



*'Voice of the Child'  
Under the Children  
(Scotland) Act 1995:*

*Volume 2 –  
Feasibility Study*



SCOTTISH EXECUTIVE

Working together for Scotland's children

**'VOICE OF THE CHILD' UNDER THE CHILDREN  
(SCOTLAND) ACT 1995:**

**GIVING DUE REGARD TO CHILDREN'S VIEWS  
IN ALL MATTERS THAT AFFECT THEM**

**Volume 2 – Feasibility Study**

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## **EXECUTIVE SUMMARY**

### **AIMS, OBJECTIVES AND OUTPUTS**

The feasibility study sought to examine how best to conceptualise and evaluate how decision-making in children's lives takes due account of their views, with particular attention to processes related to Part I of the Children (Scotland) Act 1995 and the implications for compliance with the UN Convention on the Rights of the Child (UNCRC).

The Children (Scotland) Act 1995 greatly strengthened the right and mechanisms for children to have their views considered in court decisions affecting them, in line with Article 12 of the UNCRC. For example, in considering whether or not to make an order on parental responsibilities (Section 11)<sup>1</sup>, children must be given an opportunity to indicate whether they have views. If they do, children must be given the opportunity to express them and the court must have regard to such views. These provisions are subject to practicality and the child's age and maturity.

Conceptually, the study investigated children's experiences from the perspectives of key participants – professionals involved in the processes, parents and, vitally, children themselves. Methodologically, the study sought to develop methodological tools and identify key issues for more in-depth research.

The study produced two outputs: (1) a 'mapping paper' providing a detailed analysis of the whole Act, accompanying regulations and guidance, and relevant reported case law; and (2) a report of the feasibility study itself, including literature reviews on relevant research and methodology. This report is output 2.

### **METHODS**

The study sought to involve 4 different groups of children: (A) children who were represented by a solicitor or curator *ad litem* in formal court proceedings on parental responsibilities; (B) children involved in formal court proceedings but not formally represented; (C) children who had experienced parental separation or divorce but were not involved in formal court proceedings; (D) children who had not experienced parental separation or divorce.

Four focus groups were undertaken through youth groups, involving 26 children. 17 children were interviewed individually (accessed through focus groups or solicitors). Vignettes and drawing methods were used. Children were aged between 8 and 18, with the majority aged 11-16, and some diversity by ethnicity, disability and gender. No group (B) children were recruited, perhaps because the 1995 Act had only recently been implemented and the access methods used. Children individually interviewed were asked to identify 3 'web' adults who had supported them in expressing their views. Four children's 'webs' were followed-up, resulting in 10 'web' adult interviews.

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<sup>1</sup> Within this report, such orders will frequently be referred to as 'Section 11 orders'. This is to distinguish between such orders and 'parental responsibility orders' under Section 86 of the 1995 Act.

Seven legal professionals were interviewed: 4 sheriffs; 2 solicitors; 1 family mediation respondent.

Ethical considerations were a high priority and are outlined in the full report.

## FINDINGS

As this was a feasibility study, the substantive findings must be qualified by the small number of informants. Some findings, however, have been widely confirmed by other research – these are listed separately below. Other findings are suggestive rather than conclusive and require further research.

### **Findings confirmed by other research**

*Lack of information:* Children and ‘web’ adults felt they lacked sufficient information, at a time and in a format that they needed. The media was the prime source of information; it was frequently misleading.

*Barriers to children’s expression of views:* Children’s involvement tended to be dependent on parents’ initiative. Children, however, were often hesitant to burden their parents further during parental separation or divorce. Children thought they would be asked to choose with which parent they would like to live.

*Opportunities for children to express views and receive support:* Beyond parents, older siblings, grandparents, friends and youth leaders were cited as important sources of advice and support. Teachers were considered an important potential source of information and support but children were wary of teachers’ inability to maintain confidentiality.

### **Findings confirmed by other research that have direct policy implications**

*Information dissemination:* Following the 1995 Act, the Scottish Executive commissioned the Scottish Child Law Centre to produce information designed for young people. The result was the magazine-style ‘You Matter’. In view of the Scottish Executive’s commitment to informing young people, researchers asked young people whether they had seen ‘You Matter’. Virtually none had seen it and most adults also lacked accurate information.

*Barriers to children’s expression of views:* Some children perceived lawyers to be unapproachable or feared that they would not be treated as equal to adults. This suggests a need for better information and for policies to raise the profile of family lawyers in their role as advocates for children. Training for lawyers in working with children could form a key component in raising the profile of representing children within the profession in general.

The majority of children was unfamiliar with courts and found them intimidating. Policies to improve children’s experiences of court should take into account the

suggestions of children who have given their views in court. These include a tour of the court before the hearing (note this would not typically be covered by legal aid), a video to watch to prepare them for the procedures and possible outcomes, and access to a companion (who is not directly involved in the case) when waiting for proceedings in court. Findings suggest that the provision of child-friendly places for interviewing children would improve their experiences.

### **Findings requiring further research**

*Improving access to information:* Effective information dissemination strategies need to be identified and enacted.

*Gender differences in communication and being legally represented:* Boys appear to find it less easy than girls to talk about their feelings and opinions on family matters. Fewer boys than girls appear to seek independent representation – although this would require quantification to confirm. If true, why such variation occurs, and potential barriers, require exploration.

*Barriers to children's expression of views:* While many children in the focus groups had experienced parental separation or divorce, none of these children had had their views 'formally' considered in court proceedings either by legal representation or using any other mechanism. Given the small numbers involved in this study, the question remains as to whether children are successfully using the range of mechanisms available (Form F9, letters and independent representation) when they wish to articulate their views. If they are not using these mechanisms, why they are electing not to express their views should be investigated.

No official monitoring is required of non-contested agreements and none was reported.

A friendly approach by lawyers and a relaxed atmosphere during consultation were critical to young people's positive experiences of independent representation. Children who were independently represented did not feel they had been offered a choice in solicitors but were satisfied with their solicitors. Given the limited number of and selection biases of children interviewed in Group A, further research is required to explore how lawyers and other representatives can effectively engage with children.

*Court and associated procedures:* The level of distress to children and parents caused by delays and prolonged legal proceedings calls for further exploration of the causes and potential remedies.

All children who had been independently represented by a lawyer reported significant benefits to their general wellbeing. Many felt that it was the first time their views were being heard clearly. Their parents and other adults confirmed these benefits.

*Impact of disability and ethnicity:* Findings from this study suggest that children with a disability and/or from a black and minority ethnic group may face particular barriers to

expressing their views. In regard to disability, this may primarily be due to adult ‘gatekeepers’ attitudes.

*Identifying mechanisms to keep children informed:* Children wished to be kept informed of the process and outcomes of the legal proceedings yet no official mechanisms exist. For this research, children asked for feedback every 2-3 months.

*Specialism and training:* All legal professionals consulted advocated further consideration of specialist training for legal professionals.

# CHAPTER ONE: INTRODUCING THE FEASIBILITY STUDY

## BACKGROUND

1.1.1 The Children (Scotland) Act 1995 brings together aspects of family and child care law, and amended adoption legislation. The Act deliberately seeks to incorporate the three key principles of the United Nations Convention on the Rights of the Child (UNCRC) – i.e. non-discrimination (Article 2); a child’s welfare as a primary consideration (Article 3); and listening to children’s views (Article 12) – into Scottish legislation and practice. In fact, in making decisions about parental responsibilities, courts must take children’s welfare as the paramount consideration, which is considerably stronger than Article 3.

1.1.2 The Children (Scotland) Act 1995 greatly strengthened the right and mechanisms for children to have their views considered in court decisions affecting them, in line with Article 12. The particular focus of this study was in family law proceedings (Part I of the 1995 Act). In considering whether or not to make an order on parental responsibilities (Section 11)<sup>2</sup>, children must be given an opportunity to indicate whether they have views. If they do, children must be given the opportunity to express them and the court must have regard to such views. These provisions are subject to practicality and the child’s age and maturity.

1.1.3 Various procedural mechanisms and legal provisions were enhanced or created. When a Section 11 order is sought, sheriff court rules<sup>3</sup> require a crave either for service on the child or for dispensing with the need for service. Schedule 4 of the Children (Scotland) Act 1995 added Section 2 (4A) to the Age of Legal Capacity (Scotland) Act 1991. This states that a person under the age of 16 has the legal capacity to instruct a solicitor in any civil matter, when that person has a general understanding of what it means to do so. Without prejudice to the generality of that subsection, a person twelve years of age or more is presumed to be of sufficient age and maturity to have such an understanding.

1.1.4 Several routes are now available for children to express their views:

- If children are served, they will receive a Form F9 requesting their views. The child may fill in the form and send it back to the court.
- The court may appoint a court reporter or curator *ad litem* to report on the child’s views.
- The Sheriff may express the wish to hear directly from the child and ask for the child to be brought to the court.

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<sup>2</sup> Within this report, such orders will frequently be referred to as ‘Section 11 orders’. This is to distinguish between such orders and ‘parental responsibility orders’ under Section 86 of the 1995 Act.

<sup>3</sup> Sheriff Court, Scotland, Act of Sederunt (Sheriff Court Ordinary Cause Rules) 1993, as amended by the Sheriff Court, Scotland, Act of Sederunt (Family Proceedings in the Sheriff Court) 1996

- A child may take independent legal advice. If this is done, there are several ways in which the child's views may be expressed. The solicitor may help the child to fill in the Form F9. The solicitor may write to the court on the child's behalf or may seek to have the child listed as a third party to the action.
- Alternatively, the solicitor may appear on the child's behalf at the Child Welfare Hearing to express the child's views. The Child Welfare Hearing was introduced following the 1995 Act, to provide an early hearing to resolve any disputed issues in family actions, particularly in relation to children.

When a child has expressed a view, the sheriff or someone appointed by the sheriff must record the view. The sheriff may decide whether it should be kept confidential. There is therefore no automatic right to confidentiality for the child.

**1.1.5** Beyond the court proceedings themselves, parents and others exercising parental responsibilities and rights must have regard to children's views in making major decisions about such responsibilities and rights (Children (Scotland) Act 1995, Section 6).

## **AIMS AND OBJECTIVES**

**1.2.1** The feasibility study sought to examine how best to conceptualise and evaluate how decision-making in children's lives takes due account of their views, with particular attention to processes related to Part I of the Children (Scotland) Act 1995 and the implications for compliance with the UNCRC.

**1.2.2** Conceptually, the study investigated children's experiences from the perspectives of key participants – professionals involved in the processes, parents and, vitally, children themselves. The research was initially framed under the following research questions:

1. How, and to what extent, are children's views given 'due regard' in legal proceedings? How does listening to children intersect with the principles of avoidance of unnecessary orders, avoidance of delay and the primacy of children's welfare?
2. How do court or other statutory 'events' impact on children's lives and particularly their experiences of expressing their views?
3. What structures and professional practice best meet the four principles mentioned in (1)? How might these differ by the child's background and characteristics, the context and the subject of the proceedings?

As exploratory research, the study also aimed to:

4. Develop methodological tools for accessing the views of children, those with parental responsibilities and professionals;
5. Identify key issues for more in-depth research.

Key outputs of the study are:

A. A ‘mapping paper’ that provides a detailed analysis of the Act, and accompanying regulations and guidance, asking the following questions:

- In relation to which decisions do the views of children need to be sought? Which children are included in any such requirements?
- What processes are specified for ascertaining children’s views? What weight is given to the child’s views?
- Is there provision for feedback to the child?

Relevant reported case law is considered. A summary of the mapping paper is provided in Annex 1.

B. This report on the feasibility study itself, including literature reviews on relevant research and methodology.

## **CHAPTER TWO: LITERATURE REVIEW ON CHILDREN'S VIEWS WITHIN PARENTAL DIVORCE AND SEPARATION**

*"It's important that parents explain what's going on ... otherwise the kid gets messed up." (Young Person, quoted in Save the Children Fund Scotland 1999: 16)*

**2.0.1** This chapter provides a short literature review on children's views within parental divorce and separation. It begins with a summary of the seminal literature review undertaken by Rodgers and Pryor (1998) and then concentrates on three sets of research studies with particular salience to the feasibility study's research questions.

### **MOVING THE DEBATE ON**

**2.1.1** A large amount of literature exists on the impact of parental separation and divorce<sup>4</sup> on children, which has encouraged a widespread concern for children's welfare. The seminal literature review by Rodgers and Pryor (1998) summarises the findings:

- Family dissolution is distressing for both parents and children. In the short-term, children are likely to experience unhappiness, low self-esteem, problems with behaviour and friendships, and loss of contact with extended family. Children are helped by positive communication and contact between themselves and both parents. Clear explanations about what is happening and why can be helpful, particularly for young children who can feel abandoned or fear being so.
- In the longer-term, children's outcomes are highly varied. Most children do not feel stigmatised by divorce. Adverse outcomes are twice as likely for children of divorced families as they are for intact families. However, only a minority of children experience adverse outcomes. These outcomes include:
  - poorer socio-economic status as adults;
  - increased risk of behavioural problems;
  - poorer performance at school;
  - more likelihood to report health problems;
  - more likelihood to leave school and home when young and more likely at an early age to become pregnant, co-habit, become a parent and/or have a birth outside marriage;
  - more likelihood to report depressive symptoms and higher levels of smoking and drinking and other drug use.

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<sup>4</sup> The phrase 'parental separation' can be used in two different ways: to present the separation process that may go along with the divorce 'event' or to refer to the separation of non-married parents. These differences are reflected upon in chapter 6.

- Parental separation must be seen as a process rather than an event; it cannot be assumed that parental separation is the underlying cause for such adverse outcomes. Further analysis suggests that factors affecting outcomes are *not*: the absence of a parent figure, a child's age, the child's gender, nor failing to maintain parental contact. Rather, critical factors are:
  - financial hardship and other socio-economic circumstances;
  - family conflict;
  - the ability of parents to recover from psychological distress;
  - multiple changes in family structure.

2.1.2 Rodgers and Pryor identify key gaps in available research: i.e., on the immediate impact of separation on children, the role of underlying factors (such as family conflict) on impact, and how family support initiatives and other interventions could reduce the risks of adversity for children.

2.1.3 Rodgers and Pryor's review was limited largely to research on parents' or professionals' perspectives or outcome evidence. Recently, 'childhood studies' researchers on divorce have criticised the past, protectionist perspective and look towards an alternative:

*"This perceived shift away from seeing the child as an inevitable victim whose welfare must be safeguarded, towards a framework within which the child is seen as a potentially active participant in his or her family's progress, is probably only slight, yet it is potentially important. It suggests that the child should have a voice of some sort and, in having a voice, that someone ought to be listening to and engaging with the child."* (Smart and Neale, 2000b: 163)

A growing amount of qualitative research, sometimes supported by quantitative data, explores children as 'social agents', as active participants 'caring' in their families as well as receiving care, and adult researchers prioritising their 'voice' in data collection.

2.1.4 A standard commentary in children's rights literature would be that children have few or no rights within the 'black box' of the private family (see Children's Rights Office 1996; Qvortrup 1994). While legally this has some validity (although with exceptions), the recent 'childhood studies' research would belie children's passivity within the family (Brannen et al, 2000). Further, it would suggest that, for many children, their families are a place of greater negotiation than other areas of their lives such as school (Mayall 1994, 2000). While 'young carers' may have grabbed the headlines, many children do have practical responsibilities within their families. They – and their parents – also report children taking on emotional responsibilities as well, to support their parents and/or to take care of their siblings (Brannen et al, 2000).

2.1.5 Three examples of recent 'childhood studies' research are explored here in-depth, as they directly inform and reflect upon the feasibility study's research questions:

(1) Butler *et al.* Research project title: *Children's Perspectives and Experience of Divorce* ([www.cf.ac.uk/psych/kids](http://www.cf.ac.uk/psych/kids) or [www.hull.ac.uk/5to16programme/](http://www.hull.ac.uk/5to16programme/))

2.1.6 Undertaken by an inter-disciplinary team at Cardiff University, this research project formed one of the 22 research projects of the Economic and Social Research Council's (ESRC) recent Children 5-16 Research Programme. As indicated by the project's title, the research sought first-hand accounts from children who had recently lived through their parents' divorce.

2.1.7 The initial sample (315 cases/families) was randomly drawn from six courts in South Wales and South West of England. Each case meet two criteria: the involvement of at least one child aged between 8-14 years and the granting of *decree nisi* between January and August 1997. Thus, the research team would be able to speak to children typically within 15 months of the *decree nisi* being granted.

2.1.8 For these 315 cases, the court sent out a letter to both parents, giving the option for more information, opting out or actively opting in. The letter made clear that researchers did not have their names but that this information was under the control of the courts. The court then provided names and contact details for those parents who had opted in or sought more information. After further negotiation with families, 70 families took part in the study, with 104 children aged 7 to 15 (and evenly split between boys and girls). The children were interviewed and completed the 'KIDs Activity Book', that gathered both qualitative and quantitative data. Further information was also gained from 70 resident parents.

(2) Lyon *et al* (1999) *Effective Support Services for Children and Young People when Parental Relationships Break Down – A Child-Centred Approach*

2.1.9 In 1998, the Centre for the Study of the Child, the Family and the Law (University of Liverpool) held three separate consultation days: one each for young people, welfare professionals (ranging from medical to social work to court welfare officers), and lawyers and judges. Young people were recruited from schools in the area, supplemented by other young people who had attended earlier Centre seminars.

2.1.10 120 young people aged between 13 and 21 attended their consultation day, at which 110 young people filled in a questionnaire. The numbers of professional questionnaires were: 77 from welfare professionals; 38 from lawyers; and 11 from local judges. As indicated by the title of the final report, the study aimed to research:

“ ... the support service needs of children whose parents are, or have been involved in private law proceedings, in order to establish service deficiencies and the most appropriate means of addressing the needs of children and the family.” (37)

(3) Smart et al. Two Research Projects: *Good to Talk? Conversations with Children after Divorce* and *New Childhoods: children and co-parenting after divorce* ([www.hull.ac.uk/children5to16programme/](http://www.hull.ac.uk/children5to16programme/))

2.1.11 Both projects were undertaken at the Centre for Research on Family, Kinship and Childhood at the University of Leeds. The first project, *Good to Talk?*, was funded by the Nuffield Foundation. Children were recruited through their parents, who had previously taken part of a study on post-divorce parenthood by Smart and Neale (1999). In-depth interviews were undertaken with 52 children, who were living under a variety of post-divorce household arrangements. These children had lived with divorced or separated parents for at least three years. The research sought to explore the children's current views and sense of wellbeing, how children feel about parental conflicts over their care and what part (if any) they might wish to have in legal proceedings.

2.1.12 The second project, *New Childhoods*, was also part of the ESRC 5-16 Programme. 65 children were involved between the ages of 4 and 17 (most were between 7 and 15 years), who experienced 'shared' parenting across households. The sample was recruited through contacts with parents in the workplace, community based projects and Family Court Welfare and Family Mediation Services. A conversational interview method was used, which included vignette activity sheets and drawings. The research explored children's experiences of being 'shared' across households.

2.1.13 The above projects were all undertaken in the context of the English and Welsh system. They thus have certain key differences from Scotland, which evidently influenced their data collection and recommendations:

- Children had to apply to the High Court in order to become party to private law proceedings.
- In public law proceedings, children were typically represented by both a guardian *ad litem* (representing their best interests) and a lawyer (usually instructed by the guardian *ad litem* on the child's behalf). A child could separately instruct a solicitor if deemed competent, although this was rare. This framework was often favourably compared to private law proceedings.
- English/Welsh law had no parallel to Section 6 of the Children (Scotland) Act 1995: i.e. that parents must give due regard to their child's views in any 'major decision' relating to parental rights or responsibilities.

Combined, these three research sets display remarkably common themes, which are explored below. Further, these themes are congruent with much of other recent research. Where relevant, other supporting references are provided.

## **Information**

**2.1.14** Children and young people felt significantly ill-informed in two ways. First, they lacked accurate understanding of the legal process surrounding divorce<sup>5</sup>. One in three young people participating in *Effective Support Services* wrote on the questionnaire that they had been affected by the divorce or separation of their parents. When asked what help they would have wanted, 24 of the young people responding out of 33 indicated a desperate need for more information and discussion with knowledgeable people. Over three-quarters of all young people believed there was a need for more information to be given to children in all private law proceedings (slightly more females wrote this than males). A young person, representing the general view, is quoted as saying that it was a “... basic right for children to understand their situation and to be able to have an informed opinion. The important thing is to explain the situation and process in simple terms so they can understand” (53).

**2.1.15** Further advice was given about information provision by young respondents. Information needed to be age-relevant and understandable for different ages. Too much information, or the wrong sort of information, would be counter-productive, confusing or distressing to children. Most felt that children and young people would most readily seek information first from leaflets and then seek further advice. *Effective Support Services* concludes that leaflets produced by the Department of Health (CAG 1-9) have failed to reach children and young people. An information service was required that did not have court proceedings as the sole trigger for information provision – information might be needed at any time before or after parental breakdown (“information before they needed it” (206)). Information leaflets needed to be widely available, where children and young people naturally go (school, youth groups, libraries, GP offices etc.) and on the Internet<sup>6</sup>. These leaflets should provide a *choice* of people the young person could then consult. Further, they should cover more than information for children whose parents are presently divorcing. Information should also address those children whose parents are separating but who were never married and/or for those whose parents broke up some time ago and the children are unhappy with their present parenting arrangements. Another particular information need was for children affected by domestic violence or other forms of abuse:

*“A child often doesn’t understand the circumstances of divorce, or what would happen if they reported abuse. They need to know that their interests are always kept at heart and are secure.” (Young person quoted in Lyon et al, 1999: 64)*

**2.1.16** More discussion should take place, and information be given, within the school curriculum<sup>7</sup>. Teachers, and other professionals working with children and young people,

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<sup>5</sup> Indicative research (Eltringham and Aldridge 2000) comparing 11-year olds knowledge of court and guardian *ad litem*s found that guardian *ad litem*s risked over-estimating children’s knowledge of the court system.

