

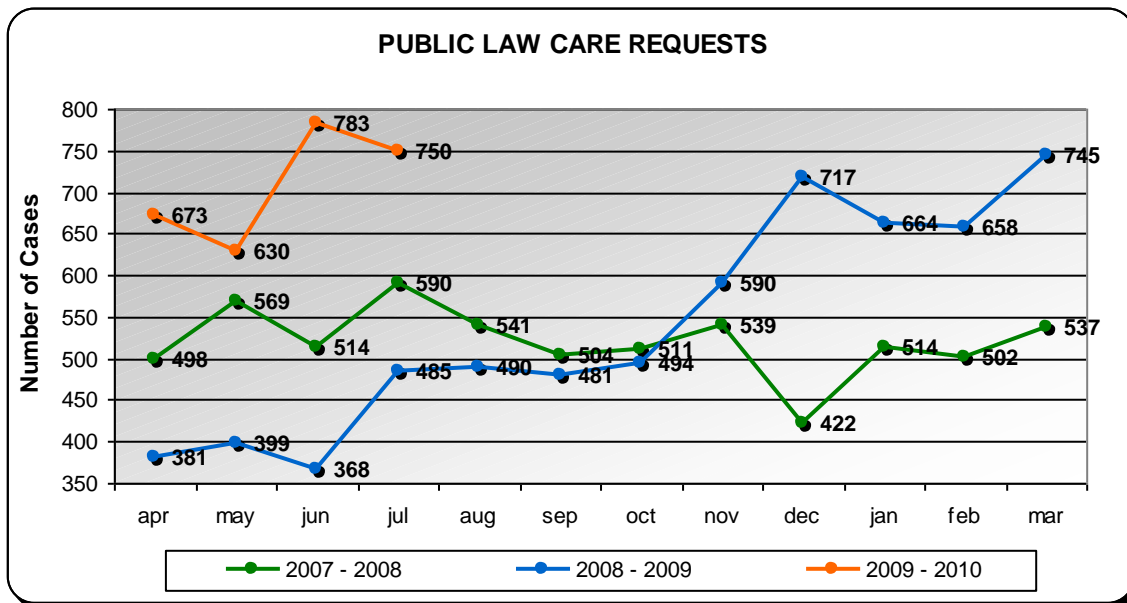


CHILDREN AND FAMILY COURT ADVISORY AND SUPPORT SERVICE

OPERATING PRIORITIES FOR CAFCASS: AUGUST 2009 – MARCH 2010

CONTEXT

Demand for our services, particularly care applications by local authorities, continues to rise rapidly and the rise in these applications looks set to continue for many months yet, according to local authority projections. Private law case requests from courts in June were also the highest ever recorded for a single month. The chart below illustrates the scale of the pressures we now face, which all of you experience and go through every day. Whilst we had no significant underlying backlog of public law cases in October 2008, before the Baby P case hit the press, we have been unable to allocate 900 new public law care cases since then – though we did allocate 5,500, including allocation to duty. Private law filing times continue to be under constant threat, though there are early signs of promise from the Work to First Hearing Trial Areas e.g., Birmingham.



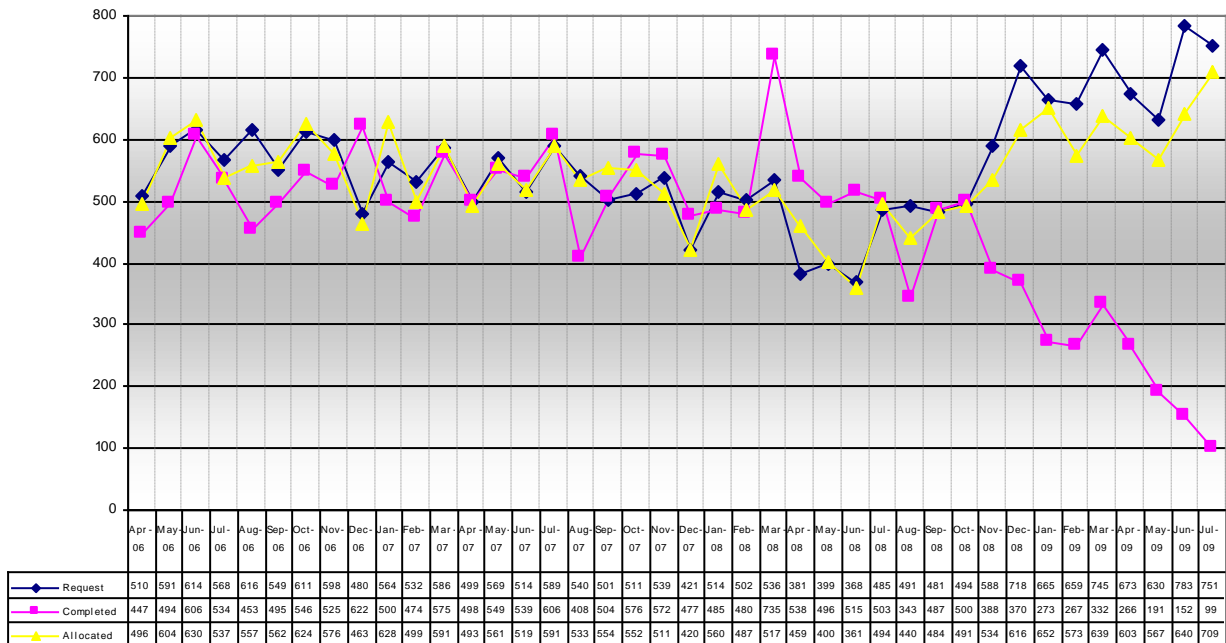
These public law applications from local authorities relate to children who with only a few exceptions are likely to be found by the courts to have met the significant harm threshold, so the cases are serious. They are mostly children who have been known by local authorities for some time, whether as family support or child protection cases. Many are the subjects of child protection plans and some have been voluntarily accommodated by the local authority under s20, prior to the local authority's applications.

