



Private and Confidential

Sukhchandan Kaur
Acting Chair Nagalro

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Sent via email to: nagalro@nagalro.com

16 April 2018

Dear Sukhchandan,

Thank you for your letter received by email on 2nd February 2018, which provided your comments on our updated Operating Framework, which we published on 1 July 2017.

The Operating Framework has been in place for a number of years. We agree with you that it has an important role in setting out the context of Cafcass' work, not only to Family Court Advisers (FCAs) but to service users and others within the family justice system. The model of 'proportionate working' was a line of enquiry in the recent national Ofsted inspection and they found that the model has been "successfully implemented" with proportionate working being used "exceptionally well". A copy of the Ofsted report is attached for your reference.

It is also important to recognise that the Operating Framework is not the only reference point for Family Court Advisers (FCAs). All FCAs attend core training upon joining Cafcass – including a session on the legal framework - and have access to additional training modules, policies, guidance documents and other resources, as well as case-specific and group supervision.

We respond below to the individual points raised in your letter.

1. Every Family Court Adviser (FCA) attends core legal training and understands the legal framework, including the different statutory roles with different powers and duties.
2. The process for resolving any disagreement between guardians and managers is set out in our [Reporting to Court policy](#), as cited in Re K and Ors. The policy makes reference to this judgment.
3. We do not agree that the phrase 'independence is not an end in itself' displays a lack of understanding of the history of independent representation of children. We also do not agree that this phrase compromises the independence of the guardian, and in the same bullet point clarify that guardians should maintain "a respectful statutory distance" from others in the case.
4. We have a long history of jointly working with other agencies. We do not agree that doing so is evidence of collusion with another party to family proceedings. We do think it is important that we continue to work together with other stakeholders in the family justice system, to solve problems and to develop better services.

Baroness Tyler of Enfield Chair
Anthony Douglas CBE Chief Executive



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5. We have standalone guidance on appointing and working with the solicitor for the child, as well as a range of other legal resources which provide detailed information about the statutory framework. We have listened to your point about this and we will insert some additional text into the Operating Framework about the tandem model and working with the child's solicitor.
6. As in point 4 above, we do not agree that issuing joint guidance documents with ADCS suggests an inappropriate style and culture of working. There is no evidence that this compromises the independence of the guardian on an individual case.
7. We believe that all professionals and family members involved in care proceedings have a commitment to ensuring that the child's voice is heard. We will re-phrase the sentence with which you take issue.
8. We have sections in the Operating Framework on working with, and observing, children, but we will re-phrase the sentence to remove reference to "the bulk of our time" being spent with adults and professionals recognising that the amount of time spent with the child will depend on the needs of the case.
9. The child impact assessment is a welfare report, done under s7, and all FCAs are obliged to take the welfare checklist into account when drafting their reports. A child impact assessment looks at the impact on the child of the welfare issues. We do not accept that this is ultra vires.
10. It is a commonly held view within the family justice system that current trends in society may run ahead of legislation. We do not agree that this statement encourages FCAs to undervalue or underestimate the importance of the law relating to children, indeed the full sentence in the Operating Framework is "whilst we have to be aware of current trends in society, which may run ahead of legislation, we cannot depart from our remit in law".
11. We say in the Operating Framework that we employ a small number of newly qualified social workers. They join a three-year development pathway to gain the experience and expertise necessary to qualify for an FCA role. We do not expect students and NQSWs to act as guardians; in care cases NQSWs act in the capacity as observer only, with the agreement of all parties. We will add some text to the Operating Framework to clarify the role of students and NQSWs.
12. We feel we are clear about proportionate working. It has been in place for about 7 years. This concept does not affect the ability of the guardian to determine what is relevant to proceedings, with Ofsted finding that "practitioners see each child as required...and have appropriately moved away from being seen as the 'second social worker' in public law". As above, any conflict between the guardian and the manager is addressed in our Reporting to Court policy.

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13. We will add something to this section on observing the child with other significant adults.
14. We say in the Operating Framework that “the FCA should see the child alone on a sufficient number of occasions”. We expect children to be seen in care cases and after the first hearing in private law and, in the succeeding bullet point, state that if a child is not seen, the reason should be recorded on the case file.
15. We do not agree that this section on analytical writing undermines the value of chronology and the sentence referred to relates to report writing rather than to the importance of a chronology to the case.
16. As in point 12, the Operating Framework does not prevent guardians from making decisions in cases. It is not an “overarching management directive” and FCAs do not apply it in this way, with Ofsted finding that staff are well supported in “understanding the discrete and dedicated role that they undertake”. We do not agree that the reference to attending court to give or hear crucial evidence is a clear breach of the court rules. However, for clarification we will add that this is subject to the court’s direction.
17. These matters are covered elsewhere in our resources for staff and we do not agree that they need including in this section of the Operating Framework.
18. We will amend this to include a reference in this section to maintaining a watching brief.
19. This is a misinterpretation or misunderstanding. We do not say that all discharges are straightforward, but that there may be cases which are straightforward applications to discharge care orders and, where this is the case, the court may need less assistance.
20. This is a misinterpretation. We say that the care plan put forward by the local authority should be their preferred option after all realistic options have been considered. It may not be the guardians preferred care plan.
21. This is a misinterpretation or misunderstanding. We say in the paragraph above that guardians should focus on the contact framework – including the type and extent of contact – that will best support permanence, but that following the conclusion of the proceedings the local authority will need to make decisions based on the best interests of the child. As above the Operating Framework is not the only reference point for our FCAs.
22. The statutory powers and responsibilities of the guardian are set out in the Operating Framework and in other resources available to practitioners. Both local authority social workers and guardians have the procedural powers referred to and we are not saying that guardians provide “just” a second social work opinion; it is factually correct to say that they give a second social work opinion in care proceedings. The paragraph recognises that guardians need to determine level of input appropriate for each case.

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23. We do not agree that the Operating Framework undermines the independence of the guardian.
24. See point 6, above.
25. We will add some text to the Operating Framework regarding Human Rights Act cases and compensation claims but the detailed information is contained in separate guidance.
26. See point 9, above.
27. We appreciate the positive feedback on the child-centred approach in surrogacy cases.
28. These are broad competencies that we say would apply to FCAs “in the majority of situations”. As in point 5 above, we will add something to the Operating Framework about working with solicitors.
29. We will add something to the Operating Framework about Cafcass Associates.
30. FCAs have access to a range of internal and external training and resources, including eLearning and face-to-face sessions. Cafcass commissions external agencies to provide training where necessary and specific expertise is required.
31. Seen and Heard is available in the Cafcass library. We will add a point about our work with professional associations to the section currently regarding trade unions.

We will make the above changes shortly.

Yours sincerely,

Anthony Douglas CBE
Chief Executive

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