CAFCASS RESPONSE TO THE WORK OF THE PUBLIC LAW WORKING GROUP

Cafcass has been an active member of the Public Law Working Group and its sub groups, contributing data and learning from our own work within the family courts. We fully support the aims of the group and welcome the opportunity to drive improvements in the system. As existing members of the group, we have focussed our response on areas where we have a difference of opinion to that expressed in the consultation, or where proposals would have an impact on our service or role.

GENERAL COMMENTS

1. Perhaps inevitably, for an exercise which involved professionals from across the system, each with their different perspectives, there were a number of issues on which it was not possible to reach consensus or draw fully on the available evidence and data, within the timeframes available for producing an interim report. When the consultation is closed and the feedback has been considered, we would like to see the final report say more about the evidence base for the proposed changes and how remaining differences of opinion have, or will be, resolved.

2. The paper is wide-ranging and covers a comprehensive number of issues for improvement. There is a difference between issuing guidance for best practice and improvement, and ensuring changes are adopted into practice by professionals working on the ground, beyond any legal changes. It will take time for the recommendations to be worked through and adopted by partners and it we would be helpful if the final paper could prioritise the areas for action so that the improvement programme is manageable, and sequenced in a way that increases likelihood of success.

3. The challenge for the system is to support <u>all professionals</u> in it to improve their practice so that collective efforts ensure the very best outcomes for children and families. This requires a concerted and coordinated programme of work, with adequate infrastructure and funding, and we believe the network of Local Family Justice Boards now need to be placed on a firmer footing with resources provided by Government. We should build on the foundation provided by the extensive improvement activity that already exists for local authorities, who undergo children's services inspections from Ofsted. Local authorities have a long-standing commitment to working collaboratively to improve children and young people's outcomes via data benchmarking, peer challenge activity and informal mentoring or support, and have access to a range of funded programmes including:

    - the Local Government Association's Sector-Led Improvement programme;
    - the Association of Directors of Children's Service (ADCS) sector-led improvement support, including the Regional Improvement and Innovation Alliances; and
    - the Department for Education's (DfE) Partners in Practice Programme.

4. New best practice guidance in the consultation should be channelled through relevant professional networks where they already exist, who will then be able to stress-test all aspects of the guidance with practitioners. Asking existing networks to develop and endorse the guidance will make it more likely that it is adopted on the ground than if it is to be issued in a final report following the consultation. We are active members of the network of Local Family Justice Boards, chairing and sponsoring many of them, and we

are keen to work in partnership to lead the system wide improvements, if the programme can be properly resourced. Our preference would be for final guidance to be issued by the national Family Justice Board, to secure multi-agency buy-in and ensure appropriate fit with existing statutory guidance.

5. Any additional funding for the family justice system, or opportunities for legislative change, will be limited. The Public Law Working Group is well placed to advise on relative priorities for additional investment and reform which would have the biggest impact on outcomes for children and young people.

LOCAL AUTHORITY DECISION MAKING

6. We agree that there is a need for a renewed focus on pre-proceedings work and managing risk, with more emphasis on gaining and recording the wishes and feelings of children at this stage. Public law applications have continued to grow over the last 10 years and the drivers for this have been well researched through studies including the *Care Crisis Review* and the ADCS longitudinal study on *Safeguarding Pressures*. We want any future investment to prioritise support for families with children in need or in need of protection, through the work of local authorities in pre-proceedings. While care applications have plateaued and started to drop off in recent years other types of public law application, such as for secure accommodation, have risen and the net effect is that the work in the system is intolerably high.

7. As the largest employer of social workers, Cafcass works closely with local authorities to share good practice, learn from our partners, and establish protocols where together we can help to drive improvements in the system. Care is needed to ensure that any best practice advice complements, rather than contradicts, statutory guidance (including primary legislation) and that any resource implications are fully considered. Improvement advice must be based on current practice and built on best available evidence, so it is important that it is developed by local authorities, the Judiciary and interested professional groups and embedded within existing sector-led improvement programmes and inspection criteria. Once advice has been agreed, it should be issued by the national Family Justice Board and incorporated into relevant inspection frameworks.