As a result of so many new cases coming into the system in such a short period of time, cases are taking longer to complete and local family justice systems are becoming clogged as resources across the system are not there to bring cases to a timely conclusion. For us, each extra month is likely, on average, to take 10 hours of a

practitioner's time. Whilst our delays in allocating new cases contribute to the problem, there are many other factors causing delay, including the extent of the use of experts and listing problems. It is always necessary when considering delays to take a system-wide approach – the family justice system is a multi-agency responsibility and problems are best solved together.

The main resource allocation problem is that new cases are coming in at a much higher rate than cases can be allocated (duty or substantive) or closed using current working practices (see below)

Public Law S31 Care Case Trend 01/04/2006 to 31/07/2009



Private law cases continue to grow in complexity, sometimes because we cannot be involved quickly enough to resolve issues and as a result, opinions and attitudes harden still further.

We have a cash limited budget which we are required to balance this year, and the available budget for the flexible workforce (self-employed contractors and bank staff) is already fully committed in response to the recent increases in case volumes.

IMPLICATIONS

As a result, we will only be able to offer a safe minimum service on all cases between now and the end of the financial year (March 2010). That 'safe minimum' is defined below, but it is essentially a regrettable but inevitable move to a more narrowly defined, task-centred service, both in respect of new cases, those already awaiting allocation and those already allocated. This can best be seen as putting the entire organisation on a duty footing for the remainder of the 2009/10 year, whether this is organised locally along the lines of formal early intervention teams or through more traditional approaches to case allocation, supplemented with a duty rota.

The previous extent of planned work in long-running cases will only be possible in a

limited number of the most exceptional cases, if we are to fulfil our key priorities, as placed on us by the Secretary of State for Children, Schools and Families, Ed Balls, of safeguarding children effectively and bringing backlogs to an end. The operating model set out in this paper represents a positive means of ensuring the timely allocation of work at the outset of cases, the time when children are potentially at their most vulnerable and when prompt initial assessment is so important.

Many teams are already operating in this way and this guidance gives more of a structure to what has become a daily necessity.

Whilst this is an economy model for our times, we will still be delivering on our core function of providing high quality psycho-socio-legal advice to courts in order to safeguard children's rights and welfare. But in these circumstances, we are limited in our ability to deliver strong Every Child matters outcomes as these outcomes depend a lot on a lengthier involvement than we can commit to, and the involvement of many partners working together on an individual case over an extended period of time. However, we should make as strong and effective a contribution to Every Day Matters outcomes as we can, within the above limitations.

1 PRINCIPLES

The principles underpinning our revised operating priorities are as follows:

- 1.1 Every child deserves a service from us, with no delay in providing that service once we receive court papers – 50 cases in a cupboard are more than 50 children sitting in there, without us having taken the right steps to understand the kind of help they need, and the relative priority of their case compared to others. We have to get the measure of each case straightaway.
- 1.2 We will guarantee an initial safeguarding analysis in each public law case and the work to first hearing stage of each private law case, with work beyond that point being prioritised in accordance with the timetable for the child in the context of available resources, and in accordance with the arrangements agreed with the relevant local Designated Family Judge (see the President's Interim Guidance for England published on 30 July 2009, applicable from 1 October 2009 through until March 2010). This initial work is best thought of as a 'safeguarding analysis' of every case. Such a safeguarding analysis and consequential action constitutes the 'safe minimum' of social work.
- 1.3 We will reduce administration on cases to the 'safe minimum', as defined below.
- 1.4 We will respond to each case in accordance with the 'timetable for the child' principle, which will be used as the basis for all recommendations to courts about our continuing involvement beyond the initial safeguarding analysis.

2 OPERATING FRAMEWORK

- 2.1 These priorities are in force from 1 October until 31 March 2010, with development work plus some further internal and external consultation being carried out before then. It may be necessary in some teams to move to this model immediately, in order to reduce a local backlog to more manageable proportions in time for the new system starting.

