



RESPONSE FROM CAFCASS TO THE CALL FOR EVIDENCE FROM THE FAMILY JUSTICE REVIEW PANEL¹

Q1: What does the family justice system mean to you? What is its purpose? What should not be included in its remit?

Cafcass' principal functions are to safeguard and promote the welfare of children involved in family proceedings, to give advice to courts, make provision for children to be represented and to provide support for children and their families. The purposes of the family justice system are:

- for its components² to work together to safeguard and promote the welfare of children, whose cases are brought before the courts.
- to ensure that children's welfare is the paramount consideration
- to prevent miscarriages of justice, in particular in care cases either through children's wrongful removal from, or continued living with, their parents
- to arbitrate, to ensure equity and fairness between parties and to apply the law.

What should no longer be included in the system's remit are those private law cases where serious welfare concerns (as defined by Hunt and Macleod 2008³) are not present. Such cases, following assessment, should be diverted to relevant support services. We also propose a narrower remit for courts in public law cases – see our response to Q22 (Top 10 proposals, 3).

Q2. What should the role of the state be when dealing with family-related disputes that do not concern the protection of children or vulnerable adults? To what extent should the state fund this?

Protecting vulnerable children and adults is an inescapable duty for the state to discharge. This means that the state needs to be able to identify relevant private law cases, at the point at which applications are made, where 'serious welfare concerns' (as defined by Hunt and Macleod) are present. The state should fund this triaging service, thus fulfilling its *parens patriae* responsibility, and because access to protection for the vulnerable should not be constrained to those of limited means. The state should divert those cases where it assesses there to be no serious welfare concerns and facilitate access to relevant support services.

Q3. How effectively does the current family justice system meet the needs of its users?

¹ This is supplemented by a submission made by the Cafcass Young People's Board – see Appendix D (summary) and E (full).

² Primarily being the courts, legal profession and Cafcass, but recognizing that the system (as defined more widely by the Family Justice Council) requires input at points from: *Family courts, lawyers, McKenzie Friends, judges, magistrates, Cafcass officers, the Child Support Agency, contact centres, health professionals, expert witnesses, family mediators, local authority social services or children's departments, police and refuges.*

³ Hunt, J. and Macleod, A. (2008) Outcomes of applications to court for contact orders after parental separation or divorce.

In the absence of sufficient longitudinal research to demonstrate better outcomes as a result of family justice system input, there is limited evidence that the needs of children (or adults) are being met by the current system. We draw a distinction between the impact of the system and the more positive impact of some interventions for children, such as structured family support programmes, and permanency options for children under 5, where that is needed. Those improved outcomes for children could still be achieved with a radically different and more effective family justice system.

a) Does it have the capacity to deal with all cases comprehensively?

No. The system is under considerable strain, following sharp and sustained increases in both public and private law application levels since Autumn 2008 and because of the slowing of case throughput, especially in public law cases in most, but not all, courts.

b) How could capacity in the system be increased?

Increased resources could increase capacity, but such an option appears unrealistic. 'Resources' include financial resources and human resources, both of which are in limited supply. Improved knowledge about costs, volumes and outcomes would enable informed judgements to be made about how best to improve efficiency, which would serve to increase capacity. Another feasible option is to reduce the scale of the tasks faced by the system (see responses at Q1 and Q22).

Improved efficiency in the private law sphere has been achieved since April 2008, through changes to pre-first hearing private law processes now included in the revised Private Law Programme. The impact of the President's Interim Guidance has in a number of areas, since July 2009, released capacity in the public law sphere. Further capacity increases (and remit reduction) can be assisted by legislative changes. The focus of such changes should be on fulfilling the state's duty to safeguard its vulnerable citizens.

c) How efficient is the system?

The system is highly inefficient and is characterized by:

- inappropriate delays
- many clear-cut public law cases taking far too long to come to court
- inequity in care cases, with massive variations in the rates (in population terms) at which individual local authorities make care applications

d) Does the system ensure equality and diversity?

We do not know. The courts do not collect information about the diversity characteristics of its users and the range of outcomes that arise.

