

THE MAGISTRATES' ASSOCIATION

FAMILY COURTS COMMITTEE

Comments on Cafcass Service Provision

Introduction

The Family Courts Committee of the Magistrates' Association thanks the President of the Family Division for his paper regarding current delays in the appointment of Cafcass Officers to cases, and in the subsequent delay in the filing of reports.

Feedback from FPCs across the country has presented a worsening picture of the ability of Cafcass Officers to meet their commitments. Panel chairmen have reported difficulty in resolving these issues with local Cafcass managers and we have therefore raised concerns wherever possible at national level and at the Cafcass Judicial Liaison Committee and the Ministerial Group on Care proceedings / National Family Justice Board.

We welcome this judicial initiative and fully support the points made in the Paper. In addition, we make the following points from the FPC perspective.

Public Law Appointment of Guardians

Delays in appointing guardians in Public Law Cases are reported from across England. This is particularly acute in the inner city areas and in Greater London in particular. In a written reply to the House of Commons, the Minister recently quoted 653 unallocated cases nationally. In Greater London alone there are approximately 270 unallocated cases and a waiting time of some 12 weeks for appointment. Even when appointed some guardians are unable to start working on a case immediately. Cases are reaching CMC level and beyond before a guardian is working on a case.

The situation puts a strain on family magistrates who are frequently hearing the first application for an Interim Care Order where removal from home can set the path for the proceedings and future care of the child. The court will appoint a solicitor to act for the child but non-availability of guardians at first hearing means that solicitors do not have the instructions of a guardian and are unable to advise the court on welfare issues. It is therefore the responsibility of magistrates to carefully weigh up the evidence and to assess the risk to the child of leaving him/her at home or ordering removal, without the advice of a guardian.

In some areas Cafcass are making plans to set up teams of experienced guardians to prioritise cases. We have some concerns about the criteria that will be applied and its practical operation. There is anecdotal evidence from members of the Committee of cases that were deemed by Cafcass as a non-priority but this did not necessarily accord with the Benches assessment of urgency in the particular case before them.

We await final details of the criteria that Cafcass will use to prioritise a case before we can comment in detail. However, we contend that particularly under the PLO, care applications appear to be more complex and certainly refer to allegation of serious harm. It follows

therefore that if one case is prioritised another serious case will be pushed further down the waiting list.

We have reports of different duty guardian schemes operating in some areas. Whilst we have insufficient knowledge to comment on individual schemes, we welcome and indeed need a guardian's advice on difficult early decisions. We would commend for example the Wells Street Scheme which was deemed a success by all agencies. This was abruptly ended a few months ago without consultation.

We are concerned at suggestions by Anthony Douglas that guardian input should be curtailed. We commend the high standard of protection and commitment exhibited by individual Guardians dealing with complex cases. Court fees and legal aid work tend to penalise long cases which are frequently complex and where the guardian plays a full and vital role. To reduce their input will cause delay and cannot in our view be in the best interests of the child. It would seem to us that under the PLO, Cafcass analysis and updates should reduce the amount of report writing when it fully filters through.

Cafcass Cymru

We have not received (many) adverse comments from FPCs in Wales regarding Cafcass service provision. In some rural areas workload remains low and so this is not an issue. We understand that a more favourable funding situation ensures a better outcome. However we are aware that funding issues are beginning to affect the service they are able to offer. We are unable to comment further.

Private Law

We share the grave concerns over the inability to allocate Cafcass officers to Private Law cases which has caused unacceptable delays in filing S 7 reports. A recent example is in the Liverpool Combined Court when 31 weeks was required. This is aggravated by the practice that has developed whereby a filing date for a report is accepted on application, but then an adjournment is requested two weeks before that date. This increases the pressure on listing but more importantly, the welfare of the child is not addressed during this time.

Whilst we have successfully advised magistrates of the need not to request reports unless absolutely necessary, especially addendum reports, it must be accepted that on occasions reports are necessary.

We welcome Cafcass' role in safeguarding children subject to court applications. We are actively involved with the President's Private Law Working Group to address timetabling and allocation issues and are confident that this will prove positive. Although improving, some FPCs continue to report a lack of transfers. One issue for them is the lack of presence of Cafcass officers in the FPCs which again, is a resource issue. Whilst we acknowledge guarantees from Cafcass that they can complete initial safeguarding checks within the 4 week 1st hearing date, many magistrates have expressed doubt at their ability to meet this target locally, and fear that a request for a last minute adjournment will become more frequent.

Summary of Concerns

Our main concern is that Cafcass is a demand led support agency whose resources are governed by fixed funding from Government. This does not allow for flexibility which is intrinsic to child protection and family matters. We cannot accept the view stated at the National Family Justice Board meeting of the 18th May 2009 that despite the fact that delays are due to lack of resources, nothing can be done. Where vulnerable children are at risk we feel Ministers should be held accountable.

The situation is aggravated by cuts in legal aid. The increase of litigants in person demonstrates this heightened concern especially as some of the parties are from ethnic backgrounds and cannot speak or understand English. We feel that taken collectively the situation could adversely affect the right to a fair hearing and not be in the best interests of the child. It will inevitably cause delay.

Recent legislative and procedural developments have increased the demand on Cafcass. In addition, FPCs are working with all agencies to increase capacity at this level to ensure the efficient use of court resources and thereby reduce delay and improve outcomes for children. We feel that these initiatives are being undermined by a lack of resources across the board. Lack of Cafcass cover as well as other resource difficulties put additional pressure on family magistrates at a time when morale is low.

We continue to support judicial initiatives to improve resources for Cafcass and other agencies. We assure you of our co-operation and assistance wherever possible. We would be happy to expand on any of the points in this paper.

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