<sup>6</sup> An internet site for children experiencing separation and divorce was launched in 2001, by NCH at <http://www.itsnotyourfault.org>

<sup>7</sup> See Smith 2000 for similar conclusions.

should receive specific training. Children and young people are frequently described as ‘angry’ in the report, at the lack of information they received and the realisation during the consultation day that they could have had certain opportunities for their views to be considered.

2.1.17 As a result of this lack of information, much of children’s and young people’s knowledge and perceptions of legal proceedings came from the media, and in particular television. Josie, aged 12, is reported in *Children’s Perspectives* (Butler et al, 2000: 2) as saying: “I’ve seen it on Eastenders. I’ve worked it out from there! I know it from there and I know it from other TV series.” Such information, comment the research team, was rarely accurate.

2.1.18 In *Children’s Perspectives*, only one-fifth of children reported being told by their parents about the legal proceedings. But less than half of children (46%) said it would have been helpful to know more. Other aspects of the marriage breakdown were more concerning for children than the legal aspects.

2.1.19 Second, children and young people felt they lacked information on what was happening in their particular household, with their own parents’ relationship<sup>8</sup>. Few children in *Children’s Perspectives* felt actively ‘prepared’ by their parents for the separation. Libby aged 13 is quoted: “It was like, ‘Oh well, it’s not really your problem, you don’t have to go through all the divorce things.’ But no one seemed to realise I was sort of THERE. They were all concerned with what they were doing.” (Butler et al, 2000: 2) In their more general research, Brannen and colleagues (2000) find that children and parents express diverse views on involving children:

“...many mothers and some children were opposed to parents ‘burdening’ their children with their [adult] problems. .... there was no consensus, with children split between those who viewed such matters [as difficulties in parental relationships and financial problems] as personal and confidential and not to be disclosed, on the one hand, and those who considered that children needed to be prepared because they might be implicated in adults’ problems ...” (177).

What is unknown by comparing these two research studies is whether children more likely to recommend preparation if they have experienced divorce or separation than if they have not.

2.1.20 Parents, and particularly mothers, are typically the people in children’s and young people’s lives that they first turn to if they have a problem (Brannen et al, 2000). But this route to information, support and comfort may not be available for children and young people in situations of parental separation or divorce, because the parents themselves typically are under emotional stress: “My mum, because she was upset, she didn’t really

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<sup>8</sup> See Brannen et al, 2000, Smith 2000 and Dunn and Deater-Deckard (2001) for similar findings.

talk to me much. She was always upset and I couldn't really say to her, 'I'm upset, I need a really good chat with you'" (Louise, aged 12, quoted in Butler et al, 2000: 3)<sup>9</sup>.

**2.1.21** Children in *Children's Perspectives* had sought someone out but were concerned over who would find out and when. Not all friends were necessarily sympathetic: "Well, I've kept it a secret from my worst friend 'cos he'll probably tease me and all that. I told one of my friends and he called me 'Dad-less'" (Johnny aged 10, reported on page 2). More positively, Sandy spoke to her friend: "If I had a problem I'd talk to a friend because then they wouldn't tell anyone. Last year my friend was a great help because he convinced me to tell a teacher" (aged 13, reported in Smart and Neale, 2000b: 4). Grandparents were another valued source for children<sup>10</sup>. Siblings were sometimes helpful but often children saw their siblings as too young, too involved themselves, or experiencing the divorce differently – or the siblings did not get on well together.

### A say in their families

**2.1.22** Children wanted to have a say in decisions that directly affected them and they had frequently felt excluded from such decisions. *Children's Perspectives* reports that 43% of the children were asked their opinion on which parent they would like to live with. ([www.cf.ac.uk/claws/kids/change\\_and\\_balance.htm](http://www.cf.ac.uk/claws/kids/change_and_balance.htm)). Children who felt excluded expressed strong views, such as Damian aged 13:

- "They just said: 'You're doing this and: 'You're doing that' and I just kept to it.
- Would you have liked to be asked?
- I still don't think it would have changed their decision, but I would have liked to have been heard." (Butler et al, 2000: 2)

Such findings are as strongly stressed in the other two sets of research. Research more generally on children's views of family life similarly found children supportive of having a say (Brannen et al, 2000). Responding to a vignette on a father leaving the family home, 56 of 59 children thought the boy should have a say on which parent the boy lives with.

**2.1.23** Smart and colleagues (1999) uniquely address children's views about children making the 'wrong' decision in a vignette where a boy differs from his sisters on contact and residence between their parents:

*"They [the child respondents] can weigh up the importance of his [one of the siblings] having the choice to make the wrong decision against the fact that his mother will be upset. Most of them assume that, given time and more experience of his new situation, he will come to realise that he has made the wrong decision but they are prepared to allow him to come to that realisation rather than force him. They were also inclined to think*

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<sup>9</sup> See Smith 2000 for similar findings.

<sup>10</sup> See Dunn and Deater-Deckard 2001 for similar findings.

*that the disappointed parent should handle their own hurt rather than inflicting it on the child ... ” (374).*

This discussion concludes by commenting how courts and welfare officer can find it much harder to allow children to make ‘wrong’ decisions.

### **Information, Consultation and Representation**

2.1.24 In both *Good to Talk?* and *New Childhoods*, children do not want to be forced to choose between their parents, to make ‘autonomous choices’ about issues like residence and contact<sup>11</sup>. For example, Mark’s response to a vignette was:

*“I think he should have an opinion. I don’t think he should necessarily decide, he should get a say in it, he shouldn’t be left out, I mean it’s his life as well, he shouldn’t be stuck with someone he didn’t want to be with.” (aged 15, quoted in Smart and Wade, 2000: 3)*

Such decisions as choosing which parent to live with were considered to be a ‘huge burden’ to place on a child, especially a young child (Smart and Neale, 1999). The solution, according to the children, was for children to talk to both of their parents, or even hold a family conference, for negotiation and discussion. Whether or not there is an age dimension bears further scrutiny. The age of 10 was found to be significant in research undertaken by Buchanan and colleagues (in press), on welfare reporting in contested orders in regard to parental responsibilities. Those under 10 indicated they would prefer others to make decisions for them while children over aged 10 tended to want to be involved in decisions.

2.1.25 While Smart and colleagues explore the different ways children’s views can be considered within families, *Effective Support Services* does so outwith families. The consultation explored with respondents what children needed and wanted in regards to information, consultation and (independent) representation<sup>12</sup>. Children were more likely than any of the adult groups (welfare and legal professionals) to recommend all three in all cases.

2.1.26 Consultation was conceptualised as a step between information and representation. Children could be advised by information leaflets as to whom they could consult. Consultation was described as a way for children to acquire information and express themselves<sup>13</sup>. For example, one child wrote that consultation should be, “For the child to express the child’s fears, anticipation, and as a chance for the child to ask questions about what is happening and what will happen” (55). Young people “repeatedly emphasised that children must feel that they can decide when to leave the process of consultation as well as when to enter it, and that there should be no stigma attached to either decision that

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<sup>11</sup> See Smith 2000 for similar findings.

<sup>12</sup> Representation was not necessarily by a lawyer and it was explicit in the report that representation could/should incorporate advocating children’s best interests and not solely their views.

<sup>13</sup> See Smith 2000 for similar recommendations.

they might make” (210). Schools were a key site of referral. The need for such an intermediate – and confidential – step matches the findings of *Good to Talk?*<sup>14</sup>. Most children, write Smart and Neale, were not given an informed choice over referral to legal agencies and did not receive confidential counselling before being drawn into the legal process. Maya (aged 15) told of her experience:

*“This child psychologist stuff, the approach they had made me cry more. There were seven of them behind a mirror. I didn’t really talk much, ‘cos they included my mum and step dad ... I didn’t really find it helped.”*  
(quoted in Smart and Neale, 2000b: 3)

2.1.27 In responding to the questionnaire for *Effective Support Services*, four out of 10 children thought that separate representation of children should be provided in all cases, while one-quarter said it was not necessary in most cases. For those children who thought representation should be provided, one theme in their responses was a ‘balancing of power’: for example, “Not everyone can stand up for themselves, they need someone who they can trust and who fully understands what they are doing” (young person, quoted in Lyon et al, 1999: 56). Another theme was representation to ensure children’s interests were adequately considered.<sup>15</sup> *Effective Support Services* reports that children did not necessarily favour lawyers:

*“Those who had experienced family proceedings were not particularly complimentary about lawyers and, more generally, the views of young people appeared to be that specialist children’s advocates such as guardians ad litem or properly trained lawyers attuned to the needs and concerns of children, would do a much better job.”* (210)

Both Smart and colleagues and Butler and colleagues report that children were sometimes critical that their ‘evidence’ was used selectively by child welfare officers (reported in O’Quigley 2000).

2.1.28 Smart (2000), however, states that children involved in their research were *not* particularly interested in being heard in legal proceedings, but wished to be heard within their family. This difference might be explained by such factors as the different methods (a self-selected group of young people interested in consultation, in *Effective Support Services*, versus a sample recruited through parents and interviewed) or by different experiences (both studies by Smart and colleagues were children in post-divorce arrangements while young respondents in *Effective Support Services* were in a broader range of circumstances).

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<sup>14</sup> Scottish focus groups with children and young people who had experienced parental separation noted the importance of talking about how they felt but the difficulties in being able to do so because of “not being able to trust people” and “feeling vulnerable” (Mayes et al, 2000: 59).

<sup>15</sup> See Hunt and Lawson 1999 for similar views expressed by adult professionals.

## Difference?

2.1.29 The written reports by both the Leeds (Smart et al) and the Cardiff (Butler et al) teams give little sense of critical differences by gender, ethnicity, socio-economic background nor disability. As fairly recent research projects, it could be that such analysis has yet to be published publicly. Alternatively, it could be the teams' conclusion that the commonalities across children are more significant than differences by such characteristics. (Note that this question was asked verbally to both research teams in 2000 and this was confirmed at that time.)

2.1.30 One difference that is noted by *Children's Perspectives* is boys' difficulty in expressing how they felt, both due to inexperience and lack of emotional vocabulary. In its quantitative analysis, *Effective Support Services* does report differences by gender. In general, girls were more supportive of information, consultation and representative services for children. Girls were more likely to have experienced divorce than boys, while boys were more likely to have experienced parental separation (and no divorce) – whether this had any effect on responses is not discussed.

## CHILDREN'S VIEWS IN FORMAL PROCEEDINGS: ADULT PERSPECTIVES

2.2.1 In considering both the literature and her own interviews with child welfare officers, Trinder (1997) develops a much-quoted typology of childhood constructions within family proceedings: the advocate's child; the mother's child; the parent's child; and the worker's child. The 'advocate's child' is an independent active subject, whose interests are independent of and potentially in conflict with parents. Not listening to children in decision-making is harmful to them and, conversely, their participation is beneficial. Arguments are then made for independent representation of all children in private law proceedings and court welfare officers are seen as inadequate advocates for children. The 'mother's child' is defined, in contrast, with children having interests indivisible with their primary care-taker, their mother. Child welfare officers interviewed by Trinder most commonly used two other constructions. The 'parents' child' is framed around systemic family therapy, with the child as a junior member of the family unit. The officers thus seek to enhance parents' ability to make decisions on their children's behalf. The 'worker's child' similarly see children as vulnerable and dependent but children's interests are separated from their parents'. Particular attention is paid to the damage that divorce/separation can do to the children. While children may be asked their views, this is based on the language of needs rather than rights.

2.2.2 When Trinder considers the limited research available on how children see themselves as decision-makers, she concludes that all of the four constructions are too simplistic and deterministic: "The systemic approach runs the risk of excluding or stifling the voice of the child; the welfare-oriented and advocacy approaches may place undue pressure on the child to express an opinion" (302). She identifies two ways forward. First, that the court decisions themselves are merely symbolic and families do and will continue to make far-reaching decisions. Alongside procedural rights must be substantive rights for children, including counselling and support services. Second, children's desire to participate should be seen as highly individualistic and not simply 'read-off' against any

other structural factor like age or gender. Concluding, she writes “The ability to participate is different from the desire to participate” (303).

2.2.3 Children risk being seen as manipulated or manipulators, when they express views in family proceedings (O’Quigley 2000). For example, Sawyer’s research with child welfare officers found that children’s opposition to contact with a non-resident parent was attributed to pressure from the resident parent (unpublished, reported in O’Quigley 2000). This was seen as highly problematic for children required to maintain contact with abusive and violent parents (O’Quigley 2000). Sawyer also describes some children feeling misled and betrayed when the child welfare officers revealed their views, even though the officers had sought to be clear that they could not offer confidentiality<sup>16</sup>.

2.2.4 When considering formal processes for uncontested divorces in England and Wales, Murch and colleagues (1999, also reported in O’Quigley 2000) found adult-focused processes that did not ensure that children’s welfare was paramount. Data was collected from a selection of district judges (who must consider the ‘Statement of Arrangement’ forms for non-contested divorces), solicitors, parents involved in such situations and a survey of family mediators. General scepticism about the forms was reported amongst district judges and solicitors. Judges rarely took action after looking at the written details. Both judges and solicitors felt an independent check should be made on the arrangements for children, particularly as the form only required parental information on the children.

2.2.5 All the professionals perceived the importance of children’s wishes, feelings and welfare; none of the professionals, however, saw it as their responsibility to ensure that such matters were prioritised. When asked, only 17% of judges said they would consider speaking to a child, should the child write to the court requesting this. Reluctance was expressed because the judge would not be able to keep the child’s views confidential from the parents. Solicitors and family mediators saw it as their role to encourage parents to consider their children. Certain solicitors were not aware of the Legal Aid Transaction Criteria that children’s views on current or proposed arrangements should be considered where residence or contact is not agreed. Those who were aware of it relied on parents or the child welfare officer to relay the child’s views<sup>17</sup>. Only 40% of solicitors felt some responsibility for assessing the proposed arrangements. Ascertaining a child’s wishes was understood by most solicitors as asking the child about residence and contact. Only a few solicitors saw it as giving the child the opportunity to express wishes without being asked to make a decision.

2.2.6 In public law proceedings, Masson and Oakley’s (1999) small-scale research with children and young people, guardians *ad litem* and solicitors found that the later two groups sought to avoid children and young people instructing solicitors directly. They were reluctant to talk to children and young people about attending proceedings because the adults felt this would be negative for the children and young people. The children and young people were equally divided on whether they had wanted the opportunity to

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<sup>16</sup> See Clark and Sinclair 1999 for similar findings in regard to guardians *ad litem*, in public law proceedings

<sup>17</sup> See Piper 1997 for similar findings on solicitors’ views.

participate in formal proceedings. Arrangements were ‘haphazard’ in informing children and young people about the outcomes of cases<sup>18</sup>.

2.2.7 Limited research is available on children’s involvement in Scottish civil law proceedings, in part because procedures are relatively new under the Children (Scotland) Act 1995. The Scottish Executive has commissioned a research programme to evaluate the 1995 Act, with the feasibility study on child welfare hearings raising some significant findings.

2.2.8 Christie et al (2000) use a sample of 67 cases to survey courts processes, in their feasibility study on child welfare hearings. They found it difficult to survey processes for intimation on the children. Styles were used by many practitioners in preparing writs but the writs were not always edited to avoid confusion nor to tailor craves to match specific children. In three-quarters of the cases, craves were made to dispense with intimation on the child. This may be associated with the age of the children involved, with 73% of the children aged 8 or less and only 9% aged 12 or above. Unsurprisingly, then, only three Form F9s were filled in by children as part of the processes. Solicitors’ reports were common, followed by curators *ad litem*’s reports and then social work reports. No child attended one of the studied child welfare hearings nor spoke to the sheriff in chambers, in these cases. Questionnaire surveys of practitioners, however, suggest that this sample may underestimate children’s involvement. For example, 16% reported that children’s views had been submitted in writing in their most recent case and 19% wrote that the child had appeared.

2.2.9 The research team found considerable variation in practice, when directly observing child welfare hearings, on sheriffs’ approaches. No child was observed in the courtroom in observed hearings (20), although children were seen privately in the sheriff’s chambers in two cases.

## CONCLUSIONS

2.3.1 Children would seem to be disadvantaged in having their views considered, in both internal family decisions and in formal family proceedings. This disadvantage arises from numerous factors. It arises from children’s lack of information and counselling, parents’ desire to protect their children and children’s desire to protect their parents. Adults’ conceptualisations are criticised as too traditional and too fixed. Divorce and parental separation are conceived as irretrievably negative for children, only to be ameliorated by parents coming to a consensual agreement without court intervention. While children’s welfare may be paramount in particular decisions, both legal and mediation services are predominantly adult- (parent-) orientated and thus ‘adding in’ children’s welfare and views is problematic. Research would suggest that adverse outcomes are not inevitable. Divorce and parental separation would be better considered as a process than an event and thus decisions should be reviewable and fluid rather than fixed. A concern is raised that the preference for parental agreement can preclude adequate consideration of children’s views.

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<sup>18</sup> See Hunt and Lawson 1999 for similar findings.

## **CHAPTER THREE: RESEARCH METHODS**

3.0.1 This chapter describes the methods employed in this research, the rationale for their choice and the limitations posed on data generated. It therefore begins with a short overview of current practice in research with children on issues affecting their lives. Procedures used to select informants, gain access to informants and ensure ethical research are then described. The research team's reflections on the methodology's effectiveness are given in chapter 5

### **CONSULTATION WITH CHILDREN**

3.1.1 As outlined in chapter 1, this research is concerned with children's views and experiences of family decision-making, the legal services and their right to express a view in matters that affect them. Consultation with children is therefore central to its methodology. The consultation process comprised individual interviews and group discussions in which children were considered expert witnesses (in other words, as experienced informants in the process of parental separation), rather than sources of information on personal experience or feelings.

3.1.2 Research with children is a growing multi-disciplinary area of enquiry. Concern that children's voices have traditionally been 'muted' within the social sciences (Hardman 1973) has prompted reconsideration of approaches in research on childhood. Increasingly, research has aimed to understand and portray accurately children's perspectives and how these change with age and experience (Scholnick et al, 1999; Siegal and Peterson 1999; Smith et al, 1998; Wood, 1998). This research endeavour has led to the development and refinement of age-sensitive research methods that both facilitate children's ability to express their views and accurately represent these views in research (e.g. Christensen and James 2000; Graue and Walsh 1998; Greig and Taylor 1999; Holmes 1998; Lewis and Lindsay 2000).

3.1.3 The inclusion of children in social research has entailed a significant paradigm shift: namely the repositioning of children as the subjects rather than the objects of research (Christensen and James 2000). In this paradigm, children are recognised as social actors within families and communities who are influenced by, and have an influence upon, those around them.

3.1.4 Alongside the development of child-centred research methodologies, this last decade has seen significant change in social policy and professional practice towards listening to children and attending to their voices (Davie 1996; Lansdown and Newell 1994). Within the last decade, the full implications of the UNCRC and subsequent children's legislation have become evident in their demand to involve children both in terms of principle – their right to be heard, and practicalities – their views are vital to effective policy implementation.

3.1.5 As discussed in chapter 2, a recent review of studies on the impact of divorce and separation on children highlights the lack of attention paid by researchers to children's

perspectives and their rights (Rodgers and Pryor, 1998: 45). Only recently (e.g. Morrow 2000) has research explored children's notions of families and their roles within family decision-making.

3.1.6 Morrow (2000) suggests that one reason for such research gaps is inadequate research methodologies. A range of designs (longitudinal and cross-sectional) and methods of listening to children have been used extensively in research (for example, on the outcomes of divorce). However, these methods require careful modification to fit to the new research demands of exploring children's experiences and roles in the complex and emotional processes such as parental divorce. Even when the principle of listening to children is supported, actually doing so often poses difficulties (Davie, 1996; Dockrell et al, 2000; Masson, 2000).

3.1.7 These difficulties include the practical and ethical challenges in accessing children's views on what is considered to be a sensitive subject. Recent analysis of the methodological challenges in consulting children on family decision-making points out that "... researchers looking into this area now regularly report that parents are fierce gatekeepers and routinely say that they do not want their children to be 'upset' by being asked questions about divorce, contact and access ..." (Smart et al, 1999: 366).

3.1.8 Questions about access to and communication with children who have experienced parental separation or divorce were integral to the purpose and design of this study. Many challenges arise from the basic dilemma posed by adults' understandable wish to protect children from harm, while at the same time enabling children to participate in discussion and activity affecting their lives. As explained below, a number of different approaches to consulting with children were investigated, adapted and reviewed. Reflection on their effectiveness has produced recommendations for the main study (see chapters 5 and 6).

## THE RESEARCH PROGRAMME

3.2.1 The research was conducted by a small team of researchers based in the School of Social and Political Studies at the University of Edinburgh, the Centre for the Child & Society at the University of Glasgow, the Law Department of Napier University and Children in Scotland, Edinburgh, as well as two consultants. Begun in November 1999, the initial one year research schedule was extended to 18 months due to delays encountered in gaining access to informants with the relevant experiences, the resulting need to explore other avenues for consulting young people and the Research Advisory Group's decision to broaden the groups of children consulted.

### Research Design

3.3.1 Three distinct informant groups were consulted who have direct or indirect experiences of Scottish legal proceedings for children during parental divorce or separation. These were:

- children and young people<sup>19</sup>;
- ‘web’ adults: those adults identified by children as being significant sources of support during parental separation;
- adult professionals in legal and other support services.

