



## CHILDREN AND FAMILY COURT ADVISORY AND SUPPORT SERVICE

### Paper for the Board Meeting on 22 March 2013

#### UPDATE ON THE FAMILY JUSTICE REFORM PROCESS

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##### AIM AND PURPOSE

- 1.1 To summarise developments in the family justice reform programme since the last Board update, in December 2012.

##### 2. RECOMMENDATIONS/ACTION FOR THE BOARD

- 2.1 For the Board to note and comment

##### 3. SHORT SUMMARY

- 3.1 The paper sets out: the ways in which the Family Justice Board and the Judicial Family Modernisation Programme are 'driving' family justice reform, in line with Ministerial expectations; key examples of how Cafcass contributes to both; external (legislative) developments; and other developments instigated by Cafcass, whether relating to Cafcass alone or in partnership with others.

##### 4. BACKGROUND

- 4.1 The Family Justice Board (FJB)

The FJB, chaired by David Norgrove, has published an *Action Plan to Improve the Performance of the Family Justice System* (January 2013). In delivering against its aim to drive improvements in the performance of the family justice system, the FJB has a particular focus on the following:

- a) Reducing delay in public law cases and making progress towards the proposed 26 week limit for care cases;
- b) Resolving private law cases out of court where appropriate;
- c) Building greater cross-agency coherence; and
- d) Tackling variations in local performance.

Cafcass contributes to the work of the FJB through a number of mechanisms including:

- Membership of the full Board (Anthony Douglas) and Performance Improvement Sub-Group (Bruce Clark; this role to be taken on by Christine Banim from May 2013).
- Active involvement on a daily basis with civil servants and partner agencies on various aspects of the reform programme, including our potential transfer to the MOJ which at the moment is subject to due diligence testing. An expectation of transfer by April 2014 is made explicit in our remit letter for 2013/14 from our Secretary of State.
- Steering and supporting the development of the Cafcass Young People's Board into the wider Family Justice Young People's Board.
- Provision of the Chair role in ten Local Family Justice Boards (LFJBs) and sponsorship of five LFJBs (out of 46 Boards in total).
- Provision of summaries of Cafcass research in the Family Justice Research Bulletin (set out in 4.4 below).

Cafcass has an important contribution to make to the successful implementation of the FJB action plan by, for instance:

- Ensuring the timely appointment of guardians, and the provision of high quality and timely analytical reports (action 4).
- Improving the quality and consistency of management information and research (action 10).

The FJB Key Performance Measures (KPMs) have been amended for 2013/14. The 'old' KPMs 2) and 3) relating to case durations in s31 cases have been merged into one measure (KPM 2 below) and a new measure has been created (the 'new' KPM3 below) relating to adjournments in s31 cases. The FJB KPMs are on the agenda of the Performance Committee Meeting of 25 March 2013. The KPMs for 2013/14 are as follows:

- KPM-1) Average duration of section 31 care or supervision cases.
- KPM-2) Timeliness of progression of section 31 care or supervision cases comprising:
- a) Proportion of new section 31 care or supervision cases on the 'standard' track that are completed within 26 weeks; and
  - b) Proportion of new section 31 care or supervision cases on the 'exceptional' track that are completed within the timetable for the child as set by the judge.
- KPM-3) Proportion of all listed hearings in new section 31 care or supervision cases that need to be adjourned as a result of deficiencies in the quality of the following key system inputs:
- a) evidence in the form of court social work analysis and advice provided by Children's Guardians;
  - b) provision of staffed court room and effective listing arrangements;
  - c) timely public funding decisions; and
  - d) evidence from social workers submitted both with the application for an order (including social work assessments and the care plan) and subsequently.
- KPM-4) Timeliness of progression of section 8 cases in court, comprising:

- a) Proportion of section 8 cases where the FHDRA or urgent first hearing takes place within six weeks; and
- b) Average time from application to first full order for section 8 cases.

KPM-5) Take-up and initial effectiveness of publicly-funded family mediation comprising:

- a) Number of couples attending a MIAM where one or both parties are publicly-funded; and
- b) Number of publicly-funded family mediations reaching full agreement on the issues in dispute.

#### 4.2 The Judicial Family Modernisation Programme

Mr Justice Ryder continues to work as Head of Judicial Family Modernisation Programme until April 2013, working closely with the President of the Family Division, Sir James Munby. Cafcass attends the President's Improvement Board, as an observer.

A Family Court Guide is in preparation. This includes Expectations Documents produced by agencies involved in family justice (Cafcass, local authorities, HMCTS, Legal Aid Agency). The Expectations Documents submitted by Cafcass set out key elements of good practice in respect of key stages in public and private law proceedings. The documents are unlikely to be made public until the review of the Public Law Outline (PLO) is complete, either in the summer or the autumn of 2013. The revised PLO is likely to make considerable professional demands of Cafcass and local authorities, so detailed preparation for the shift in case management being signalled is vital. Cafcass will be required to produce clear advice to courts on case management according to the timetable for the child, by a slightly later first hearing. This is a welcome reform, despite it being professionally challenging.

#### 4.3 Other Developments – External

The *Legal Aid, Sentencing and Punishment of Offenders Act 2012* will come into force on 1<sup>st</sup> April 2013. Its effect will be to remove from the scope of legal aid private law cases, other than those involving domestic violence or child abuse. In respect of domestic violence one of the following qualifying criteria has to be met: ongoing criminal proceedings; being subject to a MARAC (Multi Agency Risk Assessment Conference) plan; a finding of fact. In respect of child abuse one of the following criteria has to be met: ongoing criminal proceedings; a child protection plan; a finding of fact.

