



## **WORKING TOGETHER REPRESENTING CHILDREN NYAS (THE NATIONAL YOUTH ADVOCACY SERVICE) AND CAFCASS (THE CHILDREN AND FAMILY COURT ADVISORY AND SUPPORT SERVICE)**

This Protocol reflects the roles of both agencies representing children in private law proceedings in order to meet the needs of children and families.

### **Shared Commitments**

- Compliance with Article 12 of the United Nations Convention on the Rights of the Child Ensuring the voice of the child is heard in family proceedings
- A coordinated response to changing practice and regional needs, to ensure the best service is available for children in family proceedings.

### **Making a child a party in private law proceedings**

The procedure for making a child a party to proceedings is set out in Part 16 of the Family Procedure Rules 2010 (FPR) which:

- (a) sets out when the court will make a child a party in family proceedings; and
- (b) contains special provisions which apply in proceedings involving children.

Rule 16.2 of the FPR confirms that a court may make a child a party to family proceedings if it is in the interests of the child to do so, although the rule does not apply to specified proceedings or proceedings to which Part 14 applies (adoption and placement proceedings).

The decision about whether to join a child as a party is exclusively that of the court but Paragraph 7.2 of Part 4 of Practice Direction 16A provides some guidance on the circumstances where it may be appropriate for a court to join a child as a party to proceedings under Rule 16.2. This is not an exhaustive list but includes the following:

- (a) where an officer of the Service or Welsh family proceedings officer has notified the court that in the opinion of that officer the child should be made a party;
- (b) where the child has a standpoint or interest which is inconsistent with or incapable of being represented by any of the adult parties;
- (c) where there is an intractable dispute over residence or contact, including where all contact has ceased, or where there is irrational but implacable hostility to contact or where the child may be suffering harm associated with the contact dispute;
- (d) where the views and wishes of the child cannot be adequately met by a report to the court;
- (e) where an older child is opposing a proposed course of action;
- (f) where there are complex medical or mental health issues to be determined or there are other unusually complex issues that necessitate separate representation of the child;
- (g) where there are international complications outside child abduction, in particular where it may be necessary for there to be discussions with overseas authorities or a foreign court;

- (h) where there are serious allegations of physical, sexual or other abuse in relation to the child or there are allegations of domestic violence not capable of being resolved with the help of an officer of the Service or Welsh family proceedings officer;
- (i) where the proceedings concern more than one child and the welfare of the children is in conflict or one child is in a particularly disadvantaged position;
- (j) where there is a contested issue about scientific testing.

### **Appointing an Officer of Cafcass as children’s guardian**

Cafcass’ functions include safeguarding and promoting the welfare of children who are the subject of family proceedings, and providing independent social work advice to the court. It is also a function of Cafcass to make provision for children to be represented in family proceedings. In those private law cases where the court has joined the child as a party the court must appoint a children’s guardian and in some cases will appoint an officer of Cafcass who will then instruct a solicitor to represent the child.

Practice Direction 16A says that the court should approach Cafcass first and “cause preliminary enquiries to be made of Cafcass” before making the order appointing a guardian. Cafcass will provide a guardian unless there is likely to be delay or if there is any other reason why another person should be appointed.

### **When NYAS may be appointed as a children’s guardian**

NYAS is independent of Cafcass and other statutory agencies and the funding for their role is through the Legal Aid Agency (LAA). NYAS appoint a caseworker who is an independent social worker. The NYAS in-house lawyer and caseworker work in tandem to provide representation for children and young people in family law proceedings.

In circumstances where the court decides not to appoint a guardian from Cafcass it may appoint NYAS to provide separate representation for children and young people in cases where they have been joined as parties. NYAS may be asked by the court to provide a guardian in cases (likely to be long standing) where for example, despite the best efforts of Cafcass, one or more members of the family can no longer work with the organisation or the relationship between the family and Cafcass has broken down. The Official Solicitor may agree to act as children’s guardian notably where the young person is approaching 18 years of age, is suffering from some form of mental incapacity, and where Court of Protection proceedings post 18 will be necessary. Alternatively a relative or friend may take on the role, but in practice this is rare, given the potentially onerous duties involved.

The requirement to approach Cafcass first comes from Para 7.4 of Practice Direction 16A which states:

*“ When a child is made a party and a children’s guardian is to be appointed -*

*a) Consideration should first be given to appointing an officer of the Service [as children’s guardian.....]*

*b) If Cafcass.... is unable to provide a children’s guardian without delay, or if for some other reason the appointment of an officer of the Service ....is not appropriate, rule 16.24 makes further provision for the appointment of a children’s guardian.”*

And it is Rule 16.24 which permits the court to appoint the official Solicitor (if he consents) to act as guardian or a person other than the Official Solicitor, which could be NYAS, or relative, advocate or solicitor.

**NYAS and Cafcass working together**

Both agencies are committed to effective communication in the best interests of the child in accordance with the law. The normal points of contact should be the Cafcass service manager and the nominated NYAS lawyer. If any case is transferred between the two agencies it is particularly important to pass on information which may assist the work with the child and family. In cases where there is a need for a new or updated safeguarding check, NYAS will request Cafcass do this on their behalf.

If NYAS is invited to provide a guardian and child's solicitor for a child in circumstances where Cafcass has not been approached, NYAS will discuss the matter with Cafcass.

Cafcass and NYAS will work together to advise the court whenever there appears to be good reason for a guardian not to be appointed.

This Protocol will be reviewed in three years' time.

**Dated 23<sup>rd</sup> August 2017**



.....  
**Rita Waters**  
**Chief Executive**  
**NYAS**



.....  
**Anthony Douglas**  
**Chief Executive**  
**Cafcass**