/separation/divorce order</td>
<td>18</td>
</tr>
<tr>
<td>Property/financial issues/matrimonial home</td>
<td>18</td>
</tr>
<tr>
<td>Contact</td>
<td>16</td>
</tr>
<tr>
<td>Residence</td>
<td>8</td>
</tr>
<tr>
<td>Child protection</td>
<td>5</td>
</tr>
<tr>
<td>Specific issue (taking child on holiday, relocation)</td>
<td>2</td>
</tr>
<tr>
<td>Parental responsibility</td>
<td>2</td>
</tr>
<tr>
<td>Adoption</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>70</td>
</tr>
</tbody>
</table>

Table 7.4 Other issues discussed by solicitors and clients during FAInS observations (N = 40)

<table>
<thead>
<tr>
<th>Issue</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child support/maintenance</td>
<td>10</td>
</tr>
<tr>
<td>Domestic violence</td>
<td>10</td>
</tr>
<tr>
<td>Factors influencing the other party’s behaviour (e.g. drug use, alcohol abuse, gambling)</td>
<td>10</td>
</tr>
<tr>
<td>Child support/maintenance</td>
<td>10</td>
</tr>
<tr>
<td>Specific needs of the children (e.g. disability)</td>
<td>9</td>
</tr>
<tr>
<td>Client’s mental or physical health</td>
<td>9</td>
</tr>
<tr>
<td>Client’s housing needs</td>
<td>8</td>
</tr>
<tr>
<td>Client returning to work/extended working hours</td>
<td>6</td>
</tr>
<tr>
<td>Income support (e.g. tax benefits)</td>
<td>5</td>
</tr>
<tr>
<td>Client’s ‘support networks’</td>
<td>2</td>
</tr>
<tr>
<td>Childcare arrangements</td>
<td>2</td>
</tr>
<tr>
<td>Cultural issues surrounding marriage</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>82</td>
</tr>
</tbody>
</table>

The number and types of other issues discussed by solicitors and their clients do not appear to have changed much after solicitors became FAInS practitioners. Within FAInS practice, solicitors were perhaps more likely to discuss the specific needs of children than solicitors doing pre-FAInS work, although this change could have been the result of many other factors, such as the type of legal issues also under discussion.

Only six solicitors (out of 40) kept their client very tightly focused on the issue at hand, a slight reduction on our pre-FAInS observations. Again, it is possible that this reduction is due to a number of factors other than just FAInS practice. As in the pre-FAInS observations, solicitors tended to discuss only a single issue if the case involved a specific problem connected with contact.

**Being Client-Centred**

Our data suggest that, prior to their involvement with FAInS, many solicitors did not adhere to the type of approach that would usually be identified as being client-centred. Approximately half of the pre-FAInS solicitors we observed tended to use interviewing techniques that retained control over the interaction with the client, such as sticking to a tight interview structure and using predominantly closed questions. These solicitors appeared to be concerned primarily with identifying the legal issues involved and did not necessarily conduct the meeting in a way that encouraged the client to discuss their
broader concerns, including underlying emotional issues. Very experienced solicitors were more comfortable in allowing their clients to express their emotions, and were likely to want to ensure that they had developed a rapport with the client from the outset, rather than simply focusing on the issues.

Solicitors practising family law appeared to have a rather broad understanding of what types of issues may fall within a legal framework. Most solicitors appear to have regularly discussed a range of legal and non-legal issues prior to being involved in FAInS, and their involvement in FAInS has made no discernible difference to the types of issues raised in initial meetings with clients.

While FAInS does not appear to have had a major impact on the way in which solicitors interacted with their clients, it does appear to have impacted on their approach in the first meeting, and we have noted changes in practice. The FAInS practitioners generally adopted more client-centred interviewing techniques and allowed the client to have a greater input into the meeting, rather than retaining tight control. It is possible that the difference may be a result of solicitors adjusting their practice to accommodate the new forms involved in FAInS, rather than of an effort on their part to move towards more client-centred lawyering. Even those solicitors who were using the client information form did not really embrace it as offering a more client-centred approach. For the most part, they viewed the new forms as an instrument for collecting personal details from clients, rather than as a means by which clients would be encouraged to define and clarify their problems. Nevertheless, the professional development sessions encouraged solicitors to be more open and more interested in non-legal issues, and we were able to discern subtle shifts in practice towards the approach advocated by FAInS during the first meeting with a new client.
Chapter 8  The Use of Personal Action Plans

Angela Melville and Karen Laing

As we have noted in earlier chapters, clients who could remember their personal action plan were inclined to regard it as a useful document to have, although few had actually used it to provide information to other agencies and professionals. In this chapter we take a closer look at a sample of the PAPs provided by solicitors in respect of clients who had consented to participate in the research, in order to gain a clearer understanding of the ways in which solicitors used PAPs. Normally, the PAP was introduced to the client at the conclusion of the first meeting, and was intended to encourage the client to stay focused on key issues and take responsibility for resolving issues independently, record the actions to be taken by the client and the solicitor, and provide a record of key concerns. The LSC expected that the client would retain a copy of the PAP and show it to other service providers who might get involved in helping the client (e.g. mediators), thus avoiding the client having to repeat the particulars of his or her situation.

During the course of the pilot programme, the design and the intention behind the PAP evolved. In the pre-pilot, it was conceived primarily as a document intended to aid the client to move between referrers, whereas in the full pilot it appears to have been primarily conceived as a document that promotes client responsibility and empowerment. During the professional development days solicitors were provided with guidance about how to fill in the PAP, and given some examples of completed PAPs during the training. They were also encouraged to type the information rather than handwrite the PAPs, which might then prove difficult to read. The design of the PAP also changed. The pre-pilot PAPs contained several headings:

1. The name of the client.
2. ‘My current situation’.
3. Priorities.
4. ‘My next steps will be to …’
5. Date of next contact with solicitor (if agreed).

As a result of learning from the pre-pilot, the LSC changed the headings for the PAPs used during the full pilots so that they became:

1. Background information.
2. Key issues.
3. Action to be taken by client.
4. Action to be taken by solicitor.
5. Other issues.

In this chapter, we discuss how the PAPs were used in both the pre-pilot and the main pilot.
**Personal Action Plans in the Pre-Pilot**

During the pre-pilot, we analysed 213 PAPs in respect of their content. Most of the PAPs received during the pre-pilot came from Cardiff, with one firm in particular producing as many as 83. The main purpose of our analysis of PAPs at that stage was to explore variations in content, to see how PAPs had been completed, and to determine the extent to which they matched the expectations laid out by the LSC in the professional development pack provided to solicitors.

The explanation given by the LSC for the drafting of the PAP was as follows:

> As an essential part of the provision of family advice and information, suppliers will be drafting (where and if appropriate) a Personal Statement. These documents will be designed to aid the client in moving between referrals effectively and without the need to give basic information and to re-explain their situation and the information, support or advice they seek.

Personal statements are not designed to rehearse the client’s position or to allege behaviours in regard to the client’s partner, but to provide general information in respect of the client (name, address, etc.) and the issues about which client would like information, advice or support. It is further recognised that the statements are, in part, a developing document and will require updating.\(^{159}\)

Given this rather broad description, it was perhaps not surprising that the PAPs returned by solicitors varied greatly in terms of how they had been completed and the extent to which they fulfilled the expected purpose. It was clear from our analysis that individual solicitors had taken a view about how to use and complete the PAP for their clients and that they then followed a pattern. As a result, each PAP completed by the same solicitor was very similar in terms of format, the level of detail provided, and whether referrals were made and recorded. In other words, we could detect the existence of solicitor ‘style’ in the PAPs. For example, some solicitors used a narrative style and the PAPs were full of detail, whereas other PAPs were very concise, almost schematic in format.

There were two main approaches to stating the client’s current situation. The predominant one was to summarise and capture the complexity of the situation in a concise way. The following are examples of statements in the PAPs which exemplify this approach:

- Separated from husband. Help required re debts.
- Unhappy with the marriage but not sure if I want a divorce at this stage. No children involved.
- Ongoing difficulties over daughter’s contact with her father. Concerned about the effect it is having on the child.
- Separated from partner and father of youngest child. Not clear whether relationship finally over. Contact not working.

The attempt to provide a concise summary of a client’s situation resulted, in several cases, in there being very little information, making it difficult for the situation to be understood fully by a third party. For example:


Want to sort out divorce and child support.

The other predominant approach to describing the client’s current situation was to give a detailed account, written as a personal narrative (often taking up more space than is provided on the form). The following are examples of this approach:

I live with a man called A.B. We are not married. We have been in a relationship for 6 years but we have only lived together for 2 years. I own the house that I live in. It is in my name. I bought it at a discount from the Council 4 years ago. I have always paid the bills etc. I believe my relationship with A. is over but he refuses to leave my home. My 16 year old daughter and I are staying with friends. I want him to leave so I can return. I am on anti depressants.

I am married to C.D. Our marriage has been honest. We have a son, E.F., dob 1/1/97. I have two children – G. and H. (7 and 11) from a previous relationship. At the moment H. lives with her dad but I do see her in the week-ends. Social services have been involved in the past and I have recently admitted that I have a problem with alcohol and for 9 weeks I have been to AA meetings. I haven’t drunk for 9 weeks. I feel strong enough to commence divorce proceedings. I am worried about my husband’s reaction.

I am married to I.K. We have been married for 6 years or so. He has a drink problem. On the 24th July when he was drunk he came back to family home. He was drunk and he assaulted me. I do not want to call or involve the police.

**Stating the Client’s Priorities**

Overall, the section regarding the client’s priorities illustrated solicitors’ efforts to prioritise clients’ problems. In most cases where there was more than one issue they were also numbered, as in the following example:

1. To start divorce proceedings.
2. To start addressing financial matters.
3. To address the situation so far as the children are concerned.

Most, but not all, of the identified priorities were confined to the area of clients’ legal needs. Some, such as the following, were not:

1. To explore whether there is a possibility of a reconciliation.
2. To ensure that the children are as least affected as possible by the situation.

In a few cases, the priorities were stated in terms of absolute expectations. For example:

I want my husband to give up drinking.

In the case of the highly schematic PAPs, the priorities were usually a simple reiteration of the client’s current situation, as with the following example:
My current situation: Want to sort out divorce + child support. 
Priorities: Divorce + Child support.

In some cases, the solicitor’s priorities were included among the client’s priorities, suggesting a limited understanding of the purpose of the PAP (i.e. who it is intended for and how it should be drafted). For example, the following remarks were found in two PAPs in respect of the client’s priorities:

Obtain more information to clarify client’s needs.

Represent client at forthcoming hearing.

**The Client’s Next Steps**

In respect of the client’s next steps, most PAPs were confined to aspects of the client-solicitor relationship, being used to note the very next step to be taken by the client and, in most cases, the solicitor. In about a third of PAPs, the next steps indicated that the client should provide the solicitor with further information or details, or should consider the (legal) advice given by the solicitor in the first meeting. The following are examples of the next steps listed in six PAPs:

To provide my solicitor with the following information + documents.

Await to hear from my solicitor who will retrieve old file and then make another appointment.

[Solicitor to] obtain file from previous solicitor and advise further once [they have] reviewed the full documents.

My solicitor will draft divorce papers; My solicitor will get a copy of my marriage certificate and will contact me a.s.a.p.

Think about the advice I’ve been given and consider my next steps.

Keep an eye on things.

In a considerable number of PAPs, ‘applying for public funding’ was mentioned as a next step. In most PAPs, the writing of a solicitor’s formal letter to the other party involved was mentioned under ‘next steps’, and any further actions seemed to depend on the outcome of this letter:

My solicitor will drop a line to my husband; To deal with house sale; Re-consider my position.

Solicitor to write to spouse and try to persuade him to attend mediation.

Referrals to other services were mentioned as next steps in approximately a third of the PAPs. Examples of how these were recorded include the following:

My solicitor will write to my wife and refer us to RELATE.

(Solicitor’s next steps:) Write letter to husband; Refer to mediation; Refer to RELATE; Seek referral via GP to counselling.
To get my solicitor to: Refer to debt counselling; To draft a will; To write to the CSA.

My solicitor will refer me to the Women’s Safety Unit for help and support.

In some PAPs it was not clear who was going to take the initiative in making a referral, as, for example, in the following two cases:

To think about self-referring to RELATE and/or an appropriate support group or getting my solicitor to refer if I feel it is appropriate.

Go to Mediation – re: daughter (contact); Try to resolve issues re: housing benefit – if Housing Help Centre can’t help me, return to my solicitor who will refer me to someone else who can.

The date of the next contact with the solicitor was omitted in approximately half of the PAPs, most frequently being replaced by: ‘to be appointed’, ‘when appropriate’, ‘when more information will be available’, ‘a.s.a.p.’, ‘after I’ve considered my options’, or ‘after other solicitor’s response’.

From the evidence from the pre-pilot, we concluded that the PAP was not being used as a comprehensive plan which laid out a client’s needs and the actions to be taken. It was used primarily as an aide-memoire in respect of the client’s first appointment with the solicitor. Although some immediate ‘next steps’ were often recorded, once these were accomplished the PAP would be out of date. We advised that the PAP should become a living document which the client and solicitor can refer to, update, and use to provide a brief synopsis of the key issues and the processes for dealing with them. The follow-up interviews with FAINs clients conducted by NatCen and those with FAINs solicitors conducted by the Bristol team during the pre-pilot confirmed the findings stemming from our analysis of PAPs. With these findings in mind we looked again at the use of PAPs in the full pilot.

**The Full Pilot Research Process**

Solicitors in the second phase of the full pilot were asked to send a copy of each PAP and any amended/updated forms to the research team. During a six-month period between 1 June 2004 and 30 November 2004, PAPs were completed by solicitors in respect of 1,456 FAINs clients, some 95 per cent of those for whom we received a Record of First Meeting form. No reasons were given on the Record of First Meeting forms for why a PAP had not been completed for the remaining 5 per cent of clients. Ninety-two per cent of clients who possessed a completed PAP consented to a copy being sent to us, with the result that we received 1,218 completed PAPs.

The likelihood of a client having a completed PAP was not influenced by the area in which their lawyer practised, their gender, marital status or ethnicity, or whether they had a disability. The likelihood of their having a PAP was also not influenced by the solicitor’s gender, whether the lawyer had taken part in the pre-FAInS phase of the research, or whether the lawyer had made a referral elsewhere.

Those clients presenting with divorce issues were less likely to consent to share their PAP with the research team (89% as against 93%, p<0.013), as were those clients with financial or property issues (88% as against 93%, p<0.004). Further, women were somewhat less likely to consent than men (90% of women consented, as against 94% of...
men, \( p<0.009 \). Those clients whom the lawyer stated were from a minority ethnic group were also significantly less likely to consent to share their PAP with us (84% of clients from non-white ethnic minorities consented to share the PAP, as against 92% of white clients, \( p<0.009 \)). The profile of clients who consented to share their PAP is not especially unusual, as other researchers have demonstrated that women\(^{160}\) and respondents from minority ethnic groups\(^{161}\) are sometimes more reluctant to participate in research. Nevertheless, the overall consent rate was very high, and the clients who were willing to share their PAPs were generally representative of all FAInS clients.

We could not analyse over 1,000 PAPs, so a sample of 200 client PAPs were randomly selected, following required sampling procedures, for in-depth discourse analysis. We decided to draw a sample of 200 PAPs as we believed that this number would be sufficient to answer our research questions. We are aware that family law cases are often highly variable, and we wanted a sample large enough to allow an examination of the impact of different types of cases and the influence of local legal culture on the ways in which solicitors use the PAPs. Our analysis provides some insight into how solicitors and their clients completed the PAP. It cannot, however, provide a complete picture of this interaction. The data on the Record of First Meeting forms indicated that the selected clients were not significantly different from the clients whose PAPs had not been selected for qualitative in-depth analysis in terms of gender, age, marital status, employment status, ethnicity, disability, the issues of concern, the services they had already used and whether they were referred elsewhere by their solicitor. Clients in the sample ranged in age from 17 to 74. Approximately a third were men, half were receiving Income Support or Jobseeker’s Allowance, and only 12 per cent were categorised as being employed full-time. The majority of clients (93%) were applying under the legal help scheme, 7 per cent were applying for legal representation, and 7 per cent were applying for emergency representation.

We supplemented our discourse analysis with reference to the analysis of our interviews with solicitors, observations conducted during the first meetings between solicitors and clients, and observations of meetings where solicitors provided feedback about FAInS to the LSC. We have also drawn on analysis of data provided by NatCen in respect of its telephone survey with 414 FAInS clients between January and June 2005, approximately six months after the client had attended their first meeting with the FAInS solicitor.

**The Intended Social Effects of the Personal Action Plans**

According to Fairclough, discourse analysis is essentially aimed at analysing texts with a view to their social effects.\(^{162}\) Fairclough also states:

> Textual analysis is also inevitably selective: in any analysis, we choose to ask certain questions about social events and texts, and not other possible questions.\(^{163}\)

---


\(^{163}\) ibid., p. 14.
In order to analyse the PAPs we had first to determine the social effects they were intended to deliver. These were most clearly articulated by the LSC in the guidance notes provided to solicitors and during the FAInS professional development days held in each of the FAInS pilot areas during April 2004.

The guidance notes for the PAP state:

This is a document part of the FAInS approach of encouraging the client to take some responsibility and enabling you and your client to take some responsibility and enabling you and your client to draw up plans together. The Personal Action Plan should be used as a case management tool and be presented in a way that is clear for the client, acting as an aide memoire, so that following each meeting they are clear about the key issues, progress and the actions that both you and they need to take.

The Personal Action Plan should record factual information rather than rehearsing the client’s position or allegations against their partner.

This document can also assist clients in moving smoothly to other agencies or services of choice without having to re-explain circumstances or repeat baseline information. Where this is the case, it is essential that you obtain the client’s signature. You should also agree with the client whether all or part of the information recorded on the Personal Action Plan should be forwarded to the referral agency.

During FAInS training the trainers ran through the PAP in terms of what they required solicitors to do, the headings that appear on the PAP, and how they might potentially impact on a client’s behaviour. The PAP was to be completed at the end of the first interview and, if appropriate, updated throughout the case using an additional Progress Form. In preparation for the full pilot, solicitors were not provided with an example of a completed PAP and were told that there was no set way of completing the form. Instead, they were encouraged to use the PAP in whatever manner best suited them, although they were again encouraged to type up the forms rather than handwrite them as they would be easier to read and look more professional.

The PAP was described as being ‘owned’ by the client, and it was intended that it should be completed by the solicitor in co-operation with the client, rather than being written entirely from the solicitor’s point of view. This process would start the client thinking about what actions they needed to take, rather than the client being left with the impression that the solicitor would provide all the solutions. Clients were also required to sign the PAP, and in this way they were seen as endorsing the form, as well as making a commitment to fulfilling the actions listed.

The PAP was also intended to provide a means of communicating the client’s story to any support services to which they were referred. It was described by the trainers as the ‘client’s travelling plan’, which the client uses in order to avoid repeating their story. The trainers explained that some clients lack confidence, or are too upset and embarrassed to repeat their ‘painful’ story to another agency. In some cases, when clients are sent to a number of agencies, the PAP would obviate the tedium of repeating the story for each referral.

Our analysis of the PAPs produced during the pre-pilot suggested that solicitors adopted two main approaches to the statement concerning the background to the case. They would either provide a concise summary, which would often be very difficult for a third party to follow, or they would provide a very detailed account, often in the form of a narrative. It
would appear that the background statements written by solicitors during the full pilot also fall into distinct categories.

**Biomedical/Issue-Centred Approach**

Nineteen per cent (N = 38) of the personal background plans provided very little, and in some cases no, background information. The background statements in these PAPs usually consisted of a very short phrase and often referred only to the main issue at hand (e.g. ‘contact’, ‘marriage breakdown’, ‘parties have separated’, ‘matrimonial home’, ‘grounds for divorce’). These statements are not self-explanatory, in that it would be impossible for someone unfamiliar with the case to gain an idea of the causes and nature of the client’s problems, and they did not provide any idea of what the client wanted.

This conceptualisation is akin to the way in which patients are conceptualised within the biomedical, or disease-centred, approach which has traditionally dominated the medical profession. Doctors who work within this model diagnose the patient’s problem by concentrating solely on the physiological source of the patient’s symptoms. This diagnosis effectively omits the patient’s presentation and understanding of their symptoms, and the doctor constructs the patient’s symptoms as a pre-given condition calling for a pre-defined course of action. Thus, it becomes very difficult for the patient to contradict the doctor, who is constructed as an expert who cannot be questioned. Within this model, the doctor is active and dominant, whereas the patient is passive, dependent and ultimately dehumanised.

It would appear that some lawyers take an issue-centred approach to their clients, which is akin to the biomedical approach, when drawing up the PAPs. Clients’ understandings of issues are unaddressed, and instead their stories are repackaged as legal problems. The way in which solicitors identify the issues is relevant to the world of law rather than to the world of the client, and the client is left little room for contradiction or the exercising of control.

Most of the background statements do not refer to the client using any form of personal pronoun or substantive (e.g. ‘you’, ‘I’, ‘Mrs Smith’, ‘the client’). It has been argued that when doctors identify a patient simply by their symptom, rather than by any form of personal address, they effectively omit the patient from the doctor–patient interaction. The patient’s point of view, understanding of the problem, and inputs into solutions all become irrelevant. Likewise, background statements that do not refer to the client’s identity at all effectively remove the client’s perspective from the record.

Within the biomedical model, however, symptoms are seen to have physiological causes and effects which have no connection with other problems. Presumably, an issue-centred approach would also fail to connect the client’s immediate presenting legal issues to the underlying cause of their problems. One of the aims of FAInS is to encourage solicitors to

---

167 Nijhof, G., op. cit.
see that the presenting legal ‘symptoms’ are possibly connected to other problems in the client’s life. It would appear that these PAPs were not achieving this aim. While the background statements may achieve the goal of clarifying the role of the solicitor, this role is constructed in a manner that leaves little scope for client independence, responsibility and empowerment.

These kinds of background statements would not allow the PAP to be used a travelling document, since they convey no sense of the client’s story to a third party. The limited use of the PAP as a travelling document was also highlighted in the results of the telephone survey with FAInS clients. Only 13 per cent of FAInS clients who attended a face-to-face meeting with a referral service said that they showed their PAP to someone at the service.

Some solicitors explained that they did not put much detail into the PAP as clients can become distressed after reading a detailed, written statement concerning their case. They claimed that clients can become upset, dwell on the other party’s behaviour, and generally ‘work themselves up’ if too many details are written down. Some solicitors also considered the PAP to be overly intrusive, and suggested that their clients were not comfortable putting down details concerning sensitive issues such as domestic violence. They also felt that clients may be uncomfortable allowing this information to be shared with another service, as the following remark illustrates:

I am concerned with how much background to put in. What if the client wants to keep some of the background material confidential?

Some solicitors stated that by the end of the initial meeting clients often feel swamped by all the information they have received and the forms that need to be filled in. In their opinion, completing a detailed background statement is asking too much of a client who is already distressed and feeling overwhelmed:

What if a client is being swamped by all the forms that we have to go through … They don’t understand why I can’t get on with it, they don’t see that this [the PAP] is in any way connected to them.

No, I don’t do the personal action plan with them, I run through it briefly and agree the details with them, but I don’t write it up then and there. I do a summary as part of my file note, and then move the summary to the personal action plan. This means that the personal action plan is duplication.

What I tend to do, and I am again not sure if I am supposed to do it this way or not, we identify together what it is that we are supposed to do and so forth, and it is all noted down in my handwritten notes. And then I will dictate a detailed attendance note, and I will dictate the action plan. I will send it to the client in duplicate, asking them to read it and confirm that that’s what we agreed, and to sign a copy and send it back.

Several solicitors explained that they simply do not always have the time to complete a detailed PAP:

I cannot … see how you can [complete the PAP], having taken instructions, gone through everything that you want to go through with the client. And, obviously, they ask you questions, you are answering questions, you try to deal with what they are raising. To then say ‘Right, let’s put all of this down, and agree to an action’. You don’t have the time. You couldn’t possibly. Well, you would only see three clients a day.
A total of 43.5 per cent (N = 87) of the PAPs provided background statements that listed personal details concerning the client, such as the children’s names and date of birth, the parties’ marital status, and the approximate value of the marital home. The information required for proving eligibility for public help, such as the types of benefits the client receives, their income, tax credits and child support, was provided in several background statements. These PAPs provided no information about what the client wanted, nor did they give any background about the issues raised by clients. In many cases, the solicitor referred to the client according to their role in the case, usually as ‘the client’ or ‘our client’. To continue with our analogies drawn from medical sociology, the role of clients here is akin to the ‘sick role’ described by Talcott Parsons. According to Parsons, when a person becomes ill they take on a submissive role where they are expected to seek professional advice, adhere passively to treatment, and turn over control of their bodies to the medical professional. A ‘good patient’ is compliant, trusting, uncomplaining, undemanding and submissive. These PAPs assist in clarifying the roles of client and solicitor. It could, however, be argued that they do not achieve the aim of promoting client responsibility, independence or empowerment. In addition, these PAPs would also have limited value as a travelling document since, while they convey personal information about the client, they do not give any idea of the client’s story.

These PAPs had a somewhat impersonal tone, although in interviews solicitors generally stressed the importance of being aware that each client is different, and that they attempted to adjust their practice to suit the individual needs of the client. There is little evidence that solicitors depersonalised their clients; rather, they are used to referring to them as ‘clients’ in an interactive professional–client framework.

Interviews and observations with solicitors also provided insights into how these PAPs were usually produced. It seems that many of the PAPs were filled in after the client had left the office, with the solicitor cutting-and-pasting information for the PAP from their attendance notes. Thus, the personal information contained in the attendance note is reproduced in the background statement. Solicitors appeared to do this in an effort to avoid what they perceived as being needless duplication and to reduce the amount of time taken to complete the PAP, as the following remarks show:

I started typing up the personal action plans myself, but I don’t tend to do so now, unless it’s urgent. Mostly, I dictate them and the girls have the pro formas on their computers. It took me a while to get a system that works, but now if I dictate the background first, the girls can cut and paste the first part of the attendance note into the first part of the personal action form and it stops that duplication.

I think that solicitors are being stretched too far. You just get to the end of the first meeting, after an hour or an hour and a half, sometimes longer, the first meeting lasts 20 minutes longer for FAlnS, and then you need to do the PAP. It duplicates too much of what we have already asked.

The trainers acknowledged that some of the material in the PAP was covered in the client care letter. They also explained, however, that client care letters are often very long, can be confusing to clients, and may be written in an idiom that clients do not necessarily understand. After using the PAPs, some solicitors told us that clients may find the PAP easier to read and understand than the client care letter:

The problem is that very few clients read beyond the client care letter, but the personal action plan is nice and simple. I like to keep my personal action plans short and simple. People don’t like to read, they don’t get their information from reading anymore.

I think it clarifies things sometimes, it’ll focus their mind on what you’re doing. And they probably won’t go out as confused as what they may have done before, because you’re focusing on certain things, ‘you’ll do this’, ‘you’ll do that’, like to write to the other side’s solicitors, to write to social services, to make an application to court. So that might focus their minds on that and they may remember more by you doing that.

**Patient-Centred/Client-Centred Approach**

The second main approach to completing the PAP appeared to be rather more client-centred. A third (37.5%, N = 75) of the background statements consisted of a narrative describing what had been going on in the client’s life that had led them to seek legal advice. Most of these background statements identified the key issues and recorded personal details, and also provided a statement of the client’s ‘story’. These background statements were more self-explanatory, in that it was possible for a third party to gain an idea of why the client was seeking legal advice. Thus, these PAPs could function as a travelling document.

While these background statements were written by the solicitor, most were written in a way that did not question the client’s presentation of the fact. For example, statements included those such as ‘[The other party] had seen the children regularly, usually on a Sunday, but his threatening and abusive behaviour has continued …’. These background statements read as if the client were presenting their case from their own point of view.

Not all the solicitors presented the background statements in this way. Some had written the PAP in a way that emphasised that the solicitor had listened to the client, but had not necessarily taken on the client’s point of view, and were commonly phrased as ‘The client feels/says/believes’. Phrases such as ‘It is understood/explained/confirmed’ and ‘It appears to be/seems to be’ were used regularly. In several instances, the solicitor provided their own commentary, and their tone suggests a degree of scepticism about the validity of the client’s story. For example, phrases such as ‘It seems bizarre …’, ‘This seems odd to me …’, ‘The client does believe that he is alcoholic …’, ‘If this is the case … ’and ‘On the face of it …’ were found in some PAPs.

Solicitors who produced these ‘narrative’ background statements tended to refer to the client by name. For the most part, the client was referred to formally (e.g. ‘Mrs Smith’), although in some cases the solicitor had referred to the client by their first name. Several solicitors, such as the one below, explained that they address the client by their first name in order to develop rapport:

> You need to be able to maintain a distance, not to let it become personal, but at the same time you need to be able to listen. I don’t like to become too familiar with my clients, although I do use first names. I know some lawyers don’t like that, but I like to use their names.

Several solicitors appeared to use other linguistic devices in order to diminish social distance. For instance, a number of the PAPs contained statements that reflected the client’s language, such as ‘[The client] pops in to see the children’; ‘[The client] is nipping back occasionally to the house’, ‘[The client] simply wants a quick divorce’. A
few PAPs referred to the client’s emotional state: ‘The client is very concerned’; ‘The client is devastated’; ‘The client feels that arrangements are unfair’; ‘Client is worried’. Some provided recognition of the problems the client was experiencing, such as ‘The marriage has been going terribly wrong’, ‘The parties have had difficulties’ or ‘The marriage has faced problems’.

Lawyers who tended to produce these ‘narrative’ PAPs were more likely to complete the background statements with their client during the initial interview. In contrast to the background statements that present the key issue or a list of facts, these background statements appear to be more client-centred. They give a greater sense of the underlying cause of the client’s problem and prevailing emotions, generally present the issues from the client’s point of view, and address the client in a manner that stresses that the solicitor has acknowledged the client as an individual rather than merely as a legal case or ‘the client’.

**Turning Client’s Narratives into Legal Texts**

As we have noted in earlier chapters, our observations of initial meetings between clients and solicitors showed that while most (although not all) solicitors allowed a client to tell their story, this occurred within a structure that is determined by the solicitor rather than the client. The background statements in the PAPs also appear to be highly structured, this structure being produced by the solicitor. They invariably started with the client’s current marital status, followed by some key facts, a short history of the relationship, and key issues and problems faced by the client (legal and non-legal). Some finished with a statement of what the client wants or needs, the client’s current options or what the solicitor is going to do. In some instances, the solicitor also flagged up issues that would need to be addressed in future meetings, such as whether the client needed to write a will or if there was a need to sever a joint tenancy. The way in which solicitors might shape their client’s narrative into a given structure was also stressed in interviews:

> I don’t have a pro-forma form, but the structure is still there. First, get all the personal information, everything that is needed for the divorce petition, then ideally give advice at the end, although this isn’t always the case depending on the client.

Some solicitors also considered that the PAP assisted them in giving structure to the interview with their client and that it assisted in organising their files. Several solicitors felt that the PAP would be especially useful for less experienced solicitors. One experienced solicitor told us:

> … to some extent we’ve now got these structured documents. It’s been easier, I suppose, to some extent. I simply just put it on to these documents … Maybe now it all looks a bit neater. It all is done a bit better, maybe, in some respects. But certainly the younger solicitors … I’m not sure that it was something that [they would be] familiar with, so I think it is probably a very good thing in terms of ensuring that the younger solicitors, as they come through, are doing the various things that they must do.

Just under a third (N = 62, 31.1%) of all the background statements offered some recognition of what the client wanted. The remaining PAPs, however, provided no idea whatsoever of the clients’ desires. Some simply reinforced the solicitor’s role as providing advice and direction to the client. These statements contained the solicitor’s advice to the client or provided a statement of what the solicitor intended, such as ‘I will do …’, ‘I advised …’. These also tended to stress the client’s acceptance of the advice
and their compliance with the directive role of the solicitor, and contained phrases such as ‘The client accepts …’, ‘The client agreed …’ and ‘The client admits …’.

It might be expected that, if clients were to write the PAPs themselves, they would produce very different background statements. Research has consistently stressed that clients’ narratives are essentially about pain, bitterness, and betrayal.\textsuperscript{170} Other researchers have noted that family lawyers take the raw substance of the client’s narrative and transform it into a legal text that identifies and clarifies the issues.\textsuperscript{171}

We noted in the pre-pilot that individual solicitors appeared to adopt a particular view as to how they should produce the PAP, and then they kept to this style so that each PAP completed by each individual solicitor followed a similar pattern. The same was observed for many of the PAPs produced during the full pilot, although solicitors from one pilot area in particular tended to produce more individualised PAPs. Most of the other background statements, however, showed less flexibility and, once they had developed their own style for producing PAPs, solicitors stuck to that regardless of the issues or the client. Similarly, the dominant doctor-centred models of medical practice have also been shown to lack flexibility, with doctors maintaining their own style regardless of presenting problems or patient behaviour.\textsuperscript{172} This does not necessarily mean, however, that lawyers are not concerned about providing an individualised service, just that it is not always reflected in the PAP.

Observations revealed that solicitors generally stress to their clients the need to reduce conflict, to act in a ‘reasonable’ and ‘sensible’ manner, and to focus on reaching an eventual outcome that suits the long-term needs of all the parties involved. These efforts at reducing conflict also appeared in some of the PAPs, usually in the form of encouraging the client to see the situation from the other party’s point of view. For instance, solicitors had written ‘The client feels guilty about stopping contact’, ‘The client thinks that the other party is a brilliant mum’, ‘The client would like to apologise to the other party for causing them stress and upset’, ‘The client recognises [the] other party’s need for housing’, ‘The other party was devastated’, ‘There has been an amicable separation’, ‘There seems to be a misunderstanding’. The role of family lawyers in ‘educating’ clients about realistic expectations and reducing conflict has also been highlighted in other research.\textsuperscript{173}


Exploring Issues

Following the background statement, the PAPs have a section labelled ‘key issues’. In our sample of 200 PAPs, solicitors had recorded a total of 403 issues (Table 8.1). The major issues were contact, divorce and protection from violence.

<table>
<thead>
<tr>
<th>Issues</th>
<th>Number of PAPs</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact</td>
<td>84</td>
<td>21</td>
</tr>
<tr>
<td>Divorce</td>
<td>61</td>
<td>15</td>
</tr>
<tr>
<td>Protection from violence</td>
<td>54</td>
<td>13</td>
</tr>
<tr>
<td>Financial issues</td>
<td>42</td>
<td>10</td>
</tr>
<tr>
<td>Housing</td>
<td>25</td>
<td>6</td>
</tr>
<tr>
<td>Residence</td>
<td>23</td>
<td>6</td>
</tr>
<tr>
<td>Property</td>
<td>20</td>
<td>5</td>
</tr>
<tr>
<td>Maintenance/child support</td>
<td>17</td>
<td>4</td>
</tr>
<tr>
<td>Parental responsibility</td>
<td>13</td>
<td>3</td>
</tr>
<tr>
<td>Debts</td>
<td>8</td>
<td>2</td>
</tr>
<tr>
<td>Reconciliation</td>
<td>7</td>
<td>2</td>
</tr>
<tr>
<td>Specific issues relating to children</td>
<td>6</td>
<td>2</td>
</tr>
<tr>
<td>Court proceedings</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>Personal/relationship counselling</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>Severing joint tenancy</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>Care of children</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>Adoption/change of name</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>Counselling for children</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Mediation</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Other party’s alcohol problem</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Prohibited steps</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Other non-legal issues</td>
<td>9</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>403</td>
<td>100</td>
</tr>
</tbody>
</table>

Solicitors were asked to identify the client’s three main issues of concern on the Record of First Meetings. These key issues appear to be very similar to the issues identified in the PAPs, those identified most frequently being contact, divorce, protection from violence, and issues relating to property and finances.

One of the aims of FAInS was to encourage solicitors to explore both legal and non-legal issues faced by clients. For the most part, the types of issues recorded on the PAPs are legal issues, although some solicitors also referred to clients’ broader problems and needs. These included: the need for personal and relationship counselling; counselling for children; the other party’s alcohol problem; pension forecasting; help dealing with the police; cultural pressure to reconcile; problems with employment; the client’s alcohol problem; and resolving immigration status. It would appear that not only do issues...
‘cluster’, but also family lawyers acknowledge that their clients face a broad range of different problems, demonstrating the value of a diagnostic interview.

Another aim of the PAP was to clarify issues, and in 124 of the PAPs in our sample the solicitor had simply identified the key issues without adding any substantial extra comment: for example, ‘contact and harassment re the same’, ‘contact issues’, ‘divorce/children/debts’. In seven PAPs, the issues section had either not been filled in or contained only a reference to the background statement. In the remaining 69 PAPs, the solicitor had provided additional comments. For the most part, these comments consist of a short statement about what the solicitor intended to do next, such as ‘To apply for residence order’, ‘To deal with divorce proceedings once issued’. In some instances, the statement referred to what the solicitor considered the client needed, for example ‘She needs a non-molestation and occupation order’, or to a future action that may be necessary, for example ‘Client may have a potential assault claim’, ‘May need a PSO under Children Act 1989’.

Some of the issues sections contained a question, such as ‘What is the best way to achieve … parental responsibility …?’, ‘How can the [children’s] needs and best interests be protected?’. In this way, the eventual goal of the case is established, but the process by which the goal is achieved was left open. It also appeared that some solicitors used this format as a means of managing their client’s expectations.

Often, solicitors have presented the issues in the form of a list, suggesting that they had made an effort to prioritise their clients’ concerns. In addition, some solicitors had numbered the items in the list. This presentation appears to fit well with the intention of clarifying issues and moving clients out of the ‘fog’.

**Actions**

If the PAPs are to assist in achieving the aim of promoting client responsibility, it may be reasonable to expect that the types of actions clients are to perform would stress client initiative and ownership. The client actions recorded in our sample of PAPs are summarised in Table 8.2. Most frequently, the PAPs suggest that clients were assigned ‘no action’. In these instances, the solicitor had made remarks such as ‘no action’, ‘not applicable’, ‘none required’, ‘none required at the moment’, or ‘nothing at the moment’. Observations of solicitors and their clients, however, suggest that ‘no action’ is more complicated than it first appears. The client may want to go away and think about their options and absorb the advice given. This action (‘consider their position’) was recorded on sixteen of the PAPs.

According to the solicitors, clients are either decisive, in that they have made a decision concerning what they want even if they are not entirely sure how to achieve their goal, and they expect their solicitor to take action, or else they are unsure of themselves, vague, often upset, and want information which they can take time to absorb. The following remarks illustrate this:

> Clients come in for general advice, they want to think about their options. For these clients, it is incredibly patronising to say to them ‘This is going to be your action’.

Some clients want to talk. They want advice, information and to know their options. But they don’t want action. It is a big decision. You can’t force the client – they will act when they are ready, they need time. Maybe the marriage is not over. Maybe they have come to see you to try and shock the other party.

They [the clients] often don’t know what they should do. Some want guidance. Some want to get some information and then go away and think about it.

<table>
<thead>
<tr>
<th>Action</th>
<th>Number of PAPs</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Take no action</td>
<td>49</td>
<td>18</td>
</tr>
<tr>
<td>Provide documentation required for public funding application</td>
<td>45</td>
<td>16</td>
</tr>
<tr>
<td>Contact another agency</td>
<td>42</td>
<td>15</td>
</tr>
<tr>
<td>Provide other documentation</td>
<td>31</td>
<td>11</td>
</tr>
<tr>
<td>Consider their position</td>
<td>16</td>
<td>6</td>
</tr>
<tr>
<td>Contact police/solicitor if future problems arise</td>
<td>13</td>
<td>5</td>
</tr>
<tr>
<td>Attend court</td>
<td>9</td>
<td>3</td>
</tr>
<tr>
<td>Obtain other party’s address</td>
<td>9</td>
<td>3</td>
</tr>
<tr>
<td>Keep a diary</td>
<td>7</td>
<td>3</td>
</tr>
<tr>
<td>Talk to other party</td>
<td>6</td>
<td>2</td>
</tr>
<tr>
<td>Obtain file from previous solicitor</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>Not contact the other party</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>Approve petition/affidavit</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>Deal with debts</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Allow contact to go ahead</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Protect children</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Change locks</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Prepare details of unreasonable behaviour</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Freeze accounts</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Change telephone number</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Keep correspondence from other party</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Stand up to other party/not be bullied</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Other</td>
<td>13</td>
<td>5</td>
</tr>
<tr>
<td>Total</td>
<td>276</td>
<td>100</td>
</tr>
</tbody>
</table>

These remarks were also backed up by our observations. In some meetings between solicitors and clients it was obvious that the clients felt overwhelmed by the extent of the information and advice that they were given. In these instances, the solicitor often explained to the client that they did not need to do anything for the time being except think about the issues, read the client care letter, and get back to the solicitor if they had further questions. It also needs to be remembered that the PAPs were prepared at the first meeting between solicitor and client. Observations suggest that at this stage it is often too early for the client to take action. In many initial interviews, solicitors stressed to their clients that they had ‘only put a toe in the water’, ‘only just got the ball rolling’, or that ‘we have long way to go’.

The second most common action recorded consisted of clients providing documentation in order to prove public funding eligibility. In interviews, most solicitors stated that clients often do not remember to bring in the necessary documentation. Several solicitors
also remarked that they find the PAPs useful in emphasising to clients that they need to provide proof of income before the solicitor can commence any work on the file.

In 31 instances, clients were asked to bring in other documentation unrelated to their public funding status. This documentation consisted of the marriage certificate, further details required for full financial disclosure, property valuation, birth certificates, and copies of court documents from previous proceedings. Overall, bringing in some form of documentation made up over 40 per cent of all the client actions recorded in our sample of PAPs.

In 42 instances, the client was expected to contact another agency. The 65 different agencies that were mentioned in these PAPs are listed in Table 8.3. The most common service mentioned was family mediation, followed by a Social Services Department, usually in relation to concerns about children’s care, and the Local Authority, usually in relation to housing issues. There is a long list of other services that were less frequently called upon, including Citizens Advice Bureaux (generally for debt), services connected with mental health issues, general practitioners (also generally for referrals to a mental health service), and mortgage advisors. These other services reflect the clustering of issues surrounding family law problems, including housing, debts, mental health, access to benefits, child support, and the need to ensure personal safety.

Haavisto argues that client activity in legal cases is often limited to providing information, and lawyers rarely facilitate clients being active participants in their own legal case. Our analysis of the PAPs suggests that this may also be the case with many of the FALInS files, at least at the point of the initial interview. For the most part, clients were limited either to considering the advice given or to providing the documentation necessary to fill in the public funding forms. The PAPs appear to do little to direct clients towards becoming empowered to resolve their problems in the long term, although it is possible that solicitors start to facilitate the client’s active participation in their own case later on. We noted that clients were expected to be more active if the case involved issues concerning property or the matrimonial home, in which case they were to seek a valuation or talk to a mortgage broker, or if there were issues concerning housing, in which case the client was typically advised to contact the Local Authority concerning accommodation.

Table 8.3 Agencies to be contacted by the client

<table>
<thead>
<tr>
<th>Agency</th>
<th>Number of PAPs</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family mediation</td>
<td>10</td>
<td>15</td>
</tr>
<tr>
<td>Social Services Department</td>
<td>8</td>
<td>12</td>
</tr>
<tr>
<td>Local Authority Housing Department</td>
<td>7</td>
<td>11</td>
</tr>
<tr>
<td>Mental health centre/team, personal counselling</td>
<td>5</td>
<td>8</td>
</tr>
<tr>
<td>Citizen Advice Bureaux</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>General Practitioner</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>Mortgage advisor</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>Child Support Agency</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>In-house solicitor (debt, employment)</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>Police</td>
<td>3</td>
<td>5</td>
</tr>
</tbody>
</table>

Private housing  3  5
Consumer credit/debt management  3  5
Women’s Aid/refuge  2  3
Alcohol and drug support counselling  2  3
Home Office  2  3
Contact centre  1  2
Relate  1  2
Total  65  100

It was also apparent that clients were assigned more actions if the case involved allegations of domestic violence. In 39 instances, clients’ actions included contacting the police or solicitor if any problems arose, keeping the children safe, changing the locks on the house, changing telephone numbers, keeping a diary of incidents, and contacting women’s aid or a refuge. Two solicitors had also recorded that the client should try to not allow themselves to be bullied by the other party.

Solicitors’ Actions

Following the section for client actions, the PAPs have a separate section for solicitor actions. The solicitor actions recorded in our sample of PAPs are summarised in Table 8.4. Excluding ‘no action’, the sample recorded a total of 227 different actions to be performed by clients, as against 272 actions to be performed by solicitors.

<table>
<thead>
<tr>
<th>Actions</th>
<th>Number of PAPs</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Send a letter</td>
<td>105</td>
<td>36</td>
</tr>
<tr>
<td>Draft/file petition</td>
<td>56</td>
<td>19</td>
</tr>
<tr>
<td>Contact another agency</td>
<td>36</td>
<td>12</td>
</tr>
<tr>
<td>Apply for public funding</td>
<td>26</td>
<td>9</td>
</tr>
<tr>
<td>No action</td>
<td>18</td>
<td>6</td>
</tr>
<tr>
<td>Obtain/retrieve previous solicitor’s file</td>
<td>13</td>
<td>5</td>
</tr>
<tr>
<td>Ring other party’s solicitor</td>
<td>11</td>
<td>4</td>
</tr>
<tr>
<td>Represent in court</td>
<td>9</td>
<td>3</td>
</tr>
<tr>
<td>Conduct further legal research</td>
<td>8</td>
<td>3</td>
</tr>
<tr>
<td>Other</td>
<td>8</td>
<td>3</td>
</tr>
<tr>
<td>Total</td>
<td>290</td>
<td>100</td>
</tr>
</tbody>
</table>

Whereas most commonly clients were required to take ‘no action’, solicitors were assigned ‘no action’ in only 18 of the PAPs. In some of these cases, the solicitor had simply written ‘nothing’, ‘none’, and ‘not applicable’. In some others, the solicitor had used the PAP to emphasise to the client that they could come back if the case progresses or they need other advice; for example, ‘nothing at this stage, but client is to return if issues change’. Several solicitors explained that they like to describe their service to the client using the analogy of a medical clinic. The client is registered with the firm, and is free to return if they have any other problems, just as a patient registered with a medical practice can visit when necessary.
By far the most common action to be performed by solicitors was the writing of a letter, which was invariably to be directed to the other party (or their solicitor).\textsuperscript{176} This action was recorded in over half the PAPs. The second most common response was to draft or file a petition. Thus, it seems many solicitors quickly take some form of action immediately after the first meeting with the client, and in a quarter of the PAPs this action consisted of preparation of a document to be filed in court. This does not automatically mean that a quarter of the cases would proceed to court, since it is possible cases may be resolved before the draft is finalised and filed. In addition, some types of cases involve the filing of documents, such as the filing of a petition in a divorce case, but do not necessarily involve court action.

Thirty-five of the PAPs recorded that the solicitor was to refer the client to another agency. This number is somewhat lower than the number of clients who were to contact another agency themselves. This confirms that solicitors often leave making the referral up to the client. It was also noted during observations of first meetings that solicitors often asked the client to make a self-referral, and while they provided the client with the necessary contact information they rarely contacted services themselves. This is borne out in the data provided by solicitors and in the follow-up interviews with clients.

One of the aims of the PAP was to produce a travelling document which clients could take to another service. Solicitors were expected to type up the PAPs and send them with a referral letter once they made a referral. Several solicitors pointed out that the PAP is useful as a travelling document in theory, but in reality it is not a practical document. Comments from solicitors included the following:

The referral forms are useful, but only if we refer. We largely only refer to mediation, and so we don’t use the PAP, as we don’t really refer.

It isn’t based on commonsense, especially if no action is needed. It is a complete waste of time, most of the time. It is fine if you find you need to make a referral, or if you need to take major action, but that isn’t the typical case. You need to write not applicable in most cases. If it is not meant to be a check that solicitors are doing their job, but to assist with referrals, then why do we need to do it if we are not referring? If I need any more information or documentation from the client then I put that down in the client care letter, so there is too much duplication and it can be distracting. The clients don’t read the client care letter as it is, and this just distracts them further.

Some solicitors explained that, in cases where clients were referred to family mediation, the mediation service had its own pro-forma referral letters. One solicitor stated:

In the right case they would be useful. If the client was going to go to an agency, it would be useful. But only if you were sending them somewhere other than mediation, as they already have a referral form. And also it makes it unfair, as only one party for mediation has the form. And also it isn’t really relevant to them. [Mediators have] their own requirements, what information they need, and their own intake process. So it is only in very, very few cases that the Personal Action Plans might be useful.

Of the 36 PAPs in which the solicitor recorded referring the client to another agency, 15 had not provided background statements, but simply summarised the main issue or recorded the key facts. Of the 42 PAPs in which the client action was recorded as self-referral to another agency, 17 lacked detailed background statements. Presumably these

\textsuperscript{176} This category only included letters that were directed to other parties, and not correspondence, such as the client care letter, that was sent to the client.
PAPs would not have saved the client from having to repeat their story, since they contained no details about why the client was seeking assistance.

The services and agencies mentioned in the solicitor actions are summarised in Table 8.5, and are broadly similar to those in the client actions. Not surprisingly, the highest number of referrals were made to family mediation, which accounts for approximately a third of referrals, followed by the Social Services Department and the Local Authority.

Not all the clients involved in FAInS had contacted their solicitor at the onset of their problems. In some instances, the case had already progressed considerably, to the extent that it might already have reached court. This was also reflected in the solicitor actions, and in nine instances the solicitor had recorded that they were to represent the client in court.

<table>
<thead>
<tr>
<th>Agencies</th>
<th>Number of PAPs</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mediation</td>
<td>12</td>
<td>33</td>
</tr>
<tr>
<td>Social Services Department</td>
<td>6</td>
<td>17</td>
</tr>
<tr>
<td>Local Authority</td>
<td>4</td>
<td>11</td>
</tr>
<tr>
<td>Unspecified ‘other’ organisations</td>
<td>3</td>
<td>8</td>
</tr>
<tr>
<td>Police</td>
<td>2</td>
<td>6</td>
</tr>
<tr>
<td>Counselling</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Mortgage advisors</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Child Support Agency</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>School</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>In-house solicitor</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Passport Office</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>DOVES</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Alcoholic Anonymous</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Children’s counselling</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Total</td>
<td>36</td>
<td>100</td>
</tr>
</tbody>
</table>

Some solicitors indicated that they would need to do further legal research. These cases appeared to be quite complex, and involved issues connected with parental responsibility, bigamy, the possibility of declaring a marriage void, children living in another country, the sale of a matrimonial home in another country, applying for an injunction against a party with a mental health problem, and a client fearing that she had contracted HIV/AIDS from her ex-partner. Other actions included arranging a private investigator to serve papers, enquiring as to the costs of making a will, facilitating the handing over of a client’s possessions, preparing a pension forecast, supporting the client as much as possible, and obtaining a marriage certificate for the client.

Not surprisingly, the types of actions solicitors recorded varied according to the key presenting issues. Solicitors were more likely to refer to another agency or send a letter if the issues involved contact, and less likely to draft a petition. Solicitors also tended to mention other agencies (generally the CSA) if the issues involved maintenance, and to have the client go home to consider their position. If the issues involved divorce or property issues, the solicitor was more likely to indicate that their next action would be to obtain public funding and to draft a petition, and in these cases clients were generally not
referred to other agencies. Most (although not all) of the actions listed for both the client and the solicitor were directed towards the immediate future, such as a providing a piece of documentation or writing a letter.

**Varying Approaches**

We found considerable differences between male and female lawyers’ use of PAPs. Female solicitors were more likely than male solicitors to refer to their clients by name. We also found that male solicitors were more likely not to have listed an action for the client, whereas female solicitors were more likely to have provided some recognition of the client’s emotions.

Our results are similar to those of other researchers, who have shown that male and female professionals tend to communicate with their clients differently. It has been proposed that, generally, men use language styles that stress dominance and control, whereas women communicate in ways that stress empathy with their clients, decrease social distance and focus on broader issues in the client’s life.177 In terms of our sample, female lawyers appeared to be more likely to communicate in a way that decreased social distance and increased rapport with the client, whereas male lawyers appeared to pay less attention (at least in the PAP) to the interpersonal relationship between themselves and the client.

It has also been suggested that male and female professionals have different practice styles. Gilligan argues that women have a different way of thinking about and resolving problems, which involves greater attention to the ethical or moral dimensions of issues than is paid by men.178 Female professionals have been shown to give more legitimacy to clients’ emotional concerns179 and to exert less control over their clients.180 Female professionals have also been shown to be sensitive to issues that directly impact on women,181 including domestic violence.182 Our analysis of the PAPs showed that female solicitors were also more likely to have identified domestic violence as an issue. This may suggest that female solicitors are more likely to deal with domestic violence cases, for instance, or that female clients who have experienced domestic violence may be most comfortable with a female solicitor. On the other hand, this difference may suggest that


\textbf{Domestic Violence}

In cases where domestic violence had been identified as an issue, solicitors tended to take on a more directive, or possibly protective, role, often stating what they thought the client needed rather than what they thought they wanted. There were also several cases in which the solicitor seems to have considered that the client required counselling, or another form of support, and again these concerns were stated in terms of client ‘needs’. For example, in one case where the client had allegedly suffered sexual abuse as a child and further abuse as an adult from her ex-partner, the solicitor stated that the client ‘needs referral for counselling’, and that she ‘needs advice, counselling and periodical support regarding the baby’. The solicitor also stated that the client ‘has never had any counselling’ in the past, and the use of emphasis highlights the solicitor’s obvious concern that the client should receive appropriate support. Solicitors were also more likely to have provided some form of recognition of the client’s feelings if the case involved issues relating to domestic violence.

Our quantitative analysis of the Record of First Meeting forms showed that clients who presented their lawyer with issues connected with domestic violence were somewhat less likely to have had a PAP completed (91% of those presenting with issues of domestic violence had a PAP, as against 96% of those who did not, p<0.006). Clients who had a matter relating to domestic violence were particularly less likely to have a PAP when their lawyer had stated that they were not expecting to see that client again, or did not know if the client would come back, and these differences tended to be most salient in the case of those clients who did not also have issues concerning children or divorce.

Many of the solicitors explained that, for some clients, discussing these issues with a solicitor for the first time may be a major step. The solicitors seemed to be highly aware that some victims of domestic violence are never able to exit from the relationship, or it may take several attempts before they are finally successful in leaving. It is possible that solicitors may be reluctant to complete a PAP for a client who has raised issues relating to domestic violence, especially if there is a possibility that the client is not likely to exit from the relationship, since they may be reluctant to aggravate the client’s domestic situation.
Local Legal Culture

There were notable differences between the PAPs depending on the pilot area, suggesting the influence of local legal culture on legal practice. In one of the pilot areas, most lawyers produced PAPs with background statements that provided a full narrative of the issue and generally referred to the client by name. Solicitors working in this area were also more likely to assign actions to their clients than solicitors working in the other pilot sites, and were less likely to have listed sending a letter as a solicitor action.

In another area, almost all the solicitors wrote background statements that listed the facts of the case and little else, and did not tend to address the client at all. In this pilot area, almost half of the PAPs recorded that ‘no action’ was to be taken by the client. When an action was assigned to the client, it was invariably to provide some form of documentation. These PAPs were less likely to have a referral to another support service listed under either client actions or solicitor actions. In the remainder of the pilot areas, the background statements tended to be more mixed.

Typing and Signing the Personal Action Plans

Solicitors were told at the professional development days that the PAP needed to be signed by the client, since this made the client feel as if they owned the PAP and had agreed to take responsibility for their actions. Some of the PAPs sent to the researchers appeared to be drafts, and not all of them were signed by the client or the solicitor. Thus, it is difficult for us to comment on the extent to which solicitors were successful in obtaining their client’s signature. Solicitors were told that they did not necessarily have to obtain the client’s signature on the spot, rather, they could have the PAP typed up later, and have the client call in to sign it later. This advice also appeared in the guidance notes:

This document should be sent to the client for their signature – you may prefer not to sign this Plan until it has been signed by the client.

When several solicitors protested that their clients would not necessarily return in order to sign the form, they were told that if they did not come back their level of commitment should be questioned – again reinforcing the intention of the PAP in making clients take individual responsibility for their case.

Observations showed that, in some cases, solicitors asked the clients to sign the PAP at the end of the first interview. Other solicitors asked the clients to return later in order to sign the PAP, or else explained that they would send the PAP to the client unsigned and ask the client either to post the form back or to bring it with them to the next meeting. At the professional development days, solicitors expressed scepticism as to whether clients would return a signed PAP, although later interviews suggested that in most cases (although by no means in all) solicitors were managing to obtain their client’s signature.

The guidance notes state that ‘[t]his document should always be completed electronically and not [be] hand written’, and this direction was given to solicitors at one of the professional development days. At all the other sessions, however, solicitors were told that the PAPs would only need to be typed if the client were to be referred to another agency. Thus, the guidance provided by the trainers was not consistent across all the professional development days.
In addition, the conception of solicitor practice expressed by the trainers often differed somewhat from the reality. In particular, the trainers appeared to have overestimated the solicitor’s access to information technologies. For instance, the trainers suggested that solicitors use voice-activated software to produce their PAPs, although observations revealed that none of those observed had access to this software.

**Progress Update Forms**

Solicitors were not asked to fill in a PAP every time they saw a client, instead they were instructed to fill in a Progress Update form if the ‘the situation had changed’. Only 14 per cent of solicitors indicated on the Six-Month Follow-Up Forms that they had completed a Progress Update. According to the telephone survey of FAInS clients only 19 per cent of respondents (23% of those who remembered the PAP) said that their PAP had been changed or added to since the first meeting. Solicitors sent a total of 127 updates to the research team. The solicitor had not put a UFID number on many of the updates, and while we have been able to assign a UFID number to most of these forms, there remain 14 updates where we have been unable to identify the client. It seems that some solicitors used the update while others did not, since only 18 solicitors sent us copies of the form. Thirty-five of the updates were provided by one solicitor, with another solicitor accounting for a further 21 updates.

The types of issues referred to in the Progress Updates are summarised in Table 8.6. Twenty-nine of the updates did not mention any new issues at all. The ‘issues’ sections in these updates were either left blank or, in some instances, the solicitor had written ‘none’. In eight of these updates, the solicitor has not filled in any details whatsoever, and instead both the solicitor and client had signed and dated a blank form.

Most of the issues mentioned in the updates related to an alleged specific incident. Almost a quarter of the updates mentioned an issue connected with contact, such as contact having been suspended or one of the parties having refused to return the child after contact. Six of the updates recorded concerns about the child’s care, welfare or behaviour. Another 14 updates mentioned an incident concerning the other party allegedly harassing or assaulting the client.

<table>
<thead>
<tr>
<th>Issues</th>
<th>Number of updates</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Problems with contact</td>
<td>30</td>
<td>18</td>
</tr>
<tr>
<td>None</td>
<td>29</td>
<td>18</td>
</tr>
<tr>
<td>Matter to be filed/already listed in court</td>
<td>24</td>
<td>15</td>
</tr>
<tr>
<td>Harassment/domestic violence</td>
<td>15</td>
<td>9</td>
</tr>
<tr>
<td>Client to attend/already attended mediation</td>
<td>14</td>
<td>8</td>
</tr>
<tr>
<td>Parties have separated/decided to divorce</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>Concerns about the child</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>Form E (financial details) to be completed</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Server instructed</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>One of the parties has relocated</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>New party has been added to the proceedings</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>CAFCASS report needed/may be needed</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Resolution of the case</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Involvement with Social Security</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Other</td>
<td>14</td>
<td>8</td>
</tr>
</tbody>
</table>
Some solicitors appeared to fill in an update as the case entered another stage. Twenty-four of the updates refer to filing the matter in court or an upcoming court date as the main issue, with a further five updates referring to the serving of papers on the other party. Fourteen mention mediation, usually when a client had been advised to attend mediation or had reached an agreement during a prior mediation session. In seven instances, the other party had refused to attend mediation, and the solicitor had indicated that they could now apply for further funding to progress the case. Some updates appear to have been written in response to a court direction, such as the need to complete Form E or obtain a CAFCASS report. In most of these updates, the solicitor had indicated that there was a need to apply for the next stage of public funding.

In some instances, an update had been completed in response to a major change in the client’s circumstances, such as the parties having separated or one party having relocated. Several update forms refer to the resolution of the case, and in these cases the parties had either reached an agreement or had withdrawn from the proceedings. Other issues listed on the updates included a new party joining the proceedings, the involvement of the Social Services Department, the house having been sold, the client having received advice from another agency concerning bankruptcy, the client wishing to remove their possessions from the matrimonial home, repossession of the house having commenced, or the child having run away.

Some solicitors appear to have used the issue section of the update in order to communicate to their client what may happen next, or provide acknowledgement of their client’s feelings: for example ‘[Client] is very disappointed that no progress has been made and I heartily agreed with him’. Several solicitors also used the updates to stress to their client the need to consider the best interests of the child: for example, ‘On any application … the Court will have as its first and foremost concern the children’s best interests as set out in a check list contained within the Act. This includes reference to children’s wishes and feelings, effect of any Order and any physical/emotional needs of the children.’

The types of actions to be performed by the client are summarised in Table 8.7. Forty-seven of the updates did not list an action to be performed by the client. Twenty indicated that the client was to contact another service, with eight of these services being family mediation. In some of these instances the update form indicated that mediation was already in train, and some also suggested that the client should attend mediation with the hope of reaching resolution. In several of the updates, however, the solicitor clearly indicated their scepticism concerning the use of mediation for the case at hand. Other services to be contacted by the client included Citizens Advice Bureaux, One Stop, an addiction unit, the GP, Relate, counselling, another in-house solicitor, the children’s school, an army family officer or padre, a housing association, a mortgage advisor and an occupational therapist.

As with the PAPs, client actions also consisted of considering the solicitor’s advice and providing further instructions, keeping a diary of incidents, contacting the police or the solicitor if further problems arose, and preparing the property for sale. Several clients were to perform tasks related to contact, which were divided between reconsidering (and possibly suspending) contact and facilitating contact between the child(ren) and the other party. Finally, there were a number of quite specific actions, some of which were short-
term (e.g. make a formal complaint about a social worker, advise a third party to obtain independent legal advice, complete tax forms) and others of which focused more on longer-term goals (e.g. try to stop taking cannabis, get a job).

The types of solicitor actions recorded in the updates are shown in Table 8.8. Actions to be performed by solicitors again outnumbered those to be performed by clients. The main form of solicitor action consisted of writing a letter, representing 55 of the actions to be performed by the solicitor. The majority of these letters were to be addressed to the other party, although letters were also to be sent to a housing association, a mortgagee and the National Health Service. Letters were generally sent to the other party in order to ascertain their position and to put forward a proposal. Solicitors often appeared to take a stronger tone with letters sent at this stage in the case than they did with letters referred to in the initial PAPs. For instance, solicitors often indicated that they were going to write a letter suggesting that if the other party did not co-operate they would have no option but to take them to court, and, in some cases, that they would then also seek costs.

