RESPONSE FROM CAFCASS TO THE DRAFT CHILD ARRANGEMENTS PROGRAMME

1. Cafcass supports all of the proposals in the draft Child Arrangements Programme. We were pleased, proud and privileged to be part of its development and we look forward to continuing with our active involvement.

2. We have some suggestions which are intended to make the Programme even stronger. These suggestions correspond to the sequence and numbering of the draft Programme, for ease of reference.

1.2 We suggest the role of the court is to seek to achieve justice and protection for children and parties, where that is only achievable through a court hearing and process.

1.3 We would suggest the insertion of a sentence emphasising the importance of a culture of dispute resolution, perhaps as follows, at line 5…..outside of the court system. The courts both encourage and practise a culture of dispute resolution wherever possible. This may also be quicker and cheaper.

1.4. We suggest a new last sentence as follows…….is available widely. Information about local community-based services which support dispute resolution after relationship breakdown, including mediation, is widely available. (see……..)

1.5 We think dispute resolution services could be safely extended to include cases which include some element of domestic violence and drug and alcohol misuse (non-high end), but where it is nevertheless assessed that the children's best interests lie in pursuing activities designed to promote safe and sustained relationships with both parents. A DV SPIP may be possible, to develop, so that there are three services on offer: A DV SPIP; the Probation intervention, *Building Better Relationships*, and, at the high end, DVPP. We say this without any intention to diminish the focus on risk assessment.

1.6 We see a Parenting Plan as also being a change programme for a child, and reference to this intention of Parenting Plans may be helpful.

A new proposed 1.15 (linked to our point in 1.4)……..Evidence by one party or both of attempts to resolve a dispute and to focus on the needs of the child/children is important evidence to introduce at the MIAM or any subsequent court application.

2.1 (and in all such references within the draft programme). We wonder if it is time to just use the term *dispute resolution,* for ease of understanding, rather than *alternative dispute resolution*. Many litigants without lawyers ask us what '*alternative'* stands for. It would be simpler just to use DR, and then DRA.

4. We think financial incentives need to be provided to stay out of court, and we would like to see a local pilot which sought to make pre-court services free as well as much more accessible, and in-court services subject to increased charges for services provided during the court process. In other words, the more persistent the dispute, the most it would cost parties (subject to the standard exemptions for family violence, or where it is not possible to apportion responsibility for prolonging the case NB, we acknowledge the risk of secondary litigation about responsibility for delay is a high one, nevertheless we think that changing the financial incentives to make a court application less attractive is important.

5.7 We agree that the proposed witness statement template is useful. We suggest a further question asking parties if they have other children not involved in the proceedings. We think a stronger pre-proceedings hub could assist parties, especially litigants without lawyers, in preparing a witness statement.

5.7 (b). We suggest a clause is added…..send to Cafcass the documents at (i) and (ii) above, preferably electronically.

6.3 The consistency of gatekeeping is important to develop through training and learning from best practice. This is one of the key elements of corporate memory from implementation of the 2010 Private Law Programme.

8.3 We think the reference to children's involvement should be stronger and to at least warrant a separate heading such as <u>The Voice of the Child</u>, as happened in the covering report to the President. We would be happy to carry out a short piece of work on this, together with the Family Justice Young Peoples Board.

8.4 We suggest a new last sentence……to repeat a particular hearing, and to adjourn a case with a liberty to restore if the court wishes to leave its door open for a specific reason (without this becoming a review hearing by default).

10.7 Local Authority performance on returning safeguarding checks to Cafcass and Cafcass Cymru is central to the delivery of the CAP within the timescale envisaged, so local authorities need to be included in the small number of annexed protocols we think will support the delivery of the CAP in all areas, not just some.

11.1 To achieve the proposed FHDRA timescale, now that the norm is to be unrepresented, parallel lists will offer potential economies of scale, resources permitting. Many areas will neither have the case demand nor the necessary resources to make parallel lists viable.

11.12.6We think the new Cafcass case analysis template being piloted in the South West should be included in the Child Arrangements Programme as an annex document.

11.12.8(and the linked question 'should there be a timeframe for concluding private law cases? If so what should it be – 20 weeks?). We think it would be positive to include a notional standard track' of 20 weeks, which would allow for the FHDRA and a 3 month period after that for a s7 report or DR intervention/s. Whilst this would be a useful expectation, and would promote a greater culture of urgency in private law cases, it is important to recognise the lack of pre-proceedings input to families in private law case, unlike in most public law cases, so there are likely to be more cases which go beyond 20 weeks for good reason. For example, some DVPP programmes will often take the case beyond 20 weeks. We think this issue is best addressed by setting a firm evidence-based date for a final hearing at the FHDRA or at the DRA if issues cannot be timetabled before then.

We think a 20 week standard track expectation will help to reduce the current wide variation in performance between local areas, as it has done under the revised PLO. For example, the South West circuit currently completes cases (measured from issue to closure in Cafcass) in an average of 16 weeks, whilst London takes 24 weeks on average (reduced from 31 weeks in April 2013). The performance management framework developed by the National Family Justice Board for public law cases could in our view be equally well applied from April 2014 onwards to private law cases.

Another major factor leading to extended duration of cases is the %age of cases resulting in at least 1 s7 report. The average national percentage (measured at the point of closure within Cafcass at the end of November 2013) is 38%, with the North West achieving 19% and London 35%. This is another crucial area for stronger system-wide performance management.

We think the expectation of 20 weeks should be made clear on the application form (C100) and in all subsequent documentation, to reinforce the expectation.

12. Our guidance to Family Court Advisers is to consider the link between capacity to participate in proceedings and capacity to understand the needs of 'your child'. We would wish to assist the court up the limits of our professional knowledge about capacity, in order to assist judicial case management. In our experience, a lack of capacity in private law cases that end up in court is often situational – situational incapacity through rage, usually with the other party, which prevents participating constructively in discussions about the future of a child. Capacity also has links with diversity, if the understanding of proceedings is limited by language or by cultural beliefs – this is as much a problem for the court as the litigant. In our view, comprehensive guidance about capacity issues in private law cases should accompany the Child Arrangements Programme, along with learning and development materials for staff across the family justice sector.

14.3 We think that cases where ‘stepped phasing-in of child’s arrangements’ are being considered, should be subject to a protocol setting out clear criteria, similar to the protocol on Rule 16.4 appointments. We think such a protocol would help to ensure the right cases are subject to Section 11H CA 1989 Orders.

14.4 We think the protocol recommended in 14.3 could also be extended to cases where a court has ‘active involvement and monitoring’ in mind. 15.1, 15.2 and 15.3 are in our view the right framework.

17. We think PD12J does need to be revised, as the practice direction is not widely followed, and the landscape for fact finding has shifted with the increase in litigants without lawyers and the lack of legal aid funding for testing paternity and substance misuse. We think this is a crucial task either for the PLWG or for another task group, to inform the Rules Committee.

18. We agree it is important to emphasise the importance of dispute resolution in enforcement cases, where courts have made limited use of unpaid work or imprisonment for the most intractable cases. Recent research by Liz Trinder supports the use of effective judicial case management and effective dispute resolution casework, even at the latest stage of unresolved cases.

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