
NAGALRO

Time for Children

**Cafcass Public Law Work – a Survey of
Nagalro Members**

January 2010

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Time for Children: Cafcass Public Law Work – a Survey of Nagalro Members

Foreword

During the late spring and summer of 2009 Nagalro became increasingly concerned about the anxieties expressed by our members who were working for Cafcass, whether employed, bank staff or self-employed contractors, about their ability to deliver a quality service to the vulnerable children subject to public law proceedings. Reference was made to ever-increasing bureaucracy, inconsistent procedures and onerous styles of management leading to a lowering of morale.

An increasing number of our members, both employed and self employed, decided to stop practising as children's guardians. They told us of their sorrow in reaching this decision, which was in response to the difficulties of working within Cafcass, rather than anything inherent in the role.

To manage the problems facing Cafcass, the President of the Family Division published Interim Practice Guidance setting out short-term measures to be put in place. Cafcass also produced Operational Priorities for August 2009 to April 2010. The expressions of anxiety and stress from our members increased dramatically.

In response to the considerable confusion across the country about what was happening to children's cases, Nagalro's Council decided to ask our members to provide first-hand evidence to present to decision-makers. This report presents the results of this survey of Cafcass public law work; it makes distressing reading. Against a background of a limited budget and an increased demand for its services, the data and case examples demonstrate how the changes in practice and demands from Cafcass management are having a negative impact on the work guardians do with the vulnerable children for whom the service was created. We hope this report will be used constructively to inform the future functioning of the family justice system and improve the outcomes for the children at the centre of proceedings.



Ann Haigh, Chair

Acknowledgements

The survey was developed by Judith Timms, Policy Adviser, and Judy Tomlinson, Secretary. They appreciate the significant help that they received from Carol Edwards for advice in developing the questionnaire; from Council members who encouraged Nagalro members to respond; from Ann Haigh, Chair, and Alison Paddle, Press Officer, in the planning and preparation of the report; and from John Tomlinson, who analysed the results and assisted with the drafting of the report. They would like to thank all those who responded to this survey.

Above all, Nagalro would like to acknowledge the work of all its members who are continuing, in very difficult circumstances, to provide a quality service to the children who find themselves the subjects of court proceedings.

1 Key Messages and Conclusions

A survey of Cafcass public law work undertaken by Nagalro members was carried out between August and October 2009, reflecting the views of 73 children's guardians who held 469 public law cases across all Cafcass regions in England. The respondents included employed and self-employed staff. Respondents had an average of 16 years of court experience; their aggregate experience was over 1,000 years. This report, *Time for Children*, summarises the findings of this survey and discusses the implications for children.

The survey was carried out by means of a questionnaire and included both qualitative and quantitative data. Its aims were:

- to examine the impact of changes in service delivery brought about by the President of the Family Division's Interim Practice Guidance published 30 July 2009 and the Cafcass Operating Priorities August 2009 – April 2010; and
- to obtain front-line practitioner information on the impact of the changes on the children who are the subject of the proceedings.

1.1 Backlogs and delay

Of more than 300 cases allocated since January 2009, 40% were unallocated for over two months - including 10% for over three months; 2% of cases were unallocated for over five months.

The survey results indicate that the time between the application to the court and the appointment of a guardian was subject to wide variations. In early autumn 2009, taking the most conservative estimates, there were over 860 cases waiting in the offices from which the respondents took work. The backlog equates to at least 10% of the annual workload. There was a very high level of concern expressed about backlogs of cases, the widespread introduction of duty systems, the situation of the children who were waiting, and the delay in the allocation of a named guardian.

1.2 Duty systems and lack of continuity of appointment

Respondents were worried about the limitations of the duty advisory role which presents both courts and children with problems. For courts, it was the quality of the information available at an early stage and the uncertainty about when a permanent guardian would be appointed. For the children concerned, it was the dangers inherent in an essentially arm's length process of risk assessment, the lack of continuity of appointment and the fact that they might have been in care for an unacceptable length of time before being seen.

The lack of opportunity to critically appraise the local authority social services department's actions and arrangements for the child at an early enough stage in proceedings was another area of concern. Some of the case examples in the survey indicate that the local authority case was being accepted uncritically, raising the fear that the wrong decisions may have been made and the options for the child not fully explored. If too much time elapses between the child's removal from home and the final placement decision, then the outcomes may be determined through the passage of time rather than on the original facts of the case. Given the current upsurge in

care proceedings being taken by local authorities, it becomes even more important that guardians are able to ensure that the right children are being removed from their families and the right arrangements made for them. The survey's evidence of a reduced emphasis on scrutinising the action of the local authority as well as the parents and carers in loco parentis is, therefore, a matter of significant concern.

1.3 Over-bureaucratic and inconsistent administrative procedures

Over 60% of all respondents and over 80% amongst employed staff felt that there had been a significant increase in the administrative burden in 2009. The main complaint was about the proliferation of forms. The survey responses indicate that our members are uncertain of the purpose of the increased bureaucracy. Time spent re-writing and reorganising old files to meet new criteria was particularly seen as unnecessary, given the pressures on the service. There appeared to be a plethora of paperwork to complete which was seen as sapping the morale of practitioners and taking up a disproportionate amount of the professional time available.

1.4 Poor workforce management

Only four out of a total of 61 respondents felt that they had a supportive manager. It was the view of many respondents that Cafcass management had not got the balance right between delivering the service and delivering management information. Concerns were also expressed about managers who were inadequately trained.

Seventy percent of the self-employed guardians who responded said that they had spare capacity to take on new cases and 30% did not. Freezes on allocation as a result of finance shortages and inconsistent messages about organisational policy in relation to the use of the flexible or mixed economy workforce has resulted in many withdrawing their services or seeking alternative work. This was true in all areas of the country.

For those who were self employed, the main disincentives for them taking work from Cafcass were:

- the marked increase in administrative tasks and bureaucracy;
- the culture, standards and policies of the organisation;
- the challenge to their professional independence;
- the competence of, high turnover of, and bullying by managers; and
- the rate of remuneration.

Although the survey reveals spare capacity in the self-employed workforce, the opposite is the case for those who are employed. They were experiencing the same problems outlined above, with the addition of what were perceived as excessive workloads, pressure to take on extra work (resulting in increased rates of sickness in both front-line staff and management), and a heavy involvement in duty systems – which meant less time for dealing with existing cases.

1.5 Reduced focus on the child

Over 80% of those who responded said that they were being instructed to prioritise tasks other than the work done with and for the child. Many respondents felt that

already scant professional resources were being diverted away from direct work with children and families.

Much depended on the approach of individual managers, but there appear to be three main factors diverting professional attention away from the child.

- First, the voice of the child: duty guardians/advisers are not always seeing the children concerned. Whether they do or not depends on the local arrangements agreed between Cafcass and the designated family judges geographically dispersed across the country. If the child is not seen and there is delay – as the survey demonstrates – in appointing a permanent guardian, then the voice of the child is not heard at the beginning of the proceedings and a valuable opportunity may be lost to scrutinise the local authority plan for the child and change the direction of the case.
- Secondly, lack of continuity: the changes in the organisation of service delivery focus on the beginning and end of cases with a reduced input in between. Some respondents had been told they did not need to see children as often as they felt necessary. In practical terms this approach risks denying the child the protection, security and continuity of a named and known practitioner who will provide them with independent representation throughout the proceedings which may determine the course of the rest of their lives.
- The third factor is the increased level of organisational emphasis placed on recording and auditing the process rather than investigating the facts and advising the child and the court on the outcomes for the children concerned.

Two questions arise. The first is how the voice of the child is to be heard in a process which appears to be increasingly management-led, rather than court-directed and child-centred? The second question is whether or not the service as currently organised complies with the government's obligations in relation to:

- Article 6 of the European Convention on Human Rights (ECHR) – the same rights to representation as other parties to the proceedings;
- Article 8 of the ECHR – the rights to family life; and
- Article 12 of the United Nations Convention on the Rights of the Child (UNCRC) – the right both to be consulted and to have a voice in the court proceedings which affect their lives.

1.6 Constraints on professional independence and the independent representation of the child

The survey highlighted concerns about the dangers of guardians being directed by managers not to make visits or attend court hearings which they thought were necessary in order to make a thorough investigation of the child's situation and of the options available to the court. The point was often made that managers do not have detailed knowledge of the case.

In carrying out their task, guardians act as independent professionals who provide a non-partisan view to the court. The guardian carries out an investigation of all the child's circumstances and has specific duties set out in court rules, such as giving age-appropriate advice to the child and obtaining any expert opinion needed. The guardian instructs the child's solicitor on what would be the best outcome for the child

and works with the solicitor to ensure that the voice of the child is heard in the proceedings, to present the case in court, and to make recommendations in the child's best interests. This 'tandem model', in which solicitor and guardian work together, is one of the most sophisticated quality assurance mechanisms for children found in any jurisdiction. The question arises as to whether the wide powers and duties which are legally vested in the child's guardian can be properly exercised if the guardian's professional decisions are overridden or vetoed by managers.

