

The Family Advice and Information Service: A Changing Role for Family Lawyers in England and Wales?

A Summary of Key Findings from the Final Evaluation Report

1. Research Methodology

- The core of the research is based on a 'before and after' model (pre-FAInS and FAInS). The areas for research were carefully selected to ensure that a representative sample of England and Wales was used. These areas were: Basingstoke, Cardiff, Exeter, Leeds, Lincoln and Stockton & Hartlepool.
- A range of techniques were used to collect data including interview, observations and questionnaires, some key findings of which are summarised below.

2. Understanding Family Law Practice

- The family justice system has a highly specialist structure and solicitors working in family law now operate within a well-defined and distinctive professional context.
- The range of disputes coming under the remit of family lawyers has exploded in recent years. While the courts have been increasingly occupied with the monitoring of the decision-making processes of local authorities, they are also increasingly concerned with family breakdown and its consequences.
- The clients of matrimonial and divorce lawyers are quite distinctive when set against solicitors' clients in other areas of law. Solicitors often categorised their clients as vulnerable and as generally appearing more intense than others owing to the current stress in their lives.
- Consequently family clients are more demanding and require better case-management and more sensitive handling and that, because the emotional element often clouds issues for them, it takes more time to discern their issues and resolve them for them.
- One of the major themes that emerged from surveys of solicitors was the desirability of settlement over litigation. Settling matters without recourse to the courts is the goal most solicitors said they always aim for.
- Solicitors articulated six qualities that they think of as being the qualities of a good settlement:

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

3. Client perspectives

4. The research carried out retrospective surveys and interviews with a number of clients in both the pre- and post-FAInS periods. Key findings relating to clients perspectives included:

5. Choosing a solicitor

- The majority of clients found out about firms through a recommendation/someone they knew having used them, or by having seen its premises (53% and 22% respectively in the pre-FAInS study and 47% and 19% in the FAInS study).
- The main reasons that clients gave for choosing a particular firm were a recommendation from someone else or a convenient location for work (35% and 24% respectively in the pre-FAInS study and 35 and 22% in the FAInS study)

8. Additional concerns for FAInS clients presenting with divorce or relationship breakdown

- The most common additional concern was the division of money, property or pensions, mentioned by 56% of clients
- More than a third (36%) were concerned with contact arrangements for children, just over a fifth (21%) were concerned about where the children should live
- More than a quarter of clients (27%) were concerned about suffering violence or abuse from a partner or ex-partner
- 17% of clients were also concerned about debt, with the same number concerned about welfare benefits.
- The most common issues with which clients had wanted help with from other agencies were managing finances and debt and mental health problems.

9. A Holistic Service: Solicitors as a Gateway to Other Support Services

10. The research examined the propensity of solicitors to act as a 'gateway' to other services, including exploring the attitudes of solicitors towards other services, their use of them and clients perceptions of other services they had recommended to use. Key findings were:

- There appeared to be very few differences between observations of pre-FAInS and FAInS solicitors in terms of discussions with clients about other services.
- However, solicitors stated that they had become more conscious of thinking about which other services may be useful for clients, although they did not think that their behaviour had changed since starting FAInS.
- The agency which solicitors are most likely to refer clients to is family mediation.
- The number of clients who were referred to, advised to use or given Information about mediation rose by 2% to 16% during the FAInS period. However, although the research showed that more clients were made aware of mediation, the report also highlights that mediation referrals (i.e. the solicitor making the appointment for the client) actually fell following the introduction of the pilot.
- FAInS clients were more likely to discuss services they had already used in meetings than in pre-FAInS meetings.
- There was no evidence that the pilot impacted on the propensity of solicitors to arrange for clients to attend other services or to advise them to use other services. Only 5% of FAInS clients were referred to other services although a further 12% were advised to use such services.
- Nearly three-quarters (74%) of FAInS clients rated the solicitor as 'very' or 'quite' helpful in respect of the solicitor suggesting other services, as against three-fifths (59%) of pre-FAInS clients. Pre-FAInS clients were more likely to say that suggesting other services were "not applicable". This suggests that the FAInS approach has made clients more likely to see suggestions to use other services as part of the solicitor's role.
- Those clients with especially complex and interconnected legal and non-legal problems were more likely to have already established contact with other support services through another agency.

- Solicitors most commonly mentioned domestic violence services as other services they refer to. Other common services included Relate and CABx
- Solicitors commonly raised issues around the lack of capacity of other services, in particular contact centres, Relate counselling and CABx
- Where clients made a direct approach to a service they were significantly more likely to be unable to rate the service for helpfulness or felt that the question was not applicable. This suggests that referrals made by solicitors are more likely to be tailored to addressing a specific problem than approaches to services made directly.

11. Changes in practice - Taking a client centred approach

12. The researchers argue that the FAInS approach to client-lawyer interaction stresses the need to take a client-centred, rather than an issue-centred approach to dealing with a case. The research explores the extent to which solicitors participating in the pilot put a client-centred approach into practice drawing on observations of solicitors in practice (focussing particularly on the first meeting and the impact of the use of the Client Information Form) and interview with them and their clients. The research found that:

- Data suggests that, prior to their involvement with FAInS, many solicitors did not adhere to the type of interviewing that would usually be identified as client-centred.
- There was a general shift towards greater use of more open-ended questioning and encouraging clients to tell their story in their own words has been marked since the implementation of FAInS.
- FAInS solicitors were observed as being more strongly connected to their clients.
- FAInS solicitors were more likely to ask the client how they thought the child felt about the client's separation.
- There has been a distinct shift in practice to a more client-centred approach among FAInS practitioners.
- Initial Diagnosis - It could be expected that FAInS providers would spend longer carrying out an initial holistic diagnosis for clients which would

increase the time spent in the first meeting with a client. The research found that the length of the first meeting did increase lasted an average of 8 minutes longer following FAInS training. There was however little evidence to suggest that FAInS solicitors discussed a wider range of issues with their clients.