2.2 Our narrowed down priorities are in the following order of importance:

Priority 1: Safeguarding including improvement work on safeguarding

Priority 2: Balancing our budget

Priority 3: Reducing delays and backlogs

Priority 4: All other improvement work bar safeguarding

Of course, it is hard to list priorities in a simplified way as we are attempting to make progress on each of these 4 main priorities simultaneously. Our ability to make progress on all 4 differs from one service area to another due to capacity and local circumstances. However, I felt I should set these out as clearly as possible for staff at all levels who have to make these difficult choices every day.

3 BACKLOGS

The three Operational Areas will each need to undertake the following steps on a continuous basis:

- 3.1 In order to tackle the backlog of cases, where they exist, practitioner time has to be freed up to carry out essential tasks on backlog cases, while carrying out an initial safeguarding analysis of new cases. Backlog reduction strategies include FCA's being freed up to carry out snapshot reviews of pending cases by agreement with courts, rather than full s7 reports if these will take many months to complete. This is subject to the issues for each child being specifically considered. Cases that can be closed must also be closed promptly, and do not now need to be audited before they are closed – the organisation will take it on trust that the core professional requirements on each case have been carried out by the practitioner before closure is agreed with the service manager.
- 3.2 Open public and private law cases which cannot and should not be closed must be categorised as either active or 'watching brief' cases, by agreement with courts. Such a categorisation must be practitioner-led and managerially scrutinised. Watching brief cases must not contain any outstanding defined safeguarding work which can only be carried out by ourselves – all safeguarding work must be carried out.
- 3.3 Judges must be consulted where there are cases which are still actively before the court and where judges have an expectation of work being delivered by a set time which now cannot be delivered. Rather than a stream of individual letters being sent to judges, communication must be established and followed through in respect of all backlog cases, via locally agreed communication routes. In particular, those which practitioners and managers assess as having relatively lower priority than others should be drawn to judicial attention, using the means that have been locally agreed, so that appropriate alternative ways of progressing each case can be determined. Well-organised advice should be offered to the court in backlog cases, to assist as rapid a determination of the case as possible, even when a case cannot be fully assessed. It is recognised that we will not be able to support every case in every hearing in every court with the level of advice sought, though we must remain in constant communication with courts and solicitors

in order to jointly decide which cases most need our input.

- 3.4 In public law cases where a practitioner is already appointed, applications should not be made for the practitioners to be discharged or de-appointed as a children's guardian. Instead, it is expected that practitioners will in many cases be asked by the courts to do narrowly defined pieces of work, in the context set out in the President's interim guidance (see below).

This approach to our work is based on the recognition that the finite resources of the family justice system must be organised and deployed collaboratively with the judiciary if children are to be most effectively supported. The collaborative management of scarce resources is even more essential during this current period of extreme pressure.

4 PRIORITIES ON NEW CASES

- 4.1 Allocate all cases upon receipt, either to a named practitioner or on a duty basis.
- 4.2 Guarantee to local courts a safeguarding analysis of every case.
- 4.3 Work to First Hearing (WTFH) in private law cases, within 4 weeks, is defined as:
 - 4.3.1 Carrying out the requisite safeguarding checks with police and local authorities and ensuring receipt of the information.
 - 4.3.2 Writing a letter to the court in the form of a short safeguarding analysis, informed by any direct contact with the parties that has taken place, face to face or by phone. Where all necessary information is not yet available, notify the court of the need for a short adjournment or an interim order as set out in para 17 of the President's interim guidance.
 - 4.3.3 This safeguarding analysis, where work beyond the first hearing is proposed, should identify the future work we propose to undertake, and any work undertaken by partner agencies for which we have a co-ordinating and case management responsibility.
 - 4.3.4 Parents, children and young people should be referred for help and support where there are neither safeguarding nor welfare concerns. Use of either Cafcass Commissioned Level 1 and 2 services must be considered where appropriate, asking the court to direct for a contact activity – at this stage probably either assessment for mediation or the parenting information programme.
- 4.4 Work to the Case Management Conference in a public law case is defined as:
 - 4.4.1 Effective liaison with the child's solicitor (which applies throughout the case).
 - 4.4.2 Seeing/meeting the child and all relevant adults.
 - 4.4.3 An initial appraisal of the local authority application, advice to the court about urgent action needed and carrying out urgent tasks identified for us.

NB It is at the practitioner's discretion how best to meet this Operating

Priority, and there are no blanket expectations e.g., about reading all LA files routinely .

- 4.5 Private and public law work beyond the safeguarding analysis stage is to be carried out in accordance with the President's Interim Guidance, on a task-centred basis. Solution-focussed proposals such as combining a Placement report with a Welfare report/final analysis at the Issues Resolution Hearing in a public law case should be explored with courts, in line with the spirit and expectations of the President's Guidance and our Operating Priorities. Other time-saving options such as limiting attendance at meetings, reviews and court hearings must be considered and discussed with those involved in the case.

5 PRACTITIONER CONTINUITY

- 5.1 In accordance with usual practice, cases (and children) will remain with the practitioner who knows about him/her/them where possible. This operating priority is consistent with task-centred work, as the person best placed to narrow the issues on a case safely is the person who knows most about the case.