Table 8.7  Client actions recorded on the Progress Update forms

<table>
<thead>
<tr>
<th>Actions</th>
<th>Number of updates</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>47</td>
<td>32</td>
</tr>
<tr>
<td>Referral</td>
<td>20</td>
<td>14</td>
</tr>
<tr>
<td>Complete forms for public funding</td>
<td>11</td>
<td>8</td>
</tr>
<tr>
<td>Attend court</td>
<td>7</td>
<td>5</td>
</tr>
<tr>
<td>Consider advice/provide further instructions</td>
<td>7</td>
<td>5</td>
</tr>
<tr>
<td>Keep a diary</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>Provide/sign other form of documentation</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>Advise solicitor if further problems arise</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>Reconsider contact</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>Discuss issues with other party</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>Find accommodation</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>Allow/promote contact</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Remove items from the property</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Prepare house for sale</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Apply to court</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Meet with family report/facilitate CAFCASS report</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Contact police if further problems</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Locate the other party</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Other</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>Total</td>
<td>146</td>
<td>100</td>
</tr>
</tbody>
</table>

Table 8.8  Solicitor actions recorded on the Progress Update forms

<table>
<thead>
<tr>
<th>Actions</th>
<th>Number of updates</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Write a letter</td>
<td>55</td>
<td>29</td>
</tr>
<tr>
<td>Draft/file documents for the court</td>
<td>26</td>
<td>14</td>
</tr>
<tr>
<td>Apply for public funding</td>
<td>18</td>
<td>9</td>
</tr>
<tr>
<td>Apply to court</td>
<td>15</td>
<td>8</td>
</tr>
<tr>
<td>Contact another service</td>
<td>13</td>
<td>7</td>
</tr>
<tr>
<td>None</td>
<td>12</td>
<td>6</td>
</tr>
<tr>
<td>Attend court</td>
<td>11</td>
<td>6</td>
</tr>
<tr>
<td>Other</td>
<td>11</td>
<td>6</td>
</tr>
<tr>
<td>Deal with service of papers on the other party</td>
<td>8</td>
<td>4</td>
</tr>
</tbody>
</table>
Since many of the updates appear to be associated with the case proceeding to court, it is not surprising that a common solicitor action consists of drafting and filing documents with the court, as well as applying to and attending court, serving documents, and dealing with a CAFCASS report. Documents to be drafted or filed include petitions, affidavits, witness statements and financial statements. In these updates, the solicitor had occasionally written that they intended to submit a particular court document, for example Form C1. While it is likely that the solicitor had explained to what this form relates, many of the updates are nevertheless written in a way that clients would not necessarily easily understand.

### Personal Action Plans – A Useful Tool?

Data provided by NatCen’s telephone survey show that 85 per cent of FAInS clients remembered the PAP, and 70 per cent of these clients still had a copy of their form. Face-to-face interviews with clients suggest that clients often keep all the documents they have received from their solicitor in a folder at home, and that they generally consider these documents to be ‘important paperwork’. Forty-five per cent of clients had discussed the PAP with their solicitor since the first meeting (53% of those who remembered the PAP), although relatively few clients (19%) said that their PAP had been changed or added to since the first meeting.

The majority of clients we interviewed thought the PAP was useful, and 85 per cent of those who remembered it thought it was ‘very’ or ‘quite’ useful. Some solicitors also felt that clients would find the PAP useful, in that it clarifies issues, defines respective roles, and sets out what the client and solicitor are each to do. Several solicitors explained that the PAPs are especially useful in providing a checklist of actions to be performed by clients, and that in their experience the majority of clients complete the tasks that are assigned to them.

It is difficult not to draw the same conclusion from our analysis of PAPs produced during the full pilot as from those drawn at the end of the pre-pilot. The PAPs appear to have achieved some of their aims, in that they defined the roles of solicitors and clients and assisted in identifying key issues, although use of the PAP may serve to construct this role in a way that supports a lawyer-centred rather than a client-centred approach. While issues are also clarified, the process of identifying issues often narrows the client’s problems into a legalistic, rather than a holistic, domain. Many of the PAPs were not jointly written by solicitors and clients – and solicitors did not encourage clients to take actions that would facilitate active involvement in their own case (at least immediately following the first meeting) – and would have limited utility as travelling documents. Thus, the aims of facilitating client empowerment, responsibility and independence do not appear to have been achieved through the use of the PAPs.
Throughout our analysis we have drawn on analogies from medical sociology, and the PAPs produced by solicitors suggest that they often take an issue-centred approach that is akin to the disease-centred approach that has traditionally dominated the medical professions. This approach supports solicitor dominance and client passivity and dependence. The traditional model of doctor–patient interaction has been criticised for being insufficient to bring about any long-term behavioural change in patients. Likewise, the solicitor-centred approaches that have been revealed by our analysis could hardly be expected to engender long-term behaviour changes in family law clients.

The PAPs show that some solicitors work in a way that stresses that they have tried to understand issues from a client’s perspective, and are attuned to the underlying causes of a client’s problems; they focus on what the client wants, and they use practices that attempt to decrease social distance and establish rapport between themselves and the client. Our analysis, however, suggests that this style of practice is not common across all solicitors. Some of the PAPs suggest that solicitors sometimes dominate their clients, pay little attention to what they want, and do not envisage them as individuals with specific problems, although our interviews and observations provide important insights into why some of the PAPs may have been written in this way, and suggest that solicitor practice may be different from that revealed in the PAPs.

It appears that the PAPs were not particularly well-conceived in terms of the aims set out for FAInS. It seems that their primary purpose was to act as an aide-memoire, with solicitors producing a list of the actions to be performed by themselves, and sometimes the client, in the period immediately following the first meeting. It remains unclear how the PAPs were to provide a more comprehensive plan that would identify the client’s underlying issues and concerns and address their longer-term needs. Those solicitors who were most strongly opposed to using the PAPs took the view that they did not sit at all well with their practice. These solicitors explained that they attempted to provide a holistic service to the client, but that this approach was not reflected in the PAP.

While many of the solicitors appeared to have reservations concerning the PAP, few were completely negative, and most appeared to have adjusted their practice to incorporate it. Their use of the PAPs, however, appeared to be due more to a sense of resignation and the need to comply with requirements set out by the LSC than to an enthusiasm for the forms. Solicitors appear to have adapted their use of the PAPs in order to reduce the amount of time they spent filling in forms, avoid duplication, and show sensitivity to the needs of their clients.

It is our belief that a few solicitors may continue to use the PAP, primarily because clients seem to like it, while others will abandon it now that the FAInS pilot has ended. It is difficult to discern any strong evidence that PAPs have markedly changed solicitors’ practice or their approach to family law clients, or that clients have really benefited.

Chapter 9  A Holistic Service: Solicitors as a Gateway to Other Support Services

Angela Melville

One of the key aims of FAInS is to offer a seamless, holistic service to clients through a single gateway. In Chapter 7, we considered the extent to which solicitors explored issues beyond the purely legal in order to help clients deal with a range of problems and the consequences associated with family and relationship breakdown. In this chapter, we explore solicitors’ attitudes towards other services and their use of them during the pilot, and clients’ perceptions of the other services they had been recommended to use.

Mediation

As we have seen in previous chapters, the agency to which solicitors were most likely to refer was family mediation. Family mediation was established in the UK in the 1970s and has been a feature of the divorce process ever since. Despite numerous efforts to encourage its use, the majority of separating or divorcing couples do not use mediation services. While most people facing separation and divorce acknowledge the benefits of a conciliatory approach to settling family disputes, fewer regard mediation as appropriate for them. One of the major obstacles has always been the reluctance of the other party to attend: both parties have to be willing and able to mediate if it is to be a viable option. Solicitors have long been considered the gatekeepers to mediation, their recommendations to use it being a significant factor in encouraging clients to try it. Over the years, increasing numbers of solicitors have taken training in mediation and, as we saw in Chapter 6, the majority of the most senior solicitors who participated in the FAInS pilots told us that they had both trained and practised as mediators. It is reasonable to assume, therefore, that the majority of solicitors who trained as FAInS practitioners were sympathetic to the role of family mediation in family law cases.

It is clear from the information about cases provided by solicitors (see Chapter 3) that mediation featured far more than any other service during discussions with clients. Yet only 14 per cent of pre-FAInS and 16 per cent of FAInS clients were given information about mediation, advised to use it or referred to a mediator. There was no significant difference in practice after solicitors began to practise as FAInS providers, almost certainly confirming that those who were enthusiastic about mediation were discussing its benefits with clients before the FAInS programme was implemented. It was probably unlikely that FAInS would herald major changes in its use. During interviews with solicitors and observations of the first meeting with clients we noted the ways in which mediation was discussed. We also talked to clients about mediation during our in-depth face-to-face interviews. We draw on all these sources of data here to shed light on the use of mediation and other services.

Solicitors’ Attitudes Towards Mediation

Solicitors were asked about their attitudes towards mediation. Almost all the solicitors who participated in the interviews stated that they referred some of their clients to mediation. Approximately half of these solicitors, however, explained that they sent their
publicly funded clients to mediation only because this is a requirement and that, in their experience, mediation offers very little benefit to these clients. The remaining solicitors were much more enthusiastic about mediation, stating that they regularly refer both their private and their publicly funded clients to mediation:

We would always [refer clients to mediation]. Of course, being publicly funded we have to anyway, but we would always offer information about mediation to every client. (very experienced female solicitor)

I have always been a supporter of mediation. It makes sense. (experienced female solicitor)

Even before I knew about mediation I had that approach. It is difficult for me to try and take away that mediation approach, and try to think in the way that other solicitors might think. But nowadays all solicitors will send their clients to mediation … it is part of legal culture here. (very experienced male solicitor)

These solicitors were more likely to be trained mediators themselves, working in a firm which employed a mediator, and referring clients to mediators whom they knew and in whom they had confidence. Two solicitors, both experienced mediators, explained that other solicitors may be able to see some of the benefits of mediation in theory, but they tend to refer only if they have actually seen mediation working in practice.

Some of the solicitors who appeared to be supportive of mediation stated that, in their opinion, the quality of mediation services had improved ‘vastly’ in recent years. Solicitors who were members of Resolution explained that they were expected to promote mediation and generally to adopt a non-adversarial approach to resolving family law disputes. The introduction of mediation training for solicitors was also seen to have improved family law practice in general. One solicitor remarked:

The introduction of mediation, the fact that a lot of solicitors have family mediation training even though they don’t practise family mediation, I think has helped [legal] practice a lot, in making people take a constructive approach. (very experienced male solicitor)

These solicitors were also more likely to have positive expectations of FAInS:

I think that the FAInS approach will fit in well with my personal approach to family law matters, and to my mediation outlook. It will fit with my way of dealing with clients. (very experienced female solicitor)

Solicitors identified a number of advantages in referring clients to mediation. The most frequently mentioned benefit was that mediation is ‘better’ than going to court, because it is less acrimonious, time-consuming, expensive and stressful. Solicitors explained that judgments are imposed by the court, whereas settlements made in mediation are negotiated and agreed upon by the parties. Mediation allows the parties to feel as if they ‘own’ the agreements and the clients have had an active role in negotiating.

Solicitors also explained that they usually point out to the client the relative advantages of mediation over going to court. They explained that mediation allows clients an opportunity to attempt to discuss issues face to face. The opportunity to talk through issues was seen to be more advantageous than an ongoing exchange of letters between solicitors. One solicitor remarked upon
Solicitors explained that mediation encourages clients to be reasonable and, since the process encourages discussing and negotiating issues, it also promotes a better long-term relationship between parents. Several solicitors also felt that mediation offers clients an opportunity to get issues off their chest and achieve emotional closure.

Almost all the solicitors, even those who were highly supportive of mediation, explained that mediation was not always appropriate. In particular, solicitors explained that cases involving domestic violence or other forms of power imbalance between parties should not be sent to mediation. Solicitors were sceptical about the value of mediation if the parties were unable to negotiate, if one party was too intimidated by the other to put forward their position, or if one party was simply too angry to be willing to talk to the other. Mediation was more likely to succeed if the parties were able to communicate and willing to talk. Most solicitors remarked that, in their experience, mediation was more likely to assist in the resolution of children’s issues, such as contact issues (although not care or welfare issues), and less useful in resolving financial issues. Financial issues were considered to be less suited to mediation, for three reasons: parties often do not have a sufficient understanding of the issues to negotiate a settlement; mediators do not necessarily have the skills to deal with financial issues; and successful mediation requires full financial disclosure, which was regarded as being difficult to obtain in mediation.

Solicitors who were less supportive of mediation generally stated that, in their experience, mediation was very rarely successful. They explained that mediation rarely went ahead as one party would refuse to attend, and even if it did go ahead, the parties had often made up their minds, to the extent that it would be impossible to achieve a negotiated settlement. Several solicitors cited examples of clients returning with agreements made in mediation which the solicitors considered to be too impractical to be useful, or simply not in their client’s best interests. One solicitor explained:

For financial issues, mediation hasn’t worked as often as I would have hoped. The agreement is not always in the client’s best interests. I have had a client who has signed an agreement that they were not happy with as they felt it was the only way to go. (experienced female solicitor)

Most solicitors who expressed reservations about using mediation felt that it only served to delay cases. This delay was caused, first, by the requirement that all publicly funded family law clients go to mediation, even if the solicitor feels that it is not going to be productive. Solicitors described the requirement that they refer clients to mediation as a ‘hurdle’ they had to get over. Secondly, solicitors felt that mediation delayed cases because the mediation process itself is time-consuming. Several solicitors, all from the same geographical location, told us that they were reluctant to advise their clients to go to mediation as long waiting lists in their area would be detrimental to their client’s best interests. Some also regarded mediation as a tactic designed to cause disruption in contact with children. As one solicitor stated:

They might be able to get a first appointment within a fortnight. Then they [mediators] have to see the other party. Then they see them together. So that is a three-to-four-week process. Which means that the father, because it’s usually the dad, has had no contact with the children for three months. The women know this. They know that they can delay contact. And then the court responds to that and requires
there to be phased-in contact because the break has been so long. Women know this, and take advantage of it. They are able to throw a spanner in the works. (experienced male solicitor)

Several solicitors also felt that the quality of mediation services was uncertain or uneven – although two of these solicitors then referred to specific mediators in their local area in whom they had confidence. Solicitors who were less supportive of mediation generally stressed that they refer clients simply because as they have to, and it appears that some of these solicitors convey this message to their clients, as the following remarks show:

We refer all our publicly funded clients simply because we have to. They should be able to just get a certificate of [legal] aid straight off without having to bother about this extra hurdle. I tell my clients first off that they have to go to mediation in order to get public funding. (experienced male solicitor)

To some of them you have to say ‘Look, I have to send you to mediation. I know it won’t help, but you need to show that you were prepared to go. So just go along with it, and then when it doesn’t work we can get on with things.’ (experienced female solicitor)

I tell my publicly funded clients ‘This is a hoop you have to jump through’. (experienced female solicitor)

With publicly funded cases we refer them tongue in cheek. We refer them to mediation, and they just send them back. It doesn’t achieve anything, except to delay the whole thing by two weeks. (very experienced female legal executive)

The solicitors who said that they thought mediation was rarely successful tended to present the difficulties with it in terms of delays or parties not attending. Solicitors who were more supportive and generally more experienced in using mediation services were more likely to suggest that mediation was inappropriate in cases involving power imbalances, especially domestic violence cases. It would appear that solicitors with direct experience of mediation were more supportive of the process, and were also more aware of the appropriate use of mediation.

**Solicitors’ Use of Exemptions from Mediation**

During the FAInS pilot period, FAInS practitioners were allowed to use their own judgement as to whether they referred a client to mediation. In other words, the requirement that a client must attend a mediation appointment before being able to apply for public funding for legal representation was relaxed. In our interviews, approximately half the solicitors stated that they were regularly using this exemption. We were told the following:

It’s nice not to have, for example, to send off an application … Not to have to worry about mediation for the client when we consider an application for public funding although we’re sending them half the time, immediately sending them to mediation anyway. (experienced female legal executive)

At least FAInS allows me to exempt straightaway, rather than going through this hurdle. Now solicitors can make a decision about whether we refer to mediation. It skips a stage. If both parties are willing to go to mediation, fine, but that is rarely the case. (less experienced female legal executive)
We sometimes use the exemption from mediation. If neither party can go or if the issues make mediation inappropriate then we can use the exemption. With the old system you had to refer, when you knew that the parties would just come back anyway. But now it is possible to bypass mediation. It has taken out that hurdle. (very experienced male solicitor)

Not surprisingly, the solicitors who welcomed the exemption and stated that they were applying it were the same solicitors as those who felt that mediation is rarely successful. The remaining solicitors, who were generally more supportive of mediation and had more direct contact with mediators, explained that they were not using the exemption. These solicitors explained that they usually referred clients to mediation as a matter of course, unless it was clearly inappropriate, and that FAInS had not changed this practice:

I think you can’t abuse this. I think mediation is there for a particular purpose. And if there’s any chance that it might work then you want your clients to go, because obviously it’s going to reduce the costs and minimise antagonism between the parties. (very experienced male solicitor)

I always use mediation – whatever, really – so that’s not changed, except we don’t have to refer to mediation now … But I still tend to refer them [clients] to mediation if I think it will work, rather than going to court. (less experienced female solicitor)

My view is, if it is appropriate to refer a case to mediation then you should refer to mediation. If it isn’t appropriate then you shouldn’t refer. I have always thought that, and FAInS has made no difference. (experienced female solicitor)

In six meetings we observed, the solicitor stated that he or she was going to refer the client to mediation. In one of these cases, the main issues at stake concerned residence and contact with a very young child and financial issues. The solicitor explained that mediation might be useful to ‘knock the financial issues on the head’, and ‘would be useful in keeping costs down’. The solicitor also explained that mediation might be useful in resolving the issues concerning the child without further fighting, and might prevent the case from getting out of control. In another case, the client had a drug problem and had lost contact with her child, who lived with the father. The client explained that she was now drug-free and wanted to re-establish contact. The solicitor explained that mediation might be useful in achieving this, and recommended a number of different services that might assist the client, including a contact centre and a local charity, and also offered to help her with her application for council housing. Both these clients appeared to be happy to attend mediation. In a third case, the client was a grandmother who explained that she has been denied contact with her grandchild by the child’s father. She alleged that the father was very violent towards both the child’s mother and the child, and that he was ‘poisoning the child’s mind’. The solicitor explained that mediation might resolve the issues, but that if it was unsuccessful they could then look at going to court.

Another client had very recently separated from the other party and wanted to ensure that he had a contact regime with his child. The client explained that he was still on speaking terms with the child’s mother, whom he described as an ‘on–off girlfriend’. The solicitor explained that mediation is a requirement, and that it would also be appropriate to this case. He did not, however, explain what mediation entailed or why it was appropriate, nor did he provide the client with any written information about it. In the remaining two cases, the solicitors told the clients that they should attend mediation. Both clients strongly objected to having to attend mediation but were told that the LSC required that they go. In one case, the client was seeking a divorce, and she was also concerned that the other party’s alleged drug and alcohol problems were having a negative impact on the children. She was also very worried that the other party would move overseas with the children.
She did not want to attend mediation as she was concerned that her ex-partner would lie and that she would cave in, but she was told by the solicitor that she did not have any choice about going.

**Observations of Pre-FAInS Solicitors**

Observations of 30 pre-FAInS solicitors’ initial meetings with clients showed that solicitors discussed mediation with their clients in approximately half of them (14). Some solicitors explained mediation by stressing the possible advantages of mediation over going to court. Solicitors explained that mediation could be less stressful and less expensive than going to court, especially if the assets under dispute are minimal. Clients were told that court should be considered a last resort, and that it could sometimes make matters worse. Solicitors also stressed that mediation could provide a more amicable resolution of the dispute, that it would help avoid fighting, and that it would avoid the ‘to-ing and fro-ing’ of letters between solicitors. During some meetings observed, the solicitor had provided the client with written material about mediation. In five instances, clients who were to be referred to mediation were given brochures describing it.

Other solicitors, however, explained that mediation represented the LSC’s ‘carrot and stick’ approach to dispute resolution. In four instances, the solicitor told the client that they thought mediation would not be successful, but that they were required to refer them anyway. In one instance, the solicitor told the client that she would have to try mediation, and that when the other party inevitably did not turn up they could then apply for further funding. This solicitor stated that he had never had a client for whom mediation was suitable. In several instances, the solicitor also stressed to the client that mediation could ‘take quite a while’, and that it was best to ‘get over this hurdle’ as soon as possible.

In another case, the client had attempted to resolve the dispute, which involved contact issues, prior to seeing a lawyer. She said that she had already attempted to persuade the other party to attend mediation but that he had refused. She had rung the other party’s solicitor and asked why he had not turned up, and was told that he was only interested in communicating via solicitors’ letters. She described the other party as being unreasonable and aggressive. The solicitor did not continue to press the client about mediation.

**Observations of FAInS Solicitors**

The proportion of FAInS solicitors who discussed mediation with their clients barely changed. Observation of 40 initial solicitors’ meetings with clients revealed that they discussed mediation in under half of them (17). The way in which some solicitors described mediation, however, did appear to change after they became FAInS practitioners. Overall, they were far more positive about mediation. In contrast to the solicitors in the pre-FAInS observations, these solicitors did not describe mediation as a ‘carrot and stick’ approach adopted by the LSC. Clients were encouraged to attend mediation, but they were not told that mediation was a requirement. Nor did the solicitors point out to clients that mediation could be a time-consuming process, or that in their experience it had never been successful. Instead, they largely concentrated on describing the potential benefits, and did so largely by contrasting mediation with going to court. Mediation was described as allowing clients to solve their problems themselves rather than having the court impose a decision. Clients were told that mediation is often cheaper, quicker and less stressful than taking a case to court, which was described as the ‘worst-
case scenario’. Mediation was also described as allowing clients to talk matters over, as a useful means of moving matters forward, and as reducing the need for solicitor letters.

In eight meetings, the solicitor explained mediation to their client but did not indicate that they were going to make an immediate referral; this practice is similar to that observed pre-FAInS. In four instances, the solicitors discussed mediation with the client but then suggested that was not really advisable. In one of these cases, the client was worried that the parties were not close enough regarding what they wanted from the case. This case involved a dispute concerning the residence of a young child and the parties had a history of conflict. In another case, the client protested that the other party would not attend mediation and that it would not work. This case was also a contact dispute, and the client described the other party as aggressive and manipulative. The solicitor responded by saying that mediation might not be appropriate. In another case, the client claimed to have been raped by the other party, and the solicitor explained that it was highly unlikely that mediation would occur. In another case, the solicitor explained that the other party appeared to be unwilling to go to mediation. The solicitor explained that mediation could have been an option but that the other party had written a letter stating that they would not be prepared to consider it.

We observed one solicitor discussing mediation with a client who was adamant that he did not want to attend. Another client said she thought mediation would not work and that the other party would not be interested in attending, was too manipulative, and would not ‘stick to the facts’. She said repeatedly ‘I very strongly believe that it won’t work’. This client had strongly protested at all the solicitor’s suggestions for resolving the case without resorting to court. At the end of the interview the solicitor reassured the client that mediation was voluntary, but she also provided her with a brochure on mediation saying that she could ‘still think about it’.

In eight meetings in which the solicitors indicated that they would make a referral for mediation, all the clients appeared to be quite happy to go. The solicitors usually asked the clients whether they thought mediation would be beneficial and whether they anticipated that the other party would be willing to attend. In each case, the client had answered ‘Yes’ to both questions. The clients’ attitudes towards mediation were somewhat different from those observed in the pre-FAInS meetings, in which a number of the clients who were referred to mediation clearly did not want to go. Clients were provided with written material concerning mediation in two of the observed cases where clients were to be referred to mediation, and in another two cases where the solicitor had raised the possibility of mediation in the future. In addition, one solicitor typed up a referral letter for the client during the first interview, and another rang the mediation service so that the client could make an immediate appointment. Thus, solicitors appeared to be slightly more proactive in referring their clients to mediation after FAInS training, and more positive about its potential benefits.

**Clients’ Perceptions of Mediation**

Turning now to consider the clients’ perspectives, we look first at clients who said they had not been told about mediation and then at those who said they had discussed it with their solicitor.

**Clients who had not heard of mediation**
In our in-depth interviews with people who had been to see FAInS solicitors, approximately half the interviewees stated that they could not recall discussing mediation with their solicitor. Some cases did not proceed to mediation because they were inappropriate as they involved allegations of serious child sexual abuse or domestic violence, or issues that needed to be brought urgently before the court. In some instances, the solicitor had not taken on the case until it had become relatively well advanced in court. In two instances the case had been resolved very quickly: one involved the solicitor simply writing a one-off letter to the other party, and in the other the parties were able to resolve the issue themselves without further assistance from the solicitor. Most of the clients who could not recall being told about mediation had discussed contact issues concerning their children with the solicitor. It is highly likely that most of the solicitors in all these cases had mentioned mediation to their clients, but it is significant that some clients had no memory of being told about mediation when we spoke to them over six months later.

Clients who had heard of mediation but did not use it

Some clients said that they could recall the solicitor discussing mediation, but had not used it. The main reason they gave for this was that the other party had refused to attend, and there was no discernible difference between pre-FAInS and FAInS clients in terms of the other party being willing to go to mediation. Several of the people we interviewed said that their lawyer had explained that mediation would provide an opportunity for both parties to sit down and discuss the issues between themselves. One FAInS client seemed disappointed that mediation had not been an option because her ex-husband had not been compelled to attend:

They said that mediation might help. We could have gone to mediation first ourselves, tried to sit down together around the same table. I had got legal aid, but not my ex, and as he wasn’t on legal aid he was not prepared to go. The mediation would have been easy as it was in the same building, upstairs from my solicitor. I had grabbed some leaflets from my solicitor’s office on my way out, and the solicitor said that it was one avenue. (residential mother, one child aged 8)

Two other interviewees believed that their partners had refused to attend mediation on the advice of their solicitors. One of these clients had seen a FAInS solicitor and believed that his partner had made ‘excuses’ in order not to attend mediation and, ultimately, to frustrate contact:

Her solicitor got hold of me and reckoned I was a big drug dealer, I was violent, I’d beat her, I was a cokehead, etc. And really it was all to do with her not wanting me to see my daughter. (non-residential father, one child aged 3)

The other man, also a FAInS client, explained that his partner had refused to be co-operative at every stage of the case. This man appeared to see his wife’s failure to turn up to mediation as a form of strategic success, in that it would further demonstrate to the judge that she was being deliberately obstructive:

I went to my solicitor for contact with my daughter and he sent me to mediation, which I went for … but my partner’s solicitor advised her not to go for it, so she didn’t go for it … If they want to advise her to go that way and she doesn’t want to turn up in court then I would think the magistrates are going to look on it that I must have attended mediation, all the court appearances, all the social services
appointments, mediation whatever. I’ve attended, been there, done it – she’s not done any of that, so at the end of the day if she don’t turn up in court when she’s summoned she’s liable to arrest and conviction. (non-residential father, seven children)

The other main reason clients gave for not attending mediation was that they themselves were opposed to it. The proportion of pre-FAInS and FAInS clients who had objected to mediation was approximately the same. Clients who had refused to attend explained that their solicitor had stressed that mediation could be a useful avenue for resolving the dispute. However, these people were adamant that they did not want to attend. One interviewee, a FAInS client, did not think that mediation would be useful because she did not want to see her partner, and she was certain that they could just as easily resolve the issues via solicitors’ letters:

I didn’t want to see him [her partner]. I [had] had enough. When I walked out I thought, that is it, I don’t want to see your face again, and I still feel like that. I understood what she [the solicitor] was saying, but I didn’t want to go to mediation. We could sort it out with a couple of letters … It took several letters between the solicitors, but it got sorted out in the end. (residential mother, one child aged 6)

A desire not to see the other party was also expressed by another FAInS interviewee who did not want to attend mediation, although it appears that the solicitor did not attempt to push her very hard and she had not understood its purpose. She seemed to confuse mediation with marriage guidance counselling, and she was not the only person we interviewed who was confused in this way:

The lawyer said that she has to ask all her clients about mediation, that it is a road that everyone needs to go down, but she didn’t push it. I honestly thought that mediation was not for me. I wanted a clean break. I didn’t want to dig up any more issues. It couldn’t work. At first my ex was homeless, living on the streets, so I couldn’t contact him. I thought that we had gone too far for mediation to help. (residential mother, three children aged 14, 16 and 22)

One mother (a FAInS client) who did not want to attend mediation said that she had been abandoned by her partner, leaving her to raise a very young child by herself. This woman was quite angry at how she had been treated and felt that her partner did not deserve to have contact with their daughter. She was not prepared to discuss the issue of contact at mediation:

Because I’ve given him chances time and time and time again, and I know if I give in this time he’ll be on his best behaviour for a couple of months and he’ll be really good, and then he’ll find something else he prefers to do and he’ll ring and say ‘I can’t have her today, I want to go out’ … And when she’s older and he’s doing that, she’s just going to get upset and asking to see him and I just don’t want him to see her until then … I know it sounds horrible, but I think it’s in her best interests really until she’s grown up … and he can see what he’s being like and he can see what he has to do to change – until then I think it’s better if she doesn’t see him. (residential mother, one child aged 2)

**Going to Mediation**

Only seven FAInS clients whom we interviewed told us they had actually attended mediation. It appears that for five of them mediation was not particularly successful. One
woman had agreed to attend mediation but had walked out of the session. She explained her reasons for leaving as follows:

What went wrong was, my husband didn't think that I had contributed anything to our marriage. We had been in a relationship for eleven years and he thought I was doing rather well out of it, which I found quite insulting because we had been together eleven years and I'd been working for nine of those full-time, and we'd bought the house together and everything. And … I actually walked away with less than what I was entitled to financially. I had enabled him to stay in our old house. He had to buy me out, but he couldn't really afford to do that unless I took less than half. And I was keen to get out, otherwise it could have taken – I was advised it could take twelve months to get the house on the market to force him to sell, and I didn't want to do that, for the sake of the boys and all of us really. So I agreed to that. But it finally broke down, because he said he wanted the boys more and I said ‘No’, because I felt our arrangement that he had [them for] three days was quite good. And he offered me money [in the mediation meeting] to have the boys more often, and that was the point at which I walked out. (residential mother, two children, both aged 3)

One man said that he had turned up to mediation with his partner and that she had simply lied all the way through the session. He was clearly frustrated by this behaviour:

She has been difficult about everything, that's the way she is … And so we both sat there, me in one seat listening and her in the other doing all the talking. And every word that came out of her mouth was a bald lie, an utter, utter lie, like you couldn't believe. She told the mediator everything under the sun. You had to be there to believe the things that she said: that I did this, and I said that, that I drank, and was aggressive, which is all an utter lie. (non-residential father, one child, aged 5)

This man had told his lawyer afterwards that he regretted having attended mediation:

And I told her [the solicitor] exactly what happened, and what she [his partner] said about me. I told her that I wished that I had never been to mediation. Don't get me wrong, I'm not a saint or anything, but I never did what she said I did. The stuff that she said about me, it wasn’t true, none of it … In the end, after I tried to say my piece, I gave up. I just sat there, and tried not to listen. I tried to shut myself off. At the end of it I thought, I am having nothing to do with this, I'm not going to sign anything. ‘You can’ – I shouldn't say this, but it is what I felt at the time – ‘you can go to hell.’ And that's what I did and that’s what I thought.

He did not attend any further mediation sessions, and in the end the case was resolved in court.

One woman who attended mediation explained that an agreement concerning her ex-husband’s contact with their children had not worked:

We decided that my ex should have the kids every second weekend: that he picks them up Friday afternoon after school and drops them off after Sunday lunch. That’s what we agreed on, and then, well, that worked for about two times, for a month. Then we were back to the same old story. He rang up, said that he couldn’t make it, that he had something else on. I can’t remember now, but probably out with his friends, something like that, the usual old story, that he wanted to pick them up Saturday afternoon. But I have a life to live too, and I have plans, and I have to be able to know what he is doing. I wanted some certainty. (residential mother, four children aged 6, 12, 13 and 15)
This mother returned to her solicitor in order to see what other options were available. According to her, the solicitor told her that the options were limited and that even a court order would not necessarily change her ex-husband’s behaviour:

He [the solicitor] said that he understood, and that he knew that I was getting frustrated, but that it would be very difficult to make my ex do what was right for the kids, no matter how much I wanted him to. He said that we could go to court and the court could make an order, but that he would probably just do the same thing anyway. That he would probably follow the court order for a while and then we would be back in the same cycle.

She had not returned to her lawyer again, and said that she was instead ‘learning to live’ with her ex-husband’s behaviour.

A father told us that he had been to mediation, which had assisted in clarifying the situation between him and his wife. He felt, however, that since he had been to mediation the case had not progressed:

We had about three or four sessions of mediation and they came up with, I suppose, a sort of résumé of the whole situation, detailing all sorts of financial aspects, access to the children, the house, etc., etc. So we went down that avenue to start with and then it sort of drifted for a while, and things were put before the two solicitors. But it’s been very slow since then and then there became issues over the children and access to the children in the spring of this year, and it sort of dragged on from there and nothing seems to have been resolved really. (non-residential father, three children aged 8, 15 and 18)

This man maintained that a financial agreement had been reached during mediation, but he had decided that it was not practical:

There was a report written up, which we both signed, which can’t be used as a legal document, but it can be used as a guide for, I think, for the way things had been agreed at the time. But having looked at it and analysed it a bit as the year has gone on, then it’s become apparent that everything would go on until [the child] is eighteen, and I’d have to sit there and sort of mull it over for the next ten years without being able to press forward really.

He was also somewhat sceptical about the solicitor’s motivation for referring him to mediation:

At the time we were both on legal aid, because I was out of work at the back end of last year and … thinking about it, reading between the lines, that was probably another way of trying to get part of the work done by another party, and then shift it back to them to let them sort of pick the bones off it really, and work on it from there. I don’t know, maybe I’m being a bit cynical saying that, I don’t know.

He had not understood why mediation might be considered appropriate, nor did he seem aware of the expectation that, as publicly funded clients, the parents would have to attend a mediation appointment anyway.

Only one client expressed very clear satisfaction at having attended mediation. She had had a previous arrangement with her ex-husband concerning contact, which had worked well until she had moved in with a new partner. At this point the contact arrangement broke down. According to her, mediation had allowed her and her ex-husband to express their feelings about her new relationship and to resume the contact regime:
Mediation was fine, it worked very well actually. We both sat down and I said that things used to work well, and that [the child] had a routine, that she liked to see her daddy, and that she was missing him. And I think, because he could see what effect it was having on [the child], that he softened a bit. I know that he perhaps is a bit jealous, but we all have to be adults about this. We are several years on now and we have both got on with our lives. But we still have a child together, and it is not right that she got caught in the middle. But he could see that and we are back to where we were before he got all huffy. I don’t know how he feels about it, but he bites his tongue. And as long as [the child] is OK, then that’s what counts. (residential mother, one child aged 11)

**Referrals to Other Services**

Prior to their FAIMS training, solicitors were asked whether they referred their clients to services other than mediation. Approximately a third replied that they did not generally refer clients to services other than mediation, or to Relate for help with marital difficulties. Some explained that they did not know a great deal about what services were available. One solicitor told us:

> I refer to, first, mediation and then, second, to marriage guidance. But otherwise, no. This may be lack of knowledge on my part. I think a holistic approach is great, but I don’t know who these other services are. I don’t know who do other things.

(experienced female solicitor)

Another solicitor explained that, he was relatively new to the area and had not had the opportunity to become familiar with other services. A third explained that he had attempted to collect information from other services, but had had little success:

> Because I haven’t had a lot of luck with those services – I mean Relate, for example – I tried to get some information from Relate. It took about three months just to get some leaflets out of them … and I couldn’t get anyone to really talk about how long things took.

(very experienced female solicitor)

Another solicitor explained that, because most clients had already sought help before coming to a solicitor, there was no point in referring them to other services. Most solicitors, however, stressed that, beyond Relate, clients had not spoken to another service prior to seeing a solicitor.

Some of the pre-FAIMS solicitors who replied that they did not tend to refer their clients to services other than mediation seemed to consider that it was not the role of lawyers to do so. They tended to stress that a family lawyer’s primary role is to help solve the presenting legal problems. These solicitors also tended to regard FAIMS as primarily requiring them to refer their clients to other services, irrespective of whether referrals were appropriate or timely. Solicitors who were less concerned about the appropriateness of lawyers making referrals to other services explained that FAIMS encouraged a non-adversarial and holistic approach to family law practice. Some anticipated that FAIMS would make no difference to their practice, as the following remark demonstrates:

> Obviously, I’m aware of what FAIMS is, is doing, and we have to direct people in the right direction for legal support, which we do anyway. If we can identify cases that are worthy of mediation then we refer them to mediation. But if we have a domestic violence incident and someone who has sat there battered and bruised, then mediation is not appropriate.

(less experienced female solicitor)
Solicitors who did not expect to change their practice generally expressed scepticism about the LSC’s motives for introducing FALInS. One solicitor stated:

That is one thing that concerns me about FALInS, that we are expected to refer for the sake of referring: moving publicly funded clients away from solicitors in order to balance the budget. And, in the end, it will be the client who suffers, and they are just pushed from pillar to post, and in the end no one will help them … The Government wants to cut the legal help bill. So if we refer on, it cuts down the bill. It is about shifting the cost. (experienced female solicitor)

All the solicitors we interviewed stressed that they faced problems when referring clients to other services. The main problem they raised related to the waiting times for some services. One solicitor discussed the problem of waiting times in relation to a local contact centre:

The waiting list can be up to three months. It’s an awful long time to wait to see your child. Especially considering the issue where (a) you have been denied contact, (b) you have then applied for public funding, and it takes four or six or seven or ten weeks. Then you issue your application and you’ve not got a hearing for another four to six weeks. Then you turn up at court and an agreement is reached to go to a contact centre. Then you have to wait another two to three months, and you go six months without seeing your children, which is a very long time. (very experienced male solicitor)

Another solicitor raised similar points in relation to Relate:

I guess there is several months’ wait [for Relate] before you just get an initial assessment, and it is then much longer to get them in. (very experienced female solicitor)

Some solicitors were reluctant to refer to services unless they were certain of their quality and had a personal contact within the service. One solicitor explained:

We refer to CAB, although I have had a client return who had been clearly given the wrong advice. I also refer sometimes to Relate and to the local women’s refuge. But you need to know someone in the service. The client likes it if you know who the provider is and if you know a particular individual within the service. You need to be confident of the quality of the service, which you can’t always be. (very experienced female solicitor)

Despite these reservations, most pre-FALInS solicitors stated that they did refer clients to other services. Solicitors were not asked to provide an exhaustive list of services, although most identified several to which they regularly referred. The most frequently mentioned services were those that provided assistance for women who had experienced domestic violence, such as Women’s Aid and women’s refuges. Other commonly mentioned services were Relate and CABx, to which clients were referred for advice on welfare benefits, debt and bankruptcy. Solicitors also referred clients to other solicitors within their own firm, especially in connection with debt and housing issues. They also mentioned that they might send clients to their GPs for counselling referrals, to social services for help with benefits, to anger management services, and to services such as Gingerbread that provide assistance with housing issues.

Prior to their involvement with FALInS, some solicitors appeared to be very proactive in urging the use of other services. For instance, some had leaflets on hand containing contact numbers of services for clients who had experienced domestic violence. Some
were directly involved with these services, attending meetings and sitting on committees. Some solicitors explained that they had solicitors in the firm who regularly sought information about other services, and then reported back to the firm. One firm had organised a visit to a women’s refuge so that they would have first-hand knowledge of the services on offer. Some solicitors had their own folders of leaflets that they had put together themselves, and we also observed that most firms had leaflets and information sheets displayed in waiting rooms and on notice boards.

Solicitors were also asked to identify any gaps in services. In response, several solicitors in two pilot areas raised problems connected with contact centres. They explained that these provided invaluable services for clients, but that some had been closed and that those remaining had long waiting lists or were working very restricted hours. A number of solicitors working in one pilot area also felt that counselling services for children were too limited. We return to this issue in Chapter 11.

Although most pre-FAInS solicitors told us that before attending the professional development days they had had few preconceptions regarding what FAInS would be like, several stated that they hoped involvement in FAInS would allow them to extend their knowledge of and contact with other services:

This is something that I am hoping that the FAInS thing will actually pull together from my point of view. That we will be able to look at what other resources are around … But to actually have a proper network where we know to send them would be beneficial. There is no other major support organisation other than social services. We don’t have a domestic violence unit, we’re a bit limited. So anything that can assist in us being able to cross-reference I think would be helpful. So that’s really one of the reasons why we decided to go down that [FAInS] route, and because, as a firm, we have made a commitment to publicly funded work, and if we’re going to do it we want to do it properly. (very experienced female solicitor)

There was the suggestion … that there would be links with other organisations that we might be able to refer clients on to – that’s got to be a good thing. We struggle … we struggle because there are none, to my knowledge anyway. (very experienced female solicitor)

The professional development days did indeed cover solicitors’ use of other services. Solicitors were asked to identify services to which they might refer clients, and each group provided a considerable list of these. The trainers recognised solicitors’ reluctance to refer clients to services if they were uncertain of their quality. They asked solicitors to identify services in respect of which they could provide a name of a particular contact. Obviously this exercise reduced the original list. Afterwards, several solicitors expressed surprise at the number and range of services on offer. Others said that their firm was proactive in discovering what other services were available. Notably, these solicitors tended to specialise in cases involving domestic violence or care issues. Some other solicitors also felt that this exercise was more useful for less experienced solicitors, but held little value for practitioners who had been working in the field for a long time:

I felt we were being told this is how we should do things and really these were things we’d been doing for years … For years and years we’ve been dealing with things other than legal problems and identifying if somebody needs to go and see somebody else about it – ‘Why don’t you go and see so and so?’ We’ve been doing it for years, and then on a training day to be told ‘Here’s a list of your organisations that you can refer to’ and whatever. (very experienced male solicitor)
I think probably if you’re an experienced care solicitor you are probably more aware than many people. I mean, not always because there’s lots around that pop up, but you get to know which [services] are the good ones and which are the bad ones as well. (very experienced legal executive)

In summary, then, 47 of the 71 solicitors said that they discussed support services, including mediation. In the pre-FAInS stage, 67 per cent of the solicitors interviewed (21 out of 31) discussed another support service, as against 60 per cent of the solicitors interviewed (24 out of 40) during FAInS practice. Thus there was very little difference between the proportions of solicitors advising clients to attend or referring clients to other support services, and the discussion of other services did not increase as a result of FAInS practice.

The types of cases in which solicitors said they did not discuss other services were quite varied. Solicitors mentioned clients who were already well into the court process and who had self-represented prior to seeking assistance from the solicitor. In these cases, the solicitor discovered during the initial interview that their client was due to appear in court in only a few days’ time. These were complex cases, and the client had turned up with a considerable amount of paperwork and the solicitor had spent a good part of the first meeting trying to sift through this and develop a timeline for the case. While the solicitor in each of these cases discussed other issues with the client, they generally focused on the pending court appearance. Other clients seemed to have a very clear idea of what they expected the other party would not be difficult, a divorce petition would largely be a formality.

There appeared to be very few differences between pre-FAInS and FAInS practice in terms of discussions about other services, although during pre-FAInS observations counselling was not raised with clients at all, whereas it was discussed with clients in four FAInS meetings we observed. In interviews, several FAInS solicitors said they were more conscious of the need to consider whether the client would benefit from counselling. Solicitors also appeared to discuss a greater range of external services available for clients presenting with financial issues during the FAInS meetings. The FAInS practitioners also asked their clients about services that they had already used more often than pre-FAInS solicitors.

One of the support services most frequently mentioned by pre-FAInS and FAInS practitioners were those for women who had been subject to domestic violence. Nevertheless, quite a number of the observations involved cases where domestic violence was an issue, and there was no mention of any services that provide assistance for these clients. Several solicitors told their clients that they should ring the police if another incident occurred but did not talk about other forms of help. Several also touched on issues concerning domestic violence but then backed off once it became clear that the client was uncomfortable. Solicitors explained that some clients can find it very difficult to talk about domestic violence, and so they tend to work around the issue until the client is prepared to talk, which may be at a much later stage rather than during the initial interview.

Client’s Views about Other Services

Some clients whom we interviewed explained that their case was relatively straightforward, and involved rather discrete, specific issues. Some felt that their case was
too minor to require assistance from another source. Other cases, however, appeared to be very complex, and involved a ‘cluster’ of legal and non-legal issues. These people had generally discussed other support services available to them at length. Some of them not only had complex problems, but also seemed to be involved with a web of support services. For instance, one of the FAInS clients commented:

I’m getting psychiatric help … We’ve got social services, we’ve got care workers, we’ve got mental health workers, we’ve got a whole heap of different people. I’m still under the mental health sectors and so they are involved. But my wife, she’s under care as well, for health reasons, ’cos she’s disabled, she has trouble walking. (non-residential father, seven children)

When asked about whether their solicitor had suggested other services that might be available, another FAInS client immediately started talking about her social worker:

My social worker, she’s quite good ’cos I said to her ‘I need someone to sort out my fencing’, so she’s going to ring the Council up and see what they can do. (residential mother, five children)

This mother did not say whether her solicitor had been instrumental in involving social services, however. She was raising several children by herself. One child was severely disabled and another had been experiencing behavioural problems at school. She explained that she had been subjected to violence by both her ex-husband and an elder son who no longer lived at home. She also said that she did not have any family in the local area, and that apart from with her social worker she rarely had adult contact.

Another woman also explained that she had received considerable support from social services:

Well, social services really took over from there because they [her children] were on the Child Protection Register. They had counsellors and workers working with them and this sort of thing, and educational welfare have been involved, social services involved – you name it, we’ve had them here. So I’m sure he [the solicitor] is very aware of all that … that input was there … There wasn’t really that need for him to push me in that direction. (residential mother, four children aged 4, 6, 10 and 12)

Several clients stated that their solicitor had discussed other services with them, but the client had not accessed these, saying that they had had no time to do so. A pre-FAInS client told us:

The solicitor did say, I can put you in touch with people and things like that, but there was really no need to this time. I didn’t have to have that … He gave me all the information and leaflets and things, but I was too busy. (residential mother, two children)

A FAInS client had discussed services that might assist her in finding a carer for her children, but had not followed up the suggestions her solicitor had made:

[The solicitor] gave me some telephone numbers for carers and things like that … I haven’t been along to any of the meetings yet but I might try and get to town more when there’s things on, and get out. (residential mother, five children)

Our data suggest that FAInS has not necessarily changed access to other support services, and that other factors, such as whether the client perceived the need for further help, were more important in determining whether a client approached other services.
The way in which clients’ perceptions may be influenced by solicitors offering information about other services, even if these services are ultimately not used, was discussed by one FAInS solicitor:

I think people are quite refreshed that somebody is trying to assist them other than with the particular legal problem that they’ve come about, by looking at other options where you’re helping them. I think it does genuinely make people feel that you are trying to help by giving them the leaflets on other things. (very experienced female solicitor)

Several people also said that they did not want to go to another service as they did not want to ‘dwell on’ or ‘dig up’ issues that were too painful and difficult to deal with. These people explained that they were also ‘busy getting on with their lives’.

Only two FAInS clients, a non-residential father and a residential mother, commented that they had sought assistance from an agency other than mediation following a discussion with their solicitor:

I’ve been to counselling and all sorts of thing. I’m just coming off the sick now, I’ve just coming off anti-depressants. (non-residential father, one child aged 3)

I spoke to the solicitor about counselling. He said that it was a good idea, and that he was glad that I had brought it up. He suggested that I talk to my GP, which I did, and to the school as well, which I had already done. I felt that I could talk to my solicitor … and he was very understanding. He was very easy to talk to – I would use him again. (residential mother, two children aged 3 and 1)

Several people explained that they had sought assistance with issues related to their case from other support groups which they had found out about through social workers, schools, doctors and CABx. These people explained that their lawyer had only discussed issues very directly related to their legal case, and had not suggested other services that they could contact. They also explained that it had not occurred to them that they could have raised these other issues with the solicitor. For instance, one man had seen a solicitor concerning a divorce and contact arrangements for the children, but had not discussed debt problems that he was also experiencing. Instead, he had sought advice from the CAB about his debts.

Several clients also identified other problems with which they needed help. Two men, both single fathers raising teenage daughters, explained that they had received support from a group for single parents. They had been receiving assistance from social workers and schools, but the group had provided them with support and advice for them as parents, as well as with adult contact which was otherwise lacking. Both of these fathers explained that the groups had been disbanded owing to a lack of members and funding and that they did not know of any other services that could provide parenting support for single fathers.

Another woman told us that she was still waiting for family counselling:

I tried to get family counselling, but the waiting list is so long … We could have benefited from more help. If I had been in a nine-to-five job I would have had to give up my job. But I have a flexible job, I have an understanding boss. But if the circumstances were different I would have lost my job. I couldn’t talk to my new partner about these things, and I am still waiting for counselling. I got a letter the other day to say that I was still on the waiting list, and did I still need help? It has been over twelve weeks. (residential mother, two children aged 1 and 3)
A number of parents also identified problems with schools, particularly when children had developed behavioural problems. These parents explained that, rather than receiving the assistance they required, their child had been excluded from school. One FAInS mother explained:

At the beginning they did make a lot of provision for – well, I say a lot, they made as much provision as they could, in that they put him [her son] on part-time hours and gradually built it up until he was back full-time. They offered him their in-house counsellor at the school so that he could go and talk to somebody and they did make certain allowances. I think where the disconnection started was where he suddenly became full-time … the counselling wasn’t happening and he managed for a couple of months perfectly OK, and then he’s gradually slid off again and exclusions were coming thick and fast. I mean, I laugh about it now because there’s no point in grieving over it, but it was a struggle. We were really struggling to try and keep him in school. (residential mother, four children aged 4, 6, 10 and 12)

One mother, a pre-FAInS client, described how her son had been abused by his father, which had caused him to become increasingly aggressive and violent at home and at school. She believed that the school and her social worker were largely ignoring the problem:

I’ve told the school that many times, I’m sick of ringing them up and telling them, but they’re saying they can’t do nowt because it’s at home he’s doing it and they’re not seeing it at school. But when he comes in from school he’s saying he had a fight, he’s hit a boy. (residential mother, two children aged 15 and 14)

The mother said that the school had referred her son to a psychiatrist, and that she had tried to explain the problems the family was experiencing:

So I told him I wanted help and I told him I was concerned. I said ‘Look, he wants to kill his dad’. I said ‘I’m sorry, but that’s what it comes to’. I said ‘I want to know what’s the matter with him’. I said ‘I don’t know what’s the matter with him’. I said ‘I’m not in his head’. I said ‘He’s banging his head on metal bunk beds’, which he was. I said ‘He’s throwing ornaments, he’s smashing my ornaments, he’s smashed his telly, he’s smashed his computer’ and stuff like that, and he’s getting strong. I said ‘He’s coming on fifteen’, which he was, ‘cos his birthday’s in September – he’s just gone fifteen – and I said ‘He’s strong and not only that he smacks … his sister, she’s gone to school with bruises.’ (residential mother, two children aged 14 and 15)

According to this woman, the psychiatrist had concluded that her son had a learning disability and said there was nothing else that could be done to assist him.

Another mother, also a pre-FAInS client, talked about schooling problems related to her son’s autism:

I was thinking of taking the school to court because they were excluding my son because he wouldn’t wear a PE kit, and part of his disability is that he won’t wear other people’s clothes, because of germs, which they knew about. But I went and spoke to her and a colleague [both teachers] and then decided to take it no further because I wasn’t in any fit state to do it. (residential mother, three children aged 12, 17 and 20)

This client finally moved her son to a different school.
A Holistic Service?

It would appear that the task of offering a seamless holistic service, in which solicitors identify other support services that might be of use to their clients, has met with mixed success. When solicitors refer their clients to other agencies, it is invariably to mediation services. We had anticipated that FAInS solicitors would be sympathetic to the role of mediation in family law cases, and indeed, some solicitors were very supportive of mediation. These solicitors were generally experienced mediators themselves, or else worked in a firm which employed a mediator. They had been supportive of mediation prior to FAInS training, however, and so their approach had changed very little.

Some solicitors with less direct experience of mediation were less supportive of it and appear to have responded to FAInS by exempting their clients from it. When FAInS solicitors referred their clients to mediation, they tended to do so because they were supportive of the process, rather than because they believed it to be a ‘hurdle’ imposed by the LSC. Nevertheless, FAInS does not appear to have made any overall difference to the number of clients being referred to mediation.

Some solicitors, prior to their involvement in FAInS, were already well connected to a range of support services, especially those providing help for clients who had experienced domestic violence. Other solicitors, however, appeared less willing to refer their clients to other agencies, and FAInS training had not changed their referring practice. Thus, solicitors who had always made regular referrals to other services had continued to do so, and those who rarely referred their clients had continued in the same vein.

Solicitors stated that they had become more aware that other services might be useful for their clients, although generally they did not think their own behaviour had changed since they had started FAInS. The only observable difference FAInS appears to have made to referral patterns is that solicitors were slightly more likely to refer their clients to counselling services.

Those clients with especially complex and interconnected legal and non-legal problems were more likely to be in contact with other support services anyway than clients with relatively straightforward issues. Clients with problem ‘clusters’ had become connected to other services largely via other gateways, rather than through their solicitor. These findings raise the question of whether solicitors are likely to provide a gateway for clients to access a range of support services. While clients seemed to appreciate their solicitor making the effort to discuss other services, very few had followed up on any suggestions that they should contact other agencies.

Our interviews and observations have also highlighted some gaps in services. Solicitors highlighted problems with waiting times for CABx and Relate and pointed to the closure, or reduced opening hours, of contact centres. Clients had experienced difficulties because of a dearth of support groups for single fathers, and in accessing counselling for their children. Several clients also reported that their children had experienced problems with education.
Chapter 10    Managing Client Expectations

Angela Melville

Family law clients are often in an emotional state when they first visit a solicitor. The process of separation and divorce is likely to be one of the most stressful people experience. In this chapter we look at clients’ expectations of their solicitor, and at how solicitors manage these expectations. We consider how solicitors and clients interpret the legal framework within which family law operates, how solicitors see their professional role, how this role is played out in interactions with clients, and how clients respond. The data for this chapter are drawn from interviews with, and observations of, solicitors, as well as from interviews with clients. Where appropriate, we have considered whether it is possible to discern whether FAInS has made a difference to clients’ expectations and to solicitors’ practice.

What Clients Expect of Solicitors

A number of studies have shown that family lawyers find their clients to be more emotionally intense than other types of legal client. Clients often want to talk about their feelings of guilt, fault, anger and bitterness. They often feel overwhelmed by their problems and expect that their solicitor will be able to lift this burden from their shoulders. Most of the solicitors we interviewed felt that clients often had unrealistic expectations about what solicitors could do for them, often believing that they possess the ability to solve all the problems with a wave of a magic wand:

Some want to just off-load all their problems onto me. They think that I will wave a magic wand and fix all their problems. (very experienced male solicitor)

They come in here, tell you what the problem is, and think by leaving the office that you will have told them that you will have everything resolved within a week, and everything will be normal, and they will be happy again. (less experienced female solicitor)

They want everything. They want their pound of flesh. They want you to make all of their problems alright again. Just wave a magic wand, and everything will magically


For this chapter we have categorised solicitors according to their years of experience as family law practitioners, as follows: ‘very experienced’ means 10+ years’ experience; ‘experienced’ means 5–10 years’ experience; ‘less experienced’ means less than 5 years’ experience.
be alright. And they want you to fix all of their problems then and there. Not even today, but yesterday. (experienced female solicitor)

They come and present their heap of problems to you, and expect you to pick out the problems and tell them that, 'Right this is a legal problem, this is how we solve this, this is how we sort these other problems out for you.' They just come in with a whole bag of problems and expect you to then sort it out for them. (very experienced female solicitor)

In our interviews with clients, we noticed that in response to questions about why they had sought assistance from a solicitor they tended to launch into a narrative describing all the problems that they were experiencing at the time. However, whereas solicitors thought that clients wanted a solution to all their problems, clients explained that they had expected to be provided with legal advice or information, and that their solicitor would help them solve their legal problem. Clients appeared to have the ability to isolate the relevant legal issues from their overall narrative, and it was the legal matters which were relevant to their encounter with a solicitor.

Several solicitors felt that their clients wanted instant action, and it was necessary for them to explain that the process of resolving a family law matter can take time. This desire for instant action was also evident in some of our interviews with clients. For instance, one FAInS client told us:

I wanted prompt advice. The marriage wasn’t retrievable. My ex had an affair with my cousin. Not just my cousin, but my best friend. I still wanted a relationship for the children. I have two children, one is ten and one is nine years old. A son and a daughter. I had made up my mind that the marriage was over, and he had as well. (residential mother with two children, aged 9 and 10)

Some solicitors commented that some clients turn up with specific issues or are quite focused and ‘businesslike’, and that these clients want the solicitor to answer their questions, and, if necessary, to act there and then. Other clients, however, are less sure where they stand, and expect their solicitor to provide them with more general information and guidance rather than specific advice. These clients do not necessarily expect their solicitor to act immediately. These variations were very evident in the evaluation of information meetings,189 which is why FAInS solicitors were expected to tailor their approach to meet the different requirements.

For the most part, solicitors were well aware of the difference between their ‘focused’ and their ‘uncertain’ clients. For example, we were told the following:

It depends on what the client wants. They often don’t know what they should do. Some want guidance. Some want to get some information and then go away and think about it. Some want you to deal with the divorce, to get on with it. (experienced female solicitor)

You get to know the different types of clients. Some are very business like. They expect you to tell them, as a solicitor, what will happen in their case. (experienced female legal executive)

And of course you get people of all different types, they are not all the same … Some will quickly tell you what the problem is. Others cannot define what the

problem is – you know, what really is the issue here. (very experienced female solicitor)

Interviews with clients confirmed that some people were very focused when they first saw their solicitor. They had a clear view about what they wanted and felt that they were able to articulate this. Three FAInS clients told us:

I had seen a solicitor on a free consultation and I knew what I wanted. I wanted a divorce. I wanted it mapped out for me, what I needed to do. It had taken me a long time to decide. Years without seeing anyone about it. I tried off my own back to sort out the marriage, we went to three sessions with Relate. But I thought that it was not going to happen, that we wouldn’t end up divorced …. I had the marital home to sort out as well. We did a lot of sorting out while we were living together. It was all amicable. We were definitely talking to each other, for the sake of the children. I was still cooking for him, we would go to Tesco’s together. I thought, what was the point of paying a solicitor, I knew about the finances, so we could sort that out ourselves as far as we possibly could. I saw a solicitor to see if the agreement was fair. But we got a lot of it done ourselves. (residential mother, one child aged 8)

The reason I approached the solicitor was because of a couple of incidents that I felt I shouldn’t have to deal with. (residential mother, three children aged 8, 9 and 13)

All I wanted to know was, if I went to court, were the court able to decide what school [my child] went to. That’s all I wanted to know. (residential father, two children aged 8 and 12)

Other clients, however, explained that they had felt very uncertain of themselves when they had first seen a solicitor. Several described a long history of being subjected to violence and abuse by the other party and felt they did not have the confidence to express how they felt or what they wanted. These clients appeared to be almost overwhelmed by their experiences, and, as the solicitors often acknowledged in our interviews, going to see a solicitor for the first time was for them a difficult step. One pre-FAInS client, who had fled to a refuge in order to escape from a violent partner, explained:

I was so scared, I didn’t know where I was and what I was doing. It took me weeks to start feeling, you know, confident again, and then I was, like, why had I suffered all these years? I could have done this years ago. (residential mother, four children)

Several solicitors stated that their clients expected them to provide reassurance and sympathy when they were particularly upset by their circumstances and in need of someone to listen to them. Two solicitors told us that female clients often expect more reassurance, whereas male clients are more likely to be ‘looking for a fight’ with their other partner.¹⁹⁰

Solicitors also remarked that clients’ expectations were often shaped by a client’s friends and families, and that clients sometimes turn up with an unreasonable view of what the law can achieve.¹⁹¹ During our observations, several clients appeared to be unhappy with the advice they were given by the solicitor and attempted to argue with the solicitor. Some of these clients stated that they had ‘read somewhere’ about the rights of family law

¹⁹⁰ Other studies have also highlighted the way in which clients’ expectations reflect gender roles. See Davis, G., Cretney, S. and Collins, J. (1994) Simple Quarrels: Negotiating Money and Property Disputes on Divorce, Clarendon Press, p. 46.
¹⁹¹ Family law clients often make assumptions based on popular knowledge or ‘folk myths’, and often these beliefs are considerably different from what is achievable within a legal framework. See Davis et al., op.cit., p. 46.
clients. In these instances, the solicitors responded by differentiating between ‘what the papers say’ and ‘what the law says’.

Shaping Clients’ Expectations: Bargaining in the Shadow of the Law

Given that many solicitors felt that their clients believed they could solve all of their problems with a wave of a magic wand, it is not surprising that all except one of the solicitors we spoke to felt that their role consisted primarily of managing these expectations. Most solicitors told their clients explicitly that they needed to be ‘reasonable’ and ‘realistic’. This finding is in line with other research, which has indicated that trying to persuade clients to be reasonable and realistic is the most important task undertaken by family law solicitors.192

It appears that solicitors conceptualise what constitutes being reasonable and having realistic expectations in two ways. First, while most family law matters are resolved without recourse to the court, solicitors still attempt to shape their clients’ expectations so that they fit within the existing legal framework. In this way, the legal system impacts on all family law matters, so that negotiations that occur outside the courtroom are conducted within ‘the shadow of the law’.193 Secondly, most solicitors explained that it was important to be ‘honest’ with their clients, meaning that they have a duty to give clear legal advice, and explain to their clients whether their expectations fitted within the legal framework. Several solicitors made remarks such as the following:

I think it is important to be honest with clients, not to give them unrealistic expectations. I tell them, ‘I’m not going to tell you what you want to hear.’
(experienced female solicitor)

You have to be honest with them. Some solicitors might promise their clients the earth, tell them that they will get everything that they want. But, in my opinion, that is irresponsible. Because it never turns out like that anyway. You have to be realistic.
(experienced female solicitor)

You have to tell them, right from the very beginning, what you can do, and what you can’t do. What … you can do as a lawyer, and what the law will allow for, and what is not going to happen. If you do that, then you save problems later on.
(experienced female solicitor)

It seems that solicitors are primarily concerned to point out to their clients what is reasonable in terms of the outcomes they should be expecting to achieve. Solicitors are also careful to ensure that their clients have realistic expectations concerning the process, especially as regards the time frame involved in the resolving of their case:

---


And you tell them the process, explain to them what is going to happen, and give them a guide towards the timeline that will be involved. That is one of the things that they want – they want a divorce that will be over with next week. And you have to tell them that it isn’t like that. Even without any complications, if everything goes straight forward, without any unforeseen problems, and the matter is uncontested, it is still going to take some time. You need to tell them this at the first interview, or at least that is what I do. (experienced female solicitor)

I think it helps by explaining what information you need from them, what the legal procedure is, and give them the timescale. Tell them that things won’t run smoothly, prepare them … If you have got a couple who are separating and they are very amicable, then you can say to them, ‘It should be fairly plain sailing.’ But, obviously, if you have got animosity, which usually comes with adultery cases, then you have to tell them that it will be difficult. Because they will be both pulling in different directions rather than pulling together. And you have to warn them that some cases don’t resolve within a year, and some can go on to two years. (experienced female solicitor)

Only one solicitor we interviewed did not explicitly state that it is important to manage the clients’ expectations. She was one of the least experienced solicitors in our sample. She stressed that a case should be managed according to the client’s instructions, regardless of whether the client’s expectations were realistic or not:

To do as you’re told. With property matters, to maximise the client’s interest … To advise the client of all their options. To let them control the decision making. (less experienced female solicitor)

Solicitors described a number of strategies they use to manage their clients’ expectations within the shadow of the law. The most common strategy involves telling a client what the court would be likely to decide regarding their case, as the following remarks attest:

You have a duty to your client to tell them what is most likely going to happen, how the court will view the case, not promise them pie in the sky. If you do that, then your client will end up being very disappointed and angry. You need to let them know right from the beginning. (experienced female solicitor)

I guess I am a little no-nonsense. If I think that they are acting in a way that is not sensible, then I tell them. If I think that we are going to get nowhere then it is better to just tell them, rather than to tell them something else, and end up with a judgement that I could see coming but isn’t in their favour. They deserve to know. I don’t mean to sound harsh, but my job is to give legal advice. (experienced female solicitor)

The longer that you do this job, and the more life experience you have, the more you know what the court will do. And then you can tell that to the client. (experienced female solicitor)

Our observations of solicitors talking to their clients indicated that telling clients what a court is likely to do is a strategy solicitors commonly use. Solicitors seemed to do this, not because they necessarily expected the case to proceed to court, but as a means of

194 It may also be that solicitors are preparing their clients for a worst-case scenario. It has been shown that most cases in the UK involving a section 8 order resolve within twelve months. Thus it is highly unlikely that a case will go on for two years. It may be possible that solicitors exaggerate the time taken to resolve high-conflict cases as a strategy for encouraging their clients to avoid animosity. See Smart, C., May, V., Wade, A. and Furniss, C. (2005) Residency and Contact Disputes in Court Service, Vol. 2, Department for Constitutional Affairs.

