

## **Guidance to Children's Guardians on appointing a solicitor for the child**

### **Overview of guidance**

This guidance outlines the matters to take into account before a solicitor is appointed for the child. This guidance applies to both employed and Cafcass Associates who are appointed as guardians and who as a consequence are under a duty to appoint a solicitor for the child.

### **1.0 Choice of solicitor**

- 1.1. One of the first duties of the guardian is to appoint a solicitor for the child. The appointment is at the guardian's discretion, and should be based on the solicitor best equipped to help the child in question. Factors to take into account include skillset, availability and track record.
- 1.2 In those cases which have been before the court previously, the guardian will usually aim to instruct the solicitor who acted in those proceedings but the decision remains that of the guardian. Such a repeat instruction is also the norm in repeat removal cases, where a previous child of one or both parents has been removed. Such repeat appointments promote continuity and are based on an understanding of the case or the family.
- 1.3 The Law Society has a Children law accreditation scheme. Only solicitors and chartered legal executives who are employed by a solicitor and hold the Rights of Audience Matrimonial Proceedings/Family Proceedings Certificate (or other appropriate advocacy qualification) awarded by the [Chartered Institute of Legal Executives \(CILEx\)](#), may apply to that scheme. It is designed to provide a quality standard for practitioners representing children in children law proceedings. Reference in this guidance to solicitors should be interpreted as including a solicitor or Legal Executive who is accredited under the Law Society scheme. Accreditation has a range of requirements including compliance with the Law Society Code of Practice for Children's Law.
- 1.4 The guardian may appoint a solicitor who is not a member of the Law Society's Children Panel but this should be only in exceptional circumstances.
- 1.5 Children's Guardians should take a number of factors into account when appointing a solicitor for the subject child, including availability, geography, the needs of particular children and, if a solicitor has previously acted for the children, continuity. The children's guardian should confirm with the solicitor that they have the capacity to take on the case.
- 1.6 To avoid any concern about restriction of trade, it is important and in the interests of children that guardians should use as wide a range of solicitors as possible, and avoid becoming too closely associated with one or more solicitors. Guardians should aim to use the same solicitor, or solicitors, from the same firm, in no more than a maximum of one third of their cases unless there are exceptional circumstances, for example when a case involves a family in whose case the solicitor has acted previously. Where

such circumstances apply, they should be recorded, e.g. because there are only a limited number of solicitors on the Children Panel in the locality.

## **2.0 The Law Society's Children Law Accreditation Scheme (Children's Panel)**

2.1 Cafcass recognises that the distribution of care cases among children panel solicitors should be fair and transparent, and accepts that all Law Society children panel members have been assessed for their expertise in this field of work. The list of members is updated monthly on the Law Society website.

2.2 Cafcass is committed to promoting effective representation for children and supports the continuation of the Children Panel. This means that guardians should appoint solicitors or Legal Executives who have recently joined the Children Panel in appropriate cases, to ensure a sustainable workforce of specialist solicitors.

2.3 Guardians should have regard to the skills of children panel members. The Law Society provides additional information from its panel members, including the court areas they cover, any specialist areas of practice and languages spoken. This information is also available on the Law Society website.

## **3.0 Working together**

3.1 For the duration of the case the guardian and the solicitor should keep in touch so that all case management issues are discussed and a joint plan of action formulated. It is the responsibility of the guardian to provide instructions to the solicitor/legal representative on behalf of the child. The solicitor is not expected to make decisions on the work or the position of the guardian without consulting first. This is a cardinal principle of joint working between the children's guardian and the child's solicitor.

3.2 If the child's legal representative advises that the child may have a claim, for example under the Human Rights Act, the guardian is not able to represent the child in any civil claim and the solicitor should ensure that the relevant orders are made for the child to be represented by a Litigation friend. The guardian will not act as Litigation friend or representative in the Court of Protection as this is outside their statutory functions

## **4.0 Disagreements between the Guardian and the appointed solicitor**

4.1 If there are concerns about the performance of the appointed solicitor, the guardian should try to resolve them initially by raising them with the solicitor and if they are not resolved then with the Senior Partner in the firm. All solicitors' firms have a complaints procedure and just as poor practice of guardians can be raised with Cafcass the same applies to legal representatives. In exceptional cases where there is good reason to seek a change in the appointment of the solicitor, the guardian may transfer the instruction but must be aware that the Legal Aid Agency will need to change the Legal Aid certificate. If the solicitor was appointed by the court, the guardian must apply to the court to terminate the solicitor's appointment under rule 16.29(8) FPR 2010. In all cases, every effort should be made to ensure that a change of solicitor does not cause delay or interfere with the determination of the central issues in the case, and any conflict is positively resolved.

- 4.2 The relationship between the solicitor and the child, where applicable, is a significant matter to take into account if and when a change of solicitor is being contemplated. The importance of practitioner continuity applies to solicitors as well as to guardians.

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