

# Learning From Abroad



International developments in resolving family disputes outside court  
which could benefit the Scottish family law system.

October 2023



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Shared Parenting Scotland is a small Scottish charity which provides support for separated parents.

We encourage shared parenting arrangements after separation, so that children can continue to enjoy a meaningful relationship with both parents.

We provide information, support and training to enable parents in conflict to come to child-centred agreements. Our service users include fathers, mothers, grandparents, extended family members and new partners.

We publish 'user guides' to the family court process and on the involvement of both parents in their child's education and also publish a wide range of information on our web site and through social media.

As well as providing support, we campaign for changes in the law and legal procedures that will lead to better and faster support for parents and children after separation and for dispute resolution processes to be readily available and child-focussed.

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## CAN IT WORK HERE?

Separated parents who find themselves having to go to court in Scotland to resolve disputes about arrangements for their children find that the court process can be slow and expensive and that it often magnifies the dispute because of its adversarial nature.

This process has improved in recent years and will change further when changes brought about by the 2020 Children (Scotland) Act eventually happen. Notwithstanding these planned changes, parents and children would certainly benefit if far more cases could be resolved out of court.



This report explores developments from other countries which have the potential to improve the resolution of family conflict. Some are starting to be introduced in Scotland, such as the **New Ways For Families** programme for parents and the **ReFLEx** training for family lawyers.

Others such as the online **Uitelkaar** programme from the Netherlands and the **Early Resolution Project** from Alaska could be adapted fairly easily to work in Scotland. In most countries parents who go to court without lawyers are neglected or treated badly - Alaska shows what can be achieved for those who do not have a lawyer.

Changes such as the Israeli **Regulating Legal Proceedings in Family Conflicts Law**, **De Gezinsadvocaat** from the Netherlands and the English **Pathfinders** would require only rule changes not primary legislation. These moves could easily be justified by the savings in court time, not to mention the benefits for separated parents and their children.

It might seem the least likely change would be the emphasis on **Therapeutic Jurisprudence** that has happened in Singapore. Given the winds of change that are currently sweeping through Scottish courts we hope that this transformation might not be the hardest sell.

*"Change IS possible. So, if change is happening abroad, let's make it happen for Scotland."*

*This report was researched and written by Natalia Rucka LLB during her summer 2023 internship with Shared Parenting Scotland. The internship was supported by the University of Aberdeen. Shared Parenting Scotland is very grateful for the work that was carried out through this internship.*

*We are also very grateful to the people working on these foreign projects who supplied us with information. The main published sources of information about each project and contact details are noted in the footnotes - contact them for updates on progress.*



*"Scottish civil courts provide a service to the public that is slow, inefficient and expensive. In short, they are failing to deliver justice."*

In his introduction to the 2009 'Report of the Scottish Civil Courts Review,'<sup>1</sup> Lord Justice Clerk Gill wrote "Scottish civil courts provide a service to the public that is slow, inefficient and expensive ... In short, they are failing to deliver justice".

Lord Gill concluded that these failings mean that the legal system must make changes or "diminish public respect for the law and cause a loss of confidence in society's ability to resolve disputes justly."

Although there have been many changes to the Civil Justice System since the Gill Review, the inherent problems in Family Justice have not been addressed. Family hearings are fundamentally different to other civil hearings.

In disputes about debt or personal injury or medical negligence the aim of proceedings is for a judge to find a "winner" and a "loser". In cases where two loving and competent parents both want time with their children they "win" by attacking each other. That often feels inhumane and unfair.

Some changes have improved the Scottish family law system. The introduction of Child Welfare Hearings in 1996 following the Children (Scotland) Act 1995 enabled courts to move away from an initial adversarial procedure in the name of protecting the welfare of the child.

More recently the Children (Scotland) Act 2020<sup>2</sup> encourages the expression and inclusion of children's views, requires regulation of contact centres and child welfare reporters, and endeavours to reduce delay where possible. Once implemented along with the Family Justice Modernisation Strategy<sup>3</sup> this most recent legislation could make a difference to the current system.

However, they will not fix the underlying conceptual problems. Dissatisfaction continues to exist three-fold.

### ***"Dissatisfaction continues to exist three-fold."***

Even with the introduction of Child Welfare Hearings and the September 2023 case management rule changes<sup>4</sup>, there is shock amongst parents at how slow and unpredictable the system is.

The judiciary are equally affected, wasting time and resources on cases that shouldn't be in court. Sir Andrew McFarlane, President of the Family Division of courts in England and Wales made his view clear for England and Wales: "20% of family disputes don't belong in court."<sup>5</sup>

In a recent speech<sup>6</sup> relating to England and Wales Lord Justice Peter Jackson noted: "140,000 family days in court each year represent a great deal of human anguish and expense, much of it needless."

Most of all, in the midst of the adversarial process and delays, it is the children who end up forgotten with their most important relationships on hold for months or even longer. The damage may never be repaired. There is also no 'after care' in Scotland to help parents make their court order work.