Practice Directions 25A to 25E relating to the use of experts in family proceedings came into force on 31<sup>st</sup> January 2013. Their principal effect is to restrict expert evidence to that which, in the opinion of the court, is *necessary* to assist the court to resolve the proceedings (rather than, as previously set out, *reasonably required*). We are assessing the degree to which our professional time is being diverted onto requests for legal advice (which we turn down) or requests for help in navigating the court system (which we try to help litigants in person with, within reason). A pilot project is being established in Manchester to measure this, and we will share the results with Government. The Legal Services Commission (the Legal Aid Agency from 1 April) is working with MOJ officials to consider whether certain expert evidence such as hair strand evidence (to detect drug and alcohol misuse) and paternity testing, can continue to be paid for, given the importance of the issues to fact finding in fiercely contested cases.

The Children and Families Bill is currently before Parliament. The key proposed changes are:

- Creating a time limit of six months by which 'standard' care cases must be completed
- The setting out, within judicial case management, of a longer timescale (to a maximum of 8 weeks) for cases a judge deems will take longer. Focussing the court on those issues which are essential to deciding whether to make a care order
- Allowing the judge to set the length and renewal requirements of interim orders for a period which he or she considers appropriate, up to the expected time limit
- Requiring courts to have regard to the impact of delay on the child when commissioning expert evidence, and whether the court can obtain information from parties already involved
- Making parental attendance at a Mediation Information and Assessment Meeting a statutory prerequisite to starting court proceedings

#### 4.4 Other Developments – Cafcass/Joint

Research: the safeguarding and policy teams are leading on two public law research projects, assisted by June Thoburn (Advisor to the Board) and Cafcass staff. It is anticipated that final versions of both reports will be available by early April 2013, and that both will be of interest to the family justice network as well as Cafcass staff. The projects are:

- *The instruction of expert witnesses within care proceedings*: to establish the extent of the use of expert witnesses within s31 care applications: how many; which discipline; when; proposed by whom. It is essentially a quantitative study, based on an online survey of the children's guardians that participated in the *Three weeks in November* research (Cafcass care application study, 2012).
- *The Necessary Work of the Children's Guardian*: to establish the nature and extent of work undertaken by children's guardians: what work did they undertake with children, parties and professionals, and when? Data was collected from 91 case files.

Cafcass/ADCS have launched their *Good Practice Guidance for Social Work in the Family Court*, setting out a framework of good practice for both local authority social workers and the children's guardian. This is being published alongside more detailed practice guidance and revised Cafcass/ADCS protocols.

The Young People's Board has produced an action plan to assist it to meet its aim of supporting and challenging the FJB, and helping it to be more child-centred.

Assistant Directors and Heads of Service are, between January and March 2013, presenting at eight seminars organised by Research in Practice (RIP) about the future of the family justice system.

#### 4.5 Looking ahead

The key future date is April 2014, at which point it is anticipated that legislation in the Children and Families Bill will come into force, and the Single Family Court will be implemented. At, or shortly after, this point data will be available for all FJB KPMs (currently there is no baseline data in respect of KPM 2 and KPM 3) facilitating a more robust analysis of system performance. Between now and then the reform work will continue in line with the work-streams described above e.g, a revised Public Law Outline by September at the latest, made operational by Rule changes authorised by the President and the Lord Chancellor. An important interim development, as this will inform

the revision of the Family Procedures Rules/ Practice direction) is the proposed piloting of amendments to the Public Law Outline, due to start around July 2013 and to conclude around March 2014.

## **5. KEY STRATEGIC ISSUES FOR THE BOARD TO CONSIDER**

5.1 As set out in the previous summary paper, the Board is asked to consider whether the appropriate balance has been established between our delivering 'in the here and now' against our statutory duties and functions, and our making of a positive contribution to the future of the family justice system and Cafcass services. These are issues for discussion, rather than decision, as support for reform is a strong requirement of us set out in our remit letter both for 2012/13 and for 2013/14 by our Secretary of State. In particular, the Secretary of State gives us 3 priorities:

- Contributing to reducing delay in care cases
- Helping the swift resolution of private law cases
- Working with other members of the Family Justice Board to lead reform across the system.

## **6. BENEFITS FOR CHILDREN**

6.1 The reform agenda, and Cafcass' contribution to it, is designed to produce more timely and effective decision-making in family proceedings and thus to produce better outcomes for children.

## **7. FINANCIAL ANALYSIS**

7.1 All reform-related expenditure can be contained within existing revenue budgets.

## **8. RISK ANALYSIS**

8.1 No risks are apparent, other than the demands on Cafcass' time. The benefits of fully participating in the reform agenda are justifying the time invested in this activity. There are other risks associated with the relatively rapid implementation of reform, such as the likely rise in litigants in person following changes to legal aid entitlement from April 2013. The impact on use of Cafcass professional time of this change is being measured, both internally through our Manchester service, and by researchers in 5 court areas in Ministry of Justice funded research led by Liz Trinder from the University of Exeter.

## **9. DIVERSITY ANALYSIS**

9.1 There are no evident diversity impacts.

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**Date**            **14 March 2013**