



NEW JOINT AGREEMENT ISSUED BY CAFCASS AND PRESIDENT OF THE FAMILY DIVISION

Cafcass Chief Executive Anthony Douglas and the President of the Family Division, Sir Nicholas Wall have issued a Joint Agreement, effective from 1st October 2010 which builds upon the success of the Interim Guidance in tackling backlogs and which places the emphasis on good local agreements continuing for another year, until October 2011.

Anthony Douglas welcomed the new Agreement saying, "Through brilliant local negotiations, and sheer hard work by our local staff, we now have viable and sustainable agreements with judges and courts all over the country about the priority work we need to focus on to assist children, families and courts in the best way we can, within the resources we have. Feedback from judges about these local agreements has, without exception, been positive. We can build on this and strengthen our joint approach still further over the next year."

The Agreement will last for 12 months and seeks to build on the positive inter-agency partnerships that have been established in many parts of the country between the Judiciary and local Cafcass offices. In particular, it seeks to continue to reduce backlogs which have fallen dramatically since the introduction of Interim Guidance. The latest national figures¹ show that 11,944 care cases are allocated across the country (or 93.1% of the care workload) with only 151 care cases remaining unallocated and a further 734 cases being worked on proportionately by Cafcass practitioners providing duty advice, as provided for by both this Agreement and the former Interim Guidance.

In some areas, the picture is even more positive. In Birmingham, the Black Country and Solihull (service area C5) 100% of care cases are currently allocated and there are no duty allocated or unallocated cases. The Head of Service, Ana Popovici attributes the success in the area to both the dedication of staff and the strong leadership shown by local judges. She said, "Staff have been really proactive in coming forward with ideas and solutions on how we can improve our service. Our local judges have also been brilliant – we could never have done it without them. Together we've put in place clear agreements and there is strong communication between us. They've encouraged us to work in new ways and have shown strong judicial management of cases so that we now have a situation where the number of care cases entering the system closely mirrors those that are being closed. This has been crucial in bringing stability to our workload and in helping to ensure that backlogs do not build up again."

South Yorkshire (service area N6) is another area where all care cases are currently allocated and where collaborative arrangements with the judiciary have been key. Hilary Barrett the Head of Service said, "By setting up our early intervention team and jointly working with the judiciary we've been able to ensure that all incoming cases are allocated on receipt and that practitioners are providing timely advice to the courts to ensure that children

¹ Taken from our national Case Management System on 28th September 2010. This is a live system.

are safe. Here, the average care case takes just 46 weeks to complete. Our local judges have been key in overseeing case management and ensuring that the timescales which we set out during our initial work on a case are maintained and that drift and delay is kept to a minimum. This is not only good for children who benefit from a speedier outcome – it also means that we're able to manage and provide invaluable advice on the high numbers of care cases which we continue to receive."

There is also a rapidly improving picture in London where, since agreeing a joint accord with the judiciary in June the numbers of allocated care cases has risen to 1,911 and the numbers of unallocated cases has dropped from 165 in May to the current 27. Martin Harris, the lead Head of Service said, "What's encouraging about the figures is that with the proportionate ways of working our staff are managing to help many more children than before. At the same time, we're becoming less reliant on duty allocations with just 236 cases currently being handled in this way – I am hopeful that despite the high numbers of cases we're continuing to receive all children in public law proceedings will have appointed guardians by the end of the financial year."

**For more information or to arrange to speak to any of the named individuals above,
please contact Naomi Lawson, Interim Head of Communications:
0844 353 3320 / 07768 796 484**



PRESIDENT OF THE
FAMILY DIVISION



1 October 2010

*Joint message from Sir Nicholas Wall, President of the Family Division and
Anthony Douglas, the Chief Executive of CAF/CASS*

With this note, you will receive the Agreement which has been reached between us and the relevant government Departments and which replaces the Interim Guidance, which expires on 30 September 2010.

We think the document speaks for itself, and we express a joint determination to make the family justice system work for the benefit of the disadvantaged children who are caught up in it.

You will see that the thrust of the Agreement is that all involved in the system should work cooperatively to operate the Public Law Outline¹ locally within an environment of increasing and complex workloads to make the most of our available resources.