It is clear that the system as it now stands does enable more victims of domestic violence to be safeguarded than in the past. It also enables many non-resident parents to obtain contact with their children. We do not know however, given the scant research, the extent to which this is beneficial in the long-term for children.

In Cafcass' view, while the family justice system has improved its sensitivity to cases with equality and diversity dimensions, more training and specialist input is needed in many cases.

Q4: Are there areas within the current system where we could adopt a more inquisitorial approach, and what are the options for this in relation to:

a) Private law cases

The focus in legislation on the interests of children promotes an inquisitorial approach. The increased use of alternative dispute resolution (ADR) methods, following appropriate socio-legal triage, would, of itself, reduce adversarialism. A more co-operative approach to the challenges of post-separation parenting would help to broaden the current narrow focus on residence and contact, and instead encourage consideration of how an individual child can best be supported to adapt to parental breakdown. However, in cases where serious welfare concerns are present, there is often an intense dispute between parents, especially at the outset, and this invariably needs a combination of casework and adjudication.

While the system (through the courts, legal practitioners and Cafcass) is often able to 'move' parents to the point where 'consent orders' are made, we know from repeat applications these do not always last. An important adjunct to effective inquisitorialism is the input of specialist child contact services, which are often a key lever of positive change within separated families.

The current Work to First Hearing framework will need to be expanded to include a socio-legal triage process, if cases without serious welfare concerns are to be identified and diverted. This process could also identify the level and nature of legal representation and casework needs, such as those arising from parental vulnerability.

b) Public law cases

The Letter Before Proceedings stage set out in the Children Act 1989 Volume 1 (Court Orders) guidance is a form of ADR, and provides an important opportunity to avoid proceedings (with parents assisted by legal advice). Cafcass believes there is further scope for ADR in public law, such as a social work process involving (local authority and Cafcass) social workers in the case which is then judicially ratified. Cafcass is piloting such an approach in public law with Coventry and Warwickshire local authorities (see Appendix A for further detail).

Q5: How far are users able to understand the processes and navigate the family justice system for themselves?

a) Are there clear signposts throughout the system? and

b) Do users know how and where to access accurate and timely information and advice? Is it readily available?

No – the system is difficult to navigate and there are very few 'signposts' that can be understood without the assistance of lawyers. The lead family justice entry within the 'direct.gov' website is Cafcass (CAB is second), which has no locus to advise or support those who have not yet made court applications. The Government's 'Parenting Plan' is nowhere to be found.

c) *What are the options to support/enable people to resolve these issues without recourse to legal processes?*

The Direct.Gov website is a key route through which post-separation (and pre-court application) parents (and children) could obtain information about the challenges thrown up by parenting following separation and divorce, with clear information about how issues can be resolved outside the court process.

Q6: How best can we provide greater contact rights to non-resident parents and grandparents?

'Contact rights' as a term is better understood as referring to 'contact rights for children' – contact must be seen from the child's perspective. The vast majority of children and young people benefit from being in regular contact with family members, particularly family members whose company they also enjoy. This right should only be denied to them if it is unsafe. It is therefore crucial for Cafcass to provide the courts with the information it needs, including about the wishes and feelings of children, to determine the suitability of contact sought by relatives other than parents. Child contact centres and other child contact services have a crucial role to play in facilitating children's rights to contact. Local authority and voluntary sector family centres could also play a future role in the integrated commissioning and provision of contact services.

Furthermore, contact rights for children can only be realised if parents (and other relatives) co-operate. The statutory maintenance system does not always encourage parents to enter into cooperative post-separation parenting arrangements - this issue needs to be considered as part of any review of the wider tax and benefits system. With around 1 in 3 children experiencing parental separation during the course of their childhood, the need to support co-operative post-separation parenting is the responsibility of a wide swathe of Government policy-making and not merely a matter for the family justice system.

Q7: How effective is alternative dispute resolution (ADR), such as mediation, collaborative law and family group conferencing? What types/models of ADR are more effective and for which circumstances? Does this differ according to cases? How could we improve it and incentivize its use and what safeguards need to be put in place?

