About Families Need Fathers
Families Need Fathers (Because Both Parents Matter) is a registered UK charity set up in 1974. We are primarily concerned with the welfare and rights of children, whose parents live apart, to full and free involvement with both. Unless of course, as under our 'beacon light' document - the United Nations Convention on the Rights of the Child - there is a reason otherwise. We are not in denial about there being such cases. In our view, however, they are asserted much more often than appropriate. Family break up may release some of the strongest of emotions of which humans are capable, and truth is a common casualty. This fact is worsened by the adversarial character of legal proceedings. These proceedings are between the adults, but all parties struggle, and often fail, to keep a focus on the welfare of the children.

The charity’s first task is social welfare work. To help wrongly excluded parents first to obtain, and then to use for the best, enough parenting time. Those excluded are disproportionately fathers, hence our name. But when fathers get control of the children, they too may exploit their power with selfish intentions. We then support the rights of the children to their mothers and the wider family on her side. We are an equal responsibility charity which respects diversity.

Our second task is to promote social, legal, political and administrative attitudes that better correspond to the needs of children.

If we are successful then the sort of issues with which we are concerned would largely disappear.

FNF receive approximately 29,000 service calls per year through the national FNF Helpline. We also offer support to some 5,000 attendees of our 30+ regional branches, online support and courses. Our website receives over half a million page views a year.

Introductory Comments and Background
We ask the Committee, in the likely hubbub of urgently felt but often partial points of view, to keep its mind on the best outcomes for children, with other concerns being simply incidental to that.

We suspect that many submissions, including ours, will be or be seen to be, at best, from partial perspectives. Provider groups within the current system, such as lawyers and those working in or for the courts and so on. Most children's organisations are concerned with particular aspects, such as children who have been mistreated. These are all legitimate points of view that like ours, need to be heard.

But we hear few voices for standing up for children who are in every way 'normal' except that their parents having split up, cannot agree on their parenting arrangements.

We also fear that an excessive concern of reforms will be on how courts might get through their workload at reduced cost. Again, entirely legitimate, but the outcomes of decisions may affect the children involved for life, and the quality of decisions should come first and only then address efficiency of delivering these.

We turn now to the problems of the family courts, and - the specific topic of this document - how new technologies can help.
Most people involved in family justice are working to do their very best. This charity salutes their best intentions and efforts. However, the processes are complicated, slow, open to various sorts of abuses, and expensive. Their adversarial nature promotes hostility. Above all, the quality of justice is poor. That is acknowledged across the spectrum - including the likes of Women's Aid.

But one concern, rightly highlighted in the title of this consultation, is access to justice. The de facto situation in the aftermath of parental separation is that one parent gets physical control of the children. This gives that parent the capacity to act on their view of what relationship the child or children may have with the other parent. Many are reasonable and child-centred, but efforts are required to increase this number.

There are often a series of obstacles, some massive, put in the way of the 'other parent' seeking a meaningful relationship with the children. For a start, the excluded parent has to sue – for most a completely alien process. How do they start? This charity helps, but touches only a fraction of those affected. Most cannot afford a solicitor and for them, access to justice is woefully inadequate already.

The fact that there are approximately 50,000 new applications annually to family courts in England and Wales, 6,000 applications for enforcement of Child Arrangement Orders, with hardly any enforcement action ensuing, and the fact that Cafcass report that a third of family court applications are returns, point to the effective failure of the current system of family justice that needs to be addressed.

A crucial test of new technology is whether it makes access to child welfare easier, cheaper, quicker, less stressful etc. Conversely, one of our greatest fears is that a 'solution' to system overload will be to raise barriers to accessing it. The impact of this is that children and parents will have to accept whatever is proposed by the parent in "possession" of the children, unless the excluded parent is seriously rich.

Conversely, new technology could make proceedings much more accessible. Video conferencing where there are the logistical complications of mediation and so on.

There are some aspects of new technologies that are relatively specific and perhaps, easy to assess. For example, transcripts. One regular complaint brought to us is that the wording of court orders issued does not correspond to what the court actually ordered. This seems particularly likely if one of the parties is legally represented and offers to 'help' the judge by writing up his/her decisions. A result, so the allegations go, is that it is spun, tweaked or selective. Getting confirmation, or a remedy, involving a transcript and then taking it forward, if parties were simply all given a digital file of the proceedings would assist, without adding to the costs of parties obtaining transcripts.