195 Shaping clients’ expectations by telling them what the court is most likely to decide was also a very common strategy solicitors used in research conducted by Mather et al., op. cit., p. 99.
moving the client towards reaching an agreement which they considered to be realistic and sensible.

We observed that, if a client continued to suggest an outcome with which the solicitor obviously did not agree, the solicitor often stressed that the matter was likely to be decided by the court. Some solicitors described going to court as being stressful: they told their clients that they would probably be cross-examined, and that the judge would not necessarily be sympathetic towards them. Our observations suggest that solicitors were generally successful in convincing their clients that they needed to be sensible – meaning that by the end of the initial meeting most clients appeared to be in agreement with their solicitor about the outcome towards which they wanted to move.

Solicitors tended to portray going to court in very negative terms, partly as a means of persuading their clients to reach a settlement rather than take an adversarial stance. Solicitors told their clients that going to court gave them less control over the outcome than would reaching a settlement that would reflect their own terms. Even though the solicitors were talking to clients who were eligible for public funding, they also stressed that going to court was a more expensive means of reaching resolution than reaching a settlement out of court. Finally, solicitors also appeared to use the threat of going to court as a means of persuading the other party to compromise. Several solicitors explicitly told their clients that they would write to the other party to tell them they were prepared to proceed to court if a settlement could not be reached, hoping that this letter would convince the other party ‘to be reasonable’. Some solicitors even regarded going to court as a ‘failure’.

Solicitors also described probable court outcomes in order to dampen clients’ emotions. For example, emotional clients who appeared to be focusing on the hurt inflicted by the other party were told ‘The court does not want to know about who is to blame’, or ‘The court will expect you to move forward’. Solicitors also invoked the authority of the court in an effort to get a client to listen to advice that they perhaps did not want to hear by saying, for example, ‘I am telling you what the court will think, not what I think’.

Several solicitors also rehearsed what the court was likely to do in order to stress to clients that they should be thinking about the best interests of their children. To do this they used statements such as ‘The court will look at the best interests of the child, and so that’s what we need to do’, and ‘The court is only interested in the child’s best interests’. Some solicitors explicitly discussed the children’s needs, especially in cases where specific needs such as disability existed. For the most part, however, discussions about children’s best interests were only raised in efforts to sway the client to move towards a particular outcome. Thus, talking about children appeared primarily to be a strategy solicitors used to urge the client to be reasonable, rather than a routine behaviour.

Other research suggests that solicitors often stress to their clients that the courts’ decisions may be unpredictable and uncertain. For instance, Sarat and Felstiner found that family lawyers emphasised to their clients that legal outcomes have a somewhat accidental, haphazard quality, owing to the arbitrariness of judges. They used this description of the court process to stress their own ‘insider’ expertise in knowing about local legal norms. Similarly, Hunter et al. found that family lawyers would try to persuade their clients not to go to court by describing judges’ decisions as a ‘lottery’, whereas out-of-court settlements offer predictable and tailored-made outcomes. Hunter et

---

196 Sarat and Felstiner, op. cit., Ch. 3.
197 Hunter et al., op. cit.
al. also found that family lawyers generally felt that they were able to predict the outcome of a case accurately after the first meeting with a client.

Although two family lawyers discussed with us the problem of growing uncertainty in family law brought about by increasing legal complexity, none told us that they describe going to court as a lottery. Nor did we observe solicitors using this strategy during their meetings with clients. Instead, solicitors appeared to favour the argument that the court makes decisions that are, in fact, predictable and consistent, and that, with enough experience, a good family lawyer should be able to advise their client as to the most likely outcome. They did not, however, present their expertise as resulting from privileged insider knowledge based on their knowing the personality of the judge.

The other main strategy solicitors used to manage clients’ expectations consisted of presenting options in such a way that the client was directed towards the outcome the solicitor had decided would be the most reasonable. Towards the end of the initial meeting, most solicitors discussed the options available to the client. Some solicitors told their clients that they were going to discuss the available options, but then proceeded to present their client with only one option before asking the client what they wanted to do. Other solicitors would give the client a list of options, but if the client indicated a desire to choose an option the solicitor did not consider reasonable the solicitor immediately cut them off, and refocused them on the ‘most sensible’ option. Some solicitors would question their client’s decision (with comments such as ‘Are you sure?’ or ‘I’m not sure if that is the best way forward’), until the client changed their mind. Several solicitors did not even give the client the opportunity to answer, and instead answered the question on the client’s behalf – essentially telling the client what they had chosen to do.

Shaping Clients’ Behaviour

As well as encouraging them to select certain options, solicitors also stressed to their clients that they needed to behave in a reasonable manner. By this, they appeared to mean primarily that the parties needed to ‘put aside’ or ‘move on from’ the pain and anger relating to the separation. These solicitors seemed concerned to persuade clients to think beyond their own, immediate needs, and presumably to think about the needs of their children, though this was not always made explicit. It could be argued that, given the focus in family law on protecting children’s welfare, solicitors are still providing advice within the shadow of the law. While some solicitors referred to the court while advising their clients about how they should behave, at times they appeared to step outside the legal framework.

Lawyers explained that they sometimes find it necessary to have a talk with their clients. These talks consist of telling clients that they need to co-operate, learn to compromise, and start to ‘get on with’ the other party. Lawyers also tell their clients that they need to act in a matter that is less emotional and reactive, and that they need to be calm, rational and ‘sensible’. Some solicitors stated that they stress to their clients the importance of thinking about the ‘bigger picture’ and the ‘long-term future’, as the following remarks indicate:

With the parents in family law cases, it is to try and get them to stop thinking about themselves for a while, and to try and sort it out. To make them be reasonable and sensible. To make them think of the bigger picture, which is often the hardest thing to do. (experienced female solicitor)
You try and persuade them to be reasonable. And that they also have to be realistic about it. You can say ‘Yes, I know that you are hurt and yes, I know that you are angry, but at the end of the day, you have to – if there are kids, you are going to have to deal with this person. There are going to be birthdays and Christmases and, later on, there are going to be weddings. And you are going to have to get along, whether you like it or not. (experienced female solicitor)

Solicitors told clients that they needed to think about their ‘future needs’ and to find the ‘best way forward’, rather than getting stuck on ‘problems in the past’. They often told clients that they needed to ‘focus on their life ahead’ and to ‘move on’. They also stressed to clients that it is important for them to consider the future needs of their children, especially in respect of providing financial security and housing. Similarly, Mather et al. found that solicitors would draw on a range of verbal persuasion skills, including ‘talk, explanation, philosophical musing, questioning, cajoling, preaching, yelling, name-calling, storytelling, and role-playing’, in order to convince their clients to be reasonable. 198

Solicitors said also that they tell their clients to focus on compromising and on reaching a solution that suits both parties:

... family law is different to most other types of law. Family law really, I think, is helping people through a legal procedure, but also helping people to compromise. At the end of the day that’s what it is about in order to get anybody to move on. They need to learn to compromise, whether it’s two people, or whether it’s a family with children. To have one side win is only going to work in the short term. In the long term, if that is your stance then everyone will lose. (less experienced female solicitor)

During our observations, solicitors appeared to favour the strategy of telling their clients that they needed to be ‘flexible’, in order to get their clients to compromise. They would also point out areas where the other party had already compromised or had ‘held out an olive branch’, and then tell their client that they should try to meet the other party halfway.

Solicitors explained, also, that they use care when writing to the other party. They think it is important to adopt a ‘soft’ approach, which downplays emotions and highlights the intention to compromise and a willingness to negotiate. Again, this was a strategy that we witnessed during our observations. Solicitors told their clients that they would write to the other party in order to ‘keep matters as amicable as possible’, and to ‘put calmness on the situation’. They told their clients that writing a ‘nice’ or a ‘soft’ letter was often ‘the best way forward’. They were also careful to stress that writing a letter to the other party should not preclude the client trying to talk to the other party. Several solicitors told their clients that the ‘best way forward’ would be for the parties to resolve the issues by talking them through, rather than through an exchange of solicitors’ letters.

During interviews, some solicitors told us that they rely on the solicitor on the other side to provide similar advice and to make similar efforts to persuade their client to be reasonable and sensible:

You trust, if there is a good lawyer – you know, someone who is reasonable on the other side – that the other party is getting the same advice. (experienced female solicitor)

198 Mather, et al., op. cit., p. 98.
We also observed several solicitors telling their clients that the solicitor acting for the other party would be giving their client similar advice. Other strategies solicitors used during observations included reinforcing remarks made by clients that they interpreted as indicating that the client was going to be reasonable. Solicitors responding generally latched on to any sensible intention expressed by clients, with remarks such as ‘I’m glad you are realistic’, ‘It is always best to be reasonable’, ‘That is a sensible approach’, or ‘You are doing the sensible thing’.

When faced with clients whom they expected to be a problem (i.e. who were not ‘sensible’ or ‘reasonable’), solicitors tended to adopt a very calming and soothing tone. As clients became more animated and emotional, the solicitors became very still and talked quietly and slowly. While some solicitors maintained very direct eye-contact with their clients, some adopted body language that was particularly non-confrontational, and they avoided eye-contact until the client started talking in a manner that suggested they might compromise.

Solicitors appeared to be especially careful to downplay confrontation and adversarialism when discussing grounds for divorce. They tried to find a way of enabling a client to apply for a divorce that would preserve an amicable relationship between the parties. This was not always a straightforward process. For instance, one solicitor applied for a divorce on the grounds of adultery since it seemed that this might ‘keep the situation more amicable’. The solicitor explained that the co-respondent would not have to be named, and that it might be possible to make an application that would still ‘keep the ante down’. Similarly, another solicitor discussed making an application on the grounds of adultery, because ‘no one will see the papers – the third person is unnamed’. This solicitor explained that admitting the affair would be the ‘easiest way forward’ for the client.

Sarat and Felstiner found that the process of encouraging clients to move away from an adversarial stance to one that is open to resolution and settlement is not always straightforward. Clients are often resistant towards and suspicious of solicitors’ efforts to calm them down, and solicitors need to use a number of different techniques in order to persuade their clients to take a more reasonable line. Our observations confirmed that it was not always easy for a solicitor to convince a client that they needed to be reasonable. Whereas Sarat and Felstiner observed the techniques and strategies used by solicitors across the life of a case, we were only able to observe initial meetings between solicitors and their clients. Nevertheless, as the following case will demonstrate, even data from these initial meetings are sufficient to demonstrate the difficulties solicitors may face.

The client had residence of a young child, and the child’s father had already obtained a contact order. The client had a history of acting in an aggressive manner towards her ex-partner, who had called the police after the client had become violent on the last contact visit. She had also been arrested in the past for assaulting him. The client’s animosity was not limited to her ex-partner, and she had a history of acting in an aggressive manner towards other people around her, including her neighbours, who had also involved the police on occasion. When the solicitor asked the client about her latest ‘problem’ with her neighbours, she assured the solicitor that the problems had been resolved, stating ‘They’re gone now. I got rid of them as well.’ This client had


200 Sarat and Felstiner, op. cit.
previously made complaints against her solicitor, although she had not moved to another solicitor. The client’s ex-partner had recently developed a new relationship and the client wanted to stop him seeing the child. During the initial meeting, she stated repeatedly that she intended to be reasonable, that she believed the child should see her father, and that she wished to support contact. She endlessly contradicted herself, however. At one point, she stated that while she supported contact she herself would need to supervise it, and if her ex-partner’s new girlfriend turned up she would ‘punch the tart’s head in’.

The solicitor stressed at every opportunity that she needed to be ‘reasonable’ and ‘sensible’. She started by telling her that the court would expect both parties to have moved on, to be involved in new relationships, and to have ‘got on with their lives’. She explained that the court would consider it reasonable for her ex-partner to have a new girlfriend. She asked the client if she had considered starting to date again. The woman brushed this off, stating that she was too concerned about being a good mother to consider a new relationship, and that her ex-partner’s new girlfriend was inappropriate for him. The woman stated that she intended to turn up at the next contact visit and flash her tattoo of her ex-partner’s name at his new girlfriend. The solicitor cut her off immediately, saying ‘hang on a second’, and told the client that she must act in a reasonable manner. Again, the client laughed at the solicitor, and talked over her. The solicitor tried again, but this time she moved away from trying to encourage the client to bargain in the shadow of the law, and instead started to talk to her client about her behaviour. The solicitor indicated this shift by stating ‘I’m now going to give you some non-legal advice’. She leaned forward towards the client and maintained strong eye-contact. She then warned the client that her behaviour could influence the behaviour of her child, that it might be causing her child harm in the long run, and that she needed to think about the consequences of her behaviour, especially for the child.

At one point in the meeting, the client promised to act in a sensible and amicable manner, and to be polite to the new girlfriend. At this point, the client’s language mirrored that of the solicitor, but the solicitor looked worried and unconvinced. The client appeared to pick up on the solicitor’s scepticism, saying ‘You don’t believe me’, and laughed. The solicitor again expressed her doubts that the client intended to act in a reasonable manner, referring to the client’s proposal of supervised contact and commenting, ‘I don’t think this is a good idea.’ The client was highly animated; she spoke in a loud voice, and her body language became more expansive as the meeting progressed. By contrast, the solicitor spoke quietly, slowly and calmly. Her body language was almost the complete opposite of her client’s. Her body movements were minimal, her posture was contained, and she sat quite still. She maintained direct eye-contact throughout the interview, almost willing the client to pay attention and listen to her advice. The solicitor had also tailored her language to the client, and appeared to be phrasing her advice in a manner that the client would understand: ‘I’m worried about you beating the shit out of this girl.’

By the end of the meeting, the solicitor appeared to have gained some degree of control over the client. She was increasingly talking over the client, and telling her how she should behave: ‘You must bite your tongue’, ‘You promise me that you will not cause problems’. The solicitor asked the client ‘What do you want me to do?’, but before the client had answered the solicitor replied with ‘I’ll write a letter’.

Throughout this first meeting, the solicitor had explained that she felt the next step should involve her writing a letter to the other party detailing the client’s concerns about contact. She also explained that the letter was intended to focus the client’s mind on acting in a
reasonable manner, and that she was going to write ‘a nice friendly letter from a nice friendly solicitor’. The solicitor had also explored the child’s relationships with the paternal grandparents. She remarked that she would begin the letter by saying that the client would like the children to see more of them. She suggested that her adopting this approach would make the letter ‘less heavy-handed’ and would ‘give it a bit more purpose’, rather than continuing the client’s conflict with her ex-partner.

This case demonstrates clearly that solicitors will sometimes use a range of strategies to try to convince their clients to be reasonable, and often provide non-legal advice. It also demonstrates the difficulties solicitors can sometimes face in getting their clients to consider changing their behaviour, as well as showing that they often work hard to reduce rather than to inflame conflict. Of course, not all solicitors used strategies that promoted an out-of-court settlement for all their clients. We observed that solicitors were careful to stress that their job is to protect the client’s best interests in cases that involved allegations of domestic violence or child protection issues. In these cases, they tended to express empathy with their clients rather than trying to get them to calm their emotions. While solicitors generally encouraged their clients to talk to the other party, in these cases they emphasised that their role was to protect clients from the other party, and that the client would not need to have direct contact with the other party. Instead of telling their clients to be reasonable, they tried to provide reassurance by saying ‘You did the right thing’, or ‘You are coping’, or ‘You’ll be OK’.

Gladiatorial Family Law Solicitors

While solicitors emphasised the need to manage their clients’ expectations, most also mentioned that they knew other family lawyers who did not adopt this approach. Most solicitors affirmed that they had direct experience of dealing with other solicitors who adopt a confrontational and aggressive approach. The solicitors in our sample very obviously considered that approach inappropriate, and criticised confrontational solicitors for failing to be honest with their clients, for not having ‘hosed down’ their client’s emotions, and for promoting conflict:

Different solicitors treat clients differently. Some solicitors use emotional language, and do not always act in the best interests of the client. They try to inflame the situation. (very experienced male solicitor)

There is nothing wrong with people talking. What irritates me is … when the person comes back, at the second interview, I ask them ‘Did you talk?’, and they say ‘Oh no, my wife says that she can’t talk to me. Her solicitor has told her not to talk to me.’ … And that has happened quite a lot in the past. ‘No, no, we can’t talk. I’m not allowed to talk. He says that you are not allowed to talk to me.’ When a solicitor has said that you are not allowed to talk to the other party about issues, particularly children’s issues, I find that is an appalling approach. (very experienced male solicitor)

Solicitors provided a number of explanations for this confrontational approach. According to one of our interviewees, some solicitors act in this manner in an effort to boost their legal fees:

Some solicitors seem to think that if they are acting for a rich client, if they are being paid a lot of money, then they should be aggressive. It is better for the client if you resolve a matter reasonably. It reduces costs if a case is resolved through negotiation. (very experienced female solicitor)
Other solicitors felt that this approach is more likely to be adopted by a solicitor who works mainly in a more adversarial field of law, such as criminal law, and thus lacks experience of family law matters. Some solicitors thought that others took this approach because it suited their personality. They described confrontational solicitors as being ‘difficult’ and ‘hard core’. Several solicitors also suggested that some firms adopt an adversarial and confrontational approach, and that this approach extends to all matters undertaken by these firms. All the solicitors explained that the number of confrontational family law solicitors is very small and has decreased in recent years. Increased specialisation, quality audits performed by the LSC, the increased number of women who have entered the profession and the influence of Resolution have all contributed to this reduction.

Solicitors explained that there is often very little they can do when faced with an aggressive solicitor acting for the other party, except attempt to keep their own client from reacting adversely. Most also explained that it is important to ensure that they continue to protect the best interests of their client, and that this entails retaining a non-confrontational approach, even if they are ‘baited’ by the other side. We discerned a sense of frustration and irritation in solicitors’ descriptions of their responses to aggressive solicitors:

What can you do? You just have to try and talk to your client, get them to follow your advice, and tell them not to listen so much to them [the other side]. It’s hard. I try to avoid them at court when I can. Actually, to tell you the truth, I don’t have a lot to do with them. They don’t change the way that I run a case. I guess that’s the most important thing, to focus on what you are doing, to keep doing the best by your client. (experienced female solicitor)

I grit my teeth and bear it. I walk around with a fixed grin, gritted teeth. Sometimes I am tempted to fire off a nasty letter in response, but I know it doesn’t help anyone, and it certainly doesn’t help the client. But I do sometimes get tempted. You can’t let it get to you. In the end, it is their client, not yours, that loses out from that. (less experienced female solicitor)

I find that if you stand up to them [aggressive solicitors], just ignore the confrontation, the jibes, the insults that you get … If you just ignore that and just deal with the issue, whatever it is, they stop playing games. I think that they try to see whether you will bite. I am too old to play these games. And then it usually goes away. And if there is no fun in dealing with the client then they won’t play, and it often gets passed on to someone else in the firm. (very experienced female solicitor)

Several solicitors remarked that one problem with FAInS was that it was aimed at solicitors who already adopt a holistic and non-confrontational approach to family law. In their view, the solicitors who would benefit most from adopting a FAInS approach would be those who currently adopt an aggressive and confrontational approach. This group includes solicitors who have relatively little experience in family law, and who do not necessarily understand that being adversarial is not a productive approach to the resolution of family law cases.

The different approach of confrontational solicitors was evidenced in the observations. For instance, in one meeting, the client brought in a letter from the other’s party solicitor. She appeared to be very upset by the letter. According to her, it ‘demanded’ that she provide full financial disclosure, and she felt that the other party had ‘overstepped the mark’ with their aggressive language. The solicitor attempted to explain the need for full disclosure calmly and patiently, but the client was not easily pacified. The solicitor was careful to downplay the confrontational nature of the letter, stressing that, despite the tone of it, ‘as yet we don’t have a dispute’. She was concerned that she was dealing with an aggressive solicitor on the other side, and had to explain to her client that she should not assume that this was also the other party’s position. She told the client that it might be the other party’s solicitor, rather than the other party, who was responsible for the aggressive and demanding tone of the letter. She asked the client what had been said privately between her and the other party, and whether there was any indication that the letter reflected a decision by the other party to escalate matters into a dispute. In this case, the solicitor drew on a number of strategies to try to reduce her client’s emotional reaction. She stated that ‘they’ needed to ‘keep the case under control’ and ‘to find a way around fighting’. She then suggested that mediation might be a way of doing this, since it could ‘knock the financial issues on the head’ and ‘keep costs down’. She stressed that since so few assets were involved it would be best to keep the case out of court.

In another meeting, the client also handed the solicitor a letter from the other party’s solicitor. It appears this was a similar case, although it occurred in a different FAInS pilot area. The letter ‘demanded’ financial disclosure, and had obviously upset the client. The solicitor repeated that the client ‘should not worry’, saying ‘It will be all right’. The solicitor told the client that she hoped that ‘it will all be dealt with amicably’, that ‘the other party will not be difficult’, and that ‘life will be easier in the future’. The solicitor also stated that ‘some solicitors write letters like this’, but that they should focus on reaching an agreement rather than ‘getting in a fight’. The solicitor concluded the meeting by stressing to her client that ‘some people even remain on friendly terms after a divorce’, and that reaching an agreement is ‘best for the kids’.

While solicitors emphasised that very few family lawyers are confrontational and aggressive, interviews with the clients showed that many had a very negative view of the other party’s solicitors. Some FAInS clients told us that the advice being given to the other party was exacerbating conflict between them:

I would say quite stubborn and strong legal advice, in terms of, you know, ‘Hold out for as much as you can’, on certain aspects … She's obviously getting some advice to … dig her heels in and not give in on certain issues, and yet other ones that you would think … would say ‘Well, don't do anything – just sit on it and, you know, both sort it out’, they’re going completely the opposite way … It just seems like an enormous amount of time now that it’s been dragging on for, where we just don’t seem to have got anywhere, basically. They claim that her solicitor has been away ill for a while, although there were still letters coming out with her signature on them. And my solicitor seems to be under the impression that they are dragging their heels quite a bit over it … My ex-wife's solicitors have dragged their feet as well. I think they’ve really dragged their feet on this and strung it out as long as they can. (non-resident father, three children aged 8, 15 and 17)

The first letter she [the other party’s solicitor] sent me, I suppose I had in my mind the way a solicitor should be. And when I rang her she was just very flustered, she didn’t have a clue who I was. You know it says in the letter ‘Ring this number’, and so I did, and she was like ‘Oh, wait a minute, two minutes, let me just find the file’ and she was gone for about half an hour. (residential mother, one child aged 2)
Some clients felt that the other party’s solicitor was not dealing with the case adequately. Their animosity towards them stemmed from the failure of these solicitors to understand the client’s point of view. In the case of two FAInS clients, the anger and bitterness they felt towards the other party extended to their solicitor:

His solicitor’s really rubbish as far as I’m concerned. I just knew that he was going to say – you know, that [my ex-partner] wanted to see the baby. I didn’t know he was going to go for a parental responsibility order as well. I don’t see why he should be able to have parental responsibility. He hasn’t earned it – you know, he doesn’t do anything for us, he hasn’t paid us anything since she was born. He doesn’t buy her anything. He didn’t help me out at all when I had to give up work to look after her. There was no help from him when he was working … I’m still a bit angry, I suppose, and I know it’s passing, but he just really amazes me when he thinks he can go like this, when I’m the one who got up with her every single night and looked after her. He hasn’t done anything and yet he wants parental responsibility. (residential mother, one child aged 2)

Her solicitor got hold of me and reckoned I was a big drug dealer, I was violent, I’d done all these things, I was a cokehead, etc. and I was violent, and all of this was to do with not seeing my daughter. Personally, I think her solicitor is a complete fucking twat because, I tell you, the simple reason is I’ve been accused of everything. Like her solicitor’s making me out to be a really bad person, etc. etc. yet I’ve proved myself innocent on it and I don’t see why an innocent man should have to prove himself innocent. (non-residential father, one child aged 3)

Shaping Clients’ Expectations

For the most part, the clients to whom we spoke were very satisfied with the service they had received from their solicitors. Several clients described how their solicitor had explained to them that their expectations were not entirely reasonable, or that they needed to compromise. It was not possible, however, to discern any difference in terms of client satisfaction between pre-FAInS and FAInS clients, and there is little evidence that FAInS had changed clients’ expectations of their solicitors or their perceptions of the service they have received. For the most part, clients appeared to agree with their solicitors. Several appreciated the fact that their solicitor had tried to be honest with them and not to give them false hopes:

He’s straight with you, doesn’t lie to you, won’t go behind your back or anything like that. If he doesn’t think it’s correct what you’re saying, he won’t just go along with what you say – he’ll tell you you’re wrong. He tells you how it is, he tells you straight. That’s what you want, that’s what you’re paying him for. I can’t see the point in paying somebody who, when they know at the back of their minds you’ve got no chance, or at the back of their mind they’re thinking, well, you’re wrong in what you’re doing but you’re paying me so I’ll do it, I don’t think so – if he doesn’t think you’re right, he’ll tell you. (residential father, FAInS client, two children aged 8 and 12)

Several clients also recognised that they had been in a highly emotional state when they had first seen a solicitor and had trusted their solicitor to see beyond the emotion and to ensure that they received good legal advice. One FAInS client who had sought legal advice in order to stop her ex-partner from harassing her commented that she had deliberately sought advice from a solicitor who had experience in resolving family issues:

I think I specifically chose that firm because, when I looked through the adverts and it was … ‘family specialist’ … And I just felt, well, this is an experienced firm who
probably will have dealt with something like this before, so … they’ll know the way to do it … (residential mother, three children aged 7, 9 and 13)

Our observations suggested that solicitors are careful regarding the way in which they present options to their clients, and most of the clients confirmed that their solicitor had offered them a range of options, had explained the advantages and disadvantages of each position, and had allowed the client to make their own decision. For instance, one pre-FAInS client told us:

My lawyer understood why I was doing what I was doing and didn’t force anything. She was very good … She did lay out, you know, all the advantages and disadvantages, what I could do and what I couldn’t do and such like. (residential mother, three children)

Clients told us that their solicitors generally ‘made suggestions’ and explained what was permissible within the framework of the law. Clients appeared to feel that, although their options were constrained by the legal framework, it was still they who made the eventual decision about how the case should be resolved. In some cases, the final outcome seemed to be achieved through a joint effort by solicitor and client:

Me and my lawyer came up with this plan, gave it to the judge, and she said ‘Fine, great, that’s brilliant’, so that was that. (residential father, FAInS client, two children aged 8 and 12)

While most clients appeared to have appreciated their solicitor’s advice, not all had done so. One pre-FAInS client felt that her solicitor had been too sympathetic to their ex-partner, and had failed to listen to her concerns. At one stage, this client had gone to see a solicitor in another firm with the intention of changing solicitors:

I thought they weren’t doing nowt – I thought they were just, like, helping him more than they were supposed to have been helping me. So I thought they weren’t believing what I was saying and I was getting to the stage where I was thinking ‘Oh, it’s pointless. I might as well give him the kids ’cos you’re not acknowledging me.’ This is how it was. I really got upset. (residential mother, two children aged 13 and 15)

The new solicitor, however, had also failed to tell the client what she wanted to hear, and so she had returned to the original firm:

They said they couldn’t do nothing so I went straight back to [the first firm] and I said, ‘Sorry about the misunderstanding.’ (residential mother, two children aged 13 and 15)

One of the FAInS client expressed similar frustration with her solicitor, although she had not considered changing firms. She felt that her solicitor had put too much emphasis on what the other party wanted, and that she was being asked to compromise too much:

I tend to find she defends him more than she does me. She tends to want to compromise a lot, I just want to go in guns blazing. I want my own way and she’s kind of, well can’t you bend a little bit and let him do this and let him do that? And it’s like that. I now pick the girls up from [the city], which is a bus ride away for me, and I do that on a Sunday, at her sort of like pushing me into it. And he’s supposed to pay my bus fare, but he never does and I can’t force him to do it by law. Yet she pushed me into doing that – the picking them up from [the city] is by law, that’s in the final contact order. I have to do that now, but I can’t force him to pay the bus fare and I can’t stop the contact because he doesn’t pay the bus fare … I was pretty angry
the last time I went in because he was wanting to stop the way round we did it [contact arrangements]. He wanted me to take them into [the city] on the Friday and he’d bring them home on the Sunday and I said ‘No’. She was like, well, why can’t you just do it that way round? She said, ‘Have you got commitments?’ I said, ‘No, but I’m just sick of him getting his own way all the time.’ I said, every time he wants to change it, I said, ‘What’s to say in six months’ time he won’t change it again?’ I said, ‘And … every time he wants to change it, why I should I be the one who says “Yeah, OK”?’

Changing Solicitors

Other research has found that family solicitors can be reluctant to take on a client if they suspect that they will be unreasonable. Some of our clients had been turned away from the first solicitor that they had seen. The reason given for this was that the solicitor did not do publicly funded work, and we found no evidence of family lawyers turning away eligible clients. Studies have also found that solicitors will sometimes ‘fire’ their clients if they continue to refuse to take their advice. Again, we found no evidence of this practice. Instead, several clients had ‘fired’ their solicitors, although changing solicitors did not appear to be related to whether they were pre-FAInS or FAInS practitioners. One client changed solicitors at a late stage because she felt she had failed to connect with her solicitor. This client eventually went to a solicitor who seemed to understand her problems. Another FAInS client also changed solicitor after feeling that the first solicitor was not empathic and did not communicate in a way she could understand:

I went to another lawyer first, and he started proceedings, but I didn’t go through with it. He was a male lawyer. I am not sure if it was because he was a man – I don’t know. A woman lawyer is much easier. She would listen to me, and the words she used in the letters were quite firm, straight to the point. She would listen, then put it down in the way that you would say it, not in the jargon. I could just phone her up. If I didn’t understand some points, the secretary would explain it to me. The letters from the lawyer, though, made sense. They were forceful, but I could still understand them. The other lawyer wrote high[ly] convoluted letters. I don’t know if she had a family, but I think that female lawyers understand more. She listened to me, it was a good thing that I went to her. (residential mother, three children)

Four of our observations involved clients who had been represented previously by another solicitor. In these meetings, the solicitors appeared to be very careful to ascertain the client’s reasons for changing solicitors. In one instance, the client had changed solicitors because she had relocated. The solicitor quizzed the client about her relationship with the other solicitor, however. In the other cases, the clients appeared to be unhappy with the service they had received. All these cases involved clients who were already involved in court proceedings, and it appeared that they had experienced problems with their initial representation in court. All these clients complained that their first solicitors were difficult to contact and had not turned up at a court appearance. One client told us that she had been left with a trainee who had turned up late at court, had ignored her and had made her feel uncomfortable and unimportant. This client complained that her first solicitor had shown no interest in her concerns over her child’s welfare, and was worried only about the financial issues. She told us that in the end she had resorted to a 24-hour legal helpline for advice on how to handle her case in court.

203 Mather et al., op. cit., p. 104.
It is not always easy for solicitors to meet their clients’ expectations, particularly if these are unreasonable. While some clients appreciated their solicitor’s ability to step back from their case and provide ‘honest’ and unemotional advice, other clients wanted their solicitor to adopt their own position and become emotionally committed to their case. Almost all the FAInS solicitors were very reluctant simply to take their client’s side, and when faced with a client who was expecting them to ‘fight their corner’ solicitors engaged in a number of strategies in order to get their client to be ‘reasonable’. Our analysis does not suggest that FAInS has altered solicitors’ strategies in managing their client’s expectations; nor does it appear to have impacted on levels or causes of client satisfaction or dissatisfaction. This is not surprising, given that the solicitors who opted to become FAInS providers were already committed to being conciliatory, had considerable experience in family law and were well used to managing a range of client expectations. We were aware, however, that they were often faced with clients with multiple problems, and that their role is at times extremely demanding.
Chapter 11 Support for Separating Families: Children’s Perspectives

Martin Richards, Shelley Day Sclater and Poppy Webber

Two of the main aims of FAInS were to encourage the continued participation of both parents in their children’s lives, and to provide appropriate support to children whose parents split up. It was important, therefore, to draw a sample of children and young people. We drew a sample of children where at least one parent had seen a FAInS practitioner and compared these children’s reports with the accounts of experiences given to us by children whose parents had not been to a FAInS practitioner (pre-FAInS clients).

The primary purposes of our interviews were to:

- explore the perspectives and experiences of children whose parents had separated and at least one of whose parents is the client of a FAInS practitioner
- to compare those accounts with those of children whose families did not participate in FAInS
- focus on issues of support for and participation of children

Our approach to the research, which was approved by the University of Cambridge Psychology Ethics Committee:

- was explicitly child-focused
- used semi-structured conversational interviews
- provided qualitative data on children’s perspectives and their experiences of participation and support
- collated children’s ideas about what might be helpful when parents separate

The interviews:

- were semi-structured, qualitative and conversational
- encouraged expression of each child’s own voice
- elicted children’s own stories about their experiences
- explored children’s views on what might be helpful to them
- employed a flexible interview format, adaptable to children’s preferences
- included verbal discussions and visual materials
In attempting to recruit our samples, we encountered all the usual difficulties that are consistently found in research involving children of separating and divorcing parents. In part, parents’ reluctance to assent to their children’s involvement is undoubtedly related to a protective attitude towards the child, and a fear that talking about things may upset their child further; parents are understandably often reluctant to take this risk. In the present study, the vast majority of the parents we contacted said that the separation/divorce was all in the past, that their children were settled now, and that they did not see any merit at all in having the past dredged up again. However, parental defensiveness about outsiders speaking to children can also arise for other reasons, including psychological ones relating to the separation. Also, post-separation, parents commonly go through difficult and stressful periods, including moving home, which can create barriers to a willingness to assent to their children’s involvement in research. Parents are necessarily the ‘gatekeepers’ for researchers’ access to child research participants, and their refusal or reluctance to assent to their child’s participation should not be taken as a reflection of the children’s own attitudes towards participation, which may well be quite different. Despite all these difficulties, we were able to talk to 18 children and young people.

Our pre-FAInS sample consisted of nine children from six families: Moira (aged 15), Nina (aged 13) and Jim (aged 8) in Leeds; Laurent (aged 12) in Leeds; Kevin (aged 9) in Leeds; Steven (aged 16) in Leeds; Chloe (aged 11) and Susan (aged 9) in Leeds; and Lottie (aged 10) in Lincoln. Our FAInS sample consisted of nine children from four families: Sean (aged 12) and Katrina (aged 10) in Basingstoke; Lance (aged 12), Sam (aged 9) and Brian (aged 8) in Basingstoke; Grace (aged 16), Alice (aged 14) and Pink (aged 12) in Leeds; and Christina (aged 15) in Leeds. All names have been changed to preserve anonymity and protect confidentiality.

The Data

This research was qualitative, and the main aim was to elucidate children’s own perspectives. Face-to-face conversational interviews were held in children’s own homes, though not always in total privacy. Siblings sometimes chose to be interviewed together, and even when children chose to be interviewed alone it was not uncommon for other family members to come in and out of the room during the interview. Prior to the interview, the verbal or written consent of the residential parent for their child to participate was obtained. At the time of the meeting, the researcher made sure that the child fully understood the nature and purpose of the research and consented to participate in it. Each child signed a consent form. Such discussions were facilitated by the use of a colourful child-friendly leaflet that the families had received in advance. Conversational interviews were facilitated by a range of visual materials, appropriate to the child’s age. Children were invited to use these materials if they wished. For example, we offered ‘circle maps’ to enable children to talk about the people who were significant in their lives among family, friends and others. Some children used stickers, coloured pens and drawings to indicate with whom they lived, what their wishes for the future were, or what they would do if they had ‘magic powers’. Some completed the ‘What helps me?’ sheet. Children were permitted to retain their visual materials and pens and stickers, etc. after the interview. Vignettes, portraying hypothetical situations, on which the children were asked to comment, were used to facilitate explorations of children’s perspectives where it was difficult or painful for children to talk explicitly about problematic areas in their own lives. The main purpose of using the visual materials and vignettes was to facilitate
conversations around the various issues raised. All interviews were tape recorded and transcribed by the interviewer.

We have adopted a primarily case-study approach to the data analysis, to illuminate the range of subjective experiences across the sample, recognising the uniqueness of each individual child. Such an approach not only highlights the diverse stories that different children have to tell (indeed, siblings in the same family can have very different stories) but also offers insights into experiences that the participants have in common, and into broader social processes that structure both their lives and their accounts of their lives. The original intention was to look at the data from the children alongside those from the qualitative interviews with parents. Integration of the data sets has not been possible, however, since in every case except one the parents of the children who participated in our study had not themselves been interviewed. We have considered our data from the FAInS sample alongside the solicitor data and the personal action plans for the relevant parents.

As in other elements of the research, the main finding of this study is that there were no discernible differences between the experiences of children and young people in the FAInS and pre-FAInS samples. This should not be surprising, since the solicitor data and the personal action plans of the FAInS parents indicate in all cases that no onward referrals were made, and only in one instance was any written information (about mediation) regarding wider sources of help provided by the solicitor. The personal action plans, in all cases, were brief and focused on the issue in hand; broader issues concerning parenting, child participation or support for children did not feature in the plans at all. In the discussion that follows, therefore, we make no particular distinction between the two groups of children.

The main themes emerging from our analysis of the data include the following:

- the lack of support for children, and their ambivalence about wanting it
- little participation by children in decision-making
- fragile family equilibriums that children struggle to maintain
- findings consistent with those of other recent studies of children’s experiences of parental separation and divorce and with research on listening to children’s views
• children’s suggestions about what could help them fitting well with recent research on school-based support for children whose parents have separated.\footnote{204} There has been a large body of research about the impact of separation and divorce on children, all of which provides consistent messages for policymakers and practitioners. Increasingly, evidence has indicated that listening to children and giving them a voice in talking about matters which affect them are important components in supporting children through the process of family breakdown and re-formation.\footnote{205} Our research adds to this evidence-base.

**Support for Children**

In Chapter 4, we reported that many parents felt that the issues they faced had had an adverse affect on their children; some 44 per cent of pre-FAInS and 40 per cent of FAInS clients had sought help or advice specifically for the children. We therefore foregrounded the issue of support for children in our research, but our findings suggest that insufficient appropriate support for children is available and, even where it is, there are considerable complexities around accessing it and using it effectively.

As regards the support available for children, we have concluded that:

• there are no consistent frameworks of support for children, either formal or informal

• there are often difficulties in accessing support from parents, especially where the child’s wishes do not coincide with those of the parents


• children do not often seek support from siblings

• children sometimes turn to friends, but this is more common with girls than with boys

• independent access to support from external agencies can be helpful, but there are complex issues

• issues of support for children are linked to the more complex problem of maintaining fragile family equilibriums

• the lack of support for children is likely to have psychological consequences

• appropriate support could enable children to work through difficult feelings in a ‘containing’ environment

• appropriate support could enable children to make sense of their experiences through telling their stories

• children’s own suggestions for the kind of support that they would find helpful include welfare workers at school, peer listeners at school, and talks in school assemblies

• independent access to support is important

The difficulty of accessing appropriate help and support for children was a theme across all the interviews. Most children might reasonably expect to receive support primarily from a residential parent, as they would normally for a whole range of issues in their lives. But support regarding children’s feelings about, and coping with, the separation itself can be a rather different matter. Accessing such support was particularly difficult where children’s wishes were not the same as those of the residential parent, or where the parent had other difficulties to contend with, including material privations and conflict with the other parent. In those cases, children were aware that the resources of the parent were limited and, in the main, they did not seek to add to the difficulties by asking for what they felt they needed themselves. Sean (12), for example, said:

I see Mum’s problems as worse than ours … She’s single, she’s got four kids and money problems and stuff.

Susan (9) and Chloe (11) (two half-sisters) mentioned a wide range of family members and friends among the people with whom they were close. Yet despite this, neither of these girls felt that they had anyone to turn to for support, as the following exchanges demonstrate:

Researcher. Who do you go to if you’re feeling upset or sad about stuff?

Susan. Nobody.

Chloe. Nobody.

Susan. We don’t.
Chloe. You do – you’ve got your Dad.

Susan. No I don’t.

Chloe. You do.

Susan. I don’t.

Researcher. Do you go to your Dad if you feel sad and upset?

Susan. No, I don’t even go to him …

Researcher. So who else do you go to for help and advice?

Chloe. Nobody.

Researcher. If you, Chloe, were feeling sad about not seeing your Dad, who would you go and see? Who would you talk to?

Chloe. [mumbles] My friends …

Researcher. Would you talk to your Mum?

Chloe. My friends …

Researcher. Do you not talk to your Mum?

Chloe. No.

Researcher. Have you told your Mum that you want to see your Dad?

Chloe. Yeah.

Researcher. And what did she say?

Chloe. She won’t let me.

By contrast, Lottie, aged 10, felt very close to her mother. She told us:

She looks after me really good, and just nothing could really make me stop being her friend or her being my Mum.

Lottie’s parents had largely managed to resolve their differences and, although frictions still existed, Lottie did not feel them to be overly threatening to the family equilibrium. At those times, she felt able to cope alone with her sadness, and she had school friends who were ‘always there’ for her.

Similarly, Grace, Alice and Pink are three sisters who had good relationships characterised by a high degree of trust in each other and in their mother. There was a real sense that they were a strong unit, identified and united by a common bond since the stepfather left taking their younger half-brother with him. These young women were able to derive all the support they feel they needed from each other and from their mother.

Moira (15) and Nina (13) also felt able to derive support from their mother. Their father left four years ago in difficult family circumstances. What was different about their situation from that of Susan and Chloe was that both girls agreed with their mother that seeing their father would be a ‘bad’ thing. Their wishes coincided with hers, and so they
were able to turn to her as a primary source of support. But things were not so clear-cut for their younger brother, Jim (8). He saw his father at a Family Centre. The girls said they were ‘relieved’ that they did not have to see their father, but they were upset on Jim’s behalf. They felt that they had tried to change things, to no avail. These issues were explored in the following extracts from our interviews:

Researcher.  How do you feel that [Jim] sees him [Nina’s father] and you don’t?

Nina.  Upsetting for all of us, ’cos Jim doesn’t like going. ’Cos he finds it – he just doesn’t want to see him. None of us do. We’ve told the two welfare workers involved in the legal proceedings – nobody listens to us at all.

Researcher.  So, nobody listens to you? Do you think people should listen to you?

Nina.  Yeah.

Researcher.  So why do you think that people should listen to you?

Nina.  Because it’s our feelings …

Jim.  The only person who listens to us is our Mum.

It is clear that these children valued their relationship with their mother, and saw her as a primary source of real support. Underlying this was a shared hostility towards the father, and protective feelings towards their mother and younger brother:

Researcher.  Why do you think your Dad still wants to see you, even if you say you don’t want to see him?

Jim.  ’Cos he wants to smack me again.

Researcher.  You think he wants to see you just to smack you? Do you think there’s other reasons why he might want to see you?

This question was clearly addressed to Jim, but it was Moira who replied:

Moira.  To try and get one over on my Mum. To say, ‘Yay! Look! I’ve won! I get to see the kids!’

Nina.  And you don’t, ever again!

Moira.  He threatened to poison me Mum.

These children were closely bonded with their mother, in the face of the outside ‘threat’ (real or imagined – it was not possible to tell) from the father. There is a clear ‘him’ versus ‘us’ story being invoked by the older girls, where the ‘us’ is strengthened by the existence of the opposition. In such a situation it must have been quite difficult for Jim to have much sense of what, if anything, he actually wanted from his relationship with his father, since any expression of positive affect on his part would clearly have been at odds with the family narrative.206 The problem for Jim was probably exacerbated because he

was by far the youngest. Jim’s tentative attempt to express a view contrary to that of his older sister was revealed in this short extract:

Nina. I wish that someone would – say it was somebody like you [the interviewer] that came to speak to us children, and do like what you’re doing here – recorded it, and listened to what we say!

Jim. Stop being bossy!

Researcher. No, it’s true. I mean, that is partly what I am here for. So that we can learn ways of finding out how children can … have their views heard –

Jim. Yeah, I’ve got a right boring Dad.

Jim departed from his earlier view of his father as dangerous, and now cast him as ‘boring’, as he attempted to negotiate his own story alongside the dominant family one.

Consistent with existing research findings, the children in our sample tended not to seek support from siblings. Jealouslyes, rivalries and simple differences of perspective can be obstacles that stand in the way of siblings supporting each other. But there were complexities, as Jim’s case illustrates. He was under considerable pressure from his two older sisters to subscribe to a dominant family narrative that life had been so much better since the father left. When these children talked about the changes to their lives that their parents’ separation has brought for them, they were, at first, entirely positive. Jim said he had started a new football club, and could now actually ‘play out’. Moira said ‘We actually have a life now’. Nina said ‘Putting it plainly and simply, we have a life’. As far as the girls were concerned, the only downside was that Jim had to see his Dad. At this point in the interview, Jim ventured to suggest, sadly and in an oblique way, that he missed his Dad:

No, the only bad thing is – Dad ain’t here. ‘Cos it don’t feel right …

But he was interrupted by his sister, Nina:

Yes it does.

Jim concurred, though ambivalently:

Well, it does feel right. But – it don’t …

Moira then interpreted Jim’s expression of feelings for his father:

I think he’s trying to say it feels weird.

The girls then both encouraged Jim to look on the positive side, by mentioning all the positive things that had followed on from the father’s departure from the family, and Jim joined in to agree about all the good things that they could now do, such as playing out and watching television. But he was clearly uncertain about expressing himself in the face of pressure. Yet it cannot straightforwardly be said that Jim lacked support from either his mother or his sisters. On the contrary: the girls were struggling to ‘include’ him by making sense of his feelings for him, interpreting his words, and trying to bring him back into the family fold. They saw themselves as pursuing Jim’s best interests on his behalf.
Katrina and Sean are half-sister and -brother for whom rivalries stand in the way of mutual support. As Sean (12) put it:

Katrina is my half-sister, but I half like her and half hate her most of the time … We used to get on when we were really little … but since then, we’ve been having a go at each other – rivalry! ... If I talk to her, it’s like ‘Get out of my room’, rah rah rah!

Wider family networks were not often mentioned as sources of support, although three of the boys mentioned a grandmother as a confidante and said that she could be relied upon to listen.

Kevin (aged 9), for example, lived with his mother and younger brother, Simon. His father left to live with his girlfriend, and Kevin had not seen him for eighteen months. He was convinced his father did not want to see him, and neither his father nor any members of his father’s side of the family figured as significant others in his life. He mentioned his grandmother as a first port of call for support. He saw her as someone he could trust and rely on, as the following transcript illustrates:

Researcher. So who would you go to if you needed something, or needed help or something? If you needed to speak to somebody?
Kevin. Um – my grandma.
Researcher. Would you go to your Mum as well?
Kevin. Yeah …
Researcher. If you were feeling sad, who would you go to, do you think?
Kevin. Um – Si [his younger brother].
Researcher. Would you go to speak to your friends if you were feeling a bit sad too?
Kevin. Not really.
Researcher. What if you felt poorly? Who would you go to?
Kevin. Me Mum.

Although Kevin’s grandmother was his first port of call when he needed help, when he is sick it is his mother to whom he would turn. His grandmother is someone who can be approached and trusted – she is close enough to call upon for help, but not close enough to share his ‘sadness’ with. Kevin mentioned his younger brother (only a toddler) as the person to whom he would turn if he were feeling sad, indicating that there was a gap in his support system when it came to sharing difficult feelings. Kevin did not share his sadness with his friends. A well-documented pattern in the literature regarding gender differences in friendships is being reflected here, with boys and young men being far less likely than girls and young women to share confidences, feelings and intimate secrets with their peers. Friends often offer the best possibility of support for children. But there were marked gender differences, consistent with a large body of psychological research on children’s friendship patterns. Boys and young men are less likely to share personal problems with their male friends, whereas reciprocal sharing of intimacy can be a lifeline for girls.
Steven (aged 16) said he had not had any support from anyone. He had friends who had been through similar experiences, but he had neither specifically sought nor received any support from them. He was also not sure that any kind of support would have made much difference. He did concede, however, that some kind of support might be helpful for younger children. It may be that Steven felt himself already to be too ‘grown up’ to admit to any need for support. It may be that ideologies of masculinity were operating here – as Steven’s needs to feel strong and appear to be coping outweighed his need to express his vulnerabilities.

For Moira (15), there was a crossover between ‘family’ and close friends. When filling out the ‘circle map’ (a series of concentric circles on which the child can place significant others close to or at various distances from him- or herself in the centre, to indicate different levels of significance and intimacy), she said:

Can you class like really, really close friends – like that act like family? Would you class them as family or friends?

Her sister Nina (13) said her two closest friends ‘have been excellent through all of this. They’ve always helped me.’

A few children mentioned having talked with a welfare worker or a counsellor or a teacher at school, from whom they had derived some support. One girl had found a social worker who was involved with the family quite helpful, while her brother had felt quite differently. Susan (aged 9) and Chloe (aged 11) had some ongoing support at school, though not specifically for issues around the separation. But these children knew very little about the support, or what it was supposed to be for. There was little sense that they were active participants in the process, and Chloe seemed actually to feel excluded by the support. She did not like the support worker, and felt ignored by her:

Researcher. Have either of you had any support from anywhere, like help? Have you seen or spoken to anyone about it?
Susan. I don’t know. Yeah.
Chloe. Yeah, we have.
Susan. Oh yeah, we go to this woman.
Researcher. Do you? Do you find that any good?
Chloe. No, I don’t like it.
Susan. Yeah.
Researcher. What family thing do you go to? Do you know what it’s called?
Chloe. I don’t know. I’ll ask me Mum.
Susan. I don’t know what it’s called.

Sean (12) experienced some welfare interventions as a consequence of having been abused by a stepfather. His case illustrates the complexities of providing support for children. Support that is perceived to be inappropriate or which falls short of the mark can be experienced by the child as a yet further source of frustration, as the following exchange shows:
Researcher. You saw a social worker, you saw a counsellor?

Sean. I don’t think that any of them benefited me really... It’s just that they were ... there was one ... she was meant to help me, and all she did was – she was meant to do strategies, to help me out.

Researcher. Yeah, coping strategies?

Sean. Yeah, and she done gardening instead with me [sounds disgusted], ... 'cos it annoyed me a lot more, 'cos I didn’t even finish the garden I started. All I did was pull out at least fifty weeds.

Nina’s experience of seeing the welfare worker at school had been more positive, however:

Researcher. So have you had any sort of help or support? I mean, you’re saying like, you haven’t been listened to …

Nina. Yeah, there’s only one person that listens – well, actually, two. There’s my Mum and there’s this woman at school called Morag [a welfare worker].

Researcher: What sort of things do you see her about?

Nina: Just how you feel, really. Sometimes you say to her when you’d like to see her, in the register. And you go see her, and you just talk to her. You can actually talk to her like a friend.

Similarly, Christina had positive experiences of professional support, although it may be significant that she had been able to access such support not in relation to the parental separation but as a result of her illness (she is diabetic). Both her support worker and her social worker were significant others for Christina; they were trusted, and she felt that she could talk to them and that they not only supported her emotionally but also gave her help in practical ways. They were also in touch with a welfare worker at her school, and so Christina felt a strong sense that there were professionals who were there for her and to whom she could turn.

Lance, Sam and Ben all included some teachers in their circle map. They appeared to have positive relationships with some teachers at school, and Lance said that, if he had a problem, a particular teacher would be his first port of call. Like other boys in this sample, however, these brothers reported that coping alone and muddling through was really how they had managed when their father left. With hindsight, they thought it would have been valuable to have been able to talk to a trusted adult who, preferably, would have had similar experiences.

The Consequences of Lack of Support

Where there is a lack of real support, children have difficulty in making sense of their experiences and processing their confusing feelings in more ‘thoughtful’ ways. Then, coping strategies can be based on denial of feelings, with consequent tendencies either to stand alone or to ‘act out’ in inappropriate ways that are harmful to the child and hurtful to others. These consequences were visible in some of the boys’ stories. It was clear that Kevin had not really talked about his issues with anyone. He had not had any support, and
he was not really sure whether any support would have helped. Even at nine years old, he was anxious to portray himself as someone who did not really need help anyway:

Researcher.  Do you think it would have helped if you had [talked about it with someone]?
Kevin. I don’t know.
Researcher. Were you upset?
Kevin. Not really.
Researcher. Would you have liked to have someone to talk to, though?
Kevin. Not really.
Researcher. Do you think that some children in your situation might like somebody to talk to?
Kevin. Some.
Researcher: Do you think there is any help that you think you might need because of this?
Kevin. I don’t – I don’t think so.

Kevin came across as a child who was very much alone with his feelings, and it is tempting to see him as having developed a coping strategy based on denial – possibly as a result of the lack of any real opportunity he had had to share his feelings with anyone. Where there is conflict between the parents, and where the child relies so much on the resident parent, it is difficult for a child like Kevin to express wishes or feelings that might be in tension with those of the parent on whom they most rely. It is in cases like this that support services for children, to enable them to articulate their feelings and begin to make sense of their experiences, could be most useful. But few such services are available, and even where they are children might in any case require the help of the resident parent to access them.

Perhaps because he had not been able to make sense of his experience, Kevin could not imagine that he might have some agency in changing things. The issue of whether or not things were right or wrong from his point of view seemed not to arise for him. He seemed just to accept the situation, and could not imagine that he, or anyone else, could do much about it. He tacitly accepted that things were just how they were, and there was no point in thinking about them further. But he did say at the end of the interview, when talking about his wish for the future, that he wished ‘Dad would see us more often’. He said he ‘would have thought it would be possible’, but he was aware that it was his mother who made those kinds of important decisions, and that his father would have to agree and that he had no power to change them.

Similarly, Steven (aged 16) seemed to have little sense that anything he could say would make any difference. Steven had lived with his father since his mother and sister had left a year previously. They now lived many miles away, and he saw them ‘sometimes’, mainly in school holidays:

Researcher. Is that how you want it to be? Or what …?
Steven. It happens. I can’t say any more. It happens. That’s how it is…
Whatever I say, it don’t make no difference.

Researcher. Doesn’t it? Would you like what you say to make a difference?

Steven. But it doesn’t. So it doesn’t matter what I …

Steven’s own wishes, feelings and desires had had to be pushed to one side. He appeared to think that whatever he might want was hardly relevant, and perhaps for this reason he had difficulty in acknowledging what his own feelings were. Here is a case of a young person who not only lacked support, but was also excluded from participating in the decisions that affect his life. But the exclusion is not only social – it has personal effects – but also a barrier that is in the way of him coming to terms with his experiences and his pain. His disempowerment made him sad, not angry, though he did not claim either emotion. The sadness came over in the interview in the way that he talked – he sounded defeated. Steven made sense of the situation by casting his experience as being ‘just how it is’. He had little sense that it could perhaps be otherwise.

Steven said the separation ‘hasn’t affected me that much’. He normalised his experience by reminding us that having parents who separate is a common experience nowadays – he talked about it as an everyday occurrence:

So, it just happens. It just happens. That’s about it.

Steven here was making a leap between separation as a common experience and the idea that nothing therefore can be done about it. It is as though the fact that parental separation is not an unusual experience any more necessarily means that there is no room for expressions of emotion or of need. Moreover, he employed a discourse in which people in his position have no say and no control. In that frame, any expression of desire on his part would be futile:

Researcher. What’s it meant in terms of, like, your feelings? And changes it’s made to your life? How’s your life changed at all?

Steven. [mumbling] Like I said before, like, no matter what I said, it happened. And I couldn’t say anything that would change anything.
So I didn’t.

Even at sixteen, Steven appeared to be silenced by his position in a discourse in which adults have power and young people have to live with the consequences.

A further possible consequence of lack of support is that of a tendency to ‘act out’ the unresolved feelings that have nowhere else to go. For example, Sean (12) said that he felt so angry with his stepfather (who had abused him) that ‘sometimes I feel like going round there and literally punching the crap out of him’. When asked how he coped with those feelings he replied:

Well, I just – I do like weights and everything instead, because I may as well take it out on everything else. Like on Grand Theft Auto [a video game], the game, I go round shooting everyone.

Aggressive fantasies and video games enabled Sean to cope with his angry feelings, but the personal consequences were high, as he was currently having difficulties at school.
Support from someone who is trusted offers the possibility of working through feelings and ambivalences in a ‘contained’ setting, and hence an opportunity to process and to think through them – which may be crucial in making the difference between having manageable feelings and suffering overwhelming ones. Furthermore, to tell ‘your’ story to a sympathetic listener is a vital means of making sense of experience and deriving meaning from what life has put in ‘your’ way.

It is clear from these children’s stories that many had considerable difficulty in making sense of their experiences. Lance, Sam and Brian reported having been confused when their father left. They just couldn’t understand why; it just didn’t make sense to them and, with the benefit of hindsight, they felt that they would have been less sad if they had been able to understand. In the absence of real information and understanding many children, like Lance and his brothers, fantasise that because their father has left he does not love them any more. Some children appeared to have been ‘colonised’ by their parents’ stories, as their own were silenced. They were thus deprived of the opportunity to make their own meanings and to articulate their own sense of self within those stories – essential for a coherent, stable and continuous sense of self.207 For some, coping alone meant trying, in vain, to ‘put the past behind them’: there was a real lack of awareness among these children that such coping strategies meant that present issues were not being properly dealt with and might have longer-term psychological consequences. Some of the stories of the boys in this sample had a ‘defeated’ ring to them: things were as they were, there was nothing they could do about it, so they might as well just get on with it. Such attitudes, which spring from the very limited opportunities that children have for support, also stand in the way of the possibility that children might arrive at positive resolutions, in terms of discovering new competences and strengths to face the challenges posed by their situations. In short, the lack of real support that these children told us about were not just incidental issues in the here-and-now, but carried with them the possibility of longer-term detrimental consequences.

**Children’s Ideas About the Kinds of Support Which Might Be Helpful**

Concrete suggestions made by the children themselves about the kinds of support that might be helpful included:

- an accessible welfare worker, or counsellor, at school, or specific teachers who are responsible for ‘welfare’ and who can make referrals
- ‘peer listeners’ at school, and mentoring
- an ‘inclusion room’ at school, available all school hours
- talks in school assemblies from a range of lay people and experts in child welfare and children’s rights

These findings fit well with those of recent research on school-based support for children whose parents have separated,208 and suggest further ways in which support for children might be provided in the school setting.

---

208 See Wilson and Edwards, *op. cit.*
It is noteworthy that ‘school’ featured so prominently as the desired location for preferred support systems. School is not only a convenient location in which children can access support, but, crucially, it is a place where they can do so independently of parental gatekeepers or even parental involvement. Children said they would appreciate having open access to support from peers, professionals and others, in a relatively informal though confidential setting, where the choice to access the available support is entirely in their own hands. What is at issue here is children having to negotiate their own ambivalences about taking problems outside the family which they realise could threaten sometimes fragile family equilibriums.

Children saw welfare workers at school as people with whom they could talk about difficult and confusing feelings in confidence, and where they could expect to receive not only emotional support, but also information and advice. Peer listeners at school are children who are ‘on the same wavelength’ as the child, who probably have had similar experiences, and have been trained to act in a mentoring capacity. They are seen as ‘people like me’ who are able to provide support through empathic listening, and who can facilitate the child’s articulation of their own story.

Nina (13) was a ‘peer listener’ at school. She told us:

> I learned to be a peer listener. People tell me their problems and I give them advice ... well, I don’t really give advice. What I do is try to help them sort through their own problem ... we’ll try and work together to work out an answer.

Moira believed that it is a good idea to have such people available:

> It’s just that some people might feel that they can’t talk to an adult, because the adult won’t remember what it’s like to go through the problems which they’re going through. If they haven’t been through them, it’s as though they can’t imagine.

What is being suggested here is the value of being able to talk to someone on one’s own wavelength, even if the listener has not encountered the specific problem being experienced. Friends can, of course, often serve this function, but there are all sorts of reasons why children might not want to reveal all to a friend (not least, confidentiality if trust was not assured), and this may be particularly so for boys, who do not habitually bare their souls in friendships. Peer listeners are bound by confidentiality, as Nina said, unless

> we think you’re either going to harm yourself or hurt somebody else – then we have to tell an adult.

Talks in school assemblies were not only seen as an opportunity for children to gather information about the various dimensions of the separation process and the different perspectives of those involved (e.g. children, parents, the legal system), but, more crucially perhaps, they can serve to ‘normalise’ children’s experiences, thereby reducing stigma and addressing exclusion. As Nina expressed it:

> Sometimes I wish somebody like you [the researcher] would actually come into school and talk – I’m sorry – I think it’d be an idea if somebody – like what you’re doing – came into school and talked to the full school in, like, a big assembly.

The idea Nina was expressing here was of something that would not only ‘normalise’ her experience, but also open a space for children’s own stories to be articulated. Nina and
Moira made some concrete suggestions about the kinds of things that might also help children in similar circumstances. Nina did not see Childline as the solution, ‘because they just listen to your problem. They don’t give you any way to sort it out.’ So, Nina is looking for advice about what to do, as well as being a listening ear, which suggests that different forms of help could be provided to cover a spectrum of needs.

For support to be effective, it has to be easily accessible, confidential, without stigma, flexible enough to meet a child’s changing needs, and sensitive enough to take account of a child’s inevitable ambivalences. Most crucially, however, our data suggest that support is most effective if the child not only trusts but also likes – gets along with – the person providing the support. Inappropriate help (as in Sean’s case) may be worse than no help at all, as the child can feel let down and more alone, and perhaps even hopeless. For this reason, a case should be made for involving children as participants (e.g. on school panels) in the selection and recruitment of people intended to act in a support capacity in the school. In this way, children’s ‘ownership’ of the process could be facilitated.

The connecting thread in the suggestions these children made regarding the kind of support they would find helpful was that of opportunities to make the child’s own voice heard. It may be that only a minority of children actually require support, but there can be no doubt that the majority would benefit from opportunities to make sense of their experiences by telling their own stories. It is here that ‘support’ for children shades into ‘participation’, and points to the need for support provision to be based upon a participation model. Sean, for example, was one child who had welfare support available to him, but he found it unhelpful, and even that it added to the difficulties and frustrations with which he was already having trouble coping. ‘Support’, in Sean’s case, was thrust upon him from the outside, and we have little sense of him having any say in the matter. Far from helping him to cope, it became an obstacle to him making meaningful sense of his situation.

