



## CAFCASS AND CAFCASS CYMRU STATEMENT ON ISSUES COMMON TO THE PRIVATE AND PUBLIC LAW WORKING GROUP CONSULTATIONS

Cafcass in England and Cafcass Cymru in Wales represent children's interests in the Family Court across England and Wales. Both organisations have been active members of the President's working groups set up to look at practices, processes and opportunities for improvement in and around the family justice system when working with public and private law matters. It should be noted that whilst both organisations are distinct and operate within different contexts, we have worked closely together reflected in this joint statement but also in our individual, more detailed responses to the consultations which are closely aligned.

**Cafcass** (the Children and Family Court Advisory and Support Service) is a non-departmental public body sponsored by the Ministry of Justice. Cafcass represents children in family court cases in England. We put children's needs, wishes and feelings first, making sure that children's voices are heard at the heart of the family court setting, and that decisions are made in their best interests. Operating within the law set by Parliament (Criminal Justice and Court Services Act 2000) and under the rules and directions of the family courts, we are independent of the courts, children's services, education and health authorities and all similar agencies.

We are an England focused national organisation with a rich evidence base combining national and local level case-data and practice insights from working with more than 130,000 children in England each year.

**Cafcass Cymru** is a devolved Wales focused organisation. We are part of the Welsh Government's Health and Social Services Group and are accountable to both the Deputy Minister for Health & Social Services and the Director General for Health and Social Services. Through The Children Act 2004 and in accordance with the rules and directions of the family court, Cafcass Cymru provides expert child-focused advice and support, safeguards children and makes sure their voices are heard in family courts across Wales so that decisions are made in their best interests. We are independent of the courts and local authorities. We work closely with Cafcass with the shared aim of influencing the family justice system. We also work with policy colleagues in Welsh Government to influence services for children in Wales.

In 2018/19 Cafcass Cymru worked with over 9,000 children and their families across Wales.

Cafcass and Cafcass Cymru welcome the work of the private and public law working groups to improve outcomes for children and families in the family justice system. All children, regardless of law type, need security, stability and protection from physical and emotional harm. We understand why practice in these two legal frameworks have been considered separately but, in our experience, there are as many similarities as there are differences. This is no surprise given that both frameworks concern the welfare of children living in families which are under strain, that there is a largely common workforce of professionals, and the majority of the challenges are systemic.

By way of introduction to our response to each of the consultations, we would therefore like to make the following joint observations to help inform next steps:

**1. Children and their families should be actively involved in shaping the next steps so that the system works for them, not just for professionals.**

A key priority of any reform should be a focus on understanding and meeting the needs of children, and by extension their families. This includes ensuring children are able to understand what is happening and to participate in proceedings, if they wish to do so, in ways that are developmentally appropriate. It also means considering and reducing the potential for the negative impact on them of court proceedings and clearly communicating what decisions have been made and why.

To ensure the proposed changes are sufficiently child-focused, we recommend the involvement of the Family Justice Young People's Board in any next steps to take forward proposals emerging from these consultations. The FJYPB contains several Welsh members and so Cafcass Cymru would be satisfied that Welsh voices would be represented. We already know that one of their priorities is to improve ways in which family justice professionals seek and act on feedback from children to better ensure we are collectively meeting their needs. This is a current gap in the proposals but something that both Cafcass and Cafcass Cymru are actively working on with the FJYPB in relation to our own services and could potentially be developed into a system-wide approach.

We think it is also important to involve families in the development and testing of revised processes.

**2. What is possible is limited by the capacity and resources: both of the family justice system and allied services for children and families.**

Both reports point to increasing numbers of children and families coming before the courts – for example Cafcass in England deals with 27% more cases now than it did four years ago - and the strain this is putting on a system which is already stretched. There has been a similar increase in Cafcass Cymru over this time - a 40% increase in requests for private law reports together with a 17% increase in public law work. It is clear there is a need for change, but this needs to be planned, coordinated and resourced carefully so that professionals across the system can continue to deliver the day job while preparing for it.

Even if additional money were found, there is a finite number of professionals to deliver it. Work has already taken place to streamline what we do, and we are constantly exploring new ways of working that could further improve efficiencies. We would like to step up our joint work with the judiciary and HMCTS to achieve such efficiencies as failure to do so will limit the pace of change.

It should be recognised whatever changes are made to court processes, the reality is that the Family Court cannot fully resolve the problems presented by the cases before it, and the full roots of demand management lie elsewhere. Both reports highlight the need for effective '*primary prevention*' support and services for families as a more effective way of managing the capacity of the system.

**3. We need as much focus on testing and implementation as on guidance, and to do more to support this at local as well as national level.**

The need for professionals to work differently in practice requires more than publication of written guidance and training. Longer term, legislation may be needed, but we cannot afford to wait for that, and the reports have identified the steps we can take in the meantime. Given the common issues across both law types, any changes must be considered as a unified package and will need the buy-in of all professionals and agencies working in the family justice system across England and Wales – on the *how* as well as the *what*. In Wales, there is a large number of policy areas devolved to Welsh Government around social care, education and

health (to name but a few) and therefore any changes need to be sensitive to these realities. Any approach needs to fit both England and Wales (allowing for local variation to take account of needs and circumstances, including funding and governance differences) in terms of effective implementation if we are to avoid the current postcode lottery and make best use of collective resources. We think this would be best achieved if the Family Justice Board – with the benefit of advice from the Family Justice Young People’s Board - endorses, prioritises and oversees the necessary programme of work; and secures the resources to deliver it. Future legislation should in any case be informed by the learning from this programme of work.

The Family Justice Board is likely to need the support of a working-level programme board – drawn from operational partners across the sector, and reflective of both England and Wales - to coordinate and sequence the programme of work. Specifically, this will need to be resourced to focus on practical testing and evaluation of changes on a ‘*whole system*’ basis rather than a plethora of separate pilots; and to develop an approach of embedding and sustaining change at local as well as national levels (England and Wales). If Local Family Justice Boards are to be the main agents for change locally, significant investment and coordination will be needed to ensure they are equipped to implement the changes locally in a way that is aligned with national priorities in England and Wales and to deliver upon the expectations placed upon them. We also anticipate that it will be necessary to review the current key performance measures and indicators in the system to ensure they are realistic and incentivise the right behaviour – across delivery organisation at both national and local level - as part of the implementation of any reforms.

## **Cafcass and Cafcass Cymru**

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