Fundamental change is necessary to divert more disputes out of the courts and provide support for separating parents more quickly and less expensively.

The needs of children need to be placed at the centre. These decisions can affect them not just for this week or next month but into their adult life.

Similar challenges exist in jurisdictions worldwide. However, some countries have been more willing to engage with change and to acknowledge that family life and the expectations of both children and parents have transformed in the last 50 years.

**We have looked abroad to explore the different solutions that have been developed in these countries and how they support parents through divorce or separation.**

1 - <https://www.scotcourts.gov.uk/docs/default-source/civil-courts-reform/report-of-the-scottish-civil-courts-review-vol-1-chapt-1---9.pdf>

2 - <https://www.legislation.gov.uk/asp/2020/16/contents/enacted>

3 - <https://www.gov.scot/publications/family-justice-modernisation-strategy/>

4 - <https://www.lawscot.org.uk/members/journal/issues/vol-67-issue-11/family-case-management-rules-made-for-2023/>

5 - <https://todaysfamilylawyer.co.uk/20-of-family-disputes-dont-belong-in-court-mcfarlane>

6 - <https://www.judiciary.uk/the-nicholas-wall-memorial-lecture-given-by-lord-justice-peter-jackson-is-family-law-law/>



## What is New Ways For Families?

New Ways For Families® (NWFF) is a parenting skills course developed in the USA which is now available in the UK.

Intended particularly for parents who have experienced high-conflict separations, the course includes 10 online modules which are supported by one-to-one coaching sessions conducted online or by phone after modules 1, 4 and 10.

The online modules introduce communication, bargaining and understanding skills which can then be practised during coaching sessions. The coaches are all UK-based family professionals.

NWFF is intended to reduce the negative impact of conflict on children in family breakup and reduce stress levels.

Learners are helped to calm separation conflict and hopefully avoid taking court action by reaching agreement.

Online learning provides information and guidance on four key behavioural skills: managing emotions, moderating behaviour, flexible thinking and 'checking yourself'.

Coaches help learners to practice these new skills. Separated parents discover how to handle their own situation, reach agreement, and protect their children from the detrimental effects of conflict.

The NWFF course in the UK costs £295 for the ten online modules and three 90-minute coaching sessions. Instalment payments and subsidised places are available.

*"My whole mindset is changed, and I do now manage my emotions. I do moderate my behaviour. I'm acting much more in my daughter's interest."* NWFF Learner

**Contact: Shared Parenting Scotland**  
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## What is Uitelkaar.nl?

*"people-centred procedures in law, recognising the advantages that technology offers in making divorce a smoother, more accessible process"*

**Uitelkaar.nl**<sup>7</sup> is an online dispute resolution platform. It was set up in 2017 by Justice42 as a continuation of a previous divorce platform, Rechtwijzer. The aim of the project was to introduce more people-centred procedures in law, recognising the advantages that technology offers in making divorce a smoother, more accessible process that works in accordance with the personal needs of the parties. Around 30,000 couples divorce in the Netherlands each year and there is a widespread perception that the current process is not fair.

### How does Uitelkaar.nl work?

The process starts with a preparatory stage (with or without support of mediation). The next fixed stage is involvement of a lawyer, then formalising agreements with the court and finally, an aftercare stage.

**STAGE 1** - Partners register, pick a plan that suits their circumstances (divorce, parenting or both) and then both fill out an online questionnaire (20-30 minutes to complete). The questionnaire touches on topics such as housing, children, assets, income and communication.

Some questions go directly towards asking about preference on these topics. Other questions are more positive and children-focused, for example, "what was your partner good at?" and "what do you value most about the way your partner interacts with the children?" Partners can read back answers and are reassured that they are not required to be 100% certain on everything yet.

*"other questions are more positive and children-focused, for example, "what was your partner good at?"*

See this webinar for more information:  
<https://www.youtube.com/watch?v=u0Oy6XpOkBc&t=24s>

After the questionnaire, both partners are shown how often they agreed on each theme. Templates are then produced on the things they have agreed on and options for those they haven't. Partners can use the platform to communicate. Documents may need to be uploaded depending on the situation. Extra services such as alimony or child maintenance calculations, pension advice, help with tax issues and others are also available for a small additional cost.

During this stage, further support through a mediation module is available if partners are struggling to reach an agreement (again for an additional cost). Users also receive unlimited access to a case manager through messaging or by phone. The case manager can liaise with lawyers if the situation is complex, co-operate with a notary organisation, and/or pass on queries (for example, finance) to other professionals as required.

Both parents must agree on the final version of the plans. Once agreed, the case manager does a pre-review to check whether the process can continue onto the next stage.

*"Users also receive unlimited access to a case manager"*

**STAGE 2** - A lawyer joins through a message in the chat and checks everything is fair, meaning there is informed consent, the agreement is balanced between the parties and legally valid as well as practically executable. This review may go back and forth until the lawyer approves all of the sub-agreements. A one-time meeting is then arranged (either in person or online).

