



PRESIDENT OF THE
FAMILY DIVISION



Ministry of
JUSTICE



HER MAJESTY'S
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department for
children, schools and families



**Agreement between The President of the Family Division,
Ministry of Justice, HMCS, Department for
Children, Schools and Families and Cafcass**

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THE PRESIDENT'S INTERIM GUIDANCE FOR ENGLAND

30 July 2009

This Interim Guidance sets out *short-term* measures which have my approval and which have been developed with the agreement of all signatories. It is not a Practice Direction, but is intended instead to create a framework for local arrangements as the best method of achieving necessary improvements to assist Cafcass to deliver their services to children, families and the courts and thus secure timely outcomes to promote the welfare of children who are the subject of family proceedings

The aim of the Guidance is to put in place measures which will address the current backlog of work while preventing backlogs arising in respect of new work (i.e. mounting delays in reporting and in the allocation of Children's Guardians consequent upon the increase in Children Act applications) **in a planned and time limited way**. It is a temporary solution to help in an emergency situation. It is intended that this Guidance will cease to have effect on the 31st March 2010 at which point it is expected that the backlog will have been substantially reduced.

Discussions involving key bodies within the same time-frame will take place with a view to identifying how to achieve the enduring elimination of backlogs.

Although some measures reflect developing good practice (e.g. issue specific section 7 reports and welfare reports in care proceedings, the timetable for the child and national expectation timeframes for the delivery of each type of report), others are expedient solutions which are not intended to endure in the longer term.

This Interim Guidance is designed to support the provisions of the Public Law Outline, my revised Private Law Programme as currently being trialled and the Overriding Objective in family proceedings as stated within those documents. It is also intended to support the exercise of the statutory functions of Cafcass to safeguard and promote the welfare of children and to give advice to the court, in accordance with the rules of court governing the powers and duties of officers of the Service.

Nothing in this Guidance is to be taken as an endorsement of schemes other than the duty advice schemes referred to in paragraphs 28 and 29 below, or of any system where the duties of a Children's Guardian are performed by or on behalf of anyone other than a named individual.

It is necessary to recognise that, to the extent that the measures proposed may involve children's solicitors taking on case management tasks which have hitherto been regarded as functions of Cafcass, courts will have to proceed with caution and by consent, having satisfied themselves that the solicitors understand and accept what is required of them within the public funding arrangements which apply to them.

All cases

Lines of Communication

- 1 Cafcass and HMCS should each nominate a person who has the authority to make agreements on their behalf as a single point of contact (with a deputy) for each court or group of courts (as arranged locally) for use by HMCS, the judiciary and Cafcass to coordinate matters such as
 - Hearing dates
 - Filing and service of documents
 - Transmission of information including resolution of urgent problems.

In each case, full contact details should be provided to the Designated Family Judge (DFJ), including those to be used in an emergency. In respect of Cafcass, it is anticipated that the nominated person will be the Head of Service.

- 2 The judicial representative of the President, who will have authority to formulate local arrangements will be the DFJ. It was envisaged in the President's letter to DFJs of 26 October 2007 that local Family Business Committees (whatever their title may be) would be set up (where the committee or an equivalent body did not already exist) to advise the DFJ about local services and resources in order to assist the DFJ to make decisions about the management of family business in their courts. Those Committees were to include HMCS, Cafcass, Local Authorities and local Practitioners.

- 3 Accordingly, where they have not already done so, DFJs should set up meetings of such committees, or their equivalent, and HMCS and Cafcass should ensure that the Head of Service nominated at 1 above attends such meetings to provide authoritative up to date information to assist the DFJ to formulate local arrangements as indicated at 2 above and to be advised of the decisions of the DFJ.

