



CHILDREN AND FAMILY COURT ADVISORY AND SUPPORT SERVICE

Paper for Board Meeting on 21 June 2013

RECENT CHANGES TO LEGAL AID ENTITLEMENT AND IMPACT ON CAFCCASS

KEY POINTS

- From 1st April 2013 the Legal Aid Agency reduced eligibility for legal aid in private law applications. As a result, the number of Litigants in Person (LiPs) has started to show increases, as was widely predicted.
- Indicative data from the National Business Centre and from our service in Greater Manchester was collected and collated in order to measure the impact of these changes. The findings are too uncertain at this stage to be extrapolated to indicate the potential impact of the LSC reforms for Cafcass nationally, but the Board is being given the early data on the impact, on scarce Cafcass professional time, of the changes
- This report assesses the initial impact of the reforms and identifies potential issues/risks for Cafcass. These are growing – 50% of local Cafcass service areas are reporting significant increases in LiPs and an extra workload as a direct result.
- A follow up study in the Autumn will be carried out, when sufficient data will be available on which to draw conclusions, including on the new underlining level of private law applications after the legal aid changes have been fully implemented.

1. AIM AND PURPOSE

- 1.1 To assess the initial impact of the April 2013 Legal Aid Agency (LAA) funding changes in private law applications and to identify potential issues/risks for Cafcass. The paper does not consider the issues/risks for the Family Justice System as a whole, as the data is too uncertain at this stage.

2. RECOMMENDATIONS/ACTION FOR THE BOARD

- 2.1 To note the report and to receive a further report at the Board meeting in December 2013 when the impact of the changes on the use of scarce Cafcass professional time can be fully assessed, in relation to planning for 2014-16.

3. BACKGROUND

Research evidence base on LiP

- 3.1 In February 2011, the Ministry of Justice, anticipating the planned LAA reforms, published a review of research into LiPs. LiPs are not a homogeneous grouping and the review was not specifically focussed on family law and, “should be treated as presenting evidence on the potential issues and impacts of LiP, rather than conclusive evidence of this”. Notwithstanding this caveat, the review identified the problems LiPs might reasonably be expected to face (understanding evidential requirements, identifying legally relevant facts, dealing with forms as well as the oral and procedural demands of the courtroom) and notes;

“Research with other court participants, such as court staff, the judiciary and other parties’ representatives, suggested they felt compensating for these difficulties created extra work and possibly ethical challenges”.

- 3.2 The review found mixed evidence on the impact of LiP on case duration, with case type and active LiP being the key influences on case duration. Some studies found that LiP in family cases were less likely to settle, increasing case duration. The weight of evidence (when all kinds of cases are considered) indicated that lack of representation negatively affected case outcomes. An Australian study showed that shared decision making on residence and contact was more likely when both parties were represented.

4. CONTRIBUTION OF THE REPORT/PROPOSAL TO DELIVERY OF THE 2013/15 CAF/CASS STRATEGIC PLAN

- 4.1 This report contributes to the first aim of the strategic plan, “We will work collaboratively within the Family Justice System to influence reform...”

5. KEY STRATEGIC ISSUES FOR THE BOARD TO CONSIDER

- 5.1 Potential issues/risks were identified by Cafcass prior to the implementation of the specific April 2013 reforms which reduced legal aid eligibility for many parents in private law applications:

- A likely spike in applications as applicants and respondents sought to secure legal aid before the the eligibility criteria changed. This was expected to lead to workload pressures in the system as the applications moved through the process (this has been borne out statistically in the last few months)
- An increased rate of queries because LiP are unfamiliar with the way the system operates and this causes concern and, for some applicants and respondents, distress
- Longer case duration, as above; and longer hearings in court
- Increased rates of Section 7 reports and multiple Section 7 reports, to assure judges that the welfare of the child is not being compromised
- Increased rates of Rule 16.4 appointments (where the court makes the child party to the proceedings and represented by a guardian and a solicitor), as above

5.2 Applications

There is compelling evidence of a surge in applications prior to the date of reform implementation. The final quarter of 12/13 and the first month of 13/14, saw record numbers of applications, an average 30% increase. This surge is expected to tail off by the end of the first quarter of 13/14 but, at the time of writing, this is speculative as Cafcass has received a record number of private law applications both in April 2013 (27% up on May 2012) and May 2013.(28% up on May 2013)

Prior to the reforms, LiP consistently featured in 20% of private law cases. In April, LiP featured in 26% of cases. This percentage is expected to increase as many of the April applications had already been granted legal aid.

5.3 Query Rate

During April 2013, Cafcass Greater Manchester (A3) and the national Cafcass Call Centre systematically gathered data, using an agreed recording schedule, to establish the impact of LiP in the first stages of contact with Cafcass

The NBC found a 19% longer call duration for LiP (as opposed to non-LiP), with LiPs representing 12% of all calls in the period. The overwhelming majority of the calls to NBC, 92%, are recorded as 'General enquiries relating to cases', with only 8% relating to work that started after the introduction of the reforms. It would be reasonable to expect that as the balance of LiP/non-LiP work changes; the percentage of LiP calls will increase. It is not possible at this point to estimate with any degree of accuracy where this percentage might be expected to settle

NBC analysed data on complaints and found that 42% of complainants are LiP, which is a significant over-representation. They found that the three areas with the highest rate of LiP (A11, A14 and A15), also recorded the highest rate of complaints.