In deciding what directions should be made in relation to the work of the guardian, the court will usually hear from all parties and especially the representative of the child and will above all take into account that nothing in the Agreement fetters the responsibility of the children's guardian independently to represent the interests of the child in accordance with the statute and court rules.

We expect that the judges and magistrates who have to manage cases and make the decisions in relation to them will understand and respect the changing operational processes of Cafcass. In turn Cafcass recognises that it is the essence of judicial case management that judges and magistrates identify particular pieces of work which they wish the guardian to undertake and that if they regard it necessary from time to time to specify the manner in which such work is undertaken, they have the power to do so.

Sir Nicholas Wall
The President of the Family Division
& Head of Family Justice

Anthony Douglas CBE
Chief Executive, Cafcass

¹ Practice Direction: Public Law Proceedings Guide to Case Management: April 2010



PRESIDENT OF THE
FAMILY DIVISION



ARRANGEMENTS TO ASSIST CAFCASS PENDING IMPLEMENTATION OF THE FAMILY JUSTICE REVIEW

Agreement between the President of the Family Division and the Chief Executive of Cafcass.

**Sir Nicholas Wall
The President of the Family Division
& Head of Family Justice**

**Anthony Douglas CBE
Chief Executive, Cafcass**

1 October 2010

This Agreement is supported by the Ministry of Justice and the Department for Education and shall remain in force *for a period of 12 months from 1st October 2010* (unless renewed within that period). The effect of the Agreement shall be monitored by the Ministry of Justice, HMCS and the Department for Education with a view to further discussions between government, Cafcass and the judiciary three months in advance of the end of that period: (that is by 30th June 2011).

The agreement has a four- fold purpose:

- 1. To build on the valuable inter-agency working which the Interim Guidance has produced.**
- 2. To continue the reduction of backlogs in the allocation of public law guardians and prevent their recurrence where they have been eliminated.**
- 3. To assist guardians to make the best use of their time and**
- 4. To minimise the use of Cafcass nominated ‘duty advisers’ except where the DFJ has agreed and published circumstances in which they may be used, and then to regulate such use.**

Where local arrangements have been agreed and implemented by DFJs with Cafcass under the President’s Interim Guidance which have been successful and resulted in eliminating backlogs in the appointment of guardians in public law cases, such arrangements may continue to apply with the concurrence of both the DFJ and the Cafcass Head of Service in so far as those arrangements are not inconsistent with the provisions of the Public Law Outline¹.

¹ Practice Direction. Public Law Proceedings Guide to Case management: April 2010

Preamble

1. This Agreement must be read alongside the Public Law Outline (The PLO). It is of the utmost importance that the PLO is fully and effectively implemented by all judges, magistrates, legal advisers and guardians.
2. In particular;
Paragraph 3.1(2) of the PLO emphasises the need for judicial continuity. It makes clear that each case must be allocated to one and not more than two case management judges (in the case of magistrates' courts, case managers) who will be responsible for every case management stage of the proceedings through to the final hearing.

It is of the greatest importance that this provision is obeyed. Delay most often occurs when there is no case manager taking responsibility for the case. The President is content that arrangements for this have been made in the Principal Registry of the Family Division and he is setting up a similar scheme to govern cases listed in the Royal Courts of Justice. Family Division Liaison Judges, through their Designated Family Judges, and Justices' Clerks will be expected to make similar arrangements on their Circuits.

Paragraph 3.19 of the PLO requires the court to further the overriding objective by actively managing cases.

Paragraph 3.20 makes clear that active case management includes identifying all facts and matters that are in issue at the earliest stage in the proceedings and at each hearing, and that the court must decide promptly which issues need full investigation and which do not. For the avoidance of any doubt, active case management includes (1) discussion with all parties and the guardian and/or the child's legal representative about the issues in the case; and (2) directions to the guardian setting out the issues which the case management judge or case manager requires the guardian to investigate and report upon to the court.

