



# GUIDANCE FOR CHILDREN'S GUARDIANS WHEN APPOINTING A SOLICITOR FOR THE CHILD

## **1. Purpose**

1.1 This guidance describes the factors to be taken into account by a Children's Guardian<sup>1</sup> when appointing a solicitor for the child.

## **2. Selection Criteria**

2.1 The choice of solicitor for the child is at the discretion of the Children's Guardian. A Children's Guardian should appoint a solicitor who is most appropriately qualified, taking all the facts and circumstances of the child and case into account.

2.2 Children's Guardians should be aware of the benefits for children which can come from using a wide range of solicitors.

2.3 Usually, the solicitor appointed for the child will be a children representative on the Law Society's Children Panel. In exceptional cases a non-Panel member may be considered more suitable to be appointed. If a non-Panel member is to be appointed, the Children's Guardian should see an appropriate Criminal Records Bureau check prior to making the appointment.

2.4 Cafcass is committed to promoting effective representation for children and this extends to supporting the continuation of a specialist Children Panel. This requires Children's Guardians to appoint solicitors newly appointed to the Children Panel in appropriate cases, in order to ensure a sustainable workforce of specialist solicitors.

2.5 A Children's Guardian should avoid becoming too closely associated with one solicitor. It is expected that a Children's Guardian would not appoint the same solicitor or solicitors from the same firm in more than a maximum of one third of their cases unless there are exceptional circumstances and such circumstances should be recorded e.g. limited numbers of children representatives on the Children Panel in the locality.

2.6 Children's Guardians should have regard to the guidance on Gifts and Entertaining set out in the Cafcass Finance Manual which can be found at:

[http://cafcassintranet/Intranet/departments/finance/finance\\_manual\\_new/financial\\_control\\_new.aspx](http://cafcassintranet/Intranet/departments/finance/finance_manual_new/financial_control_new.aspx)

## **3 Solicitors Appointed by the Court**

3.1 The court has the power to appoint the solicitor for the child directly in public law proceedings. In private law proceedings, only a competent child or Children's Guardian can appoint the solicitor for the child. Where the court prior to the appointment of the Children's Guardian has appointed a solicitor for the child, that solicitor should continue to act for the child unless there are exceptional reasons to the contrary.

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<sup>1</sup> The guidance applies to both employed officers and self employed contractors.

## **4 Disputes and Terminating the Appointment of the Solicitor**

4.1 Where the actual appointment or the solicitor's conduct gives rise to concern, the Children's Guardian should seek to resolve those concerns by discussion and working together, where possible, with the solicitor. In those exceptional cases where there is good reason to seek a change in the appointment of the solicitor for the child, the Children's Guardian will have to obtain the consent of the Legal Services Commission to transfer any public funding certificate and have to show they pursued any complaints procedure. In cases where the court has appointed the solicitor under section 41(3) of the Children Act 1989, the Children's Guardian should make an application to terminate the appointment of the current solicitor in accordance with rule 16.29(8) FPR 2010. Every effort should be made to ensure that it does not cause delay or interfere with the determination of the central issues in the case, and that is dealt with as amicably as possible.

## **5 Child instructing Solicitor Directly**

5.1 The Children's Guardian and child's solicitor must keep under review the possibility that a child may wish to give, and be capable of giving, separate instructions which differ from what the Children's Guardian considers to be in the child's best interest. If the child is competent and wishes to instruct the solicitor directly it is likely that the Children's Guardian will separate from the child's solicitor.

5.2 In public law proceedings, the Children's Guardian must inform the court if the child is instructing a solicitor directly and thereafter may take such part in proceedings as the court directs. The court may grant permission for the Children's Guardian to be legally represented<sup>2</sup> but the decision as to whether to provide legal representation is a matter for Cafcass and the Children's Guardian must discuss this with his/her line manager. The procedure for dealing with this is set out at on the Cafcass Legal Services Intranet Page.

5.3 The position in private law cases is that a child may instruct their solicitor directly if the court has given permission or the solicitor considers that the child is able to do so having regard to the child's understanding. However, the court may direct the former Children's Guardian to have a continued role.

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<sup>2</sup> Rule 16.21 FPR 2010