6 SAFE MINIMUM GUIDELINE – CAF/CASS PRACTITIONERS

- 6.1 The 'safeguarding analysis' is the core professional task within these Operating Priorities. Most cases we receive have safeguarding needs, so the early identification and analysis of these needs is the priority in every case as soon as it comes in.
- 6.2 Our definition of safeguarding remains a broad one, in line with our National Standards and Safeguarding Framework. It includes the immediate risk of harm as well as the prevention of avoidable impairment of long-term development. The President's Interim Guidance makes clear how the judiciary HMCS and Cafcass will deal with this from 1 October. We must provide a safeguarding analysis and advice, and courts can ask us to carry out high priority tasks on cases, including focused specific issue reports.
- 6.3 In private law cases, referrals to agencies able to help children and families at lower levels of need should also be made as a priority, so that where help is available from a bona fide local agency, it is signposted or offered.
- 6.4 In public law cases, every case should be discussed with the IRO as well as the child's solicitor to agree each person's role and level of involvement.
- 6.5 Task-centred budget-sensitive work means that the necessary work on a case is restricted to the resources available, and therefore tasks within cases have to be prioritised, as well as tasks between cases. No meaningful guideline can be written on this, as no two cases are the same. This is why these Operating Priorities can only be practitioner-led, as practitioner judgment on levels of risk and need has to be the basis for a priority system. However, we will publish more detailed advice before 1 October, to support front-line practitioners and managers.
- 6.6 Cafcass as a corporate body will bear the responsibility for the work that cannot be carried out as a result of the current period of extreme pressure. Fundamentally, the shift in these Operating Priorities is to prioritise work

once it has been assessed rather than before it has been assessed. This will be less dangerous as cases cannot be adequately prioritised before they have been properly looked at by a practitioner.

- 6.7 Work outside this framework defined in these Operating Priorities may only be undertaken with the prior approval of a manager.
- 6.8 This guidance applies in full to self-employed contractors who work for us. Contract managers will define the parameters for this.

7 SAFE MINIMUM GUIDELINE – CAF/CASS BUSINESS SUPPORT STAFF

- 7.1 Administration should be reduced to the following safe minimum, undertaken in accordance with the Safeguarding Framework.
- 7.2 C100s processed, and safeguarding checks carried out as commissioned by FCAs.
- 7.3 Welcome packs sent out (simplification of this process to be effected by October 2009, based on the six-month review, as part of the move to some admin tasks being consolidated in the 3 Operational Business Centres where economies of scale can be applied).
- 7.4 FCA's to be supported as far as possible in their admin tasks.
- 7.5 Financial procedures and processes to be equally prioritised, particularly to support the requirement to balance our 09/10 budget.

8 SAFE MINIMUM GUIDELINE – FRONT LINE MANAGERS AND ENHANCED PRACTITIONERS

- 8.1 Supervision should be carried out proportionately to the skill set of each individual member of staff in relation to these Operating Priorities (also see 6.5 and 6.6).
- 8.2 Managers should be office-based, in order to be available for case consultation and communication with courts, solicitors, local authorities etc.
- 8.3 Heads of Service should be in regular touch with their local offices to support them. It is vital in this time of exceptional difficulty that management at all levels is accessible and not remote.
- 8.4 Meetings should be reduced to the necessary minimum and the meeting costs tool applied to judge their added value and the opportunity cost lost or gained by each meeting, especially meetings outside service area boundaries.
- 8.5 Stability of staffing and the right emotional environment should be aimed for in every team, given the importance of stability and a positive climate to handling high levels of pressure. Teams short of stability will be given additional help as soon as possible, though this help cannot at the moment come in the form of extra resources.

9 SUPPORT TO FRONT-LINE STAFF FROM THE ORGANISATION

- 9.1 Heads of Service and Service Managers are expected to work jointly with

the local Designated Family Judge to ensure services are delivered within the interim national framework that has now been established, including the establishing of local duty schemes as described in paragraph 29 of the President's Interim Guidance.