1.7 Definitions of a 'safe minimum service'

The survey reveals a snapshot of an organisation at a time when the Chief Executive has said that it is on an '*emergency footing*' and can offer only a '*safe minimum service*' delivery within the finite resources available. The combined impact of the President's Interim Guidance of 30 July 2009 and the new Cafcass Operating Priorities for August 2009 – April 2010 have resulted in very significant changes in policy and practice being driven through, with what many respondents are experiencing as an oppressive and unsupportive management culture. The impact on service delivery, management practices and workforce morale were becoming evident at the time the survey took place. The concerns raised by respondents in relation to the fettering of their professional discretion are indicative of the gap which is opening up between the organisational target of the '*safe minimum*' standard of service delivery and the statutory duty of the children's guardians under the Children Act 1989 – to give paramount consideration to the child's best interests. Practitioners are rightly concerned that the present systems may put them in breach of either their professional codes of practice or their statutory duty. The concept of a '*safe minimum*' is essentially a subjective rather than an absolute concept, dependent on different local and managerial definitions. This has resulted in considerable confusion and anxiety for front-line staff concerned about potentially dangerous practice. The problems are compounded by a perceived fettering of professional independence and a blurring of the boundaries of professional accountability between Cafcass the corporate body, and its individual practitioners.

The survey results indicate an unacceptably high level of organisational and professional frustration and confusion. The case examples given by the survey respondents vividly illustrated the anxiety and stress experienced by practitioners who are all too acutely aware of the vulnerability of hundreds of children who are waiting for a guardian.

1.8 Effective use of all available resources?

Cafcass has a limited annual budget and an increased demand. There is a pressing need for additional resources at fieldwork level, and what is available is being spread more thinly across a greater number of cases and a greater number of children.

The assumption underlying Cafcass's operational decision-making and resource allocation is that what is most effective for Cafcass as an organisation will also be best for the children concerned. However, just as the interests of parents and vulnerable children may be in conflict, one has to ask whether that is a safe and sustainable assumption. The decision to prioritise resources to set up complex duty advisory systems working around, rather than with the child, may mean that too great a proportion of the available resource is going into what may be a limited paper exercise of arm's-length risk assessment that is insufficient to safeguard children's

interests. This is a high-risk strategy compounded by a lack of management information about when the child has actually been first seen.

The question remains, therefore, whether the changes which have been introduced by Cafcass are either the most effective for the children concerned or the most cost-effective use of all available resources, both human and financial.

The following Sections 2 – 14 describe the findings of the survey with an analysis of the results. Case studies and quotations from respondents illustrate the key issues. Section 15 addresses the consequences of the situation revealed by the survey for the children involved.

2 Policy Context

On 30 July 2009 the president of the Family Division, Sir Mark Potter, issued Interim Guidance for England to address the existing backlogs of work while preventing backlogs arising in respect of new work. It is not a Practice Direction but is intended to create a framework for local arrangements for the best method of achieving necessary improvements to assist Cafcass to deliver their services to children, families and the courts and thus secure timely outcomes to promote the welfare of children who are the subject of family proceedings. The guidance is intended to be a temporary solution to help in an emergency situation and will cease to have effect on 31 March 2010, at which time the President will review the impact of the interim arrangements on the children and proceedings concerned.

Cafcass is under extreme pressure and is struggling with backlogs in both public and private law proceedings. The Chief Executive said that Cafcass is operating on an emergency footing (The Times, 26 October 2009) and is now able to offer only a 'safe minimum service' (Cafcass Operating Priorities August 2009-March 2010).

3 Purpose and Method

3.1 Purpose

The survey was undertaken to contribute to an understanding of the changes in service provision brought about by the Interim Guidance and the new Operating Priorities and their dual impact on the children at the centre of proceedings.

It was carried out after a period when Nagalro Council had been hearing increasing concerns expressed by its members but had no detailed information about the extent of the problems. Its requests for information from Cafcass did not produce a clear picture of the situation.

3.2 Method

The survey was undertaken by means of a questionnaire (Appendix 2). Some questionnaires were completed by a telephone interview, but the majority were completed by the respondents themselves and e-mailed to the organisers. The responses were entered into an Excel spreadsheet, which was used to prepare cross-tabulations and to facilitate classifying responses. Questionnaires were completed in September and October 2009.

4 Survey Respondents

4.1 Geographical coverage

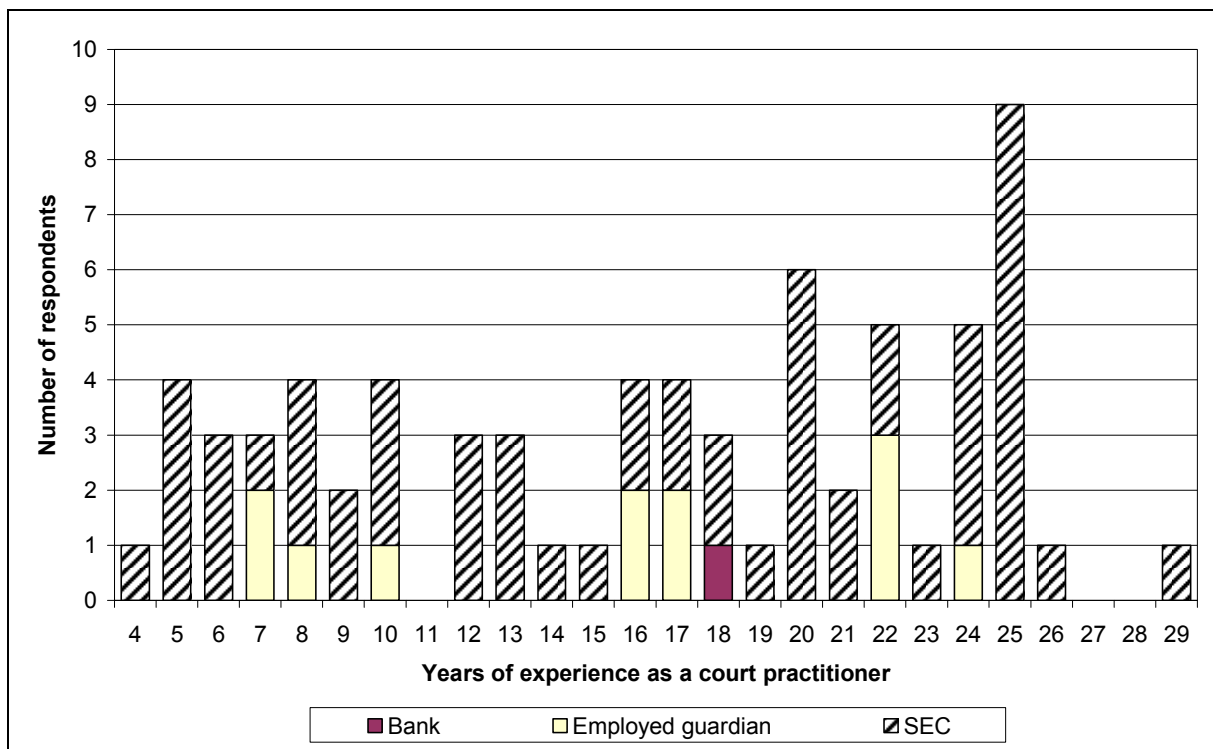
Cafcass serves children and courts in England. All Cafcass Regions were represented in the survey and 20 out of 21 Cafcass areas were covered. While employed members mostly take cases from only one area, several SECs take cases from more than one area and some from more than one Region. Roughly one third of responses were from London guardians, one quarter from each of Southern Region (excluding London) and Central Region, and one sixth from Northern Region. Nagalro members were not surveyed on work for Cafcass Cymru because the separate service in Wales was seen as functioning effectively.

4.2 Numbers - employed and self-employed

There were 73 responses: 1 bank worker, 12 employed guardians and 60 self-employed guardians. Between them they had over 1,000 years of experience. On average, they have had 16 years as a court practitioner (the least experienced had 4 years, the most 29 years). The average experience was the same for employed and self-employed guardians. This is illustrated in the chart below.

Numbers of respondents and their years of experience as a court practitioner

Most guardians responding to the survey have very considerable experience



5 Guardians' Concerns

Respondents were invited to identify any burning issues about Cafcass that were causing them concern. Of the 73 respondents, 52 raised at least one issue. Their concerns were many and diverse; some of these overlapped with replies to other survey questions. The table below shows how many respondents raised each issue.