**STAGE 3** - The plans are signed off and the lawyer submits these to the court. They are formalised by the court without the requirement of a hearing.

**STAGE 4** - Partners are guided through the finalisation of the divorce and any changes in circumstances that may occur, for example, a move or a new partner. Here, partners can also ask any questions, make new agreements, get the help of a mediator, make use of the extra services, and if needed, make another submission to the court.

- Which plan to choose?

In the Netherlands, a parenting plan is mandatory with a divorce plan for partners who have children under the age of 18 and have separated.

- Who are the case managers?

- They are select individuals from a legal or social work education background.

- They are trained internally with step-by-step guidelines for the different case management tasks. They start small and progress towards more complex tasks.

- All communication is visible to the case manager as well as to the mediator if parties opt for the mediation module.

- How does the mediation module work?

- This is an optional additional service that can be selected at any time but most conveniently at the start. Sessions can last between 1 to 1.5 hours.

- Partners get the opportunity to discuss why they chose the help of mediation, whether that was due to the inability to resolve a certain topic, general ineffective communication or otherwise. They can then work towards solving this.

- How are children involved in the process?

- For the parenting plan to be successful, Uitelkaar.nl acknowledges it is important that children can express themselves and indicate what they think is important.

- A child module included when drawing up the parenting plan provides the opportunity for children to be involved.

- It works by both parents writing a message to the child and explaining the arrangements they have made. The child will see this in their own messaging platform and can choose to respond from there.

- An online chatbot, Mike, guides them through to make sure their voices are heard.

- There is additional access to information that is made understandable for children.

- The module is for children between 12 and

18 years old. Younger children may have access so long as they have their own telephone and email address.

*"A child module included when drawing up the parenting plan provides the opportunity for children to be involved."*

### How much does Uitelkaar.nl cost?

There is a 5-day free trial when partners first sign up. Then there is a cost of €25pp for the preparation phase. This allows for unlimited use of the platform and the case manager (with the cost of the mediation module if selected). The divorce plan costs €495pp and the parenting plan costs €250pp. The mediation module costs €300pp.

### Reports and figures of success

*"for every euro invested in the activity by the stakeholders (financial or by delivering an in-kind contribution), Justice42 created 5.8 euros of social value in 2020"*

An independent Impact Report<sup>8</sup> in 2020-2021 by SI2 Fund revealed that for every euro invested in the activity by the stakeholders (financial or by delivering an in-kind contribution), Justice42 created 5.8 euros of social value in 2020. Other findings were as follows:

**PARENTS** - 42% of parents using Uitelkaar.nl felt less stress during the divorce process; 29% felt that it had a positive influence on their emotions.

**LAWYERS** - the impact on lawyers was significantly higher than initially expected -lawyers working with the Uitelkaar.nl platform reported higher work satisfaction since couples who used the platform were more constructive, better-informed and had less conflict with each other. Lawyers also see Uitelkaar.nl as a source of additional revenue.

**LEGAL AID** - for 1 euro paid as a subsidy to Uitelkaar.nl, the Legal Aid Council saves 1.8 euros compared with alternative routes.

Due to special arrangements with the Legal Aid Board eligible cases can be subsidised and only cost 38 euros in comparison to the average cost of

8 - <https://indd.adobe.com/view/5dc59730-c8ca-4484-ae1e-1857d93d721c>

3-4000 euros. Family lawyers who won't do legal aid work have agreed to work for Justice42 as they feel the remuneration is fair for the work they do.

Uitelkaar.nl empowers people to gain control over process - the use of technology means they can use a laptop/phone/tablet to work in a setting where they feel safe and comfortable at their own pace. It takes away money stress - you decide what you need and only pay for what you use with fixed fees.

It offers opportunities to think from a positive mindset, promotes collaboration and does not require partners to be in each other's presence. Communication is also generally better between partners since they are aware that a case manager and lawyer will also read the messages.

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## What is De Gezinsadvocaat?

*"De Gezinsadvocaat team provides a connection between law and care"*

Instead of parents each having their own lawyer representing their individual needs, with De Gezinsadvocaat<sup>10</sup> (in English: The Family Lawyer) parents jointly use a team consisting of a lawyer and a behavioural scientist.

This method is a Dutch initiative developed by Carla Goosen, behavioural scientist and mediator, and Cees van Leuven, senior judge in Breda, with Marjolijn Schram, lawyer and mediator in Den Bosch. The scheme was supported by a grant from the Legal Aid Board in mid-2020. The pilot of this initiative started in the spring of 2021 in the Hart van Brabant region and ended on December 31, 2022.

The results of the pilot were promising and a further pilot has launched via Proeftuin in Hart van Brabant and in the municipality of Den Bosch. Other municipalities have also shown interest.

In addition, a direct route to the courts has now been added to the scheme helping to provide both law and care.

10 - <https://www.gezinsadvocaat.nl>

*"This method ensures the needs of the family are met ... while keeping the developmental health of the child central"*

### How does De Gezinsadvocaat work?

Partners start the process by accessing De Gezinsadvocaat website and signing up individually via a form. Registrations are received by the secretariat. There is then an intake interview.