Wilson and Edwards (2003) studied the impact of individual and group-based support for primary school children and found an overall positive response from both children and parents. The support work was well-received by headteachers and staff, and the researchers reported that six months later, children who had participated in the study showed sustained improvements on a range of measures including self-esteem and perceptions of relationships and support. The researchers concluded that children are most likely to benefit from support where it can be provided in a flexible format that responds to the needs of the child, and this is consistent with the suggestions made by the children in our sample.

**Participation: Children Having a Voice**

Consistent with government priorities in the *Every Child Matters* initiative, we have looked closely at the issue of children’s participation in the context of parental separation.

Our data suggest the following:

1. There were no consistent frameworks, either formal or informal, for children to participate in decisions that affect their lives.

---

209 ibid.
2. Children do not want to make decisions, but they want to participate and have their voices heard.

3. Lack of participation is likely to have psychological consequences for each individual child and broader social consequences for families, communities and society.

4. Children feel that they remain, to a large extent, an excluded social group.

5. Children’s lack of participation is normalised through implicit embedded discourses that represent children as incompetent and their feelings and wishes as less important than those of adults.

6. Support for children of separating parents is inseparable from issues of participation. The linking issue is making the space for children to have a voice – to tell their own stories – through which children are enabled to make sense of their experiences.

There were considerable gaps and difficulties around participation in all cases in our sample, and it is clear to us that children’s lack of participation had detrimental consequences for their well-being. Children repeatedly, and often sadly, told us that nobody listened to them. Our data present a picture of exclusion – at the same time that children realised what was going on in their family (and in the absence of accurate information their fantasies about it were often worse than the reality), they remained at best on the periphery of adult (and expert) decision-making and received scant information to enable them to make proper sense of what was happening to them.

We have already seen that the sisters Moira (15) and Nina (13) had a strong sense that no one was prepared to listen to them: ‘Nobody listens to us at all.’ These sisters were aware that the legal proceedings might provide a forum in which children’s voices can be heard, but they did not feel that the welfare workers from the court, or the people at the Family Centre (where their brother went to see his father), had truly ‘heard’ what they were trying to say. Nina remained annoyed and frustrated that the adults who were in a position to change things (i.e. in positions of power) did not listen to her:

But I find it really annoying, ’cos the people there [at the Family Centre] asked us if we wanted to come in and speak to them. We went in. They didn’t listen. I’m sick of adults. No offence, but no adults listen to kids – even if – I want to have my say heard.

Moira and Nina contemplated extreme measures:

<table>
<thead>
<tr>
<th>Moira</th>
<th>Even if it means, if it goes to court, and we get called into court, I don’t care. I’m willing to go just to make people listen to me.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Researcher</td>
<td>Has all this been to court?</td>
</tr>
<tr>
<td>Moira</td>
<td>Yeah.</td>
</tr>
<tr>
<td>Researcher</td>
<td>And have you been invited to have your …</td>
</tr>
<tr>
<td>Nina</td>
<td>No.</td>
</tr>
<tr>
<td>Researcher</td>
<td>No?</td>
</tr>
</tbody>
</table>
Nina. I really want – even if I have to barge in, and go to the judge myself. I will do. To tell him how I feel. Simple as …

That these young people were willing to contemplate such an extreme measure is an indication of how strongly they felt about having a voice. They wanted their agency respected. They wanted to be heard. And it was not at all clear to them that there might be any other way for that to happen.

Their brother, Jim, did not see much point in getting people to listen. He was convinced that his views would be ignored anyway:

Researcher. What about you, Jim? What do you think to it all?

Jim. I don’t really want people to listen to me, ’cos if they do, they’re going to still ignore me, and I don’t think people listen to me.

In some cases, this marginalising of children’s voices led to confusion, frustration and even anger. In the case of three of the boys (Steven, Kevin and Laurent) their lack of participation led to a tacit acceptance of an unsatisfactory situation and a deep personal sadness that they struggled to conceal. For Sean, it led to angry acting out, which simply exacerbated his own problems and his family’s difficulties. For four of the girls (Susan, Chloe, Nina and Moira) it led to anger and a sense of alienation from the adult world. It also had consequences for identity. Nina, for example, felt that her wishes and feelings were so overlooked that she felt ‘like a nobody’:

Researcher. What other feelings have you gone through? Have you felt anger?

Nina. Yeah! Anger! I know this might sound horrible, but he [her father] makes me feel like I’m a nobody.

Researcher. How does he make you feel like you’re a nobody?

Nina. Because whatever Dad wants, Dad gets. Whatever we want, oh forget it! Dad must get this …

Moira. We’re sick of it …

Nina. Dad must get that, Dad must get this …

Children accept that relationships with important adults are two-way things: they would like adults to listen to children, but equally children should also listen to adults. But there are qualifications to this general rule. As Nina put it:

… children should also listen to adults. And I know this might sound a bit horrible, but some adults can be complete and utter ignorants [laughs]. Sorry!

On her ‘What helps me?’ sheet, Nina wrote that her father did not help her, and the reason she gave was that he was ‘ignorant’. So, while children accepted that they should listen to adults, there was a notion that some adults might not be worth listening to. Perhaps, in Nina’s eyes, adults have to earn respect; it does not follow automatically from their status as adults. Perhaps, if children were accorded greater status as participants, the ground would be prepared for better listening and understanding on both sides. It may be that Nina’s casting of her father as ‘ignorant’ reflects a broader problem with communication between them.
There is a real danger here, in this context where children’s participation seems to be so fraught with difficulties, that children’s perceived exclusion from the adult world is alienating and a breeding ground for mistrust. We can see here that Nina’s anger at not being heard has been generalised to all adults, not just the ones in her immediate world by whom she felt let down.

One might expect that the people at the family centres and family courts and those involved in the legal process – the adults who are in a position to transform the supportive and participatory process for children – would see themselves as engaged primarily in furthering the welfare of these children. But the view from the children’s side is rather different. Children can feel invisible even within those support services that are designed to help them. That needy children like Sean could regard the support services as a barrier to their voices and their agency, rather than as a facilitator of those things, is worrying, and points to the need for a fundamental reappraisal of strategies to facilitate meaningful support and participation for children.

Children’s reported experiences of exclusion from participation were in marked contrast to the ideals they expressed when discussing the ‘vignettes’ that portrayed hypothetical situations. Steven (aged 16), for example, felt that he had had no influence on what had happened to him:

Researcher.  Would you like to have a voice? Would you like people to listen to you when you said what you wanted? Is that what you’d like?

Steven.  It just sort of happened. And I have just taken it how it happened. That’s how it went and nothing will change it. And, like, there’s no way to change it.

In discussing the vignettes, however, Steven was quite clear that young people should be able to express their wishes and have their voices heard. He demonstrated an awareness of the complexities of balancing competing interests and feelings, in both the shorter and the longer term, and subscribed to democratic ideas about sharing feelings and ideas with important others. But this is all a far cry from the story he told of what happened in his own life.

Similarly, Laurent’s responses to hypothetical situations did not really reflect the reality of his own life. Instead they portrayed an ideal situation where the child in question is able to participate in decision-making: there is an implicit model of a democratic family, in which children have a say, and where negotiated solutions can be found, that was not present in his own life. The same was true for Sean. He was clear, when talking about the vignettes, that children should have a chance to express their views and to be heard, that they should be able to talk to their parents about important things, and that they should be able to derive support from outside their immediate family if necessary. But none of these pertained in Sean’s own life. Sean was aware that powerful social norms stood in the way of his having his voice heard, particularly as regards the abuse he had suffered. Adults might appear to be listening to children, but they do not necessarily hear what they are saying, where this confronts their own implicit agendas:

Researcher.  Do you find that that’s an issue, that people don’t believe you, then?

Sean.  I do get annoyed when people don’t believe me, once I’ve told them everything I’ve had to say and everything.
Researcher.  Why would somebody not believe you?

Sean.  Say, if you didn’t believe me right now, I’d probably get really annoyed and walk off.

Researcher.  I don’t blame you. So would I, if somebody didn’t believe me over something that serious …

Sean.  Er, but he [his uncle] doesn’t believe it. I feel a bit – if he doesn’t want to believe it, then he doesn’t want to believe it.

There is a real danger that children’s lack of participation is normalised through a perception of children as people whose wishes and feelings are somehow less important than those of adults. While our legal system has long had the ‘welfare of the child’ as its paramount consideration, it is ironic, to say the least, that children themselves still have to struggle so hard to make their voices heard. There is now a strong body of research evidence that points to the need for a radical change in our old conception of children as the passive recipients of adults’ decisions about their future. Such research shows that children across a wide age spectrum are, if given the opportunity, capable of quite sophisticated participation both in decisions that affect them and in family and social life more generally. Children, on this view, should be treated as active human agents who want to be able to have their say. To this we might add that it is likely that both individual and social benefits would flow from greater participation by children.

The UN Convention on the Rights of the Child of course states that participation is the right of every child (Art. 12). This is not the place to rehearse the debates about what ‘participation’ is; suffice to say that there is a general consensus that it amounts to children being, at the least, actively engaged in all aspects of their lives – being informed and consulted in decision making, such that they can form views and express ideas and have them valued and heard. But the case for listening to children is not just a matter of inclusion, social justice and human rights. Participation also has a developmental dimension and, as such, is linked to both children’s well-being and the well-being of society.

It is likely that participation enhances children’s self-esteem and confidence and provides them with the opportunity for developing a sense of autonomy and social competence. It helps children understand the relationships between actions, decisions and their consequences. Being valued as an agent in the world encourages responsibility and ownership. Empowering children also takes a step towards protecting them more effectively. On the social side, participation encourages membership of civil society and strengthens children’s understanding of and commitment to democratic processes.210

Fragile Family Equilibriums

210 The Government currently has a range of initiatives to increase participation across a range of children’s services. For example, CAFCASS has published (November 2005) a second draft of its Children’s Rights Policy, ‘Putting children and young people first’. But its consultation paper Every Day Matters: New Directions for CAFCASS (2005) incorporated a welfare perspective rather than one based on children’s rights. Clearly, CAFCASS offers a forum for child participation, but to date the evidence suggests that its operation in this regard has been limited.
The issues of support for children and children’s participation discussed so far cannot clearly be separated either from each other or from two other important issues. The first of these is the fragile family equilibriums that pertain from moment to moment and within which children and young people seek to manage their own feelings and take account of others close to them. The second is the crucial issue of how adults listen to children. The children in this sample are acutely sensitive to the nuances of interactions. They know when they are being excluded, even while steps are ostensibly being taken to help them. Sean clearly felt ambivalent about the involvement of welfare and social workers in his family and in his life. He was not at all comfortable with their visits to his house. It felt like an intrusion, disturbing their normal patterns of living:

I felt that … they shouldn’t [continue to have any involvement]. I felt like they were just … I don’t know why we couldn’t have just done it like where me, Mum and Katrina went along … ‘Cos, if I was like just having my lunch or something, or I was doing something or I was doing something naughty like playing with a knife maybe … ‘cos it was a bit annoying when they just walked through the house and everything … Also, when they said ‘Ooh, come on girls – let’s get all the toys out! – out of the toy box’, and Mum don’t like that ’cos she has to clear it all up, ’cos we’re all sitting in our rooms and everything and doing what we want. Then Bridget [the social worker] goes and gets all the toys out, like the whole box is absolutely clear … and my Mum’s thinking like ‘Oh!’, she’s trying to hold on to her tongue. So I come down and I think ‘Oh, bloody hell’, and so we waited for Bridget to go, and we shoved it all together and chucked it back in the toy box. It was quite annoying, though, because it took about two hours … And we missed most of our stuff on the TV and everything.

What is suggested here is that there was a fragile equilibrium in this family which Sean understood at some level, and he was anxious to preserve it. Outside interventions threaten to disrupt not only family norms, but also the unspoken balances which have probably, in the circumstances, been very difficult to achieve. In addition to this, Sean’s concern not to upset his mother was evident. He had had numerous problems at school (to the extent of being excluded) which presumably upset his mother, but these family issues were different. In the context of social worker involvement in the family, he was clearly very anxious that his mother should not be further disturbed. This story that Sean told indicated the profound emotional significance that a simple everyday act on the part of the social worker (tipping the toys out of the box) can have for the family. It seemed to Sean to epitomise the lack of real understanding that the welfare service had regarding the fragile equilibrium of this family. His story underlined the alienation he felt from this potential source of help, and thus pointed to the very small things that, in a child’s eyes, could make a transforming difference.

Concluding Remarks

We conducted in-depth qualitative interviews in a small sample that did not lend itself to the same kind of generalisations that a large-scale quantitative survey and statistical analysis usually permit. Our conclusions bear this in mind, and are based on the prominent common threads that emerged from the wide range of individual experiences that our research uncovered. We are also mindful, in summarising our conclusions, of the ways in which our findings support those of other recent research. In this respect, two main findings from our research bear emphasising:
1. There is a lack of available support for children experiencing parental separation.

2. There is a need for structures, procedures and mechanisms that ensure that children’s own voices are heard (i.e. participation).

In addition, in the light of the *Every Child Matters* initiative, we highlight a number of other conclusions.

**Support for Children**

There are no consistently available frameworks of support for children, either formal or informal. Children have a range of coping strategies and different needs for support. Some children may require support from professionals. The consequences of lack of support for children are likely to include an effect on their general well-being. Appropriate support can enable children to process their feelings in more thoughtful ways in contained settings, thereby minimising the possibility that they will deny or ‘act out’ difficult feelings which can only exacerbate problems in the longer term. A lack of appropriate support deprives children of the opportunity to tell their story and so make sense of their experiences, which are preconditions for healthy integration and moving on.

Children’s own ideas about what kind of support they would find most helpful included: an accessible welfare worker or counsellor at school; peer listeners at school; mentoring at school where ongoing support is needed; and talks in school assemblies from a range of lay people and experts. We particularly note the significance of independent access, easy accessibility, flexibility, confidentiality, trust and the removal of stigma, and the importance of the school setting for support that children would value. We also note that accessing support, either formal or informal, even when it is available, is not always easy for children; the complex issues involved need to be recognised and accommodated. Issues of support for children are linked to more complex problems of maintaining family equilibriums which can be fragile in the post-separation situation. We conclude that the most appropriate and effective support for children would be child-centred and fully focused on the child’s view of the world. Children have diverse experiences and their different needs for support could be met in different ways. School-based support can meet a range of needs. The efficacy of support could be enhanced if children were able to participate in the planning and implementation of support services. Such services would require careful evaluation to assess their appropriateness and effectiveness in delivering desired outcomes. Further research is clearly needed.

**Participation of Children**

We found that there were no consistent mechanisms that enable children to feel that they are participating in decisions that affect their lives. For children, participation is inseparable from support, and they want to have their voices heard, even if they do not want to assume responsibility for decision-making. The exclusion of children from participation is likely to have a range of consequences. Lack of opportunity for real participation marginalises children; it can be a barrier that stands in the way of them making meaning from their experiences and articulating a stronger sense of self; and it can lead to confusion, frustration, anger, alienation and distrust. Participation, by contrast, empowers children and is likely to be linked to the well-being of individual children, their
families and democratic society as a whole. The lack of felt participation by the children in our sample (which echoes that found by other researchers) is particularly worrying in the light of the UN Convention (Art. 12), which makes participation the right of every child, and the ongoing Every Child Matters agenda. Indeed, not involving children in decision-making may be a breach of their rights as young citizens. Participation is especially relevant to ensuring that children make ‘a positive contribution’, but promoting participatory citizenship is also relevant to all five of the Government’s outcomes. The children in our sample felt that they remained, to a large extent, members of a socially excluded group. We conclude that children’s lack of participation is normalised and embedded in the image of children that is an integral part of our culture.

We are aware that listening to children is a complex process, requiring particular skills. Research has shown that existing means of doing this (including through interventions involving CAFCASS, mediators and solicitors and via the Statement of Arrangements and Family Assistance Orders) are not sufficiently effective in ensuring that the voice of the child is heard, and we conclude that more effective ways of ensuring children’s participation in separating families (and the attendant legal processes) need to be found. Further research is also needed. Recent social-scientific work has emphasised that children’s agency needs to be acknowledged and respected. But children are emotional beings too, and more sophisticated theorising is needed to inform both research and practice in the area of participation. Finally, we found no evidence that FAInS had made a difference for children, and even the most experienced and conciliatory family lawyers seemed not to have grasped the importance of enabling parents to provide appropriate support to their children and to access external sources of help when necessary.
Part 3  Learning from FAInS

In this final section we reflect on the findings from our evaluation of FAInS and consider the context within which family law practitioners are undertaking publicly funded work. The FAInS pilots have not changed family law practice and this may be because most of the lawyers who participated were already committed to following the kinds of approaches which characterise FAInS practice. Nor have the pilots done much to encourage multi-agency integration or networking in their local areas, so that providing a more holistic approach to family law remains somewhat elusive. Just how far beyond providing legal advice and support family lawyers should go remains a pertinent question. Family law is in itself different from many other areas of law and lawyers are used to dealing with clients whose emotions may be running high and who are experiencing considerable distress. If lawyers are to uncover and address the range of problems clients might be experiencing in their lives, they almost certainly require more specific training and to have a range of support services readily available to which to refer clients.

As public funding for legal aid continues to be in the spotlight, ensuring that there are enough well-qualified and committed family law practitioners to engage in legal aid work remains a challenge and a concern. There are many changes afoot at the present time and the future seems somewhat uncertain. The FAInS pilots have done little more than tweak best practice, but they have demonstrated how challenging it is to change the way lawyers practise and how clients behave.
Chapter 12  Looking to the Future of Family Law Practice

Janet Walker

The findings, both quantitative and qualitative, which have been discussed in previous chapters all point to a fairly stark conclusion: the Family Advice and Information Service pilots do not seem to have effected much change in family law practice. Although there may have been some subtle shifts in the approach adopted by some FAInS practitioners, they have not been substantial enough for us to be able to detect any major impacts on the behaviour of solicitors or their clients. There are a number of explanations for these findings, however, all of which can provide useful evidence for those tasked with making decisions about future policy in the field of family law. In this final chapter, we reflect on the findings from the evaluation of FAInS, position these within the current context relating to changes in legal aid, consider the appropriate role for family lawyers in providing services to families involved in separation and divorce, and discuss what we regard as the key learning points for the future. Before we do so, it may be helpful to recognise the important role pilots can play in policy implementation, particularly when the findings do not indicate the overwhelming success of a new initiative, as in the case of FAInS.

The Role of Pilots in Policymaking

It has become increasingly usual to try out new ideas through pilots in order to inform implementation and to identify and prevent any unintended consequences. Piloting is essentially a form of experimentation in which learning what works and what does not are equally important objectives. The idea of establishing some kind of family advice and information service delivered through a network of agencies working within the family justice system emerged from the piloting of information meetings and publicly funded mediation provision under the auspices of the Family Law Act 1996. The purpose was to provide a fully co-ordinated, comprehensive and interdisciplinary approach to the concerns and problems experienced by families when marital and parental relationships are disintegrating. During the 1980s and 1990s, there was growing concern about the adversarial nature of divorce legislation in England and Wales and increasing interest in finding alternative processes for dispute resolution which would be less damaging for children caught up in parental conflict and hostility. Family mediation was regarded as a more civilised approach to family matters, and family mediators became important players in the divorce business. By contrast, family lawyers were increasingly characterised as escalating hostility, taking a partisan approach which involves getting the best outcome for their own client. Face-to-face negotiation with the help of a family mediator was increasingly regarded as preferable to arm’s-length negotiation through partisan lawyers. To some extent, the role of solicitors in private family law was marginalised in policy reforms in favour of mediators.

Although the Family Law Act 1996 put information provision and conciliatory processes at the heart of divorce reform, lawyers were recognised as playing a critical role as advice givers in support of mediation. When the Government decided not to implement Part II of the Family Law Act, which contained the most far-reaching and controversial reforms, the need remained to find ways of plugging the information gap and providing a more
holistic service for families facing dissolution. Of particular concern, as always, was the need to protect the best interests of the children involved. The role of family lawyers was once more in the spotlight. Family solicitors were regarded as the obvious professionals to provide a holistic service, primarily because the vast majority of separating people seek the help and advice of a family lawyer at some stage during the process of separation. The information meeting and mediation pilots had confirmed that relatively few people access counselling and other related services after they have taken the step of seeing a solicitor, and that while mediation is a valuable service for resolving disputes it is used by a relatively low proportion of couples. Lawyers were, and were likely to remain, the chosen route through the separation and divorce processes. The Legal Services Commission argued, therefore, that it would be sensible for these lawyers to be trained to deliver a more holistic service which conformed to the principles enshrined in the Family Law Act (and now embedded within the Family Law Protocol), and which would build on and enhance existing good practice in family law. Although the concept of FAINs appeared to be sensible and appropriate the LSC decided, quite rightly, to pilot the new service before deciding whether it should be rolled out nationally, and whether other professionals might also act as gatekeepers to a new network of services.

The LSC fully anticipated that the arrangements for FAINs would require modification as a result of the pilots. It was important, therefore, to evaluate both the mode of delivery and the likely impacts of FAINs using multiple methods embracing quantitative and qualitative data collection, and for the evaluators to provide regular feedback as the pilot unfolded. During the pre-pilot phase, when we were testing our research methods and the LSC was refining the concept of FAINs, it quickly became apparent that integrated networks of local services did not exist and that solicitors were uncomfortable with the expectation that they might take the lead in developing them. The LSC responded to this finding and the focus shifted from establishing Family Advice and Information Networks to developing a Family Advice and Information Service – a shift which might partly explain why we found little evidence that FAInS increased the number and range of referrals to other agencies. We return to this aspect later in the chapter. The pre-pilot clearly pointed to implementation issues which the LSC needed to address.

The pre-pilot also enabled us to confirm our preferred approach to the evaluation, which was to conduct a before-and-after study. We wanted to examine family law practice with publicly funded clients prior to solicitors being trained for FAInS and then re-examine it after those solicitors had become FAInS practitioners. Although we had to accept a number of compromises in relation to what we hoped would be a rigorous research approach, primarily because solicitors opted into and out of the different phases, we believe that our evaluation has been sufficiently robust for us to have confidence in the findings. The lack of clear impacts attributable to FAInS will not come as a surprise to the LSC. We have presented regular, quarterly evaluation reports to the Commission and interim reports at key stages, and the findings have remained consistent. This consistency has enabled the LSC to consider the future of FAInS and to learn from the evaluation in ways which have already informed policy discussions. In our view, the findings raise a number of questions relating to the appropriate roles for family lawyers and the extent to which public funding should be committed to resolving private family law issues. While the evaluation does not herald FAInS as an overriding success, it nevertheless provides constructive and practical evidence about the current state of family law practice in England and Wales. It also underlines the gaps in service delivery which need to be plugged if the best interests of children are to remain paramount. In our view and that of the LSC, piloting FAINs/FAInS has been a worthwhile experiment.
A Holistic Approach: An Appropriate Role for Family Lawyers?

Perhaps the most significant learning from the pilots relates to what family lawyers do. Throughout this report we have discussed the role of solicitors in family law cases and have noted that some solicitors in the study raised concerns about whether it is appropriate for solicitors to be tackling non-legal issues when clients come to see them. The majority of family solicitors seem to prefer to maintain a professional boundary between themselves and their clients, which means that they avoid getting too involved in discussions about wider issues and more emotional concerns. Some of the individual case studies discussed in Annexe 5 illustrate this desire to maintain clear boundaries. Many clients are equally reluctant, it seems, to raise non-legal issues with their solicitor, and most place greatest value on the quality of the legal advice they obtain. Indeed, it is clear that clients were not really expecting their lawyers to refer them to other agencies or help them deal with non-legal issues. This raises the question of what constitutes a holistic service in family law. Is it about multiple interventions? Is it about diagnosis and ‘treatment’? Is it about the provision of information and legal advice?

At the beginning of the pilots there was no specific definition or description of the kind of service the LSC was anticipating, which was unfortunate, but the LSC had clearly been influenced by research which highlights the complexity of family law matters and the enormity of the transitions accompanying family breakdown. We know, for example, that relationship breakdown can be a trigger for other problems such as those connected with housing and financial resources. The surveys undertaken by the LSC found that lone parents were more likely to report multiple problem types than respondents living in other types of family. They were also more likely to report having experienced domestic violence. These findings are confirmed by the clients in our study, many of whom talked about housing problems and about domestic violence during their first meeting with a solicitor, irrespective of whether they were meeting with a FAInS practitioner. Separation and divorce can also trigger problems such as long-term psychological ill health. Solicitors are well aware that their family law clients may be emotionally fragile and vulnerable. In the LSC’s recent survey, respondents who had experienced problems relating to relationship breakdown reported that they spent all or most of their time worrying about them. Solicitors in our study told us that their clients are frequently emotionally distressed when they come to see them and that solicitors have to manage meetings with care. As we saw for ourselves, solicitors generally listen sympathetically to clients who need to unburden themselves, but then attempt to put boundaries around the conversations to ensure that the focus is both practical and geared towards problem-solving.

In an earlier study of a small group of family lawyers in practice, Eekelaar et al. found that

information work blended into the giving of advice, and advice into negotiation, so ... the activity of negotiating often came very close to the giving of help and support.

---

212 ibid.
213 ibid.
Throughout the solicitor–client interaction, Eekelaar et al. found that solicitors were continuously supportive of distressed clients, and they described the day-to-day work of legally aided practitioners as resembling that of a social worker or general practitioner. Rarely was the lawyer’s role confined to the provision of legal advice. Other research has confirmed this portrait of family lawyers doing more than merely resolving legal issues.\textsuperscript{215} We noted in Chapter 6 that solicitors working in the family justice system today operate in an area of law remarkable for its specialism and distinctiveness. Their clients are regarded as different from others, on account of their emotional issues and the impacts of these. Consequently, clients can be more demanding, which requires solicitors to handle them sensitively and manage the cases more carefully. In recent years, doubts have arisen as to whether family disputes should be resolved in courts and whether lawyers are the best professionals to deal with them, and family mediation has emerged as a preferable way of resolving family disputes. Increasingly, lawyers have moved towards settlement-seeking at the earliest possible stage and many of them have trained as mediators. The Family Law Protocol has since encapsulated the non-adversarial approach adopted by family lawyers and their important role in advising and supporting clients has been acknowledged and endorsed.

Family solicitors have had to respond to human and emotional matters well beyond those that could be described as purely legal. If this is what solicitors were already doing prior to the introduction of FAInS, it is hardly surprising that we did not detect much change in solicitors’ behaviour as a result of their adopting a FAInS approach: they were almost certainly offering what they would describe as ‘a holistic service’ already. Moreover, the majority were hand-picked by the LSC to participate in the early phases of the FAInS pilot and so were highly likely to be exhibiting best practice in adherence to the Family Law Protocol. This was one of the reasons why we urged the LSC to extend the FAInS pilot to include all the family lawyers in pilot areas, since this should have given us a greater variety in pre-FAInS practice against which FAInS could be tested and changes measured.

Solicitors in our study had recognised the ‘dual role’ family lawyers play prior to FAInS, and said they derived professional satisfaction both from being able to use their legal skills to achieve a fair settlement for their clients and from offering emotional support and helping clients to improve their well-being. The solicitors believed that their clients expect them to listen, understand, support and advise – to be a social worker, therapist, friend and lawyer all at the same time. They described themselves as ‘new-style’ lawyers who take a constructive, facilitative approach to family law cases. It was difficult for them to see what else they could do to offer a more holistic service beyond that which they had been providing prior to FAInS. They invariably pointed to other solicitors as ‘old-style’ lawyers who might well be gladiatorial (although nobody in the evaluation admitted to being one of these), for whom FAInS would constitute a wholly different approach.

‘Tweaking’ Best Practice

Early in the evaluation, during the pre-pilot phase, we found that solicitors were unsure as to how FAInS differed from existing good practice, and most described it as merely ‘tweaking’ best practice rather than introducing radical change. To a large extent, FAInS has merely re-emphasised the importance of lawyers taking a client-centred approach. Moorhead et al. have suggested that client-centredness

\[ \text{is taught as an ethic of listening to the client and understanding their needs, as well as providing meaningful options from which the client may choose.}^{216} \]

Even though solicitors may be client-centred, this does not necessarily mean that they agree with a client’s motives or preferred outcomes. Rather, being client-centred relates to their paying attention to the client’s practical and emotional needs.\(^{217}\) We observed many client-centred solicitors who attempted to encourage clients to be more conciliatory and less adversarial while appearing to understand why they might be wanting to ‘beat the other party into submission’ or ‘take them to the cleaners’. The solicitors we observed often attempted to restrain and curtail clients who were driven by anger and bitterness, yet they also made it clear that these kinds of drivers are understandable emotional reactions to a distressing situation.

Although we observed that solicitors tended to maintain a legal framework within which to support clients, there is some qualitative evidence that FAInS solicitors took what would be identified as a more client-centred approach. This was evident in the way the first meeting was structured and in the manner of questioning clients to obtain information about the main issues. Clients tended to make a greater input in the first meeting after solicitors had trained as FAInS practitioners. These observable changes in practice were subtle. Whether these subtle changes mean that clients received a better service is, however, a different question.

The possibility of being effective in relating to clients but ineffective in dealing with their legal problems is a concern that has been raised in previous research. Moorhead et al. have pointed out that client satisfaction with legal services provided by lawyers is generally high.\(^{218}\) However, studies comparing client satisfaction with the quality of service provided have pointed to the potential mismatch between them.\(^{219}\) Although solicitors may be client-centred, they may give inadequate or incorrect advice. Clients tend to assess the quality of service on the basis of a range of characteristics such as whether their solicitor has understood their problems, treated them with respect, and taken time to explain options and procedures. Certainly, these criteria were important for many of the clients we interviewed. The notion of client-centredness emphasises the kind of processes which might be appropriate, particularly in family law. Whether or not legal outcomes are better as a result of these processes is a question we could not answer in this research. We simply do not know whether FAInS solicitors gave good legal advice or were able to achieve better outcomes. Identifying ‘best’ outcomes is difficult anyway, given the general focus in family law on being conciliatory rather than litigious.


\(^{218}\) Moorhead et al., op. cit.

Consensual settlements are regarded as better than adjudicated settlements by most solicitors, and so clients are under subtle pressure to negotiate outcomes and reach compromises if necessary. We would have needed to know from the LSC what kinds of outcomes are considered ‘better’ in order to judge effectiveness.

The focus for FAInS tended to be on improving processes and no specific outcomes or targets were identified by the LSC. Minimising bitterness and distress, reaching consensual decisions and avoiding litigation appear to be the kinds of outcomes which have long dominated thinking and practice in family law. So what other outcomes might FAInS have sought to achieve? Solicitors could rarely identify any, but did refer to client satisfaction as the gauge they use. Since most clients are satisfied, it seems, this is hardly a particularly helpful measure, as Sherr et al. have pointed out. This, however, is a not a new dilemma. Williams suggested well over twenty years ago that a client’s understanding of legal competence is hampered by an inability to know whether an outcome is good. The solicitors in our study were at pains to achieve outcomes that were ‘fair’ and ‘just’ rather than merely ‘good’. Process issues are clearly an important element in defining best practice, yet it has been argued that client choice and client satisfaction are insufficient tools by themselves for improving the delivery of legal services. Most clients in our study were positive about the service they received from their solicitor, and we could detect no difference between pre-FAInS and FAInS clients in respect of client satisfaction, which was generally high. Moreover, the FAInS approach, even if it is slightly more client-centred, does not appear to have influenced the way in which cases were handled or resolved. As far as the solicitors are concerned, FAInS has highlighted the importance of taking a more holistic approach (whatever that really means) in family law cases and working towards a greater integration of legal and non-legal services. In the pilots, however, this integration had in most areas not been achieved.

One of the distinctive characteristics of FAInS was the introduction of personal action plans as living documents which could be modified and used as portmanteaux. The LSC’s expectation was that clients could take these to different service providers and that they would guide the actions that both professionals and clients would take. Many solicitors were sceptical about using PAPs, and enthusiasm was generally guarded in the early days of the FAInS pilot. Some solicitors became more positive about the use of PAPs as time went on, not because they found them helpful as case-management tools, but because their clients seemed to like them. We have seen in Chapter 8 that FAInS solicitors took varying approaches to the completion of PAPs, and there is little evidence to indicate that their completion was a mark of clients receiving a better, more tailored or more comprehensive service. We would question whether PAPs have helped solicitors to be more client-centred or more holistic. Indeed, many PAPs have been confined to the noting of legal issues and are redolent of a more lawyer-centred approach. Some of the PAPs indicate that solicitors paid little attention to their clients’ needs and problems; nor do they suggest that the service clients received was in any way holistic.

Integrating Services

How, then, could FAInS solicitors have offered a more holistic approach? It has been increasingly recognised by practitioners and policymakers that families facing separation

220 ibid.
222 Moorhead, R. et al., op. cit.
and divorce have needs and difficulties which go beyond the purely legal. Research has indicated that people are frequently looking for a mix of help, support, guidance and advice to get them through the process.\(^{223}\) Professionals who have contact with these people have an important role to play in ‘problem noticing’ and signposting to a range of services.\(^{224}\) Research suggests that co-ordinating these services so that people’s problems are dealt with not just in isolation, but in the context of their causes and consequences, is likely to be more beneficial and effective in helping people find long-term solutions. As Pleasence has pointed out:

> Vulnerability to problems is not static, but cumulative. Each time a person experiences a problem, the likelihood of experiencing a different problem increases … some ‘trigger’ problems, such as domestic violence and divorce, naturally bring about other problems, and these can be key elements of problem clusters …\(^{225}\)

It seems that the holistic approach encouraged by FAInS was meant to uncover problem clusters and increase clients’ access to a range of support services, thereby enhancing their access to social justice and minimising the risk of social exclusion. The emphasis in the professional development training for FAInS was on dealing with emotional issues and recognising clients’ vulnerabilities. Little was said about other kinds of problems, however. The emphasis on psychological distress may have masked the importance of problem-noticing in other domains and the recognition of problem clusters which might require other kinds of professional input. We found little evidence that FAInS solicitors were aware of problem clusters as such, nor did they regard themselves as the primary gateway to other services. Nevertheless, some FAInS practitioners told us that they were attracted to FAInS precisely because it offered the opportunity for working in collaboration with other services. What they had not considered was that they should make any of the running in establishing collaboration and developing integrated networks. It was clear during the pre-pilot that networks hardly existed in most pilot areas and that solicitors did not have the time or know-how to invest in establishing them.

So, while many FAInS solicitors were doing many of the things emphasised by the FAInS approach prior to becoming FAInS providers – hence the mere tweaking of practice – the majority were not pivotal in the provision of an integrated service. The advent of FAInS did not change this. Although the LSC organised some networking events, attendance was poor, and we observed few attempts by solicitors at networking with other local service providers. The provision of national service directories by the LSC was never likely to have much impact on solicitors’ behaviour. Not surprisingly, FAInS solicitors were no more likely than they had been before FAInS to inform clients about other agencies, or to make referrals to them. Most had been referring a few clients to counselling and mediation services prior to FAInS and these referral patterns did not change after FAInS. As we saw in Chapter 3, only 25 per cent of FAInS solicitors had given their clients information about other services, or advised them to attend, or actually referred them to another agency. The most common reference to other services related to mediation, but relatively few referrals were made. Yet, during our six-month follow-up interviews with clients (discussed in Chapter 4), we were told about a wide range of concerns, indicating that solicitors should have been aware of the existence of problem clusters and should have been able to refer clients to the most appropriate services.


\(^{224}\) Pleasence, *op. cit.*

\(^{225}\) ibid., p. 155.
It may be that solicitors did not attempt a diagnostic interview to uncover other, non-legal concerns because they would not have known how to deal with them or where to send clients for help. It seems clear from our interviews with solicitors that most were reluctant to recommend services about which they knew nothing and in which they could have no confidence. Solicitors usually feel a sense of responsibility for their clients, and are not going to expose them to practitioners they do not know and whose work is seemingly untested. Two firms dealt with this issue by employing other professionals inhouse, and regarded this as an excellent way in which to embrace FAInS principles and objectives. Some other FAInS practitioners had taken the time to find out about other local services and felt that their family law practice had been enhanced by this additional knowledge. Many solicitors were of the view that FAInS would only work well and produce positive outcomes where there was a strong network of local services working in an integrated way. Despite the paucity of strong local networks, many FAInS practitioners regarded the potential for a more integrated approach as the most notable feature of FAInS, and one which they would like to have endorsed and put into practice. They would have liked legal and non-legal services to have been brought together (although they were reluctant to take the lead), and conceded that had this happened they would have been more inclined to be more diagnostic and take a more holistic approach by exploring a wider range of issues and concerns with clients. The existence of strong local networks of complementary services was regarded by FAInS practitioners as a key prerequisite for rolling FAInS out nationally. While the FAInS pilots had merely tweaked pre-existing best practice, solicitors felt that more significant changes could be achieved if there were a greater integration of non-legal and legal services. Solicitors felt that the holistic approach would be more meaningful, and PAPs could be more detailed and useful. We seem to have a chicken-and-egg situation here. There was a general recognition among FAInS solicitors that FAInS could enhance best practice, but only if service provision were more integrated, more joined up. Best practice had not changed much, precisely because local services were not joined up. Yet, solicitors did not believe that they should take the lead in promoting this shift and wanted the LSC (or someone else) to do it for them. This poses some difficult dilemmas about who should and could take the lead in the development of a more integrated approach. Effective partnership working is very difficult to achieve, and is highly resource-intensive.

In 1998, Community Legal Service Partnerships were established as the first nationally co-ordinated attempt to develop a more seamless advice service. They have been less successful than was hoped, however, and the LSC proposed that resources should be channelled into the development of strategic partnerships with other advice services and funders and direct engagement with other public partnership structures. Pleasence has argued that the LSC’s proposals are, effectively, an extension of FAInS. It is important to note, therefore, that the failure to establish effective partnerships and better integration of services within the FAInS experiment may well have impacted negatively on its success and contributed to the lack of change highlighted in this report. More effective

---


230 Pleasence, op cit.
integration of services is, undoubtedly, one of the major unresolved challenges in the provision of more tailored, seamless, joined-up services in family law.

**Changing Client Behaviour**

The provision of integrated services does not automatically mean that clients will use them, however. We know from previous research that simply providing information about the kinds of services available does not necessarily encourage people to use them.\(^{231}\) We noted in Chapter 4 that FAInS clients were less likely than pre-FAInS clients to have made contact with a service mentioned to them by their solicitor. There are a number of reasons why people do not take action to resolve issues even when they have been encouraged to do so. A person’s having taken action to consult a solicitor may in itself make it less likely that they will then go on to seek additional help. The FAInS firms which employed other professionals were at an advantage, it seems, because clients did not have to go elsewhere for the help being suggested to them. Furthermore, if family law solicitors were taking time to listen to clients and following the Family Law Protocol, their clients may well have felt that they had no need of additional services.

The service solicitors mentioned most frequently was family mediation. Although the majority of FAInS providers expressed enthusiasm for mediation services, they did not always regard referrals to mediation as appropriate or necessary. Research has suggested that some clients can suffer from referral fatigue, particularly if they have to move between agencies to deal with different problems.\(^ {232}\) Very few FAInS solicitors actually made appointments for their clients with other agencies – they were no more pro-active than they had been pre-FAInS. Personal action plans were designed to help clients move between agencies, but they were not used in this way. Nor, it seems, did clients follow up on services which solicitors had recommended to them. During our follow-up interviews with them, clients gave several reasons for not contacting services that had been mentioned to them. Some said that the problem had been resolved without recourse to another agency; some felt that the services recommended would be unlikely to be useful; and others reported that their partner was unwilling to attend (mediation services) and so there was little point in them attempting to use the service. Clients who had contacted other services of their own volition without their solicitors having made any suggestion that they do so had often sought help with mental health problems, managing finances and debt. It is not surprising that their lawyers had not suggested referrals to other agencies for help with these kind of issues, since they were rarely discussed in meetings between solicitors and clients and the solicitors may have been unaware of them.

If a more holistic approach is to be encouraged, more needs to be done to help professionals uncover problem clusters and then help clients to access other services directly. Clients and solicitors need to be able to recognise problems and to recognise when advice and assistance are necessary and appropriate.\(^ {233}\) Providing clients with information and education is an important mechanism for promoting integrated services, but not sufficient in itself to ensure that people access and use these services. Referral systems may be largely passive, as they were in FAInS, and consist primarily of signposting options. But such options are not necessarily helpful to people who have little

---

231 Walker (ed.), *op. cit.*
233 Pleasence, *op. cit.*
knowledge via which to gauge their relative benefits.\textsuperscript{234} It may be that establishing one-stop shops or centres in which a variety of legal and non-legal services can be provided in such a way that referrals are seamless would be a better way of developing integrated services. Our evaluation of FAInS does not shed any light on whether such an innovation would be beneficial, however. Those FAInS solicitors who brought other services in-house would probably support the idea. What seems clear from this and other studies is that the effective provision of integrated services should not place additional administrative burdens on busy professionals. The FAInS solicitors were fairly vociferous about the administrative demands made on them to complete more forms, and some were anxious to move away from FAInS in order to reduce administrative demands. We note that referral protocols seem to have contributed to the burden felt by advice agencies working within Community Legal Service Partnerships.\textsuperscript{235} Ultimately, as Pleasence has pointed out, the success of a referral system depends on knowledge and trust.\textsuperscript{236}

We would argue that these are essential if professionals are to be able to work together and clients feel confident that seeking help is worthwhile. The National Audit Office has argued that

\begin{quote}
    sufficient capacity should exist to ensure that referrals are not accompanied by unreasonable delay, and those making referrals should provide people with a explanation of the whole process that lies before them.\textsuperscript{237}
\end{quote}

This view might also support the case for the development of one-stop shops to address family law problems. There may well be benefits associated with a range of agencies being able to recognise problem clusters and contribute to their resolution. The promotion of a common assessment framework and information sharing in children’s services under the Every Child Matters agenda are bold attempts to promote integration. There are clearly problems and concerns to be overcome in implementation, but it may be an initiative worth considering within the provision of legal services and access to social justice. Difficult though it may be, there might be value in attempting to

\begin{quote}
    actively change the landscape of legal and advice services in order to improve access and make services more reflective of people’s lives.\textsuperscript{238}
\end{quote}

Family law solicitors might benefit from contributing to the development of a co-ordinated network of services, but it is clear from our evaluation of FAInS that they are unlikely to take the lead in changing existing and shaping new infrastructures, except in a very modest way. This may well have been a missed opportunity for everyone involved in FAInS. At a seminar for FAInS practitioners, held at the end of the evaluation, the idea of integrated family support services was strongly welcomed, but solicitors believed that links are difficult to establish and that clients do not always feel confident in using other services. They clearly saw it as the responsibility of the LSC to develop networks, and pointed also to the role of local Family Justice Councils. The FAInS solicitors regarded it as essential that there should be understanding of what clients expect from legal services and the extent to which they see solicitors as an appropriate gateway. Those who had

\textsuperscript{235} Matrix Research and Consultancy, op. cit.
\textsuperscript{236} Pleasence, op. cit.
brought counsellors and therapists in-house were convinced that ‘going the extra mile’ helped clients and that integrated services could be cost-effective. Several FAInS solicitors, however, expressed concerns that other professionals should not be regarded as a cheaper alternative which could reduce public funding for legal advice. The FAInS solicitors who had the longest experience of delivering FAInS felt that they could make a valuable contribution to debates about future directions both locally and nationally. In their view, not all clients need services which cannot be supplied by family lawyers. The other services which they thought could most usefully be joined up included debt advice/counselling, housing advice, welfare benefits advice, counselling, and, possibly, mediation. They were unanimous, however, that in any one-stop-shop approach legal services should be the core business. Their biggest disappointment with FAInS, it seems, was at the lack of any centralised attempt to co-ordinate services in advance of implementing FAInS. Whether solicitor and/or client behaviour would have changed if services had been co-ordinated is a question we cannot answer.

Promoting Family Relationships: Every Child Matters

It is clear that concerns about children’s well-being are at the heart of reforms in service provision across Government. In September 2003, the Government published a consultation paper, *Every Child Matters*, setting out its vision for lifting children out of poverty and providing them with the best possible opportunities at all ages and stages.\(^{239}\) In 2004, the publication of *Every Child Matters: Next Steps* provided a blueprint for delivering the vision and heralded the Children Bill 2004.\(^{240}\) The Government acknowledged that improving outcomes for children and young people requires long-term change in culture and ways of working, so that resources are organised around the needs of children and young people and able to support parents and carers. The focus is on early intervention and effective prevention of risks and problems in children’s lives. The integration of children’s services is designed to achieve five key outcomes for children and young people: being healthy; staying safe; enjoying and achieving; making a positive contribution; and achieving economic well-being. The goal is to maximise opportunities and minimise risks. Working in partnership across sectors is regarded as the best way of achieving this goal. The family justice system is a key player in this vision.

Two of the stated aims of FAInS were to minimise distress to children whose parents are splitting up and to promote ongoing family relationships and co-operative parenting. Residence and contact arrangements were discussed by most parents with their solicitors, but we detected no shift in practice as a result of FAInS. Issues relating to other aspects of co-operative parenting were not addressed during the professional development training for FAInS and most solicitors we observed did not venture beyond impressing on parents the importance of minimising hostility and encouraging ongoing contact. During the six-month follow-up interviews with clients we learned that 46 per cent of FAInS clients who were non-resident parents had no contact with at least one child who did not live with them. Indeed, the lack of contact was greater among FAInS clients. Some 33 per cent of FAInS clients were dissatisfied with the contact arrangements and 45 per cent described communication with the other parent as ‘very poor’. While these findings are consistent with those of previous research, cited in Chapter 4, they are likely to be considered disappointing.


\(^{240}\) Department for Education and Skills (2005) *Youth Matters: Next steps: something to do, somewhere to go, someone to talk to*, DfES, Crown Copyright.
Many clients interviewed felt that their children had been adversely affected by the separation/divorce. The personal narratives (Annexe 5) illustrate further some of the difficulties children faced when their parents separated, including problems arising from changing schools, being bullied by other children, being expected to carry the burden of making decisions, and being exposed to unsatisfactory contact arrangements. Our interviews indicate that some parents certainly received assistance from their solicitor in dealing with some of the problems. However, there was a suggestion that the problems perhaps appeared too complex for solicitors to handle. Simply signposting parents to other services was not always regarded as an appropriate response, either. Parents who did seek help with or for their children usually turned to schools and health professionals. Others remained at a complete loss as to where to go for help and pointed to the significant gaps in support services for children.

Many of the parents in our in-depth interview sample found it difficult to consider the impact of separation from their child’s point of view and conflated their child’s best interests with their own. Interviews revealed the negative consequences of parental conflict, and some children were experiencing behavioural problems and unresolved feelings of anger. The FAlignS approach does not appear to have diminished these consequences, nor to have helped parents access appropriate help for children in considerable distress. Our interviews with children (Chapter 11) confirm this view. Children were rarely consulted about or involved in decisions which impacted on their living and contact arrangements. To a large extent they were socially excluded from processes which have fundamental consequences for their well-being. Solicitors who became FAlignS practitioners seemed largely unaware of services for children, did not have access to the information leaflets prepared for the information meetings pilots which were subsequently rewritten and reproduced, and made little or no use of parenting plans despite widespread debate about their value following the evaluation of information meetings.241 Since the Family Resolutions Pilot Project was running at the same time as the FAlignS pilots it is surprising that aspects of that programme (including parenting plans) were not incorporated into FAlignS practice. Again, an opportunity appears to have been missed within the FAlignS pilots to benefit from the extensive work which had been undertaken in respect of providing information and support to children and enabling parents to focus on parenting issues.

The objective of promoting enduring, supportive family relationships and co-operative parenting remains a challenge for the family justice system, and there is little that FAlignS has contributed to meeting it. Recent research has illustrated how the cost and duration of publicly funded private law children cases have increased substantially, and has suggested that the legal aid scheme can act to minimise delay and reduce cost inflation.242 Furthermore, Trinder found that if contact was not presented as a problem to solicitors it was rarely discussed.243 Kemp et al. cited FAlignS as representing an opportunity to encourage solicitors to provide parents with appropriate advice and information and promote early settlement of issues. We have found no evidence to suggest that FAlignS solicitors have contributed in this way. Cases dealt with by FAlignS practitioners have not been resolved earlier, nor have children issues been handled any differently.

In July 2004, the Government laid out its proposals for integrating the Every Child Matters agenda into work with separating and divorcing parents. The focus is on enabling children to have an ongoing relationship with both parents and ensuring that parents have responsibility for maintaining their relationships with their children. The consultation paper put forward proposals which would better meet these aspirations. They are aimed at minimising conflict and supporting good outcomes without recourse to the courts, improving parental access to services which will enable parents to reach agreements, and improving legal processes and service delivery for families who do go to court. Within the proposals were parenting plans, access to legal advice and practical/emotional advice, and the restructuring of legal aid to incentivise early dispute resolution. The expectation was that

the Government will continue to develop these early resolution methods through its Family Advice and Information Service (FAInS) pilot.

Further, the proposals indicated that collaborative law would be developed, an in-court conciliation scheme would be introduced, family mediation would be promoted, and the Family Resolutions Pilot Project would be introduced. Undoubtedly, FAINs was envisaged as a key driver for change, and in our response to the consultation paper we cautioned that FAINs solicitors did not always spend time exploring all the issues which need to be addressed, nor were they always facilitating access to other support services. We noted their continuing focus on legal issues, and suggested that the FAINs model would need to be articulated more clearly and that solicitors would require more training and encouragement to offer a distinctly different kind of service which would fulfil the Government’s expectations regarding FAINs. We argued that while the FAINs approach may have much to contribute to the Government’s proposals for reform, solicitors were not overly keen to participate in the pilots, and those who had participated had not taken much of a lead in offering more collaborative, integrated services or in case-managing clients through their various transitions. We also pointed out that FAINs solicitors did not appear to be discussing the needs of children unless parents raised concerns, nor were they promoting or facilitating access to children’s services. We argued, in 2004, that more resources would need to be invested in enhancing solicitors’ understanding of the vital role they can play in promoting the Every Child Matters vision within the family justice system, and that, although FAINs was in its infancy, there was no room for complacency. We suggested that much more would need to be done to incentivise family solicitors to participate in FAINs and to spearhead change in the approach to resolving family law problems. At the end of the FAINs evaluation it is clear that these challenges still exist, and more consideration needs to be given to how solicitors might deliver services in the ways envisaged by the consultation paper and the agenda for action.

Promoting co-operative parenting will always present serious challenges in high-conflict cases. The FAINs lawyers did not spend much, if any, time talking about co-operative parenting but they did underline the importance of reducing conflict and putting the best

245 ibid., p. 6.
interests of children first. As we have found in this and in previous research, communication between parents often deteriorates during and beyond separation and divorce and little is done to improve it. The Family Resolutions Pilot was introduced to help families in which conflict was entrenched but relatively few people experienced the programme. In other jurisdictions, a number of programmes have been developed to address high-conflict cases. Recently, five programmes in Alberta, Canada were reviewed including one designed to improve communication between parents. The Focus on Communication in Separation (FOCIS) programme is available in ten locations in Alberta and is a skills-based six-hour communication class. The review found that participants were very positive about the course and described it as having helped them reduce negative conflicts with the other parent and learn positive communication strategies. In addition, there is evidence that FOCIS is considered to save court and clients’ time and costs. It may well be that until these kinds of focused interventions are available in England and Wales, family lawyers are unlikely to be able to do more to address co-operative post-divorce parenting issues and contribute further to achieving the Every Child Matters outcomes. The FAInS practitioners were acutely aware of gaps in service provision and of just how few programmes are available for parents and for children.

The Future of Legal Aid

Decisions about family law policy, the role of solicitors and the future of FAInS are inevitably intertwined with debates about legal aid, and concerns to reduce the legal aid bill. The rising cost of legal aid has long exercised governments. Our tentative study of FAInS costs indicates that the current FAInS model is unlikely to reduce legal aid costs and that, at best, FAInS might be cost-neutral. In July 2006, the LSC and the Department for Constitutional Affairs published a consultation paper on the future of legal aid funding. It was published alongside Lord Carter’s review of the legal aid budget and his recommendations for change towards a market-based procurement settlement for legal aid. The proposals are formulated within a framework aimed at achieving a steady state procurement system, operating with the resources available, so as to deliver a sustainable legal aid scheme. One of the key changes proposed is that of moving away from the current position, in which legal aid pays for services providers choose to deliver, to one in which public funding is available for services the LSC wishes to purchase. Part of the plan is to move towards Unified Contracts with fewer, larger suppliers. Fixed and graduated fee schemes would replace hourly rates and tailored fixed fees. The scheme will cover all family work currently covered by Legal Help, Help with Mediation and General Family Help. The proposals built on an earlier consultation which proposed that family legal aid should encourage early and amicable resolution of family law issues and restrict access to Legal Representation for contested proceedings. The FAInS pilot practitioners were regarded as critical to testing these measures out. The objective was to introduce stricter controls on the funding of multiple and repeat applications in private law family cases and reduce the number of cases coming before the courts.

251 Department for Constitutional Affairs (2004) A New Focus for Civil Legal Aid: Consultation, DCA.
The FAInS practitioners were expected to undertake the early diagnostic work implied by these controls. This would imply that experienced family law practitioners should be handling family law cases from an early stage. However, we found that many FAInS practitioners were used to handing cases to more junior colleagues in the early stages, becoming involved themselves only if the case posed complex issues or when negotiation with the other party was necessary. It is important to consider, therefore, whether FAInS and related support need to be provided by experienced senior practitioners. Kemp et al. have argued that juniorisation might account, in part, for rising costs in legal aid due to junior staff lacking negotiating skills and the increased use of counsel.\footnote{Kemp et al., op. cit.} Certainly, the experienced solicitors who were used to handing family law cases to more junior staff were unhappy with the eligibility requirements for being a FAInS practitioner. Most argued that they simply could not afford to do all the work themselves, owing to poor levels of legal aid remuneration. Legal aid rates tend to be around half of private client rates, so there is a strong business incentive to delegate publicly funded work to junior staff. We argued throughout the evaluation that it would be helpful if all categories of staff could receive FAInS training so that delegation of cases to junior staff did not result in clients missing out on the FAInS approach. This did not happen, and we were aware that juniorisation was continuing in some firms and that FAInS cases tended to be carefully selected in ways which were hard to detect through the research. Davis et al. had argued, as long ago as 1994, that legal aid was creating a plethora of young, over burdened practitioners working with limited efficiency upon an unreasonable number of cases.\footnote{Davis, G., Cretney, S. and Collins, J. (1994) \textit{Simple Quarrels}, Clarendon Press, p. 263.}

While it might be reasonable to assume that FAInS requires the level of experience and skills held by senior practitioners, the ongoing dissatisfactions with legal aid rates will inevitably impact on decisions about whether being a FAInS practitioner is attractive.

It is important to note that some solicitors who participated in the pre-pilot dropped out of FAInS because they could not justify the loss of earnings resulting from an increased caseload of publicly funded cases. This issue was raised during interviews with FAInS solicitors and at the end-of-evaluation seminar. Solicitors wanted firms to be given responsibility for deciding who could train as a FAInS provider. They argued that it is not always necessary to have a senior practitioner involved at the start of cases and, furthermore, since FAInS training did not give practitioners any formal qualification there were few rewards for senior practitioners, coupled with a loss of earnings. They were keen to know who decides on what is ‘best practice’ and who should deliver it: is this a matter for the profession to agree, or one in which the LSC should have a say? They were unhappy with the way in which decisions had been taken in respect of the pilots and wanted future decisions about who can practise as a FAInS provider to be taken on professional grounds. This would also help firms to balance economic, business needs with promoting best practice across the board. It seemed clear to us that, unless more junior staff could be included in FAInS, several firms would cease to be FAInS providers. The implementation of FAInS would have to be considered within a framework of appropriate rewards and incentives as well as within the \textit{Every Child Matters} framework. It may be that introducing parents to parenting plans and informing them about their responsibility to take account of their children’s needs, beyond making arrangements for contact and residence, does not require the skills of the most
experienced practitioners. If whole firms could adopt a FAInS approach, cultural and behavioural changes are more likely anyway.

If the changes in family legal aid are intended to encourage early settlement and to restrict access to legal representation for contested proceedings, it seems essential that family law practitioners at all levels should receive appropriate training so as to take the kind of approach embodied within FAInS. This cascading downwards of skills might help to maintain a cadre of specialist family lawyers regarded as essential if specialist advice and support are to be provided to vulnerable families.\textsuperscript{254} Indeed, Macdonald has argued that if the practice of family law were rendered economically unviable this would have serious human rights consequences.\textsuperscript{255} Greater efficiency in family legal services, as advocated by Lord Carter, should not result in a diminution of family law practice and expertise. In March 2007, the Family Justice Council indicated its concern that the proposed reforms in legal aid would lead to a significant exodus of dedicated, experienced and specialist practitioners from publicly funded family law work.\textsuperscript{256} This, in turn, would reduce the availability and quality of legal advice, representation and advocacy.

The intention, from April 2007, was to implement a single level of service (Family Help – Private) paid for by a graduated fee model which removes the fee distinctions between junior and senior practitioners. It is possible that removing fee distinctions between different levels of practitioner will avoid the financial incentive towards juniorisation, although private clients are likely to remain more lucrative, even if it does not stem the exodus from publicly funded family law practice.

The fee payable is tied to the level at which the case concludes: level 1 includes all cases which complete at the first meeting with the client; level 2 includes all cases which complete after time spent communicating with others, support of family mediation and consent orders; and level 3 includes all work following the issue of proceedings. The emphasis is on completing cases as early as possible and on removing the current financial disincentive for solicitors to issue proceedings in the Family Proceedings Courts. The new Unified Contract will cover lawyers and not-for-profit agencies (including mediation providers) and will specify the work to be done. The quality of work and the standard of client services will be monitored by independent peer review (managed by the Institute of Advanced Legal Studies). At the beginning of April 2007, the LSC announced that 94 per cent of providers had signed the unified contract despite being highly sceptical of and unhappy with the proposals for legal aid reform. We noted during the FAInS solicitors’ seminar that solicitors were opposed to peer review systems, described variously as ‘a nightmare’ and ‘a disaster’. At the time, they were still providing data in relation to the Family Help trial, but were of the view that it is not helpful to have a set figure (fixed fees) for interventions as there is no incentive to do more than is absolutely necessary, and were questioning whether reaching early settlement is really the panacea it is held to be.

In its response to Lord Carter’s proposals, Resolution made the point that family legal aid contracts form the backbone of the legal aid scheme and that the decline in family legal aid contracts is indicative of a decline in legal aid overall.\textsuperscript{257} Resolution has expressed concerns about the cost of the proposed peer review system and has suggested that the

\textsuperscript{255} ibid.
preferred supplier peer review standards will not be achievable or affordable under the proposed fee structures. The timetable for implementing the proposed changes is likely to be put back, but it seems clear that no more money will be allocated for legal aid and that fixed fees will be the way forward. It was abundantly clear to FAInS practitioners that legal aid is in a state of flux and that FAInS had been operating against a backdrop of change and uncertainty in public funding. Not surprisingly, we detected an element of disillusionment and suspicion about the LSC’s motives for introducing FAInS in the first place, and some degree of negativity persisted throughout the evaluation period.

The cost of legal aid is not a concern restricted to England and Wales, however, and a number of jurisdictions are struggling with the need to allocate scarce resources wisely. It was not part of our remit to consider this issue, but concerns about public funding undoubtedly coloured solicitors’ attitudes towards FAInS and its future. Family law is widely considered to be a specialist area, supported by the formation of Resolution and the adoption of the Family Law Protocol. Nevertheless, family law is often seen as the ‘loss-leading’ department in a generic legal practice, despite the considerable increase in the legal aid spend on family matters.

**Alternative Approaches**

Some other jurisdictions tend to spend less on legal aid and instead promote alternative programmes for separating and divorcing couples.

**Family Relationship Centres**

The most recent innovation in Australia, for example, involves the establishment of Family Relationship Centres in communities, as a highly visible gateway to a range of services. Family lawyers in Australia carry a more traditional role of providing legal advice and representation rather than attempting more holistic, problem-solving practice. Individuals may still seek legal advice, but legal aid is restricted to those cases in which there is a clear, identifiable need for legal assistance. The number of firms in Australia undertaking legal aid cases has fallen since the early 1990s, with low rates of remuneration cited as a major contributing factor.

The Family Relationship Centres (FRCs) in Australia offer a kind of one-stop-shop approach to family matters. The Centres are government-funded and are run by experienced non-government agencies such as counselling and mediation services. They are intended as

> an early intervention initiative to help parents work out post-separation parenting arrangements … They will provide an educational, support and counselling role to parents … with the goal of helping parents to understand and focus upon children’s needs, to provide initial information … and to negotiate workable agreements about parenting after separation.\(^{258}\)

In addition, FRCs offer help to those in intact relationships by offering an accessible source of information and referral on marriage and parenting issues and providing a gateway to other support services. One of the aims of FRCs is to achieve a long-term cultural change in the pathways people take to resolve disputes in family law cases. This

means shifting the emphasis away from legal services towards community services, and the Australian approach unashamedly regards parental separation as a process which may become a legal issue but which should not be framed as a legal matter from the outset. This is in direct contrast to the FAInS approach, which put family lawyers at the heart of the process and saw them as providing the gateway to other services at a later date once they had undertaken a diagnostic interview. The FRCs recognise that problems often occur in clusters and that people need access to a range of advice and support. The FRCs act as the triage unit for family problems. Access to free mediation is part of the package on offer, as are parenting education courses and seminars. In announcing the concept of a national network of Family Relationship Centres in August 2004, the Prime Minister of Australia described these services as ‘shock absorbers’ intended to take some of the initial pressure off both separating parents and the family law system as the parents sought to reconstruct their post-separation parenting regimes.259

Parkinson has pointed out that FRCs, although looking much like the embodiment of a one-stop-shop approach, are not a one-stop shop but a gateway to services.260 This may be a somewhat subtle distinction, and it will be important to learn from the evaluation of FRCs just how seamless a service they are able to provide. Although attendance at an FRC is not mandatory, the incentive to do so is that it is free and courts are likely to expect litigants to have participated in FRC services prior to filing a court application. It has been clearly acknowledged that the success of FRCs will be dependent on there being high levels of co-operation between professionals in the family justice system, adequate levels of resourcing and a consistency of approach. A declared aim of the FRCs is to assist parents to resolve disputes without lawyers being involved in the negotiation process. This is a direct result of many submissions which suggested that lawyers often tend to inflame tensions rather than assist in resolving issues. The legal profession in general, and many others, are somewhat sceptical about the prospect of a legal system being able to operate without their input.261

It would seem that public reaction to the opening of the FRCs has been very positive. Indeed, Parkinson has described them as ‘a runaway success’ on the basis of the anecdotal evidence available so far.262 The media reporting has been favourable and legal practitioners in the areas where FRCs have opened up have been very accepting of the work they do. In the first three months of operation, the first fifteen Centres received over 9,100 calls and more than 2,700 people visited them to seek assistance. In the same time period, the Centres conducted over 3,800 interviews and intake sessions, and over 1,300 dispute resolution sessions.263 The formal evaluation of FRCs will hopefully be able to provide objective in-depth data relating to their use and, in due course, to the outcomes of their work.

260 ibid.