Children were the core informants for this research. Most participated in focus groups (26 children) and a smaller number were interviewed individually (10 children who had participated in focus groups and 7 who had not). Ten ‘web’ adults were interviewed, in order to provide a comparative and complementary perspective to the children’s views. Seven adult professionals were individually interviewed, to gain the views of key professionals who were not necessarily named by children as ‘web’ adults (e.g. sheriffs). (See below for further elaboration of methods.)

3.3.2 As a feasibility study, a large or representative sample of informants was not undertaken. Rather, the study sought to identify and test both substantive and methodological issues for a full study. Sampling procedures and issues of access and consent are outlined in the following section.

### **Child Sample Selection**

3.4.1 In accordance with the research aim, the study sought to consult with a limited number of children with a wide range of experiences. The children consulted belong to the following groups:

		# children consulted
A	Children who were represented in legal proceedings regarding parental responsibilities orders, either by independent legal representation or by a curator <i>ad litem</i>	5
B	Children whose views were taken into account by the court, in regards to a section 11 parental responsibility order, in a way that did not involve direct representation (e.g. only via written views, spoke to sheriff in chambers)	0
C	Children who have experienced parental separation but whose views were not directly considered by the court (either because intimation of the action had been dispensed with or the parents had reached an agreement concerning children and had not applied for a parental responsibilities order)	13
D	Children and young people living in families who had not experienced parental divorce or separation	9

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<sup>19</sup> All the young informants were under 18 years of age and are therefore ‘children’ according to the Children (Scotland) Act and the UNCRC. Many informants, however, would no longer consider themselves ‘children’. With this caveat ‘children’ is commonly used to ease reading of this report.

	Children who did not tell the research team whether they had experienced parental separation and/ or divorce.	4
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(Note: initially, the feasibility study concentrated on group A. This was expanded by the Research Advisory Group to groups B-D. Lack of access to court records was the primary reason why no children from group B were consulted. Further details are found in chapter 5)

3.4.2 Existing research indicates that children's participation in family decisions varies considerably in both degree and nature, with demographic characteristics (Morrow 1998). Thus, the sample was selected to incorporate diversity in age, gender, region and ethnic background.

3.4.3 Children and young people consulted were aged 8 to 18 years. The majority fell within the 11-16 year age bracket. Although gender diversity was achieved for the whole sample, this was not the case for group A (those who have been formally represented), who were all girls. A limited amount of regional diversity was achieved through the participation of young people from Glasgow and different localities in Edinburgh. However all informants are urban and the study lacks a rural perspective. Ethnic diversity was sought and the study includes the perspectives of a small number of children from ethnic minorities who belong to group D above.

3.4.4 A full demographic description of the child informants is given in Annex 2.

### **Accessing children and young people**

3.5.1 Following initial contact with interested solicitors, a decision was made to access children and young people belonging to group A through solicitors. A list of solicitors who were known to have represented children was obtained from the Family Law Association in Scotland. Solicitors from this list were contacted and asked to help facilitate interviews with any of the relevant children. A script was prepared and sent out to each solicitor alongside some background information about the study.

3.5.2 This method ensured that confidentiality between the child and their solicitor was not broken and allows the child to decline contact by the research team. However, this method relies upon the co-operation of solicitors who work under considerable time pressure. Owing to the fact that fewer informants were recruited via solicitors than expected (see chapter 5 for discussion), the following additional modes of access were considered and the final one pursued.

#### *Court records*

3.5.3 Butler and colleagues (see chapter 2) had successfully recruited children who had recently experienced parental divorce, through court records in Wales and England. The research team were given permission by the courts to access court records and identify potential informants. Both parents involved were written to, by the court, informing

parents about the research and given three options: to decline to participate in the research; to request further information; or to agree to participate. The letter was clear that researchers did not have their names but that this information was under the control of the courts.

3.5.4 Of the 315 cases written to, approximately one-third requested further information or agreed to participate. The court deleted all other records and gave the remaining contact information to the team. The research team then approached the residential parent. After further negotiation with the families, 70 families were involved in the research with a total of 104 children. It took approximately 1 year from initial access to court records to final recruitment of children. Out of 315 cases written to, 70 families eventually participated. (Information from personal communication with member of research team.)

3.5.5 To test the viability of this method for Scotland, the Scottish Executive sought to organise access to court records. Access was not granted so this method remains untested.

### *Schools*

3.5.6 Schools were not approached for this feasibility study for two reasons. First, permission to access schools can take a long time and require several gatekeepers (the education authority, the headteacher and parents). Second, researchers have raised some problems of consulting with children in school. Research on family issues within school can be uncomfortable for both children and school staff when it oversteps the line that divides 'home life' from 'school life' (Qvortrup, 2000). Due to school culture and routines, children may find it difficult to refuse to participate or they may perceive the research to be an exercise in giving a 'right' answer, as in a school test (Morrow, 1999).

### *Youth groups*

3.5.7 Youth groups were chosen as contact points with children and venues for focus group discussions. Youth groups have several advantages over schools, as places to access potential child informants. Youth groups typically have procedures already negotiated with parents and children, for children to participate in activities; thus, as with schools, a framework exists for researchers to gain the necessary adult consents as well as children's consent. Children tend to have more control of youth groups than school activities and thus arguably children are more likely to feel able to say no to participating in research. Further, attendance at youth groups is not mandatory and children can 'vote with their feet' and easily not participate in research. Certain youth groups have members who do not attend school. On the other hand, not all children go to youth groups and any sample thus contains certain biases.

3.5.8 Recruitment of youth groups was conducted by telephone and letter. Four groups were selected on the basis of their membership profile and enthusiasm to participate (see sample in Annex 2). For example, a youth group was sought that would have black and minority ethnic children, those with high numbers of boys, and at least one group that

was not funded by community education (and thus more likely to have children with higher socio-economic status than other youth groups).

### **Obtaining Informed Consent and Effective Participation**

3.6.1 An important question for researchers engaging in a consultative study with children is: how they can enable children to be heard without exploiting or distressing them? (Alderson 1995) By virtue of their age and status in relation to the researcher, children often attempt to comply with perceived research demands rather than offering their ‘true’ perspective or view. Furthermore, children are more vulnerable to being manipulated or taken for granted during the research process. For these reasons, the study was conducted under the following principles:

- informed and on-going child consent;
- promise of anonymity in research reporting;
- researchers would keep primary data securely and not reveal informants’ names to others – there were limitations to confidentiality should someone be at risk of ‘significant harm’ and these were stated in all consent communications;
- provision for children to opt out of the research at any point;
- provision for children to contact the researchers and ask questions at any point;
- regular feedback on research progress and findings;
- opportunity to express views on the research methods and design of future studies.

In order for potential informants to give informed consent, they must fully comprehend the purpose and nature of the research. Effective communication with children of different ages is therefore critical, including the style of initial interaction, the design of information leaflets and time allowed for recruitment (Alderson, 1995; Greig and Taylor, 1999). The following paragraphs outline the steps taken to provide information to children and adults who were potential informants, and to obtain their informed consent.

#### *Information for Children*

3.6.2 The literature shows that considerable preparation is required to tailor information in ways to make it as accessible as possible to children of different ages and abilities. The size of the document, use of colour and proportion of words to pictures can all affect children’s enthusiasm for reading and ability to absorb the information (Alderson, 1995). All children in this study were able to read, but it should be noted that very young children and those with reading difficulties require an alternative system for explaining the research, for example through drawings or a tape recording (O’Kane, 1998).

3.6.3 Information leaflets for children were designed on the basis of lessons learnt in other studies and modified during fieldwork in response to feedback from informants in the early stages. The first set of leaflets (see Annex 3) was A4-size, brightly coloured and included many cartoon-style pictures. The text was written in a question and answer format to present the information in ‘bite-sized’ chunks, and used a personal approach (for example, first person pronouns). To ensure that children could ask questions at any

point, the leaflets contained the researchers' names and contacts as well as the name of the sponsors.

3.6.4 Children interviewed in the early stages of the study told us that they enjoyed the colours but found the size daunting and the layout slightly confusing<sup>20</sup>. The second leaflet was therefore smaller (A5) and had a simpler layout (see Annex 3).

*Appropriate communication with adult 'gatekeepers'*

3.6.5 The term 'gatekeepers' refers to people who are attempting to safeguard the interests of children and were conduits to accessing child informants.

3.6.6 *Solicitors:* As stated above, initial letters and then conversations were held with interested solicitors. Solicitors were then provided with a 'script' from which they could discuss the research with potential child informants. There was the suggestion of possible resistance to the scripts, as some solicitors felt that these indicated a lack of appreciation for their work pressures. Solicitors were also provided with information and consent forms they could provide to interested children.

3.6.7 *Youth Group Leaders:* The research team followed recommendations from previous studies in contacting youth groups. In their experience, preliminary discussion by telephone followed by a letter works well for youth group leaders who have little spare time. Face-to-face contact with the youth worker and youth group was also found to be an important step in building trust and rapport prior to conducting any research.

3.6.8 *Parents:* Children's consent was central and essential to their participation in the research. Obtaining parental consent for their children's participation differed by the group of children.

3.6.9 In recognition of the level of competence required to take part in legal proceedings, children in Group A who had been independently legally represented were considered to have sufficient understanding to give consent themselves. These children were asked if they would wish their parents to be informed about the research. All children agreed to their parent with whom they lived informed and the research team sent parents information (see Annex 3). Children in groups C and D were accessed through youth groups, which had different requirements for parental consent. Some groups had obtained general consent from parents for their children to participate in youth group activities and did not consider it necessary to gain specific consent for this research. Other groups required parents to provide specific consent for the focus groups and the research team provided these youth group leaders with information and consent forms for parents. (For further discussion, see chapter 5.)

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<sup>20</sup> Further information on children's views of the research materials is given in chapter 5.

### **Confidentiality, choice to participate and feedback mechanisms**

3.7.1 In research on sensitive topics, confidentiality is particularly important for both children and adults. Before each interview and focus group the researchers explained that names would not be used in the reports and that the content of the transcripts would not be looked at by anyone outside the research team. Researchers then sought permission to record the interview or focus group using a walkman-sized tape-recorder and external microphone. Confidentiality, however, was not absolute (if someone was at risk of ‘significant harm’) and informants were informed of this limit.

3.7.2 Informants were also informed that they were free to leave a focus group or terminate an interview at any point. Consent to participate in subsequent research activities was actively sought rather than the assumption made that those unwilling to take part would opt out. At the end of each period of data collection, researchers reiterated their willingness for contact from informants at any point and ensure that contact details were available to them.

3.7.3 Past research with children has been criticised for taking children’s participation for granted and failing to recognise the investment of time and energy made by children. Financial compensation for children’s time was not considered necessary in this study because the consultation was for short periods (maximum 1.5 hours) and took place within youth group time or a time chosen by the child.

3.7.4 Feedback was provided by one page summaries of research progress to date, that were sent to informants every 2-3 months during the data collection period (three in total prior to final feedback on the research findings, see Annex 5). In order that the information was accessible to children, the sheet was word-processed using every-day language, bullet points and brightly coloured ink. Researchers also sought feedback from informants during interviews on their views of the methods used and recommendations for future studies. Final feedback was provided in written form to all informants. For those youth groups interested, research team members will provide oral feedback as well.

### **Selection of ‘web’ adults**

3.8.1 The sample of ‘web’ adults comprised 12 adults who were identified by 4 of the children interviewed (2 girls and 2 boys) as the most important sources of support during the separation and/or divorce period (see Annex 2 table 4 for demographic profiles). Children gave permission for these adults to be approached.

### **Selection of key adult professionals**

3.9.1 Consultation was undertaken with 7 professionals who play key roles relating to children during the process of separation and divorce (see Annex 2 table 5 for demographic profiles):

- in area A, 1 sheriff specialising in family law proceedings and 1 sheriff who did not; repeated for area B;
- 1 family law solicitor in area B;

- 1 CALM-accredited solicitor in area A<sup>21</sup>;
- an employee of Family Mediation Scotland<sup>22</sup>.

Anecdotal evidence suggested that practice differed considerably between courts and between sheriffs and legal practitioners. For this reason, more than one sheriff was interviewed from more than one area. Sheriffs were identified through discussion with the Sheriffs Principals for the respective area. The two solicitors and an employee from Family Mediation were approached directly on the basis of their direct experiences of working with families during separation and divorce.

### **Choice of research tools**

3.10.1 The research questions asked by the feasibility study suggest qualitative rather than quantitative methods, on two grounds. First, the study needed to identify what issues required exploration in a full study. A quantitative approach would risk ‘shutting down’ this exploratory agenda. Second, the research questions sought in-depth information on children’s views in legal proceedings, cross-referenced to ‘web’ adults’ in a selection of cases, that is best captured by in-depth methodology (rather than, for example, a survey).

3.10.2 Highly structured methods can sometimes omit topics that informants consider important and are often used in a way that infers dominance to the researcher and make informants uneasy (Alderson 1995). Hence, the study adopted semi-structured methods that presented opportunities for research informants to share opinions and experiences and to add in their own issues.

3.10.3 While individual children differ in their preferences for visual or oral methods, the appropriateness of research tools is generally associated with age (Smith et al, 1998; Greig and Taylor, 1999). This study involved children aged above 8 years of age and so relied mostly on oral communication and a conversational style interview.

3.10.4 This study approaches children as ‘expert witnesses’ in the sense that they are experienced individuals and family members in the process of consultation around divorce. The research methods are therefore designed to elicit their opinions of this process, rather than personal experiences. The avoidance of direct questioning about personal experience reduces the likelihood of offending or upsetting informants. It is, however, a natural tendency for children, and especially younger children, to draw on personal experience due to limitations to their cognitive capabilities including their ability to reason hypothetically (e.g. Lee, 2000).

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<sup>21</sup> CALM stands for ‘Comprehensive Accredited Lawyers Mediators’. These lawyers have experience in family law proceedings along with intensive training in mediation skills. Such lawyers can help parties consider all options and work out mutually acceptable arrangement. Parties are not bound by arrangements unless they have taken independent legal advice and signed a written agreement.

<sup>22</sup> Family Mediation Scotland is a voluntary organisation that supports affiliated services throughout Scotland. Family mediation is a voluntary process where a trained, impartial third person assists those involved in family breakdown – and in particular separating and divorcing parents, to communicate with one another and to reach their own agreed and informed decisions. Any decisions are not legally binding.

### *Interviews with children*

3.10.5 Interviews are used extensively in research and therapeutic activities with children and adolescents (e.g. Breakwell, 1995; Greig and Taylor, 1999). Semi-structured interview methods allow the researcher to be responsive to children's answers and probe for further information and explanation of children's responses. This method requires a high degree of research training and experience to create a rapport with the child, to minimise interviewer effects and to avoid making the child feel vulnerable or uncomfortable.

3.10.6 An interview guide was devised using the combined experience of research team members and suggestions from the Research Advisory Group. The guide included a further opportunity to secure informed consent and suggested questions under three main topics (see Annex 3). It was not intended that each interview should adhere strictly to the order or content. Rather it was expected that children would give views on the topics as they emerged in conversation with the interviewer.

3.10.7 Prior research has proven the value of conversational style interviewing in children's everyday language, that allows children to frame ideas in a manner that makes sense to them (Breakwell, 1995). Care was taken to avoid using unnecessary technical vocabulary, while at the same time exploring young people's familiarity with legal terms and procedures. Permission to record was sought from children prior to the interview and was granted by all informants. Interviews lasted approximately one hour and were conducted in the place nominated by each child: for most, their own home; for some, the youth group premises. Children who had agreed to be interviewed were also asked whether they would like someone to accompany them in the interview. In two cases, siblings asked to be interviewed together.

### *Drawings*

3.10.8 Methods with a visual dimension have often been found to be effective in research with children and children's drawings are often used to supplement interviews or provide access to key ideas held by children. Drawing has been extensively used in qualitative research with young children and those with special needs (e.g. Eiser and Twamley, 1999).

3.10.9 During the final section of the interview, child informants were asked to identify the three adults who were the most important support to them during the separation and/or divorce period (referred to as 'web' adults). They were given the option of describing these three people or drawing a web diagram, starting with themselves in the middle with lines to drawings of the three 'web' adults. Some younger informants enjoyed this activity but the vast majority of children elected to continue the conversation and describe these three people verbally.

### *Focus Groups*

3.10.10 Focus group methods have been used widely in research with adults (Millward, 1995) and have recently been employed to investigate children's perspectives. They are

an open forum in which informants can contribute if and when they wish and hence divert the focus from personal matters to general norms, beliefs and representations (for example, children's ideas about lawyers and what they do for people).

3.10.11 Focus groups were conducted in 4 youth groups with varying membership profiles (see demographic characteristics in Annex 2). The purpose of these discussions was firstly, to provide an open forum in which issues relevant to children concerning the right to be heard in family decisions could be aired and, secondly, to facilitate recruitment of children willing to take part in one-to-one interviews.

3.10.12 Youth groups were identified through the Children in Scotland (CIS) Database and the Yellow Pages. Advice was sought from CIS researchers who have recently been working with youth groups and a local area youth co-ordinator. Youth groups were avoided that felt 'over-researched' and approaches made to youth groups that might be amenable to participation. Following an initial approach by telephone, the research team wrote to interested youth group leaders to inform them of the research aims and invite participation. Practical arrangements were then made with consenting youth group leaders.

3.10.13 The size of the focus groups ranged from 4 to 9 child informants, plus 2 researchers (one to facilitate discussion and the second to look after technical aspects). Prior research with children aged 8-12 years indicates that the optimum size of focus group is 4-6 individuals and that this increases to approximately 8 individuals when working with teenagers (Maclean et al, 1998).

3.10.14 A focus group guide was prepared that included warm-up activities, potential questions for use in probing the 3 general topics, and 2 activities to stimulate discussion (see Annex 4). The first of these involved the circulation of a number of information leaflets and posters designed to inform children about family and social issues. One of these was 'You Matter', explaining the Scottish legal and court system in regards to parental separation or divorce and children's rights within that, funded by the Scottish Executive. Informants were asked to identify information they liked or disliked and give reasons for their choices. The second activity was based on a vignette. In 2 focus groups, an additional activity included brainstorming about children's perceptions of lawyers and representing these in words and drawings on a large page of paper.

3.10.15 The use of 'vignettes' or short ethical dilemmas proved productive in recent research on children's perspectives on post-divorce parenting (Smart and Neale, 2000a and b). The vignette used was a letter written by a fictitious young person to an agony aunt expressing concerns about his parents' separation (see Annex 4). Informants were asked what they thought this young person would be worried about and what their advice to him would be.

3.10.16 The focus groups lasted approximately one hour. At the close of the discussion, informants were handed a colourful questionnaire on which to record basic demographic

characteristics, their opinions on children's rights to be heard, and whether they wished to take part in a one-to-one interview (see Annex 4).

#### *Interview methods with adults*

3.10.17 An interview guide was designed for 'web' adults to elicit their views on the same sets of issues discussed with child informants and to record a factual 'pen-sketch' of the key events including legal proceedings (see Annex 4). Once children had consented to researchers contacting 'web' adults, these adults were contacted by telephone and letter to seek their consent and arrange an appropriate venue and time. All family members and friends elected to be interviewed in their own home and all professionals chose to be interviewed in their offices. Interviews were recorded with permission of the informant and lasted between one hour and one hour 45minutes.

3.10.18 While 'web' interviews were conducted by the same researcher who spoke to the relevant child (RB or KT), the legal professionals were interviewed by a third member of the research team who has considerable experience in the professional legal field (KM). An interview guide was designed to draw out experiences and views on the process and procedures of representing children during parental divorce (see Annex 4). All informants consented to recording, and the full transcriptions of each interview were sent to the respective informants for approval or amendment where necessary.

#### **Steps in Data Analysis**

3.11.1 A summary document was written by the interviewer as soon as possible after each interview or focus group. This document was recorded the logistics of the interview, key thematic points and any methodological issues.

3.11.2 Full transcriptions were made of each interview with children and 'web' adults in order to capture the precise content and mode of expression. Using the tapes, comprehensive reports of interviews legal professionals were produced and sent to informants for feedback. The summary documents, full transcriptions and reports were used in the analysis process.

3.11.3 In order to ensure rigour, initial thematic data analysis was conducted independently by three of the research team (KT and RB on data from children and 'web' adults, and KM – with input from KT and RB - on data from professional adults), who then consulted to compare findings. The subsequent analytical process was:

1) A tally of children's responses on the following topics:

- sufficiency of information for children;
- how many children have seen 'You Matter' before;
- views on courts and lawyers via the media;
- the age young people should be involved in decisions affecting their lives;
- whether an adult's gender is important when deciding whether to speak to an adult;
- who are children's 'web' adults;

- children's knowledge of their right to independent representation;
- how many children felt they had a say in decision-making about their lives;
- concerns of children when their parents split up.

2) Comparative analysis of children's responses to assess the weight given to different issues.

3) Analysis of the different perspectives of children, 'web' adults and adult professionals on the key substantive issues around children's opportunities and barriers to express their views, in order to understand the underlying reasons for these differences.

4) A methodological review to identify connections between the methods used and quality of data produced, with a view to forming recommendations for the full study.

The psychological consultant (JW) considered a selection of transcripts and the methodology used.

### **Additional ethical considerations**

3.12.1 Ethical considerations concerning sample selection, methods, consent, anonymity/confidentiality and feedback have been addressed above. In addition, the research team worked to the Code of Ethics produced by the Centre for the Child & Society, University of Glasgow (available on request).

## **CONCLUSION**

3.13.1 The feasibility study sought to follow good practice in consulting with children and adults. Qualitative methods were considered appropriate for the research questions asked and the exploratory nature of the feasibility study, although certain responses could be quantified. Ethical considerations were a high priority, particularly given the potential sensitivities of the topic. More than one method was used (interviews, focus groups and within these drawing, vignettes, and semi-structured questions) and information gathered from a range of perspectives (children, 'web' adults and key legal professionals). The next chapters describe the findings and methodological reflections.