- 9.2 Each Head of Service can commission support from operational area and national support services to assist them with the implementation of this guidance.
- 9.3 Practitioners whose practice is rated as satisfactory or above, and where this rating has been sufficiently moderated to be accurate, can operate a 'safe minimum' of administrative tasks on their cases between 1 August 2009 and 31 March 2010, defined as:
 - 9.3.1 Risk assessment/analysis, recorded as requested – compliance must be 100%.
 - 9.3.2 The evidence underpinning the safeguarding analysis to be recorded fully, with assessment of other dimensions being briefer
 - 9.3.3 Using short and simple case plans where work continues beyond the early intervention stage (one document for internal and external purposes), in order to be consistent with the President's Guidance about issue-focused analysis and direct work
 - 9.3.4 Use of the new assessment framework to be limited to long-term active cases NB with a 'safeguarding analysis, which may use elements of the assessment framework, to be applied in all cases.
 - 9.3.5 A simplified case closure process, with the safeguarding work reviewed and a short case summary, including a value added statement in each long-term case, signed off by the manager in direct consultation with the practitioner.
- 9.4 All staff whose work is not yet rated as satisfactory will be subject to the full Cafcass performance management programme, until they reach a minimum and consistently maintained satisfactory level, after which a lighter touch will apply.
- 9.5 A simplified workbook containing a shorter and more manageable end to end casework process will be in place for 1 October. This is to be used in all cases. It will supplement our policies and procedures which can be referenced in the workbook as appropriate.
- 9.6 Q4C should still be used to log a proportionate number of supervisions, and annual appraisals. All practitioners must always have a proportion of their work audited for purposes of accountability.
- 9.7 Every member of staff must produce evidence of their work as we are an evidence-based service - but it is recognised this will need to be lighter touch with a reduced burden of paperwork for the period covered by these Operating Priorities.

10 STAFF MORALE AND ENGAGEMENT

- 10.1 Managing any change well depends upon high morale and engagement. For some staff, levels of disengagement with the organisation are too high to implement this guidance successfully, so steps must be taken by

Operational Directors and Heads of Service, working with HR business partners, to increase engagement through a consultation process between now and 1 October about what needs to be done. It may well be that the burdens on staff need to be reduced in further specific ways and this will be done and incorporated into the final version of these Operating Priorities where this can be done safely, responsibly and accountably.

- 10.2 Workloads/caseloads must be reasonable and manageable for all staff. Many staff will be on duty all or most of the time, and that is the reality underpinning what we need to do. Heads of Service should keep the capacity in their service areas under review and report upwards any concerns that reductions in capacity are severely impacting upon service levels, even when these Operating Priorities have been implemented.
- 10.3 Within the cash limit for the service area, Heads of Service should consider employing office juniors to give FCA's regular admin support with filing etc, using the model of an Individual Admin Account to understand what each practitioner needs help with. Even if a limited amount of time can be given, that will help
- 10.4 It is always hard managing increasing levels of demand, balancing the budget and striving to improve. These further changes, coming on top of many other changes we have had to introduce, and with continuing problems with our new IT system Flex for those who use it, are potentially stressful for many staff, so a recognition of the stresses and strains of implementing these Operating Priorities on all staff, and of the current operational crisis, must be continuous, for as long as the current pressures last.
- 10.5 All available resources will be put into the practitioner budget for the next 18 months, until March 2011.

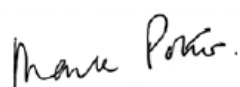
I repeat, we must narrow our priorities down to an economy model based on safeguarding, reducing delays and balancing our budget. The rest will simply have to wait. I hope we are in a position to resume a fuller service from April 2010. That will depend on what happens to the trends I highlighted at the top of this document.

Anthony Douglas CBE

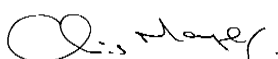
Chief Executive

7 August 2009

Agreement between The President of the Family Division,
Ministry of Justice, HMCS, Department for
Children, Schools and Families and Cafcass



Sir Mark Potter
The President
of the Family Division
& Head of Family Justice



Chris Mayer CBE
Chief Executive
HMCS



Anthony Douglas CBE
Chief Executive
Cafcass

THE PRESIDENT'S INTERIM GUIDANCE FOR ENGLAND

30 July 2009

This Interim Guidance sets out *short-term* measures which have my approval and which have been developed with the agreement of all signatories. It is not a Practice Direction, but is intended instead to create a framework for local arrangements as the best method of achieving necessary improvements to assist Cafcass to deliver their services to children, families and the courts and thus secure timely outcomes to promote the welfare of children who are the subject of family proceedings

The aim of the Guidance is to put in place measures which will address the current backlog of work while preventing backlogs arising in respect of new work (i.e. mounting delays in reporting and in the allocation of Children's Guardians consequent upon the increase in Children Act applications) **in a planned and time limited way**. It is a temporary solution to help in an emergency situation. It is intended that this Guidance will cease to have effect on the 31st March 2010 at which point it is expected that the backlog will have been substantially reduced.

Discussions involving key bodies within the same time-frame will take place with a view to identifying how to achieve the enduring elimination of backlogs.

Although some measures reflect developing good practice (e.g. issue specific section 7 reports and welfare reports in care proceedings, the timetable for the child and national expectation timeframes for the delivery of each type of report), others are expedient solutions which are not intended to endure in the longer term.

This Interim Guidance is designed to support the provisions of the Public Law Outline, my revised Private Law Programme as currently being trialled and the Overriding

Objective in family proceedings as stated within those documents. It is also intended to support the exercise of the statutory functions of Cafcass to safeguard and promote the welfare of children and to give advice to the court, in accordance with the rules of court governing the powers and duties of officers of the Service.

Nothing in this Guidance is to be taken as an endorsement of schemes other than the duty advice schemes referred to in paragraphs 28 and 29 below, or of any system where the duties of a Children's Guardian are performed by or on behalf of anyone other than a named individual.

