

CAFCASS

CODE OF CONDUCT

FOR BOARD MEMBERS

September 2011

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CAFCASS CODE OF CONDUCT FOR BOARD MEMBERS

1. INTRODUCTION

- 1.1 As public office-holders, Board members' behaviour and actions must be governed by the principles set out in this Code of Conduct. It is Board members' responsibility to ensure that they are familiar with, and comply with, all the relevant provisions of the Code.
- 1.2 In addition to the principles set out in this Code of Conduct, Board members must comply with the provisions relating to Board members contained in the Cafcass Framework Document drawn up by the Secretary of State.

2. KEY PRINCIPLES OF PUBLIC LIFE

- 2.1 The key principles upon which this Code of Conduct is based are the Seven Principle of Public Life.¹ These are:

Selflessness

Board members should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends.

Integrity

Board members should not place themselves under any financial or other obligation to outside individuals or organisations that might, or might be perceived to, influence them in the performance of your official duties.

Objectivity

In carrying out public business, including awarding contracts and recommending individuals for rewards and benefits, Board members should make choices on merit.

Accountability

Board members are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate for their office.

Openness

Board members should be as open as possible about the decisions and actions that they take. Board members should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

¹ *Standards in Public Life: First Report of the Committee on Standards in Public Life*. Volume 1: Report. CM 2850-I.

Board members have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Board members should promote and support these principles by leadership and example.

- 2.2 These principles should inform Board members' actions and decisions as Board members.

3. GENERAL CONDUCT

Use of Public Funds

- 3.1 Board members have a duty to ensure the safeguarding of public funds² and the proper custody of assets which have been publicly funded.
- 3.2 Board members must carry out their fiduciary obligations responsibly – that is, take appropriate measures to ensure that Cafcass uses resources efficiently, economically and effectively, avoiding waste and extravagance. It will always be an improper use of public funds for public bodies to employ consultants or other companies to lobby Parliament, Government or political parties.

Allowances

- 3.3 Board members must comply with the rules set by Cafcass regarding remuneration, allowances and expenses. It is Board members' responsibility to ensure compliance with all relevant HM Revenue and Customs' requirements concerning payments, including expenses.

Gifts and Hospitality

- 3.4 Board members must not accept any gifts or hospitality which might, or might reasonably appear to, compromise their personal judgement or integrity or place them under an improper obligation.
- 3.5 Board members must never canvass or seek gifts or hospitality.
- 3.6 Board members must comply with the rules set by Cafcass on the acceptance of gifts and hospitality. They should inform the Chief Executive of any offer of gifts or hospitality and ensure that, where a gift or hospitality is accepted, this is recorded in a public register in line with the rules set by Cafcass.
- 3.7 Board members are responsible for their decisions on the acceptance of gifts or hospitality and for ensuring that any gifts or hospitality accepted can stand up to public scrutiny and do not bring Cafcass into disrepute.

² This should be taken to include all forms of receipts from fees, charges and other sources.

Use of Official Resources

- 3.8 Board members must not misuse official resources³ for personal gain or for political purposes. Use of such resources must be in line with Cafcass' rules on their usage.

Use of Official Information

- 3.9 Board members must not misuse information gained in the course of your public service for personal gain or for political purpose.⁴
- 3.10 Board members must not disclose any information which is confidential in nature or which is provided in confidence without authority. This duty continues to apply after Board members have left the board.

Political Activity⁵

- 3.11 In Board members' public role, they should be, and be seen to be, politically impartial. They should not occupy a paid party political post or hold a particularly sensitive or high-profile role in a political party. Board members should abstain from all controversial political activity and comply with Cabinet Office rules on attendance at Party Conferences⁶.
- 3.12 On matters directly related to the work of Cafcass, Board members should not make political statements or engage in any other political activity.
- 3.13 In Board members' official capacity, they should be even-handed in all dealings with political parties.
- 3.14 Subject to the above, Board members may engage in political activity but should, at all times, remain conscious of their responsibilities as a Board member and exercise proper discretion. They should inform the Chair and/or the parent Department before undertaking any significant political activity.

Employment and Appointments

- 3.15 If Board members wish to take up new employment or appointments during their term of office, they must inform the Chair and/or the sponsor Department.
- 3.16 On leaving office, Board members must comply with Cafcass rules on the acceptance of future employment or appointments.

4. BOARD MEMBERS' INTERESTS

- 4.1 Board members must ensure that no conflict arises, or could reasonably be perceived to arise, between their public duties and your private interests – financial or otherwise.

³ This includes facilities, equipment, stationery, telephony and other services.

⁴ Board members who misuse information gained by virtue of their position may be liable for breach of confidence under common law or may commit a criminal offence under insider dealing legislation

⁵ If you are an MP, Board member of the House of Lords, Board member of a Devolved Administration or Local Councillor, you are exempt from these requirements - although you should still exercise proper discretion on matters directly related to the work of Cafcass and recognise that certain political activities may be incompatible with your role as a Board member.