- 4 DFJs should publish the existence of the committee and the local arrangements made at 1, 2 and 3 above.
- 5 **Where local arrangements have already been made which are consistent with the terms of this Interim Guidance they may continue. However, where local arrangements have yet to be made or finalised or, in the event of an approach by Cafcass to vary the terms of a local arrangement such proposed arrangements should be submitted to the Family Division Liaison Judge (and copied at the same time to the President’s office) for approval prior to publication and implementation.**

Timetabling and priorities

- 6 When prioritising **new cases**, Cafcass should have regard to the timetable for the child which will be determined by the court answering the notional query, “By when should the question relating to this child be answered?” The court should record the answer to the question and the timetable on the face of the order together with any relevant factor or future event governing the timeframe specified. If the timetable for the child requires subsequent amendment, that should also be recorded on the face of the order at the time of the change. The DFJ, taking account of information provided by HMCS and Cafcass should formulate a local mechanism for prioritisation of cases based on the timetable for the child and the child’s current welfare needs.
- 7 In respect of **backlog** cases (i.e. those which have not yet been allocated or where a case management direction has not been complied with by an officer of the Service or Children’s Guardian) the DFJ, taking account of information provided by HMCS and Cafcass should formulate a local mechanism for prioritisation of cases based on the timetable for the child and the child’s current welfare needs

Private Law

- 8 Cafcass will publish, and keep updated, an information sheet detailing specific services (including contact activities) available to the parties for the court’s consideration in determining the next steps in any case. The information sheet should provide contact and any further necessary details to enable the parties and the court to arrange for the parties to benefit from the services.
- 9 In respect of **new cases**, the national expectation of the timeframe for the production of any specific report by Cafcass under s. 7 Children Act 1989 is (from the time Cafcass receives notification of the court order) as follows:
- a. wishes and feelings report in not more than 6 weeks
 - b. a single issue report in not more than 6 weeks
 - c. a report covering more than one particularised issue in 6-12 weeks, depending on the nature/complexity of the issues to be addressed
 - d. where an officer of the Service is required to make a risk assessment under s. 16A Children Act 1989, in 6-8 weeks

- 10 The DFJ should formulate local arrangements to specify the timeframe for production of each type of report sought under s. 7 in respect of both new and backlog cases. It is accepted that local conditions are likely to require timeframes in excess of the national expectations (see 9 above) but, where this is the case, local arrangements should include a timed plan to eliminate backlogs with a view to eventual production of reports within the national expectation. It is expected that the plan will provide for the substantial reduction and, where possible, elimination of backlogs before the end of March 2010.
- 11 DFJs should publish the local arrangements in existence or made under 6-10 above in order for them to be effective from 1st October 2009.
- 12 Whenever practical, the court should take into account the views of Cafcass when considering whether to order one or other of the types of s.7 report as set out at 9 above, and also how to define the scope of that report. Consideration should be given by DFJs through their local Family Business Committees to establishing a system to ensure the court can receive this advice in any circumstance where an officer of the Service is not present in court at the time the court considers whether to order a s.7 report, and to ensure Cafcass receives timely notification of any order for such a report.
- 13 In every case, the filing date for a s. 7 report (as described at 9 above) directed by the court in accordance with the local arrangements shall be complied with unless **proper application**¹ is made on exceptional grounds. Letters from individual officers of the Service notifying the court of non-allocation/non-compliance shall cease. Local arrangements may specify what steps are to be taken if directions are not complied with, to include avoidance of unnecessary costs, notification to the parties and standard directions as a consequence or in default. Standard directions should be designed to provide for automatic steps to be taken where there is non-compliance.

Court listing

- 14 Listing arrangements are the responsibility of the DFJ. DFJs should make arrangements in accordance with 2 & 3 above to rationalise the days and venues upon which first hearings, including First Hearing Dispute Resolution Appointments (FHDRAs) in both the county court and the family proceedings court, are listed to make the most effective use of judicial and Cafcass resources having regard to local conditions.
- 15 All private law children cases must be listed in accordance with the President's Private Law Programme (as revised where appropriate) and an officer of the Service is to be present for first hearings, including FHDRAs, unless excused.

Approach following first hearing, including FHDRA

A Where agreement has been reached

- 16 Orders agreed between the parties must not be approved without confirmation recorded on the order that safeguarding checks have been completed and that Cafcass safeguarding duty under s.16A Children Act 1989 is not engaged.

¹ While this must be a formal application according to the local arrangements specified by the DFJ, it will not be on a form C2 and will not attract a fee.

17 Where there remains risk identification or risk assessment work to be undertaken, the making of a final order in terms agreed by the parties should be deferred until the results are available. In such circumstances the court should adjourn the case to a fixed date. If satisfactory information is then available, the order should be made in the agreed terms without the need for attendance by the parties. If satisfactory information is not available, the order should not be made, and the case should be adjourned for further consideration with an opportunity for the parties to make further representations.

