



CHILDREN AND FAMILY COURT ADVISORY AND SUPPORT SERVICE

Paper for the Board Meeting on 3 September 2010

GUIDANCE FOR COMPLAINTS-RELATED COMPENSATION PAYMENTS

1. AIM AND PURPOSE

- 1.1 The purpose of this agenda item is to enable the Board to consider, and, if content, approve the draft Cafcass Compensation Payments Guidance (Annex 1) as an integral part of the Cafcass Concerns and Complaints Procedure. The aim of this extension to the new Procedure is to provide a means of ensuring that claims for compensation made by complainant service users are appropriately handled.

2. RECOMMENDATIONS/ACTION FOR THE BOARD

- 2.1 For approval in principle, subject to the detailed scrutiny and approval of the Board Members of the complaints working group (currently Richard Sax and Ian Butler) and Ian Butler from October onwards.

3. SHORT SUMMARY

- 3.1 The proposal set out at section 1 (above) would permit Cafcass to have a consistent and principled basis for expending public funds on compensation claim which arise in relation to concerns and complaints raised by service users, outside the context of court proceedings, and would involve the Chief Executive in delegating limited decision making authority relating to the making of payments. To give this effect, a minor amendment would need to be made, subject to the agreement of the Department for Education, to the Financial Memorandum

4. BACKGROUND

- 4.1 In the 2009/10 financial year Cafcass has paid out less than £10,000 in complaints-related compensation claims outside court proceedings. Nevertheless, each year Cafcass experiences a number of situations in which requests for compensation for non-financial loss are made by service users. These are sometimes claims linked to reported distress associated with delay in dealing with complaints. Cafcass Legal has advised on a number of individual cases over the past year and has provided advice about the legal basis for the draft guidance. Currently, Cafcass has no agreed published basis for determining the situations in which the payment of compensation to service users, who have raised concerns and complaints, would be appropriate.
- 4.2 The draft guidance reflects the published approach of the Parliamentary and Health Service Ombudsman (PHSO), in accordance with advice from Cafcass Legal. It has not been possible to ascertain precisely how the PHSO calculates recommendations for awards of compensation for non-financial loss, though Cafcass Legal has had discussions about this with the PHSO; but Appendix A to the draft guidance summarises some illustrative PHSO recommendations. The draft guidance makes clear that in most cases,

payments relating to non-financial loss will be in the range £25-£100. Operational Directors would be permitted to approve higher payments (in the range £100-£500, with higher sums being referred to the Chief Executive for his consideration).

- 4.3 Cafcass Legal advises that the adoption of a clear and transparent system, for reaching a decision on whether an offer of compensation should be made, is likely to reduce the number of Cafcass complaints which the PHSO is asked to consider. Conversely, if a clear and transparent system is not adopted, there is a risk that requests for compensation will not be settled promptly, which has implications both in terms of the likelihood of the PHSO becoming involved, and for managerial and legal advisers' time. As shown in the Appendix to the draft guidance, the PHSO's published recommendation in the case of V was that Cafcass should pay compensation of £1,000 for the cost of the service user moving house as a result of wrongful disclosure of her address, and a further £1,000 for the service user's distress. The PHSO noted that her distress had been exacerbated by the time that Cafcass took to process her request for compensation. This was an extreme case but it illustrates how severe the effects of delay can be.
- 4.4 If the Board is content to approve the addition of a compensation scheme to the Concerns and Complaints Procedure, it is intended that the agreement of the sponsor Department is sought to amend the Financial Memorandum, in order that, 'fruitless payments' are recategorised, to include an additional category of special payments where the PHSO would be likely to find that maladministration has occurred.
- 4.5 It should be noted that the draft guidance only permits the payment by junior/middle managers of relatively modest sums of money (up to £100), in keeping with the level of awards recommended by the PHSO. No payments would be made without the involvement of both first line (Service Manager) and second line (Head of Service) managers, because of the requirement in the new Concerns and Complaints procedure that second line managers are directly involved in approving the proposed response to service users at Step 1 of the new Concerns and Complaints Procedure.
- 4.6 The anticipated benefits include an improvement in the speed with which Cafcass is able to process compensation claims, in that Service Managers will be able to obtain timely approval at the appropriate level for such payments. The draft guidance is also intended to reduce the number of cases in which advice needs to be sought from Cafcass Legal.

5. KEY STRATEGIC ISSUES FOR THE BOARD TO CONSIDER

- 5.1 The draft guidance, once adopted as part of the new Concerns and Complaints Procedure, together with the linked change to the Financial Memorandum, would permit the Chief Executive to delegate some decision making. The power to delegate may be used in particular for small compensation payments for non financial loss, for example where it is established that delay in complaint handling has caused distress to the service user.

6. BENEFITS FOR CHILDREN

- 6.1 There are no direct implications for children's rights, safeguarding and diversity, though children who raise concerns and complaints under the terms of the revised procedure would also be eligible to receive compensation payments.

7. FINANCIAL ANALYSIS

- 7.1 Discussions have been held with Finance who approve the draft Guidance and concur with the proposal to seek amendment to the Financial Memorandum. The sums likely to be expended, both in individual cases and in total, are modest and can be met from within existing budgets.

8. RISK ANALYSIS

- 8.1 There is a clear reputational risk and significant opportunity costs arising from unduly drawn out negotiations for compensation and the publication of adverse findings by the Ombudsman. The proposed guidance will speed up the processing of compensation claims; Service Managers will be able to obtain timely approval at the appropriate level for compensation payments and there will be a reduction in the number of cases being referred to Cafcass Legal.

9. DIVERSITY ANALYSIS

- 9.1 There are no specific diversity implications in the above proposals, beyond the fact that the proposed guidance will provide transparency, consistency and accountability in relation to the making of compensation payments to service users, outside court proceedings

10. COMMENTS FROM THE DIRECTOR OF LEGAL SERVICES

- 10.1 The advice of the Director of Legal Services has been incorporated into this report.

Bruce Clark
Director of Policy
August 2010