There is a marked lack of rigorous outcomes-focused evidence about the efficacy of ADR interventions. Cafcass' practice experience is that these interventions can be very effective in individual cases, provided that those guided/directed towards them have been assessed for suitability. The section 11E Children Act 1989 requirement that the court must, prior to directing participation in contact activities, consider the suitability of (and likely effect on) the individual and the availability of the activity is eminently sensible, and provides an important safeguard against inappropriate use. We have already discussed the types of ADR in private law currently accessed via the FJS, or as an alternative to continuing proceedings, in Q4. These interventions need to be made available to the courts as a 'menu of options', in order to maximize judicial awareness.

Longitudinal research is needed to ascertain the effectiveness of ADR in its various forms. In terms of safeguards, we reiterate the importance of triage (via the screening of police and LA information prior to first hearing) in private law to continue under any new developments so that the court is able to make an informed decision regarding the risks in the case, and the suitability of ADR interventions. A greater

appreciation of risk to children in all the forms it takes has been a major achievement of the Private Law Programme over the last five years.

Q8. To what extent do issues around enforceability of court orders motivate decisions to go to court? To what extent does it affect decisions within and outcomes of cases?

Despite the introduction of additional enforcement mechanisms through the Children and Adoption Act 2006, Cafcass has no sense that these provisions are being extensively used. Post implementation review would be helpful. In the tiny number of highly intractable and widely publicised cases, the welfare principle has to be the courts' key consideration, as it must be understood that punitive treatment of non-compliant parents may well adversely impact on the subject children.

Q9: Are there elements of cases which could be considered outside of a court setting and if so by whom? For what type of cases would this be appropriate and what sort of settings might be suitable alternatives?

What are the benefits and disadvantages?

We believe we have already addressed this question, but would reiterate the importance of cases where serious welfare concerns are identified, through the initial private law socio-legal triage process, being retained within the court setting.

Q10. Would adding a triage stage, whereby cases are assessed as to the appropriate course of action, make the system more efficient; i.e. by speeding processes up, ensuring resource could be allocated appropriately etc? In what areas might this be appropriate?

Yes. The Private Law Programme now provides, in effect, for a judicially-led triage system, which is serving to improve timeliness, and proportionality for children and families, and to increase Cafcass efficiency – for example, our role in terms of ascertaining and making the child's wishes and feelings known to the court is targeted to those cases where it is needed. We strongly support further investigation as to whether triage could usefully be extended to a more fully integrated socio-legal triage, in public law cases as well as private law case, to establish the nature of legal representation and social work (and other services' input) needed in individual cases.

Q11. Do you think the family justice system is well organised and managed? What are the strengths and weaknesses of the current governance and management structures? Who should take responsibility for the decision-making process? Who should be responsible for the administrative running of the system?

While made up of agencies which are formed of many dedicated and committed professionals who work brilliantly on individual cases, it is not a system that is well organised or well managed. It lacks overall strategic leadership and is relatively unmanaged as the system, in part for reasons of culture and history, is more fragmented than is efficient or necessary. The Review is an opportunity to ensure improved future political and professional leadership of the system.

However, the revised Private Law Programme, developed through vision, consensus and collaboration, shows that the system can reform itself, and good collaboration at a senior level has also led to better

joint management of scarce resources in the public law sphere (i.e. the President's Interim Guidance). Cafcass is proud of the role it took in initiating and contributing to these reforms.

Cafcass, HMCS and the Legal Services Commission should share in common every administrative function unless there is a legitimate principle of independence at stake.

Current drivers of inefficiency are absent/incompatible IT and performance management systems. Careful planning, supported by modest investment, will be needed to make these better. We would support a long-term (5-7 year) integrated plan, which takes full account of the straitened public spending environment.

Q12. What systems issues are there? e.g., how could things like IT, filing and administrative processes be improved?

See Q11. The most obvious place to improve system efficiency begins with promoting the e-transfer of the C100 and other forms of information. We hope that this can be rapidly progressed via the 'Lean' exercises HMCS and Cafcass have been carrying out in local courts areas (e.g. Derby and Liverpool).