B Where no agreement has been reached

18 Subject to 8 above, at the conclusion of a first hearing, including FHDRA at which agreement is not reached

1. The court should explore whether there is a way of deciding the application without a report (eg by referral to mediation or parenting classes)
2. Where the court decides that the application cannot be decided without a report requested under s.7, it should consider which of the following reports should be directed
 - a. wishes and feelings report in not more than 6 weeks
 - b. a single issue report in not more than 6 weeks
 - c. a report covering more than one particularised issue in 6-12 weeks, depending on the nature/complexity of the issues to be addressed
 - d. where an officer of the Service is required to make a risk assessment under s. 16A Children Act 1989, in 6-8 weeks
3. The practice of requesting a s.7 report in general terms should cease. Any order made should specify the particular issue(s) required to be investigated (i.e. the specific question(s) to be answered) and the court and the officer of the Service should clarify whether the court requires the report to address in detail any aspect of the welfare checklist.
4. The local practice (see 10 above) should be followed

19 If the court orders a report under s. 7, it will record on the order:

- a. The timeframe for making the section 8 decision for the child
- b. Whether the safeguarding checks are complete
- c. Whether any risk is identified, and if so what
- d. The particular issue(s) requiring investigation

20 HMCS is no longer required to complete a formal Referral Form when a report is ordered under s.7.

Fact-finding hearings

21 In every case where domestic violence is raised as an issue, there must be compliance with paras 3 and 16 of the President's Practice Direction: Residence and Contact Orders: Domestic Violence and Harm 14th January 2009.

- 22 Cafcass officers should acquaint themselves with this Practice Direction and, if they wish to make representations on the need for a fact-finding hearing, they should take into account,
- a. That in accordance with para 3, the court must consider the nature of any allegation or admission of domestic violence and the extent to which any domestic violence which is admitted, or which may be proved, would be relevant in deciding whether to make an order about residence or contact and, if so, in what terms;
 - b. That, in accordance with para 16, in any case where domestic violence is raised as an issue, and the court considers that a s. 7 report should be prepared, the court should consider the extent of any enquiries which can properly be made at that stage and whether it is appropriate to seek information on the wishes and feelings of the child before findings of fact have been made;

Rule 9.5

- 23 In every case where the question of a rule 9.5 appointment is considered, there must be compliance with the President's Direction of 5th April 2004 : Representation of Children in Family Proceedings Pursuant to Family Proceedings Rules 1991, Rule 9.5, and in particular with paras 2, 3 and 5.
- a. In accordance with para 2, making the child a party to the proceedings is a step which should be taken only in cases which involve an issue of significant difficulty and consequently will occur in only a minority of cases. Before taking the decision to make the child a party, consideration should be given to whether an alternative route might be preferable, such as asking an officer of the Service to carry out further work (for example, a risk assessment) or by making a referral to children's services or, possibly, by obtaining expert evidence.
 - b. Factors which may justify the making of an order are set out in para 3 of the Direction.
 - c. In accordance with para 5, before appointing a Rule 9.5 guardian ad litem, the court will cause preliminary enquiries to be made of Cafcass in accordance with the Cafcass Practice Note detailed in the Direction.
- 24 As far as possible, the court should avoid delay in making such an appointment when the exceptional conditions for it are satisfied.
- 25 Consideration can be given to alternative rule 9.5 guardians ad litem being appointed from outside Cafcass eg. where the court requires representation of the child in circumstances calling for legal rather than social work skills, including cross examination and/or the obtaining of expert evidence.

Addendum reports

- 26 Such reports should only be ordered by the court where (a) a contact monitoring request under s. 11H(2) of the 1989 Act is not appropriate and, if practicable, either (b) the officer who prepared the s 7 report has recommended that there be an addendum report, or (c) a legal representative, a party or the court has first discussed with either the officer of the Service who prepared the original s 7 report or the Cafcass Service Manager to clarify the purpose of the same.

- 27 Requests for such reports should be clearly noted on the court order, with clarification of the issue(s) to be addressed. A short timeframe (for example 6-8 weeks) for preparation of these reports is to be expected and courts should limit the length of such reports by indicating that they expect the report to be of, for example, no longer than 2 sides of A4 paper.