It is necessary to recognise that, to the extent that the measures proposed may involve children's solicitors taking on case management tasks which have hitherto been regarded as functions of Cafcass, courts will have to proceed with caution and by consent, having satisfied themselves that the solicitors understand and accept what is required of them within the public funding arrangements which apply to them.

All cases

Lines of Communication

- 1 Cafcass and HMCS should each nominate a person who has the authority to make agreements on their behalf as a single point of contact (with a deputy) for each court or group of courts (as arranged locally) for use by HMCS, the judiciary and Cafcass to coordinate matters such as
 - Hearing dates
 - Filing and service of documents
 - Transmission of information including resolution of urgent problems.In each case, full contact details should be provided to the Designated Family Judge (DFJ), including those to be used in an emergency. In respect of Cafcass, it is anticipated that the nominated person will be the Head of Service.
- 2 The judicial representative of the President, who will have authority to formulate local arrangements will be the DFJ. It was envisaged in the President's letter to DFJs of 26 October 2007 that local Family Business Committees (whatever their title may be) would be set up (where the committee or an equivalent body did not already exist) to advise the DFJ about local services and resources in order to assist the DFJ to make decisions about the management of family business in their courts. Those Committees were to include HMCS, Cafcass, Local Authorities and local Practitioners.
- 3 Accordingly, where they have not already done so, DFJs should set up meetings of such committees, or their equivalent, and HMCS and Cafcass should ensure that the Head of Service nominated at 1 above attends such meetings to provide authoritative up to date information to assist the DFJ to formulate local arrangements as indicated at 2 above and to be advised of the decisions of the DFJ.
- 4 DFJs should publish the existence of the committee and the local arrangements made at 1, 2 and 3 above.
- 5 **Where local arrangements have already been made which are consistent with the terms of this Interim Guidance they may continue. However, where local**

arrangements have yet to be made or finalised or, in the event of an approach by Cafcass to vary the terms of a local arrangement such proposed arrangements should be submitted to the Family Division Liaison Judge (and copied at the same time to the President's office) for approval prior to publication and implementation.

Timetabling and priorities

- 6 When prioritising **new cases**, Cafcass should have regard to the timetable for the child which will be determined by the court answering the notional query, "By when should the question relating to this child be answered?" The court should record the answer to the question and the timetable on the face of the order together with any relevant factor or future event governing the timeframe specified. If the timetable for the child requires subsequent amendment, that should also be recorded on the face of the order at the time of the change. The DFJ, taking account of information provided by HMCS and Cafcass should formulate a local mechanism for prioritisation of cases based on the timetable for the child and the child's current welfare needs.
- 7 In respect of **backlog** cases (i.e. those which have not yet been allocated or where a case management direction has not been complied with by an officer of the Service or Children's Guardian) the DFJ, taking account of information provided by HMCS and Cafcass should formulate a local mechanism for prioritisation of cases based on the timetable for the child and the child's current welfare needs

Private Law

- 8 Cafcass will publish, and keep updated, an information sheet detailing specific services (including contact activities) available to the parties for the court's consideration in determining the next steps in any case. The information sheet should provide contact and any further necessary details to enable the parties and the court to arrange for the parties to benefit from the services.
- 9 In respect of **new cases**, the national expectation of the timeframe for the production of any specific report by Cafcass under s. 7 Children Act 1989 is (from the time Cafcass receives notification of the court order) as follows:
 - a. wishes and feelings report in not more than 6 weeks
 - b. a single issue report in not more than 6 weeks
 - c. a report covering more than one particularised issue in 6-12 weeks, depending on the nature/complexity of the issues to be addressed
 - d. where an officer of the Service is required to make a risk assessment under s. 16A Children Act 1989, in 6-8 weeks
- 10 The DFJ should formulate local arrangements to specify the timeframe for production of each type of report sought under s. 7 in respect of both new and backlog cases. It is accepted that local conditions are likely to require timeframes in excess of the national expectations (see 9 above) but, where this is the case, local arrangements should include a timed plan to eliminate backlogs with a view to eventual production of reports within the national expectation. It is expected that the plan will provide for the substantial reduction and, where possible, elimination of

backlogs before the end of March 2010.

- 11 DFJs should publish the local arrangements in existence or made under 6-10 above in order for them to be effective from 1st October 2009.
- 12 Whenever practical, the court should take into account the views of Cafcass when considering whether to order one or other of the types of s.7 report as set out at 9 above, and also how to define the scope of that report. Consideration should be given by DFJs through their local Family Business Committees to establishing a system to ensure the court can receive this advice in any circumstance where an officer of the Service is not present in court at the time the court considers whether to order a s.7 report, and to ensure Cafcass receives timely notification of any order for such a report.
- 13 In every case, the filing date for a s. 7 report (as described at 9 above) directed by the court in accordance with the local arrangements shall be complied with unless **proper application**¹ is made on exceptional grounds. Letters from individual officers of the Service notifying the court of non-allocation/non-compliance shall cease. Local arrangements may specify what steps are to be taken if directions are not complied with, to include avoidance of unnecessary costs, notification to the parties and standard directions as a consequence or in default. Standard directions should be designed to provide for automatic steps to be taken where there is non-compliance.