Issue	Number raising that issue
Loss of professional status/independence, lack of challenge to local authorities, loss of commitment to quality	12
Abandonment of, or inappropriate use of, the Flexible Workforce for budgetary reasons	12
Too many and poorly trained managers	10
Bureaucracy / poor administration / poor value for money	10
Bullying by managers	7
Too many ill-planned changes	6
Delays in appointment of children's guardians	6
Loss of voice of the child	5
Too many cases allocated per guardian	4
Quality of work – inexperienced guardians; lack of staff support	4
Poor regime of quality assessment and award of fee rate	3
Inappropriate templates for court reports	3
Managers' prescription of court hearings/meetings to be attended	3
Poor communications with SECs	3
Safeguarding policies that duplicate the role of local authorities	2
Public Law Outline (PLO)	2
Quality of training	2

These issues are expanded upon and illustrated later in this report.

6 Waiting Lists and Caseloads

6.1 Public law caseloads

Respondents held 469 public law cases at the time they responded (employed 115, SEC 352, and Bank 2); 167 (35%) of these cases were in London. In this sample employed guardians had, on average, 9.6 open public law cases (ranging from 8.0 to 13.5 in different areas), and self-employed guardians an average of 6.0 (range 0 to 11.5). The highest caseload for self-employed guardians was in London.

6.2 Practice

Until recently, a full caseload for an employed guardian was 12 cases. Fluctuations in demand could be, and in part were, absorbed by allocations to self-employed guardians. There has been a build-up of significant lists of children waiting for

guardians and significant numbers of cases being handled by a solicitor without a guardian. The reasons include the rise in the number of applications, the extra time required to deal with the paperwork required by Cafcass management, budgetary problems and decisions about limiting the use of self-employed guardians.

Recently it has become Cafcass practice in some areas to allocate all cases to an employed guardian within a few days of the application, irrespective of individual caseloads. Up to seven extra cases have been allocated to each employed guardian in some offices, on top of what had been regarded as a maximum caseload.

6.3 Evidence from around the Regions

Survey respondents were asked how many public law cases were waiting in offices from which they took work. The geographical coverage of the survey means that a conservative estimate of the total number of cases waiting in September/October 2009 can be made. Because the backlog in any one office will vary from week to week, different guardians reported different figures from the same office. In these cases, the lower figures available have been used. For London many guardians reported a figure of 400 or more. However, one respondent said they had checked with the central referral unit and been given a figure of 215; that lower figure has been used.

Taking these conservative estimates there were over 860 cases awaiting allocation in early autumn 2009. Virtually every office for which there is evidence has a backlog. And as the survey does not provide data for all offices, the true figure will be higher than this estimate. To put this figure in context, there have been around 6,500 care order applications per year between 2005/06 and 2008/09. In the first four months of 2009/10 applications rose to a rate equivalent to 8,500 per year, possibly as a consequence of the Baby P case. So the backlog equates to at least 10% of the latest, increased annual workload.

6.4 Guardians' views

Several respondents to the survey raised waiting lists and caseloads as burning issues.

[Cafcass] has directed that we work differently from October 2009 in view of the high waiting lists. I don't yet know if this means we will all be allocated a number of new cases, but I understand this is already happening in some areas. I'm really worried about this, as I feel I'm barely coping as it is, always working over my hours. I fear that more people will go off sick. Some are talking about applying for other jobs. ... I'm very angry that they (management) will not acknowledge an upper level for a reasonable caseload. Employed guardian Yorkshire and Humberside

I know of [employed] colleagues [who] returned to work on a protected caseload that were ordered to take on more work then went off on sick again; it is the opposite of a caring employer. SEC North East

... [Cafcass'] insistence on employing inexperienced SW's who are then overloaded with cases; SEC East of England

7 Duty System

7.1 Establishment of duty systems

Out of 67 respondents, 48 said a duty system for guardians had been set up in their area. Few SECs had acted as duty advisers and many were unsure whether such systems were operating in their area.

What the systems entail

The idea behind the duty systems is that an adviser should always be available to provide guidance to a solicitor at the first hearing of a new case – but they may then hand the case on to a named guardian or the case will remain unallocated. The advisers are tied to the office or court for the day and often do not have time to attend to their own cases on their duty days.

When a practitioner provides advice under these circumstances, they are not appointed as the named guardian by the court and therefore should not be described as “duty guardians”. However, they are commonly referred to as such, and the quotations below from the survey responses reflect that usage.

7.2 Guardians' views on the system

The system of duty advisers significantly diverts staff from their own cases. It is inefficient because staff have to re-read material that would be well-known to a guardian holding a case long-term.

Duty days are full-on with work – all referrals have to be screened. More effective with private law than public, which tend to get left in the cupboard until allocated. With private cases the file is at least seen every time new info is received and does therefore get reviewed. Some practitioners are much better at the screening than others. It is impossible to do any other work when on duty, thus takes time away from cases. Even when screening we are achieving little because all we can do is put the file back in the cupboard! Employed guardian Southern Region

We have a rota system of both office duty and court duty. It is very time consuming, taking up approx 3 days per month. The office duty is still in its early stages and most are confused about what is expected. Time is spent screening private law applications, authorising police checks, undertaking paper risk assessments, making s120 referrals if the ‘harm box’ has been ticked, answering calls from court and solicitors re unallocated public law cases, plus general calls from the public and parents. Occasionally, I attend court on a duty basis, but most is office-based. Employed guardian Northern Region

Duty system involves ‘safeguarding’ (mainly reading C100 and private law papers/[risk identification forms] and referring to LA). Appears to be waste of resources – lots of rereading, CAF being undertaken from reading of papers only, far too much work to be processed in 1 day so lots of backlog. A public law duty system which appears to involve reading papers and attending 1st hearing recently started to deal with backlog. Employed guardian Central Region

However, the system is cumbersome and complicated. We get a massive pile of duty referrals, some of which are “rollovers” from the previous day as that duty officer did not have time in one day to deal with all the referrals – or sometimes had to go off to court to do duty on an EPO or first ICO, so wasn’t there at all – or maybe there was no duty officer as we have 6 fulltime staff off sick. Other cases in the pile may be waiting for follow-up, feedback from Domestic Violence agency or police or LA. The welcome pack letters take ages to do. We get many phone calls from distressed people who have received a welcome pack letter, sometimes before even knowing their ex-partner has applied to the court for an order, sometimes because they do not understand or think they are being accused of child abuse. We feel guilty if we have not cleared the pile by 5.00pm but are not willing to work on duty beyond this. Employed guardian Northern Region

Impact on cases

The lack of continuity is not in the interest of good communication with the children, families and other professionals in the case:

Solicitors complain that it is a waste of time, as the guardians don’t have any input. They [duty guardians] don’t know what is going on as they have not seen anyone. Can’t take their [duty guardians’] opinion seriously. SEC London

I had 2 cases where they have had someone covering – very confusing and definitely not child-focused. The parents get different messages. Employed guardian Central Region

Some cases I have recently taken have had a duty guardian before me. Many parents have told me they don’t like to meet one guardian only to be told that they are not their “permanent” guardian. SEC South-East

I do not know the Cafcass view, but solicitors to whom I have spoken dislike it because there is no continuity for the children involved. SEC Northern Region

Duty advisers also risk making the wrong recommendations because of a lack of full information and a pressure to respond quickly:

In my view duty guardians rarely have adequate information on which to base informed recommendations. In one of my cases a duty CG recommended that a severely disabled child remain at home pending further assessment. Having met with the child and observed the home circumstances, there was clear evidence of serious neglect, and I recommended at the next hearing that the child should be subject to ICO and placed away from home pending further assessment (ultimately full CO made and child placed in residential school). SEC London

Lack of consistency for the children, different practitioners dealing with the case, which likely leads to different approaches, views and opinions and inevitably confusion for the child. No one person is taking responsibility. Also more cost-effective to have continuity and less likely a need for repetition of tasks/discussions. I have taken cases from duty guardians with poor handover information and have had to re-visit initial issues, the necessity of

which has not been helpful to the child and parties and they ask why the repetition. SEC Southern Region

One barrister I spoke with said it was unhelpful as the duty guardian did not have opportunity to reflect and interview all and “played safe” by agreeing with LA. SEC South-West

8 Delays in Allocating Cases

8.1 Guardians’ experiences

There was a wide spread of the times between the application to the court and the appointment of a guardian. In the experience of 326 cases since January 2009, 57 respondents reported delays of:

- less than one week in 30% of cases;
- between one week and one month in a further 30% of cases; but
- over two months in 40% of cases – including 10% over three months; a few cases (6 out of 326, or 2%) were unallocated for over five months.