PRE-PROCEEDINGS AND THE PUBLIC LAW OUTLINE

8. We support much of the content of this section, particularly the renewed focus to strengthen pre-proceedings work and the focus on building relationships with children and families. As recommended by Isabelle Trowler (Chief Social Worker for Children and Families), the pre-proceedings period should offer the right combination of a tangible and meaningful offer of supported change for families to avoid proceedings, while ensuring swift and effective preparation for court proceedings if this is not possible. New protocols and approaches to strengthen and improve consistency in pre-proceedings practice should be developed and tested through the relevant improvement networks, informed as appropriate by the work on pre-proceedings practice for unborn and new-born children. The resulting guidance and outputs should be endorsed and issued by the national Family Justice Board as a way of sharing expectations and securing buy-in in from all key partners across the system. Ofsted should also be invited to consider what aspects of the PLO should be inspected and whether the current criteria are adequate.

9. While we welcome a debate about the role of Cafcass in public law pre-proceedings and understand the temptation to build on our independence and focus on the needs of

children, Cafcass does not currently believe this would be the best use of additional funding in the system. As the report correctly identifies, there are barriers to this expansion to our role that would require legal changes to our remit and significant additional resource. But even if those barriers could be overcome, we do not believe this would be the best way of having a positive impact on the long-term outcomes of vulnerable children. If Government decides to make additional funding available, then we believe there are better uses of this resource such as investment in support for families with children in need, or in need of protection, to prevent children from entering the care system in the first place.

10. We also need to consider the existing shortage of social workers across the system and the further pressure this would add if Cafcass were to recruit more social workers to undertake additional pre-proceedings work. This proposal is essentially a duplication of the role of local authority social workers and Independent Reviewing Officers, and far better would be for Cafcass to continue to work with our partners in local authorities to share learning and best practice so that local authority social workers are well equipped to undertake this work and get it right first time. A priority is to clarify the role of Cafcass Guardians and Independent Reviewing Officers by strengthening the existing protocol so that the distinction between the roles is very clear to children.

11. As well as fostering good relationships to share best practice and provide feedback to all local authority areas, we have tested a model of active Cafcass engagement in pre-proceedings through the *Cafcass Plus* pilots. In a small number of pilot areas, a Cafcass social worker supported public law pre-proceedings work where the local authority felt there was significant risk of harm to unborn or new-born children. We have found this to be a resource intensive model and the need across the system, and in all areas, to manage demand far outweighs any improvements we have seen through the *Cafcass Plus* pilots. For that reason, we have taken a strategic decision to conclude our existing pilots but we welcome the opportunity to work through the Nuffield Family Justice Observatory, and with our partners in local authorities, to support research and collate existing learning on what good pre-proceedings work should look like. In particular, we would like to see improved negotiations with families about arrangements which could provide safe and sustainable family-based alternatives to public care, and that there should be greater consistency and clarity about the details of financial and other support available. We additionally think there is potential for greater emphasis – drawing on the 'Top Tips' produced by the Family Justice Young People's Board, on gaining and recording the wishes and feelings of each child individually which we think is integral to the social worker's role.

THE APPLICATION

12. 63% of the care applications received in 2018/19 had short notice hearings (defined here as first hearing is listed within 7 days from application issue date). In some local authorities this figure was as high as 98%. There are a number of potential reasons for this but we don't have good monitoring data on what they are and this is a gap which needs to be addressed. Where applications are listed at short notice unnecessarily, it puts pressure on workloads and gives limited time for pre-hearing enquiries thereby seriously undermining our ability to seek the views of, and then represent, our children well. This is a serious concern for us. Our data indicates that short notice cases generally have longer durations and require more hearings, which can disadvantage the child in the case. Some short notice hearings cannot be avoided, but those that can leave insufficient time for Cafcass practitioners to prepare the case, and ultimately lead to the child being behind the curve in the considerations before the court.

13. We believe that the recommendations in the consultation could help to significantly reduce the number of unnecessary short notice applications, whether made by local authorities at the point of application or courts looking to fill available slots when scheduling. We support the long-term rollout of the online C110A form, and while the interim information form will help in the meantime, we believe HMCTS reforms for family justice are urgent and should, if at all possible, be brought-forward. Cafcass and HMCTS processes are intrinsically intertwined and we cannot afford unnecessary delay when applications across the system are at an all-time high. The reform programme will help reduce the time between applications being received and Cafcass being notified, giving us more time to manage the number of applications, and providing families with a quicker and more efficient service.

