

## CAFCASS CONTRIBUTION TO PRIVATE LAW PROCEEDINGS: KEY ELEMENTS OF GOOD PRACTICE

### Introduction

. Cafcass Family Court Advisers (FCAs) work within the parameters of the Child Arrangements Programme and other private law-related practice directions and guidance, to carry out work as directed by the court, having regard to the principle of the “overriding objective”<sup>1</sup>.

Cafcass’ principal functions, in respect of family proceedings, are to: safeguard and promote the welfare of the children; give advice to the court about any application made to it in such proceedings; make provision for the children to be represented; and provide information, advice and other support for the children and their families.<sup>2</sup> In addition, when a Cafcass officer is given cause to suspect that a child who is a subject of proceedings is at risk of harm he/she has a duty to undertake a risk assessment and to provide it to the court.<sup>3</sup>

In private law cases the court’s requirements comprise two principal forms: in section 8 (Children Act 1989) applications the provision of safeguarding information in the form of a letter and attendance at FHDRA and, if further work is required, preparing section 7 (Children Act 1989) welfare reports. In addition, the court may also decide to consult Cafcass about the possible appointment of an officer of the service as children’s guardian, under rule 16.4 (Family Procedure Rules 2010).

Court orders requesting section 7 reports or other work from Cafcass are complied with in accordance with the terms of the orders. Cafcass supports active case management by undertaking work as directed by the court within the parameters of the Child Arrangements Plan.

### Key elements of good practice

#### Work to first hearing

1. In section 8 (CA 1989) cases, on receipt of C100 application form and the ‘Notice of Hearing’ with confirmation of the date of the first hearing, Cafcass will carry out safeguarding enquiries and report their results to the court in time for the FHDRA. The initial stages of the handling by Cafcass of private law applications are dealt with by the Cafcass Intake Team (CIT). This includes a check of caution and conviction

<sup>1</sup> [Practice Direction, The Revised Private Law Programme 2010, 2.1](#)

<sup>2</sup> [Criminal Justice and Court Services Act 2000, section 12\(1\)](#)

<sup>3</sup> [Children Act 1989, section 16A.](#)

information held on the Police National Computer, carried out by a specialist unit attached to the CIT, and a check with local authority children's services.

2. Cafcass also attempts to undertake telephone interviews with the parties, and provide advice to the court, but will not initiate contact with the child. The outcome of this work and of the safeguarding enquiries are reported to the court, in the form of a letter which will be produced within 17 working days from the date of receipt by Cafcass of the C100 and Notice of Hearing, in the expectation that the FHDRA will be listed no sooner than four weeks from the date of issue. Cafcass also sends the letter to the parties, unless to do so would risk causing harm to one or both parties by disclosing sensitive and/or personal information. Cafcass files the letter with the court no later than three days before the FHDRA.

3. At the FHDRA, the Cafcass officer speaks separately to each party at court, focusing in particular on those parties with whom it has not previously been possible to undertake telephone enquiries. The Cafcass officer also seeks to assist the court by providing advice about the potential for resolving the issues between the parties, in a way that most effectively safeguards and promotes the welfare of the subject child/ren. If requested by the court, the Cafcass officer provides the court with an assessment of whether the parties appear suitable to undertake a contact activity (e.g. a Separated Parenting Information Programme).

4. Where, in other types of private law case, the court wishes Cafcass to undertake safeguarding enquiries and report these to the court, Cafcass acts in accordance with the specific directions received from the court. This may arise in cases such as non-molestation applications (s47 Family Law Act 1996) or contact order enforcement applications (s11 Children Act 1989)

### **Work after First Hearing**

5. Section 7 reports prepared by Cafcass Family Court Reporters address matters specified by the court and take into consideration s1(3)(a) to s1(3)(f) of the Children Act 1989 (the welfare checklist). Cafcass also responds to all court enquiries about the possible appointment of a children's guardian in accordance with rule 16.4 (Family Procedure Rules 2010) for a children's guardian<sup>4</sup>.

6. In providing a s7 report the Cafcass officer:

- Reads all relevant past court papers and analyses the nature and trend of the dispute, and the current relevance and impact of any criminality and other safeguarding-related information.
- Makes clear to the court which factual issues are disputed or unclear, and advises on their potential relevance to the case.

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<sup>4</sup> [Practice Direction 16A, 7.4\(a\) and \(b\)](#)

- Knows enough about the child to offer a clear view to the court about the child's ascertainable wishes and feelings and the issues in the case affecting the child's current and future safety and welfare.

7. Reports are generally 3-6 pages in length and in a standardised form, though the examination of a disputed or contentious issue may result in a longer report.

8. Reports are filed in accordance with the directions of the court. An extension to an agreed filing time for a s7 report is only requested in exceptional circumstances when it is clear that the filing date cannot be met. If no such agreement to an extension is granted and communicated to parties, the report is filed based on the information available to Cafcass at the time, noting gaps, such as those that may have arisen because a lack of cooperation (by the parties or others) or where further information remains outstanding. Any non-compliance by parties with the terms of court directions is reported by Cafcass, to the court, in a timely way, where it is affecting the welfare of the child or Cafcass' ability to meet the court's requirements..

9. Cafcass officers will attend hearings when ordered to do so by the court. Rule 16.4 children's guardians attend all court hearings, other than directions hearings, unless excused by the court from doing so.

10. Rule 16.4 appointments are reserved for exceptional cases after consultation by the court with the local Cafcass manager, in accordance with Practice Direction 16A.<sup>5</sup> In certain cases where the court decides that the child should be joined as a party, the court may appoint "some other person" as children's guardian under rule 16.24. This may result in the appointment of the National Youth Advocacy Service (NYAS), according to the established protocol between Cafcass and NYAS or may involve the appointment of 'some other person', such as a member of the Law Society Children's Panel of solicitors.

11. Cafcass managers liaise regularly with DFJs and court managers about issues, such as available resources, and current workloads.

### **Commissioning and Partnerships Service**

12. Cafcass (on behalf of the Department for Education (DfE)) manages contracts for child contact interventions and contact activities, which are provided by the private and voluntary sector. The provision of such out of court services is intended to assist parents and children to achieve safe and beneficial contact, with practical support. The court, Cafcass, and parents, jointly plan and implement such interventions.

13. When ordered by the court, based on a Cafcass recommendation/referral, Cafcass is able to commission resources to facilitate supervised contact without cost to parties, but is not able to provide the service directly .

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<sup>5</sup> [Practice Direction 16A, 7.4\(a\) and \(b\)](#)