⁶ www.cabinetoffice.gov.uk/content/public-bodies-and-appointments

- 4.2 Board members must comply with the rules below on handling conflicts of interests. As a minimum, these require Board members to declare publicly any private interests which may, or may be perceived to, conflict with their public duties⁷. The rules also require Board members to remove themselves from the discussion or determination of matters in which they have a financial interest. In matters in which Board members have a non-financial interest, they should not participate in the discussion or determination of a matter where the interest might suggest a danger of bias.⁸
- 4.3 It is Board members' responsibility to ensure that they are familiar with Cafcass' rules on handling conflicts of interests, that they comply with these rules and that their entry in Cafcass' register of Board members' interests is accurate and up-to-date.
- 4.4 The Chair and other Board members should declare any "relevant and material" personal or business interests which may conflict with their responsibilities as Board members. Such conflicts should be identified at any early stage so that appropriate action can be taken to resolve them.
- 4.5 Interests that should be regarded as "relevant and material" are:
- Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies)
 - Ownership or part ownership of private companies, businesses or consultancies likely or possibly seeking to do business with Cafcass or its sponsor Department
 - Majority or controlling share holdings in organisations likely or possibly seeking to do business with Cafcass or its sponsor Department
 - A position of authority in a charity or voluntary organisation involving children and families
 - Any connection with a voluntary or other organisation that may contract with Cafcass
 - Any professional interests in other public bodies with a link to Cafcass' business
- 4.6 If Board members have any doubt about the relevance of an interest, this should be discussed with the Chair and/or Chief Executive.
- 4.7 A register of interests appropriate to Cafcass' activities will be kept and will, as a minimum, list direct or indirect pecuniary interests⁹ that Board members might reasonably think could influence a Board member's judgment. Board members are

⁷ In general, all financial interests should be declared. When considering what non-financial interests should be declared, you should ask yourself whether a Board member of the public, acting reasonably, would consider that the interest in question might influence your words, actions or decisions.

⁸ These are common law provisions.

⁹ Indirect pecuniary interests arise from connections with bodies that have a direct pecuniary interest or from being a business partner of, or being employed by, a person with such an interest. Non – pecuniary interests include those arising from Board membership of clubs and / or other organisations. Close family Board members include personal partners, parents, children (adult and minor), brothers, sisters and the personal partners of any of these.)

also strongly encouraged to register non-pecuniary interests that relate closely to Cafcass activities, and interests of close family members and persons living in the same household as the Board member. Board members are responsible for ensuring that these details are updated as their circumstances change by notifying the Governance team, in writing within 28 days of any such change, of the nature of the change of interest.

- 4.8 The Register of Interests will be reviewed annually to ensure it is up to date and will be open to public inspection upon request and information about access will be included in the Cafcass annual report and on the Cafcass website.
- 4.9 Board members' directorships of companies likely or possibly seeking to do business with Cafcass or its sponsor department should be published in the Cafcass Annual Report. The information should be kept up to date for inclusion in succeeding annual reports.
- 4.10 In the absence of specific statutory provisions, the common law requires:
- that Board members should not participate in the discussion or determination of matters in which they have a direct pecuniary interest
 - that when an interest is not of a direct pecuniary kind, Board members should consider whether participation in the discussion or determination of a matter would suggest a real danger of bias. This should be interpreted in the sense that Board members might either unwittingly or otherwise unfairly regard with favour or disfavour, the case of a party to the matter under consideration. In considering whether a real danger of bias exists in relation to a particular decision, Board members should assess whether they, a close family member, a person living in the same household as the Board member, or a firm, business or organisation with which the Board member is connected are likely to be affected more than the generality of those affected by the decision in question.

For the avoidance of doubt, this paragraph does necessitate any remuneration, compensation or allowances payable to the Chair or Board members by virtue of paragraph 3 of Schedule 2 to the Criminal Justice and Court Services Act 2000 being treated as a pecuniary interest for the purpose of this Code.

- 4.11 Whether or not Board members are able in the light of the considerations above to participate in the discussion or determination of a matter, they should declare as soon as practicable after a meeting begins if they have an interest, pecuniary or other, in a matter being considered. They should also disclose any interests in it of which they are aware on the part of close family members and persons living in the same households as them. In addition Board members should consider whether they need to disclose relevant interests of other persons or organisations, which Board members of the public might reasonably think, could influence the Board member's judgment.
- 4.12 During the course of a Board meeting, if a conflict of interest is established, the Chair or the Board member concerned shall declare his/her interest; and where in accordance with the above Board members do not participate in the discussion or determination of a matter, they should normally withdraw from the meeting even if it is held in public. This is because the continued presence of someone who has declared

an interest might be thought likely to influence the judgment of the other Board members present. The declaration of interest shall be recorded in the Minutes of the meeting.