Cafcass is also taking a leaner partnership approach with external agencies through our new National Business Centre, to be based in Coventry. This centre will carry out the initial data inputting and processing of C100s, and will commission police and local authority checks. This is already happening for our Central England operational area, and will be extended by April 2011 to the North and South of England. This Business Centre will also operate human resources and finance transactional processes for all Cafcass teams, and could be further expanded to include family justice system-wide services, jointly with HMCS and other partners.

Q13. Who should take ownership of cases when they are in the family justice system? Who is the case manager? And at which point do and should they relinquish responsibility?

The responsibility for cases that are before the courts must rest with the judiciary, with judicial continuity and strong judicial case management becoming the norm (as envisaged by the Public Law Outline, but not yet fully realised in practice). Court involvement in public law cases should finish with the making of the care (or other) order, leaving Directors of Children's Services (DCSs) to be responsible for the implementation of care plans, and for preventing them from being inappropriately 'unfulfilled'. There needs to be a marked 'reining back', supported by legislation if necessary, of the courts' current practice of maintaining cases before the court while the detailed implementation of care plans takes place.

DCSs' statutory role, as defined in the Children Act 2004, might helpfully be expanded to make explicit a duty to oversee the review and implementation of care plans. It would then be up to each DCS to put in place a strong enough internal quality assurance system to comply with this duty. Alternatively, the Ofsted unannounced inspection regime could be extended to inspect the implementation of care plans, as this has proved a useful prompt for improvement and compliance with expectation in other looked after children services.

Cafcass does not have a fixed view about whether the IRO role needs be retained, perhaps through merger with the children's guardian role in the design, implementation, oversight or safeguarding of a

detailed care plan. Cafcass believes its own work in this area frequently adds value to the quality of the care plan, including its viability. We have been able to do this through our structural independence from local authorities and the backing of the court, which gives us an advantage over IRO's whose position within local authorities is not always authoritative. Another viable alternative would be the creation of a Panel – with independent input, in the style of Adoption Panels – established by the local authority. Such a panel could ensure that applications could be made to the administrative court under section 7 (Human Rights Act 1998), if a child's Article 8 rights were being adversely affected by the local authority's actions (or inaction).

Any alternative service should be set up with far greater planning and care than was the case for Cafcass in 2001, or indeed the IRO service.

Q14. How can we ensure that there is sufficient and appropriate accountability throughout the system?

This can be achieved through judicial leadership (at individual case and system levels) and much closer alignment/integration of functions/priorities of delivery agencies (HMCS/LSC/Cafcass). Accountability must be present at both the operational level and at the strategic level.

One barrier to sufficient accountability throughout the system stems from a lack of ownership from its constituent agencies. This can mean that there is a tension between the key players when the system is under strain, each perceiving others to be if not the cause then failing to provide the solution, when it is the system that faces common problems.

Q15. How well do different organisations/partners in the family justice system communicate, share information and work together to resolve cases?

There are numerous examples of improved communications having developed in the wake of the July 2009 Interim Guidance. In the vast majority of Designated Family Judges' (DFJs') areas, Cafcass and HMCS are supporting positive and helpful DFJ-mandated arrangements. At individual case level, there is in general also good collaborative working, for example between children's solicitors and children's guardians.

Q16. How clear are the different roles and responsibilities of those who are involved in the family justice system (such as the judiciary, legal practitioners, social workers, Cafcass officers, expert witnesses, administrators, IROs, court staff)? Are all these roles necessary?

Cafcass sees a value in most of the currently established roles and does not see major structural change as being a helpful way of going forward. The current arrangements too often result, in public law, in cases receiving too much attention. The way to address this unhelpful phenomenon is to focus better on the remits of the various roles and then to deal with the fewer cases that would be in the system (following the exclusion of private law cases without serious welfare concerns) to a higher standard.

(see also our response to 5b – while the roles may be clear to those working within the system, they are often not to service users).

How effectively are these roles fulfilled?

In the end, a case needs someone to judge it, evidence to judge it on, and representation for people who cannot speak up for themselves about crucial issues affecting them. These three core functions could be provided by the state much more simply, effectively and cheaply than is currently the case.

Q17. Where do you think there is scope to make efficiency savings within the family justice system?