13. Client Satisfaction

14. The research provides an analysis of clients' experiences of receiving legal services based on telephone interviews carried out with clients six months after their first contact with the solicitor. The analysis showed that:

- Both pre-FAInS and FAInS clients gave similarly high ratings of satisfaction with solicitor service. More than 7 in 10 of the clients interviewed said they were 'very satisfied' with the service they had received. This suggest that solicitors involved in the research were already meeting the expectations of clients in most cases before being trained as FAInS practitioners and that adopting the FAInS approach has not further increased client satisfaction.¹

15. Use of the FAInS documentation

16. Client Information Form

- 73% of clients did complete a Client Information form but usually did so immediately before the meeting.

18. Personal Action Plan (PAPs)

- The PAPs appear to have achieved some of their intentions in that they define roles of solicitors and clients and assist in identifying key issues and, as previously discussed were popular with clients.
- However, many PAPs were not written jointly with the client and were found to have limited use as travelling documents for referrals. Thus, the aims of facilitating client empowerment, responsibility and independence do not appear to have been achieved through the use of PAPs.

¹ The researchers highlight that it is possible to assume that solicitors may be more likely to volunteer to participate in FAInS if they were sympathetic to the FAInS approach and to the notion of more holistic practice.

- Clients viewed the PAP positively, 85% of FAInS clients interviewed remembered the Personal Action Plan and 84% of these found the document either 'very' or 'quite' useful.

19. Costs

20. An analysis of case costs suggests that if the premium paid to FAInS providers during the research period is set aside, FAInS practice has the potential to reduce the actual cost of private family law cases. This is linked to the cases in the sample having a lower probability of becoming certificated. Although the evidence for this is limited and the researchers suggests that FAInS may instead be 'cost neutral'.

21. Support for Separating Families: Children's Perspectives

22. As part of the research, interviews were carried out with a small sample (7) of children and young people whose parents had split up and where at least one of the parents had been to a FAInS practitioner. The analysis of these interviews highlights a wide range of children's experiences. It showed that:

- There are no consistent frameworks of support for children, either formal or informal
- Children often experience difficulties in accessing support from parents, especially where the children's wishes do not coincide with those of their parents
- Independent access to support from external agencies is important and can be helpful, but there are complex issues – for example support that is perceived to be inappropriate or which falls short of the mark can be experienced by the child a yet a further source of frustration
- Issues for support for children are linked to the more complex problem of maintaining family equilibriums which can be fragile in the post-separation situation.
- The lack of support for children is likely to have psychological consequences, without support children can find it difficult to 'make sense' of their experiences and feel frustration, sadness and anger.

- Children's own suggestions for the kind of support that they would find helpful include welfare workers at school, peer listeners at school, and talks in school assemblies
- There are consistent mechanisms that enable children to feel that they are participating in decisions that affect their lives. Participation is inseparable from support for children and children do want to have their voices heard, even if they do not want to assume responsibility for decision making. More effective ways of ensuring children's participation in separating families (and the attendant legal processes) need to be found.

22. Conclusions – Looking to the future

23. The research concludes that FAInS does not appear to have effected much change in family law practice. Although there have been some subtle shifts in the approach adopted by some FAInS practitioners, they have not been substantial enough to be able to detect any major change on the behaviour of solicitors or their clients.

24. The piloting of FAInS has shown that it is not easy or straightforward to require solicitors to change the way they practice when they consider they are already conforming to best practice principles. During the FAInS pilots solicitors did look to enhance their role and most were enthusiastic about the possibility that FAInS would underscore the value of the work they were doing. However, unless all family law practitioners are required to adopt a FAInS approach there is unlikely to be much change in practice.

25. A Holistic Approach: An Appropriate Role for Family Lawyers?

- The majority of family solicitors seem to prefer to maintain a professional boundary between themselves and their clients which means they avoid getting too involved in discussions about wider issues and more emotional concerns.
- It appears that many clients are equally reluctant to raise non-legal issues with their solicitor, and are not really expecting their lawyers to refer them to other agencies or help them deal with non-legal issues. This raises the question of what constitutes a holistic service in family law.
- In other jurisdictions family lawyers have had a much lower profile amongst new initiatives in family law, for example Family Relationship Centres in Australia.

These models limit access to legal advice with a gateway service provided by other agencies (e.g. counselling/mediation services) The extent to which the opposite continues to be the norm in England and Wales remains to be seen given the current changes in the CLS and the impact this may have on provision.

25. Integrated Services

- There was a general recognition among FALnS solicitors that FALnS could enhance best practice, but only if service provision was more integrated. Yet, solicitors did not believe that they should take the lead in promoting this shift and wanted the LSC (or someone else) to do it.
- Effective partnership working is very difficult to achieve and is highly resource intensive. More effective integration of services is, undoubtedly, one of the major unresolved challenges in the provision of more tailored, seamless and joined-up services in family law.
- If a more holistic approach is to be encouraged, more needs to be done to help professionals uncover problem clusters and then help clients to access other services directly. Clients and solicitors need to be able to recognise problems and to recognise when advice and assistance are necessary and appropriate.
- One-stop-shops or centres, in which a variety of legal and non-legal services can be provided in such a way that referrals are seamless, may be a better way of developing integrated services.
- Effective provision of integrated services should not place additional administrative burdens on busy professionals
- The other services solicitors thought could most usefully be joined up included: debt advice/counselling, housing advice, welfare benefits advice, counselling, and possibly mediation. They were unanimous, however, that in any one-stop model legal services should be the core business.