268
Marginalising Lawyers

The rather low profile accorded to family lawyers in new initiatives in Australia is echoed in other jurisdictions also. In The Netherlands, the introduction of ‘law counters’ provides a gateway to services which limits access to legal advice. In Scandinavia, many centres helping separating families do not involve lawyers as central players. The extent to which the opposite continues to be the norm in England and Wales may well depend on the level of public funding made available to family lawyers and the extent to which they choose to be pivotal in the development of more integrated services. Their frustration with what they perceive to be inadequate rates of remuneration, coupled with anxieties about the proposals for reform in legal aid funding arrangements, may well lead some experienced family law practitioners to reconsider their future position.

The recent National Audit Office report on family mediation argued that there is scope to increase the value for money achieved from the legal aid budget through increasing the take up of mediation, and urged the LSC to do more to promote family mediation, including a presumption reflected in legal aid contracts with solicitors that mediation should normally be attempted before other remedies are tried. Indeed, the recommendation suggests that solicitors who have significantly lower numbers of mediated cases should be investigated and may have their contracts curtailed. These recommendations seem to ignore many of the findings in what is a significant body of research on family mediation which suggest that increasing the take-up of mediation is not necessarily achievable because one or both partners may choose not to attend. We have seen that the family law practitioners in this study were favourably disposed to mediation as an option and advised clients about it more frequently than they mentioned other services. Nevertheless, relatively low numbers attended mediation. The LSC has done a good deal in recent years to promote the awareness of mediation. The new Family Help scheme will encourage early settlement and reduce incentives to resort to litigation, although it may well be that lawyers promote early resolution to disputes without referring cases out to family mediation. In these circumstances it is hard to see how imposing sanctions on solicitors if they do not refer to mediation can work. These recommendations come at a time when the organisation of family mediation in England and Wales is being restructured. The UK College of Family Mediators has ceased to function and may become a new Family Mediation Council. A high proportion of the not-for-profit mediation services are struggling to survive and the number of mediators in the private sector has diminished in recent years. Some qualified and highly experienced lawyer-mediators may argue that there is less need for an independent mediation sector if family lawyers practise according to FAInS principles and in line with the Family Law protocol.

Irrespective of how family mediation is taken forward in the next few years, however, all the evidence indicates that most people will still want to take legal advice and may continue to prefer to manage their case via a lawyer. The availability of public funding for legal services, therefore, is going to continue to be an issue of critical concern.

The Community Legal Service and FAInS

The last few years have seen changes in respect of legal services in the community, alongside changes in legal aid funding. In July 2005, the LSC published its proposed
strategy for the future of the Community Legal Service (CLS), which was established by the Access to Justice Act 1999. The CLS aims to promote the availability of legal services, including information, advice and representation, in civil law. A variety of stakeholders, including local authorities, central government departments and solicitors and advice agencies, have an interest in developing and maintaining the CLS. The core objective is to promote the availability of legal and advice services to protect people’s rights.

In 2006, the LSC published its strategy for 2006–11. The themes include an increased focus on meeting clients’ needs and working in partnership to provide access to an integrated and seamless service. The expectation is that the core commitment should be to use the law to achieve positive change, bearing in mind the role of legal advice services in the context of the wider provision of other services. Community legal services will be offered in a number of ways. Telephone services will continue to be offered through CLS Direct, providing information, diagnosis and basic advice, and a more specialist advice service in family law and immigration within a new triage service. Face-to-face services will be offered through Community Legal Advice Centres (CLACs) and Community Legal Advice Networks (CLANs). The CLACs will deliver wide-ranging services and may be run by a local law firm, a not-for-profit agency or some other agency. The LSC is proposing that there should be around seventy-five CLACs in England and others in Wales. The CLANs will be a group of readily identifiable CLS organisations that work together to deliver the same legal services as a CLAC in less densely populated and larger geographical areas. Some thirty-six networks are planned for the next five years. Contracts for both CLACs and CLANs will be awarded after a tendering process.

In family law, all providers will be expected to integrate their core specialist legal services with other providers offering complementary services, such as counselling and mediation. The LSC has indicated that

because of the clear links between relationship breakdown and family legal problems and other civil legal problems, family legal services will be linked with services in other areas of law.

These various modes of delivery will constitute the new Civil Advice Strategy. It is clear from these proposals that the direction for the future of publicly funded legal services is for wide-ranging complementary services to be delivered in a seamless, joined-up way, with lawyers occupying a central position in networks and centres. The move is towards larger suppliers and fewer small practices providing publicly funded services. In many ways, the models take FAInS a step further, beyond individual firms of solicitors. The challenges that have been evident in establishing FAInS will exist for the new arrangements, however. If CLACs and CLANs are established successfully, it may be that solicitors will be able to focus more on diagnosing legal issues and providing legal advice and less on the delivery of the more holistic service originally envisaged by FAInS.

We note, however, that there is little mention of new developments in collaborative law. Several FAInS solicitors and other non-FAInS practitioners around the country have

---

264 Legal Services Commission (2005), op. cit., Vols I and II.
266 ibid., p. 11.
trained as collaborative lawyers in recent years. The success of collaborative approaches in other areas of law and in other jurisdictions indicates that this can be an effective mechanism for reducing litigation and encouraging early settlement. It may be that this approach will continue to develop outwith the publicly funded sector, however.

Managing Change: Concluding Comments

The new directions in legal aid provision and the establishment of CLACs and CLANs all herald substantial change for lawyers. The piloting of FAInS has shown that it is not easy or straightforward to require solicitors to change the way they practise when they consider that they are already conforming to best-practice principles. Nor is it easy and straightforward to promote joined-up working through the establishment of networks of suppliers. As we noted earlier, the danger must be that more experienced practitioners will opt out of publicly funded work, particularly if the remuneration provides no incentive to stay in it. The expectation at the beginning of the FAInS pilot was that most family solicitors would want to be part of it. In reality, only a very few opted in to FAInS. It remains to be seen how family lawyers react to the new arrangements. Eekelaar et al. pointed out in 2000 that a key policy question is

how to ensure that enough lawyers are willing to bid for whatever kinds of contracts the new Legal Services Commission is offering to provide the expert advice and assistance in managing family transitions which the good family solicitor can offer.\(^{267}\)

This remains a key policy question since further change seems inevitable. We believe that there are lessons to be learned from the evaluation of FAInS about managing changes in family justice. During the FAInS pre-pilot, we began to develop our theoretical approach to the evaluation. We needed to delineate key inputs, outputs and outcomes for FAInS in order to determine how measurable outcomes could be achieved. We constructed a theory-of-change framework since the introduction of FAInS was an attempt to change legal practice in order to promote certain outcomes. By returning to the early documentation relating to FAInS issued by the LSC, we listed the identified aims and objectives: FAInS set out to minimise distress for parents and children when relationships break down, and to promote ongoing family relationships and co-operative parenting through the provision of tailored advice and information and the facilitation of access to a range of services that may assist people to resolve their problems. We hoped that the data we would obtain from clients and solicitors would enable us to determine: the extent to which information and advice were tailored to individual need; the issues which required legal advice and legal action; the way in which other services were used; the nature and degree of the support and help offered to parents, particularly in respect of their talking to children about separation and divorce; and the support offered to children who need it, including referrals to expert children’s services. The most powerful contribution of a theory-of-change model is its emphasis on elucidating not only whether activities/interventions produce effects but how and why. Returning to the model again at the end of the evaluation we can determine the extent to which FAInS has made a difference against the outcomes that were predicted by our model. The inputs we identified at the beginning of the evaluation included:

* an enhanced solicitor role

\(^{267}\) Eekelaar et al., op. cit., p. 196.
• changes in solicitors’ attitudes
• changes in client behaviour as a result of tailored advice and information
• increased collaboration with and use of other services
• case management

During the FAInS pilots, solicitors did look to enhance their role, but felt that, for the most part, they were offering an enhanced service prior to becoming FAInS providers. It is debatable whether attitudes were changed – certainly some solicitors said that they were more aware of clients’ wider needs as a result of FAInS, but we saw little evidence of changes in respect of collaboration with other service providers or of enhanced case management. As we have seen, clients did not change their behaviour either, at least during the period of the evaluation. Because we have noted little change overall, it has been impossible to detect changes in client outcomes. Clients were already satisfied with solicitors’ services, by and large, before FAInS. We have no evidence that other outcomes such as reconciliation, mediated settlements, reductions in distress and more co-operative parenting were attributable to FAInS.

We might argue that the implementation of FAInS was not sufficiently robust to convince solicitors that FAInS was anything more than a tweaking of best practice. The professional development training did not really set out to promote substantive changes in attitudes or behaviour, and the distinctive characteristics of FAInS were never fully articulated. The LSC seemed wary of proposing that FAInS constituted a different way of working and shied away from providing training for FAInS practice. Many senior practitioners were critical of the rather low-level professional development input they received and they were certainly never challenged to change existing practice. Any new initiative needs to be carefully and clearly articulated; the skills required to deliver a new programme need to be determined, and ways of teaching them need to be agreed in advance. Conflicting messages were given about what FAInS was and the trainers rarely managed to win the hearts and minds of those being prepared for FAInS practice. Moreover, the FAInS approach embodied a number of implicit assumptions, such as:

• clients will always have a range of issues to be resolved
• a diagnostic interview will help clients to reveal these issues
• referrals to other services are a good thing and to be encouraged
• clients will respond positively to a more holistic approach

Some FAInS solicitors were prepared to challenge some of these assumptions, particularly those relating to diagnostic interviewing at the first meeting and referrals to other services being desirable. We have observed that clients vary in terms of what they want from their solicitor and the kinds of issues they are prepared to discuss with them. Similarly, solicitors vary their approach according to clients’ behaviour and the issues they present during the first meeting. There was little enthusiasm among FAInS solicitors for collecting detailed information from clients prior to their first meeting, but they were prepared to see PAPs as something which might help clients to focus on the actions agreed. We sensed that solicitors were not enthusiastic about extending their role beyond that which they believe to be appropriate in following the Family Law Protocol, and
while inter-agency collaboration is seen as desirable it is not considered something busy family lawyers can achieve without considerable external input. With hindsight, it is clear that the inputs and desired outcomes should have been more clearly defined and the desired changes in practice more carefully spelt out. Nevertheless, the principles underpinning FAInS were already embedded in the practice of most FAInS practitioners before they embarked on the pilots, so it may well have been that little significant, discernible change was likely anyway.

All the FAInS solicitors indicated that they thought their more adversarial, gladiatorial colleagues should have been asked to train as FAInS practitioners. They were confident that the evaluation might then have been able to detect a difference in practice. It was not clear just who the gladiators are but most FAInS practitioners remained concerned that not all their colleagues share their conciliatory approach to family law practice. Whoever and wherever the less conciliatory lawyers are, it seems self-evident that unless all family law practitioners are required to adopt FAInS principles and adhere to the Family Law Protocol we are unlikely to see much change in practice. The FAInS evaluation involved a group of solicitors who were already committed to what is considered to be best practice. They were sympathetic to the aims and objectives of FAInS but somewhat mystified about how it was different. Most of them are likely to continue to offer a FAInS approach, but few of them will regard it as anything other than what they were doing prior to FAInS.

The vision of more joined-up, tailored, seamless services may be commendable, but it is unlikely to be achieved via FAInS in its current form. The proposed changes to legal aid may well impact on how family lawyers approach the future, irrespective of their commitment to FAInS and to their clients. Family law solicitors have been regarded variously in the last twenty years, and their appropriate place within the family justice system is still open to debate. Many solicitors felt that they had been unfairly marginalised during the 1980s and 1990s and that they had been compared unfavourably with family mediators. As family solicitors have taken on more conciliatory approaches (and many have trained as mediators) they have recovered a more central position in family justice. The advent of FAInS strengthened this and moved them centre stage once more. Quite what they were expected to do and how they were expected to change remains a mystery to some. The role they will play in the future has yet to be decided, but further changes in structures and funding arrangements are likely to increase scepticism and reduce enthusiasm for further new initiatives.
Annexe
Annexe 1 Research Design and the Pre-Pilot Study

Janet Walker

We designed our evaluation to meet, as far as possible, the objectives identified by the LSC. We grouped these into four research categories:

1. Those which focused on the clients of the new service.
2. Those which focused on the providers of the new service.
3. Those which pertained to the contractual arrangements for the effective delivery of FAINs/FAInS and associated services.
4. Those which required comparison with existing arrangements.

We identified nine key research objectives, and the work associated with achieving them was allocated as shown in Table A1.1.

Although each of the research groups led and managed a specific part of the study, we shared data instruments, subject samples and the data obtained, as appropriate. The core samples of clients, for example, were drawn and developed by NCFS for use by other members of the research network. As the research programme unfolded there was greater interlinking of data and of findings between the elements, thus ensuring that each element was informed and enhanced by the others wherever possible. Our research programme was designed to integrate both quantitative and qualitative research methods within a framework which has combined applied and evaluative approaches.
### Table A1.1 Research objectives and the researchers contributing to them

<table>
<thead>
<tr>
<th>LSC RESEARCH OBJECTIVES</th>
<th>RESEARCH TEAM</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Views of the client group concerning:</td>
<td></td>
</tr>
<tr>
<td>(i) enhanced solicitor role; (ii) services received from FAInS suppliers; (iii) services</td>
<td>• Newcastle (McCarthy/Walker)</td>
</tr>
<tr>
<td>received from referral network services</td>
<td>• NatCen (Finch/Kitchen)</td>
</tr>
<tr>
<td></td>
<td>• Cambridge (Richards)</td>
</tr>
<tr>
<td>2. Views of FAInS suppliers concerning:</td>
<td></td>
</tr>
<tr>
<td>(i) enhanced solicitor role; (ii) the operation of FAInS</td>
<td>• Bristol (Davis); Manchester (Bridge)</td>
</tr>
<tr>
<td></td>
<td>• Newcastle (Walker/McCarthy)</td>
</tr>
<tr>
<td>3. Views of practitioners in referral network services</td>
<td>• Newcastle (Walker/McCarthy)</td>
</tr>
<tr>
<td>4. Take up/access to and usefulness of information, advice and support services linked</td>
<td>• NatCen (Finch/Kitchen)</td>
</tr>
<tr>
<td>to FAInS</td>
<td>• Newcastle (McCarthy)</td>
</tr>
<tr>
<td></td>
<td>• Cambridge (Richards)</td>
</tr>
<tr>
<td>5. Appropriateness and efficacy of the referral networks and the matching of services</td>
<td>• Newcastle (McCarthy/Walker)</td>
</tr>
<tr>
<td>to need</td>
<td>• Newcastle (Coombes)</td>
</tr>
<tr>
<td>6. Outcome measures: (i) applications for approved family help and certificates; (ii)</td>
<td>• Newcastle (McCarthy)</td>
</tr>
<tr>
<td>‘agreements’; (iii) ‘resort to courts’; (iv) ‘co-operative parenting’; (v) reconciliation</td>
<td>• NatCen (Finch/Kitchen)</td>
</tr>
<tr>
<td>; (vi) time</td>
<td>• Cambridge (Richards)</td>
</tr>
<tr>
<td></td>
<td>• Newcastle (Coombes)</td>
</tr>
<tr>
<td>7. Effectiveness of each service and key indicators including: (i) most useful; (ii)</td>
<td>• NatCen (Finch/Kitchen)</td>
</tr>
<tr>
<td>preferred; (iii) least effective</td>
<td>• Newcastle (McCarthy/Walker)</td>
</tr>
<tr>
<td>8. Effectiveness of range of information to support and inform FAInS clients</td>
<td>• NatCen (Finch/Kitchen)</td>
</tr>
<tr>
<td></td>
<td>• Newcastle (McCarthy/Walker)</td>
</tr>
<tr>
<td></td>
<td>• Cambridge (Richards)</td>
</tr>
<tr>
<td>9. Cost and effectiveness of provision (including the cost effectiveness of individual</td>
<td>• Newcastle (Coombes)</td>
</tr>
<tr>
<td>suppliers</td>
<td>• Newcastle (McCarthy)</td>
</tr>
</tbody>
</table>

### The Importance of Comparison

Since a key aim of the research was to analyse outcomes in a way which would make it possible to identify what difference the introduction of FAInS/FAInS has made, we were of the strong view that this called for an analytical framework in which FAInS clients were compared with some kind of ‘control’ group. In our research proposal we described a ‘before-and-after’ approach as affording the most robust type of comparison, recognising that no method is without its complications and disadvantages. In other words, unless we could conduct a randomised control trial – and even that would have had some flaws – no method of comparison would be completely sound. Nevertheless, we were committed to undertaking some kind of comparison, which was not an insignificant research challenge, and we continue to believe that a before-and-after
approach has provided the best option. We undertook to use the pre-pilot phase to test
how best to conduct comparative work. In other words, we wanted to find a way of going
beyond a mere description of the organisation, delivery and receipt of FAInS. We argued
that there would be little point in introducing FAInS were there not an expectation that it
would yield benefits for clients. The classical way of measuring whether these benefits
are achieved would be to compare outcomes for FAInS clients with outcomes in respect
of a matched group of clients who had not been involved in FAInS. In order for
comparative research to work, the differences between interventions need to be clearly
articulated and consistent and outcome measures have to be meaningful and clearly
linked to the initiative being piloted. Meaningful comparison required there to be a
reasonable match in terms of the characteristics of the two groups being compared, and
we considered a range of methods for the FAInS research.

The Pre-Pilot Study

The primary task for us in the pre-pilot was to test our research methods and, in
particular, to consider how best to conduct a comparative study. The pre-pilot was not
designed to evaluate FAInS as such, but it did produce extensive findings which
subsequently informed the evaluation and led to some significant modifications being
made to the delivery of FAInS. During the pre-pilot phase we submitted two progress
reports to the LSC, an extensive final report in January 2003, and a summary of that
report in May 2003. In this annexe we summarise the key findings from those reports
which influenced the direction of both the development of FAInS and the evaluation.

It was initially anticipated that the pre-pilot phase would begin in March 2002 and run for
six months. The final research specification was agreed with the LSC in January 2002
and research activity began on 1 February 2002. Nevertheless, the first tranche of FAInS
providers were not ready to begin the pre-pilot until the end of April. Some did not start
until much later, and a few did not start at all during the revised timetable for the pre-pilot
research (May–November 2002). In order to boost the number of FAInS solicitors in the
pre-pilot, a second tranche were selected and trained ready to deliver the new service
during Summer 2002. During the pre-pilot, it was simply not possible to test our
preferred comparison methodology as there was no ‘before’ period during which we
could derive a sample of clients from family law solicitors: FAInS was scheduled to ‘go
live’ shortly after we were commissioned to do the research and we were not happy with
a retrospective approach to research for deriving the ‘before’ sample. We fell back on the
far less favoured option of deriving a sample of non-FAInS clients from solicitors who
were practising in the same firms as their FAInS colleagues, making an assumption
(somewhat boldly) that the non-FAInS solicitors might continue to practise and have a
similar kind of approach to the one their FAInS colleagues had taken previously.
Unfortunately, not all firms could identify a comparator solicitor who would fit our
requirement, so there were fewer of them than there were FAInS suppliers in the pre-pilot.

The non-FAInS comparator solicitors were identified at a relatively late stage in the
preparations for the pre-pilot, and did not receive any direct input from the LSC as to
their role. We received very few comparator cases in the early months of the pre-pilot,
and fieldwork visits revealed that the comparator solicitors had had to rely on their
FAInS colleagues to find out about the FAInS initiative, the research and the comparator
element. Most were bemused by their role and many, not surprisingly, felt relatively
uncommitted to it. Although the number of non-FAInS research cases increased as time
went on, this aspect of the study was not particularly successful, although, as we
suspected, we were able to prove conclusively that this kind of method of comparison was not a viable one for the full pilot.\textsuperscript{268} In the event, 19 solicitors provided FAINs data for the research and 14 solicitors provided data for comparative purposes. The LSC’s approach to the selection of pre-pilot suppliers was to select a few key solicitors in each of the five areas who were committed to the concept of FAINs and who were already exhibiting what could be described as ‘best practice’ in respect of the Family Law Protocol. Thus, at most, there were six FAINs-designated solicitors in one location, with fewer in others, and in one pre-pilot site one FAINs solicitor operated alone throughout most of the pre-pilot.

During the pre-pilot, research activities focused on:

- the development and preparation of data collection instruments relating to clients, FAINs and non-FAINs solicitors, and network services
- development of the NCFS database – receiving information about all new clients of participating solicitors
- evaluation of the LSC’s skills development programme for FAINs providers\textsuperscript{269}
- survey of FAINs network agencies\textsuperscript{270}
- fieldwork visits to FAINs and non-FAINs solicitors
- follow-up telephone interviews with clients
- interviews with solicitors
- research presentations to FAINs providers and to a CLS partnership group
- development of a geographical research database
- analysis of FAINs and non-FAINs client data
- observation of FAINs in action
- selection of potential sites for the main pilot
- development of a conceptual framework and theoretical approaches
- consideration of and discussion about the implications of the lessons learnt during the pre-pilot in respect of the roll-out of FAINs, the main pilot and the research

\textsuperscript{268} Throughout this report, we have used the terms ‘full pilot’, ‘main pilot’ and ‘main study’ interchangeably.

\textsuperscript{269} Report submitted as Annexe to the June 2002 Progress Report to the LSC.

\textsuperscript{270} Discussed in the September 2002 Progress Report to the LSC.
Data Collection

The pre-pilot focused on the collection of data from FAINs suppliers and non-FAINs solicitors in the five sites, and from their clients. Both FAINs and comparator solicitors were asked to return research forms on a weekly basis for all new case starts. Many managed the research process well and provided regular data; some did not manage to return all their data to us during the pre-pilot period.

Data collection involved the following research forms, which we asked each solicitor to complete in respect of each new case:

1. A Client Information Form, which provided personal details and information about issues of concern to the client. This form, devised by the research team, was for use purely in the research.

2. A Record of the First Meeting, which provided details of the issues discussed, the priorities identified and the actions to be taken (e.g. referrals to other agencies). This form was designed by the LSC in collaboration with the NCFS team for its own data collection purposes and was provided also to the research team.

In addition, the solicitors were asked to introduce the research to each client by providing them with the following documentation prepared by the research team:

1. A letter about the research.
3. A consent form.
4. An exit questionnaire to be completed immediately after the first meeting.

In order to ensure that we received data about all new client starts and could know whether consenting clients differed in any way from non-consenting clients, we asked for all client information and the record of the first meeting provided by the solicitor to be anonymised, bearing only a unique FAINs identifier (UFID) so that it could be matched with other data. The client exit questionnaire also carried only a UFID so that, if clients did not consent to participate further, we had some initial feedback about their experience of the first meeting with the solicitor if they were willing to provide this anonymously. When a FAINs client gave consent to participating further in the research, we expected to receive also a copy of the personal action plan (PAP).

The only form unique to the research which had to be completed by the solicitor for each new client was the Client Information Form. Data for this were derived either from forms completed by the client for the solicitor or from information obtained during the first meeting. We asked solicitors to administer a brief client exit questionnaire at the end of the first meeting. By the time we stopped entering pre-pilot data we had received 432 completed questionnaires (256 relating to FAINs clients and 176 for comparator clients). There was considerable variation between solicitors. Some managed to obtain 100 per cent response rates to the exit questionnaire, but one comparator solicitor managed only 19 per cent.
**Client Consent**

There were four levels of research consent in respect of clients’ participation in the pre-pilot:

1. Permission for solicitors to provide information about how the case progresses.
2. Permission to contact and follow up with the client.
3. Permission for the LSC to provide information.
4. Permission for other agencies to provide information about the services provided.

Table A1.2 shows the percentage of clients who gave consent for each level of research involvement. The FAINs clients tended to be more willing than the comparator clients to agree to continued involvement in the research at all levels. Both groups were more likely to agree to solicitors and other agencies providing information than to consent to be contacted themselves. It became clear from our observations of FAINs solicitors in action and from discussions with solicitors during the pre-pilot that some felt very comfortable introducing the research before or during the first appointment and that these people encouraged their clients to participate. Those who were less comfortable with the research component were inclined to convey their discomfort to their clients, thereby decreasing the likelihood of them agreeing to participate.

<table>
<thead>
<tr>
<th>Consent level</th>
<th>FAINs clients</th>
<th>Comparator clients</th>
</tr>
</thead>
<tbody>
<tr>
<td>Solicitor keeping researchers informed about case</td>
<td>85.5</td>
<td>75.7</td>
</tr>
<tr>
<td>progression</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Client being contacted by researchers</td>
<td>78.6</td>
<td>70.9</td>
</tr>
<tr>
<td>Researchers obtaining information about case costs</td>
<td>82.1</td>
<td>73.0</td>
</tr>
<tr>
<td>Other agencies being contacted by researchers</td>
<td>80.8</td>
<td>68.3</td>
</tr>
</tbody>
</table>

**New Client Starts**

We took a cut into the pre-pilot data at the end of November 2002, by which time we had information about 548 solicitor interviews. There were 319 FAINs cases and 229 comparator cases. We know that the numbers of cases in respect of which we received research data did not reflect the numbers of new case starts for the solicitors involved. There is abundant evidence from the interviews with solicitors (21 FAINs and 2 comparator solicitors) and from discussions with solicitors during field visits that solicitors were selective about the cases they designated as research cases. This was clearly problematic for the evaluation. Selection decisions seem to have been made as a result of solicitors’ judgements about whether a client would appreciate or be willing to take part in the research. Some felt that the ‘bureaucracy’ associated with FAINs would be too much for some clients and that clients were too fragile to get involved in research.
and a new approach to service delivery. Clearly, some solicitors did not like filling in the extra forms either, and in addition were keen to limit the demands on their own time, particularly when clients had a fairly straightforward legal problem for which they needed advice rather than the offer of other services. We sought to limit this selection bias in the full pilot.

There was considerable variation in the number of cases we received from each solicitor. For instance, one firm processed 29 per cent (n = 92) of the FAINs cases, while not providing any comparator cases. There was considerable variation between areas, with almost two-thirds of cases having been provided by solicitors working in the Cardiff area. Solicitors’ firms in Milton Keynes, Nottingham and Newcastle contributed little to the throughput of FAINs cases, accounting for only 14 per cent between them. More than half of the comparator cases came from Cardiff, while the remaining cases were distributed fairly evenly between Exeter, Milton Keynes, Newcastle and Nottingham.

The first stage in the analysis involved making comparisons between FAINs clients and people who attended a meeting with a comparator solicitor. The FAINs and comparator clients were similar in respect of gender (around two-thirds were female), age (which ranged between 16 and 83), marital status (over half were married and seeking a divorce), employment status (over 40% were not in work), occupation and receipt of benefits. The majority of clients had children, but FAINs clients tended to have younger children than comparator clients, and to be still living with their spouse or partner. The majority of clients were white. In terms of personal and socio-demographic factors, FAINs clients were very similar to comparator clients. The only differences we were able to find between the two groups related to FAINs clients being more likely to have young children (under 11) and more likely to be receiving Council Tax Benefit. The samples were sufficiently similar in terms of personal and socio-demographic circumstances to allow comparisons to be made.

**The First Meeting with a Solicitor**

Clients who attended a meeting with a FAINs solicitor tended to get more time allocated to them than those who met with a comparator solicitor. The average FAINs meeting lasted about thirteen minutes longer than a meeting with a comparator solicitor.

The concerns of both FAINs and comparator clients tended to focus on what can be described as the standard divorce-related issues:

- where the children should live
- how much contact children should have with the non-resident parent
- the amount of child support that the non-resident parent should contribute
- occupation of the marital home

The FAINs clients were apparently more likely than the comparator clients to have concerns about residence and contact between children and their non-resident parent. Solicitors were also asked to define the three most pressing concerns. Contact with children was referred to most frequently, with 39 per cent of solicitors indicating that this was one of the key concerns of clients, followed by divorce issues (30%), property issues...
financial issues (25%), parental responsibility (10%) and domestic violence issues (8%). Meetings tended to be longer if clients had concerns about who stays in the marital home, marriage/relationship support, home contents, schools, pensions or domestic violence/abuse.

The differences between FAINs solicitors and comparator solicitors in terms of the length of the first meeting seemed to relate to the more in-depth approach adopted by FAINs solicitors. Nevertheless, we found significant differences between individual solicitors. One FAINs solicitor averaged 47.42 minutes per meeting while another averaged 102.8. Clearly, solicitors allocate different priorities to the first appointment, and the introduction of a FAINs approach had not necessarily changed their thinking about what it is appropriate to include and cover in the first meeting.

In the pre-pilot there was a general perception among the FAINs solicitors that the LSC expected FAINs practice to be front-loaded, with all the effort being spent during the first interview. While some solicitors appeared to be comfortable with this, others felt constrained to think about onward referrals to other agencies too soon, and when some clients may not have been in any fit state to consider other services. The extra time allowed for the first interview was much appreciated by FAINs solicitors, but most felt that it was not always appropriate to have a lengthy first appointment and that the resources need to be available throughout their engagement with a client. Clearly, referral to other agencies may be appropriate at various times, not only during the first meeting.

Providing information

The majority of solicitors indicated that they had been able to provide tailored information and advice during the first meeting, but many indicated that they did not know enough about the services available in their area to be confident about addressing some of the specific problems which arose. Nevertheless, FAINs solicitors were likely to discuss a wider range of matters with their clients, especially those relating to legal information and advice, mediation, counselling, support agencies and provision of mental health services. Twenty-three per cent of FAINs solicitors and 8 per cent of comparator solicitors indicated that they had discussed the use of support agencies. FAINs solicitors were more likely to indicate that they had recommended other services to their clients; 62 per cent of FAINs clients, as against 41 per cent of comparator clients, apparently had other services recommended to them. Other services were more likely to be recommended in circumstances where there were concerns about contact between children and their non-resident parent, parental responsibility, immediate financial support, the sale of the marital home, or domestic violence or abuse.

Accessing other services

One important element of FAINs is the solicitors’ enhanced role, which includes their taking responsibility, where appropriate, both for helping clients and for assisting them to access other services. We wanted, therefore, to discern the extent to which there was a difference in solicitor behaviour with respect to making referrals. The FAINs solicitors indicated that they had discussed referrals with 52 per cent of clients. The vast majority of these discussions related to mediation. Around a third of FAINs solicitors had apparently raised the prospect of making a referral to mediation, although fewer than half of those who did so actually made the referral. Few other prospective referrals figured
prominently. The prospect of referral to either a domestic violence or a women’s safety unit was raised in 10 per cent of FAINs meetings, while in 4 per cent of meetings referral to marriage counselling was discussed. Three per cent of FAINs clients discussed personal counselling with the solicitor and 3 per cent discussed the possibility of attending debt counselling.

Most of the referrals suggested or made by the solicitors were to agencies, such as Relate and mediation services, which were well-established and known to the solicitor making the referral. The FAINs approach did not seem to have extended the range of services included in the networks, primarily because the solicitors did not have time to develop their networks and did not really know how to go about doing this. Some solicitors also expressed concerns about lengthy waiting lists for some services and about the costs of services which clients may not be able to afford. Undoubtedly, a strong message from the pre-pilot solicitors was that more investment and help were needed if networks were to develop locally, and that a professional person was needed to co-ordinate the networks. A directory of services was helpful, but not enough to realise the vision at the heart of FAINs.

We found considerable variation in referral practice between solicitors. For instance, one solicitor referred three-quarters of her clients for whom we have data, while two others referred only one each of ten and eleven clients respectively. Of the eleven clients referred to agencies concerned with domestic violence or women’s safety, seven were referred by one solicitor. There was evidence that some clients were reluctant to go elsewhere at the time referrals were being suggested. Four clients who had been referred for mediation indicated on their exit questionnaires directly after their first interview that they would not be using mediation, while a further three expressed uncertainty. In the follow-up interviews with 16 clients conducted by NatCen researchers some six months after they had visited their solicitor for the first appointment we asked about the use of other services. It became clear that while some referrals were followed through, others were not. The reasons clients gave for not contacting services to which they had been referred included their thinking they would not be useful, or that the problem had been resolved.

**Clients’ Views about the First Meeting with a Solicitor**

The indications were that most clients, irrespective of whether they saw FAINs providers or not, were happy with their first meeting with their solicitor and found it useful and relevant to their needs, and felt that the solicitor understood their circumstances and provided helpful advice. Only 4 per cent of both groups of clients indicated that there were issues outstanding about which they would have liked information or advice.

When the LSC introduced the FAINs initiative to solicitors taking part in the pre-pilot, a good deal of emphasis was placed on the importance of obtaining information from clients in advance of the first meeting in order to assist solicitors to think about each client’s circumstances and needs before meeting with the client. The data the LSC suggested should be obtained were modified following feedback, and for many solicitors this practice was not new but an established part of their work. For others, sending out or receiving information in advance of the first meeting did not fit with their approach, and many of those solicitors remained opposed to doing it. The LSC did not insist that solicitors change their practice and the process of obtaining information remained optional throughout the pre-pilot. We asked clients whether they were asked to provide
information in advance of their first meeting and it seems that the majority provided some advance information to their solicitor. Nevertheless, FAINs solicitors varied in terms of their views about sending out information to clients in advance of the first meeting and asking clients to provide them with information in return. They gave many reasons for not sending out the preliminary information pack, including the following:

1. Clients were in too emotional a state to fill out forms.
2. The forms were an added burden upon clients.
3. Clients regarded it as the lawyer’s job to fill out the forms.
4. It fitted better with existing practice to complete the forms in the presence of the client.
5. Appointments were often made at short notice.
6. Any competent lawyer will cover this ground anyway during the first appointment.
7. The forms are not a useful diagnostic tool.
8. Clients do not always turn up for their first appointment.
9. Clients do not always return (or bring) the forms.
10. Clients do not always complete the forms fully and accurately.
11. Sending out forms in advance wastes rather than saves time.
12. Posting forms and SAEs costs money.
13. Sending forms out could cause problems for clients still living with their husband/wife.
14. There is a high rate of illiteracy among clients.
15. It is better to begin the first interview with banal questions in order to put the client at ease, and those banal questions have already been asked on the form.

Despite the long list of reasons FAINs solicitors gave for not sending out or requesting information prior to the first meeting, some solicitors who were initially sceptical about the value of getting information from their clients became converts to the approach, either because they found the information clients provided helpful or because clients were reacting favourably to providing it. Those solicitors who did send the pack out described being suitably surprised by their clients’ positive reactions. Few solicitors, however, were actually using the information to help them diagnose their clients’ problems.

We asked clients on exit questionnaires what they felt had been the most useful information or advice they had received from solicitors. The FAINs and comparator clients gave similar responses to this question. The most common response (made by 26% of research respondents) referred to receiving information about the process of
divorce. For 11 per cent, the most useful information/advice related to financial issues, while for a further 11 per cent advice about property was deemed to be the most useful thing to come out of the meeting. Other information/advice referred to in this context included information about children (9%), the establishing of contact (5%), the use of mediation (6%), DSS benefits (3%) and counselling (1%). In the follow-up interviews some six months after the first meeting with a solicitor, most clients, when asked to rate their solicitor’s helpfulness regarding different aspects of the service offered, rated their solicitor as ‘very helpful’ or ‘quite helpful’ regarding each.

Changes in Family Law Practice

On average, FAINs clients received 13 minutes more of the solicitor’s time during the first session. Responses from solicitors indicated that FAINs providers were more likely to establish, either during or before the meeting, whether clients used related services. Moreover, people who went to a FAINs meeting seem more likely to have been told about other services, but only around one in four were actually referred to other agencies at the first meeting. More than half of the referrals were to mediation services. There was no evidence in the pre-pilot that attending a FAINs meeting made any difference to clients’ opinions about the services they received from solicitors, or to the actions they took after the meeting. The purpose of FAINs was not simply to encourage solicitors to do things differently but to make a significant difference to the impact of legal process on individuals and families. The evidence from the evaluation of information meetings illustrated just how difficult it is to change people’s behaviour as a result of providing information and it seemed unlikely that the pre-pilot version of FAINs was suitably robust, or that it provided a sufficiently different approach to make a significant impact on clients. We knew that the solicitors in the pre-pilot were chosen to reflect existing best practice, and it was highly likely that colleagues in the same firm would operate in a similar way. Thus, it was not surprising that we found few substantive differences between the two groups of clients, and that solicitors were apt to say that FAINs had made little difference to the way they practised family law.

Personal Action Plans

A particular characteristic of the FAINs approach is the preparation of a personal statement known as a personal action plan, which clients can take away with them. In the FAINs Professional Development Pack, which the LSC provided for solicitors, the explanation given for the drafting of the Client Personal Statement, subsequently known as the personal action plan, was as follows:

As an essential part of the provision of family advice and information, suppliers will be drafting (where and if appropriate) a Personal Statement. These documents will be designed to aid the client in moving between referrals effectively and without the need to give basic information and to re-explain their situation and the information, support or advice they seek.

Personal statements are not designed to rehearse the client’s position or to allege behaviours in regard to the client’s partner, but to provide general information in respect of the client (name, address, etc.) and the issues about which client would

like information, advice or support. It is further recognised that the statements are, in
text, a developing document and will require updating.²⁷²

Given this rather broad description, it is not surprising, perhaps, that the PAPs returned
by solicitors varied greatly in terms of how they had been completed and the extent to
which they fulfilled the expected purpose. The form was organised under five main
headings, as follows:

1. The name of the client.
2. ‘My current situation’.
3. Priorities.
4. ‘My next steps will be to …’
5. Date of next contact with solicitor (if agreed).

Although the purpose was to provide general information in respect of the client (name,
address, etc.) the form did not include a pro-forma for giving the client’s address.

We looked at 213 PAPs produced in the pre-pilot for FAINs clients. Most of the PAPs
received during the pre-pilot came from Cardiff, with one firm in particular producing as
many as 83. The main purpose of our analysis of PAPs at the pre-pilot stage was to
explore variations in content, to see how PAPs were completed, and to determine the
extent to which they matched the expectations laid out by the LSC in the professional
development pack provided to solicitors.

It was clear from our analysis that individual solicitors took a view about how to use and
complete the PAP for their clients and that they then followed a pattern. Each PAP
completed by the same solicitor was very similar in terms of format, the level of detail
provided, and whether referrals were made and recorded. In other words, we could detect
the existence of ‘solicitor style’ in the PAPs. Since approximately 40 per cent of the
PAPs analysed were written by the same solicitor, however, this inevitably impacted on
our preliminary analysis. We discuss the use of PAPs in the full pilot in more depth in
Chapter 8.

The pre-pilot solicitors varied considerably in terms of the extent to which they were
using the PAP. The solicitors who did complete it in the first interview had generally
found it helpful because it brought structure into confused situations, but there was little
evidence in the interviews with solicitors that they expected their clients to take the PAP
along with them if they visited another agency. From the evidence in the pre-pilots, it
seemed that the PAP was not being used as a comprehensive plan which laid out a
client’s needs and the actions to be taken. It was used primarily as an aide-memoire in
respect of the client’s first appointment with the solicitor. Although some immediate
‘next steps’ were often recorded, once these had been accomplished the PAP would have
been out of date. We recommended that it might be helpful if thought could be given to
how a PAP can become a living document in the full pilot, which the client and solicitor
can refer to, update, and use to provide a brief synopsis of the key issues and the process
for dealing with them. During our observations of practice, solicitors expressed mixed

²⁷² Legal Services Commission (2002) Family Advice and Information Networks Professional
Development Pack, Legal Services Commission, p. 68.
views about the PAP, and not all were using it. Some used it occasionally. We suggested that, since many solicitors said they liked using the PAP ‘because the clients like it’, it would be helpful to clarify for the main pilot just how these forms should be used effectively and the level of detail that should be provided in them.

**FAINS in Action**

In order to understand how the FAINS approach might be different, we had proposed an in-depth qualitative study. We wanted to understand the interactions between solicitors and their clients, the meanings solicitors and clients give to them, and the relationship between the information and advice provided and the decisions and actions subsequently taken by clients. The purely qualitative element began in the pre-pilot with observation of appointments between FAINS solicitors and their clients. We used these observed meetings to generate case studies. Each observed appointment was followed by an *in situ* interview with the FAINS supplier, which involved discussion about the meeting itself and about the rationale for providing certain information and advice and for making referrals. The interview also sought the solicitor’s views about how the quality of service provision via FAINS could be improved, developed and assured for clients with similar problems. Before the client left, the observer sought permission to follow up with the client by means of a telephone interview, within a week if possible. This interview focused on the client’s perceptions of the meeting, the issues they raised and the actions the client intended to take. During the pre-pilot we tested our observation framework, which we devised from previous research in which we had observed mediation interviews.

During the pre-pilot, eleven observations took place, involving seven solicitors. Unfortunately, no male solicitors were able to offer us observations, and so all our observations during the pre-pilot were with female solicitors. Four solicitors in Cardiff were observed, and just one in each of three other areas (Exeter, Milton Keynes and Newcastle upon Tyne). No solicitors were observed in Nottingham. There were a number of reasons for the dearth of observations: some solicitors began FAINS very late in the pre-pilot or not at all; some solicitors refused to participate in the observation element of the study; some FAINS solicitors did not take any new cases for lengthy periods during the pre-pilot; some solicitors did not schedule first appointments in advance but tended to see new clients immediately after they walked into the office; and a few clients refused to allow a researcher to observe the meeting. Although the primary purpose of the observation of FAINS appointments was to develop and test instruments for this aspect of the research, it provided some important insights into early practice developments, problems, concerns, and questions in respect of FAINS.

One component of the observations included the evaluation of whether FAINS solicitors had integrated the skills promoted by the professional development pack, and during training, into their practice, and if so how. These FAINS skills focused on two areas: active listening and the process. The first set of skills, around active listening, included checking clients’ understanding, signposting, acknowledging, summarising, brevity, clarity and fluency. The second set of skills focused on the proposed stages of the interview process (assessing, advising and referring). What we found was that many of the skills were present but that the stages in the process were not clear. Most of the solicitors quickly moved from working on issues to giving advice, but rarely did they include referrals to other agencies. Several of the solicitors moved from assessing to
advising, issue by issue, rather than waiting until all the issues had been explored to offer advice or to consider referral to another agency.

Solicitors we observed indicated that the skills development training had had minimal impact on their practice skills, and that using the skills required more training than they had received. Most solicitors believed that they had already been practising according to FAINs principles even before FAINs training. Nevertheless, observations suggested that solicitors rarely spent much time at the beginning of the first meeting attempting to explore issues with the client. Many began to suggest ‘next steps’ early on.

At the end of the pre-pilot many solicitors were attempting to come to grips with what FAINs meant and how a network might be established. Some solicitors we observed commented that they were attempting to broaden their network of services, but that they could not see how doing so differed in any way from their previous practice. Some solicitors indicated that FAINs had made them think more about the services which might be useful for their clients and had encouraged them to ask their clients whether there were issues with which they would like help. Others had reconsidered their own professional skills and the relevance of these to FAINs.

**Modifications to Practice**

The pre-pilot FAINs solicitors had been carefully selected by the LSC, and most were thoroughly committed to practising family law in a conciliatory manner and sympathetic to the ideas underpinning FAINs. For most, then, the FAINs approach fitted well with their existing practice and provided an endorsement of their more holistic approach to family law issues. In that respect, some felt that FAINs should be extended to include public law cases. Although most solicitors had been enthusiastic about the opportunity to engage with FAINs, not all could describe the specific characteristics of the new approach, with many regarding FAINs primarily as a research project rather than as representing a fundamental change in their legal practice. Although some solicitors interviewed during the pre-pilot felt that FAINs had changed the way they think about the service they offer to their clients and had encouraged a more holistic approach, most saw FAINs as little more than a ‘tweaking’ of their existing way of working and not as constituting a dramatic change. In that sense, clients would be unlikely to notice that much had changed in the service they receive. Nevertheless, solicitors appeared to view positively the opportunity afforded by FAINs to spend more time talking to clients about their worries, which they saw as helping to minimise the distress clients feel. They would, however, have liked more help with developing networks.

Some solicitors were comfortable with the remuneration they received for FAINs, while others were concerned that the level of expertise necessary to deliver an enhanced service would not be achieved on existing rates. A more general point about the level of public funding for family law was being made, and there was a sense that it is not realistic to expect experienced solicitors to work for the rates offered. The increasing pressure on family lawyers to deliver high-quality work with low financial reward was considered by some to be problematic for the development of FAINs.
Identifying FAINs

It was clear that while solicitors in the pre-pilot were generally supportive of the aims and objectives associated with the introduction of FAINs, they struggled to identify what was different about their practice as a result of their being selected as FAINs suppliers and to articulate the key characteristics of FAINs. It was not easy in the pre-pilot to determine what FAINs actually was. It was presented as an initiative which was building on the positive outcomes from previous experiments and changes, namely the provision of information, counselling support and publicly funded mediation. Solicitors were to act as gatekeepers to a range of information, advice, support and dispute resolution services which would form a kind of network. This role, as gatekeeper or the initial point of access to a network, seemed appropriate given the evidence from a range of studies, which suggests that the majority of people approach a solicitor at some stage when a relationship is in difficulty or has broken down. Legal advice is a commodity most people consider is important to obtain in these circumstances. While some people approach marriage support agencies such as Relate and some might go to their GP, most people, at some time during the process of marriage breakdown, contact a solicitor. Practitioners such as marriage and relationship counsellors have argued, however, that by the time most people see a solicitor there is little chance that they will be willing or able to attempt reconciliation, and that other agencies ought therefore to be able to act as access points to FAINs. The LSC acknowledged that other professionals might be designated FAINs suppliers at a later date when more had been learnt from the research about how FAINs should function. The solicitors in the pre-pilot also acknowledged the value of there being other points of entry to FAINs, but felt that it was right for family solicitors to continue in this role.

Not only was it difficult to identify the unique characteristics of FAINs, but it was also not clear at the beginning of the pre-pilot whether solicitors were expected to take responsibility for establishing and developing FAINs in their locality, or whether this was to happen by some other means. It became clear that without some kind of developmental activity networks would not suddenly emerge and, unless a network of services were to be available, FAINs solicitors might not be able to function effectively. Some FAINs solicitors felt isolated, without the resources adequate for developing FAINs as a new initiative in their area. It was not surprising, therefore, that they saw FAINs as no more than an endorsement of existing good practice, and/or as a research project.

The enhanced role which identified solicitors as FAINs suppliers indicated that they were expected to do more for their clients than previously. Again, defining what activities or services constituted an enhanced role was difficult during the pre-pilot. Although the majority of FAINs solicitors embraced the notion of a more holistic approach, and some identified the exploration of wider issues as a novel aspect of what they did as a result of the FAINs initiative, the evidence from the pre-pilot revealed the following:

1. Not all FAINs solicitors sought information in advance of meeting the client for the first time. Moreover, most of those who did appeared not to have used it for the purpose of thinking about the client’s needs or for planning for the first appointment. Some solicitors had always collected information in advance and continued to do so; some introduced this element and found it helpful; and others refused, for a variety of reasons, to operate in this kind of way.
2. On average, the initial meeting with a FAINs provider was longer, but there was considerable variation in practice among solicitors and some preferred not to explore issues in depth at the first meeting, particularly if a client was distressed and anxious.

3. Actual referrals to other agencies were limited, although different services may have been mentioned during the course of the meeting.

4. Personal action plans were not always drawn up, even though they were described by the LSC as mandatory, and those that were drawn up varied considerably in their content and style, influenced by the solicitor’s own idiosyncratic approach.

The process of the first appointment was by no means wholly consistent with the vision initially set out by the LSC, and the pre-pilot illustrated the characteristics and traits peculiar to each family lawyer. Solicitors used their discretion as to whether to obtain information from the client, explore legal and other issues, refer to other agencies, and draw up a personal action plan (and if so how). There was little, therefore, that could be delineated as characterising a new or a uniquely FAINs approach among the pre-pilot solicitors, and practice in the first meeting was very divergent.

There were clear indications that solicitors held a number of different conceptions of what FAINs were and that these influenced how they operated. There appeared to be four main conceptions of FAINs:

1. The FAINs were viewed as representing a new, enhanced way of working with all clients which includes being mindful of other agencies and how they can be utilised to help clients resolve a range of problems associated with relationship and marriage breakdown.

2. ‘FAINs’ was the name given to an enhanced way of working: that is, it allowed the solicitor to give more time to exploring clients’ needs, but it is only practised when time allows, the issues presented go beyond legal concerns, and the client is deemed to be appreciative of and receptive to this specialised approach.

3. The FAINs represented a ‘tweaking’ of and an endorsement of existing practice, so nothing new was offered to clients.

4. ‘FAINs’ was the name of a research project which involved providing information about clients to the researchers and asking clients to participate in the project.

We concluded that it had almost certainly been unhelpful that solicitors appeared to regard FAINs as concerned solely with a changed approach in the first meeting with a new client. This did not detract from the significance of the first meeting. Indeed, many clients may never return a second time, and some, if they do seek further legal help, may go to another solicitor. So the solicitor may have only one opportunity to work as the key professional capable of offering the client a more comprehensive or holistic service. Being minimalist in the first interview, then, may be self-defeating because the client may never return.
We argued, however, that, if FAINs were understood within the framework conceptualised in the first description above, the enhanced role for solicitors would have to continue throughout the case if the client returned, and might well encompass some kind of case management role, guiding and supporting clients along the way. The LSC had never intended to imply that the focus of the new approach was solely on the first meeting. It was perfectly reasonable for solicitors to have assessed that some clients were not in the best frame of mind to take in a great deal of information at the first appointment. Not attempting to do too much in the first meeting was in no way inconsistent with an understanding of what FAINs were trying to achieve, but it did imply that solicitors needed to see the FAINs approach as something which exists at all times and at all stages in their work with clients. Part of the case-management role may well be to determine which actions and steps should be taken at different points in the process to ensure that advice and information are consistently tailored to a client’s needs, which will probably change and shift as time goes by. It was clear from the pre-pilot, then, that the FAINs approach should not focus only on the first appointment with the solicitor, and that it had to pervade the period of engagement between the solicitor and the client and be understood as signifying a changed process. Consequently, we concluded that in the full pilot the research must capture ongoing data about what solicitors do in subsequent appointments. This was one of the key changes we made in our methodology in the full pilot. As we collected more process data from solicitors we decided that we would also need to be able to classify and record family law issues consistently, and to secure information about referrals to other agencies as a case progresses.

Developing Networks

The name of the new initiative had highlighted ‘networks’ as the vehicle for providing family advice and information. This required practitioners to have a good knowledge of the services available locally and know how best to help clients access these. In the pre-pilot, however, few solicitors felt able to give time to developing networks, and many acknowledged that even if they had had more time they would not necessarily have known how to go about the task. Most relied on their current knowledge of the services available, and this was often limited or out of date. All the solicitors were aware of mediation services, and they were also likely to know about marriage counselling, although it is clear from the evidence that not all of them realised the range of services which agencies such as Relate offer, which go well beyond attempts at reconciliation.

Our initial survey of the agencies we had expected would be key players in a network in the five pilot sites revealed that most had not heard about FAINs and knew nothing about them. Nevertheless, the majority considered FAINs to be an important development, would have liked to be involved in them, would have welcomed the opportunity to build better links with solicitors doing family law, and believed that a good deal of work needed to be undertaken if agencies were to come together to form a cohesive network which offers comprehensive information, advice and support to clients. Subsequently, the LSC conceptualised networks within three levels of involvement. Level 1 services, which would be expected to work closely with FAINs solicitors, included counselling agencies, mediation services, debt counselling experts, the Children and Family Court Advisory and Support Service (CAFCASS), contact centres, and domestic violence support agencies such as Women’s Aid. Other services, which may have less involvement with FAINs clients, would be located at levels 2 and 3, with those seen to be the most peripheral located at level 3.
One reason FAINs solicitors gave during the pre-pilot for not being able to develop networks was that one or two solicitors could not achieve the desired changes in localities the size of the pre-pilot sites. We regarded this as an important argument in favour of there being more FAINs suppliers in each area. The findings from the pre-pilot indicated that for FAINs to be a presence which makes a real difference it was essential that firms, rather than individual solicitors, and the majority of family lawyers in each area undertaking publicly funded work should be designated as FAINs suppliers. We argued that this would: afford an opportunity for the new initiative to be meaningful; make it more likely that level 1 agencies would be able to work together with local solicitors; provide an incentive for legal firms and agencies to embrace the philosophy and principles underlying FAINs; increase the chances of both parties in a case experiencing the FAINs approach; and, importantly, ensure that a mix of solicitors are involved in FAINs rather than selected practitioners who may or may not be typical of family law practice in any given area, or even nationally. Thus, it was the LSC’s intention in the full pilot to flood research areas with FAINs suppliers and not to continue with its selective pre-pilot strategy.

The pre-pilot proved to be a most useful period, during which the LSC was able to refine the professional development training for FAINs practice, consider how to select areas in which to introduce FAINs for the full pilot, and clarify some of its expectations regarding solicitors’ approaches to FAINs. Importantly, the name shifted to the Family Advice and Information Service (FAInS). The research team was able to test methods for data collection and, most importantly, consider how best to undertake a more robust comparative study in order to assess the impact of FAINs practice. The in-firm comparison which we had reluctantly employed in the pre-pilot was not good enough, and there was far too much contamination for us ever to attribute outcomes to a particular approach. Solicitors within the same firm inevitably shared their ideas and their knowledge and it was a source of tension in some firms for one solicitor to be designated a FAINs supplier while another was not. Moreover, with clients moving between members of the same firm, we could never characterise the experience they had as being either FAINs-led or non-FAINs-led.

The LSC, with the support of the Research Advisory Committee, agreed to us pursuing our original proposal to conduct a before-and-after study in the full pilot, which meant that solicitors in new research pilot areas in the full pilot were not trained for FAInS immediately, allowing us to observe existing practice during 2003. It was important to keep as many factors constant as possible, and we made the assumption that by examining the work of solicitors before the introduction of FAINs and then comparing it with their work after its introduction we ought to have been able to detect changes which could be attributed to the new way of working. We assumed also that, for the most part, other factors, such as the profile of a solicitor’s client group, would not change in any perceptible way. We provide a description of our revised methods and the choice of study areas in Annexe 2.
Annexe 2  Evaluating the Family Advice and Information Service

Janet Walker, Karen Laing, Mike Coombes and Simon Raybould

In this annexe we outline our methods for the evaluation of FAInS, describe the selection of the study areas, and report on the nature of our samples. The representativeness of the pilot areas and generalisability of the findings from the evaluation are discussed in Annexe 3.

Research Methods

In addition to the data captured during the pre-pilot, in the full pilot we wanted to:

- capture information about process – so that our evaluation was not confined to understanding interactions in the first solicitor–client meeting
- include *all* new case starts as research cases in given time periods in order to prevent solicitors selecting some cases for FAInS and not others
- classify case types and family law issues in order to address the complexity of cases
- determine solicitors’ overall approach to family law practice prior to FAInS and again after practice as FAInS suppliers
- observe solicitors’ practice in both the before- and the after-FAInS periods
- secure samples of parents and children for follow-up face-to-face and telephone interviews

Process Data

We considered how best to obtain data from solicitors relating to all their meetings with clients in the research periods, and developed three new research forms:

- a record of the first meeting to include client information (revised from the pre-pilot)
- a record of each subsequent meeting
- a case termination record to be completed at the end of the case (or after six months, whichever was the soonest)

These forms were anonymised to allow us to collect data relating to all case starts. We also asked for a copy of each personal action plan in respect of FAInS clients who consented to participate in the research.
In the full pilot, we decided not to try to track clients in their individual use of network agencies as this had proved to be unworkable in the pre-pilot. The data forms completed by solicitors captured information about referrals and the use of other agencies. Clients who consented to participate in the research and who were selected for follow-up interviews were asked to give their views of referrals to and use of other agencies.

**Comparative Data**

We sought to undertake a before-and-after study, which meant that we would examine the work of solicitors selected for the full pilot both before they trained as FAInS providers and after they became FAInS practitioners. It was agreed that two of the original pre-pilot areas, Cardiff and Exeter, should continue to be included in the full pilot, with more firms in each area delivering the FAInS. There could be no ‘before’ and ‘after’ studies in these two areas as the FAInS already existed. Four new areas were to be added to the research sites for the full pilot. Two of these were expected to act as between-area comparators to Cardiff and Exeter as well as offering ‘before’ and ‘after’ FAInS data.

We asked the new pilot areas to provide pre-FAInS comparator data for six months prior to training for and implementing of the FAInS, at the same time as the two ongoing pre-pilots produced FAInS data in the full pilot. Thereafter, the new FAInS suppliers in the new areas were trained and prepared for the implementation of the FAInS, and they then subsequently provided FAInS data for a similar period of time. It was essential that exactly the same data were collected regarding a total population of clients in the pre-FAInS stage as had been collected in the post-FAInS stage. The decision was taken to cease collecting FAInS data from the two pre-pilot areas during this ‘after’ period in order to release them from the task of providing research data. This approach has yielded three distinct data sets during the full pilot:

1. FAInS data from two of the original pre-pilot areas, extended to include other family law solicitors in those areas who had become FAInS providers and were undertaking publicly funded work.

2. Pre-FAInS comparator data from the new pilot sites (‘before’ data).

3. FAInS data from the new pilot sites (‘after’ data).

Our hope was that this approach would provide us with a robust method of comparison and enable us to draw strong conclusions about the impact of FAInS both on legal practice and on clients. We also wanted to monitor the evolution of the service provision through both FAInS and FAInS, and to monitor changes in legal practice and solicitors’ responses to these changes.

In addition to obtaining data from solicitors and from a sample of clients, we undertook two surveys of family law practice, the first at the beginning of the full pilot and the second at the end of the research. We also observed a sample of solicitors in action both before they became FAInS providers and again afterwards, and conducted interviews with solicitors in both the ‘before’ and the ‘after’ periods.
The Selection of Pilot Areas

An important activity during the pre-pilot was assistance in the selection of research areas for the full pilot. From the research viewpoint, the selection of areas was very important. The decision that was taken with the LSC in autumn 2002, to concentrate the main pilot efforts on as many solicitors as possible in a few parts of the country, increased the importance of area selection. We considered the kind of areas suitable to be researched during the full pilot, having suggested that two of the pre-pilot areas (Cardiff and Exeter) should be expanded and included in the main pilot. There was no predetermined list of new candidate areas from which to select.

The nature of FAInS implied that pilot areas should provide a reasonably complete range of the appropriate non-solicitor service providers. For a local network to coalesce, these providers should probably not be so scattered that they are unlikely to know each other or to see referral to each other as impracticable. We proposed that the overall set of research areas selected should together offer a cross-section of England and Wales: in other words, the pilot areas should provide a foretaste of the variation in local circumstances which would be encountered in a national ‘roll-out’ of FAInS.

The discussions here concern only the areas used for the research; numerous other pilot areas were selected through a process geared to the Commission’s own needs and constraints. From the research viewpoint, the selection of areas was very important. If the research results reflected circumstances and behaviour in areas which were by no means representative of the rest of the country, the findings would not be generalisable: in other words, it would be like trying to draw conclusions about the wider population from the results of a survey based on a very particular sample of people.

Candidate Areas

The first challenge was to determine the list of ‘candidate’ pilot areas from which to select. The issue here was not whether some parts of the country might be unsuitable for selection, but rather related to the question ‘What kind of area is a candidate?’. For example, the pre-pilot case of Cardiff was subsequently extended to cover Merthyr Tydfil too: did this extension produce a more or less appropriate pilot area? In short, the issue is about the boundary of each candidate area.

The geographical delivery of FAInS is shaped by the catchment areas of solicitors. When the pilot areas were being chosen, it was thought that there would also need to be a network of other services providing a reasonably complete range of the appropriate non-solicitor services. Such networks depend on the building of personal contacts and this is less likely if providers are so scattered that they are unlikely to know each other or see referral to each other as not practicable. It was suggested that, in the absence of a special analysis of relevant service provision, the best ‘proxy’ set of local areas available to the research was the catchment areas of the 180 or so county courts which handle divorce petitions; our earlier work for the former Lord Chancellor’s Department (now the Department for Constitutional Affairs) had provided estimates of these catchment areas.
Selection Criteria

The overall aim of the research meant that the areas selected should together offer a cross-section of England and Wales so that they provided a foretaste of the variation in outcomes which would be encountered in a national roll-out of the FAInS programme. The way the research was conducted led to the requirement that each pilot area should cover enough cases to make the surveys’ evidence reliable. Exeter was near the lower end of the range of caseloads which should be sufficient. Throughout the 1990s the number of divorce petitions heard annually in Exeter averaged around 1,100, so research pilot areas were limited to those centred on towns or cities with courts where the annual number of petitions heard was around one thousand or more.

The next requirement was based on the idea we had, at the time the research began, that key to the success of FAInS lay in building networks between local service providers. The probability of success was thought to vary between areas, with, for example, small isolated towns having few service providers, although we recognised that these providers may know each other better. The other important question we considered was whether people would take up the referrals from one provider to another, and the answer was thought to depend on people’s characteristics (e.g. their ethnicity or affluence/poverty). This led to a classification of areas which took the following into account:

- those factors which seem likely to shape how readily service providers come together in a network (termed supply-side factors)
- the question of the local population’s likely response to FAInS (termed demand-side factors)

Other potentially relevant issues – such as the ethos of the local court – could not be taken into account, because no information on such issues was readily available.

The issues raised by the term supply-side factors can be seen as largely geographical and led to a fourfold classification of court areas:

- **London and the Home Counties** These mostly suburban centres included a mix of inner areas and others further out (including some outside Greater London).
- **Other metropolitan regions** Centred on the former metropolitan counties there were both core cities like Leeds and more suburban towns like Stockport.
- **Other larger cities** These centres were largely separate from the major conurbations, each embracing a substantial urban area as well as its hinterland.
- **Rural centres** Including several county towns among their number, these smaller urban areas had extensive and more rural hinterlands.
Among the court areas whose numbers of divorces were too low for them to be included were several which would have made up a fifth category of small and separate towns with only localised hinterlands.

As regards the demand-side factors, the task was to determine which were likely to influence the willingness of people to take up opportunities for referral to the other providers. The most reasonable hypotheses were that this willingness would be greater among people who were more familiar with the process of meetings and who were more mobile. As a result, more disadvantaged areas seemed likely to include more people who would find the FAInS approach unfamiliar and perhaps onerous. Another possibility was that, for a range of reasons, a number of minority ethnic groups could prove to be less enthusiastic about attending many meetings.

On these assumptions, the court areas’ populations were analysed to establish which had high unemployment rates (to distinguish between prosperous and more disadvantaged areas), and in which minority ethnic groups made up a substantially higher proportion than the average for the country as a whole. Table A2.1 shows the results. In the end, the LSC decided not to include any London area, but Basingstoke was selected as one of the research pilots to provide a Home Counties sample area. Along with Cardiff and Exeter from the pre-pilot, our evaluation focused on three other areas: Leeds (other metropolitan region), Stockton and Hartlepool – northern Teesside – (other larger cities) and Lincoln (rural centres). Leeds and Lincoln were expected to provide FAInS comparator data for Cardiff and Exeter respectively.