There is scope for improved efficiency through the following steps:

- Reducing the number of (private law) cases requiring a court process
- Ensuring that both diverted and non-diverted private law cases make optimal use of ADR interventions, that are matched to the circumstances of the case
- The provision to the courts (by local authorities and private law applicants) of complete and correct information at the point of application
- Maximising the electronic communication and shared use of information and information systems
- Further improvements to the focusing of the courts' use of scarce resources (i.e. Cafcass reports, experts' input) by full implementation of existing Practice Directions (PLP, PLO, experts, rule 9.5 etc)
- Reduced duration and intensity of court scrutiny of the ongoing implementation by local authorities of care plans.

Budgets should be locally owned and the system performance managed by the agencies concerned, adopting local solutions to ensure delivery of the required outcomes. It is impossible effectively to micro-manage local operational change from the centre. The place-based budgeting framework may be applicable here.

Q18. What improvements to funding arrangements and mechanisms could be made?

Implementation of what Cafcass is suggesting will ensure that family justice is delivered in a less costly way.

Multi-year, cross-department settlements enable more effective medium term financial performance and avoid many of the perverse factors that arise from annual funding settlements. There may be some gains in establishing some commissioning elements to the system's funding, such as those derived from Cafcass' commissioning of around 400 child contact service/contact activity providers.

At present, efficiency savings are being driven through by each agency in relative isolation from each other. A stronger local joint funding approach, based upon joint Cafcass/HMCS/LSC administration, would enable better cost control and resource allocation.

Q19. Please tell us about your role in the family justice system. What value does this add to the family justice system?

Cafcass provides, on behalf of children, independent social work advice to courts in respect of up to 140,000 children annually whose cases (either public or private law) are dealt with by the family courts. In private law cases, we are often the only (or the primary) social work agency, and are therefore responsible for identifying any child protection or other serious welfare concerns, in order to enable judicial decisions to be well-informed.

In our public law role, we add considerable value to the assessment, analysis and planning process for individual children whose cases are before the courts, so that decisions about the separation of children from their birth families can be soundly based. A key aspect of our work is to assist the court in ascertaining the wishes and feelings of each child, and through this focus, we can enable judges to make profound, life-changing decisions about children. In this regard, we provide a crucial safeguard for children. Two social work opinions in these cases (Cafcass, and the local authority) are justified at the threshold and Care Order stage, because the independent view of a Cafcass guardian is a positive, and in our view crucial, check and balance on one of the most far-reaching decisions the State ever has to take.

Q20. What qualifications and experience should be required for the different roles of those who work in the family justice system? What should be included in initial training and continuous professional development?

The inter-dependence of aspects of the work within the FJS means that inter-disciplinarity is both desirable and necessary. Though outside the Review's scope, this can usefully take place during initial professional training. The training initiatives (usually in the form of part-day events) undertaken by many of the Local Family Justice Councils are commendable. There is considerable scope for additional training of this type, perhaps through the auspices of the Family Justice Council. Cafcass has commissioned a specialist (university-delivered) family justice module for its Family Court Advisers, as a specialist addition to the wider social work Post Qualifying award.

This Review, and the Government's response, must consider how the necessary changes can be introduced in ways that engage and make best use of the current skills of family justice professionals, as well as developing the new skills that will be needed. The Review should consider and utilise the work of the Munro review and the Social Work Reform Board. In our view, progress could be made through a single overarching workforce development strategy for the family justice system, within which there would be social work and legal strands. If the system is to operate well with fewer resources, then practitioners need to be jointly trained in new ways of working.

Q21. Are there sufficient performance management and feedback mechanisms throughout the system as a whole?

There are no effective system-wide performance management mechanisms that operate across the system, though the proposed Local Performance Groups are a start. Performance management should be jointly owned and led at Ministerial level. This should be linked to resource allocation, with funding directed to local areas on a basis of a resource allocation system based upon activity levels, taking into account the level of resources that should be needed (based on wider benchmarks of efficiency and throughput). Internally, Cafcass is well advanced in identifying these measures and levels.

Q22. How could the system be improved to ensure it meets the needs of users and secures positive outcomes for children?

