



Cafcass Cymru response to the report of the Private Law Working Group (review of Child Arrangements Programme; PD12B FPR 2010)

Introduction

1. Cafcass Cymru is a devolved Wales focussed organisation. We provide expert child-focused advice and support, safeguard children and make sure their voices are heard in family courts across Wales so that decisions are made in their best interests. Cafcass Cymru becomes involved in private law matters after an application has been made to the court. Our role involves working directly with children and families to safeguard and promote the welfare of children going through the family justice system and advise the court on what we consider to be their best interests. Our responsibilities include providing safeguarding enquiries reports and undertaking dispute resolution at the first hearing (the FHDRA), preparing child impact reports in accordance with section 7 of the Children Act 1989 and representing children when appointed as a Children's Guardian under rule 16.4 of the Family Procedure Rules.
2. Cafcass Cymru has been an active member of the President's working groups set up to look at practices, processes and opportunities for improvement in and around the family justice system in public and private law matters. We have collaborated with colleagues in Cafcass to produce a joint statement on issues common to private and public law, and also in preparing our response to the Private Law Working Group report.
3. We fully support the key principles of the current Child Arrangements Programme and the working group's aims of improving the process so that it works better for children and their families. We acknowledge that for a proportion of families the court is not the best place to resolve their differences. We know that court proceedings can increase parental conflict between parents, which in turn is harmful to children. We support the principle that where it is safe to do so, separated parents should be encouraged towards co-ordinated services that can help them make agreements for their children in a non-adversarial environment. We support the call for this to be reinforced by public education and awareness raising campaigns in England and Wales, aimed at affecting cultural change and setting out expectations of the best way to deal with family disputes.

Consultation Questions (Annex 12 of PLWG report)

4. **Early help: SSFA and MIAM (questions a and b):** The formation of an alliance of services for separated families (the SSFA) is supported by Cafcass Cymru.

This aligns with the existing Welsh Programme for Government priorities for children and families, for example the provision of extended, coherent support for parenting support, focussed on positive parenting and early intervention, and preventative services to improve the resilience of parents, children and young people. It should be noted that the existing government initiatives referred to in the Cafcass response as potential building blocks of the alliance infrastructure are England only initiatives (Troubled Families Programme, Early Help Hubs, Reducing Parental Conflict Programme). The identity and organisational structure of the SSFA would need to take account of the different legislative and funding context in Wales, to ensure that it fits and can be implemented in both England and Wales. We submit that sustainable long term, joined up initiatives to provide early intervention aiming at reducing parental conflict and which support the resilience of families, with an England and Wales focus, are needed to enable the cultural change required to reduce the flow of private law applications.

5. Cafcass Cymru agrees that a wide range of community and specialist services should be involved in the SSFA. Additionally we suggest that the alliance should include organisations and services that support the diversity needs of children and families including BAME, LBGT, and disabilities. In Wales the development of an SSFA should consider the needs of the Welsh population in terms of language and access to services. We are not convinced that Local Family Justice Boards should have a role in the local alliances, and are concerned about whether they are equipped, resourced, or have the right membership to provide effective leadership and co-ordination of the SSFAs. Additionally, we are not clear that the LFJB having a role is consistent with the message of people, where possible, resolving their disputes outside of the court system.
6. We agree with the views of Cafcass in respect of the proposals to strengthen and reinvigorate the MIAM. It is the experience of Cafcass Cymru practitioners that, where trust has broken down, parents often want the reassurance of a formal document. It follows that a pilot project, in which parenting agreements made in mediation become open documents, would be valuable in exploring whether this would increase parental confidence in non-court dispute resolution.
7. **Gatekeeping, triage and tracks (questions c and d):** We support the principle of the proposed changes; we consider that it is likely to increase the efficiency of court practices for the current “one size fits all” approach to be replaced by a gatekeeping and triaging process. Cafcass Cymru agrees with the principle of a more targeted role including making recommendations for next steps in our safeguarding reports. This could potentially include advice as to whether and how children might participate at an earlier point in proceedings or in mediation (see also paragraph 16). We concur with the comments of Cafcass in respect of gatekeeping applications more robustly so that Cafcass/ Cafcass Cymru are not sent applications which cannot be progressed due to lack of basic information;

clarity on whether incomplete applications must be accepted by the courts would also be beneficial.