## **CHAPTER FOUR: REPORT ON FINDINGS**

4.0.1 Children are the core informants of this feasibility study. As such, the presentation of findings in this chapter follows the major themes raised by the children. The views of ‘web’ adults and legal professionals are interwoven with these.

4.0.2 These findings cannot be considered conclusive, as they represent a small number of informants. Findings raise significant questions about (1) children’s experiences, (2) present practice in legal procedure, and (3) mechanisms that enable children to express their views. A number of the findings match other research with children, as described in Chapter 2. A summary of these links is made in this chapter’s conclusion. They also suggest areas for further research, as described in the chapter 6.

### **INFORMATION ON RIGHTS AND THE LAW**

#### **Extent of knowledge**

4.1.1 Virtually no child knew that they have the right to independent representation and to instruct a lawyer. About half did not know of the distinction between civil and criminal law. Of those who knew the basic workings of civil law, the majority was aware that legal aid is available.

4.1.2 None of the child informants felt that sufficient information was available for children. Most children interviewed felt that much could be done to improve their access to legal matters and had various suggestions as to ways of doing this (see below). The following extract from the end of an interview with a 14-year-old boy demonstrates the need for information expressed by most children:

*INTERVIEWER: “Is there anything else you want to cover? Any question that’s occurred to you?”*

*BOY 14 YEARS: “How would you go about getting a lawyer? That’s really it. You see I don’t know how you would do that. That’s probably what you need to express - like say you’re putting on a billboard – ‘Did you know young people can have lawyers?’ - and it’s just a big question...It’s in big board writing and a big question mark and then you should put loads of small writing underneath...such as where to go ....just knowing – ‘oh I can have a lawyer’ isn’t really enough as I’d need to know what do I do about it. So you need to say – ‘Young people can have lawyers. If you have any queries phone such and such a number or phone Legal Aid or someone like that for more information.’”*

4.1.3 The children who had had their own lawyer had been informed of this possibility by parents and solicitors acting for a parent. One girl (age 12 at the time) reported having no choice in whether she should go to court as her father said that she had to attend, and so she did.

## **Media influence on children's perceptions**

**4.1.4** Almost all the child informants reported having formed their ideas about lawyers and courts from television programmes. Personal accounts from family members and friends about their experiences with lawyers were also an important influence on children's perceptions. Their perceptions fell at two extreme ends of the scale: some considered lawyers to be helpful as they listen to people, can protect a young person from going into public care and can assist parents in sorting out a disagreement. More than half of focus group participants held largely negative views of lawyers as 'nosey' in their wish to know more than what is relevant, unapproachable ('strict' or 'scary'), and motivated by the potential to earn more money. Several young people in their mid teens felt that lawyers could not be trusted to maintain confidentiality ("as its all money to them") and that lawyers are likely to treat children "as second class citizens". One boy feared that a lawyer would alter what the child wanted expressed in court in order to look good and win the case.

## **Official sources of information**

**4.1.5** The only children, including those who had had their own lawyer, to have seen a copy of 'You Matter'<sup>23</sup> prior to this research were members of one youth group. These children had seen it on the stand amongst other leaflets but had never read it. The legal professionals consulted were also largely unfamiliar with 'You Matter'. One legal professional interviewed spoke of a Sheriff who regularly hands it out to children and commented on such action as unusual but positive.

**4.1.6** A few children remembered brief discussions during school Personal and Social Education (PSE) lessons on the legal processes surrounding parental divorce. The majority felt that schools should do more to inform young people about the available support provisions. Two teenage girls felt that teachers should do a series of lessons on these issues and 2 teenage boys suggested that lawyers should come to schools to explain what they do and how they can assist children.

**4.1.7** While some children said that they would happily look for a lawyer in the Yellow Pages, most said that they would ask their parents or seek advice from a teacher or youth group leader. A number said that they would not know where to go to get a copy of 'You Matter' nor any other written information.

**4.1.8** The places that children recommended as distribution points for 'You Matter' and other information were schools (most suggested the Guidance room), youth clubs, fast-food restaurants, skate parks, libraries, doctors' surgeries or clinics, town halls or community centres, the police station and the internet. Several children mentioned that parents needed to be better informed about children's rights to legal representation and suggested that lawyers could give parents a copy of 'You Matter' to pass to their children.

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<sup>23</sup> As described in chapter 3, 'You Matter' is printed information explaining the Scottish legal and court system in regards to parental separation or divorce and children's rights within that, funded by the Scottish Executive.

## **Format/Style of information**

4.1.9 Both child informants and ‘web’ adults liked the bright and interactive format of ‘You Matter’. Most felt that the ‘real life stories’ and magazine style made it accessible. A small number thought that it was “a bit too like a school book”. Some children under 12 years, and those in their mid teens with reading difficulties, thought that there should be more pictures and less writing.

4.1.10 Adult professionals and child informants commented that ‘You Matter’ was targeted at too wide an age range. One solicitor observed that 11-14 year olds respond well to ‘You Matter’ whereas it is not so appropriate for those over 14 years. Three girls who had had their own lawyers gave detailed opinions of the need for 2 different types of leaflet for younger and older children. In a 13 year old girl’s opinion, the leaflet for younger children should be simple and clear to reassure children that a lawyer is there to help and explain what to do if they want more information. Like younger focus group participants, she felt that large writing and lots of cartoon-style pictures should be used for information for children under 12 years. In her opinion, the leaflet for older children should contain more precise guidelines on a child’s rights, responsibilities, and what happens in a court hearing. The second 13-year-old girl suggested that a small leaflet with answers to basic questions (Who? What? Where? When? Why?) was needed for young people considering having independent representation. The third girl recalled how useful a leaflet explaining the basic court proceedings and a ‘who’s who’ was for her when she was attending court for another reason. She suggested that a similar brief guide be prepared for children who will themselves be attending or who are briefing a lawyer to speak on their behalf.

## **Adults as gatekeepers to information**

4.1.11 It is abundantly clear from focus group and interview data that adults are the primary sources of information for children on family matters. Many child informants named parents as their first source of information but added that parents can be difficult to talk to about sensitive matters relating to their separation. Children who had experienced divorce were aware of their parents’ emotional hurts and fragility. Several children thought that it would be impossible to talk to a parent about their feelings and rights because this would be interpreted as blame on the parent or as taking sides, neither of which were what the children wished to express.

4.1.12 Close friends of parents, referred to as ‘aunties’, ‘uncles’ or ‘step-parents’, are common supports to children during and after parental separation. Reasons include their knowledge of the situation, non-family status and relationship with the children since they were young. One 14-year-old boy thought a parent’s friend an ideal person to talk to because:

*“... she can talk to your mum without getting upset like you would, so it’s like having someone else to express your views for you. And she’d want the best outcome for your mum too because they’re close friends.”*

4.1.13 One child informant (who had her own lawyer) explicitly stated that parents should be better informed on children's legal rights so parents can explain them to their children and help them make decisions. Several children who had experienced divorce but had not had independent representation regretted the fact that they had not spoken to their parents or sought information. Hence children are typically not receiving adequate or accurate information from parents nor wider family members. Two thirds of 'web' adult relatives, friends and professionals said adults had insufficient information on children's rights to express their views and the mechanisms available for this.

4.1.14 In discussing access to information, children (particularly those under 13 years) stated that they would want to read through 'You Matter' or any other literature with a parent or close adult relative or friend. The knowledge of these adults and their confidence in passing it on to children is therefore a key factor in children's access to information on their rights. One girl aged 15 thought that children find that communication with parents gets easier as children grow older.

4.1.15 Other adults with a significant role in transmitting information are teachers and youth workers. Some child informants perceived teachers to be disinterested in family issues (reflected in the exclusion of this topic in lessons and their emphasis on passing exams) and others felt that teachers had no right to know. However many of those who had experienced separation reported the benefits of a supportive teacher who understood what was going on at home. All children reported only some teachers were supportive, namely those who were good at listening, willing to consider the child's viewpoint and had some empathy for the situation (for example, through personal experience). The teacher's gender did not appear to be important; however, the fact that teachers cannot guarantee confidentiality was noted as a problem by some children who would otherwise have considered seeking support at school.

4.1.16 The data show clearly that, for child informants familiar with youth groups, youth workers can be effective sources of information and support for children. Youth workers' accessibility, openness ("you can talk to anyone here about anything") and knowledge are valued by their members and even friends of members who visit occasionally. Both girls and boys in the mixed youth groups reported good communication with youth workers. However boys in the boys-only youth group did not make explicit reference to their youth workers as sources of information or support. Parents interviewed were grateful for the support given to their children by youth groups and felt that more youth clubs should be set up especially outside the city centre.

4.1.17 Positive reports of the role of youth workers should be interpreted with caution, as there could be a very strong contextual effect. Aware that researchers have contacted them through the youth group, children and adults may be painting an overly positive picture. However, the weight of opinion suggests that youth clubs are highly valued by children and adults going through difficult re-negotiations of family relationships. Further, such findings are confirmed by other research (e.g. Gallagher 1998).

## **SEPARATION AND THE FAMILY**

### **Relationships with parents: Being ‘caught in the middle’**

4.2.1 Two-thirds of children interviewed named a parent as their key support person. The vast majority named their mother, with whom they were still living. Fathers were named by the 2 children who had expressed their preference to stay with their fathers. As stated above, children seek positive communication with and support from their parents but understand that their parents are often unable to provide these due to their own emotional state. When asked what children would be most concerned about if their parents were splitting up, the majority of responses related to their relationship with both parents. These included fear of being ‘caught in the middle’ between their mother and father, of not being able to see one parent on a regular basis, and of their parents forming new relationships. The second most prevalent concern was the need to move house and school, which would involve making new friends and a risk of being bullied at school.

4.2.2 The common fear of being ‘caught in the middle’ reflects children’s wishes not to hurt their parents’ feelings by choosing between them. In the understanding of most children consulted, expressing their views during separation could mean making a decision about which parent they wish to live with. This finding implies that this is the most critical issue facing children but also suggests that children are unaware of the full spectrum of their rights in terms of the location of their property, decisions regarding which school they attend and conditions of contact with the non-resident parent.

### **The impact of domestic violence**

4.2.3 One-third of children reported past domestic violence and child abuse by parents<sup>24</sup>. Several reported drinking problems as a causal factor in their parents’ separation and a barrier to their communication with and support from that parent. Three girls (aged 11 to 15 years) recounted their experience of domestic violence by parents (including verbal abuse, beatings, and theft of money) lucidly, giving an impression that they had worked through and come to terms with the reasons for this abuse.

4.2.4 Boys were less likely to give descriptions in any detail of domestic violence. One 15 year old remembers one or 2 violent moments during the period when his parents split up 10 years ago. Although the sample is too small to draw any conclusions here, it may be that boys are more reticent than girls are to speak about abuse in the home.

4.2.5 The solicitors interviewed for this study raised the point that family alcohol misuse or violence may influence children’s wish or ability to participate in decisions affecting their lives and thereby in becoming involved in court proceedings.

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<sup>24</sup> Children were not explicitly asked about past violence. The researcher interviewing the child in these cases did not deem the information as requiring further action, as outlined in the ethical protocol established for this research.

### **Support from siblings and the wider family**

4.2.6 Six child informants (one-third of those interviewed) spoke about the help they had received from older or twin siblings who were facing the same issues and decisions. Amongst siblings who had both consulted a lawyer, the younger felt supported by the older sibling but both felt that they should be represented separately despite their common views. Their wish was upheld as they had the same lawyer but were represented separately. The reassurance children can receive from a joint interview with a sibling was also recognised by the legal professionals. Yet their concern was that one sibling's views might dominate the other's. Several children reported frustration at not being able to support younger siblings during the divorce period. One 14 year old boy reported his sense of helplessness when his brother (aged 7 years at the time) responded to his attempts to talk by shouting. In his opinion, the reason his younger brother reacted in this way was because "he was too young to understand". This raises questions about the age at which children consider themselves competent to comprehend the family situation and make the best decision for their futures (see below).

4.2.7 Grandparents and aunts are key supports for just under a third of children interviewed. Four boys made specific reference to their grandfathers with whom they shared regular outdoor activities and/or considered sources of good advice owing to their age and experience of the world. Several children commented that grandparents could be helpful in explaining to children some of the reasons behind the separation, as their grandparents were the ones who had brought their parents up and therefore should understand their personalities and why the separation had occurred.

## **SOURCES OF ADVICE AND SUPPORT OUTSIDE THE FAMILY**

### **Where do young people go for support and does gender matter?**

4.3.1 Outside the family, friends in their peer group and youth workers were most frequently cited by children as sources of advice. Five of the 7 girls who have had independent legal representation named their own lawyer as a key source of advice, as well as other professionals including their counsellor, psychologist and a parent's lawyer.

4.3.2 Half the child informants thought that an adult's gender was important in their decision as to whether to speak to adult. One 12 year old boy, who lives with his mother and two sisters, said that he would prefer to speak to a man and an 11-year-old girl who had her own lawyer observed that, "Most lawyers are ladies, and boys will want to speak to a man so there's no-one for them". The remaining half of the child informants considered the adult's gender much less important than the adult being someone they know well, they can trust and who understands how they feel.

4.3.3 Children considered that friends could be a good source of support, especially if they had also been through parental separation. The two drawbacks to peer support mentioned were that friends tend to either forget about the problem by the next day or to start telling children what to do in a way that is not helpful.

4.3.4 Girls clearly derive much reassurance and support from their friends purely from the fact that they can talk openly about any problems. Boys, on the other hand, tended to feel that family issues are not something they would ordinarily talk about with friends. Sport and TV programmes are their normal topics of conversation. One 12 year old stated that talking with his mates involved "having a laugh together, doing a bit of kick dummy fighting" and explained that after that he might ask a friend how he is feeling. Both boys and girls acknowledged that girls find it easier to talk about their problems with friends than boys do. Their explanation for this trend was that boys tend to express themselves through physical activity and hence turn to violence when distressed or frustrated: "boys bottle it up then hit out".

4.3.5 One teenage girl has found that boys find it easier to talk to her about family issues than they do to their male friends. She reports being happy to listen but unable to cope when boys open up and start to cry. This is further evidence of gender differences in behaviour and of the fact that children's gender influences their ideas about their roles in the family and peer group. Such evidence raises questions about how to acknowledge these differences in information dissemination and support services.

#### **Professional support outside the legal services**

4.3.6 The majority of children had not heard of Family Mediation. The only two informants with direct experience had very negative views of the mediator's ability to listen and respond to children's wishes. The impression that these sisters received was that the Family Mediation staff wanted a result - in other words, to have persuaded them that seeing their father was a good decision – and were not interested in hearing their views on this subject.

4.3.7 The Family Mediation Services (FMS) employee interviewed was clear that the service's primary aim is to support parents. However, the expansion of direct services for children within a number of family mediation services has enabled issues such as parental responsibilities to uphold children's rights to be heard in decisions affecting their lives. Recently Family Mediation have initiated a 'Young Person's Service' which offers young people aged 12 years or over a free confidential appointment. They also offer a 'Children's Group' for 7-11 year olds as an opportunity to express their feelings about separation or divorce in a confidential setting. The fact that their leaflet says "the children's comments will only be fed back to their parents if the child chooses to do so" indicates that FMS have broadened their objectives.

4.3.8 Several children had had direct experiences with social workers and most had opinions about them. Social workers were generally thought to be helpful and some suggested that they could be more helpful than lawyers in representing children's best interests. However social workers are not liked by many children who consider that they ask too many searching questions, interfere in family business, tell children what to do and how to behave, and issue threats if children do not follow the social workers' advice. These findings should be interpreted cautiously because the sample would appear to include more children from low socio-economic status groups (who are more likely to use youth clubs) than from middle or high socio-economic status groups. Socio-economic

status is likely to influence the type of contact children have had with social workers and the stories they have heard about them.

4.3.9 In general, children thought that the school should play a greater role in supporting children coping with difficult situations at home. Some suggested that a separate resource and counselling room should be available where pupils could talk to a teacher about family matters. Most said that they would consider speaking to the Guidance teacher about family matters but indicated that this would be a last resort. Their reluctance appears to be linked to concerns about confidentiality and some discomfort in bringing ‘family matters’ into school for fear of teasing or bullying. Several children are aware of the school’s obligation to give equal rights of information and access to both parents unless legally instructed otherwise. They therefore do not feel that the school is necessarily on their side if problems arise with one parent.

4.3.10 The data suggest that teachers, by virtue of their educational role, are associated with instruction and authority. This is evident in the fact that youth workers are valued by young people because “they don’t tell you what to do, but they help you to understand things from different points of view” and “they don’t diss you [look down on you]”. Two teenage girls who pursued independent representation reported valuable support from a counsellor and psychologist: both of whom, like youth workers, are adults trained to understand, empathise with and give advice to children in an appropriate manner.

4.3.11 One counsellor (interviewed as one of the ‘web’ adults) had agreed to talk to a 13-year-old girl because the mother was concerned about her daughter’s wellbeing following acrimonious divorce proceedings. The counsellor agreed to see this child in a befriending role on the basis that she had had to deal with many professionals (a lawyer, psychologist and family mediator) and that a safe listening ear was the most valuable service she could offer.

4.3.12 As above, the socio-economic profile of the sample may have influenced these findings. Children who reported having professional parents did express more positive opinions of teachers than other children, for example.

## **ARE YOUNG PEOPLE BEING LISTENED TO?**

4.4.1 Children taking part in focus groups and interviews were asked what they thought were the biggest barriers for children in stating their views and for them to be heard. Several acknowledged that their own reluctance to talk about the subject, or to make their feelings known for fear of hurting people’s feelings, were major constraining factors. The quote below indicates that reticence to ‘rock the boat’ is a significant barrier to expression for children going through the process of divorce:

*INTERVIEWER: “What do you see as like the barriers for children or young people to be able to state their views?”*

*BOY 14 YEARS: "Erm...probably don't say anything that's going to....you're probably thinking you really want to say something and then you change it because you know it's going to hurt people's feelings and like it's probably just the relationships that you're going to break up and you really don't want to do that."*

4.4.2 The general opinion in focus group discussion was that children are not sufficiently listened to by adults and that adults do not do enough to help children understand what is going on. Five children made specific reference to adults' poor listening skills. Adults were said to do too much talking and not enough listening, to dismiss their children's ideas as 'stupid', to give an inaccurate portrayal of children's views or to omit to make them known when a child had entrusted them to represent them information. Children had very mixed opinions as to whether they thought that parents would listen to a child's point of view in family decision-making. Some felt that it depended on what the child said as to whether parents would listen.

4.4.3 All the professionals consulted felt that children's views and feelings should be considered in family law proceedings. Some were concerned that children can be 'tutored' on what to say by a parent and thereby used to give weight to that parent's opinion. One sheriff said that she would never see the child where she had a suspicion that the child had been tutored. She had seen children in these circumstances early in her shrieval career. For example, the sheriff described a case where the child had recited what she had been told to say, the sheriff had asked whether the child had anything else to say. Only at that point did the sheriff feel that the child revealed other information.

4.4.4 Although the study has insufficient data to identify a common pattern, 'web' adults and children seemed to have different perspectives on the process of listening to children's views. For example, one 16 year old boy reported no knowledge of, or contact with, any means of representing his views around the time of his parents' divorce. His memories are of a few traumatic events and he reports little meaningful communication with his mother about his own views both during and since the divorce. Interviews with his 'web' adults paint a different picture. His mother reports her own efforts to represent her children's views. His 'aunt' (a close friend of his mother's) felt that communication had broken down between the children and their mother at the time of divorce, which meant that their mother had not explained the events or their consequences to the children. The 'aunt' was aware that the children's views were being neglected, and now regrets that she did not know the formal mechanisms available for children to express their opinions. This set of interviews suggests that parents may feel they are listening to children but the children may feel that they are not being heard.

4.4.5 Confidentiality is a high priority for the majority of child informants. Even amongst those who were unsure of the precise meaning of the term, the ability to trust the adult with whom they were talking and seeking advice was very important. Parents and other adults interviewed as part of a child's support 'web' confirmed the importance of confidentiality to children, noting that many adult professionals (teachers, family mediation and psychologists) have not kept this due to other obligations or priorities. The

legal professionals interviewed expressed great concern about confidentiality, and they thought that the implementation of the Human Rights Act is likely to raise issues about whether the parties had had a fair hearing in circumstances where a child's confidentiality had been respected. However they agreed that children are generally content for legal professionals to express the children's views once trust and rapport have been established. This mirrors the report of one non-legal professional. At their first meeting, she recognised the child's concern about confidentiality that had arisen from her experience with other professionals. She therefore offered her the opportunity to voice feelings on the understanding that they would not be communicated to anyone else unless the girl requested. Interestingly, the counsellor observed that the child never checked up on any aspect of confidentiality in their discussion and it appears that, once the girl had put her trust in someone, the girl was content to assume that that person would act in her best interests.

4.4.6 Two 15-year-olds made specific reference to their wish to be treated as an equal when consulting adults for advice. One feared that lawyers would

“treat young people as second class citizens, or assume they were unintelligent and did not know what they were talking about.”

The desire of children to be treated equally to adults raises questions about age and maturity required for children to be involved in decision-making about their lives. The child informants had a range of opinions about involving children under 10 years of age. Some felt that it was inappropriate and reasons cited included protection from the distress and official process (“kids shouldn't be mixed up in paperwork”) and a preference that adults decide for them as the children are too young to make up their own mind. The fact that one girl aged 10 years, however, felt strongly enough about her views to write to the court shows that age does not necessarily correspond to a wish to take part in decision-making.