Having recommended the selection of new pilot sites, we argued that it had not been helpful in the pre-pilot for FAInS providers to be lone practitioners in a firm, nor for there to be only a handful of firms involved in each location. We suggested that all firms undertaking publicly funded family work in the pilot areas should participate in the delivery of FAInS. We considered that it would be seriously problematic for the evaluation if there were to be:

- a lack of penetration of FAInS in each area
- a bias caused by the opting in of only some of the potential suppliers
- contamination in the before-FAInS period
- a lack of full participation in firms

We were anxious to have as many firms and providers as possible taking part in FAInS and in the evaluation, and were concerned that the generalisability of our findings could be jeopardised if there were only partial involvement and limited coverage in any pilot site. Without sufficient numbers of participating solicitors in each pilot area to provide the required before-and-after data, a robust comparator study would not be feasible.
Table A2.1 Classifying the candidate areas by supply- and demand-side factors

<table>
<thead>
<tr>
<th>Demand-side factors</th>
<th>more prosperous</th>
<th>more disadvantaged</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>London &amp; Home Counties</strong></td>
<td><em>Bromley</em>&lt;br&gt;Croydon&lt;br&gt;Reading&lt;br&gt;Southend&lt;br&gt;Watford&lt;br&gt;Romford&lt;br&gt;Slough&lt;br&gt;Medway&lt;br&gt;Guildford&lt;br&gt;Barnet&lt;br&gt;Chelmsford&lt;br&gt;Kingston-upon-Thames&lt;br&gt;Watford</td>
<td>Bow&lt;br&gt;Edmonton&lt;br&gt;Brentford&lt;br&gt;Wandsworth&lt;br&gt;Willesden</td>
</tr>
<tr>
<td><strong>Other Metropolitan Regions</strong></td>
<td>Stockport&lt;br&gt;Dudley</td>
<td><em>Nottingham</em>&lt;br&gt;Newcastle&lt;br&gt;Cardiff&lt;br&gt;Birmingham&lt;br&gt;Liverpool&lt;br&gt;Leeds&lt;br&gt;Sheffield&lt;br&gt;Manchester&lt;br&gt;Bradford&lt;br&gt;Walsall&lt;br&gt;Wirral&lt;br&gt;Wolverhampton&lt;br&gt;Rotherham</td>
</tr>
<tr>
<td><strong>Other Larger Cities</strong></td>
<td>Milton Keynes&lt;br&gt;Coventry&lt;br&gt;Bristol&lt;br&gt;Leicester&lt;br&gt;Portsmouth&lt;br&gt;Northampton&lt;br&gt;Southampton&lt;br&gt;Bournemouth&lt;br&gt;Brighton&lt;br&gt;Derby&lt;br&gt;Swindon&lt;br&gt;Luton</td>
<td>Stoke&lt;br&gt;Teesside&lt;br&gt;Hull&lt;br&gt;Plymouth&lt;br&gt;Doncaster&lt;br&gt;Blackpool&lt;br&gt;Mansfield</td>
</tr>
<tr>
<td><strong>Rural Centres</strong></td>
<td>Exeter&lt;br&gt;Oxford&lt;br&gt;Norwich&lt;br&gt;Worcester&lt;br&gt;Canterbury&lt;br&gt;Gloucester&lt;br&gt;Lincoln&lt;br&gt;Cambridge</td>
<td>Grimsby</td>
</tr>
</tbody>
</table>

*Bold: pre-pilots; italics: large ethnic minority.*
In the event, fewer solicitors participated in the full pilot than we had hoped, and we had to be realistic about the extent to which we could discern major impacts of FAInS. At various stages in the full pilot we discussed with the LSC the need to take a number of decisions to enhance the research samples. So, for example, we extended our pick-up periods of new cases in both the pre-FAInS and the FAInS phases. In addition, we accepted new solicitors in participating firms during the pre-FAInS periods who indicated their interest in joining in the pilot and becoming FAInS practitioners. We also agreed to include new firms in the study at the beginning of the FAInS period even though they had not participated in the pre-FAInS stage. While these solutions to the problem of small throughput numbers were far from ideal from a methods standpoint, we agreed that we must do everything possible to boost the numbers of clients in the study. We took account of the varying kinds of data provided by solicitors during our subsequent data analyses and we indicate in the report which samples were drawn on to investigate specific aspects of FAInS. The LSC also took steps to encourage interest and participation in FAInS. It was disappointing for everyone that relatively few firms in each area opted in to the FAInS pilot. We have considered the causes for this apparent reluctance to engage with FAInS at various points in the report.

**Quantitative Data Sets**

The full pilot was evaluated in six pilot areas: Cardiff, Exeter, Basingstoke, Leeds, Lincoln, and Stockton & Hartlepool. Solicitors were required to provide us with information about all new publicly funded family law clients in two time periods: the first (phase 1) between September 2003 and February 2004 inclusive (the pre-FAInS sample), and the second (phase 2) after solicitors had undertaken FAInS training, between June and November 2004 inclusive (the FAInS sample). In total, 115 solicitors took part in the study during phase 1; 34 were FAInS providers in Cardiff and Exeter, and 81 were pre-FAInS solicitors in the new study areas. During Phase 2, 84 FAInS solicitors provided research data. Thirty of these solicitors, however, had been recruited after phase 1 had been completed and so had not provided any pre-FAInS data. The FAInS providers in Cardiff and Exeter did not participate in phase 2 of the data collection. Our analyses of before-and-after practice, reported in Chapters 3 and 4, included only those solicitors (54) who participated in both phases and provided both pre-FAInS and FAInS data. Here we describe the data provided by all solicitors who participated: those who were involved in both phases, those who provided data only in phase 1, and those who provided data only in phase 2.

The data collection instruments were the same at each stage. Information about each new client was provided to us via a form which participating solicitors were asked to complete at the end of the first meeting with each new publicly funded client in our two study periods. We distinguished this Record of First Meeting form in the pre-FAInS and FAInS periods by colour: an orange form was completed by solicitors who had not yet received training in FAInS, and a yellow form was completed by practising FAInS solicitors. The Record of First Meeting form collected information relating to:

- the client (age, gender, ethnicity, etc.)
- the matter presented to the solicitor by the client
- whether the client had completed a client information form prior to the first meeting and if so when
• the type of funding applied for
• the issues discussed during the first meeting
• which issues were identified as most important to the client
• any referrals or advice given to use another agency (e.g. mediation)
• any written information given to the client
• the details of the next appointment

Table A2.2 records the number of Record of First Meeting forms returned in respect of clients during each time period: 1,950 forms were returned in the pre-FAInS period, which included 422 FAInS clients in Cardiff and Exeter; and 1,532 forms were received, relating to FAInS clients only, in the second phase. There were similar numbers of new publicly funded clients in each pilot area in each of the two phases of data collection.

<table>
<thead>
<tr>
<th>Area</th>
<th>Phase 1</th>
<th>Phase 2</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basingstoke</td>
<td>196</td>
<td>206</td>
<td>402</td>
</tr>
<tr>
<td>Leeds</td>
<td>678</td>
<td>676</td>
<td>1,354</td>
</tr>
<tr>
<td>Lincoln</td>
<td>145</td>
<td>105</td>
<td>250</td>
</tr>
<tr>
<td>Stockton &amp; Hartlepool</td>
<td>509</td>
<td>545</td>
<td>1,054</td>
</tr>
<tr>
<td>Cardiff</td>
<td>237</td>
<td>n/a</td>
<td>237</td>
</tr>
<tr>
<td>Exeter</td>
<td>185</td>
<td>n/a</td>
<td>185</td>
</tr>
<tr>
<td>Total</td>
<td>1,950</td>
<td>1,532</td>
<td>3,482</td>
</tr>
</tbody>
</table>

Since a separate Record of First Meeting form was completed for each client, we received information about a total of 3,482 clients who were seeing their solicitor for the first time during the full pilot. The number of clients about whom we received information was lower than we had expected, however. Having looked at previous work undertaken in participating firms, we had expected the numbers of new cases processed by solicitors to be higher. During the pre-pilot we had been aware that solicitors had been selective about which clients to include in the research. We raised this issue with the LSC, and all participants in the full pilot were reminded that all new publicly funded cases had to be included in the research during the periods in which samples were drawn. We suspect that this did not always happen.

The Clients

The majority of clients seeking help in both phases of the research were female (72%). Table A2.3 shows the marital status of clients at the time of their first meeting with a solicitor. Nearly half of the clients were married, although the majority were living apart from their spouse when they had their first meeting with a solicitor. Twenty-seven per cent of clients were described by solicitors as single, although Cardiff and Exeter solicitors recorded only 19 per cent of their clients as being single.
Nearly half of the clients (47%) were unemployed. Of the remainder, 14 per cent were employed full-time, 19 per cent were employed part-time and 3 per cent were self-employed. Other clients were defined as homemakers (12%), retired (2.5%) or economically inactive for another reason, including sickness (3%). Nearly half of all clients (49%) were receiving Income Support or Jobseeker’s Allowance. The majority (93%) of clients were described as white. The remainder encompassed a diverse range of ethnicities, the most prominent being Asian Pakistani (2.4%) and Black Caribbean (2.0%). Nine per cent of clients were described by solicitors as having a disability of some kind. These included physical impairments such as blindness or paralysis, mental illnesses such as depression, and learning difficulties.

The ages of clients ranged from twelve to eighty-six. The majority of clients, however, tended to be in their twenties and thirties. Female clients tended to have a slightly younger age profile than male clients, as Table A2.4 shows.

<table>
<thead>
<tr>
<th>Age</th>
<th>Men (%)</th>
<th>Women (%)</th>
<th>All clients (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 18</td>
<td>0.3</td>
<td>0.9</td>
<td>0.7</td>
</tr>
<tr>
<td>18–29</td>
<td>24.8</td>
<td>29.9</td>
<td>28.5</td>
</tr>
<tr>
<td>30–39</td>
<td>38.9</td>
<td>39.9</td>
<td>39.6</td>
</tr>
<tr>
<td>40–49</td>
<td>23.0</td>
<td>20.7</td>
<td>21.4</td>
</tr>
<tr>
<td>50–59</td>
<td>8.4</td>
<td>6.8</td>
<td>7.2</td>
</tr>
<tr>
<td>60 or above</td>
<td>4.5</td>
<td>1.9</td>
<td>2.6</td>
</tr>
<tr>
<td>Total (100%)</td>
<td>907</td>
<td>2,317</td>
<td>3,224</td>
</tr>
</tbody>
</table>

Chi-squared = 30.43; p<.001.

Solicitors were asked to indicate whether clients had children or stepchildren either living with them or living elsewhere. Sixty-nine per cent of clients were stated to have children living with them, the majority of those children (95%) being aged under 18. There was a distinct gender difference, however, as regards whether a client had resident children. Women were far more likely than men to have children living with them, as Table A2.5 shows:
Table A2.5  Resident children by gender of parents

<table>
<thead>
<tr>
<th></th>
<th>Men</th>
<th>Women</th>
<th>All clients</th>
</tr>
</thead>
<tbody>
<tr>
<td>Children aged under 18</td>
<td>36.1</td>
<td>72.1</td>
<td>61.8</td>
</tr>
<tr>
<td>Children aged over 18</td>
<td>1.8</td>
<td>3.8</td>
<td>3.3</td>
</tr>
<tr>
<td>No resident children</td>
<td>62.0</td>
<td>24.1</td>
<td>34.9</td>
</tr>
<tr>
<td>Total (100%)</td>
<td>985</td>
<td>2,476</td>
<td>3,461</td>
</tr>
</tbody>
</table>

Chi-squared = 445.96; p<.001.

Of all the parents who had children living with them, 38 per cent had just one resident child, 35 per cent had two, 17 per cent had three, and the remainder had four or more. Nearly 30 per cent of clients told their solicitor that they had non-resident children. Men were more likely than women to have non-resident children, as Table A2.6 indicates. Nearly half of the male clients had at least one non-resident child under 18, as against just 12 per cent of the female clients.

Table A2.6  Non-resident children by gender of parents

<table>
<thead>
<tr>
<th></th>
<th>Men</th>
<th>Women</th>
<th>All clients</th>
</tr>
</thead>
<tbody>
<tr>
<td>Children aged under 18</td>
<td>48.9</td>
<td>12.4</td>
<td>22.8</td>
</tr>
<tr>
<td>Children aged over 18</td>
<td>4.8</td>
<td>6.5</td>
<td>6.0*</td>
</tr>
<tr>
<td>No non-resident children</td>
<td>46.3</td>
<td>81.1</td>
<td>71.2</td>
</tr>
<tr>
<td>Total (100%)</td>
<td>985</td>
<td>2,476</td>
<td>3,461</td>
</tr>
</tbody>
</table>

Chi-squared = 536.06; p<.001.

*The existence of adult non-resident children is likely to have been under-reported.

**Presenting Matters**

Solicitors were asked to categorise the matters that clients presented during the first meeting. Figure A2.1 shows the matters identified and the percentage of clients in each category.

Ninety-five per cent of clients had been seen under legal help funding. Other sources of funding applied for included legal representation (6.0% of clients had applied for this), emergency representation (6.0%), general family help (0.8%), help at court (0.4%) and help with mediation (0.2%).
Solicitors were asked to record the topics they discussed in the first meeting with their clients. Table A2.7 shows the topics that were most commonly discussed. Contact with children was discussed in over half of all cases, and residence of children in nearly a third. In nearly a quarter of cases, another issue that was not categorised was discussed. The majority of responses in this category related to divorce. This category also included specific issues such as the removal of children from the jurisdiction, issues connected with imprisonment, the changing of names, care proceedings and immigration.

Solicitors were also asked to indicate whether they had provided any written information for their clients. Most written information that was provided related to mediation, but little written information was given about this or other topics (Table A2.8). Other information provided to a small number of clients included leaflets about the Solicitors Family Law Association (now Resolution) Code of Good Practice, public funding, the FAInS research, parental responsibility and wills.

Information provided by solicitors indicates that referrals to other agencies were made by solicitors in 629 cases (18.5%). This includes actual referrals to a service and a recommendation by a solicitor for a client to attend another service. Most solicitors said they expected to see their client again. Only one per cent of solicitors said that they did not expect to see their client again and a further 7 per cent were unsure, but the remainder were confident that clients would return. Nevertheless, appointments had actually been made for only 10 per cent of clients.
Table A2.7  Topics discussed in first meeting

<table>
<thead>
<tr>
<th>Topic</th>
<th>Percentage of clients (%)</th>
<th>Number of clients</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child contact</td>
<td>58.6</td>
<td>2,034</td>
</tr>
<tr>
<td>Residence of children</td>
<td>32.2</td>
<td>1,118</td>
</tr>
<tr>
<td>Costs and outcomes</td>
<td>29.6</td>
<td>1,028</td>
</tr>
<tr>
<td>Parental responsibility</td>
<td>26.1</td>
<td>907</td>
</tr>
<tr>
<td>Housing</td>
<td>25.7</td>
<td>892</td>
</tr>
<tr>
<td>Protection from violence</td>
<td>23.7</td>
<td>822</td>
</tr>
<tr>
<td>Other issue</td>
<td>23.5</td>
<td>815</td>
</tr>
<tr>
<td>Other arrangements for children</td>
<td>22.7</td>
<td>786</td>
</tr>
<tr>
<td>Mediation</td>
<td>22.3</td>
<td>773</td>
</tr>
<tr>
<td>Maintenance</td>
<td>21.8</td>
<td>756</td>
</tr>
<tr>
<td>Potential orders re children</td>
<td>20.6</td>
<td>714</td>
</tr>
<tr>
<td>Reconciliation</td>
<td>17.1</td>
<td>595</td>
</tr>
<tr>
<td>Child Support</td>
<td>14.2</td>
<td>494</td>
</tr>
<tr>
<td>Marriage counselling</td>
<td>13.0</td>
<td>451</td>
</tr>
<tr>
<td>Welfare benefits</td>
<td>11.8</td>
<td>409</td>
</tr>
<tr>
<td>Wills or pensions</td>
<td>9.2</td>
<td>321</td>
</tr>
<tr>
<td>Broader family issues</td>
<td>9.1</td>
<td>316</td>
</tr>
<tr>
<td>Personal counselling</td>
<td>7.2</td>
<td>250</td>
</tr>
<tr>
<td>Contact with grandparents</td>
<td>6.9</td>
<td>238</td>
</tr>
<tr>
<td>Contact centres</td>
<td>4.8</td>
<td>165</td>
</tr>
<tr>
<td>Getting help for children</td>
<td>4.3</td>
<td>150</td>
</tr>
<tr>
<td>Health/mental health</td>
<td>3.0</td>
<td>105</td>
</tr>
<tr>
<td>Debt counselling</td>
<td>2.6</td>
<td>90</td>
</tr>
<tr>
<td>Stepfamilies</td>
<td>2.2</td>
<td>75</td>
</tr>
</tbody>
</table>

Table A2.8  Written information given to clients at the first meeting with a solicitor

| Topic                                          | Percentage of clients (%) | Number of clients |
|                                               |                           |                  |
| Mediation                                     | 17.2                      | 598              |
| Divorce process                               | 12.3                      | 429              |
| The Children Act                              | 8.3                       | 290              |
| Another issue                                 | 7.1                       | 247              |
| Finance, property or pensions                 | 5.8                       | 203              |
| Domestic violence                             | 5.0                       | 174              |
| The role of solicitors                        | 4.6                       | 160              |
| Parenting after separation                    | 3.7                       | 129              |
| CAFCASS                                       | 2.5                       | 87               |
| Child Support Agency                          | 2.1                       | 72               |
| Marriage counselling                          | 1.5                       | 53               |
| Information for children and young people     | 1.2                       | 41               |

Subsequent Meetings Between Solicitors and Clients

In order to track the progress of cases, solicitors were asked to complete a Meeting Record form for each meeting they had with their clients subsequent to the initial meeting. This form collected information about:

- items discussed during the meeting
- any referrals made
Table A2.9 shows the number of forms that were returned to us in respect of second and subsequent meetings between solicitors and clients. We received 774 Meeting Record forms relating to 478 cases started during Phase 1 of the pilot (including 144 FAInS cases in Cardiff and Exeter) and 615 relating to 390 cases which began during Phase 2. Approximately two-thirds of all the Meeting Record forms we received were completed following a second meeting between the client and the solicitor, and 20 per cent were completed after a third meeting. We did not receive any Meeting Record forms for the majority of cases, however. This may be because no subsequent meetings took place in the majority of cases, or it may be because solicitors failed to complete and return these forms when subsequent meetings took place.

Table A2.9  Meeting Record forms returned

<table>
<thead>
<tr>
<th>Area</th>
<th>1 Sept. 03–29 Feb. 04</th>
<th>1 June 04–30 Nov. 04</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basingstoke</td>
<td>22</td>
<td>150</td>
<td>172</td>
</tr>
<tr>
<td>Leeds</td>
<td>347</td>
<td>239</td>
<td>586</td>
</tr>
<tr>
<td>Lincoln</td>
<td>38</td>
<td>51</td>
<td>89</td>
</tr>
<tr>
<td>Stockton &amp; Hartlepool</td>
<td>223</td>
<td>175</td>
<td>398</td>
</tr>
<tr>
<td>Cardiff</td>
<td>78</td>
<td>n/a</td>
<td>78</td>
</tr>
<tr>
<td>Exeter</td>
<td>66</td>
<td>n/a</td>
<td>66</td>
</tr>
<tr>
<td>Total</td>
<td>774</td>
<td>615</td>
<td>1,389</td>
</tr>
</tbody>
</table>

In total, 478 clients (25%) in the first phase had more than one meeting with their solicitor. Table A2.10 shows the distribution of meetings during the first phase of the research. The maximum number of meetings relating to one client was 15. The majority of clients (75%) apparently did not return after the first meeting.

Table A2.10  Distribution of meetings during Phase 1, including FAInS clients in Cardiff and Exeter

<table>
<thead>
<tr>
<th>Number of meetings per client†</th>
<th>Number of clients</th>
<th>Percentage of clients (%</th>
<th>Total number of Meeting Record forms</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1,472</td>
<td>75</td>
<td>0</td>
</tr>
<tr>
<td>2</td>
<td>325</td>
<td>17</td>
<td>325</td>
</tr>
<tr>
<td>3</td>
<td>92</td>
<td>5</td>
<td>184</td>
</tr>
<tr>
<td>4</td>
<td>24</td>
<td>1</td>
<td>72</td>
</tr>
<tr>
<td>5</td>
<td>22</td>
<td>1</td>
<td>88</td>
</tr>
<tr>
<td>6</td>
<td>4</td>
<td>*</td>
<td>20</td>
</tr>
<tr>
<td>7</td>
<td>6</td>
<td>*</td>
<td>36</td>
</tr>
<tr>
<td>8</td>
<td>1</td>
<td>*</td>
<td>7</td>
</tr>
<tr>
<td>9</td>
<td>2</td>
<td>*</td>
<td>16</td>
</tr>
<tr>
<td>10 or more</td>
<td>2</td>
<td>*</td>
<td>26</td>
</tr>
<tr>
<td>Total</td>
<td>1,950</td>
<td>100</td>
<td>774</td>
</tr>
</tbody>
</table>

* denotes a value of less than one per cent.
† Including the first meeting.
It would seem that what happens during the first meeting with a client is particularly important, as there may not be another opportunity to offer the FAInS approach. This offers substantial justification for the LSC’s view that the very first meeting should be enhanced or lengthened, and should be more holistic in nature.

This pattern of meetings between solicitor and client was similar during the FAInS phase of the pilot, as Table A2.11 demonstrates. As in the pre-FAInS phase, 25 per cent of clients (390) had more than one meeting. The maximum number of meetings with any one client was seven.

<table>
<thead>
<tr>
<th>Number of meetings per client</th>
<th>Number of clients</th>
<th>Percentage of clients (%)</th>
<th>Total number of Meeting Record forms</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1,142</td>
<td>75</td>
<td>0</td>
</tr>
<tr>
<td>2</td>
<td>244</td>
<td>16</td>
<td>244</td>
</tr>
<tr>
<td>3</td>
<td>94</td>
<td>6</td>
<td>188</td>
</tr>
<tr>
<td>4</td>
<td>33</td>
<td>2</td>
<td>99</td>
</tr>
<tr>
<td>5</td>
<td>12</td>
<td>*</td>
<td>48</td>
</tr>
<tr>
<td>6</td>
<td>6</td>
<td>*</td>
<td>30</td>
</tr>
<tr>
<td>7</td>
<td>1</td>
<td>*</td>
<td>6</td>
</tr>
<tr>
<td>8</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>9</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>10 or more</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1,532</strong></td>
<td><strong>100</strong></td>
<td><strong>615</strong></td>
</tr>
</tbody>
</table>

* denotes a value of less than one per cent.

**Six-Month Follow-Up Questionnaire**

All clients about whom a Record of First Meeting form was returned should have been given a research consent form by their solicitor at the first meeting and asked to indicate whether they would consent to their solicitor giving us information about how their case progressed, and to being contacted by a member of the research team for a follow-up interview. Seventy-three per cent of Phase 1 and 79 per cent of Phase 2 clients gave consent for their solicitor to share information with us about their case.

Six months after the date of a first meeting each solicitor representing a consenting client was sent a follow-up questionnaire, which collected information about all the work done on behalf of that client during the previous six months. The information requested included the following:

- the amount of face-to-face, written and verbal contact time spent with clients
- the current status of the case and, if closed, the reasons for closure
- any referral activity during the six months

---

273 In 9 per cent of FAInS cases and 13 per cent of pre-FAInS cases we did not receive a consent form.
274 78 per cent of FAInS clients and 64 per cent of pre-FAInS clients consented to be followed up via a telephone interview.
any court orders obtained or applied for

In respect of Phase 1 consenting cases, 1,414 follow-up forms were sent to solicitors between March and August 2004. Solicitors who did not return follow-up questionnaires were sent a reminder letter some six weeks later, and all those who had not returned forms were sent another letter in September 2004 reminding them to return them to us. A total of 1,092 follow-up questionnaires were returned to us (Table A2.12), constituting a response rate from solicitors of 77 per cent overall. Stockton and Hartlepool solicitors performed particularly well in this regard, returning 87 per cent of the follow-up questionnaires returned, whereas Exeter solicitors sent back only 56 per cent of the follow-up forms relating to their consenting clients.

Table A2.12 Follow-up questionnaires sent and returned relating to Phase 1, including FAInS clients in Cardiff and Exeter

<table>
<thead>
<tr>
<th>Area</th>
<th>Number of clients</th>
<th>Number consenting to follow-up</th>
<th>% consenting to follow-up</th>
<th>Number of follow-up forms returned</th>
<th>% response rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basingstoke</td>
<td>196</td>
<td>133</td>
<td>68</td>
<td>113</td>
<td>85</td>
</tr>
<tr>
<td>Leeds</td>
<td>678</td>
<td>525</td>
<td>77</td>
<td>413</td>
<td>77</td>
</tr>
<tr>
<td>Lincoln</td>
<td>145</td>
<td>64</td>
<td>44</td>
<td>45</td>
<td>70</td>
</tr>
<tr>
<td>Stockton &amp; Hartlepool</td>
<td>509</td>
<td>380</td>
<td>75</td>
<td>331</td>
<td>87</td>
</tr>
<tr>
<td>Cardiff</td>
<td>237</td>
<td>184</td>
<td>78</td>
<td>119</td>
<td>65</td>
</tr>
<tr>
<td>Exeter</td>
<td>185</td>
<td>128</td>
<td>69</td>
<td>71</td>
<td>56</td>
</tr>
<tr>
<td>Total</td>
<td>1,950</td>
<td>1,414</td>
<td>73</td>
<td>1,092</td>
<td>77</td>
</tr>
</tbody>
</table>

This follow-up survey was repeated between December 2004 and May 2005 in respect of consenting clients who attended a first meeting with their FAInS solicitors during Phase 2 of the pilot. As Table A2.13 shows, 1,212 follow-up questionnaires were sent to solicitors in respect of Phase 2 consenting clients and 932 were returned, a response rate of 77 per cent overall, which was identical to the response rate for the first phase of the pilot.

Table A2.13 Follow-up questionnaires sent and returned relating to Phase 2 cases

<table>
<thead>
<tr>
<th>Area</th>
<th>Number of clients</th>
<th>Number consenting to follow-up</th>
<th>% consenting to follow-up</th>
<th>Number of follow-up forms returned</th>
<th>% response rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basingstoke</td>
<td>206</td>
<td>150</td>
<td>73</td>
<td>114</td>
<td>76</td>
</tr>
<tr>
<td>Leeds</td>
<td>676</td>
<td>580</td>
<td>86</td>
<td>446</td>
<td>77</td>
</tr>
<tr>
<td>Lincoln</td>
<td>105</td>
<td>62</td>
<td>59</td>
<td>35</td>
<td>56</td>
</tr>
<tr>
<td>Stockton &amp; Hartlepool</td>
<td>545</td>
<td>420</td>
<td>77</td>
<td>337</td>
<td>80</td>
</tr>
<tr>
<td>Total</td>
<td>1,532</td>
<td>1,212</td>
<td>79</td>
<td>932</td>
<td>77</td>
</tr>
</tbody>
</table>

In both phases, there was a distinct variation between pilot areas in terms of the percentage of clients who consented to their solicitor sharing information with us. Consent rates in both phases were particularly low in Lincoln (44% and 59% respectively), while Leeds solicitors achieved relatively healthy consent rates of 77 per cent and 86 per cent respectively. Variations in the way in which the research was introduced to clients may well have impacted upon the consent rates. In the pre-pilot it

309
became clear that some solicitors were uncomfortable with the requirement to introduce the research. While some solicitors managed to encourage the majority of clients to participate in the research, others provided very few consenting clients. We asked the LSC to address this variability during the professional development days for the full pilot, using those solicitors in the pre-pilot who were comfortable with the research to help others overcome their reluctance. Unfortunately this did not happen, and we witnessed the same variability in the full pilot also.

Overall, we obtained follow-up information about 56 per cent of the 1,950 clients who saw a solicitor for the first time between September 2003 and February 2004, and 61 per cent of the 1,532 clients who saw a solicitor for the first time between June and November 2004. In total, we received follow-up information relating to the 902 pre-FAInS clients in our four new areas, 932 FAInS clients in these areas, and 190 FAInS clients in Cardiff and Exeter. We received, therefore, a total of 2,024 six-month follow-up questionnaires. The characteristics of the clients for whom we received follow-up questionnaires did not differ to any great extent from those of the clients for whom we did not have follow-up data.

Eighty per cent of clients consented to us obtaining information about the cost of services provided to them, and 72 per cent of clients (2,407) agreed to us contacting them for follow-up research. The data relating to those who gave consent to be interviewed were passed on to the research team at NatCen which undertook the six-month follow-up telephone interviews with clients. This element of the research and the samples used are discussed in Chapter 4.

Generalisability

In the original research design, the representativeness of the research data was to be assessed essentially in geographical terms, by comparing characteristics of the pilot areas against the country as a whole. This is important because of the decision to define pilots as areas. The process of selecting pilot areas can be informed by analyses of Census and other data to maximise the extent to which they are representative of the diversity of the country’s population, but the pilot areas that were selected excluded any part of London, and this in itself restricted the degree to which the sample could be nationally representative.

A more complex issue was raised by the selectivity of the research sample within the pilot areas: we had hoped that all family lawyers undertaking publicly funded work in the study areas would be able to participate in the study. We would then have been able to make a number of assumptions about the robustness of our before-and-after design. In the event, only some solicitors in each area took part, and there was evidence that not all of those solicitors’ cases were getting into the research sample. Thus the question of how far the findings from the research can be generalisable moved beyond questions about differences between the total populations of areas, and instead needed to be addressed at the level of the individual case. Shifting the scale of analysis from the area to the case meant that the national ‘benchmark’ data – which we needed to compare the characteristics of the sample against – could not come from the Census but had to come from the LSC’s case records. This amounted to a very substantial extension to the original research design: it required the LSC to process and export data sets whose sheer volume was unprecedented. All the cases in the database on Legal Help funding for our evaluation period were then provided to the research team, after full anonymisation.
There were, however, limitations to this database. The principal limitations of this national data set were threefold:

1. The information collected covered very few characteristics of the people concerned.

2. The postcodes of both the solicitor and the home location of the people themselves were incompletely recorded.

3. The unique FAInS case identifiers (UFIDs) were not on these case records, despite our expressed hope at the start of the research that these would be recorded on all relevant files so that case tracking would be possible.

Despite these limitations, the sheer scale of this data set meant that we could assess representativeness in a far more direct way than had originally been envisaged. This was because the benchmark population for the analyses was no longer just the resident population in aggregate, but comprised the actual LSC cases to which the findings from the research needed to be generalised (see Annexe 3).

Accessibility to Network Services

One strand of research that was originally proposed but which was not pursued through to completion was an analysis of the accessibility of the various services to which FAInS clients may be referred. The initial understanding was that the LSC would have or would develop – and would then update – a fully comprehensive list of the locations of relevant service providers. The shift of focus away from an understanding of FAInS as a network was accompanied by the LSC not capturing this comprehensive list of service providers. That information would have been essential for the research to identify which services were available in proximity to which solicitors. It would then have been possible to assess whether the differences in service availability influenced the rate of referral to these services by solicitors, and also the likelihood that clients would take up the referrals made. Without the service location data, the only accessibility-related analyses we have been able to conduct are investigations of the ‘catchment areas’ of FAInS solicitors.

Costs Study

The only costs relevant to this evaluation are the costs to the LSC, and the relevant issue was whether these differed between FAInS cases and a suitable set of comparator cases. The two data sets which are relevant are those covering Legal Help and Legal Representation cases respectively. The recording of UFIDs on the LSC database was essential to our original research design. The absence of UFIDs on the LSC case records made the original research design impossible, because they provided the only means by which FAInS cases could be identified. We did not receive the LSC databases until towards the very end of the evaluation because we wanted to ensure that as many of our research cases as possible had been closed. This meant that, when we realised that the UFIDs were missing from both data sets, it was far too late to ask for the omission to be rectified. In addition, the selectivity of the FAInS cases – in that they were not all of the cases handled by the FAInS solicitors, who in turn were not all the solicitors in the pilot areas – made it all the more difficult to identify suitable comparator cases. As a result, it has been necessary to obtain data on all the cases in both the data sets, so that a range of
alternative comparative analyses could be carried out. As with the generalisability analyses, the result may be that these much more complex forms of analyses may have delivered more robust results than would have been possible with the simpler approach put forward in the original research design.

The Qualitative Elements of the Research

Observations

Solicitors were observed conducting initial meetings with publicly funded family law clients. Securing observations was difficult, for a number of reasons. First, solicitors were often uncertain whether a client would be publicly funded. Even if clients were receiving state benefits when they made an appointment this did not necessarily mean that they would be eligible for public funding. In some instances, it did not become clear until midway through an observation of the first meeting that the client would not be eligible for public funding. Second, not all clients kept scheduled appointments. Solicitors commented that non-attendance was a frequent problem with publicly funded clients (especially during bad weather). Third, solicitors informed us that publicly funded clients often simply ‘walk in off the street’ without an appointment. We noted during the pre-pilot study that clients often missed appointments, for a variety of reasons: the weather was either too bad (cold, wet or windy) or too good (hot and sunny); something more urgent had cropped up; childcare was difficult to arrange; or the situation which led to the making of an appointment had changed. The scheduling of appointments was also somewhat uneven for other reasons. There were times when the lawyers appeared especially busy, such as immediately prior to and after Christmas and Easter when contact issues often flare up. There were other times when there seemed to be very few new clients and, for the most part, solicitors were unable to explain these quiet patches. It was also difficult to schedule observations if the solicitor was spending a considerable amount of time in court. Several of the solicitors worked part-time, some left their firm to take up work in a non-FAInS firm, and others went on maternity leave during the course of the research, all of which added to the difficulty of undertaking observations.

Thus, the conduct of the observations generally reflected the nature of family law practice. It would seem that the timetabling of client appointments is a somewhat hit-and-miss affair. Solicitors expressed frustration about this lack of certainty, although most also explained that having a ‘no-show’ client allowed them a much-needed opportunity to catch up with paperwork. The observations were generally conducted with solicitors who took on the bulk of the publicly funded cases within their firm.

For the most part, clients provided consent for us to observe appointments without hesitation, although some refused consent. All except one of the clients who refused consent were male. Several solicitors explained that some men find it particularly difficult and embarrassing to express emotions and to admit that they are experiencing problems. They felt that having a researcher sit in would be too embarrassing and too emotionally difficult for these clients.

Observation research is especially prone to observer-effect, which refers to the problem of the participants altering their usual behaviour in response to the researcher’s presence. It is possible that solicitors altered their usual behaviour in order to present themselves in the best possible light. We used several strategies to attempt to reduce potential observer-effect. We stressed to solicitors at every opportunity that the research was being
conducted by independent researchers; we reassured solicitors about the confidentiality and anonymity of the data; and we pointed out that we had an understanding of the nature and stresses of family law practice gained from previous research in this field. Several solicitors said that they initially felt a little self-conscious, but once the interview commenced it was impossible for them to concentrate on anything other than the client. Indeed, observations suggested that solicitors were generally very focused on listening and responding to their clients.

With the assistance of an observation form, we recorded data from observations relating to:

- the length of the interview
- who attended
- the client’s gender
- information the solicitor had about the client prior to the meeting
- issues that were dealt with
- whether the solicitor encouraged the client to express their emotions
- whether the solicitor encouraged the client to go beyond legal issues
- the client’s presentation
- techniques and strategies used by the solicitor
- the support services that were mentioned
- non-verbal clues expressed by the solicitor and the client
- the solicitor’s use of active listening skills
- whether there was a key moment in the interview
- how the research was introduced

Post-observation conversations with solicitors suggested that any observer-effect was relatively minimal. Solicitors were generally keen to discuss the case with the researcher in terms of the legal issues, how the client presented, and what the solicitor intended to do next.

Pre-FAInS observations

Observations were conducted in two phases, reflecting the comparative approach of the study. First, pre-FAInS solicitors were observed conducting initial meetings with their clients from February 2004 to April 2004. Thirty observations were conducted, and their distribution across the FAINs pilot areas is shown in Table A2.14. Originally, we had
hoped to conduct 40 observations (a maximum of two observations with five different solicitors across each of the four new pilot areas). We did not achieve this target, however, as there simply were not enough new client appointments available to us to make the initial target feasible. This problem was further exacerbated by the high number of observations that were scheduled but did not take place. On thirteen occasions (25% of all the attempted observations) the client did not turn up. Only one of these clients contacted the solicitor with an explanation and to reschedule the meeting. In addition, two male clients refused to participate; in five instances, the solicitor had initially thought that the client would be publicly funded but, mid-way through the interview, it became apparent that they were not going to be eligible; and, on one occasion, the client qualified for public funding but did not want it.

<table>
<thead>
<tr>
<th></th>
<th>Pre-FAInS</th>
<th>FAInS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basingstoke</td>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>Leeds</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Lincoln</td>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>Stockton &amp; Hartlepool</td>
<td>9</td>
<td>10</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>30</strong></td>
<td><strong>40</strong></td>
</tr>
</tbody>
</table>

**FAInS observations**

In the second phase of the full pilot we observed solicitors conducting initial FAInS meetings from September 2004 to July 2005. Observations did not start immediately after solicitors had completed their FAInS training, in order to give them a chance to settle into their FAInS practice. For the most part, the researcher attempted to conduct observations with the same solicitors as were observed during the pre-FAInS stage. This did not always prove possible. In several cases the solicitor had moved to another firm or was on extended leave. In some cases, the initial solicitor had reduced their publicly funded workload to the extent that conducting the full quota of observations was not possible.

The intended target of 40 observations was achieved in the FAInS stage, with these observations evenly distributed across the FAInS pilot areas (Table A2.14). In one of the FAInS areas, it became clear that it would not be possible to achieve the target if the limit of two observations per solicitor were maintained. In this area, three observations were conducted with three solicitors and four with another. We undertook FAInS observations for a longer period of time than was possible in the pre-FAInS stage, and subsequently achieved a greater number.

As with the pre-FAInS stage, we were not always successful in completing the planned FAInS observations. A total of 22 clients did not show up for appointments (29% of all the attempted observations). One client had not shown up for three previous appointments. Four of these clients provided their solicitor with an explanation. In addition, three clients refused consent for the researcher to observe. In nine instances, it became apparent mid-way through the interview that the client would not qualify for public funding. In two instances, clients qualified for public funding but did not want it. The solicitors had been careful to explain their clients’ entitlements, but one of the clients appeared to be quite suspicious of what he would need to disclose in order to gain public funding. Another client had wanted to resolve the matter ‘without a fuss’, and was insistent that money and other material goods were irrelevant to him. Another client had

314
not wanted to accept public funding as she had put aside some money and felt that she
did not want ‘to abuse the system’. This client alleged that she had been subjected to
severe psychological and physical abuse.

Observations of professional development and network meetings

In addition to the observations of solicitors’ initial appointments with FAInS clients, we
also observed other FAInS activities involving family lawyers, including the professional
development days for FAInS practice, at several points during the evaluation. The
observations were useful in allowing us an insight into how the LSC had conceptualised
FAInS, what solicitors were told about it, the skills they were expected to demonstrate,
and the concerns and questions solicitors raised. We were also able to see how the
training changed over time, largely as a result of research feedback.

The LSC conducted a series of network meetings in the FAInS areas during the study
period. These meetings consisted of invited service providers and FAInS solicitors. They
were intended to provide network providers with information about FAInS, and to
facilitate networking between other service providers and solicitors. We also attended a
post-evaluation seminar with FAInS practitioners, organised by the LSC, in April 2006.

Solicitor Interviews

During the pre-FAInS (Phase 1) period of the research, a range of practitioners, including
partners, highly experienced fee earners, relatively newly qualified solicitors and para-
legals, participated in semi-structured interviews, in which they discussed: their
motivations for taking up family law work; the distribution of family law work within the
firm; the ways (or the style) in which they approached family law cases; the initial
presentation, concerns, needs and expectations of clients; the provision of information to
family law clients; the way in which they approach an initial appointment with a client;
their use of other support services including mediation; and their expectations of FAInS.

We were keen to include in the interview sample solicitors who had not been observed in
practice since we had already had an opportunity to talk to these solicitors after
observations had taken place. A total of 19 pre-FAInS solicitors participated in these
interviews in Phase 1, and their distribution across the FAInS pilot areas is shown in
Table A2.15.

Interviews were also conducted with solicitors after they had commenced FAInS practice.
These interviews covered most of the topics discussed during the pre-FAInS interviews,
and in addition solicitors were asked about: why they had signed up for FAInS; their
experiences of FAInS practice; whether FAInS had made a difference to their practice;
and the existence of local legal culture. Twenty-two interviews were conducted with
FAInS practitioners (Table A2.15), including seven with solicitors who participated in
the pre-FAInS interviews and who were then reinterviewed. For the most part, solicitors
were willing to participate in the interviews, and we received no refusals. Most
interviews were conducted in person, although in a few cases where the solicitors had a
particularly hectic and uncertain timetable telephone interviews were conducted. Most
interviews were taped and then transcribed.
Table A2.15  Interviews with solicitors

<table>
<thead>
<tr>
<th>Area</th>
<th>Pre-FAInS</th>
<th>FAInS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basingstoke</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Leeds</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>Lincoln</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Stockton &amp; Hartlepool</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>Total</td>
<td>19</td>
<td>22</td>
</tr>
</tbody>
</table>

Qualitative Data Collection: Clients

When people had completed a telephone interview conducted by NatCen, they were asked if they would be prepared to participate in an in-depth face-to-face interview. All clients who were interviewed by NATCEN and who had at least one child aged between eight and eighteen, whether resident or non-resident, were invited to participate. We received consents for a further interview from 159 pre-FAInS and 229 FAInS clients (including those in Cardiff and Exeter). Interviews with clients were primarily open-ended in structure, although the discussions included the background of the family circumstances, parenting arrangements, family well-being, and the experience of going to a family lawyer. All the interviews were tape recorded and subsequently transcribed.

The unique identifiers of clients in each area were electronically randomised and clients were then systematically contacted by telephone until either the sample was exhausted or sufficient interviews had been conducted. In cases in which clients did not answer their telephone, contact was attempted up to ten times before they were eliminated from the sample. We were unable to contact some clients, owing to telephone numbers being unavailable. When clients were contacted they were given the opportunity to withdraw from the research, and several did. This was a particularly common phenomenon in Stockton & Hartlepool, where several clients refused to participate. A total of 44 clients were interviewed in depth during the evaluation, as Table A2.16 shows.

Table A2.16  Number of client interviews conducted

<table>
<thead>
<tr>
<th>Area</th>
<th>Pre-FAInS clients</th>
<th>FAInS clients</th>
<th>All clients</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cardiff</td>
<td>n/a</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Exeter</td>
<td>n/a</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>Basingstoke</td>
<td>1</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>Leeds</td>
<td>4</td>
<td>6</td>
<td>10</td>
</tr>
<tr>
<td>Lincoln</td>
<td>2</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>Stockton &amp; Hartlepool</td>
<td>5</td>
<td>3</td>
<td>8</td>
</tr>
<tr>
<td>Total</td>
<td>12</td>
<td>32</td>
<td>44</td>
</tr>
</tbody>
</table>

These interviews were intended to be conducted face to face in clients’ homes, but when someone was reluctant to see a researcher face to face they were given the option of a telephone interview instead. Twenty of the 44 interviews conducted were via the telephone. Of the clients who were interviewed, two-thirds were female (n = 29) and a third male (n = 15). Approximately a quarter of clients were either married and living with their spouse or cohabitating, and the remainder were single, separated or divorced. Nearly half of these clients were unemployed, and over half were receiving either Income
Support or Jobseeker’s Allowance when they first went to see their solicitor. Only two clients did not class themselves as white, and six suffered from a disability of some kind.

All the clients were parents of children under eighteen, and the majority of them had at least one resident child living with them (n = 34). The remaining parents had non-resident children. The most common matter brought to the solicitor related to children’s issues (79.5%), followed by divorce (27.3%), finance and property (20.5%) and domestic violence (18.2%). One in five clients (n = -9) was referred to, or advised to attend, another service by their solicitor at the time of their first meeting.

Qualitative Data Collection: Children

It was our original intention to be able to select a sample of children aged between 8 and 18 for in-depth interview who were members of the same families as the parents who had been interviewed. In fact this was not possible, and we became aware that some parents were not prepared to give permission for us to talk to their children, while others explained that it was not going to be appropriate to arrange interviews with children, for a variety of different reasons. Having attempted to draw a sample of children in this way and having been largely unsuccessful, we returned to the NatCen follow-up interview databases in order to contact parents who had not been interviewed face to face but who had nevertheless agreed to being recontacted by members of the research team. We had always recognised that it is frequently difficult for researchers to gain access to children and that parents are often protective of children who have experienced the trauma of parental separation. We had hoped that we would be able to select and interview a sample of up to 30 children, but acknowledge that this was almost certainly overly ambitious. In the event, we were able to interview nine children from six families in which one of the parents had seen a pre-FAInS solicitor, and nine children from four families in which one of the parents had been to a FAInS solicitor.

Theoretical Framework

An important task in building a research methodology and understanding research data is that of developing theoretical approaches. We began to consider how to go about this task during the pre-pilot in order to develop a framework for pursuing the research programme. We particularly needed to delineate the key inputs, outputs and outcomes for FAInS in order to determine how measurable outcomes could be achieved. We constructed a theory-of-change framework since the introduction of FAInS was an attempt to change legal practice in order to promote certain outcomes.

By returning to the early documentation relating to FAInSs issued by the LSC, we listed the identified aims and objectives: FAInSs set out to minimise distress for parents and children when relationships break down, and to promote ongoing family relationships and co-operative parenting through the provision of tailored advice and information and the facilitation of access to a range of services that may assist people to resolve their problems. We hoped that the data we would obtain from clients and solicitors would enable us to determine: the extent to which information and advice are tailored to individual need; the issues which require legal advice and legal action; the use of other services; the support and help offered to parents, particularly in respect of their talking to children about separation and divorce; and the support offered to children who need it, including referrals to expert children’s services.
The theory-of-change approach shows how day-to-day activities in a programme under study connect to the results or outcomes the programme is trying to achieve.\textsuperscript{275} It has been described as a kind of road-map which highlights how the programme is expected to work, the processes which should be followed, and how desired outcomes are achieved.\textsuperscript{276} At its simplest, it provided us with a theory of how and why an initiative works.\textsuperscript{277} To build a theory of change we needed to determine the intended outcomes (short-, medium- and long-term) associated with FAInS, the activities expected to be implemented to achieve these outcomes, and the contextual factors that may have an effect on implementation and the potential to bring about the desired outcomes.\textsuperscript{278} One of the strengths of the theory-of-change approach has been described as ‘its inherent common sense’.\textsuperscript{279} Its most powerful contribution is its emphasis on elucidating not only \textit{whether} activities/interventions produce effects but \textit{how} and \textit{why}. To some extent, the approach breaks down the distinction between formative and summative evaluation since it aspires to both simultaneously.

At the end of the pre-pilot, we developed our initial model (Figure A2.2). Throughout the study we have maintained close relationships with LSC staff responsible for FAInS, discussed findings as they emerged, and reflected on the impacts and outcomes of FAInS practice. We have kept this model in mind throughout the evaluation, and have regularly considered the extent to which we might be able to provide answers to the questions we posed. As time has passed, we have been confident of being able to shed light on the inputs and outputs sections of the model, but less sure that the data would enable us to determine change in outcomes. It has been important for us to be realistic about what the evaluation can achieve given that we have had fewer cases on which to base our analysis. In the pre-pilot we were not able to detect much change in solicitors’ practice as a result of FAInS, although there were subtle shifts, and it would seem that family law practice during the full pilot was not substantially different from that before FAInS.


\textsuperscript{279} ibid.
Figure A2.2 Developing a theory-of-change model for FAInS

319
Annexe 3 The Generalisability of the Research Findings

Mike Coombes and Simon Raybould

One of the objectives of piloting a policy initiative is to gather evidence on which to base a judgement about the likely effects of the national implementation of that initiative. This evaluation has sought to establish the effects of FAInS in the pilot areas, but a key question which had to be addressed is the extent to which the findings can be generalised to all other parts of England and Wales. In principle, this could be a purely geographical question about the extent to which the pilot areas are representative of the country as a whole. To this extent the choice of pilot areas was critical.

The representativeness of the pilot areas is just one element in establishing the generalisability of the findings from the evaluation, however. Because solicitors in the pilot areas were able to choose whether or not they became FAInS providers, we needed to consider the degree to which the FAInS solicitors and their cases were representative of those of other family law practitioners in the pilot areas and, ultimately, of all those in the country as a whole. It was impossible to predict which solicitors would become FAInS providers if a national ‘roll-out’ were to proceed on an optional basis, so our analyses could not compare research cases with those which would be generated by an ‘opt-in’ scenario. The comparisons we attempted to make were threefold. We have compared:

1. The six FAInS pilot areas with the rest of the country in respect of basic demographic features.
2. FAInS providers with other firms in the four before-and-after pilot areas.
3. FAInS providers with all firms nationally.

Although we defined comparators by reference to firms, most of the comparisons focus on the characteristics of the firms’ caseloads. As a result of this focus on cases, the appropriate starting point for the analyses was an examination of the wider populations which comprise the total potential client base for all the solicitors concerned, so we needed to establish an appropriate definition of the pilot areas from which the FAInS caseloads were drawn. We had expected to consider the impact of the relative accessibility of the other services to which clients were referred, but the creation of networks of service providers was no longer a central feature of FAInS in the main pilot.

The Catchment Areas of Pilot Solicitors

We examined the catchment areas of FAInS solicitors: information about the research cases made it possible to establish where the clients were living when they first went to see the solicitor. Having identified the catchment areas, we were able to assess the nature of the population on which the findings of the research depend and explore the generalisability of the research results to the population of the country as a whole.

Establishing solicitors’ catchment areas depended on linking the home address of each client to the location of their solicitor using the postcode of the office in which the first meeting took place. Postcoding of data was essential for analyses of this kind and, as a
result of the effort we made to ensure that the postcoded data set was clean and robust, only fifteen cases were lost from the data set because the postcode was missing. We decided to use straight line distances for estimates of clients’ travelling because the density of the road networks in the pilots meant that calculating shortest road distances would not yield much improvement in accuracy and would not reflect the different experiences of public transport users. Table A3.1 shows the results of these estimated travel distances between clients and solicitors. It is particularly notable that in each pilot a clear majority of clients travelled less than 5 km (about three miles) from their home to the meeting location. The wide availability of solicitors across the country means that people do not need to travel far to access one.

Table A3.1 Estimated distances clients in each area travelled to solicitors

<table>
<thead>
<tr>
<th>Area</th>
<th>Mean (km)</th>
<th>Maximum (km)</th>
<th>% under 5km</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basingstoke</td>
<td>8.8</td>
<td>311</td>
<td>74.3</td>
</tr>
<tr>
<td>Cardiff</td>
<td>4.3</td>
<td>33</td>
<td>75.8</td>
</tr>
<tr>
<td>Exeter</td>
<td>8.6</td>
<td>75</td>
<td>66.3</td>
</tr>
<tr>
<td>Leeds</td>
<td>5.6</td>
<td>271</td>
<td>67.1</td>
</tr>
<tr>
<td>Lincoln</td>
<td>6.6</td>
<td>100</td>
<td>77.5</td>
</tr>
<tr>
<td>Stockton &amp; Hartlepool</td>
<td>4.9</td>
<td>367</td>
<td>85.3</td>
</tr>
</tbody>
</table>

There is relatively little difference between the pilots in terms of how far people travelled to see their solicitor. As might have been anticipated, the average distance was lower in the larger urban areas of Leeds and Cardiff, where more people live near to the city centre where solicitors are usually located, than in the rural areas of Lincoln and Exeter. Clients were more likely to travel further in the prosperous area of Basingstoke than in Stockton & Hartlepool, where fewer people have cars. Even so, in every area the average distance was less than 9 km (little more than five miles), despite the distorting effects of the small number of very long distance journeys. The maximum distances shown tend to be for ‘outlier’ cases, which could result from people having moved away when their relationship broke down. Map A3.1 shows all estimated journeys to solicitors, and the visual effect highlights the long journeys of the minority of outlier cases.

The outliers pose a problem because it is necessary to define robust catchment areas for each pilot so that these can then be profiled to enable the generalisability of the research findings to be assessed. To be specific, if the catchment area of Basingstoke in south-east England were to be defined by drawing a line around all the cases in our research – using what is known as the convex hull technique – the boundary would extend to areas in the north-west, because two cases were located there (Map A3.1). Drawing catchment areas in this way would result in the pilot areas overlapping each other, however. The solution we adopted was to modify the convex hull methodology so that the program first sieved the cases in each pilot to exclude a proportion of the clients who had travelled the furthest. After considerable experimentation, we chose a value of 5 per cent (i.e. the convex hulls are drawn to include the 95% of clients who had travelled the least far from home to the meeting). This value was the optimum compromise between including all the data, simplifying the problems referred to above, and drawing coherent catchment areas. Map A3.2 shows the convex hulls drawn on this basis, with local authority boundaries shown in grey. It is clear that most catchment areas straddle several local authority boundaries,
illustrating why we could not simply adopt local authority areas as adequate ‘proxy’ definitions of the catchment areas.

Map A3.1  Journeys undertaken to see a solicitor
Map A3.2  Catchment areas defined as convex hulls
We have examined the detail of the travel-to-solicitor flow pattern in each pilot area. Each purple line links a client’s home with their solicitor’s location (these locations are accurate to the scale of neighbourhoods which include on average just 300 people). Built-up areas are shown in grey on the maps. The convex hulls enclosing all the clients, except for the 5 per cent who travelled the furthest, are shown as broad red dotted boundaries. The brown boundaries are county court catchment areas which were estimated for earlier research on information meetings.\textsuperscript{280} We consider each pilot in turn.

\textit{Stockton & Hartlepool}

Map A3.3 shows the Stockton & Hartlepool area, which includes solicitors in Stockton & Hartlepool. The very distinct two-centre nature of the pilot is evident, with the two centres having almost completely discrete catchment areas. Hartlepool solicitors prove to have the wider catchment area, because the area to the north-west is a former coalfield area with only the new town of Peterlee being a substantial service centre where solicitors might be located. Even though Peterlee falls largely within the convex hull definition, a town of the size indicated by its built-up area will generate rather more potential clients than travelled to FAInS solicitors in Hartlepool, so it is probably a marginal case for inclusion within the catchment area. Just a handful of clients from Middlesbrough went to see solicitors in nearby Stockton, so although their short journey qualifies them for inclusion within the convex hull definition it would be wrong to include Middlesbrough in the FAInS catchment area of Stockton & Hartlepool. Middlesbrough solicitors will have serviced almost all the Middlesbrough residents who \textit{could} have travelled to access FAInS providers north of the river. If we take these factors into account, it seems that the two court areas based on Stockton & Hartlepool together provide a satisfactory approximation to the \textit{de-facto} catchment area of the FAInS providers.

Map A3.3  Pattern of ‘journey to solicitor’ for research cases in Stockton & Hartlepool
Leeds

Map A3.4 shows the equivalent pattern for the clients of solicitors in the Leeds pilot. The large size of the city means that it contains some substantial suburban centres where solicitors are located, and the criss-cross pattern indicates that substantial numbers of clients do not use their nearest solicitor. What is equally notable is that very few people went to Leeds solicitors from the almost equally large city of Bradford, which is almost continuously built up with Leeds to the west. As with Stockton & Hartlepool, it seems that the court area can provide a working definition of the FAInS catchment area, although in Leeds the boundary proves more difficult to resolve because some of the provider locations were in outlying towns: Morley to the south-west falls into the Dewsbury court area, and Garforth to the east is in the Castleford court area. The alternative approach would be to use the convex hull as the basis for the pilot area definition, but this would create a larger problem because it includes substantial parts of Bradford and other sizeable towns such as Wakefield, where the clients can only form a small minority of the large potential client base. To have included all these areas within the Leeds pilot boundary would have been no less inappropriate than to have included Middlesbrough in the Stockton & Hartlepool catchment area.
Map A3.4  Pattern of ‘journey to solicitor’ for research cases in Leeds
Lincoln

Map A3.5 shows that the research cases in Lincoln have a more scattered pattern. This was to be expected of the clients of solicitors located in a major centre in a predominantly rural area. Indeed, some clients among the 95 per cent who did not travel the furthest — whose journeys thus inform the convex hull definition shown here — had travelled from home locations which were quite some distance away. The clear majority, however, were from the city or one of the villages within its immediate surroundings. The court area provides a very plausible approximation of the catchment area: there is little chance of ‘over-bounding’ because the area includes very few other significant centres where solicitors may service a local population which should not be included in the Lincoln catchment area, and there is little evidence of ‘under-bounding’ because the few FAInS clients who came from beyond this boundary did not live in the nearby towns from which most of the potential local clients were travelling.
Map A3.5 Pattern of ‘journey to solicitor’ for research cases in Lincoln
Basingstoke

Map A3.6 shows that a greater proportion of clients in affluent Basingstoke travelled further to their solicitors. Even so, not many people travelled from other towns where there are local solicitors. For example, just one client travelled from Reading and just three from Andover. Even in this area of highly mobile people, most use a solicitor in the nearest town. The court area thus provides a good estimate of the catchment area in Basingstoke.
Map A3.6  Pattern of ‘journey to solicitor’ for research cases in Basingstoke
Cardiff

Map A3.7 reveals that this highly localised pattern also applies to the Cardiff area, despite the fact that the city provides many services for people from far and wide. Particularly notable is the paucity of clients from the heavily populated Valleys area to the north: most of the relatively few clients who did not live in the city came from the adjacent parts of the rather prosperous Vale of Glamorgan area to the south-west and west. Four clients travelled from Barry, and these would have been just a small minority of the client base. From this we might conclude that the fact that the Cardiff court area excludes Barry means that it is a useful boundary for the FAInS catchment area.
Map A3.7  Pattern of ‘journey to solicitor’ for research cases in Cardiff
Exeter

Map A3.8 shows the pattern of travel for clients using the Exeter solicitors. As in the equally rural Lincoln area, there is a more scattered distribution of clients owing to the paucity of alternative provision in the villages and small towns surrounding the city. One important difference here is that some clients travelled from the city to a solicitor based in one of the surrounding towns: this is shown by the coming together of lines to the north of the city in a single point (which represents the location of a FAInS solicitor in Tiverton). It is likely that the court area in this case slightly ‘over-bounds’ the catchment area, because some outlying towns such as Okehampton will be servicing their client base locally. The scale of error introduced to the analyses which follow is slight, however, because these areas have few residents.
Map A3.8  Pattern of ‘journey to solicitor’ for research cases in Exeter
The Characteristics of the Pilot Area Populations

Having considered the catchment areas of the pilots, we undertook a set of relevant comparisons between the demographic characteristics of the six areas in which FAInS operated and those of the rest of England and Wales as the first step in the generalisability analyses. From the preceding analysis of catchment areas, it seemed safe to conclude that the court areas generally offered a suitable definition of the FAInS areas. (It would not have been appropriate to use the convex hull definitions for this purpose, because we also looked at the cases of non-FaInS solicitors in the same areas, and their location may not exactly match the pattern of the research cases.)

In Table A3.2 we present a range of area profiling information on the six FAInS areas, defined in terms of court areas. The first row shows the population in these areas (using the 2001 Census data, which provides most of the statistics) and reveals that Leeds has the highest population, despite being one of the smallest pilots in area. Exeter, with its rather extensive catchment area, has a population very similar to that of Cardiff. The population of Stockton & Hartlepool is about half that of Leeds, but still somewhat larger than the populations of Lincoln and Basingstoke, where the potential client base for the pilot solicitors was not much more than a third of that for the Leeds solicitors. In the remaining rows of the table, values higher than the respective national average value – shown in the right-hand column – are presented in **bold italics** to help draw out the key patterns. The fact that most rows include a mix of values above and below the national average gives some indication that the pilot areas offer a reasonable cross-section of experience nationally. This conclusion generally holds if attention is limited to the four pilot areas where the before-and-after research was undertaken. The main exception concerns issues such as ethnicity, in respect of which the lack of a pilot in London is particularly important. The following brief description of the differences between pilot areas helps us to interpret differences between pilot areas in the outcomes we observed.

In the large cities of Leeds and Cardiff a relatively low proportion of the adult population is married. The key reason for this may well be that these cities have many younger adult residents owing to the large universities located there (whereas the rather low value for Exeter may be due to its large retired population, which will include more widowed people). The proportion of married people who have children at home does not vary greatly between the pilot areas. By contrast, the proportion of all households with children varies from below 50 per cent in Exeter to over 70 per cent in Basingstoke, owing partly to the differences in age structure and to the fact that children in more rural areas are much more likely to live with married parents. The latter differential is clearly seen in the proportion of households with children (termed ‘families’ in Table A3.2) where there is a lone parent; this proportion approaches a third in Leeds and 15 per cent in Exeter. More marked is the evidence on child poverty levels (the proportion of families without any earners). More than a third of all families in Stockton & Hartlepool were in this category in 2001, whereas in Basingstoke there was only a one in twelve (8.3%) chance of families being without an earner.

Table A3.2 shows that only the larger cities of Leeds and Cardiff approach the England and Wales average in terms of the proportions of their populations that are not white, and that, along with the Basingstoke area, they are also the only areas approaching the national average in terms of share of the population born in a non-EU country.\(^{281}\)

\(^{281}\) This is the EU in 2001, and so does not include the new accession countries in central and eastern Europe.
The number of adherents of any single non-Christian religion in any pilot area is too small to warrant reporting here. We have used as an indicator the proportion of people who stated explicitly that they have no religion. The two large cities have the highest values, followed by the two southern pilot areas (Exeter and Basingstoke), which also have values above the national average.

There are only slight differences between the areas in respect of the proportion of the population aged 15 or less. By contrast, there are strong differences in terms of incidences of illness between the Basingstoke and the Stockton & Hartlepool areas. The higher level of illness in Stockton & Hartlepool results from long-term economic disadvantage. The rural areas of Exeter and Lincoln approach the Stockton & Hartlepool profile, few residents having high-earning occupations and a majority having no qualifications. The big cities have a more ‘bipolar’ profile, including more people with degrees but also significant numbers without any qualifications. Table A3.2 shows values on an indicator that lies at the centre of the Government’s economic development aims: this is the proportion of all adults who are either self-employed or employed (whether full- or part-time). Cardiff has the outstanding value on this indicator, a fact which is all the more notable given that Welsh values tend to be low. Leeds is rather different from all the other pilot areas, with a notably lower rate of owner-occupation.

Reflecting upon these profiles, we found that the statistics confirm the key contrasts between areas that we anticipated when we made the initial selection of pilot areas for the research. One of the major issues relating to the generalisability of the findings is the absence of a London pilot in the evaluation. Nevertheless, Basingstoke provides an example of a Home Counties locality and Exeter includes some prosperous southern communities in its catchment area. In most other respects, Exeter is more like Lincoln, providing us with examples of the more rural parts of the country. The urban North Tees area, together with Cardiff and Leeds, provided examples of more urban areas. Leeds is also an example of metropolitan England outside the London region. The six areas provided the intended contrast in terms of prosperity and deprivation. Because we did not have a pilot in London the ethnic diversity of the pilots was not very great. The analyses which rely on the four pilot areas with both ‘before’ and ‘after’ cases are not very greatly affected by the exclusion of Cardiff and Exeter because these two areas lie towards the middle of the range of values on most indicators. In other words, the mix of circumstances observed in the four ‘before-and-after’ pilot areas is similar to the mix across all the six pilots.

