

THE MAGISTRATES ASSOCIATION

FAMILY COURTS COMMITTEE

Response to the National Audit Office on its value for money study on Cafcass

A: Predicting the increase in demand since autumn 2008

- **Whether Cafcass or the Department for Children, Schools and Families could have done more to anticipate the increase and its impact on services.**

The increase in court applications has been occurring for some years now and Cafcass was experiencing difficulty in keeping abreast of demand in some areas previously. Applications in public law decreased significantly following the introduction of the Public Law Outline (PLO) and the increase in court fees. However following the tragic death of Baby Peter and the subsequent publicity of this and other cases applications have soared and remained high.

We do not think that Cafcass or the Department could have anticipated the size of the increase. However, an increase in applications was expected once the PLO had settled down, and it is well known that after a tragedy there is an upsurge in applications. Flexibility is therefore required to cope with such variations. Closer liaison with local authorities may have alerted Cafcass to increasing levels of concern over protecting children. Simultaneously, Cafcass reduced their employment of independent guardians who could have helped to cope with this increase. Many of these workers have now found alternative employment and are no longer available.

- **Capacity for local and/or national liaison with local authorities or other organisations about trends in future demand.**

Trends in future demand are difficult to predict and are variable. However ignoring the blip, an annual increase can be detected. In the aftermath of Baby Peter, local authorities appear to have lowered their threshold for court applications and future demand is expected to remain high.

Certain trends can be identified, and modelling may help in predicting future demands. Current increases are in the under 5 age group and age profiling may assist in the allocation of resources.

An established liaison procedure would have enabled Cafcass to be better placed to understand the cause of the increase which it appears not to have done.

B: Responding to the main risks to delivery of an effective service

- **Whether Cafcass understood the causes of the increase in demand correctly.**

Cafcass is not flexible and was therefore unable to respond to any sudden increase in demand. Baby Peter died some 18 months before the criminal conviction hit the headlines and the impact of this was not predicted. However, the size of the increase in demand could not have been predicted. The situation would have been helped if there had been better local liaison and more independent guardians were employed.

- **Whether Cafcass's response addressed the most important issues.**

Cafcass has focused on safeguarding rather than providing the court with welfare advice. Safeguarding is of course vital, but once achieved, the court requires welfare advice and information on the wishes of the child. Lack of such advice cannot be in the best interests of children. Cafcass have been slow to work with the courts by not informing them of individual appointments and agreeing with them specific work to be carried out on a case. This occurs in both Public and Private Law and the situation is difficult to explain to the parties involved.

- **Consultation with organisations like yourselves.**

This is difficult to answer as the level of consultation varies across the country.

After a slow start, consultation with the President and the Higher Judiciary produced the President's Interim Guidance which has proved helpful and promoted more local liaison.

However, consultation at local level in some areas has not been good and has led to delay in proceedings. The FPCs have not been informed about the appointment of guardians and the court's requests for prioritisation of a case often does not accord with the Cafcass criteria. Despite urgent requests and directions, cases have progressed a long way before a guardian is appointed and in some instances no guardian is appointed at all.

In some areas, consultation is good and this is reflected in the lack of delay.

In Private Law, Section 7 reports have been seriously delayed with very late communication to the court of the unavailability of reports. This has led to late adjournments, ineffective hearings and distressed parents.

C: Delivering the changes to service effectively since autumn 2008

- **Speed of reaction.**

In our view, Cafcass was slow to react.

There was some confusion over Cafcass claims that guardians were appointed but some areas reported that work was not commenced for some weeks.

Independent guardians could have been appointed in some areas.

In Private Law, some reports have taken 26 week or more to be filed.

- **Communication to staff and partners.**

We cannot comment on communication with staff. We think that communication could have been better with partners.

- **Deployment of resources to deliver improvement.**

We have not been aware of any improvement in service delivery. The MA is calling for full restoration of Section 41 of the Children Act. Guardians in many areas are not available for important first hearings; the duty officer scheme is patchy and non-existent in some areas; the appointment of guardians is often late on in a case or in some cases not at all; Cafcass, in some areas, is informing the court of what input they consider is necessary rather than reacting to court directions; the court requires the guardian to inform it of the child's wishes and feelings; there is an emphasis on safeguarding rather than welfare.

This sometimes means that when a guardian is appointed the situation has moved on and they have to deal with a position that might have been different had they been present early on. This may mean that the opportunity for possibly different and more effective approaches are missed resulting in higher costs and less than optimum outcomes for children.

In Private Law cases, reports are late; notification of late filing dates is last minute; Cafcass officers are often not available for cases listed in the FPCs.

D: Impact on timeliness of service

- **Changes in speed of: case allocations; Cafcass's actioning of cases; casework.**

We do not fully understand this question. Speedy case allocation is vital for the conduct of the case and keeping delay to a minimum. Cafcass actioning of cases is also vital. It is not satisfactory if a case is allocated but no work has commenced.

Casework – under the President's Interim Guidance work on a case can be agreed with the Court.

E: Impact on quality of service

- **Standards of risk assessment and safeguarding.**

It is difficult for us to comment on this but as far as we are aware, risk assessment and safeguarding are of a good standard.