Delays in allocation were a key issue for several respondents:

I feel that the service now being offered is very poor compared to that in the past. In the past no child was without a Guardian at the beginning of proceedings as is generally the case now. SEC

I am concerned that the number of unallocated cases became so great and the delays so long that the end result is that the Guardian will be done away with: ie courts would be so used to not having a Guardian that they simply don't see the need. SEC London

My concern is the decline in the service, in terms of CG not now allocated at the beginning of a case. Cases are going to final hearing without a CG. I have just concluded an ISW [case] where children in care 12 months, proceedings since April 2009 and no CG and I felt their voice was being lost, despite having an experienced solicitor. SEC West Midlands

No more allocation of work to SECs! This has had a devastating effect on us personally and on the service in XXX, which is experiencing increasingly long waiting lists - for the first time ever. SEC Southern Region

Case example

I have a case recently allocated to me direct by the court as they lost patience with Cafcass failing even to communicate with them. The last straw was Cafcass Chief Executive being ordered to court, with no one turning up or even a letter or e-mail to say why. The child was on an Interim Care Order and had been at serious risk during the proceedings. Eventually an operations director from Cafcass sent a letter profusely apologising to the court and allocated the case to me. SEC London

The court has a duty to appoint a guardian when a child needs this and it is Cafcass’ statutory duty to assist the court by providing a named guardian.

Case example

I was in court on my own case and was approached by the solicitor for another case. He said I was the only guardian at the court that morning and that he would like me to read the papers on a case in which he represented a 10-week old baby in a contested ICO hearing. There was nobody from Cafcass at court. I said that I was willing to act as guardian (it would only have involved reading the papers at court and giving verbal advice). However, having heard that SECs were not to be allocated further work, I phoned my local office and was told by the area manager that I was not to take it, even on a duty basis. The solicitor, very upset and angry, phoned Cafcass himself and received the same reply: "budgetary constraints, no further work for SECs". I could easily have read the papers and given instructions to the solicitor at no extra cost to the organisation. SEC London and South East

Value for money and the needs of the child are taking second place to managerial inflexibility and short-term cost-saving.

9 Working with Other Guardians and with Solicitors

9.1 Cases transferred between guardians

Sickness absence and departures to new jobs were not significant in the days before Cafcass – there was much greater job satisfaction, a greater sense of commitment to the work, less stress and a lower turnover of staff; it was very unusual for cases to have to be transferred between guardians. Research indicates that even as recently as 2007, a transfer between guardians was rare.¹

However, there has always been a risk of problems when a case has to be transferred to a new guardian. Unless handover arrangements are very good, these difficulties are likely to occur in many cases where there has been a duty adviser in the early stages. The use of a duty system will increase the frequency of this happening.

First, some examples where the transfer has worked well:

She made some notes and then passed on the information – so it was OK.
SEC Southern Region

[An] employed guardian attended the initial hearing and undertook some initial brief assessment. ... left a very comprehensive background to what she had undertaken which was very helpful. SEC South-West

But there are many more examples of problems:

The tone is set by the earlier involvement and can be difficult to change if you don't agree with the way things have been done at the outset. I think there are

¹ J Masson, contributing to 'The principle of a single named guardian for the child throughout care proceedings' *Seen and Heard*, Dec 2009, 19(4) 32-53 at p 44

also difficulties for the child's solicitor having to deal with potentially a change in instruction. Often there has been quite a gap, (this year's experience is far from new) and in the interim things may have drifted or decisions made that are not what you would have chosen. SEC East of England

Not very helpful, although [the earlier] worker did what she could, I still needed to re-interview everyone so I had my view of the parties and case, not the same as reading someone else's take on these types of cases. Also had to assure the child I would keep the case, as she was fed up with all the changes in her life – changes of SW, GAL, moving, issues of trust etc – which was why I took on this job in order to provide a level of consistency for children in these situations. Employed guardian Central Region

3 [cases] – previously [had] duty guardians. Experts appointed without the relevant expertise providing reports. Plans not being made for children who are left to languish. SEC South East

... disastrous as the duty guardian left decisions for the likes of myself – e.g. like leaving 7 children at home. SEC South East

The family feel/have felt abandoned and are angry with me despite Cafcass saying they will explain fully the delay – never a conducive working environment. The solicitor for the four children has had to visit the children twice on his own given the age of particularly two of them, it is taking me ages to sort the papers and work out what I have or haven't got (it was left pending for three/four months by the previous Guardian/Cafcass). SEC Central Region

Case example

I have been told I have to leave at the end of September. I have one case that desperately will need to be reallocated – there are very contentious relationships between the adult parties. Despite me trying to negotiate that I either carry on working my existing cases or they are reallocated, with only two weeks before I must leave 4 of my cases are not reallocated. I have repeatedly identified this case in discussion as very difficult and needs a proper handover, to no avail. SEC West Midlands

Case transfers should be properly managed for the benefit of the child.

9.2 The tandem model: working with solicitors

A fundamental aspect of a guardian's role is to work in tandem with a solicitor. The combination of social work skills and legal skills best serves the needs of the child in the court process. Ideally, the children's guardian is appointed very shortly after the application is made to court and then selects a competent solicitor. However, as noted above, there have been significant delays in appointing guardians in some cases. This leaves a solicitor to represent the child without the benefit of social work insight into the child's needs in the early, often crucial stages of the application.

In 326 public law cases started since January 2009, the solicitor had been appointed before the guardian in three-quarters of this sample. This situation can cause significant problems. Almost 30% of those surveyed expressed concerns about the current practice and the effective operation of the tandem model.

In my view, the tandem model works best when a guardian is appointed from the start and, ideally, chooses the solicitor. Nowadays, solicitors are working on their own for many months before a guardian is appointed. Some do remarkably well in the circumstances, but there is often drift. Solicitors will not have the time to check what is going on with the LA in a way that a guardian can. They are also not trained to work with children in the way we are.

Employed guardian Northern Region

[I] have had cases in which the tandem model is undermined by the excessively late appointment of a Guardian, by which time [the] process is advanced and sometimes has to be reversed, causing delays and increased costs. SEC West Midlands

Over the last 4 weeks I have been contacted by 6 solicitors from the Greater Manchester area asking for my availability as an ISW as they were making an application to Court to appoint an ISW on the grounds there was no CG. All solicitors felt unable to advise the Court regarding the child's best interests so the tandem model was not effective at all. All applications were turned down due to LSC funding difficulties. SEC North West

I have ... heard solicitors telling me that some new, inexperienced Guardians do not consult/instruct them, preferring instead to seek "supervision" from their managers. SEC London

It would appear that very inexperienced solicitors are being appointed and then no guardian for several months. SEC East England

Case example

I know of one case where a solicitor was allocated to a case after 5 months, 2 boys with a mentally ill mother. She felt they desperately needed a guardian to establish their wishes and feelings and the rest. She rang a Cafcass manager who said that as they were safe (i.e. in foster care) they were not a priority. She pushed him on this and his response was "Refuse to agree the next ICO and get them sent home – then they will be a priority." SEC London

Priorities should be based on the needs of the child, not arbitrary rules.

In other cases, guardians and solicitors continue to work effectively together for the benefit of the child:

... the solicitors on each of my cases are all experienced and completely committed and, despite the worries they have about the restrictions in remuneration they now face, I can't say that any of them have allowed this to interfere with the service that we are providing to the children in my cases. SEC East England

Just under a quarter of all survey respondents said the tandem model was continuing to work well.

10 Self-employed Guardians and Cafcass

10.1 Causes of dissatisfaction with the service

Self-employed guardians were asked what would have prompted them to take on more work for Cafcass, why they had decided not to take new work from Cafcass, and under what circumstances might they take work from Cafcass again. Perhaps not surprisingly, these three questions produced a similar range of answers. All of this evidence is considered together.

Just over one in five SECs said they would be happy to take more work from Cafcass. They had spare capacity to take on more work, but many of them were not being offered new cases, apparently because of budget restrictions.

The main causes of dissatisfaction expressed by respondents as a whole were:

- the culture, standards and policies of the organisation;
- the rate of remuneration;
- the loss of respect by Cafcass management for experienced, well-qualified guardians;
- the restrictions on the number of cases allocated to self-employed guardians, notwithstanding the backlogs of unallocated cases, leading to much greater uncertainty about future earnings; and
- the challenge to their professional independence.

Other concerns raised included the marked increase in administrative tasks and bureaucracy; the contract review system (which is the gateway to a higher rate of pay); the competence of managers and the high turnover of managers; and bullying by managers.