- 4.13 In the case of married persons or persons living together as partners, the interest of a Board member's spouse shall, if known, be deemed to be the interest of the Board member and should be declared.
- 4.14 The Board should obtain legal advice on the effect of any specific statutory provisions applying to Cafcass. In cases where Board members are authorised by law to represent a group likely to be affected by Cafcass' decisions, the relevant statutory framework may permit Board members to be involved, notwithstanding any direct pecuniary interest that they may have in the decision. However specific statutory provisions may also impose stricter restrictions in respect of non-pecuniary interests than those set out at paragraph 16 above.
- 4.15 Board members must facilitate compliance with generally accepted accounting practice and specifically Financial Reporting Standard 8 (FRS8) on "Related Party Relationships and Transactions" for material transactions with related parties to be disclosed in financial statements. "Related Parties" in FRS8 include (in addition to business contacts) close members of the family of an individual, who are defined for the purposes of the standard as those family members, or Board members of the same household, who may be expected to influence, or be influenced by, that person in their dealings with Cafcass.

5. RESPONSIBILITIES AS A BOARD MEMBER

- 5.1 Board members should play a full and active role in the work of Cafcass. They should fulfil their duties and responsibilities responsibly and, at all times, act in good faith and in the best interests of Cafcass.
- 5.2 Board members should deal with the public and their affairs fairly, efficiently, promptly, effectively and sensitively, to the best of their ability. They must not act in a way that unjustifiably favours or discriminates against particular individuals or interests.
- 5.3 Board members must comply with any statutory or administrative requirements relating to their post.
- 5.4 Board members should respect the principle of collective decision-making and corporate responsibility. This means that, once the board has made a decision, members should support that decision.
- 5.5 Board members must not use, or attempt to use, the opportunity of public service to promote their personal interests or those of any connected person, firm, business or other organisation.

6. RESPONSIBILITIES TOWARDS EMPLOYEES

- 6.1 Board members will treat any staff employed by Cafcass with courtesy and respect. It is expected that employees will show members the same consideration in return.
- 6.2 Board members will not ask or encourage employees to act in any way which would conflict with their own duties to Cafcass.

7. PERSONAL LIABILITY OF BOARD MEMBERS

- 7.1 Although any legal proceedings initiated by a third party are likely to be brought against the Board, in exceptional cases proceedings (civil, or in certain cases, criminal) may be brought against the Chair or other individual Board members. For example, a Board member may be personally liable if he or she makes a fraudulent or negligent statement which results in a loss to a third party. Board members who misuse information gained by virtue of their position may be liable for breach of confidence under common law or may commit a criminal offence under insider dealing legislation.
- 7.2 However, the Government has indicated that individual Board members who have acted honestly, reasonably, in good faith and without negligence will not have to meet out of their own personal resources any personal civil liability which is incurred in execution or purported execution of their board functions save where that individual has acted recklessly.
- 7.3 Subject to its specific statutory powers, Cafcass will honour the provisions of paragraph 28 above. Board members who need further advice should seek legal advice through the Chair and / or Chief Executive.

8. DUTY TO ENSURE THAT CAFCASS DOES NOT ACT IN EXCESS

- 8.1 Board members of the Board are responsible for ensuring that Cafcass does not exceed its powers or functions, whether defined in statute or otherwise, or through any limitations on its authority to incur expenditure. They will normally be advised on these matters by the Chief Executive who will take legal advice where necessary.

9. THE BOARD AS AN EMPLOYER

- 9.1 The Board should ensure:
 - that it complies with all relevant legislation and that it employs suitably qualified staff who will discharge their responsibilities in accordance with the high standards expected of staff employed by such bodies. All staff should be familiar with Cafcass' main aims and objectives;
 - that Cafcass adopts management practices which use resources in the most economical, efficient and effective manner;
 - that Cafcass' rules for the recruitment and management of staff provide for appointment and advancement on merit on the basis of equal opportunity for all applicants and staff;

- that its staff and the Board's own Board members have appropriate access to expert advice and training opportunities in order to enable them to exercise their responsibilities effectively.

9.2 The Board has a responsibility to monitor the performance of the Chief Executive and other senior staff. Where the terms and conditions of employment of the Chief Executive and other senior staff include an entitlement to be considered for performance-related pay, and where Board members assess such payments, the Board should ensure that they have access to the information and advice required to make the necessary judgments.

10. CANVASSING

10.1 Canvassing of the Chair and Board members of the Board or Board members of any committee/subcommittee of the Board, directly or indirectly, for any appointment in Cafcass, will disqualify the candidate for such appointment. The contents of this paragraph of this Code will be included in application forms or otherwise brought to the attention of candidates.