14. We support the need to review the Social Work Evidence Template (SWET) to avoid repetition with other documents, and to provide a shorter SWET template to help with urgent applications. The SWET is a local authority tool to improve the quality of evidence provided to court that we have helped develop in partnership with ADCS, and believe these revisions should be led by local authorities. We have had initial discussions with ADCS about revising the SWET and will support this work. Similarly, if local authorities agree, we will work with ADCS on a protocol for early notification of Cafcass in care/Emergency Protection Order applications so that we can make preliminary arrangements for representation of the child.

CASE MANAGEMENT

15. We recognise the significant regional variation in the use of care proceedings, judicial approach to case management, and the nature of orders made at the conclusion of proceedings. We are particularly concerned about the inappropriate numbers in some areas of children subject to care orders who are living at home with one or both parents. We agree there is a need to understand the reasons for these differences and to develop clearer guidance on what we believe are likely to be a very narrow range of circumstances where care orders at home may be appropriate, and on the suitability of alternative orders. Where supervision orders are recommended, it would also be valuable to achieve greater consistency in effective Care and Support plans. We consider clarification on these issues to be an urgent aspect of any implementation plan and stand ready to assist in partnership with other interested partners.

16. On the use of experts, no joint reliable data exists within HMCTS, Cafcass or the Legal Aid Agency about the frequency of expert appointments for children and so it is not possible for us to verify whether there has been a proportionate increase in their use. It is a Judicial decision to appoint an expert in cases where expert advice could help to resolve an issue or add value to the understanding of the case. Additional expertise may be required that the Cafcass Guardian does not have, or is not qualified to provide, and the Guardian will advise the court if they believe this is required. To support our understanding on the use of experts, we have looked at recent cases where at least one expert was appointed and found that the majority of expert assessments were adding value for children and were necessary to resolve proceedings. We are aware that there is a shortage of experts in some areas, particularly for medical experts, and this is causing delay.

17. Cafcass supports the extension of the 26-week limit in cases where that is in the best welfare interests of the child, for example when further time could provide a permanent home for a child to live but where additional assessment is required or where parental

capacity to change requires multi-disciplinary support and further time. But this must have clear purpose and not lead to unnecessary drift. We would want any use of this extension to be carefully monitored, explicitly in respect of the outcomes for the children and parents involved.

SPECIAL GUARDIANSHIP ORDERS

18. We agree with the findings of the Nuffield Family Justice Observatory's review – led by Coram/BAAF - of Special Guardianship Orders (SGOs), which informed the work of the Public Law Working Group. We believe the recommendations from that review should be addressed as a priority, namely:

    - increased focus on working with family members who might become the child's special guardian *before* care proceedings commence;
    - a statutory minimum amount of preparation and training for prospective special guardians;
    - ensuring that prospective special guardians have direct experience of caring for the child before making a Special Guardianship Order, evidenced by a thorough assessment of suitability;
    - ensuring that support services are available locally and align with entitlements for adopters and foster carers such as parental leave, housing priority and financial support; and
    - addressing the gap in research on children and young people's views and experiences of special guardianship, and undertaking research to identify how best to ensure safe and positive contact with birth parents and the wider family.

19. We recognise the need for children to have a relationship with a family member before an SGO is issued, and this may require more time to establish than 26 weeks. But we do not believe this necessarily requires the creation of an additional statutory instrument – the proposed 'interim SGO'. The child could live with prospective special guardians through a temporary fostering arrangement, but the barrier to this has been local authority Fostering Regulations. These regulations often preclude a special guardian from being accepted on a temporary fostering basis while a local authority is recommending a permanent placement with them. It must be possible to address this contradiction by amending the Fostering Regulations to allow a temporary placement while the child remains looked after and subject to an Interim Care Order. There is also a need to harmonise assessment and support arrangements for special guardians with foster carers and closer alignment through Fostering Regulations would be a practical route to achieving that.

SECTION 20

20. We agree with the conclusion in the consultation that the proper use of section 20 for the voluntary accommodation of children should be clearly defined to help support training for professionals on its proper use. The decline in the use of Section 20 is well documented but it is an important statutory instrument that, when used well, provides an opportunity to work with parents voluntarily and support family life. The good practice guidance should be developed through the relevant professional networks and issued by the national Family Justice Board.

Cafcass

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