3. While this Agreement reminds courts of their proactive role, it is not intended to diminish the role of the guardian. On the contrary, although the court will at an early stage, and throughout the proceedings indicate to the guardian and the parties the issues which the court perceives as likely to determine the outcome of the case: -
 - a. nothing in this Agreement is designed to prevent or inhibit the guardian identifying and investigating other issues which the guardian perceives to be necessary for the fulfillment of the guardian's duty to safeguard and promote the welfare of the child;
 - b. at all stages of the proceedings the court will revisit the issues in the case and may at any time indicate to the guardian further or other issues on which the assistance of the guardian is required; and
 - c. nothing in this Agreement encourages or permits the court's interference with the guardian's duties as set out in statute and court rules.

Agreement

4. Local arrangements have been designed to reduce backlogs in the allocation of guardians and to promote inter-agency working. Arrangements set up by the Designated Family Judge (DFJ) under paragraphs 1-4 of the President's Interim Guidance shall remain in place for

- a. Coordination of matters such as hearing dates, filing and service of documents and transmission of information including resolution of urgent problems
 - b. Provision of information to assist the DFJ to make decisions about management of family business in their courts
 - c. Arranging meetings of appropriate representatives with the DFJ to assist in and be advised of the formulation of local agreements
 - d. Publication of details of the arrangements made under this paragraph, and of the local agreements reached
5. In accordance with the PLO, Cafcass will allocate a guardian in every case within three days of being notified by the local authority or the court that proceedings under Part IV of the Act have been instituted.
6. Only, in circumstances agreed and published by the DFJ in accordance with Paragraph 4 above may Cafcass nominate a 'duty adviser.' Any such 'duty adviser' will be fully qualified and in a position to assist the court and the parties up to and at the first appointment and at any urgent interim hearing in which a substantive decision is sought in relation to the child prior to a guardian being allocated (for example whether to make an interim care order or a residential assessment).
7. Where a 'duty adviser' is in place, Cafcass will nonetheless allocate a guardian for the purposes of the proceedings no later than 7 days before the Advocates' Meeting in preparation for the CMC.
8. To the extent that the court makes case management directions and orders in advance of the CMC, and the Cafcass representative is a 'duty adviser', the 'duty adviser' shall record these matters and convey them to the guardian within 24 hours of the guardian's allocation.
9. At every hearing, the court should consider with the parties whether the 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
10. If the guardian is of the opinion, taking into account the directions of the court, and paragraph 3 above, that there are no identified tasks to be undertaken by the guardian for a specified period, the guardian must advise the court and the parties of this. The court will then aim to clarify the particular tasks and relevant time frames for any work which remains to be done by all parties and the guardian and make appropriate directions or recordings on the face of any order.
11. During any period when directions or recordings made under paragraph 10 above apply, indicating that there are no tasks to be undertaken by the guardian during a specified period, the guardian must have regard to the statutory duties of a guardian and monitor the progress of the case. The other parties, and in particular the children's solicitor, must bring any relevant change in circumstances or other matter which may require the investigation of the guardian to the attention of the guardian immediately. The case management judge(s) or case manager(s) must be advised by the parties and the guardian of any such change which is likely to affect the issues which need investigation or the timetable fixed by the court in accordance with the Timetable for the Child.

Notes for Editors:

- The Children and Family Court Advisory and Support Service (Cafcass) was formed as a new service for England and Wales on 1 April 2001 as part of the Government's commitment to supporting families and children. It brought together the services previously provided by the Family Court Welfare Service, the Guardian ad Litem Services and the Children's divisions of the Official Solicitor's Office.
- Cafcass has a statutory responsibility to ensure that children and young people are put first in family proceedings, that their voices are heard, the decisions made about them by courts are in their best interests and that they and their families are supported throughout the process. It operates within the law set by Parliament and under the rules and directions of the family courts.
- Cafcass has over 90 offices throughout England. These are split into three operational areas – north, central and south.
- Cafcass' role is to work with Children and Families in the family courts. The following are some examples of the types of cases we work with:-
 - Adoption (public law)
 - Care Orders (public law)
 - Emergency Protection Orders (public law)
 - Residency and contact following divorce and separation (private law)
- Cafcass is sponsored by the Department for Education and is a non-departmental public body.
- Cafcass has a Young People's Board who have experience of our services. They advise us on matters of policy and practice.