A3 data recorded 27 hours responding to LiP queries in the first calendar month measured (April 2013). This would equate to 450 hours per month nationally, or 3 fte Family Court Advisors (FCA). The A3 data showed clusters of query response times; 25% took 15 minutes, 20% took 30 minutes and 18% 60 minutes; most were dealt with in 20 minutes or less. The average length of time was 36 minutes. Unsurprisingly, query response times lengthened as the case moved through the proceedings, so Business Support and Early Intervention Team practitioners spent on average 8-10 minutes and case-holding practitioners (after the first hearing) averaged 41 minutes. Data was not gathered on non-LiP queries so reliable comparisons are not possible.

5.4 Case Duration, Section 7 Ordering and Rule 16.4 appointments

Practice wisdom has identified these areas as the areas of highest potential risk, because of the resource implications. In all three spheres, performance has been improving. Case duration was 29 weeks in 10/11 and 11/12; 26 weeks in 12/13 and 23 weeks in April 13. In 10/11, Courts ordered at least one Section 7 report in 33% of cases (10% multiple). In 11/12, this increased to 36% (14% multiple). In 12/13, this was reduced to 32% (12% multiple) and in April the rate was 26% (10% multiple). 11/12 saw a 21% increase in the rate of 16.4 appointments. The increase coincided with a change in Family Procedure Rules which allowed magistrates to make 16.4 appointments. 12/13 saw a 6% reduction, this lower rate is evident in April 13.

All three areas, Case duration, Section 7 and 16.4 appointments, have been subject to assertive policy and practice intervention by Cafcass to ensure diminished resources are targeted effectively. These interventions have been successful to date but the LiP impact cannot be measured at this stage

Given the average duration of private law cases, a study in October 2013 will yield more reliable data, which can be used to predict service demand/pressure and resource implications beyond this date.

5.5 As part of the Cafcass study, senior leaders in Cafcass were invited to feedback on their initial experience of LiP. Their responses reinforce the messages in the research literature review in relation to the difficulties the LiPs encounter with the system and the impact on Cafcass staff, both in regard to extra work and the associated ethical challenges. At the time of writing this report, the mid-June feedback from local Cafcass service areas highlighted the following trends and points:

- An increased number of court dates (extra first hearings) and the extra time FCAs are having to spend at court. Hearings with LiPs are also tending to take longer. We have concerns this will lead to an increased number of reports asked for, especially as we cannot attend all the extra hearings being convened in some areas.
- A significant increase in phone calls for advice about the court and legal process. In one area, a litigant in person rang 8 times in one day.
- Senior leaders are putting in place strategies designed to minimise the risks arising from LiP; for example encouraging judges to invite LiPs to come into court first so that the issues are explained and narrowed down in a joint exercise with our practitioners. Another immediate change made is to make it clear in the Welcome Packs we send out to service users that we cannot give legal advice, but can signpost applicants and respondents to advice agencies. Another reactive change is that we will train our call centre staff to filter some calls better rather than to automatically put them through to local offices.

Nationally a number of schemes are being put in place to ameliorate the risks arising from the reforms, including information packs and a helpline. As an example, Mrs Justice Parker issued a one page checklist, to draw judges' attention to the potential LiP issues that judges may need to address. It is too early to assess the impact of these initiatives, however this work will feed into the larger work programme on longer-term resource planning, which is a key strategic issue for the Board.

6. BENEFITS FOR CHILDREN

6.1 The legal aid reforms present a risk and an opportunity for children. If the reforms achieve the intended outcome of better supporting parents to reach timely agreements about their children, a huge benefit will accrue. However the reforms also present risks to children's welfare. Cafcass, taking steps to understand and quantify the risks so that they can be redressed, is clearly in the interests of children.

7. FINANCIAL ANALYSIS

7.1 The financial implications should be considered in the report to the December 2013 Board. At this stage there is insufficient evidence to support accurate resource forecasting.

8. RISK ANALYSIS

8.1 The strategic issues section is a risk analysis however additional risks are emerging, as the report highlights.

- 8.2 Cafcass practitioners are reporting the challenges that confront them in working with increasing numbers of LiPs. Without representation, the vulnerability and anxiety of LiPs, is being heightened, and is being manifested in hostile/aggressive, or passive/aggressive, or depressed/withdrawn behaviours at our practitioners. The Health and Safety and Learning and Development issues arising from this pattern will need to be assessed and addressed.

9. DIVERSITY ANALYSIS

- 9.1 The MoJ research review showed that LiP tended to be poorer and less well educated than non-LiP. People who are not literate and/or have English as a second language are likely to need additional support as LiP, if they are to receive an equitable service.
- 9.2 The Ministry of Justice is consulting on further changes to legal aid eligibility; restricting access for those without a 'strong connection' to the UK (based on residence qualification - over 12 months). Cafcass is formally submitting a response to the consultation.

Name Jo Olsson

Date 7 June 2013