

Putting children and young people first



**PRACTICE GUIDANCE FOR GUARDIANS
APPOINTING A SOLICITOR FOR THE CHILD**

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GUIDANCE FOR GUARDIANS¹ APPOINTING A SOLICITOR FOR THE CHILD

1. Introduction

- 1.1 CAF/CASS' core responsibility is in representing children and young people and their interests in a range of family court proceedings.
- 1.2 In public law proceedings and some private law proceedings the child is usually represented through the 'tandem' model with both a Guardian and a solicitor. The Guardian has a duty² to appoint a solicitor whose client is the child unless a solicitor has already been appointed.
- 1.3 Effective legal representation for the child requires a solicitor who will provide able and competent representation for the child. The appointment of the solicitor is a crucial step in any case and this guidance seeks to support Guardians in making appointments that will ensure the child's effective representation.

2 Purpose

- 2.1 This guidance describes the factors to be taken into account by a Guardian when appointing a solicitor for the child.

3 Objectives

- 3.1 The objectives of this guidance are to:
 - Assist Guardians in appointing the most appropriate solicitor for the child;
 - Provide guidance as to the criteria which should be taken into account in making an appointment;
 - Provide support to Guardians, to enable them to perform their role in the best interests of the child.

4 Selection Criteria

- 4.1 The choice of the solicitor for the child is at the discretion of the Guardian. A Guardian should appoint a solicitor who is most appropriately qualified, taking all the facts and circumstances of the child and case into account. The Guardian should, above all else, appoint a solicitor who is going to provide effective representation for the child.
- 4.2 Guardians should be aware of the benefits for children which can come from using a wide range of solicitors. Experience of the different practice methods of a range of solicitors can also improve the Guardian's own personal practice and broaden the Guardian's experience.
- 4.3 Solicitors who are experienced in representing children are eligible to apply to become a children representative on the Law Society Children Panel. In order to become members, solicitors must have:

¹ 'Guardian' is used as a generic term in this guidance to refer to both a Children's Guardian and a Guardian ad Litem. The guidance applies to both employed officers and self employed contractors.

² Rule 4.11 (A) (1) (a) FPR 1991

- A minimum of three years' experience as a solicitor;
- Attended a three-day training course;
- Submitted an application covering all aspects of children law practice to the Law Society (applications are graded by independent practitioners);
- Been interviewed by two assessors, and;
- Been the subject of a Criminal Records Bureau check

Accordingly, a solicitor who is a child representative of the Panel will be an experienced and competent practitioner.

4.4 It is expected that Guardians will nearly always appoint a solicitor for the child who is a children representative member of the Law Society's Children Panel, but there may be highly exceptional circumstances when a non-Panel member is considered more suitable to be appointed. In such cases the reason for this should be recorded. If a non-Panel solicitor is to be appointed, the Guardian should see a CRB check before making the appointment. All children representatives on the Children Panel are eligible for instruction by a Guardian. Guardians must be satisfied on the suitability of the appointment of the solicitor for the child, considering all the circumstances of the case. When appointing a solicitor, the Guardian should seek to promote the best interests of the child.

4.5 CAF/CASS is committed to promoting effective representation for children and this extends to supporting the continuation of a specialist Children Panel. This requires Guardians to appointment solicitors newly appointed to the Children Panel in appropriate cases, in order to ensure a sustainable workforce of specialist solicitors.

4.6 The Guardian should consider any special features of the particular case and/or child that require that a solicitor with specific knowledge, particular skills or characteristics be appointed. These special features include:

- The ability to communicate with the child in his/her first language;
- Sign language skills;
- Where there is a specific reason to appoint a solicitor of particular gender for the child, for example, for a child who may have been sexually abused and shows signs of being afraid of persons of that gender; or for an older child who has expressed a strong preference for a solicitor of a particular gender;
- Where there is a specific reason to appoint or not to appoint a solicitor of the same ethnic background or culture as the child.

4.7 Knowledge of the locality and court could also be a factor for Guardians to consider in choosing the solicitor for appointment. In public law proceedings this will usually be a solicitor from or near the area of the local authority that initiated the proceedings. In private law proceedings this will usually be a solicitor local to the court where the proceedings were issued, or where the child lives. Unless the exceptional circumstances of the case or child require it, it is likely to be wasteful of resources to require excessive travel to court and/or to see the child.

4.8 Where a solicitor has previously acted for a child or another child of the same family then they should usually be appointed in any further proceedings.