8. In order to provide the best possible advice and to assist the quality of recommendation for allocating cases to the appropriate track (and proposing appropriate next steps including signposting to other services or resources) it will be crucial for existing pre court agreements / parenting plans/ mediation documents to be disclosed to Cafcass / Cafcass Cymru with the application form. Cafcass Cymru (and Cafcass) will be undertaking a data analysis and case tracking exercise to assist us in understanding the likely numbers of cases that would be allocated to each track.
9. Whilst we welcome the message to police and local authorities on the importance of providing safeguarding information in a timely manner, the proposals are largely silent on how the process will accommodate cases in which safeguarding information from a third party is not available by the report filing date, or where it has not been possible to undertake safeguarding telephone interviews with both parties. The effectiveness of triaging and allocation to tracks would be reduced if the current high levels of incomplete safeguarding reports filed by Cafcass Cymru persist, as a result of police or local authority checks not being returned on time or Cafcass Cymru not being able to speak with both parties. Is it possible that where agency checks are outstanding or needed (such as enhanced police checks) the safeguarding report/letter recommends a court order is issued directly to the relevant agency for disclosure? Linked with this it would be helpful for there to be clarity as to where Cafcass/Cymru responsibility begins and ends in relation to providing the court with safeguarding information – for example in relation to outstanding agency checks. Cafcass Cymru would be unable to sustain the current levels of non-compliance in respect of agency checks.
10. When undertaking gatekeeping and considering whether specific information from a local authority or other third party agency is required for triaging, consideration should be given to avoid unnecessary pressure on public sector resources by courts requesting information that is routinely included in Cafcass / Cafcass Cymru enquiries. This can result in duplication of effort by two or more agencies.
11. Cafcass Cymru agrees that work should be distributed between tracks 1 and 2 based on complexity and risk of harm. It will be important to understand the proportion of cases that are likely to be allocated to each track and to understand where in the process in-court dispute resolution can be used most effectively. We agree that Cafcass/ Cafcass Cymru do not need to be directly involved in the triage meeting. We suggest that liaison arrangements in Wales could build on the “hotline protocol for 16.4 cases” that is already in place whereby judges / court legal advisors can contact a duty manager by telephone.

12. A pilot will be beneficial in monitoring whether any reduction in dispute resolution meetings leads to an increase in section 7 / child impact analysis reports, or increased returning applications in track 1 cases which have been concluded by a summary hearing rather than in court dispute resolution.
13. Currently Cafcass Cymru invests significant resource into providing dispute resolution at the FHDRA hearing. In our experience affording parents the time to discuss the dispute and their concerns, and skilfully focussing them on the needs, welfare and interests of their children can result in new parental insights, and agreements being reached at Court that avoid the need for a further hearing or a Section 7 report. This is achieved through a good working relationship with HMCTS and being provided with enough time in appropriate cases to do effective dispute resolution meetings. Previous analysis suggests that 32% of cases were resolved at FHDRA. What is not currently clear is the proportion of such cases that ultimately return to Court. Cafcass Cymru intends to undertake a case tracking exercise that will enhance our understanding of the longer term outcomes of a sample of cases resolved at FHDRA in 2018-19.
14. **SPIPS/WT4C (question e)** We agree with the principle of the court ordering parents to attend SPIP/ WT4C where safe to do so before the parents come to court, i.e. for cases in which the safeguarding report has been completed and there are no safeguarding or domestic abuse related issues that need to be considered. We note that the practicalities and funding for WT4C in Wales would need to be worked out. There would need to be a mechanism for the Court to know the outcome of the intervention, in order to know whether a hearing was still required. We agree with the view of Cafcass that effectiveness may be increased if a SPIP/ WT4C is combined with the parents attending mediation. The proposed timescales may not be realistic - if triaging of the case takes place 4-6 weeks after issue and the expectation is that track 1 cases will be completed within 8-10 weeks, this is likely to leave insufficient time for parents to attend the course prior to a hearing.
15. **Returners (question f)** Cafcass Cymru agrees with the principle of early allocation of returning/ enforcement cases to the original tribunal for triage and the withdrawal of the C79 application form. The case tracking exercises being planned by Cafcass Cymru (and Cafcass) will also provide some insights into the nature of returning cases. This will assist in establishing and testing criteria for cases that are placed on track 3 and provide information on how many would be suitable for track 1. This may assist the consideration of how returning cases are defined, including consideration of whether timeframes are needed within which cases would be treated as returners.