To summarise, given that we had no pilot in London, the pilot areas offered a fairly diverse coverage of the national population profile, enabling us to generalise from the findings. We needed to go further, however, to examine the impact on the representativeness of the research sample of the selectiveness which took place within pilot areas. That FAInS providers were invited to ‘opt in’ to FAInS may have led to the pilots being the preserve of certain types of solicitors who focus on certain types of client, rendering the research cases less likely to be reasonably representative of the wider caseload in the pilot area from which they were drawn. There is also a possibility that these solicitors themselves were selective in terms of their own caseload because they saw some cases as being less suitable for FAInS than others. At the end of this annex we report on the most robust assessment of the generalisability of the research findings that has been possible using data from the LSC relating to the full relevant caseload. Before that, we consider the relative levels of deprivation/affluence in each pilot and compare the research samples with the local populations from which they were drawn.
Table A3.2  Profiling the pilot area populations

<table>
<thead>
<tr>
<th></th>
<th>Leeds</th>
<th>Lincoln</th>
<th>Cardiff</th>
<th>Exeter</th>
<th>Basingstoke</th>
<th>Stockton &amp; Hartlepool</th>
<th>England and Wales</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resident population 2001</td>
<td>715,402</td>
<td>259,134</td>
<td>424,645</td>
<td>427,328</td>
<td>236,078</td>
<td>361,012</td>
<td>52,041,916</td>
</tr>
<tr>
<td>% aged 16(+) who are married</td>
<td>40.3</td>
<td><strong>45.7</strong></td>
<td>41.0</td>
<td>43.4</td>
<td><strong>48.4</strong></td>
<td><strong>45.2</strong></td>
<td>43.6</td>
</tr>
<tr>
<td>% married couples with dependent children</td>
<td>47.7</td>
<td>45.8</td>
<td><strong>50.6</strong></td>
<td>44.7</td>
<td><strong>49.1</strong></td>
<td>47.5</td>
<td>48.3</td>
</tr>
<tr>
<td>% households that have children (families)</td>
<td><strong>64.9</strong></td>
<td>57.3</td>
<td><strong>70.2</strong></td>
<td>46.4</td>
<td><strong>71.5</strong></td>
<td><strong>65.5</strong></td>
<td>62.4</td>
</tr>
<tr>
<td>% families that have a lone parent</td>
<td><strong>31.8</strong></td>
<td>22.7</td>
<td><strong>29.5</strong></td>
<td>21.6</td>
<td>15.3</td>
<td><strong>29.0</strong></td>
<td>25.1</td>
</tr>
<tr>
<td>% families that have no earner</td>
<td><strong>28.9</strong></td>
<td>20.0</td>
<td><strong>26.8</strong></td>
<td>16.4</td>
<td>8.3</td>
<td><strong>34.1</strong></td>
<td>23.8</td>
</tr>
<tr>
<td>% not White</td>
<td>8.2</td>
<td>1.4</td>
<td>6.7</td>
<td>1.2</td>
<td>3.0</td>
<td>1.9</td>
<td>8.7</td>
</tr>
<tr>
<td>% not EU-born</td>
<td>4.9</td>
<td>2.2</td>
<td>4.6</td>
<td>2.8</td>
<td>4.4</td>
<td>1.5</td>
<td>6.6</td>
</tr>
<tr>
<td>% no religion</td>
<td><strong>16.8</strong></td>
<td>12.9</td>
<td><strong>18.8</strong></td>
<td><strong>16.5</strong></td>
<td><strong>16.3</strong></td>
<td>9.1</td>
<td>14.8</td>
</tr>
<tr>
<td>% under 16</td>
<td>20.0</td>
<td>19.7</td>
<td><strong>20.9</strong></td>
<td>17.8</td>
<td><strong>20.9</strong></td>
<td><strong>21.2</strong></td>
<td>20.2</td>
</tr>
<tr>
<td>% long-term-ill</td>
<td>18.0</td>
<td><strong>18.5</strong></td>
<td><strong>19.1</strong></td>
<td><strong>19.0</strong></td>
<td>12.4</td>
<td><strong>23.8</strong></td>
<td>18.2</td>
</tr>
<tr>
<td>% students</td>
<td><strong>10.7</strong></td>
<td>6.5</td>
<td><strong>11.7</strong></td>
<td>7.7</td>
<td>4.7</td>
<td>5.6</td>
<td>7.2</td>
</tr>
<tr>
<td>% with degree or equivalent</td>
<td>19.2</td>
<td>15.9</td>
<td><strong>24.0</strong></td>
<td>18.8</td>
<td><strong>23.6</strong></td>
<td>12.7</td>
<td>19.6</td>
</tr>
<tr>
<td>% with higher-earning occupations</td>
<td>17.1</td>
<td>15.0</td>
<td>17.8</td>
<td>14.0</td>
<td><strong>33.4</strong></td>
<td>12.2</td>
<td>18.7</td>
</tr>
<tr>
<td>% without any formal qualifications</td>
<td><strong>30.9</strong></td>
<td>29.2</td>
<td>26.6</td>
<td>26.3</td>
<td>20.2</td>
<td><strong>36.6</strong></td>
<td>29.2</td>
</tr>
<tr>
<td>% (self)-employed</td>
<td>69.5</td>
<td><strong>70.8</strong></td>
<td>74.7</td>
<td>68.5</td>
<td><strong>70.3</strong></td>
<td>67.7</td>
<td>70.3</td>
</tr>
<tr>
<td>% owner-occupying</td>
<td>65.5</td>
<td>73.2</td>
<td><strong>73.2</strong></td>
<td><strong>74.7</strong></td>
<td><strong>78.3</strong></td>
<td><strong>70.9</strong></td>
<td>71.3</td>
</tr>
</tbody>
</table>

Note. **Bold italics** = above national average.

Comparing Research Cases with Wider Area Populations

We compared the research cases with the full married population in the pilot areas in terms of the affluence or deprivation of the neighbourhoods in which they live. We recognise that not all the publicly funded clients using a FAInS solicitor were married, but because the matters dealt with related primarily to separation or divorce processes we have used the married population as an indicator in order to estimate the relative size of the potential FAInS population in each area. If the research cases are representative of this population there would be little or no difference to be found. The measure we used is the Index of Multiple Deprivation (IMD), which is the Government’s official ‘scoring’ of the relative affluence in each neighbourhood. In this analysis, neighbourhoods were defined as Super Output Areas (SOAs), which are the smallest areas for which IMD scores are available.

As was explained above, each research case was located by the postcode of the client’s residence and, for this analysis, every postcode was associated with the SOA which includes most of its population. This enabled a count of the number of cases in each SOA within every pilot area. If we use this count as the ‘weighting’ measure, we find that the final result is a weighted average of the IMD values of the SOAs making up each pilot area. Census 2001 data provided a count of married people in each SOA, so it was possible to calculate average IMD values weighted by the pilot areas’ total married populations. If, in each pilot area, the two weighted average values were found to be very different, it would appear that these research cases were barely representative of the total married population from which they were drawn.

Figure A3.1 shows that, in fact, the two IMD averages are substantially different in all the pilot areas, although the extent of ‘deflection’ in each area, from the overall average IMD value to that of the research cases, is fairly similar in all areas. In other words, a systematic process has affected each of the pilot areas and has led to many more of the research cases coming from more deprived neighbourhoods than is the case for the married population overall. This is almost certainly due to the fact that FAInS cases only include people who were eligible for support from the public purse; people who were not eligible for public funding were excluded from the evaluation. This also partly explains why women predominate among FAInS clients.

A different perspective on the finding that a high proportion of FAInS clients come from more disadvantaged neighbourhoods can be gained by analysing all the pilot areas together to measure the proportion of the total married population who are among the research cases. The results are presented in Figure A3.2; neighbourhoods have been grouped together according to their IMD scores (e.g. the lowest category includes all SOAs with an IMD value of less than 10). The tendency for FAInS cases to come from more deprived neighbourhoods is stark: the probability that a married couple who live in a neighbourhood within the second highest IMD category would become FAInS clients was nearly fifteen times higher than the probability that a couple who live in a neighbourhood in the second lowest IMD category would become so.

Figure A3.1  Comparison of research cases with pilot area married populations

Figure A3.2  Probability of pilot married populations becoming FAInS clients
Comparing Research Cases to the National Caseload

The LSC kindly made available data of unprecedented scale and completeness from the Consolidated Matter Form information system: all the analyses that follow – where this data set is referred to as the LSC caseload – were based upon family matter cases other than those classified as public law cases involving children. It is useful to consider all family matter cases for which information has been made available; these are new matter starts between 1 April 2002 and 31 November 2005. Table A3.3 shows that there were more than a million new matter starts in this period: of these, 6 per cent were coded ‘(1) Public law – children’ cases, and these were not included in the subsequent analyses because FAInS pilots included only private law cases. Table A3.3 reveals that the bulk of the cases were coded ‘(1) Private Law – children’ or ‘(1) Divorce’, with only about a quarter of the LSC caseload cases falling into one of the other three categories. In respect of matter type (2) codings, in just over half of all cases children were highlighted as a key issue, either pre-eminently or in combination with finance/property matters. This set of codings contains a rather high proportion of cases unhelpfully allocated to the ‘Other’ category; the bulk of these are in the matter type ‘(1) Divorce’, but many of the domestic violence cases are also coded this way. The breakdown of matter types – and in particular the proportions of cases involving finance/property and children – is broadly in keeping with the profile of the research cases.

Table A3.3 Matter types in the LSC caseload data

<table>
<thead>
<tr>
<th>Matter type (1)</th>
<th>Total</th>
<th>% all</th>
<th>Matter Type (2): % of the total of each matter type (1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Children – public law</td>
<td>65,303</td>
<td>6.0</td>
<td>Finance/property and/or children issues: 95.6 0.9 0.4 0.2 0.1 2.9</td>
</tr>
<tr>
<td>Children - private law</td>
<td>336,316</td>
<td>30.8</td>
<td>94.3 1.5 0.7 0.2 0.2 3.1</td>
</tr>
<tr>
<td>Divorce</td>
<td>467,226</td>
<td>42.8</td>
<td>9.6 22.7 39.2 0.3 0.2 28.1</td>
</tr>
<tr>
<td>Domestic violence</td>
<td>66,465</td>
<td>6.1</td>
<td>18.6 4.5 4.6 0.2 0.1 72.1</td>
</tr>
<tr>
<td>Other relationship breakdown</td>
<td>72,978</td>
<td>6.7</td>
<td>14.6 18.7 43.3 0.3 0.8 22.3</td>
</tr>
<tr>
<td>Other</td>
<td>84,263</td>
<td>7.7</td>
<td>10.4 3.2 21.2 0.4 20.0 44.8</td>
</tr>
<tr>
<td>Total</td>
<td>1,092,551</td>
<td>100.0</td>
<td>41.8 12.0 21.8 0.3 1.8 22.5</td>
</tr>
</tbody>
</table>
Table A3.3 shows the LSC caseload for the period covered by the available data. In the principal generalisability analyses reported below, references to the LSC caseload data refer to the subset of cases started during the two phases of research case pick-up within the main pilot (i.e. pre-FAInS and FAInS) from the four areas providing before-FAInS and after-FAInS data. Table A3.4 shows that the total caseload from each of these phases included well over 100,000 cases; only a small proportion of all family matter cases were excluded (i.e. the ‘Public law – children’ cases), and this proportion remained consistently small across the periods covered by the data made available for the research. Only data for the pre-FAInS and FAInS periods (as defined in the top two rows of Table 4.4) were used in the subsequent analyses.

Table A3.4 The LSC caseload data and the time-frame of the pilots

<table>
<thead>
<tr>
<th>Period</th>
<th>From</th>
<th>To</th>
<th>Number of cases (excluding Public law – children cases)</th>
<th>Percentage of all family law cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-FAInS</td>
<td>1 September 2003</td>
<td>29 February 2004</td>
<td>154,693</td>
<td>94.4</td>
</tr>
<tr>
<td>FAInS phase</td>
<td>1 June 2004</td>
<td>30 November 2004</td>
<td>145,960</td>
<td>94.0</td>
</tr>
<tr>
<td>All data</td>
<td>1 April 2002</td>
<td>30 November 2005</td>
<td>1,027,248</td>
<td>94.0</td>
</tr>
</tbody>
</table>

Selecting only those cases in the LSC caseload which were started during our two research phases was the first step towards finding the ideal strategy for the generalisability analyses, using the LSC caseload data as the comparator to the research cases. A further step was to select a subset from the LSC caseload of cases which were opened by any firm (including those not participating in the FAInS study) operating in the four pilot areas where the before-and-after research took place. It is essential, however, to stress a limitation of the LSC caseload data. Identification of the firms in the four pilot areas was undertaken via postcodes, but some firms were not adequately postcoded so some of the relevant firms have not been included. The analyses also examined the subset of cases opened by firms – referred to here as ‘FAInS firms’ – which participated in both phases of the research. It is important to note that it was not possible to identify individual solicitors within the LSC caseload data, so these analyses include all cases opened by the FAInS firms in which FAInS solicitors were working within the relevant periods. The degree of ‘fuzziness’ this introduces into the analyses could have been avoided if the caseload data had included FAInS identifiers (UFIDs), as we had requested at the start of the evaluation. The final point to note is that the analyses exclude cases in Wales, because a key generalisability test uses the IMD measure of deprivation or affluence and this is unavailable for neighbourhoods in the Principality: in this respect, it is helpful for us that Cardiff was not one of the before-and-after pilot areas.

Putting these subsets from the LSC caseload data together with the research samples yielded six categories of cases relevant to the generalisability analyses:

1. Category A includes the respondents to NatCen’s follow-up survey with clients.
2. Category B includes the full research sample from the 24 before-and-after FAInS firms.

3. Category C includes cases of FAInS firms in the four pilot areas that are postcoded in the LSC data.

4. Category D includes cases of any other firm postcoded in the LSC data and those in the four pilot areas.

5. Category E includes cases of any other firm in England postcoded in the LSC data.

6. Category F includes cases of all firms in the LSC data (i.e. the total LSC caseload in England).

Cases in each category were also classified by the phase of the evaluation in which they were opened. This is important, because if there were substantial differences between the pre-FAInS cases these could have been misinterpreted as ‘before-and-after’ contrasts and ascribed to the impact of FAInS practice. In addition, comparing cases in different categories for the two phases separately can offer a degree of confidence that any contrasts which persist from one time period to the next are not likely to be just an artefact of the data analysed.

The six categories allowed for several forms of comparison in order to assess different aspects of representativeness:

1. The overall question of the generalisability of the research findings is best addressed by comparing data from category F – the full LSC caseload – with data from categories B and A (which relate to the cases discussed in Chapters 3 and 4 respectively).

2. Further light can be shed on the possible impact of the choice of pilot areas by comparing cases in category E with category D cases (and, rather less directly, with category C cases).

3. Comparisons between cases in categories C and D address issues arising from the selectivity of the sample within pilots, as a result of firms opting into the FAInS programme.

The other form of selectivity, in which some cases were not designated research cases by FAInS solicitors, cannot be assessed very accurately through these analyses, and so is one of the residual factors affecting how far the research sample is representative of the full LSC caseload. Table A3.5 shows the number of cases within each category in each phase of the research.

It is important to recognise that well over half of the total LSC caseload is accounted for by firms whose postcodes are not captured in the available database, and so all the cases in categories C to E combined make up little more than 40 per cent of the full caseload (category F). Another consequence of the poor level of postcoding of firms’ addresses in
the LSC database can be seen in the fact that category C – which includes not just FAInS cases but also some non-FAInS cases dealt with by FAInS firms – is a far smaller category numerically than category B despite the latter not including any non-FAInS cases: category B provides 100 per cent coverage of the research cases, whereas category C provides only around 40 per cent coverage of its larger population of cases.

Table A3.5 Numbers of cases in categories for the generalisability analyses

<table>
<thead>
<tr>
<th>Category</th>
<th>Pre-FAInS</th>
<th>FAInS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Research samples: client follow-up survey sample A clients of the 24 FAInS firms B</td>
<td>375</td>
<td>409</td>
</tr>
<tr>
<td>cases of firms with known postcodes</td>
<td>1,243</td>
<td>1,047</td>
</tr>
<tr>
<td>LSC caseload: ~ firms in both FAInS phases C</td>
<td>455</td>
<td>390</td>
</tr>
<tr>
<td>~ other firms in 4 pilot areas D</td>
<td>656</td>
<td>572</td>
</tr>
<tr>
<td>~ other firms in England E</td>
<td>57,435</td>
<td>54,364</td>
</tr>
<tr>
<td>all cases F</td>
<td>137,504</td>
<td>128,494</td>
</tr>
</tbody>
</table>

Table A3.6 provides important pointers to understanding the nature of the data analysed. The focus was on the level of completeness of the postcoding of clients’ home addresses. In most categories there was little difference between the two phases, showing that there was not much improvement in the data capture processes which lie behind these statistics. In addition, the postcoding rate declines from category A to B: this is probably an indirect result of the research process. Research cases (category B) became part of the client follow-up survey (category A) only if they gave research consent and could subsequently be contacted. Successful linking of surveys is most difficult with people who, among other their characteristics, are least likely to provide information such as postcodes. People for whom information such as their home postcode is not known may be more likely to be somewhat marginal in society, so these differences in postcoding levels may also hint at differences between the social profiles of the various categories of cases.

Table A3.6 Cases with client address adequately postcoded: % of all in category

<table>
<thead>
<tr>
<th>Category</th>
<th>Pre-FAInS</th>
<th>FAInS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Research samples: client follow-up survey sample A clients of the 24 FAInS firms B</td>
<td>95.2</td>
<td>93.2</td>
</tr>
<tr>
<td>cases of firms with known postcodes</td>
<td>88.7</td>
<td>90.2</td>
</tr>
<tr>
<td>LSC caseload: ~ firms in both FAInS phases C</td>
<td>77.1</td>
<td>78.2</td>
</tr>
<tr>
<td>~ other firms in 4 pilot areas D</td>
<td>86.9</td>
<td>92.1</td>
</tr>
<tr>
<td>~ other firms in England E</td>
<td>84.1</td>
<td>85.1</td>
</tr>
<tr>
<td>all cases F</td>
<td>85.3</td>
<td>85.9</td>
</tr>
</tbody>
</table>

Table A3.7 addresses the question of social profile directly. It was shown earlier that people in more deprived areas – those with higher IMD values – were much more likely to become FAInS clients than married people elsewhere. This does not imply that poorer people have a much higher divorce rate, but reflects the legal aid regulations, which mean that better-off people are much less likely to receive public funding. The cases in each
category which have known home postcodes were classified by the IMD level of their home neighbourhood, and then the proportion living in the most deprived 30 per cent of all areas in the country was calculated. As might have been predicted from the known social selectivity of linked surveys, category A has fewer people living in these deprived areas than category B. This brought category A cases closer to the values for categories D to F, which provide the benchmarks against which to measure research cases. In fact, the key difference is between categories D and C, and this puts the focus directly on selectivity within pilot areas: this effect will have arisen because many firms in pilot areas did not become FAInS providers. There is also a notable difference between categories B and C, so it seems that if the FAInS firms were selecting only certain cases to be FAInS research cases this selectivity involved them filtering out some of the clients from the most deprived areas. There is strong evidence that FAInS was more attractive to firms whose client base includes more people living in deprived areas, although some of these firms may have filtered out a large proportion of clients from the most deprived neighbourhoods. That said, a comparison between sets of data on the two phases suggests that this contrast between FAInS firms and other firms in their area has been lessening.

Table A3.7 Cases from three highest IMD decile neighbourhoods: % of all with postcodes

<table>
<thead>
<tr>
<th>Category</th>
<th>Pre-FAInS</th>
<th>FAInS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Research samples:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>client follow-up survey sample</td>
<td>A</td>
<td>63.0</td>
</tr>
<tr>
<td>clients of the 24 FAInS firms</td>
<td>B</td>
<td>67.6</td>
</tr>
<tr>
<td>LSC caseload:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>cases of firms with known postcodes</td>
<td>C</td>
<td>80.6</td>
</tr>
<tr>
<td>~ firms in both FAInS phases</td>
<td>D</td>
<td>52.6</td>
</tr>
<tr>
<td>~ other firms in 4 pilot areas</td>
<td>E</td>
<td>53.6</td>
</tr>
<tr>
<td>all cases</td>
<td>F</td>
<td>52.7</td>
</tr>
</tbody>
</table>

Figures A3.3 and A3.4 provide a fuller picture of these contrasts between the case categories relating to the deprivation levels of clients’ home neighbourhoods. The key contrast is between FAInS firms and other local firms: the detailed information below on the differences between categories C and D reveals that a far higher proportion of FAInS firms’ clients lived in the most deprived neighbourhoods (and therefore fewer were from all the other deciles of neighbourhoods). Comparisons between the two phases (Figures 4.3 and 4.4) confirm that there was a reduction over time in the contrast between categories C and D in terms of the proportion of clients coming from the most deprived areas.
Figure A3.3  Distribution of pre-FAInS cases in each category by IMD of home location

Figure A3.4  Distribution of FAInS cases in each category by IMD of home location

Table A3.8 shows that the categories differ only slightly in terms of the extent to which women predominate among clients. The research samples and the FAInS firms in the LSC caseload had greater proportions of women than all the available benchmark populations (categories D to F). This is likely to reflect the tendency for FAInS firms to concentrate more on working with people in more difficult financial circumstances, and
an emphasis on less well-off clients is likely to lead to women being more strongly represented among the client group.

Table A3.8  % of clients who were female

<table>
<thead>
<tr>
<th>Category</th>
<th>Pre-FAInS</th>
<th>FAInS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Research samples:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>client follow-up survey sample</td>
<td>A</td>
<td>72.8</td>
</tr>
<tr>
<td>clients of the 24 FAInS firms</td>
<td>B</td>
<td>72.5</td>
</tr>
<tr>
<td>cases of firms with known postcodes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>~ firms in both FAInS phases</td>
<td>C</td>
<td>74.7</td>
</tr>
<tr>
<td>~ other firms in 4 pilot areas</td>
<td>D</td>
<td>68.1</td>
</tr>
<tr>
<td>~ other firms in England</td>
<td>E</td>
<td>68.4</td>
</tr>
<tr>
<td>all cases</td>
<td>F</td>
<td>68.9</td>
</tr>
<tr>
<td>LSC caseload:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>cases of firms with known postcodes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>~ firms in both FAInS phases</td>
<td>C</td>
<td>74.7</td>
</tr>
<tr>
<td>~ other firms in 4 pilot areas</td>
<td>D</td>
<td>68.1</td>
</tr>
<tr>
<td>~ other firms in England</td>
<td>E</td>
<td>68.4</td>
</tr>
<tr>
<td>all cases</td>
<td>F</td>
<td>68.9</td>
</tr>
</tbody>
</table>

Unfortunately, some demographic characteristics, such as ethnicity, are voluntary fields in the LSC caseload data set and were very rarely completed. The age of each client is the one remaining coded variable which could be used to assess the representativeness of the research sample. Table A3.9 shows that the proportion of clients aged under 35 remained stable between the two phases. Comparing category C with category D suggests that FAInS firms had a slightly younger client base in both pilot phases than solicitors in the same area who were not FAInS providers. At the same time, the FAInS firms’ younger clients were less likely to appear in the research sample. This could be because these clients were regarded by solicitors as less suitable for FAInS: however, the fact that the proportion of younger clients declines further from category B to category A suggests that the key process at work is that younger people are harder to trace through follow-up surveys. Whatever the causes, the net effect is that the research samples to some degree under-represent young clients.

Table A3.9  % of clients who were aged under 35

<table>
<thead>
<tr>
<th>Category</th>
<th>Pre-FAInS</th>
<th>FAInS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Research samples:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>client follow-up survey sample</td>
<td>A</td>
<td>37.9</td>
</tr>
<tr>
<td>clients of the 24 FAInS firms</td>
<td>B</td>
<td>44.7</td>
</tr>
<tr>
<td>cases of firms with known postcodes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>~ firms in both FAInS phases</td>
<td>C</td>
<td>53.6</td>
</tr>
<tr>
<td>~ other firms in 4 pilot areas</td>
<td>D</td>
<td>48.8</td>
</tr>
<tr>
<td>~ other firms in England</td>
<td>E</td>
<td>47.8</td>
</tr>
<tr>
<td>all cases</td>
<td>F</td>
<td>48.2</td>
</tr>
</tbody>
</table>

Summary

We have attempted to shed light on the generalisability of our findings from the evaluation. Despite the lack of a London pilot, the evidence suggests that the pilot areas for the evaluation appear to be fairly representative of the country as a whole on most key factors other than the ethnic mix of the resident populations. The FAInS firms’ catchment areas were quite circumscribed, owing to the strong tendency of people to use solicitors near to where they live. The proportion of home-to-solicitor distances that were short
proved to be slightly lower for the full LSC caseload, but this difference is so slight that it does not merit fuller discussion.

The research samples are very close to being representative with respect to gender, but there is a rather larger deviation in the age profile. The results have been less encouraging regarding the social profile of the research sample: people living in more deprived areas were over-represented in the research data sets. This distinctiveness of the research sample stems very largely from FAInS’ firms having client bases with higher proportions of deprived people. We can conclude, however, that the research data are closely representative of the FAInS client base profile. Nevertheless, because the LSC set requirements that debarred some solicitors from being FAInS providers during the pilots and allowed firms to choose whether or not to opt in to FAInS, FAInS firms in the evaluation were rather different from non-FAInS firms in terms of the social profile of their clients.
Annexe 4  Preparing for FAInS Practice

Janet Walker, Caroline Bridge and Angela Melville

Before solicitors were able to accept new clients under the umbrella of FAInS they were required to attend a professional development day run by professional trainers contracted by the LSC. The LSC termed this preparation for FAInS practice ‘professional development’ rather than ‘training’, believing that the nature and style of the input would consolidate existing learning and skills, rather than introduce new ones. The objectives were to build on existing best practice, as set out by the Law Society of England and Wales in its Family Law Protocol, and generally prepare solicitors for their roles as FAInS providers. The professional development days were also intended to inspire and motivate solicitors to approach FAInS with enthusiasm and to feel that they were participating in an area of exciting change in family law.

In the years since the FAInS programme was launched, the nature and content of the professional development were modified and refined as a result of feedback given to the LSC by solicitors and the findings from our evaluation, which we presented to the LSC on a continuous basis. In this annexe, we review the preparation for FAInS in the pre-pilot and FAInS in the full pilot, present the views of solicitors who participated in the pre-pilot and in the full pilot, and consider the implications for future professional development. We have also sought to shed light on the key findings of the evaluation, which suggest that little has changed in family law practice as a result of FAInS.

Early Learning

At the beginning of the pre-pilot we observed some of the professional development seminars attended by solicitors and administered a short questionnaire to those who participated. All the solicitors had been sent a Distance Learning Pack prior to the seminars. This was a weighty document containing exercises and case studies for them to study before attending one of the seminars, and was described by some solicitors as ‘rather daunting’. Unfortunately, not all the solicitors had an opportunity to study the pack prior to attendance. The eight solicitors who completed one of our questionnaires, however, had received and studied the pack, and we report on their views here.

The eight respondents were spread across all four of the original pre-pilot areas. Six of them had over five years of experience in family law practice, two had also trained and practised as mediators, one had practised in the social work profession, and two had experience of advice work. Some had other experience they considered relevant to practising FAInS, such as being a committee member of Women’s Aid and attending courses in helping people deal with separation.

Six solicitors felt that people management skills were essential for providing FAInS, five stated that legal skills were important, two indicated a need to understand the stage clients had reached in dealing with their situation, and two wanted skills in providing an ‘empathetic approach’. Other comments about the skills solicitors might need centred on:
- practical experience
- good judgement
- diagnosing and clarifying information
- assessing risk
- managing the process
- having knowledge of suppliers
- referring to other agencies
- networking
- interdisciplinary work
- management of process
- the ability to think laterally
- knowing when to refer clients to other agencies
- how to keep records
- how to write personal action plans

Five of the solicitors in the early survey indicated that they thought the distance learning pack had been fairly useful, while three thought it had been very useful. The majority of the comments related to the use of case studies, which solicitors had hoped would be discussed during the seminar following receipt of the pack. In fact, little was said about the case studies in the seminars. This greatly disappointed some solicitors. As one said:

There were too many case studies. It was a wasted opportunity not to go through any of it (apart from a scrap here and there) during the training day.

Subsequently, the case studies in the pack were used as the basis for a role-playing exercise, in an attempt to help solicitors understand a client’s feelings before and after meeting with a solicitor. This was perhaps more successful, in that it elicited comments from and discussion among solicitors about their own practice techniques, and about how intimidating it could be to find oneself on the receiving end and how enlightening it was to view the questioning techniques of other solicitors engaged in the role play. One solicitor would have liked the pack to offer help in establishing local networks.

Other comments made related to the skills discussions in the pack. The following three are typical of those we received:

The most useful bit of the distance learning pack was that I spent a lot of time working on what was going on in the first appointment, now and in FAINs development.
Activities were useful – made you think about skills and issues involved which you tend to use/consider as a matter of routine without acknowledging why.

The sections either side of the case studies, getting you to think systematically about what you can already do as well as what you need to learn – and providing feedback.

Opinions about the seminars were largely positive. Five solicitors felt that the seminar had been very useful, while three indicated it had been fairly useful. The most useful elements were found to be the following:

The understanding on the day that this [FAINs] could be a process, as there is in mediation, which enables the FAINs provider to keep the client focused, allowing the client to take responsibility for what happens.

Recognising emotional states of the clients on separation – guidance on active listening skills and interdisciplinary working.

Understanding the procedural implications of the FAINs project.

Bouncing concerns off others and benefiting from input of those with greater experience.

Information about the research, payment, and networking ideas.

The acknowledgement that we are probably practising in a FAINs way already and recognition of our existing skills and expertise. The chart about the grieving process was very useful.

As regards the least useful elements of the seminar, two people commented on the ordering of the presentation. One complained about the lack of information provided about local services; another complained about not having time to run through the distance learning pack.

Seven out of the eight attendees suggested ways in which the day could be improved. Their comments included the following:

Even more reading in advance. I felt I understood a lot because I was a trained mediator. I felt the FAINs providers who are less experienced in mediation would be at a disadvantage.

A practice interview may be useful. Some guidance on drafting personal statements.

More time given over to the practical nitty-gritty of how this project will impact on our time and cash flow. It would have been useful to meet our professional advisor, in terms of networking issues.

Four attendees thought that other skills should be included in the day. One desired further training in managing the process, while another wanted help with observation techniques and further training in learning to deal with emotional clients:

I would certainly like more in the training on the management of the process, so that the reviewing of the case is done at the right time, eg should the second appointment be arranged to review the [personal action] plan if the FAINs provider thinks that would be helpful, even if the appointment wasn’t necessary and only the legal issues had been relevant?
Possibly some assistance on ‘observing’ eg reading body language. Tactics on obtaining information when client is finding it difficult to disclose this.

Dealing with emotional clients, because we need to handle situations appropriately.

It seemed that the solicitors had understood the emphasis on addressing emotional issues – opening discussion out beyond the presenting of legal problems. Nevertheless, seven of the eight thought that some aspects of practising as a FAINs provider remained unclear.

At the end of the seminar, six solicitors told us that they felt confident in their ability to undertake the enhanced solicitor role. One, however, indicated that she would welcome ‘further role playing’ with a supervisor. Another would have liked more information about the support agencies that could aid the processes:

I think a directory of suppliers/agencies would be helpful. May also help if LSC participated in helping organise a meeting of agencies (eg Relate, mediation providers) and solicitors.

During their interviews with the pre-pilot solicitors, the Bristol team (Davis and Woodward) asked them to reflect on the ‘training’ for FAINs practice. The majority were sympathetic to the FAINs vision, but a few were sceptical about whether FAINs really represented a fundamental change in practice and described the seminars as much too basic. Others were concerned that networking was a skill which required specific training. Networking, or the lack of it, remained a concern throughout the full pilot.

Preparing for the Full Pilot

Existing Skills or New Ones?

Several pre-pilot solicitors wished that they had been able to spend more time developing skills in delivering an enhanced first meeting and in completing some of the new forms such as the personal action plan. This feedback was acted on by the LSC, and in subsequent seminars in preparation for the full pilot some of the time was spent in role playing client interviews in an attempt to reveal the essence of the therapeutic style of FAINS. During the role plays, solicitors were encouraged to diagnose problems, prioritise issues and assist their ‘clients’ towards ‘self-determination’ and the taking of personal responsibility by referring them to any one of a range of expert services. While the process and what it revealed were enlightening for some, others considered that their real-life legal practice required them to distance themselves from their client’s ‘emotional baggage’. For those solicitors, it was not useful to try to understand how a client felt. The exercise met with a mixed response from the participants. Some practitioners found that the client’s role was an uncomfortable one and that being on the receiving end of practice techniques similar to their own could be intimidating. Others, while in the role of solicitor, felt pressure to make a referral and thought they would be regarded as deficient if they were unable to do so. Yet others noted that the process broke down, not always helpfully, in respect of the boundaries they tried to maintain between themselves and their clients in legal practice.

The trainers portrayed the essence of the FAINS approach (largely following a script prepared by the LSC) as a therapeutic one, with solicitors being encouraged to adopt a more holistic style and get to the heart of a client’s problem by addressing underlying emotional and behavioural issues. The trainers were insistent that many clients were emotionally ‘needy’ and would benefit from help in becoming more independent. Many
solicitors empathised readily with this view and welcomed the idea that the emotional issues of their clients could be ‘subcontracted out’ to any one of an enhanced range of agencies. Equally, many others revealed that their roles as family lawyers required them to address their clients’ emotional problems, that they expected their clients to be ‘needy’, and that it was their interest in helping such people that had led to them opting for family law as a specialism in the first place. These solicitors saw helping to address the range of their clients’ problems by means of legal solutions, as well as providing a shoulder to cry on, as part of their professional role. Consequently, the trainers’ perception of how solicitors viewed the everyday demands of family law practice were not always accurate.

Our observations suggested that the approach FAInS solicitors were being encouraged to adopt closely resembled the best practice laid out in the Law Society’s Family Law Protocol. Thus, one major question for the participating solicitors concerned whether FAInS were anything more than best practice in action and whether the professional development day represented attempting anything more than an enhancement of that practice. The trainers indicated that FAInS involved building a model for FAInS practice and honing solicitors’ skills so that they could provide a ‘bespoke tailor-made service’ to their clients in which expert services were brought together through a single point of reference to help families and children. At the same time, however, solicitors were also told that FAInS practitioners would be developing a wholly new approach to working with their clients. This constituted an extremely mixed message for solicitors. On the one hand, FAInS was about best practice in action (and many solicitors felt that they were already engaged in best practice); on the other, it was described as a ‘wholly new approach’.283 This ‘wholly new approach’ was envisaged as a longer, enhanced first meeting involving the use of two new forms: the client information form which aimed to gather data in advance of the first interview, and the development of a personal action plan. Solicitors were told that they should concentrate on developing effective communication skills and learn to strike a balance between offering too much information or advice at a time when a new client might be overwhelmed and offering too little owing to concerns and sensitivities regarding the client’s emotional state.

We noted that the discourse of the trainers (one a solicitor, the other an experienced counsellor) was often that of the social work or counselling professions rather than traditional legal language. For example, the ‘development of listening skills’ and talking about ‘feelings’ (‘sadness’, ‘guilt’, ‘denial’, ‘fear’, ‘confusion’, ‘chaos’, ‘alienation’ or a ‘sense of bereavement’) were to aid ‘diagnosis’, leading to client ‘self-determination’ through a process of solicitors and clients ‘working together’. Solicitors were urged to recognise that the client was suffering a variety of ‘losses’ during separation and divorce. The word ‘law’ was seldom mentioned, and solicitors who spoke in legal terms experienced a definite rebuke from the trainers. It was thus recognised in the seminars that because the particular skills being encouraged were those used by counsellors/social workers, there might be a fear that FAInS was intent on requiring solicitors to act as social workers. Consequently, the following questions can be posed: at what stage do lawyers stop being lawyers and start being social workers, and do they feel comfortable about where that boundary is? These questions have remained highly pertinent. A primary ethos of the FAInS approach, as portrayed in the seminars, was the development of listening skills. Technical expertise or formal knowledge of the law was hardly addressed at all, and thus made to seem less relevant to the family lawyer than being a sensitive and reflective listener.

The research conducted by Mather *et al.* \(^{284}\) in the USA indicated a consensus within the US divorce lawyer community that being able to listen sensitively to a client was one of the two most important skills family lawyers have. \(^{285}\) Some lawyers taking part in the Mather study indicated that good listening skills were necessary for the purpose of eliciting information for the technical legal case, as opposed to for supporting a therapeutic purpose. Others, however, insisted that a conceptual boundary should separate the legal from the non-legal aspects of a case and that a lawyer’s expertise did not generally lie in formal knowledge, but rather resembled the skills of the ‘reflective practitioner’. Divorce work thus provided lawyers with a particular obstacle to overcome in asserting the claims of special expertise. When considering the skills that were crucial in day-to-day practice, lawyers in the US study selected ‘listening to clients’ and ‘negotiating with opposing lawyers’ as the top two. The study noted that neither of those skills was taught formally to most lawyers and neither was confined to lawyers. This factor contributed to the difficulties family lawyers in the USA faced in asserting their specialism.

As we note in Chapter 6, the results of our research into the practice of family solicitors in England and Wales elicited very similar responses. While solicitors valued their ability to use legal solutions to solve clients’ problems they also prized the ability to listen effectively and negotiate with other lawyers in a skilled manner. The attributes that family law practitioners both here and in the USA valued and sought involved a combination of so-called therapeutic skills, such as listening, and legal and negotiation skills.

Thus, in terms of professional development in preparation for FAInS the exhortation to develop listening skills in one sense involved preaching to the converted. This was a skill already recognised and valued by family practitioners. Consequently, the trainers’ focus on developing therapeutic skills confirmed the sense that FAInS was simply an enhancement of existing best practice rather than the development of something new. Likewise, the omission of legal skills, knowledge and information from the development seminars enhanced the perception that FAInS was attempting to enhance the social-work as opposed to the legal aspects of family law practice.

**Maintaining Professional Boundaries**

The FAInS approach was characterised as one in which the boundaries of expertise between lawyers, social workers and counsellors were maintained, even though there was to be a shift on the part of solicitors towards adopting the social work role. This enhanced social work role was couched in terms of ‘working together’ with the client, and was developed during the seminars through a focus on the practical issues and the emotions clients experienced during the breakdown of a relationship. Managing clients’ expectations became a dominant theme. Client expectation is an element of family law practice that demands attention from solicitors. Clients often expect that divorce will be acrimonious, that it will mean a court battle, and that both they and their children will be appearing in court. Solicitors noted in their responses to the research that the focusing by some clients on ‘the battle’ and ‘fighting’ meant that it was difficult for them to impart a sense of negotiation and settlement. There was sometimes a sense in practice that, if the solicitor encouraged mediation, he or she was not acting for the client in a proper partisan


\(^{285}\) See Ch. 8, Table 8.6.
manner. Disabusing such clients of these ideas in the face of their distress and possibly anger at what was happening to them was a factor with which solicitors knew they had to deal. Likewise, many clients had unrealistic expectations in relation to outcomes, either expecting the solicitor to ‘take their [spouse] to the cleaners’ or believing that ‘courts give everything to the wife’.

The FAInS approach to managing client expectation engendered a fear in some solicitors that they were being required to become social workers. Such an emphasis could, in part, be construed as a redefinition of the boundaries of professionalism. The perception that FAInS was attempting such a redefinition was heightened by the language issues and focus on client emotion already discussed, and prompted discussion as to where the boundaries of expertise lay in the FAInS approach.

**Diagnosing Problems: The Holistic Approach**

Family law solicitors were urged to try to help the client make sense of and create order in dealing with a cluster of problems. This, it was claimed, required a diagnosis of the client’s whole case rather than simply an assessment of the presenting problem. To stress the point, solicitors were asked by the trainers to participate in an exercise designed to demonstrate the complexity of family life. This required participants to adopt the roles of various family members enmeshed in family breakdown and comment on how their character felt about their particular situation. The aim of the exercise was to highlight the extent to which family problems rebound across the members of an extended family and, again, to try to grasp the issues and emotions experienced by clients. Clients’ problems were portrayed as having a dual nature: on the one hand, there was the full range of client emotions, and on the other a range of practical problems such as housing, benefits, childcare and child support. Pleasance *et al.* found that those most enmeshed in the justiciable problems of family law experienced these problems in clusters.

While Mather *et al.*, and our present research, found that family practitioners valued listening and negotiating skills, their concern about retaining professional authority in relation to their clients and their struggle to maintain professional boundaries were also revealed. The professional development seminars left some solicitors feeling even greater disquiet about these issues than they had done previously. The provision of a holistic service for publicly funded clients – the essence of the FAInS approach – risked heightening solicitors’ concerns over the maintenance of professional legal boundaries.

The trainers described the FAInS solicitor’s job as being to establish the issues the client had, prioritise them, and work with the client to assist him or her in becoming self-determining. They described the concept of ‘self-determination’ as one according to which the solicitor should ‘avoid giving an answer or resolution to the client but should instead enable the client to reach his or her own resolution’. The aim, according to the trainers, was ‘to encourage clients to become independent rather than becoming too demanding and needy’. Solicitors were told that FAInS required ‘empathetic objectivity’ on their part, rather than ‘sympathetic subjectivity’. They needed to be able to stand back from their clients and their ‘emotional baggage’. The parallels with mediation were apparent here, and we observed that solicitors were somewhat perplexed as to what self-determination meant in the particular context of FAInS. Mediation, after all, requires a

neutrality on the part of the mediator and is essentially a process whereby the mediator helps to guide the clients towards a resolution. Solicitors had to consider whether this element of FAInS legal practice was something new and whether it would further blur professional boundaries. We have noted that encouragement towards mediation and/or self-determination leads some clients to doubt whether the solicitor is acting in their best interests – whether he or she is truly partisan and intent on getting a ‘good deal’.

Referral to Outside Agencies

Elaboration of the concept of self-determination revealed that FAInS meant trying to ‘give people the right help’, and that meant directing them to the ‘right services’. The FAInS means of achieving this lay in the use of a structure to promote independence: in particular, referrals to other service agencies intended to provide clients with extra emotional or practical support and the use of new forms intended to provide a means of managing the clients’ own process. The professional development day stressed that, essentially, it was the expert services out there in the community which would resolve the client’s problems, and the self-determination aspect would emerge as the client sought out the appropriate services – albeit guided by the solicitor.

Mather et al. found that the lawyers in their study who insisted on distinguishing between legal and non-legal issues frequently diverted their client’s non-legal issue to a professional counsellor. They believed they lacked the necessary qualifications and patience to justify the time, and therefore money, needed to assist their client with non-legal matters. Many lawyers in that study did not see their professional expertise as extending to personal matters. The study’s authors saw this in terms of lawyers constructing a particular boundary around professional expertise and maintaining their own professional legal boundary. They concluded that, given the broad spectrum of views revealed, lawyers varied in terms of how they understood their own roles and expertise. In our study, many family practitioners revealed that they expected to spend time, particularly at a first interview, listening to the client’s emotional story. This was part and parcel both of family law and of best practice. Nevertheless, solicitors especially welcomed ready access to expert assistance in dealing with a client’s emotional needs. In one of the pilot sites where FAInS had been operating for several years, extra money earned from FAInS had been used to provide an in-house counsellor for the firm. The solicitors involved applauded this. In other words, a well-established network of services with good infrastructure and well-developed links with local family practitioners had the ability to enhance the quality of service offered to publicly funded clients.

Nevertheless, the question of whether appropriate expert services, debt counselling for example, would exist out there in the community hung over discussions in the FAInS seminars. Practitioners were prepared to engage with the task of identifying services and comparing experiences of their use. They were encouraged to learn which services were available in their area, question clients about the quality of service they had received, and work with other practitioners to share feedback and build networks. The trainers acknowledged concerns about such matters as long waiting lists for referrals (e.g. to mental health services), the difficulty of knowing whether an unfamiliar service could provide appropriate advice, the levels of expertise available at local agencies, and the whole issue of availability. Solicitors were encouraged to inform the LSC if a particular expert service was not available to them, and they were told that the LSC was planning meetings across the country in order to bring legal practitioners and local support services together. The LSC also promised to construct a database of local services. Solicitors
generally agreed that such a resource would be valuable and enable them to refer clients to other agencies more readily. In this respect, FAInS was seen as being dependent on the existence of, and knowledge about, good local services. It was this aspect that solicitors saw as more than simply an enhancement of best practice.

Use of New Forms

Alongside the enhanced use of referrals to outside agencies, the ‘new’ dimension of FAInS lay in the forms. As we noted above, these were intended to aid clients’ independence and empowerment and provide a route to self-determination. Solicitors were introduced to these during the seminars, and for many they became the most tangible feature of FAInS. The trainers attempted to explain the underlying thinking behind the forms, but in general the solicitors concentrated more on the ‘how’ of introducing the forms rather than on the ‘why’. Numerous questions and problems were raised concerning implementation of the new forms and an apparent fear of yet more paperwork seemed to underlie the solicitors’ mainly negative response. The FAInS practice was seen to demand further form-filling at a time when solicitors already felt overburdened by the administrative demands of the job. Ironically, LSC forms were a prime focus of solicitor discontent, and many perceived that the FAInS forms simply involved a duplication of what they were already required to do.

During the seminars, several practitioners expressed dismay at having been told they were expected to deal with yet more paperwork given that the trainers had insisted that solicitors were overloaded by the emotional demands of the ‘needy’ client. Criticism was also directed at the lack of a full explanation of the forms, a feeling exacerbated by the belief that greater time and effort should have been expended on this area of professional development and less on such exercises as role-plays and listening to a recital of government statistics. In an effort to increase the focus on the raison d’être behind FAInS rather than simply on the forms, the format of subsequent professional development days was altered so that a discussion about the forms could take place well before they were actually handed out.

Solicitors’ Views About Professional Development

During the first seminars held in April 2004 for the full pilot solicitors, we sensed a level of criticism from senior practitioners, many of whom described the distance learning pack as patronising and unsupportive. Many approached the day defensively, feeling that they were going to be criticised for not already offering holistic practice and encouraging clients to seek outside support. A tense relationship between family practitioners and the LSC was revealed, and many solicitors took the opportunity to remind the LSC that their workload was heavy and their remuneration poor. The seminars were described by some as a waste of their time because they were not pitched at a level commensurate with the solicitors’ experience. They were considered more suitable for junior colleagues, who would have benefited more from the training but who were not going to be delivering FAInS. This point was also made in the solicitor questionnaires discussed in Chapter 6. Subsequently, the LSC altered the format of the professional development day so as to target less experienced practitioners while offering a separate and amended session to more senior partners.
Solicitors also suggested that they were open and receptive to professional development which was provided by someone who understood legal practice from the inside and which was based on a model of practice which maintained professional boundaries. Seminars which attempted to break down these boundaries and which were not framed by a legal perspective were less well-received. Clearly, the professional development FAInS offered differed in nature from the usual course of continuing professional development undertaken by solicitors under the auspices of the Law Society. The FAInS trainers were less than enthusiastic about legal responses to client problems and sometimes openly rebuked a solicitor for proposing a court application as a way forward instead of a referral to a local agency or mediation. A legal response was the ‘wrong’ response and ‘referral to agency’ the right one. Efforts by solicitors to engender discussion about management of a case within a legal framework was thus thwarted, and several noted that they had been chastised for taking an ‘adversarial approach’ to family law matters when the course they had articulated was directed at keeping clients out of court.

The experienced family law practitioners undergoing the training perceived some advantages for themselves as FAInS suppliers (increased fees, recognition of FAInS as a quality mark, being in at the beginning of a new initiative, working with the LSC and having the opportunity to influence policy) and for their clients (a more holistic approach, more information). However, because the trainers portrayed FAInS as nothing ‘new’, but as enhancing best practice by enabling clients to receive tailored advice and information and to access a range of services through a single point of reference, some solicitors believed that they already ‘did’ FAInS anyway, and expressed some reluctance to move further into the emotional issues and away from the legal ones. Their view seemed to be that, as family lawyers, they already take practical actions and solve practical problems, which in turn resolves emotional problems. The tension relates to whether solicitors should deal with the emotional issues first (and refer to other agencies as appropriate) or whether they should focus on resolving legal and practical matters, thus reducing stress for their clients.

In the second round of professional development days in September 2004, FAInS was introduced as focusing on front-end assistance to clients rather than assistance with litigation, so that some aspects of FAInS were new while others built on existing practice. The distance learning pack placed more emphasis on the forms used in FAInS practice and there was recognition that the forms were intended to encourage client empowerment and responsibility. The trainers summarised the essence of FAInS as: looking beyond the client’s presenting issues, doing diagnostic work with clients, providing legal advice and representation, dealing with urgent issues, and helping the client identify other services. They were told that their role was to help clients to access services through signposting and by drawing up a personal action plan which clients could take to other services.

Feedback from practitioners concerning the earlier professional development days was not especially encouraging, particularly with regard to the lack of a clear conceptualisation of FAInS. Explanation by the trainers was often vague and inconsistent, even within a particular seminar, and it remained unclear whether FAInS was a new way of offering legal services or whether it was just a reiteration of best practice. Nevertheless, as a result of feedback the trainers gained more experience, and the professional development programme was constructively modified in the light of earlier criticisms and concerns. In one of the last professional seminars we observed, FAInS was described as ‘providing tailored information; identifying issues; focusing on relationship counselling and encouraging mediation; offering support to parents in talking to children and offering support to children’. The extent to which FAInS is a new approach remains debatable,
however, although some aspects of the FAInS process are undoubtedly different from the
kind of practice exhibited prior to FAInS (e.g. the development of a client personal action
plan). Less experienced solicitors did not describe the training as a ‘bit of a waste of
time’ as their earlier more senior counterparts had done; they appeared more relaxed and
less sceptical, and did not appear to feel as patronised as their colleagues had done
previously.

Solicitors often expressed disappointment that more time had not been devoted to
learning how best to use the new forms and to gaining a better understanding of the
rationale for introducing them into the process. We observed that the trainers often
appeared to be defensive when introducing the new forms, deflecting questions put by
solicitors about them. When solicitors raised objections about the forms during the
seminars, the trainers usually insisted that the forms were a mandatory requirement of
FAInS. As we found, however, not all FAInS practitioners have embraced them willingly.
Indeed, some had approached the professional development days with a fairly negative
attitude and most of them merely had their views confirmed. One of the most important
factors contributing to the negativity related to the fact that they had to attend
professional development seminars at all. If they had been selected to participate in
FAInS because they were exhibiting ‘best practice’ already, why, they asked, was any
kind of training deemed necessary? These solicitors regarded the seminars as an implicit
criticism of their current practice. Hence they felt ‘patronised’, ‘upset’, or ‘angry’ at any
suggestion that they might not be offering a holistic service and taking all a client’s needs
into account. Many suggested that it is the adversarial, ‘gladiator’ types of family lawyer
who really need FAInS training – ‘them not us’. Others, however, acknowledged that the
professional development days had reminded them of the importance of focusing on the
needs of the clients, of being more proactive in helping them and of encouraging them to
use other support services.

**Perceived Advantages and Disadvantages of FAInS**

Solicitors were asked during their professional development to reflect on what they
perceived to be the advantages and disadvantages associated with FAInS. They gave a
number of responses, ranging from a recognition that FAInS could be good for their firm
to concerns about the additional administrative load. This range of responses is illustrated
in the following comments:

I thought it was a reasonable project and might give increased recognition to the role
of solicitors in family breakdown.

As Head of a family law department I ought to show an interest.

As Head of a family law team I have a business to run and £140 extra per file is
important.

I thought it would give us ‘brownie points’ with the LSC.

It may well mean increased administration, including the filling out of forms.

While some solicitors wanted to be in the vanguard of change, others saw FAInS as liable
to reduce their work and encourage clients to use other services, such as mediation:

We have a business to run so why would we want to send clients away to other
services?
There was certainly an air of scepticism on all the training days we observed, but on the whole solicitors were curious and could see some potential benefits for themselves if they acquired new skills and an enhanced quality mark. Nevertheless, they remained unconvinced after the professional development that the concept of FAInS as a gateway to other services was necessary or beneficial, even if it was basically new. Indeed, most of the FAInS ‘trainees’ believed that they were already well aware of the various needs of family law clients and well-versed in meeting them. A clear view was expressed that the FAInS approach to referrals to other agencies was simply a device to take work away from lawyers, and it seemed most unlikely that they would be actively looking for opportunities to refer clients to other services. However, this observation contrasts with the opinions expressed in 2005 by solicitors who had been practising FAInS for up to four years. Many of these solicitors had developed a constructive view of FAInS, particularly in so far as it raised their awareness of client needs, became a useful discipline for ensuring that all areas had been covered in the client interviews, and made them more conscious of the need for referral in appropriate cases. Rather than being seen as poor ‘business practice’, referrals to agencies were seen by some as a valuable way forward for clients who were ‘stuck’. The in-house counsellor funded by one law firm in which FAInS had been practised for four years was particularly useful in this respect.

Solicitors expressed the view, both in the professional development days and in the subsequent questionnaires on legal practice, that their raison d’être was to achieve good outcomes for their clients through appropriate legal solutions. The trainers, however, focused on ‘soft’ issues such as feelings and emotions as opposed to seeking solutions through legal means. The more senior and experienced solicitors being prepared for FAInS did not see the ‘soft’ issues as being of primary importance in their work with clients, although subsequently solicitors generally acknowledged that these matters were integral to good practice and were part of what they did for clients. As one solicitor noted of the training:

FAInS is picking up what we as family lawyers have been doing for donkeys’ years. Solicitors not only go through the legal process with clients – we are also social workers and psychologists. We promote a constructive, conciliatory approach to resolving issues … I think that solicitors are being stretched too far.

In a review meeting that took place part-way through the full pilot, one solicitor remarked:

It takes time to not just look at legal issues, but also to be a counsellor, a social worker, and a gatekeeper as well as a solicitor.

The solicitor was reminded by a member of the LSC FAInS team that FAInS did not require him to be all of those things, because the expectation was that he would refer clients to specialists, such as counsellors. This exchange embodied the kind of tensions that had been evident throughout the professional development days and subsequent FAInS practice, tensions relating to the appropriate role for the family law solicitor and the extent to which FAInS represent a new way of working.

We explored these questions throughout the study. It is abundantly clear to us, from our observations of preparations for FAInS practice and subsequent reviews, that a majority of the solicitors in the full pilot embarked upon FAInS with rather mixed and sceptical views about whether it would make any difference whatsoever. The mixed and often unclear messages given by the trainers increased rather than diminished that scepticism, and did little to ensure that solicitors took a different approach which could enhance and
extend existing ways of working. Equally, the lack of local services and agencies in some areas meant that solicitors were unable to make referrals. We concluded that the success of FAInS would be dependent on a well-established network of these. We also concluded that solicitors see their role as providing legal advice and assistance while at the same time dealing with human problems and emotions and gaining satisfaction from doing so. Professional development in preparation for FAInS would almost certainly have been more successful if it had combined the ‘soft issues’ with legal matters and approached the former in the context of the latter.
Annexe 5  Personal Narratives

Angela Melville

Interviews with people who had been to see a solicitor have been an important feature of our evaluation of FAInS. All the interviewees were parents, and we talked to them some months after they had completed a six-month follow-up interview with NatCen. This chapter presents a comparison of pre-FAInS and FAInS clients and, in particular, concentrates on discerning whether FAInS made an impact on the way in which parents accessed other services, attempted to resolve their problems in the long term, and improved communication with their children. We also investigated how some FAInS clients approached the resolution of family matters. In order to construct personal narratives, we adopted a qualitative approach in our face-to-face interviews. This was particularly important given that we have not been able to discern substantial quantitative differences between pre-FAInS and FAInS practice.

In this annexe we draw on our in-depth interviews with parents. These interviews were conversational in style, and followed a semi-structured format which ensured that the researcher covered topics that were important to the evaluation but also allowed parents to raise topics that were important to them. In-depth interviews produce data that contextualise and connect every aspect of the client’s story, allowing us to represent these stories as case studies rather than decontextualising and isolating very specific aspects of the client’s experiences according to pre-set criteria.

We present six case studies, consisting of three pre-FAInS and three FAInS cases. The stories are told from the client’s point of view and thus present the client’s perceptions and understandings. We interviewed just one partner in each case and so we cannot validate the stories – they are personal and we accept that they provide only one side of each story. The case studies are followed by comparative analysis of the accounts of a broader sample of interviewees which attempts to discern whether FAInS impacted on the way in which parents cope with issues surrounding their separation or divorce.

Pre-FAInS Case Studies

Veronica Moses

Veronica’s story is long and complicated, and it became evident that she had been in and out of court for a number of years. Veronica had been married to Simon for sixteen years, and had two teenage children: a son and a daughter. Veronica and Simon had not being getting along, and decided to separate. Initially, they had organised arrangements between themselves. Simon had offered Veronica a deal, whereby she was to move out of the matrimonial home for a short period of time while he established what he wanted from the house. He would then move out permanently into a bedsit. Veronica could return to the house, which was rented from the council, and she agreed to allow Simon to see the children every weekend. Simon asked Veronica to sign a letter formalising this arrangement, and insisted that she did not see a solicitor, since he wished to avoid going to court.

287 All names and identities have been changed to protect the confidentiality of the interviewees.
Veronica kept to her side of the agreement, and moved into her mother’s house, taking the two children with her. This arrangement was difficult, but she understood that it was only going to be temporary. Simon, however, did not keep to his side of the agreement. He refused to leave the house, claiming that council regulations prevented him from doing so. By this stage, Veronica’s housing situation had become desperate, and according to Veronica she was left ‘walking the streets’ looking for accommodation for herself and the children.

Veronica then went against Simon’s wishes and sought advice from a solicitor. Her solicitor’s first response was to write a letter to Simon, restating ‘in big words’ the agreement that Veronica and Simon had come to. This letter was followed by a period of correspondence between solicitors, with Simon making various promises, none of which, according to Veronica, he actually kept. Meanwhile, Veronica found private accommodation, although there was not enough room for the children each to have their own bedroom and Veronica ended up sleeping in the living room. The children continued to see their father at weekends.

Initially, Veronica had hoped that her relationship with Simon would ‘settle down’, and that they would develop a more amicable relationship. She invited him to spend Christmas with herself and the children, hoping that this would be a step towards them becoming friends. Veronica felt that it was important to develop this friendship ‘for the sake of the children’. Simon turned up, but according to Veronica he walked in, verbally abused her and then walked back out again. Since then, his attitude towards Veronica had become increasingly hostile and aggressive.

Simon applied for a divorce, alleging that Veronica had had an affair. Veronica explained that this was not true, but she agreed to admit to the allegations in order to get the divorce through more quickly. Simon then applied for a residence order, and Veronica felt that he did not really want the children to live with him, but rather wanted the money that ‘went with the kids’.

Veronica explained that, at this point, her problems with Simon started to mount. Simon refused to let her collect any of her possessions or those of the children from the house, including the children’s toys and clothes. It also started to become clear to Veronica that Simon was not providing adequate care for the children. One weekend, the children went missing while they were meant to be in the care of their father. Veronica’s son was beaten up and the police were involved, and her daughter ‘went with a lad’. Veronica explained that her son had learning difficulties and behavioural problems and needed constant supervision.

While the problems with contact were still being resolved, Veronica remarried. At one stage, contact orders were made so that Simon could see the children without Veronica’s new husband being around. Simon would see the children in Veronica’s house, but Veronica explained that he would show no interest in the children and instead would spend the entire visit harassing her. The children had started to complain that their father was not looking after them, including that he was neglecting to feed them. Veronica felt that Simon was deliberately not feeding the children in an effort to get more money out of her. She explained that Simon had run up considerable debts, and had become desperate for money.

Veronica told us that she had applied for child support but that Simon had lied to the Child Support Agency. She knew that Simon was working, but he had not declared his
income. When she tried to tell the CSA where Simon worked, she was told that nothing could be done. Instead of providing any financial support for the children, Simon expected Veronica to pay for the care of the children while they stayed at his house. When Veronica refused to give Simon any money, he made her feed the children before they visited him on the weekends. Eventually contact was reduced to half days so that the children could have their meals with their mother.

Not long after refusing to leave the matrimonial home, Simon was evicted for not paying the rent. When he was evicted, all Veronica’s belongings that had been left in the house were destroyed. Veronica then started receiving demands for the payment of bills that were in Simon’s name and addressed to him, but which had been sent to Veronica’s house. She had opened some of these letters and then rung the creditors, but told us that they ‘would not listen’. She also tried telling Simon to stop having the bills sent to her, but he denied any responsibility for them, and became angry and verbally abused her for opening his mail. Although Simon eventually moved, he initially found accommodation in the same town as Veronica. After Veronica had spoken to him about the debts, she heard from her friends and family that he had started making derogatory comments about her in public:

That night he went into the pub and told everybody. He was putting me down. He was calling me a cow and calling me a slut. He told everybody that I took the kids away from him, [that] I stole them and that I won’t let him see the kids.

Veronica then went to her solicitor and asked for advice about how she could stop the bills being sent to her. Her solicitor said that they could only help if she was prepared to pay the solicitor’s fees, but she was unable to do so. She also unsuccessfully tried several other avenues, including asking the Citizens’ Advice Bureau for advice. She even asked the police, but they said that they could not get involved and that the matter needed to go to court.

While Veronica tried to deal with Simon’s increasing demands for more money, the children started to make more serious allegations against their father, and Veronica noticed that their behaviour had deteriorated. The children tried to tell Veronica that their father had been locking them up in a shed so that he could go out without taking them with him. The children described how their father had taken the door handle off so that they had been unable to get out. They also described how Simon used to denigrate Veronica, and that he used to read out court documents, which he called ‘scripts’, to them.

Veronica told us that the children then refused to see their father, and would cross the street to avoid him. Her son had developed a ‘strong hatred’ of his father, maintaining that he wanted ‘to really hurt him’. Veronica told us her son was very angry, and that he would often become physically and verbally violent. Her daughter started having bad nightmares. Initially Veronica did not believe the children, but after seeing how strongly they opposed any contact with their father she changed her mind.

Veronica explained that her solicitor had initially tried to resolve these concerns about contact by writing to Simon’s solicitor. She felt that serious care issues were at stake and wanted stronger action. She felt that her solicitor was not listening to her, and was worried that nothing would get done. While she was not able to explain clearly how her case had developed, it was evident that the parties had ended up in court with a dispute over contact arrangements. It is also clear that Veronica had decided that Simon should not have any contact with the children.
Once the case reached court a social worker became involved. Veronica described how ‘social services’ had come into her house and checked to see how much food was in the cupboards and if the house was clean. She said that social services were particularly critical of the lack of space and the lack of bedrooms, but that there was not much she could do about the situation since she could not afford a larger house. She also described how upsetting she found this ‘investigation’, and that she felt she had been placed ‘under suspicion’.

Veronica shared her fears about Simon’s abuse of the children with social services, and her concerns were raised in court. Eventually, the court decided that Simon should only have indirect contact with his children via letters. Simon had not tried to keep in contact with the children, and his son had continued to express strong hostility to having any involvement with him. His behaviour had continued to worsen. Veronica explained that whenever she suggested to the children that they might want to re-establish contact with their father they would react violently. They would throw things at her and become verbally abusive, and her son would express the wish that his father were dead.

