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Editorial

This is an amazing year for numbers, dates and events. An American evangelist forecast the apocalyptic ending of the world by 21 May. A rival religious group was convinced the date would be 27 May following a devastating nuclear war. Others keen on Mayan rather than Biblical prophecy believe Armageddon is actually set for 21 December. There was the dramatic passing of Venus across the sun, not to occur again until 2117. More local events included: the wettest spring and summer ever recorded in Britain during a drought (or ever?); the Queen's striking Diamond Jubilee celebrations, the discovery of Shakespeare's original theatre 'The Curtain'; the Olympic Games with more British gold, silver and bronze medals than ever and the greatest Paralympics yet. It has also been a bumper year for the Union Flag manufacturing industry and makers of cup cakes topped with little icing flags. 2012 is also noteworthy for being Napo's 100th birthday year. There is something neat and satisfying about 100 years; a whole, well-rounded number that seems complete and perhaps deserves a telegram from the Queen. So, ponder on the significance of 2012 as you eat a cup cake iced with either the Union Flag or the Napo centenary logo and read on.

Our big sister, the Probation Journal began in 1929 and is now 83 years old. The separation of family court work from the probation service 11 years ago was hurried and in hindsight, not generally regarded as a good example of reorganisation. There was a perceived need for a new journal to inform, share and debate professional issues amongst the new grouping of family work specialists. The first issue was in January 2003. Although it faltered a little following its birth, it is now well established and this is the 12th issue.

Time perhaps to take stock.

In this issue, to mark the Napo centenary there is a retrospective piece on family law work that a number of readers have contributed their personal views and recollections to and a reprint from the past about some underlying principles of policy and practice by Harriet Bretherton. For the first time there is a contribution from abroad - a teacher who gives a personal slant on her work with children in modern Brazil, tempering some of the myths about her country along the way. You will find a topical item on the important work of the Child Exploitation and Online Protection Centre and Alison Paddle's hard-hitting address at the Family Court Conference needed publishing, so that is also here. The Napo contribution to the successful campaign to change the law on stalking, is acknowledged in a piece by Laura Richards of Protection Against Stalking. An interesting and sometimes difficult area of law relating to same sex families is clearly covered in the item by Marisa Allman and Sarah Greenan. There is also a scholarly contribution from a family court adviser who explores who benefits in private law matters. The author wished to remain anonymous and this leads on to the need to restate the position of the editor and editorial board on a number of matters and to share a dilemma with readers.

A growing amount of feedback has been received from readers and it roughly falls into three groups:

- The largest group seems generally pleased with content and presentation. Some have said they find it professionally reinforcing and encouraging as they feared they were alone or under siege in

isolated pockets of 'good' practice.

- One or two who have reacted to certain pieces that do not in their view represent good practice so should not be published, or should be followed by critical editorial comment.
- One or two who express regret over what they feel is an anti-Cafcass bias, that puts them off what they otherwise view as good material.
- A somewhat larger number who have expressed anxiety over submitting their honest, professional contributions on practice matters for fear of being bullied or disciplined by their employer, or feel the need to avoid this risk by getting their draft contribution vetted by their employer before submission.

Firstly, our position is that FCJ should not have any kind of bias (political, TU or Cafcass), but should be about freely presenting and discussing professional matters relating to sound practice, research and law, albeit within certain standards i.e. reasonable quality, basic courtesy and the law on libel. Individual articles may not represent Napo policy nor do they necessarily reflect the views of members of the editorial board. The board makes decisions about whether contributions are of suitable quality for publication and gives feedback to authors before publication. It most certainly does not believe in censoring submissions or in others, such as employers, censoring them. There are differing perspectives over professional matters that are sometimes polarised. This might be related to the complementary approaches and preoccupations of different professional groups, or might represent different styles of intervention or differing objectives. These differences encourage healthy debate and creative thought. If a reader disagrees or takes exception to a particular argument, they can write to the editor or draft a contribution themselves presenting their own arguments and experiences that can be published later, so can an employer.