This charity would have much preferred if reforms were approached firstly from the perspective of improving the quality and speed of family justice rather than coming from the perspective of cost (which is not to say that both cannot be achieved). Nevertheless, we warmly welcome this topic being looked at.

The MoJ paper ‘Transforming Our Justice System’ starts by stating that ‘Our justice system is the envy of the world.’ There may well be evidence for this elsewhere, however, this is simply not the case in relation to Children Act matters. FNF service users include many foreign nationals who come to rely on our family courts. Almost all are shocked when they engage with the system.

We address below the specific questions posed by this inquiry.
1. What will be the likely effects of the reforms, both implemented and proposed, on access to justice?

1.1. The loss of Legal Aid has already had a negative impact on the early phases of family disputes. Less well-off parents have lost out on vital early guidance. Often they miss out on the opportunity to seek mediation and their ex-partners are less likely to accept it without guidance from experienced third parties.

1.2. Many applicant parents speak to FNF first. However, if they become litigants in person with neither legal nor other personal support, out-of-court settlements and mediation will decrease further rather than increase.

1.3. In our experience, the early stages of family disputes set the tone for subsequent proceedings. Without assistance, access to courts may increase, however, that is not the same as access to justice which seems to be at grave risk.

1.4. A small, but significant, minority of separating parents, who have difficulties with accessing or using IT, linguistic or communications difficulties or suffer from mental health conditions, access to justice may become further compromised.

1.5. If case management is improved and there is greater visibility of and access to all documents in a case, with clear (and enforced) due-dates for filing, etc. – this could, for those litigants with an aptitude for online working and to court professionals, be of assistance.

1.6. If the result of this is a substantial improvement in the time it takes for family courts to determine Child Arrangements, then this will of itself be of value.

1.7. However, the whole system of delivery of family justice needs to be reviewed as it frequently takes many months for courts to make orders for Child Arrangements and this is simply not on a child-appropriate timescale. Delays can cause as much damage as the dispute itself – and these delays are often promoted by one of the parties in order to frustrate contact with the other.

2. What are the effects on access to justice of court and tribunal centre closures, including the likely impact of closures that have not yet been implemented; and of reductions in HMCTS staffing under the reform programme? For users, how far can online processes and video hearings be a sufficient substitute for access to court and tribunal buildings?

2.1. Especially where parents no longer live in the same geographic area, access to video hearings may be of great assistance. This can happen when either parent moves out of the area, adding to stress, extra costs and resentment.

2.2. Where experts are involved, this too may result in cost savings as they often charge significant sums for travel as well as preparation and court time.

2.3. Furthermore, in many legal matters, significant progress in dispute resolution can be made out of court and in the corridors of the court centres. Often this is encouraged by judges who exploit brief adjournments for parties to reach agreements, sometimes assisted by Cafcass.
2.4. Judges and Family Court Advisers often rely on seeing parties face-to-face – to have a chance to look them in their eye and to witness their behaviour whilst coming to a view on who, on the balance of probability, is telling the truth determine who likely to provide the best and most stable parenting. This approach must be balanced with the parts of the process which will benefit from going online.

Already we hear frequently of how Cafcass have sought to restrict the cost of private family law cases by not always making arrangements to see applicants together with their children and relying merely on phone conversations. Such omissions make it all but impossible for them to professionally and effectively assess the quality of a child parental relationship.

3. Have the Ministry of Justice and HMCTS consulted effectively on the reforms, and maintained sufficient communication, with relevant stakeholders?

3.1. Families Need Fathers is a well-established UK charity supporting thousands of parents each year in deciding their next steps, particularly in relation to early decisions as to whether to make applications to court. We have not been invited to contribute to consultations on the reforms process and this concerns us greatly.

3.2. The information that is in the public domain, implies that a strong focus on the process moving away from paper to online applications. It has been suggested by MoJ that initial trials are resulting in fewer errors. In so far is it means that applications are accepted and progressed quicker, we welcome this.

3.3. However, the process of deciding whether or not to undertake out-of-court dispute resolution through direct negotiation or through mediation does not start with a court application. For most FNF service users there is a need to first understand their options, including an appreciation of the scope of family courts to be able to assist them in resolving their particular situations.

3.4. Most FNF service users have no prior experience of family justice. Most (not unreasonably) believe that where, for example, contact is denied them by ex-partners that family courts will resolve these matters in days or weeks, (as is often the case in Belgium for example). In early stages of disputes, most litigants do not understand how blunt an instrument a family court can be. Neither do they understand how slow it can be, how stressful the journey can be, how often applications are met with exaggerated or fabricated allegations or how long these can take to resolve.