10.2 Culture, standards and policies

A quarter of SECs recorded concerns about these issues. The most serious and far-reaching of these address Cafcass' reason for existence – to promote the welfare of children in the courts. Some SECs feel the organisation has lost sight of its primary purpose:

I now consider that the guardian service and the child protection system have been destroyed by Cafcass and by the government. I fear for the future of vulnerable children and I no longer wish to be any part of a failing system which is unable and unwilling to afford them the protection which they deserve. SEC Yorkshire and Humberside

I am loath to be associated with an organisation that is failing children and whose priorities are so wrongly skewed. SEC London

I would also want ... some sense of coherent policy. SEC East of England

I find myself writing reports to satisfy Cafcass not the child or the court. SEC Midlands

Some SECs feel that their goodwill towards Cafcass has been abused. Having been denied work for many months, they were then asked to help out ahead of Ofsted inspections. Their own priorities for children do not align well with their perceptions of these agencies' priorities:

[I will take more work when] Cafcass starts to put the interests of children ahead of trying to get good reports from Ofsted. SEC Southern Region

... loss of emphasis on the child's needs rather than Cafcass and Ofsted's needs. SEC East of England

Some do not like what they perceive as an unresponsive organisational culture:

It is a Stalinist organisation that does not accept criticism and responds to the same by threats. SEC

... need a different ethos/morale at head of Cafcass. SEC London

Under pressure to complete cases in fewer hours, but without clarity as to what the organisation regards as adequately robust protection of the child's interests, and concern that that might not meet their own professional standards, some said they will decline to offer their services to Cafcass:

I have major concerns over the phrase 'safe minimum standard' so will prioritise other work including ISW work over Cafcass work ... SEC Central Region

If I am appointed (as I sometimes am) as an Independent Social Worker where there is no Children's Guardian appointed or in prospect, I shall happily undertake the work for the Court. But not for Cafcass – I'd rather have root canal surgery! SEC

10.3 Pay rate

SECs are paid by the hour. A uniform rate is used for all professional activity and travel time, but there is no direct recompense for expenses incurred such as travel costs or subsistence. The hourly rate has been held at £23 per hour (higher in London and some other areas) since April 2005. A higher rate, £30 per hour (£33 in London), was offered by Cafcass from April 2009.

The increased rate is payable to those guardians assessed as Good or Excellent. The criteria for this assessment are based entirely on the subjectively assessed 'quality' of the guardian's files. There is no appeal mechanism for guardians rated as Satisfactory or Inadequate. One in five of all SECs responding to the survey raised pay as an issue, and the grading system in particular was felt to be unfair and the criteria inappropriate.

Several SECs comment that they can earn higher rates doing other work, and even as a guardian employed by an agency contracted to Cafcass.

Nagalro disputes the basis on which Cafcass has calculated these rates as being inequitable in comparison to the pay of those who are employed.

10.4 Loss of respect

Some SECs were very bitter about the way they felt they had been treated by Cafcass. As qualified, experienced, self-employed individuals they expected their professional competence and integrity to be respected. They felt it was not:

The way that they treat SECs is demeaning, humiliating, they change their expectations of us all the time in terms of filing, what should be in reports and in case plans and it seems that it is all in an attempt to prove that we are working [only] "satisfactorily" and they can then justify not using us anymore. SEC London and South East

If Cafcass recognised our experience and supported staff rather than look for blame and don't support them ... SEC North East

... with the continuing hostility towards the workforce by Cafcass top management. SEC North West

Before Cafcass I felt valued and respected. Now, although I am the same person with the same high expectations of my responsibilities to the Child and the Court, I feel de-moralised and de-valued and feel that Cafcass does not trust my judgement. Another SEC London and South East

If they are to continue to work for Cafcass, they seek:

Respect for my professional independence. SEC Southern Region

An acceptance I am competent. SEC West Midlands

Recognition that I was a valued practitioner, ... recognition that I have worked effectively and proactively on behalf of children since the commencement of Cafcass. SEC North West

10.5 Allocation of cases to SECs

Many SECs have a portfolio of work which can include acting as an ISW, providing advocacy or training, mentoring and chairing conferences. Whatever their work-mix, most SECs want to be able to plan their working lives, having a reasonable understanding of what Cafcass work they can expect, while accepting that this cannot be guaranteed. In recent years they have been denied that stability. Cafcass has taken their availability for granted at times, but at other times cut off the flow of new cases without notice and for indefinite periods. Not surprisingly, some SECs have taken themselves out of the market.

I am now in a position to take on more work from Cafcass but there has been a freeze on the allocation to SECs. SEC London

I have not been asked and been told that I will not be given any more cases. SEC West Midlands

I had space to take on cases in September 2009, but by then S/E budget overspent and no allocation to SECs for remainder of financial year. I would have wished to continue to hold about six CG cases at any one time (I currently have two). SEC London

[I would have taken on more work if there were further] requests from Cafcass, ironically as we were all asked to take on more work, right up to being informed, by email of a moratorium on the use of SECs this month. SEC Southern Region

[I would consider taking work from Cafcass again if there were]:

- an agreement and commitment between Cafcass and each individual contractor about how much work they should take on in a particular year. SEC London*
- a reasonable flow of work. SEC North West*
- some guarantee that they will give me sufficient work for my annual contract... Another SEC London*

This topic was raised as a burning issue by several SEC guardians. Two aspects concerned them most: Cafcass' willingness to allow waiting lists to grow, while refusing to allocate cases to SECs who have spare capacity; and the expectation by Cafcass that SECs will be immediately free to take on new work after months of nothing being offered.

Messages being given by various managers across the North West that the Flexible Workforce are to be no longer used at any future time. SEC North West

I am appalled that Cafcass have decided not to allocate any work to self-employed guardians but to allow the waiting lists to grow out of control. SEC West Midlands

... the uncertainty as to whether self-employment will continue and the frequent freezes on allocation make it hard to plan work. It would be helpful if contractors could be advised when decisions [are] taken not to allocate and for how long this is likely to continue. The other frustration is that when money does become available then the expectation is that a lot of work will be taken on at once. SEC Southern Region

Even in the summer, when I objected to having to revamp my files to fit Ofsted's requirements and threatened to leave rather than have to comply, I was begged not to and told that I was valued and respected for my work. Now, however, three months later I'm not being given any work, ... SEC London and South East

I had plenty of capacity but Cafcass would not allocate unless the inspectors were due in and it wanted to hide the backlog. SEC

Some 70% of SECs said they had spare capacity at the date they responded to the survey; 30% did not – they had taken on ISW work or other activities. Some in the second group indicated they would be prepared to take more Cafcass work and less other work.

I am taking on ISW work but like many I really like the guardian work, and enjoy working together with child care solicitors; I would happily take on more Cafcass work and less ISW work if Cafcass respected its staff and its SECs. SEC London

10.6 Loss of professional independence

Guardians are appointed by the court and are personally answerable to the court. Some Cafcass managers do not recognise the professional autonomy that this entails and seek to direct their staff or contractors in inappropriate ways.

... and the comments about my reports given by the service manager which amounts to being directive. SEC West Midlands

I decided some time ago not to take any more work from Cafcass. There are too many professional compromises that have to be made. SEC

I have become increasingly concerned that Cafcass is ... restricting the professional independence of Children's Guardians. SEC London

[I would have taken on more Cafcass work if]:

- [there was] respect for my professional independence. SEC Southern Region

- [I] got treated like a professional. SEC South East

- they do not impose a structure for working which interferes with my independence and integrity as a professional. SEC London

- [there were] a return to "light touch management", less interference in my practice and application of "quality" criteria, which keep changing. SEC East of England

- but I would also want some reassurances about recommendations not being interfered with. Another SEC East of England

11 Focus on the Child

11.1 Guardians' experiences and views on Cafcass expectations

The survey asked whether Guardians were being instructed or guided by Cafcass to prioritise tasks other than the work done with, or for, the child. Just over half of all those who responded to this question (61 responses in total) said they were being so instructed. Nine out of ten employed guardians said they had been instructed in this way. There was no obvious geographical pattern to the responses – it seemed to depend more on the approach of individual managers.

The main distractions and distortions of best practice that guardians identified were:

- excessive case administration, filing and audits of their case files;
- instruction to self-employed guardians to limit the number of hours they spent on a case, and to provide justifications for hours planned;
- instruction not to attend particular court hearings, case conferences or other meetings of professionals, or to restrict the number of visits to the child or family;
- routine assessment of risk, using a cumbersome and time-consuming form, for children who are already protected because they are in local authority care;
- requirement to read Cafcass policy documents, which changed frequently;

- filing their records and typing up interview notes, in order that the files be "fit for examination" in an Ofsted inspection; and
- the need to comply with a Cafcass-specified report format and structure, at the expense of clarity about the key issues and the information required by the court in any particular case.

A selection of responses illustrates the above:

Administration became the be-all and end-all of Cafcass work. Your effectiveness as a practitioner was determined by your compliance with filling in the forms. It is not stretching a point to say that you didn't have to see the child to be seen as a good Guardian as long as your paperwork was up to date. SEC

Yes, was told not to attend fact-finding hearing but got court to agree it may also be disposal hearing so attended anyway (6 days) - Judge asked me if it had been helpful, I said invaluable and she reiterated this. SEC East of England

... contact logs, case plans, duty work, meetings, e-learning, policy reading – all these are supposed to be done before you work with children or courts or families. Employed guardian North West

Case example

I was recently told there was no need to see a child on a case I was to cover on a duty basis. It was a contested ICO hearing, papers were given to me on Friday afternoon, hearing was the following Monday. It was a very finely balanced case, child aged 4, serious domestic violence issues. The court had ordered a guardian to attend to give 'an informed opinion'. I decided to see family over the weekend, as I did not want to appear a complete fool at the hearing. Also, I felt that the family deserved that service from me. I have not been 'told off' for going against the manager's instruction, but there is a constant pressure to do less on cases (unless the tasks are Ofsted-related of course). Employed guardian North-East

Instructions to do less direct work with children seriously undermines the guardian's role in safeguarding and promoting the child's interests during the proceedings.

