

DELIVERY OF COURT SERVICES TO CHILDREN IN FAMILY PROCEEDINGS

JOINT POSITION STATEMENT – INTERDISCIPLINARY ALLIANCE FOR CHILDREN

1.1 THE ISSUES

There is now a very serious level of concern within the family justice system about the arrangements for the delivery of court welfare services. Interdisciplinary practitioners question whether the Cafcass model is either the most effective in terms of outcomes for children, or the most cost effective use of available resources, both financial and human.

1.2 Key areas of concern are:

- There are unacceptable backlogs of cases in public and private law proceedings, despite the commitment and best efforts of front line staff who have been working under great pressure for a considerable length of time.
- Cafcass' current operating priorities are now posing a serious threat to the statutory framework of children's rights and evidence-based health and welfare policies, painstakingly developed through research and clinical practice over some forty years. Two examples of this are the proposed amendment of s41 Children Act 1989 - opposed by twenty two interdisciplinary organisations in 2009 - and a recent legal note circulated by Cafcass which purports to give it authority to make changes to the section 41 roles and responsibilities of the children's guardian.
- From August 2009 Cafcass has been on an emergency footing and has only been able to offer 'a minimum safe standard' of service delivery. A gap has opened up between organisational definitions of what constitutes a 'safe minimum' and the statutory duty to give paramount consideration to the best interests of the child. Practitioners are concerned that in complying with organisational directives they may potentially be in breach of both their statutory duties and their professional code of ethics.
- The assumption that appears to underlie operational decision-making and resource allocation within Cafcass is that what is best for Cafcass as an organisation will also be best for children. This is debatable and currently not evidence-based.
- Cafcass has become increasingly bureaucratised and this is impeding the proper exercise of the professional discretion of its practitioners.
- The framework of inspection applied by OFSTED does not appear to be fit for purpose.

1.3 The purposes of this summary are to highlight concerns about the present functioning of the organisation and initiate a constructive exploration of possible alternative arrangements.

2 INTRODUCTION

2.1 The Children and Families Advisory and Support Service (Cafcass) brought together the private law work of the former Family Court Welfare Service (broadly concerned with disputes between parents about residence and contact with children), the public law work of the Guardian ad Litem and Reporting Officer Service (concerning disputes between parents and the state about the care of children) and the children's work of the Official Solicitor's department (concerning the legal conduct of specialist children's cases such as medical treatment disputes and complex international cases). Collectively, practitioners are referred to as Family Courts Advisers (FCAs), but each has specific statutory duties (e.g. reporting to the court under s7 Children Act 1989 and representing the interests of the child under s41 of the Act).

2.2 Cafcass is a socio legal court directed service whose welfare practitioners work at the heart of the Family Justice System and have a direct line of accountability to the court as well as to their employing body. The practitioner's primary function is to ensure that the voice and interests of the child are heard in court proceedings and that their interests are represented – independently of the views of a local authority or parent. The independent representation of children's views and an assessment of current and future needs in the light of adult allegations and evidence is an essential feature of Children Act cases and a key control mechanism representing the 'added value' to children and courts.

2.3 Central to the work of practitioners is the priority given to the welfare of children and young people involved in proceedings when courts are making critical decisions about their care and future safety. Accordingly, all the services provided by a court welfare service should be compliant with domestic law and international conventions on the welfare and rights of children (see below Principle A).

3 KEY PRINCIPLES FOR THE SERVICE

3.1 In considering appropriate organisational structures and models of services delivery, there is considerable interdisciplinary consensus about the key principles and priorities set out below.

3.2 Practice Principles

Principle A – Children’s rights and interests: hearing the voice of the child in proceedings
Services should be formulated around the framework of children’s rights and interests as these are set out in domestic law and international conventions.

Principle B – Professional independence and accountability

All internal management and administrative systems should facilitate and support practitioners in the independent exercise of their professional discretion, taking appropriate account of their statutory duties and their direct accountability to the court as well as to their employer.

Principle C - The independent representation of children - continuity of appointment of a named children’s guardian

In cases in which the child is a party to the proceedings, the service shall provide the courts with a named guardian working in tandem with the child’s solicitor, who has continuity of appointment throughout the case, thus ensuring that children are not procedurally disadvantaged in relation to the other parties to the proceedings and providing the oversight necessary to keep children safe and at the forefront of decision-making.

3.3 Priorities in structure and service delivery

Principle D – Services formulated around the statutory framework

The structure of welfare services must reflect and support the statutory purposes of the organisation and the underscoring principles.

Principle E - The framework of evaluation

The framework of evaluation must reflect the statutory purposes of the organisation.

Principle F - Locally delivered services meeting local demand in a timely manner

Court services for children should be geared to local demand and locally deployed in order to provide the courts with a timely and flexible service with a clear organisational emphasis on front line services.

Principle G - Effective and cost effective Services

The service must be cost effective in providing services that deliver the best possible outcomes for children in a way that provides good value for money and makes the best possible use of all the available resources, both human and financial.

Supporting organisations:

Association of Lawyers for Children (ALC)
Family Law Bar Association (FLBA)
Office of the Children’s Commissioner for England
Adoption UK
British Association of Adoption and Fostering (BAAF)
Children’s Rights Alliance for England (CRAE)
Women’s Aid Foundation
Prof. Association for Children’s Guardians, Family Court Advisors and Independent Social Work Practitioners (NAGALRO)
Together Trust
Voice
British Association of Social Workers (BASW)
National Youth Advocacy Service (NYAS)
Great Ormond Street Hospital for Children
The Trade Union and Professional Association for Family Court and Probation Staff (NAPO)
The Royal College of Paediatrics and Child Health
The AIRE Centre (Advice on Individual Rights in Europe)

29th July 2010



The Law Society

29 July 2010

Section 41 of the Children Act 1989

Section 41 of the Children Act 1989 places responsibility on the Court to appoint a named guardian to safeguard the interests of the child in proceedings. It has been brought to the Law Society's attention that Cafcass may be considering developing practices that would undermine the principle of continuity of a named guardian.

When considering any changes to the appointment of guardians it is important that the child's best interests are the key determining factors. Continuity of the named guardian working in tandem with the child's solicitor throughout proceedings is an important aspect of ensuring the interests of the child are paramount in any given case.

The Law Society strongly supports the continuity of a named guardian and the idea of the tandem model, a guardian working with the child's solicitor. Any proposed scheme that undermines these key principles would be placing the welfare of children at risk.

supporting
solicitors