10.2 The Chair or a Board member of the Board must not solicit for any person any appointment in Cafcass or recommend any person for such appointment. However, this paragraph of this Code will not preclude the Chair or a Board member from giving written testimonial of a candidate's ability, experience or character for submission to the Board or Executive.

10.3 Informal discussions outside appointment panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

10.4 Candidates for any staff appointment shall when making an application disclose in writing whether they are related to the Chair or any Board member or the holder of any office in Cafcass. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him/her liable to instant dismissal.

10.5 The Chair, Board members and every officer of Cafcass shall disclose to the Chief Executive any relationship with a candidate of whose candidature he or she is aware. It shall be the duty of the Chief Executive to report to the Chair any such disclosure made.

10.6 On appointment, the Chair and Board members should disclose to Cafcass whether they are related to any other Board member or holder of any office in Cafcass.

11. WORKING PRACTICE BETWEEN THE BOARD AND THE EXECUTIVE

11.1 Board members must comply with the working practice between the Board and the Executive set out in the Appendix to this Code.

APPENDIX

STATEMENT OF WORKING PRACTICE BETWEEN THE BOARD AND EXECUTIVE

OVERVIEW OF WORKING PRACTICE

The Board

- establishes the overall strategic direction of Cafcass within the policy and resources framework determined by the Secretary of State
- decides specific strategic policies
- monitors organisational performance to account for overall outcomes.

The Executive

- advises the Board on proposed strategic direction,
- decides operational strategies and policies to carry out the overall strategic direction set by the Board;
- devises and adopts procedures to carry out the functions of Cafcass
- **is responsible for reporting to the Board on performance and evaluation of outcomes.**

CORE PRINCIPLES OF WORKING PRACTICE

If the Board is to be involved it should be made clear that this is because the Board needs to be:

- **Accountable** and thus content that the work done in Cafcass' name by the Executive is acceptable
- **Responsible** and thus make the decision
- **Consulted** as the Board's input / views are required and valued in developing work
- **Informed** so that the Board has clear expectations of what is being done in Cafcass' name

THE BOARD RECOGNISES THAT

The executive team must have:

- a clear strategic direction
- freedom to manage operational matters within the overall governance framework
- Accounting Officer responsibility

THE EXECUTIVE RECOGNISES THAT

The Board will:

- be responsible / accountable for systems and their operation
- decide strategic plans and policies
- have a right of access to information

THE ROLE OF THE BOARD IS	THE ROLE OF THE EXECUTIVE IS
In relation to Cafcass planning systems:	
<ul style="list-style-type: none"> • To <u>approve / sign off</u> the following : <ul style="list-style-type: none"> ○ National Business Plans ○ National Key Performance Indicators ○ Annual budget ○ Annual Report and Accounts 	<ul style="list-style-type: none"> • To <u>develop and present</u> to the Board proposals for approval in relation to the national business plans, annual budget and annual report and accounts • To <u>manage</u> the operational systems and procedures • To <u>adopt and implement</u> plans, <u>monitor</u> performance and <u>be accountable</u> for outcomes • To <u>manage risks</u> • To <u>adopt and implement</u> performance management framework and targets • To <u>make decisions</u> on internal financial allocations.
In relation to Cafcass governance framework and systems:	
<p>To <u>approve</u> governance framework and systems including:</p> <ul style="list-style-type: none"> • Standing Orders • The Framework Document (subject to agreement with the Secretary of State) • Reservations and delegations • Audit requirements <p>To <u>comply</u> with the governance framework and procedures</p>	<p>To <u>propose</u> new systems and changes to existing governance framework systems and practice</p> <p>To <u>comply and report / account</u> for executive compliance with the governance framework and systems</p> <p>To <u>approve estates business cases</u> prior, where necessary under the Framework document, to their submission to the sponsor Department for authorisation</p>
In relation to Cafcass strategies and policies:	
<p>To <u>provide strategic direction</u></p> <p>To <u>adopt</u> strategic policies</p>	<p>To <u>carry out and manage the operations of Cafcass within the strategic direction provided by the Board</u></p> <p>To <u>adopt</u> operational policies</p> <p>To <u>present</u> proposals and recommendations for strategies to the Board</p> <p>To <u>implement, monitor, evaluate and account for performance</u> through evaluation reports</p>

THE ROLE OF THE BOARD IS	THE ROLE OF THE EXECUTIVE IS
In relation to executive actions:	
To <u>appoint</u> the Chief Executive and any other appointments specified in governance documents	Unless specified otherwise in the governance documents / legislation, operational actions will be the responsibility of the executive who will be <u>accountable</u> to the Board for the action taken / decision made. The executive will provide quarterly reports on service delivery performance; human resources; financial management, risks, and infrastructure.