Yes, the admin is meant to be the priority especially prior to the Ofsted inspection. File audits seem to be frequent. I am also being instructed to attend compulsory private law training, team meetings etc. There is an atmosphere of fear generated that if one is non-compliant, or voice concerns about changes, disciplinary measures will be taken. Reports being [quality checked] cuts into report writing time. Employed guardian Southwest

The contract manager has told me on numerous occasions that it is unnecessary for me to visit young children and attend LAC reviews. She also told me it was unnecessary to attend progress meetings at parenting assessment centres as "anything where there is going to be a report you can just read that". I have also been told I spend too much time with children and speaking to their relatives, carers. SEC West Midlands

Not anymore, since our new SEC contracts manager went off on (long-term) sick leave. Prior to that there was a big emphasis on administrative procedures, risk assessments etc and there was a daily deluge of emails, some of them apparently contradictory, telling us what we should all be doing, and what forms we should all be submitting. There was an underlying threat that if we did not comply we would not be given further work. SEC East of England

11.2 The guardian as advocate for the child and challenger of the local authority

This topic featured heavily in respondents' burning issues. Many felt that Cafcass had lost sight of its reason for existence: to speak on behalf of the child and to challenge other parties, most notably the local authority. This need for challenge calls for self-confidence – a quality that some feel is being damaged by managerial criticism.

Case example

Two sisters aged 3 and 7 that had been removed from home after the youngest had been physically harmed by mother's partner. Over two years they had seen 5 different social workers and 25 different SWAs involved in supervising the contact.

But their solicitor and I worked in tandem with them throughout that period to secure a safe future for them. In their case by the end of the court proceedings they had returned home to mother. I had ensured that the right services were going into the family home and that the family felt properly supported.

At one point I was opposed in my efforts to return them home by the fourth SW and an adult psychologist: that took a lot of heart-searching and introspection by myself and the children's solicitor to stand up to: a less experienced CG might have found that too difficult and taken the 'easy path' and gone along with LA adoption plans.

By case-end although the LA wanted a supervision order I contested this in evidence at court and the judge agreed that care orders were appropriate, given the injuries. So the LA went from seeking Placement orders to seeking just supervision orders. SEC North West

It takes an experienced, measured, confident but resolute practitioner to assert the right course of action in such a case.

I think the "powers that be" in Cafcass do not understand the role of a Guardian – i.e. to protect the child and safeguard his/her interests in the course of the court proceedings. They seem to be obsessed with wishes and feelings (often child has 3 people asking them this) and to be duplicating the local authority social worker role. SEC West Midlands

The approach of [the] local service manager is no less than bullying and is one way execution of power. It is demoralising and takes away the confidence that a Children's Guardian needs to have to stand for the children against the flow. SEC West Midlands

I am extremely concerned about the changes to the service and that the role of the Guardian is being so undermined. Under a duty system there is no longer

any independent scrutiny of the Local Authority. The child's voice is being completely lost. SEC South West

... and in areas where there are failing LAs and poor social work practice, our role is even more important. (Two of the unitaries in ZZZ are on special measures and the social work practice is tricky at times, to say the least.) SEC

From what I understand, the new guidance on what CGs should and shouldn't do will severely limit the scope of the work to be undertaken and causes me concern that there will be no real independent challenge to the LA. ...I am further concerned to hear that CGs are being told not to go routinely to court hearings; whilst I accept it is expensive for CGs and other professionals to spend a lot of waiting time in court, presence at the court hearing, particularly the entirety of the final hearing, is a key part of the job. SEC West Midlands

Case example

I was recently allocated a case, which was considered a priority, where I considered that the Local Authority had over-reacted in removing the children from their parents' care. The parents had left the children at home alone and caring for a very disabled child, which was inappropriate; but the LA, I believe, over-reacted. Once I was appointed, and the LA became aware of my view, they put together a rehabilitation plan. They had lied to the Court about the level of experience of a foster-carer and possibly placed a very disabled baby at risk by placing him with a very inexperienced carer. Once I was appointed I was able to find out more information about the carer and the baby was returned to his parents' care. SEC London

The guardian's challenge to the LA led to the baby's return to his parents' care.

Case examples

A 9.5 case for an immigrant teenager, in very special and complex circumstances. Although I have worked on this case for some time and my advice was sought on the issues, which are complex, I was not invited to attend court – and the manager and the FSW [family support worker] attended instead. The manager knew neither the mother nor the young person; the FSW, however good, is not a qualified worker.

Public law case in which the contract manager wanted me to promote a no order option, in a case where this was patently not achievable nor in interests of children. SEC East of England

Managers should not substitute their judgment for that of a competent professional who is familiar with the case.

In the current climate in the wake of the Baby P case there is pressure to play it safe and go along with the local authority decision to remove children from their families. A professional guardian must come to their own conclusion and advocate what is best for the child:

There is far more awareness of bad decisions if they are in favour of returning children to families. They may be damaged in care but less visibly, and

individual practitioners are rarely held responsible (esp. Guardians). It follows that, under pressure, the “safe” option is to agree with LA. This means e.g. becoming a rubber-stamping process which means there is no added value for children in the role. Only having a good knowledge of case by doing the work can a more “risky” decision be made to return children to parents safely. SEC London

Case example

Deterioration in the standards of work of local authority social workers means that I have had conflict with local authorities in the last three cases. For example, LA reluctant to request DNA tests in three cases where I'd pressed for it, and it turned out the putative fathers of the children were not related [to the child]. In two cases, this prevented the child from being placed with non-relatives in the nick of time.

I am also concerned about the belief of Cafcass that children's guardians are most needed at the beginning and end of cases. This is not true -- many big issues, concerning LA actions, arise in the middle of the case. SEC West Midlands

Guardians must challenge LAs, throughout the case, to secure the best outcome for children.

Despite these problems, some guardians feel they have been able to contribute positively to young people's lives:

... many of the children I have represented have been given better opportunities because of my input. SEC Central Region

Case example

The guardian had a case where she gave the report to a manager to be quality-checked. She had recommended a child be placed with grandfather following a positive assessment of him; LA had recommended adoption. The child was placed. The manager criticised her recommendation. The child is very well placed and doing very well with the grandfather. SEC South East

Managers do not have detailed knowledge of cases, do not carry personal responsibility for the recommendations, unlike the guardian; managers should acknowledge this.

Case example

My issues are that Cafcass are giving guidelines which are not in the best interests of children's futures. Recently, I attended a professionals meeting (having been told by Cafcass I shouldn't attend meetings) to hear that the LA proposed removal of a child from grandparents to which I strongly objected, given no evidence. This has led to court directions and hearings. Had I not been at that meeting and acted immediately to ask the court to halt the LA plans, the child could well have been removed and this may well prove unnecessary. I cannot do my work fully and serve children as they should be served. Employed guardian East of England

Purely budget-driven rules for guardians' activities do not serve children well.

12 Administrative Tasks

Cafcass' primary purpose is to provide guardians to safeguard the interests of children and to speak on their behalf in the courts. Like any organisation with over 1,200 field staff, it needs management information that can demonstrate whether its objectives are being met and its procedures followed. Most of that information is generated by its frontline staff, the children's guardians, using standard forms.

It is the view of many respondents to the survey that Cafcass management has not got the balance right between delivering the service and delivering management information. Over 60% of all respondents felt there had been a significant increase in the administrative burden in 2009 (over 80% amongst employed guardians); 10% felt there had been no difference.

The main sources of irritation and concern identified by respondents are:

- a proliferation of forms to be completed
- less time available to spend with the child, or focus on the child;
- preparation of case plans;
- filing, handling others' post, acting as admin clerks;
- typing up notes of contacts; and
- preparation for Ofsted inspections and file audits.

Most respondents felt that these changes had not contributed positively to their effectiveness as a practitioner, though 10% felt that the increased emphasis on case plans promoted reflection on key issues and so was helpful.