4.4.7 Some of the interview transcripts clearly show that, in retrospect, teenagers are aware that children of different ages require different information and support. This was also apparent in the ‘web’ adult's responses and the professional interviews. Given the wide body of literature showing that children of different ages are differentially affected by the divorce process (see chapter 2), this finding is very interesting because it reveals an awareness of this variation even among teenagers. However, the feasibility study's data are retrospective and, to understand properly developmental differences, research would need to follow children of different ages through the divorce process.

4.4.8 The study suggests that the age of 12 years is used by the majority of legal professionals in their decisions regarding dispensation of intimation. The two non-specialist Sheriffs focused more firmly on the age of 12 than did the two specialists and were therefore less inclined to consider intimation for younger clients. In contrast, the specialists felt that intimation could be considered for children aged 9-11 years but emphasised that this would not always be appropriate. Level of maturity was felt to be the main characteristic of children relevant in ascertaining their views, while others referred

to levels of shyness and ability to express their opinions. However, few gave details as to how these characteristics are assessed and decisions appeared to be made on the basis of individual judgement rather than any form of guidelines. For example, one solicitor reported that in her own practice, she assessed children's competence to instruct her by asking them what they expected that she as a lawyer could do for them. She reported that children have usually been very clear in their answers and understand that they can stop at any point.

4.4.9 Legal professionals were asked a deliberately general question about what 'characteristics' of children were relevant to ascertaining their views. Supplementary questions inquired about gender, disability and ethnicity. Ethnicity was not raised initially by any legal professional, while gender was. The Sheriffs interviewed considered that a child's impairments did not affect children's ability to have their views heard and acted upon. One referred to a case in which one of three siblings had severe learning difficulties and this child's views were accounted for via interviews with her siblings:

"At the Child Welfare hearing, I asked for the mother's views on involvement of that child. The mother was of the opinion that it would be too stressful for that child to come to the court. I asked the mother about the child's personality. I subsequently interviewed the other two siblings, in the course of which she asked them about their sister, and about their assessment of their sister's views."

Other legal professionals discussed the competency of particular disabled children.

4.4.10 A common finding across legal professionals was the recommendation of specialist training in communicating with, and representing, children.

### **Children's rights to state a view in decisions**

4.4.11 When asked whether they felt that they had had a say in decisions affecting their lives, all of the children who had had their own lawyer replied affirmatively. The process of working with a lawyer seemed to have given these girls skills and confidence in expressing their views and increased expectations that they will be heard. Two others reported having a say in decisions through their mother asking them whether they wanted a lawyer and what their wishes were for the future and through children's hearings. Approximately one third of children interviewed said that they had not had a say in decision-making.

4.4.12 Parents interviewed as 'web' adults (who were the parent with whom children are living post-divorce) are very positive about the role of lawyers in helping children to state their views. Many wished that they had known of this facility earlier. Some parents expressed their desire to put forward their children's views in court and their frustration at being powerless to do so:

*MOTHER: "It would have been far better for them if they'd had a way of making their views heard."*

*INTERVIEWER: "In what way do you think?"*

*MOTHER: "Having their own lawyer would have helped them enormously. They had no one to talk to who could represent them fairly. You see I've always tried to bring my children into decisions and to represent them to others, but I've felt they lacked someone with power who could speak for them. For all sorts of reasons I didn't have that."*

## **CHILDREN'S VIEWS OF THE LEGAL PROCESS AND PROFESSIONALS**

### **Perceptions of lawyers**

4.5.1 In contrast to the largely negative opinions of lawyers held by children who have not had independent representation (see above section on media influence), those who have been legally represented have very positive views. Their accounts show that their lawyers provided them with a vital channel for expressing their views that would not otherwise have been available:

"It's good to know that I've got a voice; I could never stand that feeling of being paralysed. To be able to have my own say and to be able to talk out, 'this is me, I'm involved in this, I'm caught in the middle.'"

"Everything changed when I got a lawyer. You got your own say...they are your voice, you get more respect, because people will listen to you....my letters were being looked at."

Clearly these children have found independent representation through their own lawyer to be an empowering process. Two girls (age 11 and 13) mentioned that they thought it would be 'cool' to have their own lawyer but this was not presented as a reason for choosing independent representation. One was of the opinion that lawyers pay more attention to the views of children than they do to adults' views. Her conclusion raises questions about children's understanding of the legal process and the way in which their views will be considered alongside those of their parents and other parties: does more effort need to be made by lawyers (or within publicly available information) to inform children of these facts?

4.5.2 The manner in which the lawyer approached the consultation process is critical to children's positive experience of independent representation. They appreciated the friendly approach of their lawyers, including their efforts to create a relaxed atmosphere, to get to know the child, to explain things clearly and to ask appropriate questions (in other words, questions about events rather than their feelings about their parents):

“I found with (my lawyer) she was kind of organised with it. Things like, she didn’t just go ‘Right, these are the facts, here they are’. She asked me about myself, and when we were in there, she was very sort of, like I’d known her for a while and that kind of thing. And she was very friendly. She did not ask, ‘What’s your dad like?’, but ‘What happened there?’. That kind of thing. It was more like talking to a friend than to someone who was a professional like that, which I think is very important for children. With adults, I mean, you expect them to take to professionals as they’re grown up too and they’ve lived in that kind of world. For children, it’s going into the unknown. As we’re young and inexperienced, it’s unknown territory. So it’s important to create a relaxed and a more homely environment to make you a lot more comfortable and willing to talk.”

4.5.3 The location of their consultation with their lawyer was important to some children and the willingness of lawyers to come to their own homes was appreciated. Others, however, gave favourable accounts of meetings in the lawyer’s office where their lawyer explained things in a clear and friendly manner. The legal professionals interviewed felt that more child-friendly places should be available for interviewing children. However, they emphasised that these should not be ‘playrooms’ because an element of formality was needed to underline the seriousness of the discussion.

4.5.4 Legal professionals also felt strongly that more time was needed for children’s cases and for reading associated reports. The fact that Sheriff Clerks have a different agenda from the Bench, that includes targets and performance indicators they are required to meet, was seen a further barrier in ensuring children’s views were considered. Economic considerations were also raised because it is proving financial unviable for solicitors to represent children who bring very little income to the practice.

### **Perceptions of courts**

4.5.5 The majority of young people is unfamiliar with courts and find them intimidating. The main reason appears to be lack of information about the place, process and the people involved and hence their inability to prepare themselves. One teenage girl who had her own lawyer described going to court as ‘scary’ and did not like having to wait for long periods of time. She noted how much better she found it the second time when she went with a friend. A second teenage girl reported a series of negative experiences in court, which made her feel very unwelcome. At the start of the hearing, her presence was disputed by the Sheriff who, having been shown a booklet stating that children can attend, proceeded to asked her condescending questions:

“...he asked me why I’d said I thought my dad was weird. And I did. But at the time I couldn’t define weird. He said, ‘What do you mean by weird?’ And I said, ‘Strange’. And he said, ‘What do you mean by strange?’ And I ended up crying. And that’s when I shouted at him. I shouted ‘Even if you do say I have to have access with my father I’m not going’ and that’s what did it. It was me shouting at him, that’s what did it

in the end, that got my feelings over. Because he wasn't listening to me, at all."

Others without direct experience expressed fears of having to talk in front of a number of people or of witnessing another shouting match between their parents.

4.5.6 Several children made specific suggestions including a tour of the courts with one's lawyer before the hearing and a video made by lawyers and children to let children know what to expect. Those with experience of hearings suggested that children should be able to stay in court for the whole hearing, as the wait outside was boring and lonely. One child informant would have liked to have waited with someone, perhaps her mother, although she understood that this might be inappropriate as she would have been perceived as influenced by her mother. She suggested that if it was required that children wait alone, the waiting room could be made more comfortable and magazines should be available.

### **Inconsistency in court processes**

4.5.7 Court procedures were reported by legal professionals as differing according to court and individual sheriff, and example were given of incorrect practice. Adult informants noted instances where parents' lawyers had made mistakes in their dealings with young people; for example in failing to ask for the child not to see the full writ, when it contained information about parents that was not appropriate for the child to know. The legal professionals consulted expressed concern that not all solicitors were aware that the Form F9 should be sent to children as a sole document rather than as an accompaniment to the writ. Moreover, some sheriffs are unaware that only the F9 should be sent out to the child and not the writ, and that this form influences decisions about intimation.

### **Impact of time delay on children**

4.5.8 Children who have been part of lengthy legal proceedings for parental divorce have a definite view that the proceedings should be completed more quickly. They reported continued high levels of stress in the family that peak when the next court hearing is due, but are always present at the back of their minds. The sense that things are unresolved and the fears about decisions over contact can make children very anxious and affect their schoolwork. One teenage girl spoke of the effects on her of cancellations and delays:

"I was looking forward to that date and then she [the lawyer] telephoned me that it had been cancelled. And that was just terrible. I felt, 'Oh no, I've got to wait longer.' I was a bit let down because I had to wait longer because I thought it would be all over. ... They should make sure that it's in bold writing and it's got like a red mark approved on it that this case is going to take place because I think delays let a lot of children down. You see they get frightened and excited at the same time that they're going to be in this court and then they get told that they're not. And they're like, 'Oh. When are we going to be in court?' So it just takes longer."

Legal professionals also reported the adverse impact of time delays on children and cited causes as difficulties obtaining legal aid, court programming and the time needed to write judgements. Solicitor informants felt that delay in obtaining legal aid was often caused by non-application by the child or by the non-resident parent, as a deliberate move to obstruct proceedings.

4.5.9 This study cannot draw definite conclusions as to the main cause of delay. What is presented by child and non-legal adult informants as ‘delay’ may be the normal, but lengthy, nature of proceedings. All legal professionals felt strongly that action should be taken to reduce the duration of proceedings involving children. When asked what she thought should be the maximum length of time for legal proceedings, one child stated one year if it was something that had only a slight effect on one’s daily life and 6 months if it was something very significant like parental divorce.

### **The importance of being informed**

4.5.10 For children who have had legal representation, the ability to telephone or write to their lawyers is an important part of their positive experiences. Several remembered points in the process when they had forgotten to ask a particular question, or been confused by some written documentation, and had quickly solved these problems with a phone call to their lawyer. However this communication with children appears to rely largely on the individual lawyer. The sheriffs interviewed also observed a lack of recognised procedures for informing children of key events and keeping them updated on general progress. Legal professionals recommended strongly that some mechanism should be devised for ensuring that children were kept informed of the progress of and decision of the case. It is worth noting here child informants requested feedback on the research every 2 to 3 months. Most expressed satisfaction with concise and comprehensible written feedback, although some preferred oral feedback.

### **Alternative means of listening to children**

4.5.11 Only one young person had filled in Form F9 and all the remaining young people consulted stated that they had never seen it before. Infrequent use of Form F9 was also reported by sheriffs. Although it is possible that the form was sent to the children or their parents but was never completed, the fact that it is largely unused is notable. Three out of 4 Sheriffs consulted felt that responses by children on Form F9s were often significant, prompting either a report or an interview with the child, or leading to the child approaching a solicitor with a view to independent representation. It was noted by one sheriff that Form F9s were of little value when they were returned with clear evidence of parental influence.

4.5.12 Most child informants thought that they or friends of their age would consider completing the form if they received it, although a large proportion were put off by the long words and said that they would need help to complete it. Some children stated a definite preference for verbal communication over written when expressing their views and this may be important in relation to young children, those with learning difficulties

and children whose first language is not English. Sheriffs' opinions of the current format of Form F9 varied. One considered it too impersonal and made suggestions for personalising it and making it more child-friendly (using a template and covering letter).

4.5.13 Reports from children and legal professionals suggest that letters written by children to the court are effective means of incorporating children's views into proceedings. The facility to write directly to their lawyer or the sheriff is clearly appreciated by children; however this mechanism relies on children knowing who to write to and having sufficient confidence and skills in written English.

4.5.14 The Sheriffs interviewed thought that court appearances by children should be avoided. Good court reports were valued by sheriffs, as a means to ascertain children's views.

4.5.15 Consultation with the professionals revealed concern that many children may never have access to any means of expressing their views. No informant had monitored numbers of parents giving due regard to children's views in major decisions (Section 6 of the Children (Scotland) Act). If the matter came to court it might be raised at a Child Welfare Hearing and addressed by appointment of a curator *ad litem* or reporter. It was pointed out that if parents make an agreement without recourse to the court, no mechanism existed to ensure children's views are given due regard. This fact raises questions about the role of mediation services in ascertaining and promoting a child's views.

4.5.16 Conversation with children during focus groups and interviews alerted the researchers to the fact that the formal expression of views during parental divorce can interact with other legal proceedings affecting the child, such as children's hearings and criminal proceedings. The accounts of two young people indicate that prior experience of legal services shapes children's perceptions of lawyers and what they can do for children. One 16-year-old boy was called to see the Sheriff about a minor criminal offence. He went with this mother and described the experience as 'boring'. Although he does not appear to have been intimidated by the prospect of speaking with a lawyer, he did not form a rapport with the lawyer and would not see a lawyer as someone who could help him beyond keeping him out of trouble. A 9-year-old girl reported taking part in a number of children's hearings that were about her own and her brothers' care, and the quality of their housing. Her articulate conversation about her parents' divorce and the role of lawyers suggests that her participation in the children's hearings has helped her make sense of the events and to communicate her views to others in a lucid manner. Her overall view of the role of a lawyer was positive and included lawyers' ability to assist children.

## **CONCLUSIONS**

4.6.1 Several major findings of this feasibility study match those of other research, as documented in chapter 2. The lack of sufficient information, in a form and at a time when they need it, was strongly felt by virtually all informants. If children had not been formally involved in legal proceedings, their knowledge was frequently inaccurate and

based on media perceptions. Children who had not been legally represented when their parents separated or divorced did not feel that their views were elicited, let alone considered. Few of these children knew of their legal rights to have their views considered, either by their parents (when parents were making a ‘major’ decision in regards to parental responsibilities), or in formal court proceedings on parental responsibilities. Most children did not feel consulted generally in family decision-making.

4.6.2 Parents were typically the first source of information and support for children. Yet, parents could be difficult to speak to in cases of parental separation and divorce, as children were aware of their parents’ own emotional fragility. Children expressed a need not only for written information but someone to provide counselling and/or advice: a finding that correlates to the distinction advocated by Lyon and colleagues (1999) between information, counselling/ advice and legal representation services for children. Child informants became highly engaged in considering what information should look like and how and by whom it should be disseminated. Concerns were raised by legal professionals about children being tutored, and whether their views should be considered officially in legal proceedings.

4.6.3 Other findings are not brought out by the literature review in chapter 2. As the feasibility study progressed, the research team increasingly saw gender as a potentially significant factor: in boys and girls wishing/ being able to express their views and concerns; and the difficulties in accessing boys who had been independently legally represented. Many child informants themselves reflected on the significance of gender. The feasibility study contained only two children from black and minority ethnic backgrounds and one of these children was known to have a learning difficulty. The significance of these factors requires further consideration. Legal professionals interviewed that were not sheriffs noted their considerations when working with disabled children. Further investigation would be required to know how Sheriffs judge competency in relation to disabled children. Children themselves brought up issues of past domestic violence and abuse, that were echoed by some legal professionals interviewed; this is a policy issue gaining increasing attention across Great Britain.

4.6.4 Do children want to have their views considered when their parents are separating or divorcing? Child informants in this study generally did but had significant reservations in being asked to choose between their parents. If children do want to have their views considered, do they wish to be involved formally in court proceedings? Smart (2000) suggests that children do not want this kind of formal involvement, while young participants in Lyon and colleagues consultants (1999) thought independent legal representation should be available for children. What was clear from this feasibility study was that, the child informants who had been independently legally represented were very positive about their views being heard. What remains unanswered is how these children would have felt should they have had an overall negative experience of court proceedings and/or legal representation.

4.6.5 Much of the literature reviewed in chapter 2 was undertaken in England and Wales, rather than Scotland, and little research is available on post-1995 Act proceedings in Scotland. Thus, some findings are arguably particular to the present Scottish context. Children who had been independently legally represented had a great deal to say on their experiences of having their views considered. Equally, legal professionals interviewed were all positive about court procedures introduced as a result of the 1995 Act. Particular concerns were raised about how well some of the procedures did elicit children's views, diversity and inaccuracies in practice across courts, how well legal professionals were trained and time delays in proceedings. Procedures did not have official feedback mechanisms for children on the results of court proceedings. Children had numerous suggestions on how legal professionals could and did help support them in stating their views. The significance of age 12, as a threshold over which children are presumed to be able to state their views, was high for legal professionals and children themselves had mixed views. Confidentiality of children's views has become a much-debated legal issue within Scotland, which is matched by legal professionals' discussions in this feasibility study. Potential means to handle confidentiality were offered by both children and legal professionals, which merit further consideration: namely, if clarity is offered on confidentiality and children form a trusting relationship, children may be comfortable with sensitive information being revealed for making decisions.

4.6.6 The conclusion to the report (chapter 6) considers these findings' implications for policy and future research.

## **CHAPTER FIVE: REFLECTIONS ON RESEARCH METHODOLOGY**

5.0.1 As a feasibility study, key tasks were to explore and evaluate potential methodologies to address the overall research aim. This chapter reviews informants' and researchers' perspectives on the research methodology. The practical and ethical considerations related to access and participation are considered, as well as the effectiveness of different methods for generating useful data.

### **CONTACTING CHILDREN DIRECTLY THROUGH SOLICITORS**

5.1.1 Based on the list from the Family Law Association, 11 solicitors approached agreed to help and scanned their files for potential participants. Several solicitors expressed their reluctance to involve children who were in the middle of a family action or who had recently been involved. Despite considerable effort, children were only being identified for interview several months into the study. Access through solicitors produced only 7 potential participants. Five of these solicitors were subsequently spoken to by one of the research team, to identify reasons for this.

Overall, potential reasons for the difficulties in access are:

- Not all solicitors approached agreed to help.
- Some solicitors felt they had no children to contact; others were reluctant to involve children when their experiences had been traumatic; children contacted did not reply to solicitors.
- Solicitors had not found the previous amount of information sent (e.g. the 'script') useful: for example, they did not have time to read it, felt it was too extensive to be useful to them and/ or otherwise found the material off-putting.
- One solicitor had not felt satisfied on confidentiality but felt reassured after discussing it further on the telephone.
- One solicitor expressed a preference to talk over the research on the telephone, rather than to be given information in writing.
- Solicitors are extremely busy and, even if supportive of the research, may not be able to find time to identify and initially speak to children. The one solicitor who was able to identify the most child participants had a staff member whose responsibility was to undertake such liaison between the solicitor and her child clients.

All 5 solicitors spoken to were very willing to try and recruit young informants, following this subsequent follow-up by one of the research team. Even so, no further children were identified.

5.1.2 These experiences suggest that accessing children through solicitors is likely to take considerable effort and time. Access through this method may be enhanced by:

- meetings with solicitors to encourage their participation and streamline information to solicitors about the project;

- the inclusion of a practising solicitor or legal secretary in the research team (e.g. working as a consultant for one day per week), whose remit is to facilitate access procedures and approach Family Law Associations;
- paying a consultancy to a legal firm, to pay for a legal secretary to facilitate access.

Once potential child participants were identified by the solicitor, all of the children then agree to participate in the research and the practical arrangements were arranged easily and quickly.

## **ACCESSING CHILDREN THROUGH YOUTH GROUPS**

5.2.1 The combination of introductory telephone calls and a letter detailing the research exercise was sufficient to secure consent or refusal from youth group leaders. The information leaflets for children and parents were well-received. None asked for any further explanation of research purpose. However, considerable time and perseverance was required by the researcher to reach this point due to youth group leaders' demanding and irregular work schedules. Having suggested an introductory meeting with youth group leaders and members, the researcher was invited to attend the weekly session at the earliest convenient date. Some youth group leaders did not consider an introductory meeting necessary. However, they agreed that it was preferable in terms of allowing children the opportunity to ask questions and elect whether to take part.

5.2.2 As expected, the number of times that youth group leaders have been asked to facilitate children's consultation influenced their readiness to co-operate in this study. Three of the youth group leaders contacted expressed concern that children had been overly consulted within the past 18 months and that the children had had little opportunity to pursue their own activities. One of the youth workers deals with this problem by spacing out visits by researchers to once a month. The research team was invited to participate on this basis.

5.2.3 The problem of over-consultation appears to be greater in Edinburgh than in Glasgow or other areas. A prominent youth group in Glasgow that took part in this study has not been consulted by research projects for the past 2 years.

5.2.4 The initial enquiry to the co-ordinator of the Edinburgh Area Scout Council resulted in his offer to send a letter from the research team in the monthly mass mailing to all 140 Scout and Cub-Scout leaders in the area. Only one leader expressed interest in hosting the research, and his opinion was that many more would have been keen to participate had the research been tied into the term's programme. Hence the initial approach to youth groups run through national and regional structures should be to the level of the organisation responsible for planning timetables.

5.2.5 Youth group leaders' reactions to the research topic, namely discussions on family decision-making during parental separation, can be grouped into two extremes. The first was positive. Leaders saw the research as an opportunity to discuss an important area of children's rights in an open and non-personal manner. Indeed, experience with the Scouts suggests that response from youth workers is more likely to be positive when researchers

are able to present their activities as a springboard for discussion of issues relevant to the organisation's work with young people. Scout leaders said that they are often grateful for some external input in such discussions and would happily plan their own activities around the research. The second reaction was negative. Leaders felt that the topic was too sensitive for group discussion. In two of three such responses, the leader explained that children in their group had recently experienced some serious family trauma. They felt that these children should *not* be approached at that particular point in time but may be ready to participate in the future. One youth group leader declined to discuss the prospect of consultation further on the basis that discussion of divorce is too sensitive an area for children and not helpful towards building relations within the group. This reaction can be expected from leaders who are in the process of forming a new group and have not yet built a strong rapport with their members. The topic may also generate a particular sensitivity amongst adult 'gatekeepers', as the quotation from Smart et al (1999) in chapter 3 suggests.