At this stage, a risk assessment instrument, a product designed by De Gezinsadvocaat, is used to collect an inventory of the points of conflict, the level of escalation, the general mutual attitude, resolution capacities of both parties, the relationship of and between the children as well as other factors.

Based on this information, an action plan is drawn up by De Gezinsadvocaat and discussed with the parents. The plan will state which professionals will be most suited to help the parties, for example a mediator, child coach, financial advisor etc, and how they can be contacted as soon as possible.

The behaviouralist in De Gezinsadvocaat team can be a psychologist or educational psychologist; in either case, they will be experienced in separation issues. The whole team coordinates the entire process and works together. Just as with a surgeon and anaesthetist, each comes with their own knowledge and expertise and success will depend on team effort.<sup>11</sup>

Key results of a report by Triqs in July 2023 summarising and evaluating De Gezinsadvocaat pilot were as follows:

- Cost benefits: activities were fully financed by the Legal Aid Board (Raad voor Rechtsbijstand) and it was found that there were very large cost savings for the central government, the municipality and the parents themselves.
- The extra cost of involving a behavioural scientist paid off due to the de-escalation of the dispute.
- It was found that 50% of cases closed within 10 months and 80% within 13 months (some tricky long-term cases were involved). The average case duration from intake to covenant signing was 10.1 months.

*"there were very large cost savings for all 3 relevant stakeholders, namely, the central government, the municipality and the parents themselves"*

*"The research confirms what we have been seeing in practice for some time, namely better protection of these vulnerable children in complex divorce situations. De Gezinsadvocaat stimulates mutual cooperation and prevents escalation and lengthy lawsuits." <sup>12</sup> Comment by Family judge Cees van Leuven of the District Court of Zeeland-West-Brabant.*

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11 <https://gezinsadvocaat.nl/GA-Uitgebreide-Samenvating-Onderzoek-230207.pdf>

12 [https://www-rechtspraak-nl.translate.google.com/Organisatie-en-contact/Organisatie/Rechtbanken/Rechtbank-Zeeland-West-Brabant/Nieuws/Paginas/Wetenschappelijke-evaluatie-bevestigt-inzet-Gezinsadvocaat-zet-met-succes-het-kind-centraal.aspx?\\_x\\_tr\\_sl=nl&\\_x\\_tr\\_tl=en&\\_x\\_tr\\_hl=en&\\_x\\_tr\\_pto=sc](https://www-rechtspraak-nl.translate.google.com/Organisatie-en-contact/Organisatie/Rechtbanken/Rechtbank-Zeeland-West-Brabant/Nieuws/Paginas/Wetenschappelijke-evaluatie-bevestigt-inzet-Gezinsadvocaat-zet-met-succes-het-kind-centraal.aspx?_x_tr_sl=nl&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=sc)





### What is the Regulating Legal Proceedings in Family Conflicts Law 2014?

The law was passed by the Israeli government on December 8, 2014, and was implemented in July 2016. This innovative law made a fundamental change to procedure. Family conflict in Israel no longer starts with a lawsuit that irreversibly harms the communication and co-operation between partners. Instead, spouses and parents and their children must resort to negotiation, consensually and peacefully.

*"Family conflict in Israel no longer starts with a lawsuit"*

Process under the new law

#### Step 1 - Motion to Settle

- Anyone wishing to file a motion on any aspect of family conflict must submit a "petition for dispute resolution," or otherwise referred to as a "Motion to Settle."
- The petition forms only require identifying details about the individuals involved (e.g. name, address etc).

#### Step 2 - Legal Proceedings Postponement Period

- After a Motion to Settle is submitted, there is a mandatory time-out. The legal term for this is "Legal Proceedings Postponement Period."
- During this period, ranging from 60 to 75 days, the parties are not allowed to initiate any legal proceedings, with the exception of matters of urgency.

#### Step 3 - Information, Familiarization and Coordination ("IFC") Meeting

- During the 60-75 days, the parties are referred to a professional mediator in the form of a social worker from the Family Support Unit.
- The Family Support Units were established in 1998 by the Family Courts Law (1995) as a therapeutic arm of the judicial system: to

provide assistance, mediation, psychological counselling and support to family members litigating in the family civil courts.

- At the IFC meeting with the Family Support Unit, family members sit together and examine the possibility of negotiation and resolving the conflict peacefully, without the worry of impending legal proceedings in the background.
- The parties are given information on the implications of the legal proceedings, the potential effects on their children, other ways to resolve family conflicts outside of court (ADR) and how to cope with the difficulties arising from family crisis.

#### Success of this law

In just the second year of implementation, the new law reduced litigation in family conflicts by 45% (46,693 claims in 2015-16 compared with 25,546 claims in 2017-18).