A few quotations will suffice to reflect the views of many:

It is an organisation that only cares about bureaucracy... SEC London

It feels as if bureaucracy has taken over. Employed guardian Yorkshire and Humberside

[Administration has increased] hugely. I estimate that I now have to spend about 10 hours a week doing the extra admin. Employed guardian South West

12.1 SECs' view of administration and bureaucracy

The survey asked SECs about their recent and future engagement with Cafcass; some said they would take on more Cafcass work if:

- *there were fewer forms*
- *there was less paperwork, more admin backup*
- *they stop changing their expectations of us all the time in terms of filing*
- *there was reduced demand for completion of the relevant forms*
- *the emphasis shifted from bureaucracy to seeing children and families.*

One SEC from the North West felt that the '*central focus of giving children a voice is being whittled away by bureaucracy*'; another from the West Midlands reports that they have plenty of work from other sources that is '*better paid with less bureaucracy*'. A third, from the North West, would consider taking further work from Cafcass if it '*reduced the bureaucratic demands to complete paperwork which is frequently badly designed and pointless*'.

Altogether, nearly a third of all SEC respondents to the survey complained about the administrative burden and bureaucracy.

13 Appraisal, Competence and Training

Quality4Children (Q4C) is the basis for Cafcass' staff appraisal and SEC contract review processes. Cafcass states that all guardians, whether self-employed or employed should have such an assessment once a year.

13.1 Frequency of appraisal

Most respondents to the survey had had an appraisal (contract review for SECs) within the previous 12 months. But seven SECs and one employed guardian, all of whom were active as they had taken on new cases since January 2009, had not had an appraisal for over a year. This equates to over 15% of those answering this question.

13.2 Guardians' view on the value of Cafcass appraisals

However, those who had missed out on appraisal were the lucky ones, in the view of many others. The following summarises the strongly negative feeling of the 61 responses to this question.

- Nearly 60% felt that the process was poor, poorly understood or that the criteria were unclear.
- Over 40% felt it had no benefits, or no impact at all.
- Nearly 30% felt that the focus had been on compliance of their sample case file, "box-ticking" or review of old, closed cases.
- One in six described the process as demeaning, demoralising or bullying.

Many respondents were contemptuous of the process:

Superficial and not constructively critical. Just tick-box rubbish again. SEC South East

Demeaning process based on file compliance primarily. No opportunity to make it an exercise where good work can be recognised and valued. Employed guardian South West

Positive Aspects: None. I think it is a good idea to have a tool to evaluate our work but the way it has been implemented has been completely subjective. I basically feel it has been used as a tool to bully and undermine me. I left one meeting in tears. It has led me to question myself and feel very upset. I have had periods of doubting my competence but the other professionals I work with are very complimentary about my work. SEC West Midlands

I can't think of any [positive aspects] at this at stage. Box-ticking, time-wasting, not respecting practitioner, managers not wanting to know practitioner anymore, way of getting rid of staff who are focused on the children not organisation. Employed guardian Central Region

Process applied to old closed cases that bore no resemblance to the current recording systems. SEC North West

A focus on negative issues, no focus on good practice, no consistency, changing the goal post. Not supportive in any way. SEC West Midlands

I have had to both administer and receive Q4C. As practice supervisor I had the opportunity to observe some excellent practice from my fellow guardians though as supervisor with a therapeutic background I felt uncomfortable at times involving children. I have found that the system does not contain the means to acknowledge highly skilful practice and tends to reward compliance and mediocrity. Myself and my colleagues have found the grading system professionally undermining and highly subjective. Employed guardian London

A few guardians (4 out of a total of 61 responses) felt they had a supportive manager and it had been a fair assessment; 5 reported a constructive reflection on their role or on their cases:

The feedback on my reports has been helpful due to the knowledge and experience of the individual practitioner undertaking this work and her comments have improved my reports accordingly. SEC South West

Time to think constructively about my role and how I carry it out. SEC West Midlands

Training has been curtailed for budgetary reasons. This is having an adverse impact:

[I] used to do adoption training and training on Special Guardianship Order (SGO) and placement orders. Feel training such as this [has] now stopped so inexperienced FCAs are undertaking adoption cases, sec 31 [Care Orders], placement order, adoption or sec 31, SGO with little or no understanding of [the] basic facts, let alone more nuanced understanding of the issues. SEC London

... as someone who is travelling around the country for domestic violence training – I think that the new training programmes are a bonus for the

organisation although many have been suspended for the moment. SEC Southern Region

And others were concerned about the quality of work being done:

I am very worried about the quality of work being undertaken, lawyers and judges are making it very plain that they are very disappointed and angry about what has happened. SEC East of England

Case example

A Cafcass Family Support Worker was instructed by the manager to write a report on the wishes and feelings of the child after only seeing the child for about 15 minutes, with the mother present. The FSW should just have been making introductions to supervise contact, in accordance with the court order. SEC East of England

FSWs are being asked to step outside the boundary of their role without having the necessary qualifications or remit.

14 Management and Organisation

14.1 Bullying by management

Bullying was raised by several respondents as a burning issue.

Management styles – bullying. Colleagues sat at their desks in tears but too frightened to speak out. Pre-Ofsted – FCAs called into meetings and told what they could and could not say to Inspectors. Employed guardian South West

I am not sure as to how valuable the Ofsted inspections have been – ... grown men and women, with many years experience have been bullied and degraded by this process. SEC Southern Region

I think all the changes over the past 12 months have little positive impact but have created a threatening and negative work environment within which it is very difficult to actually undertake the central aspects of the work. Another employed guardian South West

Yes inability to support staff. Blame culture, bullying and absence of understanding why the guardian service came into being ... it is the opposite of a caring employer. SEC North East

The ongoing evidence of oppressive practices by Cafcass senior management and the constant efforts to deskill practitioners and undermine their confidence in work that requires a particular sensitivity and professional focus. SEC North West

14.2 Management and its understanding of staff

Frontline staff have lost faith in their leaders. They feel the organisation has become bureaucratic with large numbers of managers who do not seem to understand the primary aims of the body or the key issues for guardians. Here is a selection of quotes of key issues from survey respondents:

The fact that the people running the organisation do not appear to either understand or value the role or the practitioners; the unbelievable amounts of money invested in higher management and administrative structures which have demonstrably failed to add [to], and indeed have detracted from, the delivery of a service to the vulnerable children for whom the organisation should have primary regard. SEC East of England

The hierarchical bureaucratic style of the Cafcass organisation has meant that there are less frontline staff – we need senior practitioner roles rather than business managers. ... Some of the managers have never had any training in the role and are toxic, from reports I have had from the north of the country. SEC Southern Region

... the severe loss of morale at practitioner level, the disconnection between frontline and senior management ... SEC North West

Heavy-handed management by managers who do not understand the role of the guardian. SEC London

Dreadful management. Autocratic. Inconsistent. Another SEC London

Organisation is far too big, too hierarchical. Very unstable organisation. A third SEC London

14.3 Communication with SECs

Self-employed guardians were not encouraged to feel part of a team. Although each has a Contract Manager, some Contract Managers do not make time to share with their SECs developments within the organisation, or information about the allocation of cases. This was a burning issue for some survey respondents:

... three months later I'm not being given any work, although I have had nothing in writing to me personally and all my information comes through Nagalro. SEC London and South-East

It feels like completely working alone. No appreciation or support. Left in the dark about what is happening at Cafcass. SEC South East

15 Consequences for Children

It is no exaggeration to say that a children's guardian's involvement can affect the whole course of a child's life. During care proceedings fundamental and crucial decisions are made for children, which can be impossible to change later. The consequences for children of not having their own named court-appointed guardian from start to finish of their court case may be serious. They are discussed in the following sub-sections.

15.1 Lack of representation and a voice in the proceedings

Children are legally entitled to independent scrutiny of their welfare by their children's guardian, an experienced welfare professional, working in tandem with their solicitor. Where a children's guardian is not in place, the capacity of the solicitor to fully safeguard the child's interests will often be reduced. The child is then deprived of its

right to effective representation in the decision-making process. Solicitors cannot and should not be expected to provide the welfare part of the tandem model:

- communicating with children, especially those too young to directly instruct their solicitors;
- assessment of the child's situation and parents' capacity; and
- social work expertise informing the investigation of the local authority's social work.

Children have the same rights to representation as the other parties to the proceedings. To deny them a voice and adequate representation constitutes potential breaches of their rights under Article 6 ECHR and Article 12 UNCRC.

At the start of care proceedings a decision will be made about whether a child remains where they were living, usually with parents, or is moved to live with relatives or into local authority care. Decisions made at the beginning tend to remain in place throughout the length of the court case unless challenged straight away. There is an understandable reluctance to disrupt children by moving them again unless there is a significant change in circumstances and the need for a move to another home is very pressing.

15.2 Risk to life and safety

Children's guardians have been described by Mr Justice Wall, as he then was, as: *'the independent voice of the child and the child's protection against bad social work practice and legal delays...'*² Sometimes social workers leave children at home in very risky situations. Without a guardian who visits them and sees where they are living, a child can be left at risk of significant harm and their interests will not be safeguarded.