5.2.6 The primary concerns of youth workers who consented to participation were the duration of the research session, informed consent and confidentiality.

5.2.7 In summary, established youth groups should be approached where the rapport between leaders and members is strong and leaders are better able to assess whether children are ready to talk about family decisions. Moreover, in the context of research that may bring forward sensitive issues, youth group leaders in this position are better able to continue talking to children at a more personal level or fulfilling a counselling role where necessary.

### **INFORMED CONSENT FROM CHILDREN**

5.3.1 The information leaflets and methods used in this study were effective in giving children several opportunities to decline participation. Children considered the second set of information leaflets to be user-friendly in terms of size and clear content. Their suggestions for improvement were to include more pictures and 'speech bubbles' to make it more accessible to children with reading difficulties.

5.3.2 Furthermore, the facility to 'opt into' (rather than out of) further research activities proved an important measure to reduce coercion. This was shown to be effective by the fact that one third of focus group participants declined the opportunity for an one-to-one interview. The fact that all members of focus group C were willing to undertake a one-to-one interview suggests that the decision is partly related to the 'culture' of the group and children's experiences of the focus group discussion. A mixed response from the other focus groups suggests that some children were unwilling to engage in an in-depth discussion on what they considered to be sensitive personal issues. It is likely that a significant proportion of children who have experienced parental separation still feel emotional pain and have not resolved various conflicting feelings.

## PARENTAL CONSENT

5.4.1 Most youth group leaders consulted do not usually seek additional parental consent for external activities going on in youth group time because parents have consented to their children participating in any activity approved by the youth group. After consultation with youth group leaders, it was decided that it was unnecessary and even inappropriate to send information sheets and consent forms to parents who had already consented to their children taking part in activities approved by youth group staff and conducted on their premises. Youth group leaders felt that parents might be unnecessarily alarmed by receiving ‘official’ information about an informal group discussion similar to their regular interaction with youth group members. They supported the researchers’ views that information and consent sheets should be sent to parents whose children had volunteered to take part in a one-to-one interview.

5.4.2 Masson (2000) asserts that where general consents have already been given, for example as part of the arrangements for a child’s care or education, these may not be adequate judged against high ethical standards. In schools, parental or guardian permission is typically required for children under 16, and the permission of teachers or other child professionals is not an acceptable substitute. On the other hand, Scottish law itself recognises that children under the age of 16 do have rights to consent and participate on their own behalf, independent of parents. Grieg and Taylor (2000) state that adherence to such standards must be balanced with pragmatism, so that ethical issues are treated within the context of both the problem (in this one of access) and the approach (namely consultation on children’s terms), rather than treating them as ‘add-ons’.

5.4.3 Youth group leaders clearly wish to uphold parental and children’s rights and to follow procedures for obtaining consent from both children and parents. Yet it was clear that real informed consent was not achieved through effective procedures alone. Rather, the quality of communication, and hence the level of information available to children when giving consent, depended largely on relationships between leaders and children, and those between leaders and parents.

5.4.4 As described in chapter 3, all children who agreed to be individually interviewed were then asked their views on providing information to their parents, about the research. All children agreed to have information provided to the parent with whom they predominantly lived. Given the promotion of joint parenting and the rights of non-residential parents (either in Scottish or international law), consideration was given to whether such parents should automatically receive information along with residential parents. However, receipt of this information was not necessarily in children’s best interests and might explicitly go against children’s wishes. Some children had not seen their non-residential parent for several years or saw this parent as violent or difficult. Given that the law does not require researchers to contact non-resident parents, we prioritised a child-oriented approach by asking children whether they wanted us to contact their non-resident parent. In this way, the research based its information provision to parents on the children’s views.

## **FOCUS GROUPS**

5.5.1 Despite the inherent bias in the sample, positive reports of the focus group experience from all children interviewed subsequently indicate that this method was enjoyed.

5.5.2 Compared to interview techniques, relatively little is known concerning how young children respond in this research setting. Social pressures to conform to group norms may be heightened among young children compared to older adolescents and adults in this setting, making it difficult for some children to express their own individual views if they differ from those of the rest of the group. Alternatively, social comparison processes that are heightened during early adolescence may lead to more extreme points of view being aired than would be the case in other methods. These potential difficulties require further investigation but are overcome to some extent by using a mixed method approach combining focus group approaches with one-to-one methods.

5.5.2 While a number noted that single gender groups might enable more people to voice their views, several preferred mixed groups on the basis that they are “good for hearing all sorts of different views”. The transcripts show that mixed focus groups did generate debate between participants that is revealing of the range of perceptions amongst the informants. Some individuals did dominate the discussion while others said very little. Age, gender and personality all effect extent of participation (Millward, 1995). Such dynamics are inherent in focus group work and it takes considerable facilitating skills to draw out the opinions of all participants. Biases can also be reduced by holding a series of focus groups with the same participants on a regular basis over the research period (Baker and Hinton, 1998). This allows shyer participants to build a rapport with other group members and develop confidence in speaking up.

5.5.3 Focus groups can give participants room to express themselves creatively. The use of the ‘agony aunt letter’ as a vignette in the focus groups proved effective in generating discussion about the merits of the options available to a young person whose parents are divorcing. Similarly, the brainstorm activity on impressions of lawyers and drawings of lawyers provided interactive starts to focus group discussions. Doing something active that focuses on a large visual image helps to make children feel comfortable and less ‘in the spotlight’.

5.5.4 In addition, a number of children responded using short stories to illustrate their opinions with experiences, often comparing these to what they had heard about others’ experiences. When asked what sort of research methods should be used in further research on this topic, several ‘web’ adults suggested that group discussions would be both informative and enjoyable. One recommended forming a mixed group of parents and professionals in order to bring out key issues for each group, and the barriers to communication with, and support for, children.

## **INTERVIEWS AND THE SCOPE FOR FURTHER CHILD PARTICIPATION**

5.6.1 Children who had given consent to participate were asked where they would like the interview to be conducted and whether they would like anyone else to be present. Most chose their own homes, with a few opting for the youth group premises. One girl (aged 12) requested that she be interviewed with someone else, in this case her 13 year old sister. It has been noted that children tend to be less talkative in the presence of their parents (Mauthner et al, 2000). A similar effect was found in the presence of an older sibling, whose responses appear to affect those of her sister. However, the researchers considered it important to enable informants to participate on terms they find acceptable and have accounted for the resulting bias in their analysis.

5.6.2 Children's responses in an interview are reconstructions of events or perceptions (Dockerell et al, 2000). Interviews have been shown to be highly accurate in gaining information about specific events. However, children's constructive responses are open to bias and embellishment. Biases are likely to be exacerbated when the interview concerns events or experiences in the child's past where accuracy of memory recall is an issue and where events may have been reconsidered at a later age due to new cognitive abilities. Similarly, children's responses in relation to emotionally-loaded topics may not be completely accurate and the interview process itself may be distressing. Helpline cards were given to child informants routinely after participation.

5.6.3 When participants were asked to comment on the research methods, most children and adults expressed satisfaction with a face-to-face interview and a strong preference for this method over a written questionnaire. 'Web' adults stated that questionnaires were likely either to end up in the waste bin or to be off-putting if dealing with matters relating to decisions in the family.

5.6.4 Within interviews and focus groups, children were asked whether they would like to join a panel of children who would advise research, should this be available. Interest was expressed by most children, who saw it as a positive step towards raising the profile of children's views. Some felt ready to participate in a panel of any size, whereas others said that they would only feel confident in a small panel.

## **DRAWING AND THE SCOPE FOR DEVELOPING VISUAL METHODS**

5.7.1 Younger children enjoyed the opportunity to draw a picture of their 'web' adults, whereas older children declined the offer of drawing and preferred verbal description. Within this small sample, the reticence of older children to draw seemed to be caused by a fear that they could not "draw properly" rather than a lack of interest in visual media. They are also less familiar with drawing than younger children for whom it is a mode of expression used daily at school.

5.7.2 This scope of this study did not allow for a full exploration of different visual media through which adults and children of different ages are able to communicate ideas and experience. Yet, the literature has sufficient evidence to show that visual methods, once familiar to participants, can be very effective research tools. One example is a recent

study on family and legal decisions in England (Buchanan et al., *in press*) which used visual communication in the form of drawings by children of their family tree or a circle with family members inside, as well as drawings of the child-lawyer consultation scenario (a table in a waiting room) to stimulate discussion about children's expectations, concerns and who, if anyone, they would want to accompany them.

## **CONFIDENTIALITY**

5.8.1 As anticipated, the assurance of anonymity was very important to some children and, in particular, to those who had encountered other professionals in relation to their parents' divorce (for example, family mediation staff and social workers). Researchers assured participants that transcripts would be shared only amongst the research team and their names would not be used on any public documents. On no occasion did a young person express worries that these assurances could not be kept.

5.8.2 The research team sought to be clear on the limits of confidentiality, both on written information and when speaking with children. Alderson (1995: 19) suggests that:

"Children have the same rights to confidentiality as any other person. No one has an absolute right to confidentiality. In rare cases, a breach may be justified if it is thought that the person describing the danger, or some other person, is at risk of being exploited or abused. If so, the researcher should first try to encourage the young person to talk to adults who could help or else to agree that the researcher should talk to them."

## **USE OF THE CHILD-FRIENDLY QUESTIONNAIRE TO ELICIT VIEWS AND OBTAIN CONSENT**

5.9.1 The short colourful questionnaire was designed to record the basic demographic information of children who had participated in focus groups and to give them the opportunity to consent to or decline further participation in the study (see Annex 4). As this was a good opportunity to pilot a questionnaire method amongst the young people, two questions were included on children's opinions about expressing their views.

5.9.2 The first question asks the young person to state their advice to young people whose parents are separating to ensure their views are heard in the decision making. Some found this difficult to answer and there are two plausible reasons. The first is that the question reminded them of hurts experienced in their own families and the second is that they did not have a ready answer and the final activity of a focus group was not an appropriate forum in which to consider the question and respond satisfactorily.

5.9.3 Very few children wrote an answer to the second question, namely: do you think most young people know of their rights to have their views heard in family matters? This raises the question of whether the question was understood and, more specifically, whether children understand the term 'rights'.

5.9.4 Informants' experience with this questionnaire suggest that data on children's opinions of abstract concepts like 'rights' and 'views' are best collected in an environment where these terms have become familiar. This lends weight to the argument for inclusion of children on the research team or in an advisory capacity. Such a participatory approach gives scope for on-going dialogue between adults and children in which meanings can be clarified. Children's own definitions of terms can be used to ensure understanding of concepts such as 'rights' and 'views' when conducting research with new groups of child informants.

### **THE NEED FOR AGE AND GENDER-SENSITIVE RESEARCH METHODS**

5.10.1 A close reading of the transcripts of interviews with children suggests that the conversational style is not always appropriate for children under 11 years. One example, where the interviewer has said far more than the 11 year old boy, suggests that the child may have been uncomfortable in the interview situation or did not find it an easy medium in which to express himself. In a conversational style interview, the interviewer tried to elicit further comment by suggesting possible responses, with the result that words were put into his mouth to which he just agreed. It was confirmed in the 'web-maker' interviews that this boy is very shy and that during this research he communicated feelings about his parents' divorce for the first time. However, shyness aside, younger children should understand their role in the data-collection process and should be able to participate fully. Common advice is that tasks should be kept simple, questions should be focused and fairly specific in research with younger children. Researchers working with Scottish children aged 7 to 12 years found that vignettes in the form of an emerging story were effective means of eliciting opinions about events in the family (Maclean et al, 1998). The appropriateness of these more tangible methods for structuring discussion with younger children is confirmed by the success of the 'vignette' and 'issue-based' discussion used in this study's focus groups.

5.10.2 A comparison of the transcripts by gender indicates that boys find it more difficult than girls to express their opinions and feelings in interviews. This is not true for all boys. This methodological finding itself matches the views of several child informants, as reported in chapter 4, about boys' ability and willingness to speak of their feelings and views. The implication is that an alternative or additional research method may be needed to provide boys with equal means of expressing themselves. For example, the opportunity to build rapport with researchers through a joint physical activity may be required before boys can engage comfortably in a face-to-face interview. An unanswered question is whether more girls than boys are being independently legally represented.

### **LIMITATIONS OF RESEARCH DESIGN/SAMPLING FRAME**

5.11.1 Due to difficulties in recruitment, children involved in formal court proceedings but were not formally represented (group B) were absent from this study.

5.11.2 Data from young people participating in the study should not be taken as representative of children going through the divorce process. Their accounts are retrospective and their recall and description of the divorce is very likely to be the

product of cognitive and social abilities that were not available to them at the time of the divorce. Consequently, the kinds of support mechanisms and information they suggest are appropriate to adolescence, but may not be what 7 or 8 year olds would find most helpful (e.g. the role of youth workers as sources of advice and support). Although this research was designed to rely on children's recall, the data indicate that a long period of time between events and an account of those events becomes especially significant when combined with the psychological development of children. In order to understand what avenues for expression and support are available to children during the divorce period, researchers must find a means of meeting the ethical challenges required to conduct research with children of different ages going through the process of divorce.

### **TRIANGULATION USING DIFFERENT DATA SETS**

5.12.1 The potential to triangulate data is a significant strength of the multiple-method approach used in this study. This facility is useful firstly to check facts. As noted above, children's recollections of events may not be accurate and the inclusion of the 'pensketch' (short questions on the sequence and nature of legal events around the divorce) in the 'web' adult interviews enabled children's experiences to be contextualised. However, when 'web' adults were not the child's lawyers, the exact legal situation did not always seem accurate to the research team.

5.12.2 The second benefit lies in comparing the opinions of adults and children, family and friends, and professionals and non-professionals. The transcripts reveal notable differences in the way children and adults have interpreted events and in their understanding of what actions are needed to help children express their views.

5.12.3 Several adults interviewed (both 'web' adults and professionals) mentioned domestic violence as an important part of what was going on at home. If information on domestic violence is important in future research, this may be explicitly asked of 'web' adults. The alternative, of a more explicit interview with children on the subject of abuse in the home, carries risks of harming the child; the methods used allowed unelicited information to be expressed.

### **REPORTING TO PARTICIPANTS ON PROGRESS AND FINDINGS**

5.13.1 Feedback sheets stating progress of research and key findings to date were sent to all participants every 2-3 months. Both children and adults appreciated the communication from the research team. Children reported that the concise, colourful format and child-friendly language made it easy to read. Several children, particularly those with reading difficulties, expressed a preference for oral feedback from the research team in the form of an informal group discussion on the youth club premises.

### **REASONS FOR A CONTINUED CRITIQUE OF RESEARCH METHODS**

5.14.1 Christensen and James (2000) argue that a reflexive critique of methods and, in particular, the ways in which children respond to and engage with the research can reveal differences in children's experiences and competencies. Children who had had a lawyer

were more expansive in their answers and confident in giving an opinion than those children who had not had independent representation. The experience of narrating their story and communicating sensitive information to adult professionals appears to have enabled children to articulate their responses easily. It could be argued that this process of communication with the professional services has helped these children on a psychological level because they have had to come to terms with events and their consequences.

5.14.2 Much can be learnt by standing back from the precise methodological details and looking at what emerges from the data in terms of children's lives and perspectives. For example, child informants become very eloquent about a number of different topics. Their enthusiasm to recount experiences and opinions does not appear to be solely a response for the interviewer. Rather, children seem to have strong views and feelings about certain issues. One 11-year-old girl spoke in considerable detail about her mother intervening in her school, another 10-year-old spoke clearly about the importance of adults taking time to listen, and a 17-year-old gave a long account of her views of lawyers and how they should interact with children.

## **INTERVIEWS WITH KEY LEGAL PROFESSIONALS**

5.15.1 The interviews with key legal professionals produced additional information not gathered through other adult interviews. For example, no child identified a Sheriff as a 'web' adult yet Sheriffs are key decision-makers in relation to children's views. The interview schedule elicited useful information. Those professionals who agreed to be interviewed seemed to be 'put at ease' on discovering that the research team member interviewing them had a legal background; this may have enhanced the quality of the responses.

5.15.2 The interviews raise issues about professional attitudes and practices and, particularly, diversity by professional and by court. A future study may wish to track such diversity, suggesting some type of sampling or quantitative methods.

## **CONCLUSIONS**

5.16.1 The feasibility study gathered a rich set of data from children, 'web' adults and legal professionals through the qualitative methods used. Certain methods were perceived as particularly effective: namely, the use of vignettes, drawing for younger children and the triangulation of respondents through the 'web' adults.

5.16.2 Access to children in groups A (independently legally represented) and B (involved in formal court proceedings but not independently legally represented) was time-consuming and difficult. Access through solicitors produced few potential participants: notably, however, these child informants produced a great deal of information and an important perspective to compare with key legal professionals. Focus groups did not involve any children in groups A and B. The 1995 Act is fairly recent, so such a 'broad sweep' approach might in time contain more children in groups A and B.

5.16.2 A number of methods remain untested from this feasibility study, due to either practical or ethical constraints. Access to court records was refused. While a few child informants were still experiencing legal proceedings over parental responsibilities, ‘active’ cases were not sought. Accessing children through solicitors is more likely to involve children who had positive experiences of legal representation rather than negative. These later two decisions were taken as this was a feasibility, rather than a full, study.

5.16.3 The implications of these methodological reflections are drawn together in the next chapter, in light of possibilities for a further research.

## **CHAPTER SIX: CONCLUSIONS**

**6.0.1** This feasibility study provided valuable information on the research process and issues affecting children's ability to express their views. To make best use of these findings, these have been divided them into the following categories:

1. Findings of interest that align with other studies' results. On this basis, little more is likely to be learnt from further research.
2. Findings in category one that feed directly into policy.
3. Findings of interest that call for further research.

The key lessons learnt in terms of research methodology are then outlined.

### **1. FINDINGS OF INTEREST THAT ALIGN WITH OTHER STUDIES' RESULTS**

**6.1.1 Lack of information:** Children and 'web' adult felt under-informed of children's right to be heard in legal proceedings. What information children had was predominantly gleaned from the media (television, films, print). (For those children who became involved in court proceedings in relation to Section 11 orders, this information was subsequently considered inaccurate.)

**6.1.2 Barriers to children's expression of views:** Children were aware of their parents' emotional fragility and often chose not to express their views for fear of damaging relationships. Children thought they would be asked to choose with which parent they would live. The wish of some to avoid making this choice seems to deter children from seeking the means of expressing views on other aspects. Services such as family mediation, and the legal proceedings themselves, were primarily aimed at parents rather than children. The direct involvement of children in formal procedures or services was thus usually initiated by parents.

**6.1.3 Opportunities for children to express views and receive support:** Beyond parents, older siblings, grandparents, friends and youth leaders were cited as important sources of advice and support. Teachers were considered an important potential source of information and support but children were wary of teachers' inability to maintain confidentiality.

### **2. FINDINGS THAT FEED DIRECTLY INTO POLICY**

**6.2.1 Information dissemination:** Virtually no children nor 'web' adults had seen the Government-supported information (in this case, 'You Matter'), although most children said it would be very useful for a particular age group. The dissemination mechanisms that aim to make 'You Matter' directly available to children need to be investigated and re-activated.

**6.2.2** Adults in the family and neighbourhood are key supporters for children during parental separation or divorce. However, they were often unable to advise appropriately because they do not know about legal services available. Given that family members and other informal contacts are critically important as the conduit to children having independent legal advice, appropriate information needs to be provided to this group. A significant contribution to this process that asks solicitors to distribute ‘You Matter’ to all clients who are parents as a matter of course and offer to discuss the issues it raises further with them or their children.

**6.2.3 Barriers to children’s expression of views:** Some children perceived lawyers to be unapproachable or feared that they would not be treated as equal to adults. This suggests a need for better information and for policies to raise the profile of family lawyers in their role as advocates for children. Training for lawyers in working with children could form a key component in raising the profile of representing children within the profession in general.

**6.2.4** The majority of children was unfamiliar with courts and found them intimidating. Policies to improve children’s experiences of court should take into account the suggestions of children who have given their views in court. These include a tour of the court before the hearing (note this would not typically be covered by legal aid), a video to watch to prepare them for the procedures and possible outcomes, and access to a companion (who is not directly involved in the case) when waiting for proceedings in court. Findings suggest that the provision of child-friendly places for interviewing children would improve their experiences.

### **3. FINDINGS OF INTEREST THAT CALL FOR FURTHER RESEARCH**

**6.3.1 Improving access to information:** Children and their ‘web’ adults think that information on children’s rights to express their views needs to be far more accessible and available. This should be done through different media and means and should be designed and distributed with a view to the age and interests of the target group.

**6.3.2** Children thought that the school could play a greater role in informing children of services available, explaining the procedures and possible outcomes of independent representation. The possibility to include family change and legal issues within the PSE curriculum, and to equip Guidance teachers with the appropriate knowledge and resources to advise children, are two strategies that deserve further research.

**6.3.3 Gender differences in communication and being legally represented:** Boys appear to find it less easy than girls to talk about their feelings and opinions on family matters. Boys’ relative reticence to discuss this topic was evident in the focus groups and interviews conducted for the study. A number of teenage boys regretted being unable to articulate their feelings during their parents’ divorce several years before. It appears that much fewer boys than girls seek independent representation – although this would require quantification to confirm. If true, why such variation occurs, and potential barriers, require exploration.

**6.3.4 Barriers to children's expressions of views:** While many children in the focus groups had experienced parental separation or divorce, no child involved had their views 'formally' considered in court proceedings. Given the small sample size in this study, the question remains as to whether children are successfully using the range of mechanisms available (Form F9, letters and independent representation) when they wish to articulate their views. If they are not using these mechanisms, why they are electing not to express their views should be investigated.