3.5. Furthermore, many people in the throes of emotional distress at being suddenly denied access to their children need guidance on what they can or cannot do and on what behaviours may lead to further difficulties. For example, some seek the assistance of the police. Others send repeated texts to make contact arrangements, in the face of unjustifiable obstruction, without understanding that better routes are available that do not risk the possibility of allegations of harassment.

3.6. Many people have little idea of what precisely they should be applying for. Do they need an urgent application? Do they need to apply for prohibitive steps? Do they need to apply for Parental Responsibility along with a Child Arrangements?

3.7. Initial support, prior to filing of court applications is therefore vital and this knowledge cannot be imparted easily online, particularly whilst battling with
powerful and complex emotions – not to mention many people’s unwillingness to “read the manual”. We have not seen evidence to suggest that MoJ have placed these human, behavioural issues at the heart of proposed reforms.

3.8. There is a recent history of reforms in family justice that have backfired because of their failure to put outcomes for children at their heart or to adequately consult with or give weight to those with insight and direct experience of working with separating parents. The rapid, un-tested and inadequately consulted upon introduction of LASPO in 2013 is an example of this. It removed all Legal Aid in private family proceedings, other than for cases where domestic abuse was alleged. Similarly, the poorly thought through introduction of MIAMS. These reforms, instead of growing out-of-court resolution, resulted in a massive decrease in mediation, increased reliance on courts and a boost of over a third in the numbers of Non-Molestation Orders, the current key bridge to Legal Aid. It also resulted in FNF receiving massively increased volumes of complaints of false or unfounded allegations.

These outcomes were all avoidable through consultation, research and trial. Our fear is that similar avoidable errors are being made. Given the importance to children’s and parents’ wellbeing of having the right outcomes it seems unacceptable that such risks are once again being taken.

3.9. We remain concerned that, without a wholesale review of family justice based on insight an in-depth understanding of the emotional drivers involved, reforms will result in the investment in a technological revolution turning into another policy failure at great cost to children and society at large.

4. Have the Ministry of Justice and HMCTS taken sufficient steps to evaluate the impact of reforms implemented so far, including those introduced as pilots; and have they made sufficient commitment to evaluation in future?

4.1. We have not been made aware of the steps taken to evaluate impact of these changes beyond decreases in the number basic information errors about the parties.

4.2. The lack of engagement with FNF or our service users leads us to question whether the commitment to evaluation is sufficient and whether the measures of success that are selected are appropriate to confidently move forward on these reforms.

4.3. There must be a firm commitment to evaluating and researching not just efficiency gains, but also to improved outcomes for those taking part in pilots. Evaluations must include assessments of:
- Time to resumption of severed contact by children with a parent.
- Likelihood of this happening.
- Pre-trial dispute resolution.
- Likelihood of arrangements by consent.
- Outcomes of successful shared parenting arrangements being in place.
- Cost to parties.
- Likelihood of hostility becoming implacable.
- Stress levels of litigants.
- Review of key performance indicators – especially those focusing on the outcomes for children whose cases return repeatedly to court.
Concluding Comments
As mentioned in our introductory comments, there appear to be great opportunities for the application of technology as part of a process of improving the quality of family justice, access to it and reducing its costs. The changes should have started with a wholesale review of family justice and then sought technological solutions in line with a new vision, rather than seeking to embed the system’s current failures in technological efficiencies. It should be addressing fundamental issues of how to get more transparency as well as visibility of justice being served. However, without more effective or wide-ranging consultations and exploration of possibilities we fear that at best opportunities will be missed. At worst, outcomes for children will deteriorate further.

Crucially, MoJ and Cafcass do not even capture the most basic data about cases that come before the courts, things such as what kinds of orders or findings are made. They don’t consider automatic access to transcripts and what those might do to assist courts, particularly in a system where lawyers have become the preserve of the wealthy and where a lack of judicial continuity and case continuity remain a serious problem.

Changes in family justice in the last few years have led to most litigants being in person. The impact of these changes remains unquantified and under-researched, but it is clear that the absence of professional legal support for litigants imposes an additional burden on judges. Those aspects that have been researched or measured do not inspire confidence which, we believe, is at an all-time low. We urge this Committee to do what it can to ensure that the same does not happen as a result of these major reforms and that outcomes for children are at the core. One key is to ensure that incentives in the future ensure that all parties feel a vested interest in working for the real interests of the children.

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