15.3 Disruption of, and irreparable damage to, their closest relationships

Children can be placed with foster-carers whom they do not know when they could safely be left with parents or when there are suitable relatives willing to look after them. Others may be placed with relatives who cannot meet their needs when foster-care would be a much better and safer option. Children may be separated from their brothers and sisters when they are removed from parents. It is all too common for such separations to become permanent with long-term plans continuing the split.

15.4 Insufficient protection due to use of duty systems

The quality of work that a duty adviser can provide, however able they are, is limited because of the restricted scope of their role. Their advice to the court is based on limited information: in many areas they do not see the child, they may not talk to parents, and they are not able to fully scrutinise the local authority's assessment because they only see papers produced for the court hearing. This means there is a greater likelihood of wrong decisions being made because they are based on inadequate information. The absence of a court-appointed guardian increases the

² Wall J, 'The Challenge of Hybrid Cases' *Child & Family Law Quarterly* 1997 9(4) 345-358

need for further assessment during the court proceedings by more expensive experts.

15.5 Loss of continuity and a personal relationship

Widespread use of duty teams is leading to a serious loss in continuity for children. Research shows children strongly dislike changes in workers. Cafcass recognises this in its aims, one of which is *'Start with the child and stay with the child, throughout the life of cases'*³. Children who have already experienced family disruption and trauma are rightly wary of new people coming into their lives. It takes time to build up sufficient trust to discuss personal feelings and wishes at a time of great uncertainty. Children may put up barriers that reduce the chances of successful work. This applies equally to parents. The guardian is often seen by parents as bringing a fresh start. This can be key to re-engaging parents in a process of change and enhancing their cooperation – and it is all too easily lost when practitioners change or are absent.

Each different practitioner will bring a different approach and a new perspective, with the risk of confusion. Information will get lost with each change of personnel, as it is not possible to pass on all the experience and learning to a new worker. Papers are mislaid, and mis-communications can creep in. Each worker will need to re-do aspects of the work, creating duplication and wasting resources.

Unnecessary repetition of work and poor communication make inefficient use of the Cafcass budget, and reduce the amount that is available to provide an effective long-term service. This will set up a vicious circle where even more cases will be dealt with in a perfunctory way, leading to an inadequate service being offered to more and more children.

15.6 Increased delay

Delay has long been recognised as particularly damaging for children, whose development is harmed by living in limbo for long periods waiting for long-term security. A child's ability to form secure attachments may be irreparably damaged by too long a delay at a crucial time. Secure attachment is linked to better outcomes in relation to educational achievement, emotional well-being and stable relationships and employment prospects, so the impact of delay is felt across all of a child's life chances.

As long ago as July 1996 Dame Margaret Booth wrote in her report *'Avoiding Delay in Children Act Cases'*: *'Delay in the allocation of a guardian ad litem can have serious consequences for the child. It was also observed that it could be very difficult for a guardian to get involved in a case at a later stage and that it was important to be in place for the first direction appointment.'* At that time she commented that *'Delay in allocation did not appear to present a widespread problem ...'*

Cases were allocated by panels before Cafcass was established; these panels kept their own statistics and there was no national compilation of these figures. However,

³ 'Our Vision', Cafcass Business Plan 2007-10, page 7; reproduced on Cafcass website, 16 December 2009

the evidence presented to the House of Commons Committee on the Lord Chancellor's Department, which considered the situation in Cafcass and reported in July 2003, indicated that before 2001 there was very little significant delay. The report states *'The precise extent of delay in allocation occurring before the establishment before Cafcass is not known. Information on case allocation by the pre-existing panels was not centrally collected. However, it can be said that whilst there were some delays in some areas, in others a guardian was typically appointed within 24 hours.'*⁴ Joan Hunt, Senior Research Fellow, Centre for Family Law and Policy, University of Oxford gave evidence to the Committee that *'With the exception of a few "hotspots", notably London, waiting lists had not been a problem since the early days of the service and most panels were able to allocate cases within a day of referral.'*⁵

Since 2001 Cafcass' aims for allocation of cases have been less demanding. In 2003/04 its target for the Key Performance Indicator (KPI 1) for the allocation of s31 cases was 80% to be allocated in seven days: it achieved 64% in November 2003. In 2006 the target was changed to 70% allocation in two working days (with the day of receipt counted as day zero); 56% was achieved in July 2006 and 60% for 2007/08. The target for 2008/09 was relaxed to 65% in two working days; the actual achievement was 69%.

There is an increasing tolerance of delay, which needs to be reversed.

15.7 Loss of skilled and experienced practitioners

As experienced workers leave Cafcass, children are losing the invaluable resource of practitioners who have a good understanding of the role and are highly skilled in communicating with children in the context of court proceedings. The increased demands on workers to meet paperwork requirements have also taken professionals away from their primary tasks and prioritised bureaucracy. On top of the extra paperwork burden, practitioners are being put under enormous pressure by hugely increased workloads. The cumulative effect is to significantly reduce the amount of time they can spend listening to, and talking with, children (and, just as importantly for resolving cases, with their families), reading local authority files and in court. An overly managerial approach will undermine personal responsibility, professional competence and judgment. Children are less well served by practitioners who are less confident and more fearful about compliance with organisational imperatives, which too often have little relevance to children's best interests. The bullying culture referred to by respondents can only damage the ability of Cafcass' professional workforce to manage the stress that comes from working with extremely complex and demanding family situations.

⁴ Committee on the Lord Chancellor's Department Third Report (2002-2003) HC-614, Paragraph 61

⁵ Ibid Evidence 124, Paragraph 2

Appendix 1 Glossary of Abbreviations

CAF	Common assessment framework (multi-agency assessment of children)
CG	Children's Guardian
CMC	Case management conference (initial court hearing)
CO	Care order
ECHR	European Convention on Human Rights
EPO	Emergency protection order
FCA	Family Court Adviser – an officer of Cafcass who works with children in the courts in public or private law proceedings
FSW	Family Support Worker -- Cafcass equivalent of a social work assistant
GAL	Guardian ad litem (the term for a Children's Guardian pre-Cafcass)
ICO	Interim care order
IRH	Issues resolution hearing
IRO	Independent Reviewing Officer (officer overseeing the periodic review of cases of children in care)
ISW	Independent social worker
LA	Local authority (the Children's Services Authority)
LAC	Looked after children
LSC	Legal Services Commission
PLO	Public Law Outline (Court protocol for case management)
SEC	Self-employed contractor (Children's Guardian)
SW	Social worker
SWA	Social work assistant
UNCRC	United Nations Convention on the Rights of the Child

Appendix 2 Survey Questionnaire

Years of experience as a Court practitioner?

Employed or self-employed?

How many public law cases do you have at the moment?

1. Which regions/offices of Cafcass do you take cases from?
2. How many public law cases are awaiting allocation of a guardian in each of these offices at the moment? [Give an estimate for each office if you do not know accurately]
3. a) Since January 2009 how many public law cases have you taken on?
b) If you have taken on no cases, why is this?
4. Has a duty system been implemented in your area? Yes/No
If yes - When was this?
What is the impact of the duty system?
5. In how many cases have you acted as a duty guardian?
How many of these cases have you retained on your work load?
6. Since January 2009 in how many cases, where you have been appointed as a children's guardian, were you appointed:
Within a week of the application being made?
Within a month?
Between two and three months?
Between three and five months?
More than five months from the application being made?
7. Since January 2009 in how many cases have you been appointed where there was a different guardian appointed at an earlier stage in the same proceedings?
What is your experience of this – please tell us what has been helpful or unhelpful?
8. Since January 2009 in how many cases have you been appointed after the solicitor for the child(ren) was appointed?
9. Have you any cases where you think the tandem model for children is not working as effectively as it could be? [Please give case examples]
10. [For SECs only] In the last 6 months what factors would have prompted you to take on more work for Cafcass?

11. [For SECs only] a) If you have decided not to take new work from Cafcass, why is this?

b) Under what circumstances would you consider taking work from Cafcass again?

c) Have you any spare capacity to take new work? Yes/No

12. Are you being instructed or guided by Cafcass to prioritise tasks other than the work you do with and for a child?

Please give examples.

13. Since January 2009 has the proportion of your time spent on Cafcass-led administration changed? [Please give specific examples]

14. Have these changes contributed to your effectiveness as a practitioner? Yes/No

If yes, in what way?

If no, why is this?

15. When did you last have an appraisal/contract review?

What is your experience of the Q4C process?

Areas of positive effects?

Areas of negative effects?

Areas of no impact?

How has this affected your work with children? [Include if this has meant no further cases allocated]

16. Please tell us about any other burning issue causing you concern in your work for Cafcass:

Please give us details of any case which raises an important issue for you:

Name of telephone interviewer:

Date Completed:

NAGALRO

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Family Court Advisers and Independent Social Work
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