

30 November 2021

Dear

## **Request for Information – ATISN 15650**

I refer to your information request received on 02 November 2021.

You asked for information relating to all complaints made against Cafcass Cymru between 02 November 2012 and 02 Nov 2021. The response to your request is provided below set out in the same order as your original request apart from the response to part 9 which has been amalgamated with the response to part 11.

1. *the nature of the complaints;*

The following categories are used to define the types/nature of complaints received:

Conduct, Communication, Best interest of Child, Bias, Delays, Information Clarity, Court Reports and Complaints Process.

2. *how many complaints were made;*

We received 591 complaints over the period 01 April 2012 to 02 Nov 2021.

3. *which officers investigated the complaints;*

The Investigating Officers were normally either a Practice Manager or a Head of Operations.

4. *how many complaints were upheld;*

We do not hold this information for the full period you requested, but from 01 April 2015 to 02 Nov 2021, 55 complaints were either fully upheld or had elements of the complaint upheld.

5. *how many complaints were escalated to the Ombudsman, Estyn or the responsible Minister;*

We do not hold information matching the description of this part of your request. I can however confirm that for the period of the request, the Public Services Ombudsman for Wales contacted us in relation to 50 complaints made to them in relation to Cafcass Cymru.

6. *how many complaints were settled through private court proceedings;*

We do not hold information matching the description of this part of your request.

7. *how much money Cafcass Cymru paid out as compensation as a result of poor practice;*

We paid £2535.90 in compensation in relation to complaints made to us.

8. *how many times the police have investigated Cafcass Cymru;*

We do not hold information matching the description of this part of your request.

9. *how many Cafcass Cymru employees or acting consultants were released from employment as a result of poor practice or a direct complaint;*

Please see the response at 11 below.

10. *how many children registered a complaint against Cafcass Cymru;*

Three complaints were received from children.

11. *how many Cafcass Cymru employees have registered a complaint against Cafcass Cymru.*

We have concluded the information in part 9 and 11 of your request amounts to third party personal data and is exempt from disclosure under section 40(2) of the Freedom of Information Act, 2000 (FOIA), as set out below.

When considering whether or not the exemption applies, I have to consider the effect of disclosure in response to a FOIA request. That is, the information is released to the world not just the person making the request. As such, it is the effects of that wider disclosure which needs to be considered.

### **Freedom of Information Act 2000: Section 40(2)**

Section 40(2), of the FOIA, together with the conditions in section 40(3)(a)(i) or 40(3)(b) provides an absolute exemption if disclosure of the personal data would breach any of the data protection principles.

'Personal data' is defined in sections 3(2) and (3) of the Data Protection Act 2018 ('the DPA 2018') and means any information relating to an identified or identifiable living individual. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

We have concluded that, in this instance, the information requested contains third party personal data.

Under Section 40(2) of the FOIA, personal data is exempt from release if disclosure would breach one of the data protection principles set out in Article 5 of the GDPR. We consider the principle being most relevant in this instance as being the first. This states that personal data must be:

*“processed lawfully, fairly and in a transparent manner in relation to the data subject”*

The lawful basis that is most relevant in relation to a request for information under the FOIA is Article 6(1)(f). This states:

*“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”.*

In considering the application of Article 6(1)(f) in the context of a request for information under FOIA it is necessary to consider the following three-part test:

- **The Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- **The Necessity test:** Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
- **The Balancing test:** Whether the above interests override the interests, fundamental rights and freedoms of the data subject.

Our consideration of these tests is set out below:

### **1. Legitimate interests**

Whilst requests for information under the Freedom of Information Act are treated as applicant blind, in that we are not aware of your own particular interest in this information, the Welsh Government recognises there is a legitimate interest in the openness and transparency that release would engender.

### **2. Is disclosure necessary?**

In this instance, we believe the fact that Cafcass Cymru as part of Welsh Government has a robust complaints and internal disciplinary policy satisfies this legitimate interest without the need to release personal data.

### **3. The balance between legitimate interests and the data subject’s interests or fundamental rights and freedoms**

Whilst we may hold details in respect of information in relation to those staff who have been subject to disciplinary action, or who may have made complaints, they

would have had no reasonable expectation information that identifies them would be put into the public domain.

Thus, we believe release of this information would be unfair so as to breach the first data protection principle.

As release of the information would not be legitimate under Article 6(1)(f), and as no other condition of Article 6 is deemed to apply, release of the information would not be lawful within the meaning of the first data protection principle. It has therefore been withheld under section 40 of the Freedom of Information Act. Section 40 is an absolute exemption and not subject to the public interest test.

If you are dissatisfied with the handling of your request, you can ask for an internal review within 40 working days of the date of this response. Requests for an internal review should be addressed to:

Nigel Brown  
Chief Executive  
Cafcass Cymru  
[cafcasscymru@gov.wales](mailto:cafcasscymru@gov.wales)

Please remember to quote the ATISN reference numbers above.

You also have the right to complain to the Information Commissioner. Normally, however, you should pursue the matter through our internal procedure before you complain to the Information Commissioner.

The Information Commissioner can be contacted at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Yours sincerely

**Rydym yn croesawu gohebiaeth Gymraeg. Cewch ateb Cymraeg i bob gohebiaeth Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.**

**We welcome correspondence in Welsh. Correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not involve any delay.**