**6.3.5** Furthermore, this study showed that no monitoring was done of parents giving due regard to children's views in major decisions (Section 6). If the matter came to court, the child's views might be raised at a Child Welfare Hearing and addressed by appointment of a curator *ad litem* or reporter. However, if parents make an agreement without recourse to the court, no mechanism ensures children's views are given due regard. Given these findings, the role of family mediation services (especially new services directed at children) needs to be explored, as well as other youth services in offering children a forum for the expression of views.

**6.3.6** A friendly approach by lawyers and a relaxed atmosphere during consultation were critical to young people's positive experiences of independent representation. Children who were independently represented did not feel they had been offered a choice in solicitors but were satisfied with their solicitors. Given the limited number of and selection biases of children interviewed in Group A, further research is required to explore how lawyers and other representatives can effectively engage with children.

**6.3.7 Court and associated procedures:** According to people interviewed, practice appears to differ substantially by court and by the individual Sheriff. Further research is required to map this and follow through the potential implications. Particular differences were raised by legal professionals in dispensing with intimation, sheriffs' hearing of children's views and child welfare hearings. A number of legal professionals may misunderstand intimation through Form F9 and what that involves.

**6.3.8** The level of distress to children and parents caused by delays and prolonged legal proceedings calls for further exploration of the causes of such delays and potential remedies.

**6.3.9** All children who had been independently represented by a lawyer reported significant benefits to their general wellbeing. Many felt that it was the first time their views were being heard clearly. Their parents and other adults confirmed these benefits.

**6.3.10 Impact of disability and ethnicity:** Findings in this study indicate that disability/impairment may restrict children's access to an appropriate means of expressing their views. None of the legal professionals mentioned the challenges of cultural difference that might arise when representing children from minority ethnic groups. It is apparent that these groups of children may be excluded from the provision of services to express their views from the very early stages. Research is required to

identify where the exclusion takes place and how policy change might give equal access to the expression of views to all children.

**6.3.11 Identifying mechanisms to keep children informed:** The study shows that children want to be kept informed of the process and outcomes of the legal proceedings. It has been long recognised within the legal profession that there are no functioning systems of feeding back such information to children. Research is urgently needed to identify the appropriate conduit of information contained in formal reports to children in an appropriate manner. For this research, children asked for feedback every 2-3 months.

**6.3.12 Specialism and training:** The study revealed significant differences in legal professionals' views on certain issues (i.e. children younger than 12 participating) depending on whether the respondent was a 'specialist' or a 'non-specialist' in working with children.

**6.3.13** All professionals consulted advocated further consideration of specialist training for legal professionals. The experiences of children who have had independent representation underline the importance of a lawyer's expertise in consulting children. Research is required to identify the gaps in skills and knowledge amongst family lawyers, and to devise a mechanism to provide the training needed. Enquiry into the gender distribution of lawyers prepared to represent children would also be valuable and, if necessary, further investigation on how to attract more (young) male solicitors to this work.

## **CONCEPTUALISING HOW DECISION-MAKING IN CHILDREN'S LIVES TAKES ACCOUNT OF THEIR VIEWS**

**6.4.1** The feasibility began with assumptions about taking account of children's views in decision-making, that are evident in the initial research questions:

- The principle of giving 'due regard' to children's views may not always sit comfortably alongside other principles such as the avoidance of unnecessary orders, avoidance of delay and the primacy/paramountcy of children's welfare. Adults may find it difficult in practice to balance these principles and may have very different attitudes towards them.
- Court proceedings regarding parental separation (whether parents are married or not) focus around divorce largely as an 'event', at which time parental responsibilities can be set out in an order if necessary. Courts can take various decisions (like to list a case) that allow for review but arguably its essential structure is based on a decision being made (either by the court or between the parties) rather than continued review and renegotiation. Children – and their families – are more likely to experience parental separation as a 'process'. Children's views and experiences may alter as they develop themselves, their families change and how parental separation unfold.
- Children will have individualised experiences but commonalities may exist due to certain backgrounds, characteristics and the context and subject of proceedings.

Such assumptions were broadly confirmed by the research. Children themselves raised potential tensions between children's right to 'have a say' versus the potential harm of being asked to choose between their parents and the potential harm done if asked at a young age. Sheriffs interviewed were reluctant for children to appear in court, although supportive of children having their views considered. Certain children recognised how they had gained perspective on their parental separation and divorce over time, having found it difficult to express their views at the time. Reflections on the methodology and data suggest that children's views are affected by their development stage and current/past experiences. Children do seem to have different experiences, based on their age and gender, and may have different experiences based on impairments and ethnicity; these different experiences require further investigation.

6.4.2 The findings of the feasibility study suggest two additional components to conceptualising children's involvement in this area. First, the flexibility of current legislation and procedure to adapt to children's needs and the attitudes of professionals have resulted in considerable diversity in practice across both courts and individual legal professionals. Second, the processes of parental separation and divorce, whether formal court proceedings, uncontested agreements or family mediation, are largely framed around parents. The need to consider children is now well-recognised but this risks being an 'add on' to essentially adult-oriented services. This creates certain tensions or problems: for example, on confidentiality of children's views, on professionals' roles to ensure children's views have been given due regard, on how children know about and access independent information, advice or representation.

## **SUMMARY OF METHODOLOGICAL ISSUES ENOUNTERED IN RESEARCH WITH CHILDREN**

6.5.1 Recruitment: Difficulties were experienced in accessing children who had expressed their views in legal proceedings. Contact via solicitors produced only a small number of children who had had independent representation.

6.5.2 Access was not granted to court records, in order to recruit families who had been recently involved in legal proceedings. As such, this method remains untested.

6.5.3 Youth groups proved effective environments for discussion on family issues and for recruitment of children with relevant experiences in groups C and D. While sufficient groups were recruited fairly easily, other groups were hesitant to participate because of the perceived sensitivity of the topic.

6.5.4 Consent: Information leaflets for children and parents appeared to provide sufficient information to potential participants and, in particular, to make their decision on whether the children would participate.

6.5.5 Methods: Focus groups and semi-structured interviews worked well with older children. The use of vignettes was particularly productive. Alternative methods are needed for consultation with younger children (involving short activities and visuals) and possibly for boys.

6.5.6 While children were not required to speak about their particular experiences, most did in response to general questions. Younger children are better able to respond to questions on their own experience.

6.5.7 The inclusion of 3 informant groups (children, ‘web’ adults and key legal professionals) and use of 3 different methods (focus group, interview and drawing) provided scope for data triangulation. Researchers were able to check facts and compare perspectives on children’s experiences and views.

6.5.8 If no legal professionals were interviewed in regards to a particular child, however, the precise details of the legal situation were frequently not known. A legal ‘pen sketch’ could be collected, with permission, on every child interviewed.

6.5.9 Children’s retrospective accounts of views and feelings around parental divorce are likely to be re-interpreted over time. The support and information needs of children are likely to change with age. The study design did not include consultation with children in the midst of parental divorce for ethical reasons. Some form of longitudinal study that includes younger children would fill certain gaps in knowledge. The advantages of longitudinal research are:

- access to information on children's experiences of each stage of the process;
- insight into how legal representation interacts with other support services; and
- removal of any bias in children's responses caused by recall.

The disadvantages of longitudinal research are:

- difficulties in obtaining sufficient numbers of participants for a worthwhile study; in part due to an anticipated high drop-out rate; and
- high costs in terms of time and money; in part due to the need for researchers to maintain regular contact with children's support networks (family, school, youth group etc).

6.5.10 In view of the ethical implications of conducting research with children whose parents are currently divorcing, the researchers believe that such a longitudinal study should only be undertaken if policy makers have a commitment to make changes based on the children’s experiences.

**6.5.11 Research involvement:** Young people and adults expressed considerable enthusiasm for further research on this topic and for a participatory approach involving consultation groups and advisory panels.

## **GLOSSARY**

<b>Crave</b>	To ask formally of a court. This unpleasantly abject word is also used as a noun: in sheriff court practice the part of the initial write corresponding to the conclusion in a Court of Sessions summons is called the crave. (Duncan 1992)
<b>Curator <i>ad litem</i></b>	A person appointed by the court to look after the interests of a party to proceedings who is under legal disability but has no guardian. (Duncan 1992)
<b>Decree nisi</b>	Order of the court in two stages: 1. terminating a marriage ... (Stewart 2001)
<b>Form F9</b>	Form of intimation in an action which includes a crave for a Section 11 order – offer a child to fill in the form and return it to the Sheriff.
<b>Writ</b>	This word is mainly used as meaning any writing possessing legal significance ... (Duncan 1992)

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## **ANNEX 1: SUMMARY OF THE MAPPING PAPER**

One major output of this feasibility study is a mapping paper on the ‘voice of the child’ within the Children (Scotland) Act 1995. The following paragraphs summarise this mapping paper.

### **BACKGROUND AND AIMS**

The Children (Scotland) Act 1995 brings together aspects of family, child care and adoption law that affect children. The Act deliberately seeks to incorporate the 3 key principles of the United Nations Convention on the Rights of the Child (UNCRC) – i.e. non-discrimination (Article 2); a child’s welfare as a primary consideration (Article 3); and listening to children’s views (Article 12) — into Scottish legislation and practice.

This ‘mapping paper’ undertakes a detailed analysis of the Act, and accompanying regulations and guidance, asking the following questions:

1. In relation to which decisions do the views of children need to be sought?  
Which children are included in any such requirements?
2. What processes are specified for ascertaining children’s views? What weight is given to the child’s views?
3. Is there provision for feedback to the child?

Relevant reported case law is considered.

The mapping paper is part of a feasibility study, funded by the Scottish Executive. The feasibility study sought to examine how best to conceptualise and evaluate how decision-making in children’s lives takes due account of their views, with particular attention to processes related to Part I of the Children (Scotland) Act 1995 and the implications for compliance with the UNCRC. A second volume reports on the feasibility study itself, including literature reviews on relevant research and methodology.

### **SUMMARY OF KEY PROVISIONS AND MECHANISMS**

**Key provisions** within the Act and related regulations and guidance, when children’s views must be considered:

- When a person is making ‘any major decision’ in exercise of parental responsibilities/ rights (S. 6), including the nomination of a testamentary guardian (S. 7)
- When someone with ‘care or control’ of the child (but not parental responsibilities/ rights) is making ‘any major decision’ in relation to safeguarding the child’s health, development and welfare and/ or surgical, medical or dental treatment or procedure (S. 6)
- When courts are considering making an order in regards to parental responsibilities, rights etc. (S. 11)
- Before a local authority makes a decision with respect to a child whom they are looking after, or proposing to look after (S. 17)

- Before a local authority informs another local authority that a young person, who has a right to after-care, is proposing to live in that authority (S. 29)
- When a local authority provides or arranges for a safe refuge for a child (S. 38)
- When a court or children's hearing are involved in certain proceedings relating to children's hearings or orders in regards to child protection (S. 16)
- When a court is making, varying or discharging parental responsibilities orders (S. 16)
- The 'specified person's' actions in terms of emergency child protection measures under S. 61
- When a court or adoption agency is considering 'any decision relating to the adoption' (S. 6 of the Adoption (Scotland) Act 1978)
- In all adoptions and freeings for adoption, a child aged 12 years or over must consent (unless the child is incapable of consenting) (S. 12 (8) and S. 18 (8) of the Adoption (Scotland) Act 1978).

**Mechanisms** outlined within the Act and related regulations and guidance, for ascertaining children's views, such as:

- A child could sue or defend proceedings in relation to any exercise of parental responsibilities and rights
- A person under the age of 16 years has the legal capacity to instruct a solicitor in any civil matter, where that person has a general understanding of what it means to do so
- Children's involvement within court proceedings for S. 11 orders (e.g. response to intimation, written affidavit, participation in child welfare hearings, third party minuter in any family action)
- Discretionary appointment of people to report on children's best interests, including their views: i.e. court reporters, curators *ad litem*, safeguarders (in relation to children's hearings). A curator *ad litem* must be appointed in applications for parental responsibilities, adoption and freeing orders.
- At certain points when making or reviewing plans for looked-after children, within regulations
- Recommendations for listening to children in child care services, within guidance, such as: providing information; supporting children in developing views; advocacy/ key workers; preparation for, arrangements and chairing of meetings
- Complaints procedures within local authorities; listening to children in service inspections
- Right of child to attend his/ her own children's hearing (S. 45); invitation to child subject to a children's hearing, to submit written views; exclusion of 'relevant people', their representatives and/ or press from children's hearings (S. 43 and 46)

## **COMPARISONS AND CONTRASTS ACROSS THE LEGISLATION, REGULATIONS AND GUIDANCE**

- Coverage: The principle of listening to children's views is not consistently applied in all decisions and processes.
- Limited case law exists on children's views under the 1995 Act.

- Which children?: Different qualifications, presumptions or thresholds are applied, in the weight given to children's views.
- Process versus event: The legal provisions differ in their specification of procedures for ascertaining children's views.
- Only child care guidance recognises that children's views develop and change over time.
- Giving notice to children of decisions made is not consistently specified.
- Best interests versus views: Only a legal representative's remit is primarily to represent a child's views.
- Confidentiality: Proceedings differ in the confidentiality of children's views.
- The individual child, the child in the family or children as a group: Most references are made to decisions for an individual child.

## FURTHER QUESTIONS

**What counts as a decision?** Whether or not a child's views must be taken into account is dependent on what constitutes a 'major decision' (under S. 6) or a 'decision' (for looked-after children). Do matters important to children count as decisions?

### Discretion

**On what basis are decisions about competency and/ or maturity made?** Little specification is given within legislation or guidance on how such decisions are made, what contextual factors should be considered and what skills are required to do so. For instruction of a solicitor, a child must be considered to have a 'general understanding' of what it means to do so; for consent to surgical, medical or dental procedure or treatment, a child must understand the nature and possible consequences of the treatment or procedure (Age of Legal Capacity (Scotland) Act 1991 S. 2 (4)).

**On involving children in decision-making?** Decisions made by adults – e.g. sheriffs dispensing with intimations to children, separating parents making decisions outwith the courts, parents showing children's hearing reports to their child, the Scottish Legal Aid Board granting legal aid for a child to be legally represented – can prevent or facilitate children's views being gathered and taken into account.

**Confidentiality:** What is the appropriate balance between ensuring a child's views are taken into consideration, the child's welfare, and ensuring 'due process' requirements are met?

### PROCESS VERSUS EVENT:

- How do the particular 'events' required by legislation – e.g. child welfare hearing, a children's panel, a court decision on adoption – impact on children's lives?
- How do time-scales help or hinder children's participation and welfare?
- What opportunity is there for review of decisions? What account should be taken of children's development over time, changes in their situations, changes in their views?

- What facilitates or prevents children from participating: i.e., what information do they need and how might they best receive it, what support do they need, what feedback on decisions should they have? What account is taken of children's differing communication styles, abilities/ disabilities, backgrounds etc.?

### **KEY QUESTIONS**

- How are the legal requirements being interpreted in practice?**
- How do children experience them?**
- What constitutes 'good practice'? From whose perspective?**

## ANNEX 2: CHARACTERISTICS OF PARTICIPANTS

**TABLE A1. DEMOGRAPHIC CHARACTERISTICS OF FOCUS GROUP PARTICIPANTS**

Criteria	Youth group	Participants	sex	ethnicity	age	age at split	disability	willing to be interviewed
Mixed but largely male group (age 15 +)	Edinburgh Focus group A	A (twin of B) B * C D (entered late) E F G	F M F F M M F	W W W W W W W	15 15 16 14 19 17 14	5 5 12 no data 17 no data no data	N Y dyslexia N No data Y No data No data	Y Y Y N Y (\$) N N
All male group (age 11-16)	Just outside Edinburgh Focus group B	H (M3 in trans) I * J (S1 in trans) K L M N O P	M M M M M M M M M	W W W W W W W W W	14 12 12 12 11 13 12 15 13	10 11 9 10 no split no split no split no split no split	N N N N N N N N N	Y Y Y Y (but absent) Y Y Y Y Y
Outside Edinburgh	Glasgow Focus group C	Q R (S1) S T U V	M M F M M M	W W W W W W	12 16 12 13 14 12	2 4 8 no split no split no split	N N N N Y N	Y Y N N N N
Ethnic minorities	Edinburgh Focus group D	W X Y Z	F F F M	W Asian Af-C Chi	10 8 9 10	8 no split 9 no data	N N N Y learning	Y Y (\$) N N

## NOTES

\* Young people whose web members have been interviewed (see table below)

\$ = not interviewed as no response to contact about interview after the focus group

**TABLE A2. DEMOGRAPHIC CHARACTERISTICS OF YOUNG PEOPLE INTERVIEWED THROUGH SOLICITOR CONTACT**

Contact	informant	sex	eth nici ty	age	age at split	disa – bility	research group
Solicitor CC	T1	F	W	13	12	N	A
	T2	F	W	12	11	N	A
Solicitor CC	U1	F	W	13	2 (court action age 9)	N	A + spoke in court
Solicitor	V1	F	W	13	11	N	A via Cur. <i>ad litem</i> + attended court
Solicitor	W1 (sister of V1)	F	W	14	12	N	A via Cur. <i>ad litem</i> + attended court
Solicitor	X1	F	W	12	10	N	A
Solicitor	Y1 *	F	W	11	9/10	N	A

## RESEARCH GROUPS

Group A: Those who have experienced independent legal representation

Group B: Those who are involved but not independently represented

Group C: Those who are excluded from their parents' action

**TABLE A3. DEMOGRAPHIC CHARACTERISTICS OF YOUNG PEOPLE INTERVIEWED AFTER FOCUS GROUP**

Focus Group	Interviewee	sex	age	age at split	disability	category
A	A	F	15	5	N	C
	B *	M	15	5	Y dyslexia	C
	C	F	16	12	N	C
	2C (with C)	F	(16)	(14)	N	C
B	H	M	14	10	N	C
	I *	M	12	11	N	C
	J	M	12	9	N	C
C	Q	M	12	2	N	C
	R	M	16	4	N	C
D	W	F	10	8	N	C

**NOTES**

With the exception of 3 participants in the BCDP focus group, all informants are white, including St.

\* Young people whose web members have been interviewed (see table 4)

**TABLE A4. DEMOGRAPHIC CHARACTERISTICS OF ADULT ‘WEB-MAKERS’ INTERVIEWED**

<b>Young person</b>	<b>YP sex</b>	<b>YP age</b>	<b>Web members</b>	<b>Web member sex</b>	<b>Interviewed? Yes/No</b>
T1	F	13	JM mother CC lawyer CB counsellor	F F F	Yes Yes Yes
Y1	F	11	GC father ID ‘step-father’ ED ‘step-mother’	M M F	Yes; all at once
B	M	15	EC mother KP ‘aunt’ SC elder brother	F F M	Yes Yes No – against mother’s wish
I	M	12	SB mother WB father RH maternal g-father	F M M	Yes No – declined Yes

**TABLE A5. DEMOGRAPHIC CHARACTERISTICS OF KEY PROFESSIONALS INTERVIEWED**

<b>Position</b>	<b>Area</b>	<b>Gender</b>	<b>Status</b>
Sheriff W	Glasgow (Area A)	female	Specialist
Sheriff X	Glasgow (Area A)	female	Non-specialist
Sheriff Y	Edinburgh (Area B)	female	Quasi-specialist (recently retired)
Sheriff Z	Edinburgh (Area B)	male	Non-specialist
Family Law Solicitor	Edinburgh practice	male	
CALM Solicitor	Glasgow practice	female	
Family Mediation	Edinburgh	female	Education Officer

## **ANNEX 3: INFORMATION FOR INFORMANTS**

The following pages contain three sets of information designed to communicate the research objectives and activities, and to obtain informed consent.

### **Information for children**

1. The first set of information was an A4 leaflet containing cartoon drawings in a range of bright colours.
2. The second set of information was designed in response to feedback from young informants on the first set. It differed from the first in that it was smaller (A5), opened out as a booklet-style leaflet, and had fewer but systematically ordered ‘Question and answer’ bubbles. It also contained fewer drawings and colours: features which the majority of young people appreciated and should therefore be prioritised in future design of information.

### **Information for parents/youth group leaders**

3. The third sent of information was designed for parents, but was also sent to youth group leaders. The response form gives parents the opportunity to consent to their own involvement in the research, as well as their children’s.

## **ANNEX 4: INTERVIEW GUIDES**

The 4 interview guides used in this research are presented as follows:

- Guide for focus group discussion with young people in youth groups (including vignette )
- Guide for one-to-one interview with young people
- Guide for one-to-one interview with ‘web’ adults named by young people as key supports during the divorce process
- Guide for one-to-one interview with key professionals

### **FOCUS GROUP GUIDE**

#### **Introduction**

5 mins	Warm up/ introduction session (possibly ball + name game, or name, age, their favourite thing about the youth group)
5 mins	Why are we doing this study (handout VOC leaflet to those who have not been given it by leaders or RB on prior visit)
5 mins	Outline confidentiality/ anonymity; freedom to opt-out; secure consent to proceed and record/ answer any questions or concerns they may have. Stress not asking young people to speak about personal experiences. Up to them if they wish to do so.

#### **Information**

\*START for groups who need a longer warm up and have time (1 hour)

Hand around info leaflets for young people, from various sources

Ask young people in pairs to consider what they like/ don’t like about the leaflets -- if they were re-designing the leaflets, what would they do?

Ask where young people do tend to go for information on matters that affect them

**\*START for groups who are familiar with focus groups and/or have limited time (45 mins)**

*Hand around ‘You Matter’*

Here is a leaflet that has particularly been designed for young people, around their rights in family matters.

What do you think of this?

Did you know that young people could have their views heard in court decisions, on such matters?