Public Law

Cafcass duty advice schemes

- 28 On issue of an application in specified proceedings, the court should consider immediately appointing a solicitor for the child under s.41(3) Children Act and in accordance with the latest version of the Law Society Guidelines.
- 29 The DFJ may make an arrangement for Care Centres and/or groups of courts to enter into a Cafcass duty advice scheme for the provision of advice (not instructions) to the court at the first appointment through the solicitor appointed under s. 41(3) Children Act 1989. This may extend to advice provided without attendance at the court but the duty scheme shall be published in writing and must provide for
- Delivery of all papers to the Cafcass duty advice team
 - Appointment of the solicitor for the child in time for the first hearing
 - An initial appraisal of the local authority application, advice to the court about urgent action needed and, subsequent to the first hearing, following up urgent tasks identified for Cafcass prior to the CMC through its local duty arrangements
 - Subsequent allocation of the named Children’s Guardian as soon as possible, and in any event prior to the Case Management Conference, to be the Children’s Guardian in the proceedings thereafter and to be responsible for the future continuous conduct of the child’s case

Local Authorities advising Cafcass of proceedings

- 30 Local authorities must note para 3.28 of their Volume 1 Children Act 1989 ‘Court Orders’ Guidance and should notify the Cafcass Service Manager of the prospect of the commencement of proceedings. However, identifying details of the child should only be disclosed at this stage with the parents’ consent.
- 31 Local authorities should send a copy of the application to Cafcass at the time of issue and confirm to the HMCS single point of contact (see 1 above) that this has been done.

Question the need for a Children’s Guardian in all cases

- 32 Courts are reminded of the terms of s. 41(1) Children Act 1989: i.e. “For the purpose of any specified proceedings, the court shall appoint an officer of the Service for the child concerned *unless satisfied that it is not necessary to do so in order to safeguard his interests.*” (Italics added).

Directions by the court as to attendance at court

- 33 At every hearing, the court should consider with the parties whether the Children's Guardian may be excused attendance at the next hearing in the proceedings in accordance with rule 4.11A(4) FPR 1991 or rule 11A(4) FPC(CA)R 1991.
- 34 The court should always consider excusing the Children's Guardian from attending a fact-finding hearing. If the court does not excuse attendance it should record the purpose for which the Children's Guardian is to attend and whether and if so at what point it is appropriate to release the Children's Guardian (eg. at the conclusion of any discussions between parties or after hearing the oral evidence of family members).
- 35 In every case, the court should consider directing the Children's Guardian to file a report in time for the advocates' meeting before the Issues Resolution Hearing rather than 14 days before the Final Hearing. The report shall be an issue focussed report where the issues to be analysed are the key issues identified by the court.

The tasks of the Children's Guardian/direction by the court

- 36 The duties of the Children's Guardian are set out in the relevant legislation and rules. It is inconsistent with the role of the Children's Guardian to delegate any task which will or may relate to the personal/professional relationship of the Children's Guardian with the child (or any other significant person in the proceedings).
- 37 While the Children's Guardian may delegate the collection of certain information to other personnel within Cafcass, part of the Children's Guardian's function is to analyse the information in the proceedings and therefore tasks relating to such analysis should not be delegated.
- 38 At the Case Management Conference, the Children's Guardian should seek guidance from the court about the work which is to be done between the CMC and the IRH by reference to the key issue(s) which have been identified in the case. The court should aim to clarify the particular tasks and the relevant timeframes for the work to be done by all parties and the Children's Guardian.
- 39 The court should clarify with the solicitor for the child the extent to which the solicitor is willing and able in any particular case to monitor compliance with directions which may affect the timetable of the case (e.g attendance of parents at appointments) and to report any failure to the Children's Guardian and to the court.
- 40 The court should continue to ensure that the case progression function is performed, and that the case manager/judge is advised of any substantial failure or potential failure to comply with case management directions.

Independent Reviewing Officer

- 41 The Local Authority should advise the Children's Guardian of the name and contact details of the child's Independent Reviewing Officer and of the dates of the child's statutory reviews, with a view to promoting the best possible planning process for the child in accordance with section 2 of the Cafcass Practice Note of 2007: Cafcass and the work of Independent Reviewing Officers.