There is a relatively fine line to be drawn between political and professional. The current economic climate and issues related to insufficient resources can obviously be relevant to social work practice, so can the structures, procedures and management of services - especially at this time with the Munroe report, the Family Justice Review and an undecided future. At the end of the day, what is suitable for publication has to be a matter of editorial judgement, but we all want FCJ to be professional and independent.

To date, I do not believe the journal has shown bias. It is hard to discuss professional social work practice in the family courts without including some discussion about Cafcass policy and practice as it is the monopoly provider of the services we primarily address in this journal and the main employer of family court social work practitioners. We all know that many legal and social work practitioners, academics and even some politicians are critical of Cafcass for sound professional reasons.

On the matter of anonymity, one item submitted for this issue has been from someone who fears retribution from an employer and wished to be anonymous. It is outrageous for prospective authors wanting to present their considered professional views on family work, to feel prevented from doing so openly by the threat or implied threat of bullying or disciplinary action from their employer. We do not see anonymous pieces in other professional journals and it runs counter to openness, challenge and the notion of 'peer review'. For these reasons we prefer to credit articles with the names of their authors. We face a dilemma when we receive a submission that is clearly in the interests of readers to publish, but is sent on the condition that the author's identity is withheld. At present, we are prepared to respect that wish and publish, though not without misgivings.

We would be pleased to receive any views from FCJ readers on these issues.

Brian Kirby

A life in the day of... ...a Brazilian teacher

Daniella Gomes

To others in lands abroad, the name Brazil must suggest a myriad of images, ideas, concepts that are conjured up from history, from books, from the words aired by the press, perhaps even from personal contacts. Some are accurate, but such views can also be distorted. So, I wonder what they really know about this huge country where I have been born and raised and about the problems we have.

My country has a population of over 190,000,000. Over the recent years there has been a big social transformation and now 73% of the population live in big urban centres. There are lots of problems that come from the speed of development and growing in any country and here the infrastructure could not cope quickly with all these changes. We also have the problems of crime, drug abuse, violence, poverty, as there is in big cities everywhere. It is getting so difficult to drive in big cities because of the amount of traffic. I heard this real statistic some time ago, that now São Paulo actually has more cars than people. There are lots of subways and people ride their bikes but that cannot solve the problems of traffic jams.

There is also the bad phenomenon of ‘street children’ in our big cities. When I was a very young child, I can remember some children knocking on my door to ask for some bread. “Tem pão velho?” which means: “*Do you have some old bread?*” I remember it well. As I matured, the world around me changed a lot. I do not hear that sentence anymore. Since Brazil’s economy has grown most families now have a comfortable lifestyle and those problems are growing less.

But I live and work in a town of 90,000 people a long way from the big cities of

Brasilia and Rio de Janeiro. It is a young town that has celebrated 117 years, very ordinary with no big malls or modern commercial centres. People here work in different jobs and there are plenty of choices for a career. There is a lot of emphasis on academic achievement and some fight hard for their Masters degrees and PhDs while others strive to maximise their incomes, as elsewhere there is also greed. It can get very hot in summer - to over 50°C. Winter is cold but there is a long autumn full of wind and dust. August is called the month to fly kites. All the boys used to fly their kites in August, but now children do not play on the streets like they used to. When out of school, they spend their lives playing video games, talking on cell phones, or Internet, which is a shame.

I teach children of all ages, from the beginners to college age. Racially, in my town, most are white and a few mixed race with very few afro-descendants amongst them. I do not really experience race problems here; prejudice tends to be more linked to the social level of the children and income levels of their families.