Court listing

- 14 Listing arrangements are the responsibility of the DFJ. DFJs should make arrangements in accordance with 2 & 3 above to rationalise the days and venues upon which first hearings, including First Hearing Dispute Resolution Appointments (FHDRAs) in both the county court and the family proceedings court, are listed to make the most effective use of judicial and Cafcass resources having regard to local conditions.
- 15 All private law children cases must be listed in accordance with the President's Private Law Programme (as revised where appropriate) and an officer of the Service is to be present for first hearings, including FHDRAs, unless excused.

Approach following first hearing, including FHDRAs

A Where agreement has been reached

- 16 Orders agreed between the parties must not be approved without confirmation recorded on the order that safeguarding checks have been completed and that Cafcass safeguarding duty under s.16A Children Act 1989 is not engaged.
- 17 Where there remains risk identification or risk assessment work to be undertaken, the making of a final order in terms agreed by the parties should be deferred until the results are available. In such circumstances the court should adjourn the case

¹ While this must be a formal application according to the local arrangements specified by the DFJ, it will not be on a form C2 and will not attract a fee.

to a fixed date. If satisfactory information is then available, the order should be made in the agreed terms without the need for attendance by the parties. If satisfactory information is not available, the order should not be made, and the case should be adjourned for further consideration with an opportunity for the parties to make further representations.

B Where no agreement has been reached

18 Subject to 8 above, at the conclusion of a first hearing, including FHDRA at which agreement is not reached

1. The court should explore whether there is a way of deciding the application without a report (e.g. by referral to mediation or parenting classes)
2. Where the court decides that the application cannot be decided without a report requested under s.7, it should consider which of the following reports should be directed
 - a. wishes and feelings report in not more than 6 weeks
 - b. a single issue report in not more than 6 weeks
 - c. a report covering more than one particularised issue in 6-12 weeks, depending on the nature/complexity of the issues to be addressed
 - d. where an officer of the Service is required to make a risk assessment under s. 16A Children Act 1989, in 6-8 weeks
3. The practice of requesting a s.7 report in general terms should cease. Any order made should specify the particular issue(s) required to be investigated (i.e. the specific question(s) to be answered) and the court and the officer of the Service should clarify whether the court requires the report to address in detail any aspect of the welfare checklist.
4. The local practice (see 10 above) should be followed

19 If the court orders a report under s. 7, it will record on the order:

- a. The timeframe for making the section 8 decision for the child
- b. Whether the safeguarding checks are complete
- c. Whether any risk is identified, and if so what
- d. The particular issue(s) requiring investigation

20 HMCS is no longer required to complete a formal Referral Form when a report is ordered under s.7.

Fact-finding hearings

21 In every case where domestic violence is raised as an issue, there must be compliance with paras 3 and 16 of the President's Practice Direction: Residence and Contact Orders: Domestic Violence and Harm 14th January 2009.

22 Cafcass officers should acquaint themselves with this Practice Direction and, if they wish to make representations on the need for a fact-finding hearing, they should take into account,

- a. That in accordance with para 3, the court must consider the nature of any allegation or admission of domestic violence and the extent to which any domestic violence which is admitted, or which may be proved, would be relevant in deciding whether to make an order about residence or contact and, if so, in what terms;
- b. That, in accordance with para 16, in any case where domestic violence is raised as an issue, and the court considers that a s. 7 report should be prepared, the court should consider the extent of any enquiries which can properly be made at that stage and whether it is appropriate to seek information on the wishes and feelings of the child before findings of fact have been made;

Rule 9.5

- 23 In every case where the question of a rule 9.5 appointment is considered, there must be compliance with the President's Direction of 5th April 2004 : Representation of Children in Family Proceedings Pursuant to Family Proceedings Rules 1991, Rule 9.5, and in particular with paras 2, 3 and 5.
- a. In accordance with para 2, making the child a party to the proceedings is a step which should be taken only in cases which involve an issue of significant difficulty and consequently will occur in only a minority of cases. Before taking the decision to make the child a party, consideration should be given to whether an alternative route might be preferable, such as asking an officer of the Service to carry out further work (for example, a risk assessment) or by making a referral to children's services or, possibly, by obtaining expert evidence.
 - b. Factors which may justify the making of an order are set out in para 3 of the Direction.
 - c. In accordance with para 5, before appointing a Rule 9.5 guardian ad litem, the court will cause preliminary enquiries to be made of Cafcass in accordance with the Cafcass Practice Note detailed in the Direction.
- 24 As far as possible, the court should avoid delay in making such an appointment when the exceptional conditions for it are satisfied.
- 25 Consideration can be given to alternative rule 9.5 guardians ad litem being appointed from outside Cafcass e.g. where the court requires representation of the child in circumstances calling for legal rather than social work skills, including cross examination and/or the obtaining of expert evidence.

