



# CAFCASS CYMRU

## RESPONSE TO THE WORK OF THE PUBLIC LAW WORKING GROUP

September 2019

### Preamble

1. Cafcass Cymru has been an active member of the Public Law Working Group, and along with Cafcass fully support the aims of the group and the opportunity for improvements to be realised.
2. As a member of the Group we have not responded to each of the 57 core recommendations or the 17 longer term recommendations but rather taken this opportunity to highlight some of the key differences which affect Wales, reiterate points raised in the consultation where we are in agreement and discuss some areas which may have a direct impact on our role and resources.
3. This response relates to the public law working group recommendations but should be read in conjunction with our response to the private law working group recommendations. Our family court advisors (FCAs) carry mixed caseloads of both private and public law and any final recommendations of either working group which would impact on FCA resource would negatively impact on our ability to resource our current commitments.

### The Welsh Context

4. Cafcass Cymru is an organisation within Welsh Government's Health and Social Services group. We are accountable to both the Deputy Minister for Health and Social Services and the Director General for Health and Social Services. Our statutory functions are set out in section 35 of the Children Act 2004. We provide a voice for any child in Wales that is involved with the Family Justice System under the Social Services and Wellbeing (Wales) Act 2014, The Children Act 1989 and The Children and Families Act 2014. It should be noted that whilst the Family Justice System is not devolved, local authorities, Cafcass Cymru, education and health are – this reality should be acknowledged and respected.
5. Following consultation feedback, any subsequent recommendations which suggest change should stem from an evidence base rather than anecdotal information. Any good practice guides which have a direct impact on practice with children and their families should involve those organisations already in place who work to improve outcomes for children. Under the Well-being of Future Generations (Wales) Act 2015, Cafcass Cymru as a public body in Wales is required to think about the long term impact on our decisions, to work better with

people, communities and each other and highlights the need to work in collaboration to achieve good outcomes. We have excellent working links with:

- Association for Fostering and Adoption (AFA) Cymru
- The Nuffield Family Justice Observatory
- All Wales Heads of Children's Services (AWHoCS)
- CASCADE: Children Social Care Research and Development Centre
- Care Inspectorate Wales (CIW)
- Social Care Wales
- Children and Families Division Welsh Government
- Family Justice Young Peoples Board (FYJPB)
- Welsh Women's Aid

6. All of these agencies share information on good practice and research outcomes and should be involved in co-producing good practice guidelines. To secure multi agency co-operation any good practice guidelines should be issued by the National Family Justice Board, and to this end we very much support the observations of Cafcass in their consultation response as to the crucial role of Local Family Justice Boards in helping to drive and embed the changes needed.

## **Response to the Recommendations**

### **Local Authority Decision Making / Pre-Proceedings and PLO**

7. We support the intent of sharing good practice and expectation guidelines on decision making pathways, but suggest they are limited to "principles" rather than detailed models. This approach would avoid the issue of how it is determined whether or not a service model is "proven" and also prevent the final guidance becoming too long.
8. Cafcass Cymru supports the renewed focus on pre-proceedings work as highlighted by Isabelle Trowler's "*The Case for Clear Blue Water*". Building relationships with families is imperative to achieve positive engagement and be able to manage risk in the community. We agree that pre-proceedings should be strengthened to improve negotiations with the family about alternative care which can provide safe and sustainable family based alternatives to public care and this should include finer details of finance and support available.
9. We recognise the lack of consistency across regions regarding Independent Reviewing Officers (IRO) and welcome the drive to strengthen the quality and consistency of IRO services as promoted by the 2018 Welsh document "*Practice Standards and Good Practice Guide. Reviewing and monitoring of a child or young person Part 6 Care and Support Plan*". We would support local authorities consistently implementing these guidelines across Wales.

10. The voice of the child is central to the role of Cafcass Cymru and we agree there should be more emphasis during the pre- proceedings stage on gaining and recording the wishes and feelings of each child individually which we feel is integral to the social workers role. We support the use of the Family Justice Young People's Board (FJYPB) material and '*top tips*' to strengthen this.
11. Cafcass Cymru welcomes early notification of issue on new-born babies whilst this is routine in some areas it is not consistent. Cafcass Cymru would welcome the opportunity to work alongside AWHoCS to develop a good practice guide in relation to this, supported by the forthcoming work of the Nuffield Family Justice Observatory in this area.
12. Current legislation negates any involvement pre-proceedings, therefore any involvement at this early stage could be viewed as comprising our independent role and would add another level of scrutiny to the local authority. Our view is pre-proceedings work is the role of the local authority and we should enable social workers in this role to be competent in this work. Should there be a legislative change in relation to this, additional resources would be required in order to fulfil this role.
13. The high volume of public law applications to court may partly be explained by better identification of safeguarding concerns due to digital awareness campaigns and partner agencies becoming more skilled at recognising signs of abuse and neglect. In conjunction with this, there is a workforce shortage and where many front line safeguarding practitioners lack experience and therefore may lack confidence in managing risk within the community. It would therefore be beneficial for social work skills, knowledge and confidence to improve to be able to manage risk in the community safely. Consistent use of reflective supervision and group supervision to build knowledge and confidence may be valuable along with analytical risk assessment training.