*"the new law reduced litigation in family conflicts by 45%"*

Benefits of this new approach

- The new law does not enforce the resolution of conflict. It is not mandatory mediation, but a mandatory "time out."
- The postponement period compels parties to stop, calm down, think, and then talk before "running" to file lawsuits against each other in the height of emotion.
- It enables a better understanding of the emotions involved in a family dispute - gives the parties the opportunity to enter a state of rational thinking rather than the stressful state of survival fight-or-flight.
- The Motion to Settle avoids including details that heighten the conflict or which the parties might later wish they did not include.
- The IFC meetings allow parties to see and feel that there is someone to talk to - they can provide hope about the feasibility of a dialogue to reach a future agreement.

- Lawyers negotiate more than before - the legal profession is amazingly adaptable and lawyers are very good at doing just that.
- When the negotiations fail and people do go to court, they arrive with a different attitude than before. In most cases, their state of mind has changed.

*"The postponement period compels parties to stop, calm down, think, and then talk before 'running' to file lawsuits against each other in the height of emotion."*

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13 - <https://scholarworks.alaska.edu/handle/11122/6583>  
<https://onlinelibrary.wiley.com/doi/abs/10.1111/fcre.12441>  
<https://richardzorza.files.wordpress.com/2013/03/early-resolution-project-2-13.pdf>

## 4. Alaska



### What is the Early Resolution Project?

The Alaska Court System established the Family Law Self-Help Centre (FLSHC) in 2001. In 2009, the director of FLSHC, together with Anchorage Superior Court Judge Stephanie Joannides, established the Early Resolution Project (ERP)<sup>13</sup> as a pilot in Anchorage. This project was founded following high rates of self-representation in Alaska. It aims to manage divorce and custody cases with self-represented litigants effectively and to improve outcomes for families.

*"Early Resolution Project cases are resolved 3-4 times faster."*

### How does the Early Resolution Project work?

**STEP 1** - Within one day of filing for a family action, the case will be routed to FLSHC.

**STEP 2** - That same day, the FLSHC staff attorney and director will review the case to ensure its suitability for ERP.

Firstly, the case must involve two self-represented litigants. If at any point either party hires an attorney, the case is removed.

Secondly, the case will be screened against any other factors that point to it being overly complex and therefore excluded from the program. These factors may include current and serious domestic abuse incidents (especially those involving children), an unaddressed serious drug or alcohol abuse allegation, an unaddressed serious mental health allegation, a relocation issue in a custody case, complicated financial situations, a special needs child in a custody case that requires expert testimony or that both parties aren't able to meet in person.

Cases which are likely to be accepted as suitable include parties who appear to agree or, where there are disagreements, the issues are simple to resolve, or where the parties are young and unmarried and could benefit from learning how to co-parent.

**STEP 3** - If selected, the FLSHC attorney will schedule an ERP hearing with a settlement judge in approximately three weeks time along with six to nine other cases as part of a regularly scheduled afternoon hearing block.

Notice of this hearing and the special opportunity to resolve their case quickly is sent to the parties. The parties are also advised of useful information to bring to court and are provided with the staff attorney's phone number for questions.

**STEP 4** - Two days before the hearing, the parties are contacted by the staff attorney to remind them of the ERP hearing, explain which factors the judge will consider when coming to a decision on parenting issues and division of assets following divorce. The parties are asked to come prepared with workable solutions to their specific issues and to have discussed these beforehand. Any further questions are also answered.

**STEP 5** - Depending on the issues in the distinct case, parties will be assigned two volunteer attorneys, or a mediator and/or a settlement judge. Parties needing legal advice can attend the hearing with two voluntary attorneys (who provide legal representation only for the day but unbundled legal services at the courthouse outside of the hearing). Cases with children are often handled by a mediator.

The judge at the hearing acts as a settlement judge, hearing the terms of the agreement and working directly with the parties to find a solution to their case. Once the judge is satisfied, a staff attorney will prepare the final documents in the courtroom during the hearing. The judge then reviews and signs the final documents and grants the divorce. The parties are given copies as they leave the courtroom, and the case is docketed in the case management system and closed by the next day.

There has been an impressive volunteer attorney participation, with over 50 lawyers regularly donating their services.

#### Statistical results

- 2 hearings a month take place in Anchorage, 1 per month in Palmer and Juneau.
- As of September 2018, over 1,200 cases have been heard in Anchorage ERP, with approximately 80% resolving by agreement.

#### Results of a 2015-2016 evaluation

- Average time from answer filing to disposition with ERP was 50 days while the control group took 172 days. ERP cases therefore resolved 3-4 times faster. The main reason for this difference is due to screening and hearing being scheduled quickly, by which time most cases resolved by agreement.
- ERP hearings did not result in more dissatisfaction than standard procedure - based on a lower number of motions to modify being filed within 2 years of disposition (while these are rare in general, the number of them was still lower).
- Time benefit: ERP cases were found to take 28-30 steps and 4 hours of staff time. Non-ERP cases took take 49 steps and 17.45 hours. 39% fewer steps and 13 hours saved per case.
- Discrete opt-in pro bono obligation and responsibilities last only as long as the hearing - no preparation or follow-up required.
- Regular and more efficient scheduling - calendars run routinely on the same days every month.

