

## **Summary of results from online consultation with Cafcass practitioners on the impact of legal aid changes**

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*This paper summarises the views and experiences of 133 Cafcass practitioners who responded to our internal staff consultation exercise. Responses were used to inform confidential discussions with the Ministry of Justice, which is reviewing the impact of changes to legal aid made in 2013. The main points are summarised below, including some illustrative quotes from practitioners based on anonymised examples provided by a small number of practitioners who responded. The findings reflect the range of issues our practitioners have faced in response to legal aid reforms, but are not necessarily representative of the views of all practitioners or the impact on all cases.*

### **Impact on FCA workload**

Almost all FCAs who responded reported a higher workload due to increased numbers of litigants in person: compared to when both parties are represented, 90% find cases with *one* party unrepresented more demanding (of which 17% find it significantly more demanding); this rose to 95% when *both* parties are unrepresented (of which 71% find it significantly more demanding).

FCAs reported the impact of cases involving a litigant in person on their time and workload: litigants in person are more likely to call or email the FCA with questions and to seek reassurance; they need more help understanding the court process; reports and hearings can be more wide-ranging and lengthy; and FCAs may need to chase parties for information. Compared to cases where both parties are represented, FCAs report they spend more time with litigants in person: explaining the court process (97%); receiving calls and emails (96%); in court (95%); advising on narrowing issues (94%); providing emotional support (90%).

In cases with a litigant in person, 64% of responding FCAs say they are required to complete tasks outside of their remit. This includes being asked:

- By parties to provide procedural advice such as: what the court order means; what is expected of them; how to contact professionals; and how to write and file statements.
- By the court to: arrange expert reports or tests; share information between the parties or arrange indirect contact; make security arrangements such as separate waiting areas in court; assist parties to draft orders; attend hearings to help manage parties; and undertake mediation that does not fall under our dispute resolution remit.

*“The unrepresented father felt intimidated by mother’s barrister. He would not speak to the barrister without Cafcass or insisted on all discussion happening in court. This led to lengthy hearings.”*

### **Impact on children and families**

FCAs reported the impact of cases involving a litigant in person on:

- Delay and conflict in the case: proceedings are longer; hearings are more likely to be ineffective, with fewer consent orders and more contested hearings. In cases involving litigants in person, 96% report that the litigant often or always has difficulty narrowing issues and cross-examining the other party, 89% say cases often or always feature difficulty funding necessary experts or assessments, and 79% say hearings often or always last longer when a party is not represented.
- Outcomes: parties can ‘lose sight’ of the child; expert reports may not be funded affecting risk assessments; cross-examination is likely to be ineffective; parties may feel nobody is ‘on their side’ affecting how they interact; and parties may be disadvantaged if English is not their first language or they have other vulnerabilities.

The most commonly cited impact on the child was delay and uncertainty, negatively impacting their stability and wellbeing. Complex cases without funding for required expert assessments or effective fact finding hearings were also seen to disadvantage the child, as important evidence is missing. Conflict was reported to lead to a focus on adult issues rather than child needs which FCAs say legal advisors help avoid. 67% of FCAs feel having an unrepresented party dilutes the voice of the child as the court may be caught up in the parents' complaints and needs. The remaining 33% say FCAs ensure there is no impact on the child's voice.

*"Parents are increasingly coming to court with their own internet based research, losing sight of their children and focussing on the 'fight'. The adversarial nature of private law matters has increased... there is increased delay for children, and increased stress for parents."*

### **Domestic abuse**

Almost all FCAs reported that the evidence threshold to obtain legal aid in domestic abuse cases has a negative impact on their workload. Of the staff in post before the legal aid changes, 94% feel domestic abuse is now alleged in more cases. Few had experience of an alleged perpetrator directly cross-examining a victim, as this is usually done by a judge or legal adviser (with the exception of magistrates courts). But when it does happen it can lead to the victim being bullied, intimidated and abused.

The consequence of no representation is that evidence is often of poor quality and victims may avoid court due to fear of cross-examination. Some FCAs raised concern that judges do not order fact finding hearings when a victim is particularly vulnerable - to prevent them being cross-examined - which limits the information available to the court.

*"Both parties were unrepresented and there were allegations of abuse. The court ordered a finding of fact but neither party was able to cross-examine effectively and no conclusive findings could be made."*

*"The alleged perpetrator was cross-examining the mother. It got worse and worse and the magistrates didn't intervene. Mother eventually shrunk into a tiny ball in her chair and said "please...be quick". She needed the trauma to end."*

### **Use of mediation**

Views on the effect of legal aid on the uptake of mediation were mixed: 35% felt it decreased uptake; 34% felt it had no impact; and 23% felt it increased the uptake. The key barrier identified by almost all FCAs was cost – parties tell FCAs it is cheaper to go to court. Other barriers include a lack of understanding about mediation (including the option to get an enforceable consent order afterwards), availability, particularly in rural areas, and the level of acrimony between parents. Once mediation is explained at the FHDRA, parties often feel they may as well "get their money's worth" on the court fee.

*"There needs to be resources available to provide some legal advice at the beginning of proceedings to divert suitable cases and manage expectations, and far more resources available for mediation and dispute resolution."*

### **The future of legal aid**

All FCAs who responded felt that widening legal aid to cover alternative dispute resolution in suitable cases would have a positive impact for children and families. Suggestions for how legal aid provisions could be improved included: increased eligibility to cover complex cases; funding for both parties to ensure balance especially in cases of domestic abuse; funding out of court alternatives in appropriate cases; and targeted funding for expert assessments, early legal advice, or representation at fact finding hearings.

*“Legal aid should be available whenever there is a fact finding hearing, and to cover expert assessments of the parents. This would help to ensure decisions are made for children that are appropriate and safe.”*

*“I accept the need to reduce spending on legal aid, but the cuts have come out of the wrong courts. Family court is often extremely challenging for parents to navigate. Some are left to be further abused by a system that is supposed to be there to protect them.”*

*“I hope that Cafcass will make a strong case for legal aid to be made available in family proceedings.”*