Find out what the group knows in terms of the provisions for legal representation (ensure distinguish between civil and criminal cases) [e.g. legal aid; at what age children can be represented; how children can be involved]

What are your images of law courts? Of solicitors?

[From where do you get your information on law courts? On solicitors? ]

Where do you think such information should be available? In what ways?

Agony Aunt/ Chatroom

Show young people a short description of a young person's letter concerned about his parents' up-coming divorce.

**Read out:**

Dear Jaz,

My parents have just told me that they're going to get divorced. Its been terrible at home recently with all the rows, so I suppose its for the best in the long term. But I'm really worried about all sorts of things, both for my life now and in the future – everything seems to be changing. What should I do?

Rick, Glasgow

What would you advise this young person to do?

What do you think this young person would be worrying about? What would be his concerns?

Do you think it will be likely that his views will be considered in decisions his parents make about separating etc.? Are families good about discussing such sensitive issues?

Do young people tend to have their views considered when parents make major decisions that affect them?

Who might the young person turn to get help? To discuss such a personal matter? [if not professionals – ask what about class room teachers, guidance teachers]

What might help this young person to ensure his views are heard? What might be the barriers?

Do you think it would be any different for a girl? Someone much younger? Are there any groups you think might find it particularly difficult?

#### Feedback

Their advice on how future research on this subject should be undertaken – what did they think about the focus group? Suggestions for change?

There is a possibility that the Government will be establishing an advisory panel in relation to future government research in related issues. Would that be something that young people such as themselves would be interested in participating in?

Discuss present feedback (letter every 2-3 months), as requested by other young people. What would be their vote for feedback?

#### End with questionnaire

As we said at the beginning, the Scottish Executive want to hear the views of young people who have experienced major family change. We are hoping that some of you, who may have experienced things like their parents separating, might be willing to speak to either Rachel or Kay one-on-one. It would be quite like what we did today, asking in a bit more detail what might be barriers or help for young people to state their views.

Thanks!!

Hand out colourful questionnaire (see next page)

**WE WOULD LIKE TO KNOW SOME BASIC INFORMATION ABOUT YOU ...**

How old are you? .....

Are you ... male?  female?

What area do you live in? .....

Do you have a disability? Yes  No

How would you describe yourself .... Asian  Afro-Caribbean

Chinese  White  Other (please state) .....

**We would appreciate having your views on 2 key questions:**

What advice would you give to the young person whose parents were separating – to ensure his views are heard in decisions made?

Do you think most young people know of their rights to have their views heard, in family matters?

Yes

No  If NO, how should young people be informed?

**We are hoping to speak to some young people who have had experience of their parents separating and/ or divorcing ....**

Have you experienced your parents separating and/ or divorcing? Yes  No

If YES, how old were you at the time? .....

Would you be willing to be interviewed? Yes  No

If YES, please let us know ...

Your name .....

Your telephone number ..... the best time to reach you.....

**If you would like to receive feedback from the study, please let us know your contact details:**

Your name .....

Your address

## **YOUNG PEOPLE'S INTERVIEW GUIDE**

### **Approach**

Young interviewees were considered as expert witnesses. Instead of being asked directly about their experiences, they were asked, as experienced children, how researchers should consult with children to ascertain their views on their experiences and how they would advise other children in similar circumstances. This did not preclude children from talking about their own experiences but did mean that their own experiences were not the focus of interviews.

The general themes for discussion were flexible. Listed below are some broad areas covered in interviews. It is anticipated that these areas will develop and change as participants in their expert witness role define the agenda.

### **Meeting 1**

Meeting 1 will be a short *getting to know each other* meeting. In some cases, this was undertaken over telephone conversations.

Its main purpose will be:

- to explain the study to participants
- go over what will be expected from them
- say something about the researcher
- answer any questions or concerns they may have
- re-assure on confidentiality
- leave information materials with them (unless these have been handed out by solicitors) and confirm a time and place for our next meeting.

The aim would be for the second meeting to be no more than 7 days later.

### **Meeting 2**

During interviews with children, documents will be used as stimulus materials. Participants will be asked to comment on these. It is likely that they will consist of questions similar to those below that the participant can look at, consider or go back to during the course of interview.

*Review confidentiality issues and ask child whether it is OK to record interview using tape recorder and microphone. Set up and try out equipment with child.*

### **Broad areas for discussion:**

#### *Pre court experience;*

- identifying significant people in their lives; involvement in decisions; understanding of events; identifying gaps in knowledge
- who are children likely to approach when they have a personal matter to discuss
- what things would be helpful if they have to make a decision of some kind

- what information/advice would they think children would want
- what things do they think children will bring up
- what sort of things do they think children might forget to ask

*Court proceedings and their impact on the child;*

- understanding of process; concerns; perceptions
- what are children's views of courts /solicitors, other personnel within the family law system
- what are likely to be the main concerns for children when in contact with courts and solicitors
- what are the things that children are likely to experience and how are they likely to feel about these
- what information/advice would they think children would want when they had to go to see a solicitor or attend court
- would children be concerned about their views being kept confidential, within the proceedings

*Post-court experiences*

- when they look back, could some things be done differently
- what would their advice to other children be now; what would they change
- what things are children likely to worry about most
- what could be done to re-assure children

*Overall*

- what are the main issues for children having their views heard in decisions - barriers, opportunities, good/ bad practice

*Feedback*

- their advice on how future research on this subject should be undertaken – e.g. What did they like about this interview? Suggestions for change?
- if they would like to be part of a panel that would help with future government research.
- what form feedback about the study should take
- list of support organisations (if not already given by solicitor)
- any other matters

## **'WEB' ADULTS INTERVIEW GUIDE**

In individual interviews, young participants have identified up to 3 other people, who were key to them expressing their views in regards to family proceedings. To date, all these people have been adults and thus the term adults is used in this paper.

In the subsequent interviews with these 'web' adults, the questions asked will depend on both the young participants' particular experiences (e.g. were they legally represented or not?) and on the 'web' adult (e.g. a solicitor would know more legal detail about any proceedings than a teacher would be likely to). The general framework is proposed below, which would be modified according to both aspects.

*Care will be taken not to reveal the particular comments of young participants, as such comments should be kept confidentially. No 'web' person is approached without first gaining permission for this from the young participant.*

### **Introduction**

Consent from young person, purpose of interview, recording consent, confidentiality of this material, respond to any questions

### **Pen-sketch of child's situation (appropriate for 'web' adults such as solicitors or parents)**

What were the nature of the proceedings?

- what was being asked for in relation to a Section 11 order?
- who were the parties of the proceedings?
- in what court did the proceedings take place?
- was there a child welfare hearing?
- were the proceedings concluded? If so, what was the decision
- was there any appeal to the proceedings? (description if so)

In what ways (if any) was the child involved in (Section 11) proceedings?

- did the sheriff dispense with intimation to the child/ did the child receive intimation of the proceedings (Form F9)?
- did the child express their views by ...
  - filling in the Form F9
  - taking independent legal advice. If so, did the child become legally represented?

*Were there any difficulties in obtaining legal aid?*

- did the child become a party to the action?
- did the child have a curator *ad litem*?
- did the child record his/ her views in any other way -- e.g. letter to the sheriff?
- did the child speak to the sheriff?

Is the child involved in any other legal proceedings? (e.g. children's hearings, child protection, criminal etc.)

The broad areas for discussion will mirror those used in interviews with young participants. 'A' is used to represent the young participant in question.

### **Information and support for decision-making**

Identifying significant people in young people's lives; involvement in decisions; understanding of events; identifying gaps in knowledge

- How well informed did you think A was on the legal proceedings? Decisions being made in relation to family matters? On how A's views could be heard?
- How did A find out how her/ his views could be heard? Were there any practical difficulties in communicating/ meeting?
- What information was available to A? What are your view of the information (or lack of)? How useful and accessible did the information seem in your experience? Any issues of timing, time taken for the whole process, or bureaucracy?
- What other information/advice do you think A or other children might want? Who are children likely to approach when they have a personal matter to discuss? Are these people then able to take the next steps in assisting them?
- Views on the role the media could play in better informing children
- What sort of services/assistance would be helpful if children have to make a decision of some kind?
- What are the issues that children tend to bring up?
- What sort of things do they think children might forget to ask? What can you do to help them here?

#### **SOLICITOR**

- In gathering information from a client, who is a child? Are there particular methods or approaches you use to make her/him comfortable? To explain procedures?
- How did he/she assess competence of A? of children more generally?
- Any legal aid issues?

#### **PARENT**

1. Were your friends, neighbours aware that A had a solicitor? How did they find about this? What were their views?

### **Experience of any legal proceedings and impact on the child**

Understanding of process; concerns; perceptions

1. From your perspective, how do you think A viewed the legal proceedings? More generally, what are children's views of courts /solicitors, other personnel within the family law system?
2. What do you think were A's main concerns, when in contact with courts and solicitors? Are these similar for other children? [if appropriate]

3. Do you know if A was concerned about his/ her views being kept confidential within the proceedings? Is this a concern for other children?
4. What are the things that children are likely to experience and how are they likely to feel about these
5. What information/advice would they think children would want when they had to go to see a solicitor or attend court [if appropriate]

#### **SOLICITOR**

- C. Did you observe anything about the physical space which children enter that helps or hinders their abilities to make their voices heard? (solicitor's office, court etc.)

#### **Post-proceedings, looking back:**

- When you look back, could some things be done differently to improve A's experiences? In what way and why?
- Were you aware of what A was most worried about? What things are children likely to worry about most
- What could be done to support children?

#### **SOLICITOR/ PARENT**

- How was A kept informed of the progress of the case? How was A told of the decision? What was A's reaction?

#### **PARENT**

- As a parent, what do you think should be done if a parent does not want a child's view to be heard but the child wants to give an opinion?
- Did you observe anything about dealing with legal people and procedures that helps or hinders A's abilities to make his/her voices heard?

#### **Overall**

- What are the main issues for children having their views heard in decisions - barriers, opportunities, good/ bad practice
- Are there any special provisions you or your firm/organisation have made to be able to better represent children? [if appropriate]
- Are there characteristics you have as a person, your background, gender or age that you think important? (facilitatory or a barrier) [if appropriate]
- Are there other people you think are currently critical in this process for A, or who could/should be? How could the process be made smoother? Suggestions for ways in which these individuals could link together to better facilitate the process? (role of guidance teachers? Counsellors?)
- Are there any groups of young people who can more easily use the provisions now available or who are excluded? For what reasons?

## **SOLICITOR**

- Extra dimensions or differences you find in representing a child?
- To what extent is welfare relevant to you when representing a child? Have you ever experienced a tension between your perception of a child's welfare and representing the child?
- What training issues are there for solicitors? Should the Law Society have a role?

## **PARENT**

- Your opinions on the process of A having his/ her views heard: how straightforward was it?
- If there were difficulties, delays etc, what were these caused by?
- What could have been done to make it easier for you to assist A in the process?
- How did you think that the court procedures fit into A's everyday life? (school, friends) [if appropriate]
- Would you recommend other children have the same means as A to have his/ her views considered? Would other parents find it the same? Or are there special things about your family relationships that helped? [if appropriate]

## **5. Feedback**

- Advice on how future research on this subject should be undertaken – e.g. What did you like about this interview? Suggestions for change?
- Suggestions as to how best to involve children in future government research.
- What form feedback about the study should take
- Any other matters

## **KEY PROFESSIONALS INTERVIEW GUIDE**

There will be variation according to the professional asked. Below are certain core questions.

### **Basic Information about Interviewee**

Background information on professional work, time in particular post etc.

What is your role in facilitating young people's views in decision-making about family matters?

### **Information and support for involvement in decision-making**

#### *Based on your experience,*

- How well informed do you think children are of legal proceedings? Decisions being made in relation to family matters? On how their views could be heard?
- How do children find out about how their views can be heard in such decisions? If there is information available, how useful do you think it is? How accessible is it? [Questions about F9, if appropriate] Views on the role the media could play in better informing children
- What other information/advice do you think children might want? What sort of services/assistance would be helpful if children have to make a decision of some kind?
- Do children raise issues or questions during the course of family proceedings? If so, what kind of issues or questions? What sort of things might children forget to ask or say?
- Do you think children are inhibited from expressing their opinions? If so, why?

FOR THOSE INVOLVED IN DIRECT CONTACT WITH CHILDREN/ YOUNG PEOPLE  
(e.g. sheriff, curator, solicitor)

- Are there particular methods or approaches in gaining information from children on their views? To explain procedures?
- How do you assess competence of children?
- Any legal aid issues?

### **Experience of any legal proceedings and impact on children/ young people**

#### *Based on your experience ...*

- From your perspective, how do you think children view the legal proceedings? More generally, what are children's views of courts /solicitors, other personnel within the family law system?
  - What do you think were children's main concerns, when in contact with courts and solicitors?
  - What is your approach to the confidentiality of children's views?
- 
- What elements of the physical space (solicitor's office, court etc.) might put off children from stating their views? Might make them feel more willing to state their views?

## **Post-proceedings, looking back:**

*Based on your experience ...*

- What could be done to support children after formal proceedings are done?
- How are children kept informed of the progress of the case? How are children told about the decisions made?

## **Overall**

- What are the main issues for children having their views heard in decisions - barriers, opportunities, good/ bad practice?
- Can you think of a positive example, where a child's views were listened to? [Please describe] What facilitated this?
- Can you think of a negative example, where a child's views were not listened to? [Please describe] Why did this happen?
- Are there any special provisions you or your firm/organisation have made to be able to better represent children? [if appropriate]
- Are there characteristics you have as a person, your background, gender or age that you think important? (facilitatory or a barrier) [if appropriate]
- Are there any groups of children who can more easily use the provisions now available or who are excluded? For what reasons?
- To what extent is welfare relevant to you when working with a child? Have you ever experienced a tension between your perception of a child's welfare and representing the child?
- What training issues are there for [your profession], in supporting children to express their views? Who should give such training?

## **Feedback**

- What form feedback about the study should take to professionals such as yourself? To yourself personally?
- Any other matters

## **ANNEX 5: FEEDBACK TO PARTICIPANTS**

The following four feedback sheets were sent to all child and adult ‘web’ informants at 3 monthly intervals during the course of the study, with accompanying letters.

## Voice of the Child Research Study - Feedback I

- We have now spoken to 6 young people. We are finding it difficult to find young people through solicitors so we are now going to youth groups. Hopefully, we will find more young people there.
- We have a great deal of information from the interviews already. Some early thoughts on common messages:
  - Young people lacked initial information on how courts worked and how their views could be heard. Most information was from television, the media and films. They found this largely inaccurate in practice.
  - Young people were quite dependent on adults for accessing solicitors and courts. For example, young people did not know they could have a lawyer until an adult suggested it. Adults often took young people to their lawyer's offices, unless the lawyer came to the young people's homes.
  - The setting and 'small' details were important for young people feeling comfortable to state their views- such as having food, how long they had to wait, how people spoke to them
  - Young people found it positive to have someone to represent their views in court proceedings. Having a lawyer helped young people know their rights under the law.
  - Young people were concerned about confidentiality but did not think this would be a problem with the people they trust
- You will have been asked in your interview about who was important for you, in expressing your views. Most of you said a parent, a family friend and your solicitor or curator. We may wish to talk to these people as well. We would contact you first, to see if it was ok. And we would not tell these people things that you told us.
- Using your suggestions, we are revising our information on the research that we send to young people. We are going to make the leaflets smaller but keep the colours and text.

If you wish to get in touch with us for any reason about the study, please contact Rachel Baker at 0131.650.3940 or Kay Tisdall 0131.650.3930

## Voice of the Child Research Study – Feedback II

- We have now spoken to 10 young people in one-to-one interviews and over 25 young people in groups. The groups have worked well.
- We hear a lot of common messages from young people. Some early thoughts are:
  - Many young people do not know that they have a right to have their views heard when their parents are separating/ divorcing. They do not know they can be represented by a lawyer. Most young people think that lawyers can be strict and not very easy to talk to.
  - Very few young people have seen any leaflets or other written information about having their views heard in family decisions. They feel that information should be made more available. They have many ideas about how the information could be presented, for example in colourful posters, key-ring cards etc.
  - Young people often find it hard to say which parent they want to stay with. They can feel 'stuck in the middle' and do not want to upset either their mum or their dad.
  - Family members including sisters, brothers, grandparents, aunts and uncles, as well as good friends and neighbours, are often important sources of advice and support for young people.
  - The topic of 'families' or parents divorcing is not usually discussed in school classes. Young people feel that it should be covered in Social Education lessons.
- We have also been talking to some adults who were helped young people to express their views. (Thanks to those young people who allowed us to do this - we have some more useful information.)
- Following your suggestions, we have revised the information on the research that we send to young people. We have made smaller leaflets using bright colours. Young people over the last 2 months have thought these were good.

If you wish to get in touch with us for any reason about the study, please contact Rachel Baker at 0131.650.3940 or Kay Tisdall 0131.650.3930

### **Voice of the Child Research Study - Feedback III**

- We have now finished speaking to young people and adults. We are looking closely at this information and writing up a report for the Government. The report will be completed by the end of June. We will send you a summary by the Autumn.
- In total, we have spoken to 18 young people in one-to-one interviews, and over 25 young people in group discussions held in youth groups. Having got permission from the young person concerned, we have interviewed 10 adults identified by young people as 'important supports' during the time when their parents were separating. We have also spoken to adults working in the professional services for children. They told us their opinions on how young people's views can best be heard and represented.
- We have found that all this information has really helped us see the opportunities for and barriers to young people having their views heard in family decisions.
- The information we have gathered recently supports the common messages that we shared with you in the last two feedback sheets. Some additional messages are:
  - Some professionals can find it hard to judge when to involve children. Some think that a child aged 8 is too young to instruct a lawyer or to appear in court.
  - Many young people thought that the 'You Matter' magazine was a good way of letting young people know about their rights. Some young people thought that 'You Matter' could be made more available by distributing it in schools, community centres and youth clubs.
  - Young people find support from family members and friends very helpful when their parents are separating. The most important thing is that people who are available to talk to young people are good at listening. It is also important that young people can trust the person they are talking to.

**If you wish to get in touch with us for any reason about the study, please contact Rachel Baker at 0131.650.3940 or Kay Tisdall 0131.650.3930**

## Voice of the Child Research Study - Final Feedback

- We have now finished the research. You may remember we asked about the best ways to ask young people about things that matter to them in family decisions. We have written a report for the Government (Scottish Executive). A response from Claire Monaghan, head of legal studies research at the Scottish Executive, is at the end.
- We have talked to:
  - 25 young people in groups
  - 17 young people individually
  - 10 adults identified by young people as 'important supports' when their parents were separating or divorcing
  - 7 adults working in the courts and services.
- We gathered a lot of information in this research. The most important messages are:
  - *Lack of information.* Young people said they did not have sufficient information, when they needed it. Very few young people knew that they had the right to state their views when their parents are separating. Young people thought that the 'You Matter' magazine could be a good way of letting young people know about their rights. The problem is that not many people have seen 'You Matter'. This shows that it should be distributed more widely in schools, community centres and youth clubs.
  - For some younger children, 'You Matter' is a bit too complicated. They need a short information leaflet that is full of colourful pictures.
  - Young people would like adults to explain the things that happen during divorce, how it might affect them and the ways they can say how they are feeling.
  - *Who do young people talk to?* Young people found support from family members and friends very helpful when their parents were separating. They found it easier to talk to adults who are good at listening and who they can trust. Teachers could be a good source of information and advice. Teachers, though, do not always keep information confidential.
  - Adults often did not know about legal services available to children. Parents, teachers and youth workers need to have more and accurate information.
  - Young people sometimes did not want to speak to their parents about what they wanted because they were worried about their parents' feelings. Young people thought they would be asked to choose where they would live.

- Boys seemed to find it less easy to talk about their feelings on family matters. Fewer boys seem to seek legal representation (although we would need to do more research to be sure about this).
- *Legal representation.* Some young people thought lawyers were unapproachable or lawyers would not treat young people equally to adults. Most young people were unfamiliar with courts and found them intimidating. Their information usually came from TV.
- A big question remains over whether young people are successfully getting to have their views considered by courts. Young people with disabilities and from black and minority ethnic groups may find it even harder. There is no official monitoring.
- All the young people who had been represented by a lawyer during their parent's divorce found this very helpful. They felt much better after talking to someone who listened and was careful about passing on information to others.
- Some professionals can find it hard to judge when to involve children. All thought a young person at age 12 or older could have a lawyer or appear in court. Some professionals were not sure about children younger than 12.
- Legal professionals thought that specialist training was needed.
- Young people's involvement was usually due to their parents' suggestion.
- *Long delays.* Sometimes there are long delays in making decisions about the divorce. This can be upsetting for children. The lawyers know that they should try to help the family to make decisions as fast as possible. Young people should be told what happens after the court makes a decision.
- *Research.* Young people said they enjoyed participating in the research. The methods seemed to work. We found it hard to find young people who had legal representation to talk to. But it was easy to find young people willing to talk to us, through groups. Thanks to the young people's suggestions, we improved our introductory leaflets over the study.

We suggested two areas for further study:

- How to get information to children and young people, at a time and in way that is useful.

- Children's experiences of providing their views when their parents are separating/divorcing.

**Response from Claire Monaghan, Scottish Executive:**

It is very important to the Scottish Executive to hear the views of young people. I am grateful to all of you for taking the time to talk to the researchers. Your contributions are valued.

The research report will be published in Autumn 2001. The Scottish Executive will consider carefully what further research might be done on this subject area and how the views expressed in this project can be used to improve the way that young people have their views heard and how they can access information.

Thank you once again for taking the time to participate.

If you wish to get in touch with us for any reason about the study,  
please contact Kay Tisdall 0131.650.3930.

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