*"ERP involved much faster resolutions, less staff time and steps while maintaining similar satisfaction with outcomes."*

*"Simplified, swift process, with 80% of ERP cases being resolved in one hearing after up to 3 hours."*

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### What is Therapeutic Jurisprudence?

Therapeutic Jurisprudence<sup>14</sup> is the study of the role of the "law" as a "therapeutic agent." It requires us to look at substantive rules, laws, legal practices and legal actors through a "lens" and specifically, whether they create helpful or harmful effects in a given system.

In a Therapeutic Justice system, there is an effective 'hardware' structure and 'software' resources. This allows both the family's legal and non-legal issues to be addressed. Helpful, and therapeutic outcomes can be reached without offending important legal norms such as procedural justice.

Through this multi-disciplinary approach, Therapeutic Jurisprudence gives parties access to interventions and support in the form of counselling, therapy, mediation and adjudication where needed and as early as possible.

A problem-solving, solution-orientated and forward-looking focus within Therapeutic Jurisprudence means parents are assisted with developing key skills that enable them to resolve disputes themselves, co-parent after divorce and seek support from services where required.

Family lawyers and judges play an important role in furthering Therapeutic Jurisprudence. They are not expected to function as therapists or social workers. Instead, they are pushed to consider whether and how the law can solve underlying problems that have brought people to court. Family lawyers will have good interpersonal skills and understanding of a client's underlying needs to help parties problem solve, make good decisions, reach fair (reasonable, workable and good for the children) agreements and ensure these are followed.

Similarly, a family judge will be a specialist judge who will steer the parties towards the underlying and relevant issues, show a balance of compassion, empathy and judicial authority, promote a problem-solving approach and deliver decisions in a manner that inspires change and respect for the court.

*"a problem-solving, solution-orientated and forward-looking focus"*

### Therapeutic Jurisprudence in Singapore

Therapeutic Jurisprudence is not a new approach and there are systems around the world that acknowledge that parts of this concept should exist in family proceedings. However, unlike these countries, the Singapore Family Justice Courts are fully committed to the adoption of a Therapeutic Justice system.

The Family Justice Courts Workplan 2020 set out a focus on three areas to implement a Therapeutic Justice system in Singapore.

Firstly, developing and teaching a consistent approach of Therapeutic Jurisprudence amongst family lawyers, those in the social service sector, university students and within the courts. This will be achieved by Best Practice Guides, a Therapeutic Jurisprudence module within lawyer certification training (and hopefully later in academic institutions) and a Multi-Disciplinary Team 'Pilot,' testing how judges, mediators, psychologists and counsellors work together.

Secondly, involving the 'hardware,' facilitating court processes, settlement and enforcement. This is aimed to be achieved by an electronic litigation assist system, a navigation pack of the Family Justice Courts, redesigning practice rules to have more straightforward processes and provisions to enhance the judge-led approach.

Lastly, customised training programmes will be developed for family judges as well as family lawyers. The courses will include understanding how children are impacted by family conflict and how to help parties reduce such conflict.

Therapeutic Jurisprudence is now established in the lexicon of family justice in Singapore. The task now involves the different disciplines working together to build and implement the approach in practical terms.

14 - Debbie Org, 'Singapore Family Justice Courts Workplan 2020: Today is a New Day' (2021) 59(3) Family Court Review 414; Yarni Loi and Suzanne Chin, 'Therapeutic Justice - What it Means for the Family Justice System in Singapore' (2021) 59(3) Family Court Review 423.

## What is the Panel of Therapeutic Specialists?

The Panel of Therapeutic Specialists (POTS)<sup>15</sup> is a collaborative project in 2022 between the College of Psychiatry Medicine, the Singapore Psychological Society, and the Singapore Association for Counselling.

The panel comprises psychiatrists, psychologists and professional counsellors. The aim of POTS is to merge legal and counselling expertise to increase access to therapeutic services and support for court users and their families. Those most likely to benefit will be parties involved in high conflict divorce, prolonged conflict, mental health concerns or children with symptoms of distress. Services will be delivered as directed by a judge or on a voluntary basis, with the consent of the referred parties.

A pilot of POTS commenced in early 2022. A steering committee, headed by the Court Registrar and involving chairpersons from the three bodies oversee the strategic direction of the project.

*"Those most likely to benefit will be parties involved in high conflict divorce, prolonged conflict, mental health concerns or children with symptoms of distress."*

## How POTS works?

Once parties have consented and either been referred by a judge or voluntarily, referral documents are delivered to the Therapeutic Advisory Council (TAC). TAC, working with the support of a secretariat, matches and assigns a POTS specialist to the case. The POTS specialist accepts the case and contacts the parties.

The POTS specialist works with the parties and updates the court via the POTS secretariat on any status updates or to alert of any risks. The judge is alerted, the status is reviewed, and the case is closed. The results of the pilot are still to be confirmed.