Our Top 10 initial proposals (as presented to the Family Justice Review Panel in evidence on 15 September 2010):

1. Extending the proportionate working model to all aspects of our service (and others)
2. Continuing to implement the PLP, building on recent successes e.g. more cases being closed than opened, and further deflection of parental disputes from the court system, where serious welfare concerns are not present.
3. Ending active work in public law care cases when the outline care plan is in place, then adopting an 'in reserve' or 'watching brief' approach, still through the appointed guardian. Ending the court process once the outline care plan has been approved judicially, and the detailed shape of care plans to be determined outside court.
4. Learning from our proposed public law demonstration project in the West Midlands (see Appendix A) in which Cafcass' involvement begins at pre-proceedings at the point at which a local authority makes a decision to issue proceedings, thus increasing the focus on the child's welfare.
5. In light of the evidence of differential use of care proceedings by otherwise similar local authorities, and in the light of international evidence, we believe there is scope for a change in some local authority practice to reduce the extent of use of care proceedings in 'high user' areas. This is dependent upon improving the numbers and quality of social workers and case supervisors.
6. End the commissioned expert witness culture by relying upon the expertise of existing core court services, supplemented by reports from health professionals carrying out this work as a priority within their existing NHS contracts.
7. Joint administration/business support with HMCS, to improve consistency of data inputting, service user responsiveness and timeliness and case progression.
8. Using the Cafcass High Court team model (as previously used in the Official Solicitor's Children Division) as the basis for a proportionate public defender/representation model for socio-legal support and representation in public law care and Rule 9.5 cases.
9. Expanding the funding of targeted support services in private law, funded through reduction in Legal Aid in cases where there are no serious welfare concerns.
10. Putting in place a managed system with a stronger accountability framework, with powers to a local family justice system manager to 'knock heads together' and drive up performance.

We stand ready to discuss these with the panel further, and to assist with the development of preferred options.

23. How can we ensure sufficient protection is afforded to vulnerable adults through the system?

The socio-legal triage proposed by Cafcass (and as operated under the revised PLP) enables the identification of vulnerability in both adults (such as that arising from domestic violence or learning disability) and children. This helps the court to avoid the danger of determining apparently consensual agreements that are, in reality, coercive and counter to children's interests.

Inter-disciplinary training in the recognition of vulnerability is important, as is more comprehensive dissemination of case law in which the impact of levels of vulnerability on the threshold for care applications and viable parenting has been established.

24. In what types of cases is it important to hear the voice of the child to assist with decision making? How should the child's voice be heard in the family justice system?

The child's voice should be heard to assist with decision making in nearly all cases that involve a decision being made which impacts upon them. We reach this conclusion in the light of the expectations of the Children Act 1989, the UN Convention on the Rights of the Child, and because of research evidence and practice experience that shows that considering children's wishes and feelings is associated with the cessation of repeated proceedings. In most cases, it will be the responsibility of the relevant professionals (social workers and solicitors) to represent children's wishes and feelings, and to provide professional assessments of their needs.

Q25: How effective are Cafcass and CAF/CASS Cymru? What should their role and remit be in the future?

Cafcass performs a crucial role in safeguarding and promoting the welfare of children who are involved in family proceedings. Cafcass, despite the unprecedented inflows of new work and rising stock (in public law) of cases before the courts, is making steady progress towards becoming more effective. In particular, progress is being made to eliminate backlogs of cases, so that all cases are allocated in accordance with the courts' expectations, as now set out in the President 30 September 'Agreement' with the Cafcass Chief Executive. Evidence of this progress is attached, in the form of the latest Performance Report, prepared each month for the Cafcass Board (see Appendix B). Cafcass is currently implementing a major programme of change to ensure it can cope effectively with the demands we are facing and improve our services for children, both now and into the future.

While the future remit of Cafcass is, quite properly, a matter for the Government and Parliament, Cafcass' view is that the organisational names and arrangements are unimportant, provided that there is a full and proper exercise by the state of its duty to safeguard and promote the welfare of its vulnerable citizens, in particular in respect of their family lives.

And finally

26. What has guided your response to the questions posed above, e.g. personal experience, feedback from the public, specific research or evidence?