4.9 A Guardian should avoid becoming too closely associated with one solicitor. It is expected that a 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 Children Panel in the locality, for example, in rural areas. It is expected that the Guardian will seek to instruct a solicitor with whom they have not previously worked in some of their cases and generally seek to achieve a "spread" in their selection of solicitors. Guardian's must have regard to the guidance on Gifts and Entertaining set out in the CAFCASS Finance Manual at http://cafweb01/intranet/Finance/Downloads/Chapter_18_Finance_Manual.doc

5 Solicitors Appointed by the Court

5.1 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 Guardian can appoint the solicitor for the child. Where the court prior to the appointment of the 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.

6 Disputes and Terminating the Appointment of the Solicitor

6.1 Where the actual appointment, or the solicitor's conduct gives rise to concern, the Guardian should seek to resolve those concerns by discussion and working together where possible, with the solicitor. In those exceptional cases where the Guardian considers that there is good reason to seek a change in the appointment of the solicitor for the child in the best interests of the child, the Guardian should make an application to terminate the appointment of the current solicitor pursuant to rule 12(4) FPC (CA 1989) R 1991 or rule 4.12(4) FPR 1991. 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 it is dealt with as amicably as possible.

7 Child instructing Solicitor Directly

7.1 The 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 Guardian will separate from the child's solicitor.

7.2 In public law proceedings, the Children's Guardian remains a party to the case and the court may grant permission for there to be separate legal representation for the Guardian³. The decision as to whether to provide separate legal representation is a matter for CAFCASS and the guardian must discuss with the line manager. The procedure for dealing with this is set out at [CAFCASS Legal Services Web Page](#).

7.3 The position in private law cases is different in that if the court grants leave⁴ for the child to instruct the solicitor directly, the CAFCASS officer's role as Guardian must then end⁵. However, the court may direct the former Guardian to have a continued role, for instance a role advising the court or investigating and reporting to enable the continued instruction of an expert. The court may alternatively appoint the former Guardian as a Child and Family Reporter. If legal representation is still needed, the Legal Services Commission can no longer cover the cost and an application can be made for separate legal representation in accordance with the above procedure at 8.2 above.

8 Audit

8.1 It is important for Service Managers and Contract Managers to understand the reasoning behind the appointment of a solicitor by a Guardian. This knowledge will assist both Service and Contract Managers in managing

³ Rule 4.11A(3)(iii) FPR 1991

⁴ Rule 9.2A FPR 1991

⁵ Rule 9.2A(6) FPR 1991

complaints received from solicitors due to non-appointment and assist them in the supervision or annual review process.

8.2 In order to meet this requirement, all Guardians should complete the Appointment of a Solicitor Form (Appendix 1). This form should be stored within each case record file. Both Service and Contract Managers will use completed forms as a checklist during the supervision or annual review process.

8.3 Service and Contract Managers will in addition be able to access information on the use of solicitors from the Case Recording System.

9 Diversity

9.1 Nothing in this policy serves to undermine the CAFCASS Diversity Policy as published on the CAFCASS website.

9.2 CAFCASS recognises that society is enriched by diversity, and actively and consciously values diversity. CAFCASS aims to provide a high quality service, treating all service users fairly.

10 Further Information

10.1 To access up to date Law Society Children Panel membership information in your area:

Tel: 0870 606 2555

www.panels.lawsociety.org.uk

10.2 The Law Society and CAFACSS have issued guidance on the working relationship between children panel solicitors and guardians: 'LAW SOCIETY AND CAFCASS GUIDANCE ON THE WORKING RELATIONSHIP BETWEEN CHILDREN PANEL SOLICITORS AND CHILDREN'S GUARDIANS February 2004'. Although the guidance is drafted within the context of public law children and adoption, the principles are of general application in private law proceedings. A copy of the guidance is available on the CAFCASS Intranet at http://cafweb01/intranet/Downloads/Appendix_10_Joint_Guidance_for_Children_Panel_Solicitors.doc

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Appendix 1

Appointment of a Solicitor		
Name of Solicitor:		
Name and Address of Office:		
Tel No:		
Fax No:		
E-mail (if in use):		
Children representative from Children Panel		Y/N
Date Appointed:		
Appointed by:	Court	Guardian
When the solicitor was appointed how many cases did you have the solicitor working on?		
Have you worked with the solicitor before in the last 12 months? If so, how many times.		Y/N
Reason(s) for Selection:		