**Contact:** Judiciary\_Media@judiciary.gov.sg

15 - <https://www.judiciary.gov.sg/news-and-resources/news/news-details/media-release-fjc-and-three-professional-bodies-join-hands-to-set-up-panel-of-therapeutic-specialists>

## 6 - England and Wales



## What are the Pathfinder Pilots?

Based on recommendations from the Harm Report 2020, the Pathfinder Pilots<sup>16</sup> launched in England and Wales in March 2022 to trial an investigative and problem-solving approach in private law proceedings.<sup>17</sup>

The aim of these pilots was to encourage out-of-court settlements, with a particular focus on improving court responses to domestic abuse and boosting the voice of the child. The pilots are funded by the Ministry of Justice and launched in the family courts in Bournemouth and Weymouth in Dorset, and Caernarfon, Mold, Prestatyn and Wrexham in North Wales.

*"This puts the child impact at the outset of the process."*

For an 18-month period, the standard process of private law proceedings was replaced with the Pathfinder process.<sup>18</sup> The process follows four stages with the Children and Family Court Advisory and Support Service (Cafcass) at the core.

There are two main changes. Firstly, more in-depth initial information is gathered by Cafcass and Cafcass Cymru, including speaking to children before the first hearing. In most cases. Secondly, there is better involvement of agencies outside of court, specifically those specialising in domestic abuse and mediation. The process goes as follows:

### Stage 1 - Initial gatekeeping

At this early stage, a judge or legal advisor will look at the information and issue directions on the main issues at hand. They will identify whether the family might benefit from early out-of-court dispute resolution if it is safe to do so or give directions for an accelerated hearing if an urgent action requires it. This establishes an assessment of the impact on the child.

16 - [https://www.youtube.com/watch?v=PuDpDT\\_X6HQ&t=7s](https://www.youtube.com/watch?v=PuDpDT_X6HQ&t=7s)

17 - Ministry of Justice, *Assessing Risk of Harm to Children and Parents in Private Law Children Cases* (2020).

18 - Practice Direction 36Z, 'New Practice Direction 36Z - Pilot Scheme: Private Law Reform: Investigative Approach' of the Family Procedure Rules 2010.

## Stage 2 - Information gathering and assessment

Cafcass will investigate welfare issues and complete a Child Impact Report (CIR). They will go out and speak to the parents, directly or indirectly engage with the children, complete a DASH assessment (Domestic Abuse, Stalking and Honour-based violence) and inform the judge of any serious issues, if appropriate.

The child is central to this model. The reporter will find out exactly what the child prefers, whether that is to be involved and meet the judge or to have little participation.

Cafcass will try to help the parties avoid court as much as possible, but if that isn't possible the aim is to have one final hearing.

## Stage 3 - Interventions and/or decision-making

The court will exercise its discretion and decide how best to proceed to reach conclusion. This may include recommending non-court resolution, considering how best to monitor and review any agreement and holding a Decision Hearing.

At a Decision Hearing, the court will investigate and make decisions on any outstanding issues. Working with agencies outside of court, domestic abuse workers can come to court to support the most vulnerable parents unless there is a very good reason against this.

### Stage 4 - Review

The final stage involves staying in contact with the parties, including the child where appropriate, to review how the order is working for them. This is to ensure their continued safety and to offer any source of support as required. It will usually take place 3-12 months from the date the order is granted.

"Working with agencies outside of court, domestic abuse workers can come to court to support the most vulnerable"

### Benefits of Pathfinder

- Issues are being dealt with early - having the right information early means the main issues are identified as well as the resources required to deal with them.
- The Pathfinder is managing to work within time targets - completing the process in 12 weeks from date of issue.

- Advantages for children - non-adversarial approach gets partners to move focus from each other to children, child's wants and wishes are heard, avoids children coming to court at all or significantly limits their time in court.
- Feedback from DA survivors - much less brutal process for everyone involved, feel supported even beyond proceedings (anecdotal evidence).

**Contact:** UK Ministry of Justice or see the regular View from the President's Chambers issued by Sir Andrew McFarlane

<https://www.judiciary.uk/guidance-and-resources/a-view-from-the-presidents-chambers-july-2023/>

*"child's wants and wishes are heard, no child disadvantaged by time delays"*



## What is ReFLEx?

ReFLEx (Relationship: Family Law: Excellence) training is essentially a series of CPD courses developed for all those involved in the family justice system - whether they be lawyers of any age and level of experience, social workers, or even parents - to help them reflect on broader emotional and psychological issues and build the essential skills to aid their individual aims.

ReFLEx launched in 2022 and is made up of 9 courses. These are:

1. Understanding the impact of conflict on children
2. Listening
3. The art of effective questions
4. Boundaries
5. The importance of language
6. Child Development
7. Dealing with conflict
8. The dynamics of relationships (and what happens where they go wrong)
9. Attachment and systemic theories and how they impact families

For those interested in developing an even deeper understanding and knowledge of these areas, a ReFLEx Skills Diploma is also in development. Topics covered for the diploma include identifying and dealing with psychological issues (the danger of labelling); use of the genogram; the importance of story; safeguarding and screening; referrals to other professionals; vicarious trauma; introduction to reflective practice.