- **The duty system.**

From the FPC perspective welfare advice from the guardian is important at first hearings when important decisions as to whether to remove a child or not are taken. At Wells St a duty officer is available and when necessary will attend court. This is generally seen to be helpful. In other areas it is patchy. Some offer telephone advice and some are non-existent. When a Cafcass officer is appointed late on in the case, the situation has moved on and they have to deal with a position that might have been different had they been available early on. Some cases suffer from the involvement of different duty guardians, and also from a long gap before a full-time guardian is appointed, if at all.

- **Quality of Cafass's casework.**

We would like to emphasise the quality of work and dedication of individual officers. Where work is undertaken it is usually of a high standard, although some magistrates report a lack of analysis on the views of children and parents. We are aware that Cafcass Officers are carrying ever increasingly heavy workloads which could lead to stress and there appears to be an increase in sick leave. We are concerned that administrative decisions appear to be controlling Cafcass input on a case and in some cases children are not receiving full support from a guardian throughout.

F: Other impacts

- **Staff case loads.**

Staff workloads are increasing and are heavy causing levels of stress. Whilst we commend the work of individual Cafcass officers we are concerned about their workloads.

- **Meeting court dates.**

We have concerns about meeting court dates especially in Private Law. The courts are often informed late about non-availability of reports.

- **Service user satisfaction.**

This is patchy. Some areas (Manchester) report good satisfaction but overall there is poor satisfaction.

- **Stakeholder goodwill.**

As magistrates we carry on with cases and are concerned for the welfare of vulnerable children. This can put added strain on benches and other agencies. Stakeholder goodwill is currently very strained.

G: Measuring progress

- **Accuracy of Cafcass's performance figures on: allocations, backlogs, case loads, etc.**

This is difficult to answer as we do not have alternative accurate court figures available. On allocations, the figures are misleading because they do not indicate if any work on a case has started. In some cases actual work is not started for several weeks although Cafcass figures indicate that it is allocated. This affects the figures on backlogs because we would define a backlog as a case where no guardian or private law worker report is available. We do not have direct information on caseloads.

- **Addressing variations in quality and timeliness in the 21 Cafcass areas.**

We know that quality and timeliness varies and that this has improved in some areas that were suffering badly a few months ago. We fail to understand why good practice in one area cannot be applied in another. We also recognise that situations can change very quickly and so early and constant officer availability is essential.

Manchester is a particularly good area, London and the North East, are poor.

- **Whether Cafcass is on track to clear backlogs.**

We consider that the first priority of Cafcass should be to clear the backlog. We are concerned that a 'generation' of vulnerable children and families going through the courts will not have been fully supported or serviced by Cafcass officers. We welcome the extra funding provided to Cafcass and consider that this should be used to clear the backlogs. This needs to be monitored. Any changes in procedures or practice should follow and be subject to the fullest national consultation with all stakeholders. The MA wishes to be fully consulted on any proposed changes.

- **Any impact, including financial, of Cafcass's response on your organisation.**

The MA represents magistrates sitting in the FPCs and so there is no direct impact on this organisation. The most important impact on the courts is delay in proceedings. This is difficult to quantify but it must follow that cases are taking longer to complete. Magistrates continue to hear cases regardless, but lack of Cafcass input adds strain to a bench. We feel it is important that FPCs have a good working relationship with Cafcass, current difficulties have put this under strain. Cases are adjourned, others continue without the guardian's work, all of which causes extra work for the court, other agencies, independent social workers and experts and results in extra costs which are difficult to quantify.

H: Implications for future performance

- **Sustainability of any improvements, in the medium/longer term.**

We are not aware of any improvements. We consider the first priority is to clear the backlog. Future improvements should be subject to consultation. It is important that section 41 criteria are fully restored and that any future improvements are sustainable and flexible to fluctuations in demand.

- **Cost effectiveness of Cafcass's response.**

We do not have sufficient information to respond. Lack of Cafcass input puts extra strain and work on others. We would point out that there is a cost implication for all other agencies involved in the court process caused by extra work and delay.

- **Potential contribution of Cafcass's workforce planning, IT and estate strategies.**

We do not have sufficient information to respond to this but raise the following concerns. Firstly we consider that all administrative costs should be subject to stringent scrutiny to ensure that funds are allocated efficiently. To clear the backlog we consider that the additional funding should be loaded on to front line services. Secondly, we are aware of the aging profile of Cafcass officers and would urge careful planning of the future workforce.

Other evidence about Cafcass relevant to this study

Is there anything you would like to add that does not fall within these themes? If so, please feel free to add additional, relevant material.

We are concerned that administrative decisions by Cafcass dictate to the Court how they can conduct proceedings whereas it is the Court's responsibility to manage the case. When guardians and or reports are not available the court is not informed. Although we carry on with cases whenever we can, the situation can be embarrassing and difficult to explain to distressed parents. We are pleased that the extra funding provided for Cafcass should go a long way to clearing the backlogs and that this should be closely monitored. Family magistrates do this work because they care passionately about children and we are concerned that under such conditions we are not able to deliver the best outcomes for the vulnerable families and children passing through the courts.

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