## **The Application**

14. Early notification to Cafcass Cymru, as established in some areas, has been effective and should be consistently implemented in all areas.
15. Our data reveals the majority of care applications in Wales are issued as short notice. In the year 2018-19 50% of s31 applications were short notice with this year to date (19-20) showing 52.5%. Due to this we intend to complete an internal audit to explore the drivers behind the figures. We welcome HMCTS's intended introduction of the electronic C110 whereby an explanation must be given if an urgent hearing is requested – though would wish for this to be fast-tracked if at all possible. Where there is no cogent reason for an urgent hearing adherence to the stipulated time frames are imperative. This is so children and

young people can receive the best possible service from Cafcass Cymru in terms of establishing wishes and feelings and carrying out relevant enquires to inform a robust analysis for the court and to maximise the effectiveness of the Case Management Hearing.

16. In line with Cafcass we support the need to review the Social Work Evidence Template (SWET), but would request that any such work includes both Welsh and English local authorities.

### **Case Management**

17. We recognise the inconsistency across Wales in respect of the number of care orders made for children who are placed with people with parental responsibility. There needs to be an exploration of the reasons behind the differences and good practice examples of when it is apposite to use this order and when an alternative order is more appropriate. It would be beneficial to be explicit around what a robust Care and Support Plan (CASP) should look like to support the recommendation for a supervision order and the review mechanism to ensure this has the independent scrutiny to determine the next steps which could be an added function of the IRO.
18. Harwin<sup>1</sup> suggests where stronger measures are needed to achieve parental cooperation than the duty to "advise assist and befriend" a supervision order is not appropriate.
19. Any care order made for the child to reside with someone who has PR requires ongoing review by the IRO to consider discharge of the order when it is no longer proportionate.
20. Judicial continuity for consistent case management is vital and we support the recommendation of no more than two judges being involved in any one case.
21. We recognise the importance of judicial independence but agree there should be a greater degree of consistency to the judicial approach to case management and the nature of orders made at the conclusion of proceedings.
22. We recognise there is different practice throughout Wales in respect of listing a final hearing before an effective issues resolution hearing. However, when this has occurred it has assisted in adhering to the 26 week timetable and ensuring the availability of all professionals and parties who are required.

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<sup>1</sup> Harwin et al 2019 (in research regarding the Contribution of Supervision Orders and Special Guardianship to Children's Lives and Family Justice)

23. Any extension to the 26 week limit for cases must have clear welfare benefits for the child to avoid unnecessary drift. We recognise that there are occasions when this is the case however, any extension to the court timetable would require careful review.
24. Cafcass Cymru does not have any reliable data regarding the use of expert witnesses and we are in the process of undertaking an internal audit to gather information about the use of experts in Wales and whether experts appointed are providing specialist knowledge that is beyond the expertise of the social worker and/or children's guardian and were necessary for the court to make a determination about the child's future.

### **Special Guardianship Orders**

25. The provision of special guardianship support in Wales is governed by the Special Guardianship (Wales) regulations 2005 (as amended in 2018) and the Special Guardianship Code of Practice. However we accept provision of services across Wales varies significantly.
26. We agree with Harwin <sup>2</sup> that supervision orders should not be made with special guardianship orders. All support required should be identified following a robust risk assessment to inform comprehensive Special Guardian Support Plans (SGSP) tailored to individual needs. In Wales, AFA Cymru, commissioned by Welsh Government and supported by AWHoCS, are due to publish work regarding a "minimum standard offer" of support to special guardians which is outcome focused particularly looking at the needs of the child and to include safe contact with parents. This approach is centred in Welsh law, specifically devised to encapsulate and develop a pan Wales approach to special guardianship support.
27. We agree with the use of Family Group Conferencing (or equivalent) to identify at an early stage potential special guardians for children who may require alternative safe care. Ideally this should form part of the pre-proceedings work. We endorse the use of Family Rights Group; Initial Family and Friends Care Assessment; A Good Practice Guide.
28. We welcome the Interim Guidance on Special Guardianship which has been recently issued by the Family Justice Council.
29. Cafcass Cymru believes children should have a relationship with the carer who is being considered as a special guardian and we accept this relationship may not be established before the 26 week timescale of proceedings. We would

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<sup>2</sup> Harwin et al 2019 (in research regarding the Contribution of Supervision Orders and Special Guardianship to Children's Lives and Family Justice

welcome a vehicle to enable this to take place however have reservations about the suggestion of an “Interim Special Guardianship Order “ which would require a change in primary legislation. We consider existing fostering regulations should allow flexibility to achieve the best plan for the child.

30. Along with Cafcass, we largely agree with the findings of the Nuffield Family Justice Observatory’s review – led by Coram/BAAF - of Special Guardianship Orders (SGOs), which informed the work of the Public Law Working Group – albeit noting the study does not reflect Welsh data, Welsh regulations (which differs from those in England), nor the devolved nature of social care in Wales. The Nuffield Family Justice Observatory are working to address those shortfalls.

### **Section 76 (Section 20)**

31. We agree the use of s76 is an appropriate resource for local authorities and should be used in the correct circumstances where there is an agreed plan to assist the family and a clear plan of when to end s76 or to issue proceedings. We welcome the need for support and training for professionals and good practice guidance should be developed through AWHoCS and dissemination through Local Family Justice Boards.