The Child Arrangements Programme

The Child Arrangements Programme, or CAP, was launched on 22 April 2014. I think it is time for a quinquennial review, or CAP 2. Why? Several reasons. The rise and rise of litigants in person has changed the roles of family court professionals and the court process. The underlying level of demand has risen by 23% since 2014 and court has become the default option for too many unhappy separators. The exemption process is too often bypassed, so that applications which should be dealt with in mediation or early help are being passported through to court without robust gatekeeping. Finally, better and bigger data is helping us to know how the system is operating and who it is reaching. For example, the rule of thumb that only 10% of couples separating choose to go to court, and conversely that 90% separate without any recourse to court, is out of date. On the basis that research suggests that around 2% of households with dependent children separate every year, and Cafcass deals with more than 41,000 private law applications annually, the proportion going to court is nearer one third than one in ten. So the issues are more serious and they affect more children than we knew to be the case in 2014.

Analysis is easier than action but I recognise the compelling case for change and the urgency. Through the medium of the Private Law Working Group (PLWG) chaired by Mr Justice Cobb, Cafcass will co-sponsor work on CAP2. To support this process, I think it would sensible to identify the parts of the CAP which are not working and to change those, rather than to start again. In my view, the underlying principles in the CAP still hold. The Private Law Working Group put together the first CAP and it is best placed to do the same with CAP 2, albeit with a slightly different membership. People as well as the issues have moved on.

Minor changes to update procedure and references will be straightforward. More substantively, I believe there are 5 issues to put at the heart of CAP2. I should emphasise these are the views of Cafcass which we shall be taking into the Working Group. I expect there will be many more options, and no shortage of suggestions.

1. <u>Promoting alternative dispute resolution</u>
   Cafcass's own research and analysis suggests that at least a quarter of applications feature no child protection or welfare concerns. Quite simply, these families should not be in court. The court process risks escalating conflict to a point where it becomes harmful. While one role of the court is to arbitrate where parents are not able to reach agreement, we need to guard against the court becoming the 'third parent', thereby interfering with the proper discharge of parental responsibility. Improved early screening and triage could better identify and distinguish between levels of risk to a child. A multi-track pathway and set of interventions could divert suitable applications into those dispute resolution services with a track record of success. At the other end of the spectrum, we may need to refine the process for seeking exemptions so that it more consistently operates in line with the principles of the CAP, namely to fast track into court families where a child or a vulnerable adult is at risk and needs the court's oversight and protection. We would also need to strengthen gatekeeping so that the gate to the court is shut when mediation or early help has not been tried. Early help is something of a misnomer – it is already almost too late for many children who have been traumatised by a toxic parental separation.

2. <u>Reducing the likelihood of returning cases</u>
   The second group of families Cafcass wants to help is the one third of applicants who return to court within a year of a final order being made. This is far too high a number. It shows that too many final orders are far from final. We see the benefit of a Public Law Outline-type framework

for Private Law – with a time limit of 6 months, extended as the Public Law Outline can be by 8 weeks if circumstances require it. We think this would help to create a culture of a final order in private law securing the best possible permanence arrangement for children within their family or their families. This is likely to need additional interventions to address parental behaviours in those cases that get 'stuck' – something Cafcass is actively seeking to develop, initially in Rule 16.4 cases. We also want to ensure that proceedings are ended in the child's timescale, not that of the parents.

3. Strengthening case management
   Thirdly, we see a need for clearer guidance to accompany CAP2 about the end to end process – how first hearings (FHDRA's) work, the role of a Dispute Resolution Appointment (DRA) and the conduct of final hearings. If we were to shift to a Private Law Outline framework, the FHDRA would take on a more defined case management role for those cases which cannot be resolved there and then. We would then like to see a menu of options about how the case can be taken forward between the FHDRA and the final hearing, rather than a s7 report being automatically ordered. We would like to see more Cafcass time used for direct work with children and their families and less time spent on reporting to court. We recognise this will also need a revision to templates, some of which are repetitive and can be further simplified.

4. Child-centred interim arrangements
   CAP 2 will need to take on board the concerns many parents have about existing arrangements, such as the use of interim order to protect the status quo which can mean that a parent who is being excluded from their child's life is shut out for so long they cannot get back in. New guidance will also need to make the role of fact finding hearings clearer, when they are needed. We would like to see a higher prominence to child impact in CAP2 than to the forensic analysis of allegations by one parent against the other unless an allegation is pivotal to child impact. The impact on children of adult behaviour is complex. I would like to see a much higher priority for this in CAP2 than it has in the original CAP.

5. Efficiency and effectiveness
   Finally, we need to be clearer about value for money in CAP2. Private law is an expensive business, for many parents and for the public purse. Systems leaders like myself have a responsibility to ensure the court process is as efficient and effective as it can be. For example, 25% of the Cafcass operational budget goes on pre-FHDRA work, including the production of safeguarding letters. This is a lot of resource going into families who we think should not be in court in the first place. As well as this, much of the work in the production of a safeguarding letter is then repeated for a s7 report, as this is allocated to a different practitioner who has to form her or his own view. If the case returns to court within a few months of the final order, a third practitioner will be involved. I think that CAP2 should facilitate judicial and Cafcass continuity in case management much more. We would also like to ensure that the scarce professional time of all concerned is never wasted. This means re-considering the amount of time attending court, time spent in writing and recording and how relevant information is gathered and shared most efficiently. Improving data quality is another important and long-standing objective.

CAP 2 would be a golden opportunity to update and strengthen the Child Arrangements Programme for the next 5 years. The relentless rise in the numbers of children needing help makes further change a necessity rather than an optional extra.

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