16. Currently safeguarding checks are requested in the vast majority of returning cases. In cases in which the court does not request safeguarding checks but lists the case for an urgent hearing, a mechanism may be needed to ensure that issues of new safeguarding concerns, domestic abuse or coercive and controlling behaviour are not overlooked, and any safety requirements for parties at court are identified and appropriate provision made. This could be via information provided on the notice of hearing, indicating what a party should do if they believe they or a child are at risk of harm.
17. **Comments on other recommendations not covered elsewhere (question g):Voice of the Child:** Cafcass Cymru agree that any future pilots should include best practice methods for obtaining and including the views of children. We concur with the views of Cafcass, for the same reasons, in respect of maintaining the current practice of not directly seeking children's wishes and feelings prior to first hearing. We suggest working with the Family Justice Young People's Board (FJYPB) in relation to developing children's participation, obtaining and including the views of children and young people at a proportionate and appropriate point in proceedings, and sharing outcomes with children. This will need to include detailed consideration of the practicalities of providing a letter or order framed in terms suitable for children concerned, including by whom this should be provided.
18. **Piloting changes** Cafcass Cymru welcomes the opportunity to pilot any revised approach. The pilot designs will need to take account of the differences between the Welsh and English contexts, and be suitably resourced. We concur with the view of Cafcass that significant design work on the process will be needed; the courts have struggled to implement aspects of the existing CAP, for example achieving effective FHDRA court listings, ensuring MIAMS take place, timely receipt of applications and orders. It will be important to mitigate against the risk that introducing additional complexity to the processes could cause further delay, and therefore increase the risk of harm to children.
19. **General (question h)** We are of the view that all possible means of providing clear information should be utilised to ensure that potential service users / litigants in person are as clear as possible about the court process have realistic expectations of what can be achieved by the family court. A level of co-ordination is desired to ensure clear and consistent evidence based messaging on relevant websites, information leaflets and so on including digital Court application portals, Cafcass, Cafcass Cymru, National Family Mediation Council, English and Welsh Government parenting websites. This will be an important element in achieving the cultural change towards more collaborative ways of making arrangements that are in the best interests of children following separation.

20. We agree with the view of Cafcass that the PLWG will need to take account of changes in practice brought about by the proposed Domestic Abuse Bill, MoJ's rapid review; and the Family Justice Council's Guidance on domestic abuse. In Wales, the Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 is in force, the purpose of which is to improve prevention, protection and support for people affected by all forms of gender based violence, domestic abuse and sexual violence across Wales. There are two duties placed on public bodies within the Act, which are the National Training Framework and the 'Ask & Act' initiative. Whilst Cafcass Cymru is not considered one of the 'public bodies' within the Act, it has concerned itself with the key messages and essence of the Act and worked closely with colleagues from the specialist sector and sought engagement with survivors of domestic abuse to inform the organisations most up to date domestic abuse practice guidance. Cafcass Cymru recognises the challenges faced by survivors of domestic abuse and their children who access the family court, we welcome any opportunity for early intervention by the court when domestic abuse (including coercive and controlling behaviour) is identified. Cafcass Cymru agrees with Cafcass in that we welcome appropriate adjustments being made to ensure the safety and protection of children and survivors is prioritised by the family court and are equally committed to promoting safe relationships.
21. Currently, in a minority of cases no final order is received; Cafcass/ Cafcass Cymru should be sent final court orders in all private law cases in which we have involvement. This would support the monitoring of outcomes for children and allow us to identify any changes in the rate of returning cases.
22. We consider that it may be beneficial to suspend a completion target for private law cases during the operation of a pilot phase. Removing the pressure on courts to conclude cases as quickly as possible may improve rates of MIAM attendance through more robust gatekeeping, and be more likely to lead to parents in suitable cases having sufficient time to try to reach agreement through mediation or similar services, which is likely to lead to a better outcome for the child.

Cafcass Cymru
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