Addendum reports

- 26 Such reports should only be ordered by the court where (a) a contact monitoring request under s. 11H(2) of the 1989 Act is not appropriate and, if practicable, either (b) the officer who prepared the s 7 report has recommended that there be an addendum report, or (c) a legal representative, a party or the court has first discussed with either the officer of the Service who prepared the original s 7 report or the Cafcass Service Manager to clarify the purpose of the same.
- 27 Requests for such reports should be clearly noted on the court order, with

clarification of the issue(s) to be addressed. A short timeframe (for example 6-8 weeks) for preparation of these reports is to be expected and courts should limit the length of such reports by indicating that they expect the report to be of, for example, no longer than 2 sides of A4 paper.

Public Law

Cafcass duty advice schemes

- 28 On issue of an application in specified proceedings, the court should consider immediately appointing a solicitor for the child under s.41(3) Children Act and in accordance with the latest version of the Law Society Guidelines.
- 29 The DFJ may make an arrangement for Care Centres and/or groups of courts to enter into a Cafcass duty advice scheme for the provision of advice (not instructions) to the court at the first appointment through the solicitor appointed under s. 41(3) Children Act 1989. This may extend to advice provided without attendance at the court but the duty scheme shall be published in writing and must provide for
- Delivery of all papers to the Cafcass duty advice team
 - Appointment of the solicitor for the child in time for the first hearing
 - An initial appraisal of the local authority application, advice to the court about urgent action needed and, subsequent to the first hearing, following up urgent tasks identified for Cafcass prior to the CMC through its local duty arrangements
 - Subsequent allocation of the named Children's Guardian as soon as possible, and in any event prior to the Case Management Conference, to be the Children's Guardian in the proceedings thereafter and to be responsible for the future continuous conduct of the child's case

Local Authorities advising Cafcass of proceedings

- 30 Local authorities must note para 3.28 of their Volume 1 Children Act 1989 'Court Orders' Guidance and should notify the Cafcass Service Manager of the prospect of the commencement of proceedings. However, identifying details of the child should only be disclosed at this stage with the parents' consent.
- 31 Local authorities should send a copy of the application to Cafcass at the time of issue and confirm to the HMCS single point of contact (see 1 above) that this has been done.

Question the need for a Children's Guardian in all cases

- 32 Courts are reminded of the terms of s. 41(1) Children Act 1989: i.e. "For the purpose of any specified proceedings, the court shall appoint an officer of the Service for the child concerned *unless satisfied that it is not necessary to do so in order to safeguard his interests.*" (Italics added).

Directions by the court as to attendance at court

- 33 At every hearing, the court should consider with the parties whether the Children's Guardian may be excused attendance at the next hearing in the proceedings in accordance with rule 4.11A(4) FPR 1991 or rule 11A(4) FPC(CA)R 1991.
- 34 The court should always consider excusing the Children's Guardian from attending a fact-finding hearing. If the court does not excuse attendance it should record the purpose for which the Children's Guardian is to attend and whether and if so at what point it is appropriate to release the Children's Guardian (e.g. at the conclusion of any discussions between parties or after hearing the oral evidence of family members).
- 35 In every case, the court should consider directing the Children's Guardian to file a report in time for the advocates' meeting before the Issues Resolution Hearing rather than 14 days before the Final Hearing. The report shall be an issue focussed report where the issues to be analysed are the key issues identified by the court.

The tasks of the Children's Guardian/direction by the court

- 36 The duties of the Children's Guardian are set out in the relevant legislation and rules. It is inconsistent with the role of the Children's Guardian to delegate any task which will or may relate to the personal/professional relationship of the Children's Guardian with the child (or any other significant person in the proceedings).
- 37 While the Children's Guardian may delegate the collection of certain information to other personnel within Cafcass, part of the Children's Guardian's function is to analyse the information in the proceedings and therefore tasks relating to such analysis should not be delegated.
- 38 At the Case Management Conference, the Children's Guardian should seek guidance from the court about the work which is to be done between the CMC and the IRH by reference to the key issue(s) which have been identified in the case. The court should aim to clarify the particular tasks and the relevant timeframes for the work to be done by all parties and the Children's Guardian.
- 39 The court should clarify with the solicitor for the child the extent to which the solicitor is willing and able in any particular case to monitor compliance with directions which may affect the timetable of the case (e.g. attendance of parents at appointments) and to report any failure to the Children's Guardian and to the court.
- 40 The court should continue to ensure that the case progression function is performed, and that the case manager/judge is advised of any substantial failure or potential failure to comply with case management directions.

Independent Reviewing Officer

- 41 The Local Authority should advise the Children's Guardian of the name and contact details of the child's Independent Reviewing Officer and of the dates of the child's statutory reviews, with a view to promoting the best possible planning process for the child in accordance with section 2 of the Cafcass Practice Note of 2007: Cafcass and the work of Independent Reviewing Officers.