The courses involve a mix of pre-recorded webinars, exercises and quizzes. This way, they are fully flexible and can be done as many times as wished. All courses are 'reflective', meaning information is not just passed on but learners are required to reflect on their own experience, history and childhood. This reminds the learner that they too were once a child which in turn, helps them to see things from a different perspective and become aware of any prejudices.

*"reminds the learner that they too were once a child which in turn, helps them to see things from a different perspective"*

A ReFLEx Community is also being developed to provide a feedback platform for those who have completed the courses.

### Cost of ReFLEx

Each course may be purchased for £114.00 inclusive of VAT and discounts are available for three courses booked together. Each course lasts between an hour and a half to two hours online.

### Background on ReFLEx

The idea of ReFLEx began following the Family Solutions Group (FSG) report *"What About Me."*<sup>20</sup>, which highlighted the deficiencies in the current English & Welsh systems and made recommendations for change. FSG is a multi-disciplinary group with practical experience with parents and children involved in separation outside of court proceedings. The FSG was tasked with considering ways in which the experience of separated families could be improved before court action is raised and within the bounds of existing legislation.

One such suggestion was training for lawyers. This included awareness of the broader psychological issues at play, use of appropriate language at all times to defuse conflict, recognition of the differing needs within a family and more.

In response to these reports the FLiP Faculty and the Institute of Family Therapy collaborated to create the ReFLEx training.

### Feedback on ReFLEx courses

Here is a quote from someone who has undertaken the training.

*"I loved the way the courses used different methods of communication throughout the sessions - video, slides, diagrams, audio and clips from you tube etc - combining together to keep the course really engaging."*

**Contact:** <https://www.reflextraining.co.uk>

20 [https://www.judiciary.uk/wpcontent/uploads/2020/11/FamilySolutionsGroupReport\\_WhatAboutMe\\_12November 2020.pdf-final.pdf](https://www.judiciary.uk/wpcontent/uploads/2020/11/FamilySolutionsGroupReport_WhatAboutMe_12November 2020.pdf-final.pdf)

The main benefits of each new measure contained in this report are:

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## USA

### **New Ways for Families**

Teaches parents key skills to better handle their situation and reduce impact of conflict on children.

- *a training programme from the USA with online learning and individual coaching. Teaches separating parents new skills to better handle their situation, reach agreement and reduce impact of conflict on children.*
- 

## THE NETHERLANDS

### **Uitelkaar.nl**

Empowers separating parents to gain control over the process with technology.

- *an online dispute resolution platform. Flexible hybrid support, online or offline, allows people to work at a pace and location they feel comfortable.*

### **De Gezinsadvocaat**

Tailor-made, people-oriented solutions to problems

- *an initiative where two parents jointly use a team made up of a family lawyer and behavioural scientist. This team connects providing legal services with care, understanding and peace in the process.*
- 

## ISRAEL

**Regulating Legal Proceedings in Family Conflicts Law 2014** - Institutionalised commitment to negotiation and settlement out of court

- *a law requiring parents going through divorce a mandatory "time-out" before being able to raise any formal legal proceedings. Increased opportunities for parties to calm down, think about what each wishes to achieve and to reach a settlement that both are happy with.*
- 

## ALASKA

**The Early Resolution Project** - Support for self-representing litigants

- *free unbundled legal assistance and mediation for self-representing litigants. Simplified, swift process with opt-in pro bono obligation for lawyers that lasts only as long as the hearing (typically up to 3 hours!).*
- 

## SINGAPORE

**Therapeutic Jurisprudence** - An inter-disciplinary, problem-solving approach to achieve healing, restoring and lasting outcomes.

- *a concept that sees the role of the "law" as a "therapeutic agent." An inter-disciplinary, problem-solving approach to achieve a healing, restoring and lasting outcome.*

**The Panel of Therapeutic Specialists Scheme** - Families receive access to support through their journey of healing.

- *collaboration between psychiatrists, psychologists and counsellors to increase access to support for court users. Approach understands the importance of rehabilitation and supports families through their family proceedings in a healing way.*
- 

## ENGLAND AND WALES

**The Pathfinder Pilots** - Kinder and faster process

- *pilots of a problem-solving approach in private proceedings. Popular with all those involved due to kinder, less brutal process.*

**ReFLEx** - Improved comprehensive non-legal knowledge for lawyers

- *a series of training courses on the broader emotional and psychological issues involved in family conflict. Provides vital non-legal knowledge and skills for stronger client relationships and long-lasting, beneficial settlements.*
- 

Along with the above benefits, these developments have also resulted in savings in cost, time, and emotion for all stakeholders (parents, children, legal professionals and governments).

**"if this can happen in other countries, why not in Scotland?"**