Veronica had tried everything she could think of to contain her son’s anger, which she described as spiralling out of control. He punched and kicked anything in his way, hit his head on the furniture, had smashed the television and his computer, was verbally abusive, and had started hitting his younger sister. Veronica tried to talk to people at the local hospital, including a psychiatrist, hoping to get her son on to an anger management course. The psychiatrist decided that such a course would not be appropriate because of the child’s learning disability. She had repeatedly asked for help from his school, but the school staff explained that since her son’s behaviour at school was not aggressive there was little they could do. Social services suggested that her son should try to get involved in activities that promote self-control, but he was ejected from a programme because of his violent behaviour and language. Veronica explained that, other than offering this suggestion and assistance during the court case, social services had not been willing to get involved. They had told her that she did not need any further support, and that her case did not warrant the help of a social worker. Veronica even suggested to her son that he joined the Territorial Army, but he refused. She knew of other services her son could contact to talk about the way he felt, but he had refused to use them.

It was evident to us that Veronica was at a loss as to how to control her son’s behaviour. She felt that the only avenue left to her was to try to do so on her own:

He hasn’t caught up to his age with his learning. And I try and talk to him … and say ‘Look, son, I’m not having a go at you. If you don’t understand what I’m saying I’ll tell you again.’ And I tell him again, and I explain to him that they can pick you up and lock you away for hitting people – it’s classed as abuse. And he understands that, so I know it’s getting to him. But he says it’s up to him what he wants to do. It’s his body, it’s his hands, and he couldn’t give a monkey’s uncle more or less. So like I say, we do try with him, and I try and talk to him. I’ve asked for help with him. I even asked the social services for help with him at one point, and they said that you don’t need it … it was getting to the stage, I didn’t know what to do any more … I didn’t want him to be taken off me. So I asked for the help, but what can I do? How can I cope with this when the school’s saying he’s all right at school? How can I get out of this? What can I do?

Veronica talked a great deal about the problems her children had experienced, including discussing at length her concerns about her son’s behaviour. For the most part, however, she tended to discuss how her children’s behaviour had impacted on her, rather than how the children might understand what had been happening in the family. For instance, she
tended to talk about her son’s problems by focusing on her own feelings of helplessness. She quickly changed the focus back to herself when we asked about the impact her separation from Simon had had on the children, talking about the problems she had had in finding housing. Veronica suffered from chronic health problems, which were not so bad that she was unable to care for her children properly, but which still made her life difficult. When we asked her how these health problems impacted on the children, she again moved the conversation back to the difficulties she had faced in her life.

During the interview, Veronica provided an account of numerous other problems. She explained that she used to be able to claim a disability living allowance for looking after her son but that, since he does not have a physical disability, the allowance had been refused. She was also worried that her son might suffer from ADHD, and told us she had had considerable trouble finding someone who would listen to her concerns and provide her with help. She also believed her son was being teased at school, but when she had contacted the school it had told her there was nothing that could be done.

Simon had recently remarried. His new wife lived close to Veronica and she was concerned that she and the children might be forced to move. Simon’s new wife had three children from a previous relationship, although she was not allowed any contact with them, and Veronica was worried that she might cause her problems. Veronica had heard via family and friends that Simon intended to continue his antagonism towards her:

He says ‘I’m gonna get them kids. I gonna hurt you one way or the other.’ He’s told a lot of my friends he’s going to do that. He’s told a lot people who my mam knows he’s going to do that. He’s even told the kids, when he used to have the kids, [that] he’s going to hurt their mother. He’s going to get them back one way or the other, whether it’s in death, whether it’s in whatever it is – he can hurt me through the kids, he knows that.

The issue about which Veronica had sought legal advice concerned changing the children’s surname. The children wanted their surname changed to that of Veronica’s new husband. The solicitor, however, had said it would not be possible:

They said, ‘You can’t.’ I said, ‘Why?’ They said, ‘’Cos their dad’s still alive and we know how he’s gone on for the last years. You’ve been in and out of court with him – he won’t sign the papers.’

The solicitor suggested that Veronica should wait until the children were sixteen and then she could pay to have their names changed by deed poll. Veronica explained that she could not afford to take this option. Despite the solicitor’s advice, the children were currently using their stepfather’s surname. Veronica wrote to their school saying that the children wanted to be known by a different name, and the school was ‘OK about that’.

Veronica changed solicitors three times, each time because she was unhappy with the service she received. The first solicitor largely dealt with the divorce and the original problems concerning residence and contact. At the time, Veronica thought that since the children had stayed with her Simon would ‘automatically have access’. She was very surprised and alarmed that Simon was able to make an application for residence, and felt that her solicitor should have explained the situation more clearly:

They never told me at the beginning about the children. I would not have known [that Simon could make an application], and they should make people aware of that… they should be more open in what they’re saying.
She felt that this solicitor had not done enough for her, and instead had been more concerned about helping Simon. She was particularly upset that nothing had happened to Simon after he had locked the children in the shed:

I mean, even the time he locked them in the shed, he never got in the prison. He never got nowt done with him. He got slapped on the hand and [told] ‘Oh, you can’t see the kids’. Which is not right for me, it’s not on.

Veronica explained that she had brought her children up to believe that adults who mistreat children will be punished, and that her solicitor should have taken stronger action against Simon. She explained that at one point she had felt that it was pointless to continue and that Simon would take the children. It was at this stage that she had changed her solicitor.

Veronica did not go into detail about her second solicitor. Her third solicitor had provided advice about changing the children’s surname and she had also asked this solicitor (and presumably the previous ones) about dealing with Simon’s bills. It was clear that she was unhappy with the service she had received from the third solicitor (pre-FAInS), and at one stage she had considered changing firms again. She was unhappy at the fact that this solicitor would not provide any advice unless she paid for it. She also explained that the solicitor used complicated language so that she had difficulty understanding what was going on.

While Veronica was not entirely happy with the service she received, she would have to travel a considerable distance if she wanted to change firms, and so she expected she would be back to see her solicitor sooner rather than later. She expected that her problems with Simon would flare up again, especially when he moved into the local area. She believed he would never forgive her, and that he would do whatever it took to remove the children from her care.

**Joel Shephard**

Joel Shephard’s story shares some similarities with the previous story, in that it involved complex legal issues which intersected with other difficulties, including allegations of domestic violence and drug and alcohol abuse. Joel was the father of a five-year-old daughter, who was currently living with him. He had previously been living with the child’s mother, Renee, although they had not been married. He had two adult daughters and a son from another relationship, who had all moved out of the home. He also had a number of young grandchildren.

Joel said that his relationship with Renee was happy enough until she started drinking heavily. The more she drank the worse her behaviour became, until she started acting in a very violent manner. Joel did not go into detail about the cause of Renee’s behaviour, although he suggested that she had also developed a drugs problem. Originally she used to verbally abuse Joel, but by the end of the relationship she had become physically violent. In one incident she had pushed him out of a window that was fifteen feet above the ground. Finally, she had stabbed Joel in the testicles, injuring him to such an extent that he was hospitalised for several weeks. One of the police officers who was involved in the case suggested to Joel that he should ‘put in for custody’ of his daughter, who was living with Renee at the time.
As soon as Joel had been released from hospital he had applied for an injunction to ensure his own safety, and he then applied for a residence order. He explained that this had not been the first time he had been attacked by Renee, and he now felt that he should have left the relationship long before the violence had escalated to that point. He described the time when he had first decided to apply for a residence order as the most difficult period of his life. He had felt dazed, upset and confused. Despite reassurances from his solicitor, he felt sure that he would not be awarded a residence order relating to his daughter. He had assumed that a mother would have a much better chance of obtaining residence.

Joel’s solicitor did not attempt to reach resolution out of court, but instead moved immediately to obtain an interim residence order. The child had been living with Renee, but after a contact visit she had remained with Joel. Renee then alleged that Joel had kidnapped her. The judge, however, made an interim order that the child should remain with Joel. At the final court appearance, Renee consented that her daughter should reside with Joel.

Joel’s final application for a residence order was decided at court, with residence being awarded to Joel. He told us that the court had left the contact arrangements up to him, and he believed that the child’s safety was not being put at risk by her spending time with her mother. He understood that the child was being put at potential emotional harm by witnessing Renee’s behaviour, but was convinced that Renee would never physically harm her own child. Renee was able to see the child every weekend, as well as during the week during school holidays. She liked to spend time with her mother, and Joel had not tried to discourage her. Joel grew up with his mother in a lone-parent household and, as a result, did not want his own child to be without both of her parents. He felt that if he denied his daughter contact with her mother he would effectively be telling her that her mother was dead, and he felt that he could never lie to his daughter.

Despite the problems Joel had experienced with Renee in the past, he felt that the future was much brighter. Renee was involved in a new relationship and, for the most part, she was out of his life. Joel and Renee appeared still to be experiencing some problems with contact, although Joel did not believe that he would need to return to court. While Joel was happy for Renee to see her daughter every weekend, she did not always turn up. Joel described Renee as being very unreliable concerning contact, and was concerned that his daughter sometimes built up expectations that were then dashed when her mother did not come. This had happened on the weekend when we spoke to Joel, and so instead of spending time with her mother Joel’s daughter was spending the weekend with her two older half-sisters. Joel explained that, while his eldest daughters no longer lived at home, they were living nearby, and had provided him with considerable support. They acted as babysitters, and offered him some respite from being the single father of a young child. Joel suffered from a heart problem, which had resulted in him spending extended time in hospital. His older daughters had stepped in and looked after their young half-sister when their father was away. Joel had lived in the local area for most of his life, and had numerous friends who provided him with support. He explained that he had an active social life, and tried to see his friends regularly. He appeared to have received quite a bit of support, which he felt reaffirmed his suitability to look after his daughter. The school provided evidence to the court that he was a good father and that the child was well looked after. Social services had also made a recommendation that he should be the resident parent. Nurses at the hospital and local shopkeepers had volunteered to provide statements should they be required.
Joel was quite concerned about the impact of the court case on his daughter, and that she had suffered from some temporary behavioural problems. He said that she now seemed much happier, and that she had returned to being a cheerful and sometimes cheeky child, as she had been before the deterioration in Renee’s behaviour. Joel said that he had not been particularly conscious of the impact on his daughter at the time, and that his attention had been directed towards just dealing with Renee and trying to protect himself. It was only in retrospect that he was able to see the impact the problems were having on his daughter, but he was very positive about his relationship with his solicitor. He described his solicitor as very understanding and very sympathetic as regards his efforts to raise a young child by himself. He told us that the solicitor had wanted a picture of him and his daughter at the conclusion of the case. He felt that the disputes had been resolved, and that despite some minor problems with contact he was unlikely to need to reapply to the court. He explained that his solicitor had told him that he could come back should any other problems arise, but he did not expect this to be necessary.

Joel explained that being a single father had been hard work, but he felt that he was managing quite well. He also explained that while his role was sometimes a difficult one, owing especially to his age and health problems, he experienced a lot of ‘joy’ and fulfilment and was looking forward to seeing his daughter grow up. He felt that he had been a good father to his older children, and was determined to be a good father also to his youngest daughter.

**Judy Hopeton**

Judy and her husband, Gus, had three children: a twelve-year-old son, Gary, and two adult children who no longer lived at home. Judy had been separated from Gus for about three years when she went to see a solicitor about obtaining a divorce. At the time of the separation they were living together overseas. When Judy left Gus she moved back to the United Kingdom and Gus also moved back a short while afterwards, although he lived in a different part of the country. Gary was autistic and in dealing with the divorce Judy appears to have been motivated by a desire to put her son’s interests before her own.

During our interview, Judy seemed reluctant to talk about her separation, explaining that at the time she had hit ‘rock-bottom’. She also seemed hesitant about discussing her past relationship with Gus, although she openly discussed her present situation. She had not sought a divorce immediately after leaving Gus. She had just moved to a new area, and needed time to ‘sort herself out’ and for the children to settle in. She did not know anyone in the local area and her family were all overseas, although she now had a close friend living nearby who had reassured her that she had made the right decisions.

At the time Judy had sought to formalise the divorce, she felt that had moved on from the separation and that she was no longer as emotionally raw as she had been. She was not interested in obtaining any of her legal entitlements from the marriage. Instead, she wanted to get out of the marriage as quickly and easily as possible, and was willing to make sacrifices to do so. Her solicitor informed her of her rights, and told her she was always welcome to come back if she changed her mind, but she did not attempt to argue with her. The solicitor laid out the advantages and the disadvantages of Judy’s decision, and while Judy felt that the solicitor had provided her with information and advice she was ultimately free to make her own choices about how to proceed with the divorce.
In the end, Judy ‘walked away with nothing’, although she felt that she had made the right decision. She wanted to go through with the divorce in order to gain some ‘peace of mind’. She wanted to ‘draw a line’ under her relationship with Gus, and had no regrets about her decision:

When I made the decision to walk away, it was the best thing I ever did … I needed peace of mind, I suppose. I felt I was the better person to get up and walk away … hopefully I proved something.

Judy did not want to have to engage in any proceedings with Gus, since she was struggling to cope with the problems with Gary. At the time, Gary was having problems at school, having just started at the local secondary school. He had not had any behavioural problems when the family had lived abroad. He had always attended one school, which had a very structured programme, but when he changed schools his behaviour had changed. He had quickly discovered that if he misbehaved he would be sent home and, soon after starting the new school, he was being excluded regularly.

Judy tried to discuss the problems with the school, and was told that her son’s behavioural problems were due to the marriage breakdown. Eventually, Gary was diagnosed as being autistic. He had recently been placed in a school that was better able to cope with his needs, and his behaviour was no longer problematic. Judy had received considerable support from the school, including help from an educational psychologist. She had spoken to a doctor, who had put her in touch with the Child and Adolescent Mental Health Services. Gary had settled well into the new school, and no longer needed a high level of support. Judy knew that if any new problems arose there were a number of agencies to which she could turn.

Judy explained to her solicitor that she simply wished to get the divorce over and done with so that she could concentrate on taking care of Gary. Although the solicitor did not provide assistance in terms of contacting any support agencies on behalf of Gary, Judy did discuss with them her feelings about the first school’s treatment of her son. She had thought of taking the school to court, and discussed this possibility with her solicitor. In the end, however, she decided she was not well enough to manage court action.

Judy explained that Gus had not provided her with any assistance in dealing with Gary’s autism. Gary has always displayed ‘peculiar’ behaviour, and Gus blamed his behaviour on Judy. He was just starting to accept his son’s medical diagnosis. Judy occasionally talked to Gus, but their conversations were limited to discussion about the children. He had not helped Judy in any way with Gary’s care, and had had no input into any decisions about his upbringing, including the change of schools.

Judy was initially worried that Gus would not accept the divorce, but in the end he did not dispute her application. The children were able to see their father when they wanted to. Judy’s oldest children made their own arrangements to see Gus, while Judy was careful to give Gary active encouragement to see his father. Gus and Judy had not made any formal arrangements regarding contact with Gary. Gus was seeing Gary when the child was willing to have contact, and the length of the visit was determined largely by Gary’s mood. Sometimes Gus spent just the afternoon or a morning with Gary, and at other times they might spend the entire day together. Judy said that contact arrangements had been running smoothly and that she did not foresee any problems. She felt that her life was back on track and that she was now settled. She understood that her solicitor’s door ‘is always open’, but did not feel she would need to return for further legal advice.
Maureen Hill

Maureen had been married to Claude for 27 years, and they had three children: two teenage daughters and an adult son who was a quadriplegic and intellectually disabled. She had worked as a nurse before the birth of her son, but had left work in order to become his full-time carer. She had had to look after the children completely by herself as Claude refused to help and she was not able to access any respite care.

Maureen explained that she had been unhappy in the marriage for a long time, and that Claude’s behaviour had gradually worn her down. Claude suffered from mental health problems and had made several suicide attempts. He had walked out on the family several times. Maureen said that Claude had little concern for his own hygiene, and he used to collect ‘junk’ which he left around the house and yard. He had also run up considerable debts and would not allow Maureen any control over the family finances.

The last time Claude had walked out, Maureen had gone to see a solicitor about getting a divorce. Claude moved back, and for a period they continued to live in the same house. Maureen continued with the divorce and moved her things downstairs while Claude lived upstairs. Claude became more aggressive towards Maureen. Maureen told us that they would frequently argue in front of the children, and Claude would often verbally abuse her. After a court order was made, Claude finally left the house, and his mental health deteriorated. He became depressed and threatened to commit suicide. He failed to find somewhere to live and spent some time living in a shed on the property. Finally, he moved out altogether and was living on the streets until he was admitted into a ‘mental home’.

Maureen had sought legal advice since she had decided that the marriage was finally over, but she did not know what she should do next. She wanted some guidance as to how she would cope by herself. She also wanted to ensure that the children stayed with her, and that she remained as her son’s main carer. Her solicitor helped her through the divorce and also helped resolve the financial issues, the purchase of a new house and contact arrangements, and provided advice on dealing with the debts. Maureen had also talked to her solicitor about changing the children’s surnames.

This was not the first time Maureen had approached a solicitor about getting a divorce, but in the past she had not gone through with it. The difference this time was that the children were old enough to have a say. Maureen explained that she felt very close to her children, and as it had become more obvious that her relationship with Claude could not continue she had turned to them for advice. She said that she had left the final decision to leave Claude to them.

She was also worried about the poor state of the house, and about whether she could manage to sell it by herself. This time she was supported by a friend who helped her clean up the property and find a new house, and they had recently married.

Maureen’s daughters had decided that they did not want any contact with their father, who had made no efforts to see them. They also wanted to change their surnames in order to dissociate themselves from him. Maureen felt that she was closest to her youngest daughter, who strongly opposed any future contact with her father. She shared the same
interests as her, and said that they ‘get along very well’. The eldest daughter was closer to her father, and Maureen felt that Claude manipulated her. Although this daughter said that she did not miss her father Maureen suspected that she did. This daughter did not talk to Maureen about how she felt, although she did talk to her boyfriend and his family. Maureen described her eldest daughter as being ‘soft’, whereas the younger daughter had learnt to ‘see through’ Claude. Maureen did not discuss Claude’s relationship with their son, other than to point out that he provided no help with his care.

Maureen explained that, since her divorce, the family had been much happier. She acknowledged that as a single mother and full-time carer she had found life tough. However, she said she would have preferred to remain single rather than live in a situation that exposed her children to constant arguments. She described the household as much calmer and more relaxed: the family now ate meals together and talked over problems as a family. She felt lucky that her children were mature and sensible, and that they had pulled together during the difficult times.

Maureen had been very happy with the service she had received from her solicitor. She had chosen a female lawyer, feeling that she would be more comfortable explaining her problems to another woman. She felt that her solicitor listened to her, was careful to explain what was going on in a way she could understand, allowed her to ask questions, and wrote letters in a language with which she was comfortable. Her solicitor asked her about issues outside of the immediate presenting problem and, in particular, focused on the problem of Claude’s debts and how Maureen could obtain a mortgage in her own name. The solicitor referred Maureen to another solicitor in the same firm who provided further financial advice. Maureen remembered that her solicitor had asked her at the beginning of the case if she would consider seeing a mediator, but she had been strongly opposed to the suggestion. Claude had been living on the streets at the time and so Maureen had felt that writing to him in order to explain mediation was very impractical. She also appeared to confuse mediation with marriage guidance, and explained that she had also not wanted to see a mediator because she had felt that the marriage was over and that once she had decided that she should leave she did not want to ‘dig over old ground’ again.

Maureen told us that she definitely felt better than when she had still been living with Claude. Not all her problems, however, were resolved. She was still involved in court proceedings, although she was unclear about what issues were to be raised at the next court appearance. She explained that she had found appearing in court very stressful. She did not like to be surrounded by so many unfamiliar people, and found the setting ‘strange’ and ‘intimidating’. She appreciated that the judge had tried to make the procedure less formal and had spoken to the parties in his chambers, but she still found the whole situation ‘difficult’. She also explained that she was a highly emotional person who liked to speak her mind, and that she found it difficult to control her behaviour in court.

It would appear that one of the main issues still to be resolved was the sale of the marital home. Maureen was still living in the marital home, a split-level house, and she had to carry her adult son up and down the stairs. She was hoping that she would be able to sell the house soon as she had found a small bungalow for sale which could be adapted for wheelchair access. She seemed unsure as to when her problems with Claude would finally reach resolution and expected that she would have further court appearances. However, she could see a time in the future when she would be living in the new house.
with her new husband, she would have nothing to do with Claude, and the children would have no contact with their father.

Alan Clarkson

Alan Clarkson had been married to Naomi for 24 years. They had a ten-year-old son, Danny, who lived with Alan and refused to have any contact with his mother. They also had two older daughters who no longer lived at home. Recently, Naomi had left Alan, and although Alan had wanted to resume the relationship Naomi had filed for divorce.

When Alan and Naomi separated, Naomi gave Danny a choice as to where he should live:

My son had the choice of going with her or staying with me and he wished to stay with me. He said he wanted to stay at home with his dad, and she said ‘fine’… It was entirely up to him. The wife gave him the choice.

Initially Danny tried to keep in contact with his mother, but she let him down. He wrote to her, but she never replied. He also wrote letters to her on his computer, in which he tried to express his feelings, although he did not send them. She sent him birthday cards that were several months late. He tried to find out where she was living through his maternal grandparents but they refused to help. Alan believed that Danny felt very angry towards his mother. She had recently attempted to re-establish contact, but Danny wanted nothing to do with her. When she wrote to him, he ripped up the letters and threw them in the bin. Alan believed that Danny felt that, since his mother could not be bothered with him, he should not be bothered with her.

Alan was worried about his son’s anger. He initially thought that Danny had got over the separation quickly and easily. Danny’s behaviour, however, started to deteriorate and Alan believed that he was being teased at school:

People [were] sort of saying ‘You haven’t got a mum’, and that ‘you’ve only got a dad’, and calling him names. He was getting into fights at school … He was getting into trouble, and just always in trouble, sort of never staying in the class.

Alan discussed these problems with his solicitor, who suggested that Danny should go to a counsellor. Alan took this suggestion to a teacher, and the school arranged counselling for Danny. Alan felt that Danny had really benefited from counselling and that he enjoyed going because it got him out of class.

Alan’s youngest daughter, who was sixteen, had also refused to see her mother. This daughter felt that she had been abandoned by her mother, and blamed her for the breakdown of her parents’ marriage. She spent quite a bit of time with her brother, since she did not want him to feel that he had been abandoned by both his mother and his sister. Alan felt that he could trust his daughter with Danny’s care, and was pleased that they spent quite a bit of time together. Alan explained that he got along quite well with this daughter, although it seemed that this had not always been the case. This daughter left home not long after her sixteenth birthday, and immediately pressed charges against her father. Alan did not specify the grounds of the charges, but explained that he had been given a community service order, although he said he was not guilty. Alan was already doing community service and was on probation for ‘other things’, although he did not specify what they were. His daughter had since mended things with her father, and Alan understood that she was easily influenced and had probably been ‘pushed into’ making
accusations against him. The daughter has since explained that she did not really want
him to go to prison.

The eldest daughter was quite close to Naomi, but refused to see Alan. Although Alan did
not explain why, he told us that the feelings were ‘mutual’. He also stated that ‘she needs
psychiatric help because she is apparently gone in the head’. This daughter was
constantly ringing the police with false accusations. Alan felt that at the root of his
daughter’s problems was her ‘laziness’. He also suspected that she had been behind
Naomi leaving him. He noticed that her behaviour had first become very bad when
Naomi had left, and felt that she had been responsible for some of the marital problems,
although he also acknowledged that ‘it doesn’t matter’ since Naomi would not return.
This daughter had also made accusations against her father, saying that he used to beat
her. Alan explained that he did shout at his children, and had hit them if their behaviour
had been seriously endangering their well-being or if they had been persistently
misbehaving, but that he would never ‘beat’ them. He had spoken to his solicitor about
his daughter’s problems and had expressed his concern that she needed help, although his
solicitor did not appear to be able to provide him with advice on how to deal with these
problems.

Alan explained that the separation had been very difficult for him to deal with. While he
repeated several times that he thought he was now better off without Naomi, he obviously
still missed her and seemed to be at a loss to explain why she had left the marriage. He
said that he had initially tried to ‘bring her back home’, but she had refused to return. His
solicitor had suggested that they should try relationship counselling, but she had refused
this also.

Once Naomi had left she pressed criminal charges against Alan, accusing him of beating
her. She claimed that he had thrown things at her and had kicked her out of the house.
She had applied for a divorce straightaway, and Alan had gone to see a solicitor after he
had received her application. The solicitor Alan saw had been dealing with the divorce
and Naomi’s application for a contact order. This solicitor, however, did not have the
expertise to defend Alan against Naomi’s other charges, and so another firm had dealt
with the criminal case. This case had been resolved, and Alan had been found not guilty.
He explained that he had been represented by a barrister in court, who had ‘picked holes’
in Naomi’s allegations.

Alan and Naomi no longer talked to each other at all, and communication was via their
respective solicitors. Alan had tried to telephone Naomi, but she would not answer his
calls and had changed her telephone number. Alan received quite a lot of letters from
Naomi’s solicitor, and when we interviewed him they were concentrating on resolving
Naomi’s contact with Danny. Naomi had not seen Danny for around twelve months, and
when contact had occurred there had been problems. After Naomi had left Alan she had
moved to another town. The last time she had tried to see Danny she had wanted to travel
by train and had asked Alan to contribute to her fare. When he refused, she made Danny
travel for several hours on his own to visit her. Alan felt that this was unacceptable, and
insisted that if Danny was willing to see his mother she must come and pick him up and
she would have to pay the entire expenses. Alan felt that since Naomi had chosen to leave
he should not have to be flexible.

At first, Alan had found the separation very stressful. He had been to see a doctor, who
had prescribed medication to help him cope with the stress. He did not discuss his
feelings with his solicitor, explaining that it is often very difficult for a man to admit that
he is struggling to cope. Alan felt that he had adapted, and that he was better off living alone. It took him a while to adjust to his new role as a single parent, but he was managing.

Naomi had been the main breadwinner for the family, and when she left Alan found that he could not afford to repay loans and was getting a long way behind on bills. He did not talk to his solicitor about his debt problems and instead sought advice from the CAB. While he was there, he found a leaflet for a support group for single parents and he started to attend. He found that the group was very supportive and helpful, especially as few other people seemed to understand the problems faced by single fathers. The group had recently been disbanded because of a lack of members.

Alan was still in regular contact with his solicitor, who he described in glowing terms, although he also explained that she was often very busy and he needed to book appointments at least a week in advance. The contact case was currently in court, and Alan needed to wait until the contact issues were resolved before the divorce would be finalised. He had reconciled himself to the fact that Naomi would not return and was making plans for the future. Danny would soon be starting high school, and Alan, who was currently unemployed, said would try to find a job once Danny went back to school. He was also planning a holiday with Danny to visit his parents, who lived some distance away. Alan felt that he had a close ‘friendship’ with Danny. He explained that they liked to do things together, and that if Danny did not want to go to school every day he could spend a day a week helping his father with his community service work.

**Jenny Kindler**

Jenny had had eight children, although one had died. Four of her children, Jodi, Mardi, Matthew and Lindsey, still lived at home. Jodi, Mardi and Matthew were teenagers, and Lindsey was in her early twenties. The household also contained one of Jenny’s grandchildren, so that there were six people living in Jenny’s house. Jenny explained that she had first seen a solicitor after her second-youngest daughter, Mardi, had seen a doctor about a health problem. The doctor discovered that this child had been sexually abused. Jenny’s husband, Geoffrey, had been arrested for the abuse, but had been released owing to lack of evidence. Jenny explained that there was clear medical evidence that the child had been abused, but the police were unable to prove the abuser’s identity, despite the child saying that it was her father.

Once it became clear that Mardi had been abused, Jenny left Geoffrey. Mardi and Jodi were placed in foster care, and Jenny asked social services if they could also place Matthew in foster care until the problems were resolved. The three children were removed from the home, and lived in care for approximately twelve months. For Jenny, the most difficult thing she had ever had to do in her life was to hand her children over to foster carers. The children were badly treated. They were beaten, and one of the carers burnt Matthew’s face with a hot teaspoon. Mardi was a diabetic, and she was not provided with the diet that she needed to control her blood sugar levels. The children ran away several times in an effort to return home, which further upset Jenny. Jenny felt that being placed in care had caused her children considerable ‘mental damage’.

Jenny was allowed to see the children while they were in care, although Geoffrey was refused any contact at all. Geoffrey would follow Jenny, hiding until she had picked up the children. In the end, Jenny resorted to having three bodyguards to escort her to a
contact centre in order to ensure that Geoffrey did not attack her or kidnap the children. She was also forced to move so that her ex-husband did not know where she lived. She described Geoffrey as very violent and dangerous. A judge decided that he was to have no contact whatsoever with the children, and he was not allowed to know where they lived. Jenny moved out of the city, away from her family and friends, and into a small village. She said that she found the move very difficult, and she felt isolated and alone. She realised, however, that she needed to make ‘some hard decisions’ to protect the children’s safety, and despite her own reluctance to move she recognised that ‘you’ve got to put them [the children] first’.

Jenny had found the court case itself very stressful. She told us that she was struggling to cope with the stress of dealing with the children having been put into care, and coming to terms with what had happened to Mardi:

\[
\text{I was absolutely devastated, so devastated in fact that I lost five and half stone in three months. I couldn’t eat. I couldn’t sleep. I used to pace the garden through the night. I’d stopped smoking, but started again. All I lived off was black coffee and cigarettes. I was so bad that I couldn’t even drive any more. It was just horrendous.}\]

All the children finally returned home, but Jenny’s problems had continued. Lindsey was not living at home, but was married and living nearby. Jenny then discovered that Lindsey’s husband had raped Jodi, who had become pregnant. Lindsey left her husband and moved back into her mother’s home. Jodi kept the baby, who was also being cared for by Jenny. Jenny was very angry at what had happened to Jodi, and felt that social services should shoulder some of the blame. Social services were meant to have done a police check on Lindsey’s ex-husband, but they had failed to do so. It was only later that Jenny found out that he had a police record, and that she had unknowingly put her daughters at risk. Lindsey’s ex-husband was violent and had a drug problem, and at the time we spoke to Jenny there was a warrant out for his arrest. A care order remained in place relating to Jodi, and would continue until Lindsey’s ex-husband had been arrested. Jenny explained that, despite this order, social services had failed to provide the family with adequate support:

\[
\text{Basically, they’ve done nothing to help us from day one. It’s annoying, because they were ordered by the court, by the Judge, to take this family on, and basically they’ve done nothing.}\]

Jenny was clearly trying to cope with a multitude of serious problems. She was worried about the long-term damage that had been caused to her daughters. Both Mardi and Jodi were receiving counselling, and they continued to have problems. Jenny constantly worried that Geoffrey would find out where they lived. She also worried about Lindsey’s state of mind and her safety. Lindsey was devastated by what had happened, although she realised that her husband, rather than Jodi, was to blame. She was currently looking for a house, although Jenny felt that it was still not safe for her to move out. Jenny also suffered from arthritis. She discussed also her continuing feelings of loss and grief, which had resulted from one of her children having drowned.

When Jenny moved in order to escape from Geoffrey, the family were offered very few options in terms of new housing. They were currently living in a four-bedroomed house, and Jenny described the living arrangements as ‘strenuous’. The house was located in a small, isolated village, and Jenny had found that the local people were not very supportive. She explained that quite a number of people in the village blamed her for her youngest daughter’s pregnancy, and it was a ‘tragedy’ that the children had had to change
schools and lose contact with their friends. Again, Jenny was critical of the social services, and felt that they should have been able to offer better options for the family:

There’s a lot of things they could have done that looking back … when the case first started, rather than uproot and make a new life for ourselves and move out of [the city] altogether. Really, they should have had the means so that I could have stayed in the property.

Jenny also explained that transport was a major problem for the family. The village did not have any shops or a doctor, and when she had first moved she had not had a car. She had since bought a small car, but it was not big enough to transport the entire family at the same time.

This was not the first time Jenny had seen a solicitor. She had had a previous marriage annulled on grounds of non-consummation. Jenny’s solicitor had helped her with the divorce from Geoffrey and the care case, and had provided her with advice about rehousing. Jenny felt that her FAInS solicitor had been ‘brilliant’. She felt that her solicitor ‘did not pass judgement’, put the welfare of the children first and, at the same time was also on her side. She particularly appreciated the solicitor bringing in a ‘brilliant’ barrister, who ‘made them [social services] change their lies that they’d put down in the report’. She described how the judge had complimented her twice on the decisions she had made, and she felt vindicated when the judge, solicitor and barrister all praised her as a mother.

Jenny felt that her solicitor understood the complexities of her life and the number of problems she had had to overcome. Her solicitor had suggested other services, including counselling, but Jenny had not taken up any of these suggestions. She explained that as her life was so hectic she had not had time to contact any of the other services. Now that her life was slowly coming under control, she doubted that she would bother to contact them.

Despite the problems Jenny and her family had faced, she felt that the family was still coping. They tried to talk through their problems and to pull together. Jenny was no longer seeing her solicitor, and said ‘things are starting to settle down’. She described the younger children as healthy and as doing well at school. The children had also received considerable support, including from a support worker for Jodi provided by the school who assisted teenage mothers. Jenny described Jodi as being particularly ‘vulnerable’ and as having behavioural problems which had resulted in a number of exclusions from school, although with the extra help from the school she appeared to be settling down. Jenny explained that her main problem was that she had no real life of her own, and that her time was spent looking after her children and her grandson.

**Comparing Stories**

The most obvious elements of the stories presented above are their diversity and complexity. The issues each of the clients faced, their underlying concerns, their relationships with the other party and their children, and the ways in which they had sought to solve their problems were all quite different. They reflect the sheer diversity of the cases family lawyers deal with. This diversity and complexity suggest that any mechanisms put in place to try to assist family law clients to resolve their problems need to be flexible. No one solution will ever be suitable for all clients. A comparison between pre-FAInS and FAInS cases cannot clearly establish the effect of FAInS practice on
parenting outcomes, since so many other factors have shaped each family’s situation. The case studies also highlight the complex and interconnected nature of the issues that are often contained in family law cases. The clustering of problems is very evident in these stories.

The FAInS was aimed at helping people deal with the multitude of problems that they may face, rather than focusing simply on a specific presenting (legal) issue. Some of the parents had managed to unravel some of the issues and were starting to feel as if their lives had moved on, but others were bogged down in their problems. Some appeared to be moving towards a resolution of their problems, whereas others seemed to feel that there was no end in sight. The narratives suggest that a number of different factors may have helped them, and it is not clear whether FAInS played a strong role in assisting families.

**Approaches to Problems**

We have discerned a distinct difference in the ways in which clients approach their problems when contacting a solicitor. We have selected four clients who went to see FAInS solicitors as examples. Two of these clients were solution-focused in their approach and two were problem-focused.

**Solution-Focused Parents**

Parents who had a solution-focused attitude towards their problems seemed, by the time we talked to them, to have reached some form of resolution of their cases and to have attempted to get on with their lives after separation. They had attempted to consider how the other party thought and felt about the separation, as well as how the children had understood what had been going on. It had been important for these people that they had built up or continued a relationship of trust with their children, and that the children had a home environment that offered certainty and stability. They had also been very concerned to ensure that their children were doing well in other aspects of their lives, such as at school, and that they would in turn create stable home environments once they became adults.

Solution-focused clients seemed optimistic about their future when we interviewed them, and did not think that problems would necessarily arise again, or if they did said that they had clear strategies for resolving them. Their thinking about their problems appeared to be long-term, and in particular they had a concern about the long-term future of their children. They also appeared to have a very positive relationship with their lawyers, and, in some cases, to have had considerable contact with other support services.

*Richard Dodd*

Richard Dodd had five children. Two were adults who no longer lived at home. His other three sons were aged nine, eleven and thirteen, and were living with their mother, Kathleen. Richard had been divorced from Kathleen for four years, and during that time had remarried. His new wife, Anne, had also been married previously, and both Anne and her young daughter had moved in with Richard.
Since the divorce, Kathleen had also taken up with a new partner, and both she and her new partner had become addicted to heroin. Consequently, Richard had become increasingly worried that Kathleen could not provide adequate care for the boys. Eventually, Richard decided that he did not want the children to continue to live with Kathleen, and went to see a solicitor about gaining residence of the children. Like many of the other solution-focused clients, Richard faced some major legal and non-legal problems, and his legal case involved a dispute over residence that proceeded to full hearing. He did not especially dwell on the court case that followed, although he related a number of difficulties that he had faced.

Richard’s main concern about the court case had been that he was uncertain whether he would be successful. His solicitor had suggested that the judge had a reputation for granting ‘custody’ to mothers. He was told that in many cases fathers did not obtain residence of their children as they were seen to be violent and abusive. Afterwards, he learnt from the Department of Social Services that he had initially been considered to be violent, and that Kathleen had alleged that she had fled a violent relationship. He was told that if he had not been so co-operative he would probably have been presented to the court as being aggressive and argumentative.

Richard was somewhat reluctant to talk in detail about the case, and stressed that so far as he was concerned it was over. He was, however, very keen to point out that the accusations were completely false. He said that he had started to feel as if he had to justify himself, as well as defend his new relationship. He accounted for why Kathleen had raised these accusations without appearing to blame her, explaining that she had made up accusations not so much to hurt him or stop him seeing his children, but as a means of gaining ‘favours’ from social services and the local council, especially in terms of obtaining housing.

Richard pointed to a number of factors that may have delayed his case, but at no stage did he mention that the matter had taken too long to resolve. Kathleen did not attend the court appointments, and so the case was delayed somewhat by a series of adjournments made in the hope that she would make an appearance. In addition, there was a further delay of six weeks while the court waited for a CAFCASS report. In the end, a shortage of CAFCASS officers meant that the CAFCASS report would take months to be completed, and so the judge decided to proceed without it.

Richard said that since the end of the case the family had faced other issues, although he described these problems in terms of what the family had achieved rather than what setbacks they had endured. In particular, the family grew very quickly from three to six people living in a relatively small house. Richard had bought a new house in order to accommodate the children, but could not afford to buy a large property. Instead, he bought a property that was affordable since it needed considerable renovation, and had been working on it himself.

Richard and Anne became quite emotional when talking about how the boys had originally reacted when they had left their mother’s home, where they had largely been left to look after themselves. They had had to feed themselves, and had often slept on the floor. They only attended school 50 per cent of the time, and were often not picked up after school but left waiting, sometimes for several hours, outside the school building. They had been told to look away so that they could not see their mother and her friends taking drugs. When the boys had first moved in with Richard and Anne they would search through all the drawers and cupboards in the house, and a psychologist explained
to Richard that they were checking to make sure that there was nothing in them that could cause them harm.

Richard felt that the boys had lacked security and certainty, and he had tried to make up for this. He had tried to set a routine and ensure that they went to school every day, ate regular meals, did their homework and had a bath every night. He had put in a loft conversion, which meant that each of the children had their own room, and had hoped that this would help them to feel wanted.

Richard downplayed the conflict between himself and his ex-wife. He did not discuss the reason for his original separation, but the relationship between the two of them appeared to have been positive until she had started to take drugs. He was most critical of her failure to care for the children, and blamed this on her drug use. At no point during the interview did he express any strong negative emotions about Kathleen. For the most part, he maintained that she did not contest his having residence of the children. At one stage, he also described an incident when Kathleen had telephoned the children and promised them a yacht trip round the world if they returned to live with her, suggesting perhaps that she had not given the children up completely freely and would like them back.

Richard told us that he was careful not to say anything negative about the children’s mother in front of them. While he hoped that she would want to spend time with her sons and did not prevent them from trying to contact her, he preferred not to make contact with her himself. Since the boys had left their mother she had seen them twice in approximately ten months. She lived quite close, but had not expressed any desire to see the children. She had not rung them or sent them any messages, and they received no presents at Christmas or on their birthdays.

The boys had tried to contact their mother, however, and Richard believed that they would dearly like to see her. They had tried to telephone her, but her phone was disconnected. One of the boys wrote to her, saying that he was doing well at school and had been spending time at the house of his grandmother (Kathleen’s mother) hoping to see her. But his mother did not reply. According to Richard, the boys missed her a lot, although they were now starting to mention her less and less. Kathleen had another son, who was still a baby, by a different father. One of the boys had said that he was missing seeing the baby, and Richard believed that this remark reflected his son’s underlying desire to see his mother.

Richard believed that Kathleen felt very guilty about the way she treated the children. He had heard that she had told other people living in the town that she was exhausted looking after the children, making school runs and preparing meals, despite the fact that the children had not lived with her for over twelve months. He felt that her sense of guilt had produced a denial of what had happened.

One of the reasons Richard gave for not trying harder to facilitate contact between the boys and their mother was that he found it too upsetting to see them disappointed. He became quite emotional when relating a story about an occasion on which the children had waited for their mother to pick them up to take them to lunch to celebrate one of their birthdays. She had telephoned and explained that she had bought a present, and that they were going to have a wonderful day. The children had spent the morning standing on the footpath waiting, in vain, for their mother to appear. Richard started to cry in the interview when he described how difficult it had been to watch his sons’ hopes and expectations turn to disappointment. He said that he had tried to ease what he regarded as
a betrayal by their mother by spending the rest of the day spoiling the children, but he
was reluctant to leave them so exposed a second time.

Richard said that the children tried to remain in contact with their mother’s extended
family, but with very limited success, although he does not appear to have instigated this
contact himself. One of Kathleen’s cousins visited the family and was warmly received.
However, the children were treated coolly if they visited in return. They did have
considerable contact with their father’s extended family, however.

The boys had a good relationship with their stepmother, Anne. She was aware of not
being their biological mother, but felt very close to all the children, and thought that the
boys felt the same way. Originally, she had felt that the children had placed her on a
pedestal, and that she had to take time to adjust to caring for such vulnerable children.

Richard felt he had received considerable help and support in gaining residence of his
children from social services, NPSCC and his solicitor, whom he described in glowing
terms. In particular, he found his solicitor was friendly while still being professional. He
also had considerable contact with the school and with the children’s doctor. Richard and
Anne had been worried lest the children should have to cope with too much change, and
so they had decided not to change the children’s schools, since this provided them with
stability and continuity. The children’s school performances had improved; they had
become quite sociable and had started to make more friends. Richard spent quite a bit of
the interview discussing their recent accomplishments at school. Apparently, they had
also had behavioural problems at school in the past, but these had recently started to abate.

Richard had resigned from his job in order to look after the children. He said that not
everyone he used to work with understood why he had left work. Some former colleagues
did not understand why, since he had a new wife, she could not look after the children.
Richard said that, while Anne got along well with the children, they were not her
biological children and the children needed to know that their father was at home, that he
was always there if they needed him and that they had a set routine. He told us he had
been the only person in the children’s lives whom they could trust and rely on, and that
he took this responsibility very seriously. While he admitted that others may see this as
an unnecessary sacrifice, he felt that there really had been no choice. He said that it was
essential that the children felt that they lived in a stable home and that without this they
would not become adults who would themselves be able to produce stable families. He
was concerned to do his best to ensure that the children did not reproduce the problems
they had witnessed when they had been living with their mother.

Claire Eagleton

The seriousness of Richard Dodd’s concerns for his children and his desire to ensure that
their best interests were paramount were mirrored in the approach adopted by Claire
Eagleton. Like Richard, Claire had come through a difficult court case and yet appeared
to be optimistic about her future, and determined to focus on solutions rather than on
problems.

Claire had four children. The eldest was a son, Shane, who was twelve years old at the
time of our interview. She also had three daughters, aged 4, 6 and 10. Shane and the
eldest daughter have different fathers. The younger two girls have the same father, John.
John and Claire were married for seven years, and approximately twelve months before
our interview Claire had decided to see a solicitor in order to see where she stood should she divorce John.

Claire and John had been experiencing serious marital problems, including a complete breakdown in communication. According to Claire, communication with John had always been one-way, and he was never prepared to discuss any problems with her. He had refused to discuss their marriage. Claire also wanted to talk about the possible sale of the house, since she was worried that, should they separate, John would refuse to leave the house. Claire was an employee of a company owned and run by John, and was unsure where she stood in terms of financial entitlements. John and Claire separated shortly afterwards, and John moved into his parent’s home nearby. Claire had still not decided whether she was going to initiate divorce proceedings on the grounds of unreasonable behaviour.

Not long after Claire had first seen a solicitor, Shane started to exhibit behavioural problems at school. It then quickly became clear that John might have been sexually abusing not only Shane but the younger children as well. Claire had no idea what had been going on, and was extremely shocked. Suddenly, her case was completely different. Gradually, she became aware of how manipulative and secretive John had been throughout their marriage. She described the realisation that he had been controlling her in order to abuse the children as like ‘being hit by a steam train head on’.

At first, after they separated, John continued to see the children. They spent several hours each weekend visiting him at his parents’ house, supposedly under their supervision. In fact, John was taking the children out of the house and having unsupervised contact. Claire’s solicitor wrote several warning letters to him, but his behaviour did not change. Finally, one of the children disclosed information suggesting that she had been sexually abused and contact stopped immediately. Claire explained that her solicitor had become ‘very serious’ at this point, and had insisted that there would be no more contact.

John had not seen the children since, although sometimes he appeared outside the children’s schools or outside Claire’s house. He had not sought to contact the children by any formal means. Apparently, the police had taken what Claire considered to be a long time (over three months) to interview the children after being informed by social services of the concerns about John. Claire said that the children had responded well to talking to the police as it had provided them with an opportunity to disclose what had happened to them, and had also provided them with reassurance that something was going to be done. The police said they had enough evidence to act, but nothing had happened until one of the children made further allegations several months later. The police had reinterviewed the children, although no charges had been laid against their father at the time of our interview. Claire was concerned that the lack of action by the police sent mixed messages to the children.

Claire told us that her solicitor had suggested putting in a complaint about the police, but she was reluctant to do this as it would mean going against a system that is ‘too difficult to change’. She said that she tried to send the right signals to her children – that if they had a problem they should do something about it – but she admitted that she did not always have the energy to act herself. She said she needed to be realistic about the battles she took on.

Since John did not qualify for public funding he had only employed a solicitor when he had been able to afford to do so. As a result, he had only been represented by a solicitor
during part of the case. Claire’s contact with him had been solely through her solicitor. Sometimes he took a considerable period of time to respond to her solicitor’s letters, and at times he did not respond at all.

The children did not have contact with John’s extended family. The police had apparently told his family that they were not to contact Claire or the children. Claire had not been aware of this restriction until she had telephoned John’s mother concerning one of the daughter’s birthdays. The family still sent cards and presents, and Claire was aware that there was a ‘huge disconnection’ between the children and John’s family. She also believed that the family could not accept that John had abused the children, and until they were able to do so there could not be a fully open relationship between herself, the children and John’s family.

Claire had sought counselling for herself, as well as for the children. She also sought assistance from a friend who offered life coaching, and was now beginning a training course herself to become a life coach. The coaching had improved Claire’s ability to see what had been going on in her life, and had helped her to talk to the children and to feel empowered and in control. She found it difficult to deal with John’s continuing manipulative behaviour, but was now able to see the patterns behind his actions. She also felt able to see how his behaviour impacted on her own way of thinking, on her relationship with the children, and even on her own sense of individual identity. She said that John had tried to undermine her parenting skills, and had constantly told her that she was unbalanced and needed help. She said that she accepted the blame for her failure to protect the children, but that the best she could do was be as honest and open with the children as was appropriate, to allow them an opportunity to discuss their feelings and to help them try to move forward with their lives.

Claire described her relationship with her solicitor in very positive terms. She described her solicitor as being friendly and sympathetic as Richard had his, but at the same time he was, she said, always professional. She felt that her case had taken her on a roller-coaster journey, and was grateful that her solicitor was there to ‘share’ it with her. She was divorced from John when we interviewed her, and they had reached a decision on the distribution of the property, which included Claire being able to keep the house. According to Claire, only a few ‘loose ends’ remained, including changing the children’s surnames.

Claire said that she had been ‘to hell and back’, and that at one stage she had really hit ‘rock-bottom’. She also told us that, despite the severe problems her family had faced, she felt she had come out of the case with a ‘positive frame of mind’. She attributed this to having received the help that she had needed along the way, including having a very good solicitor.

Claire had received assistance from a number of sources, including counsellors, social services and educational and welfare advisors. She described numerous problems she had faced with Shane’s school. Following Shane’s initial problems at school he had been excluded. Once the school had become aware of the source of these problems it had tried to make provisions for Shane, including gradually getting him into full-time hours and offering him counselling. Once Shane had started full-time hours, however, the school had withdrawn its support, including cutting off the counselling. Shane’s behaviour began to slide, and once again he faced exclusion. He had considerable problems controlling his anger and aggression and would often lash out against other students.
Claire said that while she could be critical of the school she also understood that it had limited resources, and that Shane’s behaviour had been very difficult to control.

Eventually, Shane was referred to a project which helped him deal with many of his problems. It emerged that he was being bullied at school and was having difficulties with one of his teachers. Claire had no idea of these problems, but the project provided her with some insight into the school’s problems with her son. She said that it had given her a bigger picture of the situation and that, since then, she had been able to find a more appropriate solution. Shane had changed schools, to one which catered for children with special needs. He had settled in well and his behaviour had clearly improved. He would gradually be integrated into a new mainstream school, where he could start with a ‘clean slate’. Claire said that finding solutions for Shane had been difficult, but that if she faces the problem and ‘chips away at it slowly … then you build up the positive stuff’. She was confident that Shane’s schooling would get back on track. She considered that he needed long-term solutions such as are put in place over time. Her daughters had received counselling and had not had the same problems as Shane.

Claire said that one of the greatest problems the children faced was a betrayal of trust, and that ensuring that this sense of trust and security was re-established had for her been paramount. Overall, her assessment of the family’s future was optimistic. She told us:

"I’m sure that some children probably wouldn’t cope as well. Children that have been abused as badly probably don’t move forward as quickly because it’s all about how their home environment is … I know that it’s the little things. You can do so much for them that’s positive. And you can’t beat yourself up about what’s been in the past – it’s the future that matters. And they are off the [Child Protection] Register, which is good, and moving on in school, which is good.

There’s always an awareness of what might come up later on … My daughter, my ten-year-old, will suddenly say, she’ll come up with something like ‘Mum, were you sexually abused by him?’, and it’s ‘OK, we need to sit down and have a talk’. And we’ll take half an hour or an hour and a half, and she’ll go to bed late, but we’ll deal with it. And we get to the point where she’s happy and she’s comfortable and I’ve answered all her questions. We will have that ongoing, I’m sure, but we will keep going forward.

Problem-Focused Parents

In contrast to Richard and Claire, some parents were clearly problem-focused. These parents seemed to share many of the same problems as the solution-focused clients, and had faced a range of non-legal issues. In fact, some of the solution-focused parents had faced more serious issues, such as problems relating to child sexual abuse and child neglect, than those the problem-focused parents had experienced. Problem-focused interviewees seemed to feel unresolved anger and bitterness towards the other party, and their anger had meant that even minor issues, such as contact arrangements, appeared to have become major problems. They felt that the other party was motivated purely by malice, and appeared to respond in a way that heightened negative emotions. While these people felt they were acting in the children’s best interests, they appeared not to consider the issues from the child’s point of view very often. They described their problems as being ongoing, without any hope of eventual resolution. Some problem-focused parents appeared to be more critical of their solicitor than solution-focused parents. Some appeared to have been told by their solicitor that their behaviour was not productive, or that their expectations were not realistic, whereas they wanted their solicitor to be ‘on
their side’. Some problem-focused interviewees also appear to have had limited contact with other services.

The claims made in personal narratives represent the clients’ realities. Clients’ understandings of their own position underlie their beliefs, perceptions and behaviour, even if the facts of the case could be disputed or other interpretations are possible. All these examples involve cases where the non-residential parent had no contact with the child(ren). The reasons for there being no contact were different in each case.

Sandra Breen

Sandra Breen had two children, aged 3 and 6. She had divorced the father of her children, Eric, two years previously. Initially, contact between Eric and his children had gone smoothly. Eric had then started another relationship, and he and his new partner had recently had a baby. Since then, continuing problems had arisen concerning Eric’s contact with the children, and Sandra had decided that she did not want Eric to see the children at all. She explained that Eric was constantly ‘messing her about’ and that he liked to ‘niggle’ at her. She said that this was nothing new and was one of the reasons they had got divorced. She believed that Eric liked to frustrate the contact plans in order to annoy her. The incident that had led Sandra to decide finally that Eric should no longer see the children had occurred several days prior to Christmas. Eric had arranged to take the children for a few days, but when Sandra was halfway over to his house to drop them off he telephoned her on her mobile phone and said that he could not look after them after all.

Sandra also felt that Eric did not make enough of a financial contribution towards raising the children. She received no money whatsoever from him as he was unable to hold down a job. In her view, he preferred to look after his new family rather than providing for her children. Sandra described him as being a better father to the new baby than he was to her children.

Whereas the solution-focused parents had attempted to see the issues from the perspective of the children, the problem-focused parents seemed to struggle to distinguish between the children’s best interests and their own needs. Sandra said that the youngest child was starting to ‘go off’ seeing her father and, since Eric was not really bothered about this, she did not intend to make her see her father against her will. She thought this was a shame, since she had grown up without knowing her real father and wanted her own children to have a relationship with their father. She then told us that while she had missed her father as a child, she had also known how her mother had felt trying to raise a young child while being messed about by the father.

Whereas all the solution-focused parents were very happy with the service provided by their solicitors, this was not always the case for the problem-focused parents. Sandra was not entirely satisfied with her lawyer. She felt that the lawyer tended to defend Eric more than her. She said that her solicitor kept telling her that she needed to compromise and that she needed ‘to bend a bit’ and allow Eric to have some contact with the children. She was annoyed that the solicitor made her agree to arrangements that were inconvenient. As the contact orders currently stood, Eric picked up the children from Sandra’s home every second Friday afternoon, and then Sandra travelled across the city to Eric’s home to retrieve the children once contact had finished on Sunday. Sandra regarded this
arrangement as intruding on her weekend. She was especially annoyed that Eric refused to pay her bus fare to bring the children back:

I said [to the solicitor] that I could keep going on like this for the rest of my life, any time he wants to change his mind, me agreeing to it. I said ‘I’m not having it’. And that’s when I said ‘He doesn’t pay my bus fare’. And she said ‘Oh well. There’s nothing we can do about that. You can’t stop his contact for not paying bus fares.’ I thought, well, if I’d known that I’d never have agreed to it … The judge didn’t seem to think that it was unfair for me to have to go into [the city] to pick them up. So the worst-case scenario was that I was going to have to go all the way over to his house, which is like two bus rides away, once a month. I would have to go all the way there and go all the way back again on the Sunday to pick them up, all at my own cost.

Another point of contention had occurred when Eric proposed changing these arrangements. He had asked Sandra if she could drop the children off one Friday afternoon saying that he would return them to Sandra’s house on the Sunday. The solicitor had tried to persuade Sandra to be flexible and had asked ‘Why can’t you just do it that way round?’ . Although Sandra had told her solicitor that she did not have any commitments and could have changed her arrangements, it was clear that she was ‘just sick of [Eric] getting his own way all the time’. She felt as if Eric always wanted to adjust the arrangements and that she was always expected to be flexible. Sandra felt that her solicitor could not see the issues from her point of view, and she was a little disappointed that her solicitor was not ‘gung-ho’ and fully committed to being on her side.

Sandra explained that this incident was just one in a long chain of problems with contact. Contact arrangements worked for a short period of time, and then Eric would ring at short notice saying he could not keep to the arrangement as planned. Sandra wanted him to be more reliable and more interested in the children, but had little faith that he would change. She said that her seeing a solicitor had not really helped, since Eric had just ignored the contact order and she was reluctant to change her mind about arrangements. According to Sandra, the only advantage of her seeing a solicitor was that she was able to ‘threaten [Eric] a little bit more’.

The children had no contact with Eric’s family. Sandra explained that she used to take them to visit Eric’s mother, but she then discovered that Eric had been dropping in to see the children at his mother’s house. She thought that this was particularly unfair, since Eric was having contact with the children without having to do anything for it. He did not have to come and pick the children up or drop them off, and so he was getting contact ‘for owt’. Sandra explained that Eric should not be allowed to see the children at his mother’s house, since he now had a new house with a new family and any contact should be there. In order to ensure that Eric was not getting any contact ‘for free’, she suspended all contact between the children and members of Eric’s family.

Bryan Swancott

Whereas Sandra was preventing contact between her children and their father, Bryan Swancott’s ex-partner was refusing to allow him to see his daughter. Bryan had seven children, aged between 10 and 26. He had gone to see a FAInS solicitor about contact with his youngest daughter, Brenda, who was ten at the time. Brenda’s mother, Sue, had separated from Bryan four years previously. They had not been married. Since the separation Bryan had started a new relationship and had recently got married. Brenda used to stay with Bryan every weekend.
Approximately eighteen months before our interview, an incident occurred when Sue was picking up Brenda following contact. First, Sue rang Bryan and a ‘violent conversation’ occurred. Sue threatened Bryan, who locked all the doors and called the police. Sue turned up to collect Brenda accompanied by her new partner. They tried to smash down the front door. Bryan let them in and Sue attacked him, cutting his forehead, eyelid and lip. Bryan stated that Sue was charged with assault, but he later dropped the charges since he did not think that ‘having Sue put in prison’ would be good for Brenda.

Since then, Sue had allowed Bryan to see Brenda for just one hour. Bryan had continued to send his daughter cards and had opened a trust account in her name, but had received nothing in return. Bryan and Sue still telephoned each other, although Bryan was not allowed to speak to Brenda, and whenever he talked to Sue she quickly reminded him about the time Bryan had called the police, before hanging up.

Bryan went to see a solicitor to try and re-establish contact with his daughter. The solicitor initially suggested mediation, but Sue refused to attend. The case then proceeded to court, with Bryan making an application for parental responsibility. At the time of our interview, the case had been scheduled to be heard in the magistrates’ court. Bryan appeared to think that this marked only the very start of his actions against Sue.

Bryan felt that Sue’s refusal to allow him to see Brenda had several causes. He blamed Sue’s solicitors for advising her to stay away from him. He said that Sue’s solicitors alleged that he was ‘a danger’ to his children. Sue was also seeing a new partner, and Bryan believed that this partner had instigated the problems. He felt that Sue’s new partner considered him to be a threat, and was doing everything he could to keep him out of Sue’s life. He explained that one of the reasons behind the incident that had led to Sue refusing him contact was that her new partner had accompanied her when she had dropped off the child.

Bryan had tried various avenues in an endeavour to see his child. One of his nieces was in Brenda’s class at school, and so he used to go to the school to see Brenda on the pretence of seeing his niece. He had had to stop doing this after the Principal had started ringing the police each time he approached the school. He did, however, continue to communicate with Brenda via letters passed on by his niece. He had also asked Sue if she would allow him to see Brenda in the company of a social worker, but she had refused.

At one stage in the interview, Bryan was very optimistic about his immediate future regarding Brenda. He believed that the court would grant him parental responsibility as Sue would not attend court to defend the application. He said that Sue had a history of non-attendance, as demonstrated by her refusal to turn up for mediation. He believed that his having parental responsibility would resolve the contact issues, since the order would allow him to see his daughter whenever he wanted. He also believed that his having parental responsibility would assist his intended application for residence:

… obviously her mother’s got 100 per cent legal parental responsibility but if things go well on the day, I’ll get parental guidance as well. Which will give me 25 per cent leverage to try and get parental custody.

Bryan explained that Sue had been summoned to court to give her reasons for refusing him ‘access’ to his daughter. He believed that she would be arrested and convicted for failing to obey the summons, and that once this happened he would gain residence of Brenda.
Despite his optimism about the upcoming court attendance, Bryan was fairly negative throughout the remainder of the interview. He felt very upset about losing contact with Brenda and his problems with Sue had led to him feeling depressed and suicidal:

It is frustrating. It does make you feel very suicidal at the end of the day when you come home and sit down and you cannot get any sleep. All you think about – you know – is why can I not see my child? I’m her father, her dad. That bloke is nothing to do with her, but he is influencing her mother to prohibit access from me.

He believed that he might not see Brenda until she was an adult and contacted him herself. He repeated several times that he and his solicitor had tried every avenue possible, and that there was nothing else they could do apart from going to court.

Bryan had faced many other difficulties in his life and could see few solutions to his problems. Both he and his wife are disabled, and she is wheelchair-bound. He also suffers from mental health problems, and has been institutionalised several times over the last decade. He had received support from a range of sources, including social services, care workers and mental health workers. Unlike Sandra, he felt that his solicitor had understood the other problems he had experienced, even if ultimately he lost contact with Brenda.

Bryan’s story was not always easy to follow. For instance, he was quite vague when it came to describing the incident that had led to Sue discontinuing contact. At one stage, he said that he had been charged by the police at the time, and that his solicitor had been helping him deal with the ‘police involvement situation’ that had arisen. He also hinted that social services had been involved in the case, but then quickly moved on to another topic.

Bryan tended to contradict himself during the interview. For instance, at one point he stated that he had regular contact with all his other children, as well as with his eight grandchildren. Further into the interview, however, he suggested that he did not have quite so much contact with his other children. He explained that one of his older daughters had made allegations of abuse against him and that as a result he had been ‘tagged’ and could not leave the country without permission. He also mentioned another court case involving another daughter. He explained that he had recently made an application in respect of this daughter for ‘full custody or contact and custody that allows me at any time to take my daughter to any destination in Europe’. Apparently, the case was dismissed and Bryan was ‘told off” for wasting the court’s time.

**Behaving Differently**

Whereas the solution-focused clients had received support from other agencies, they also appeared to be capable of taking the fullest advantage of this help. They seemed determined to move on with their lives, whereas Bryan seemed to be mired in his problems, which were further exacerbated by his mental health problems.

The solution-focused clients appeared to be capable of viewing the world from the perspective of other people around them. They were able to place their problems within a broader context, whereas Bryan and Sandra were very inward-looking. During the interview, Bryan was asked how he thought Brenda felt about the situation, and in response he started talking about the impact on himself and his own state of mind.
Solution-focused clients also appeared to have different positions within the social structure. Richard and Claire were both very articulate, well-educated people, who had given up careers in order to care for their children. It could be argued that the backgrounds they came from assisted them in solving their own problems. Bryan and Sandra seemed frustrated and confused by the legal system. They had a poorer level of education than Richard and Claire’s, and seemed less able to take advantage of the services available.

The problem-focused clients also tended to externalise and oversimplify problems, blaming issues almost exclusively on the other party or on their solicitors. They also appeared to be using contact with a child to attempt to exert control over their ex-partner. By contrast, Richard and Claire seemed to realise that their problems were quite complicated and interconnected with other issues, and that they themselves played a role in both the creation and the solution of these problems. While they wanted to change the way their ex-partners behaved, they seemed to realise that this task was not necessarily their responsibility or within their power to perform.

**Other Typologies**

We were able to discern differences between parents who had quite distinct, contained problems and those who faced a cluster of problems. Some described their cases as concerning a single legal issue, which their solicitor resolved quite quickly. Others described their cases as involving a long list of interconnected legal and non-legal issues, and for the most part these parents appeared to have had contact with a range of other support services. We can also draw a distinction between families for whom contact arrangements were smooth and unproblematic and those for whom contact had simply not worked.

What is clear from the case studies presented here is that many FAInS clients faced a multiplicity of difficulties, and the role of the solicitor had varied according to the circumstances of the case. Although we obtained just one parent’s perspective in each case and there are bound to be other perspectives to take into account, what we have are the stories much as they would have been presented to the FAInS solicitors, along with insights into how clients go about using their solicitors and other support services to try to address the situations in which they find themselves. When clients are determined not to be flexible and to view everything as a problem caused by someone else, it is very difficult for solicitors to ensure the client takes a conciliatory approach to resolving disputes about children. By contrast, if parents are attempting to resolve issues by being reasonable in the face of difficulties, solicitors are more likely to be able to support clients in seeking help and taking action which is likely to be in everyone’s best interests.