Our response is informed by:

- Evidence from research and our management information system

- ‘Soft intelligence’ from our daily work throughout England
- The collective input of our staff and Board members
- The parallel submission from our Young People’s Board.

27. What can be learned from the way in which other sectors work which could be transferred to the family justice system?

- the Criminal Justice System’s improvements particularly the way in which CJSSS (Simple, Speedy Summary Justice) initiative has speeded up initial processes and used a triage model to good effect
- the Criminal Justice system’s attempt to dispense with the need for costly trials through skilled and active approaches to plea bargaining
- Lessons from the Business Process Re-engineering (BPRE) back catalogue, which could inject greater pace and direction into efficiency savings programmes, such as the HMCS Lean Programme
- lessons from individual local family justice systems which have, though clear judicial leadership and strong collaborative working, successfully maintained a good level of service despite the scale of recent demand pressures

28. Do you know of any good and innovative practice in the UK that the Review Panel should consider? What wider services could be tapped into (especially in the children’s sector) to support the family justice system?

The lack of family justice integration stands in marked contrast to that seen in the criminal justice system. The FJS needs to adopt the principle of joint working within a single performance framework and funding regime, to the limits imposed by the emergence of strong legitimate independence issues. In addition, see Cafcass’ response to the Munro Call for Evidence (attached, see Appendix C).

29. Is there anything we can learn from international examples?

An analysis from Professor June Thoburn (a Cafcass Board member, which was submitted at the request of the Panel) suggests that while we can learn from international examples there is no simple, single solution that could be fully translated to this jurisdiction. We would therefore suggest that, as part of reviewing the system, international learning is drawn on when considering the usefulness of importing aspects of other systems.

30. What question would you have liked us to ask that we haven’t posed and what would your response be?

The question is ‘What are the elephants in the room?’ Our response is ‘there are two’.

The first is the continuing rise in the level of new care applications, where underlying pressures (such as professionals’ reduced appetite for risk and the numbers of children now the subject of formal child protection interventions) point to further increases, and, with the stock of cases already in the system, is taking many areas towards gridlock. The system cannot be managed well unless there is a mechanism for restricting public law cases being brought into the FJS or unless there is demand-led funding. The

former option is problematic, in terms of children's welfare. Though the latter option formed the basis for the funding of Cafcass' predecessor public law work (in the 56 Guardian Panels), it does not appear to be a viable option at this time. This leaves a change of remit as the favoured option and an integration of the Family Justice Review and Munro review proposals, in areas such as a radical revision of the core assessment process.

The second 'elephant in the room' is 'implementation'. The question we would have liked to see included is 'how can the finally agreed changes be best implemented, learning the lessons from past change programmes in the family justice system?' The family justice system's track record of implementing major change is mixed. Changes to the private law system under the auspices of the President's Private Law Programme are leading to major change for the better. Work is processed more quickly and streamlined arrangements are taking hold. Practitioners have been motivated by a vision for the work which emphasizes the importance of a child protection focus in many cases, and the need for skilled casework as well as dispute resolution in cases with serious welfare concerns, of which 'intractability' (resulting in emotional harm to children) is one element. Implementation of the recommendations of successive reviews and programmes in public law has been far less successful e.g., implementation of the 2008 Public Law Outline, which remains patchy at best (like its 2003 predecessor). In similar vein, the 1996, 2002, 2004 and 2006 reviews resulted in very little change on the ground. A consensus about change in the public law framework will have to be built, if change is to be understood and managed effectively. We would emphasise the need for coherence in the Panel's public law proposals.

Anthony Douglas CBE

Chief Executive Cafcass

The Panel recognises that the questions posed in this document cannot fully cover every aspect of the family justice system. We welcome any further information and evidence that you feel relevant to the review.

Appendix to Cafcass Submission

(Documents are hyperlinked, but have been sent to the panel as separate attachments)

[A: Warwickshire and Coventry Pilot](#)

[B: Cafcass Board Performance Report July 2010](#)

[C: Cafcass' Submission to Munro Review](#)

[D: Cafcass Young Person's Board Submission \(Summary\)](#)

[E: Cafcass Young Person's Board Submission \(Full\)](#)