It is hard for me to give an account of just one day as I have worked in many private schools providing specific language courses in English and Spanish. Public schools (state schools) are maintained by different parts of government, some are supported by the municipal government, some by the district, the government of the State or of the region and some by the federal government. The teachers must do 20 hours to 40 hours of work per week, depending on which subjects the classes are about. As language classes are for a few hours per week, whenever I finish a class, my contract ends. I have always

planned my classes and created lots of extra work and papers for the students to read, to learn and stay in touch with their new subject as much as possible. I like to motivate and to show the students the new world that is in front of them and to make them work all the time, reading, writing, talking and creating their own texts, their own works.

Despite the summer heat, we do not have a siesta like the Spanish. It is not known here in Brazil where people seem to be turned on all the time! There are two periods of study here: morning and afternoon, the families can pick either. Students do not spend their whole day at school, so they have their lunches or dinner at home. Children bring their food for the breaks from home or they buy from the snack bars outside school. The public schools offer food so the children can eat there. Classes take 50 minutes each and our daily breaks are of 20 or 30 minutes, or are sometimes split in two breaks of 15 minutes, it depends on each school.

I like to use the white board and marker, but have used the Internet and information programs in some classes. I dislike students bringing their own tablets and netbooks as they connect to the Internet and can then lose their attention to the class. It is almost impossible then to get their attention. I sometimes tell a joke so they stop what they are doing and start to pay attention. If I can get them to laugh they are in my 'world' again. There is a saying: 'You can catch more flies with honey than with vinegar'. Shouting is not my style.

I understand this journal is about family breakdown and helping children in that situation. So, you might like to know that Brazil supports the Universal Declaration of Human Rights, the UN Convention on the Rights of the Child and the Hague Convention. The typical Brazilian family is now smaller with more single parent families. Men can marry from 18 years and women from 16 years and if either of them are under 21 years, the consent of parents is needed.

Same sex marriage is not legal and same-sex cohabitation is not legally recognised. Before 1977 divorce was not possible and the divorce rate has doubled since 1980s. There is also domestic violence. In the past few women and girls made complaints about it as shame was attached to them if wanting divorce, but researchers say this attitude is changing and women are now more ashamed to stay with the man who abuses them. My experience as a teacher shows perhaps 20% to 30% of children may be from families with domestic violence. Brazilian law says parents share equal rights of custody. Legal guardianship goes to the mother of a child born outside a marriage unless the father files for custody. But some bias is possible, mothers can be given preference in custody cases involving small children and girls and a Brazilian parent may be favoured over a foreign parent. Divorce and custody fighting is not uncommon here, but compared to other places, family court cases are decided in a short time. Families can get some assistance from local social workers but of course children do suffer.

From my experience, most of the younger students are from whole families. Many teenagers have problems in their families including separated parents. About 30% are from divorced families. Students talk about their conflicts at home, but they manage in their own style. They try to spend a lot of their time outside home until they go to the university. Sadly, family problems are common, so there is no big deal about breaking relations or carrying any deep guilt or traumas. I have experienced many children who lived through conflict at home returning home some years later, as though nothing had happened, friends with their parents and siblings. I think Brazilian family ties are very strong and somehow hard to break. There is support for such children from social workers who sometimes visit the schools. When the children talk of their problems at home, I listen sympathetically, then try to turn what they have said into an activity or something that might help to increase their

understanding of the subject. Other teachers express their concern about children's problems too, but we find our own ways to support the children.

The days of my life became somehow different the moment I started working as a teacher. At first, it was easy to identify common behaviour in all the students, children or adults, as soon as they step into the classroom. There is always an initial barrier with silent and anxious looks, like they were stepping into a minefield. They were facing something new, a difficult subject, the English language.

But their will to learn that foreign idiom was as clear and strong as their fear about trying to scribble the first words or to speak up the simplest phrases. A thousand times I have heard little children, so young and fresh that they had hardly gotten the skills to write in their birth language, Portuguese, express their eagerness to speak the global language. They know that the needs of this world demands that they use the Internet to communicate, search, research and make friends in different parts of the Globe. It is hard to accept sometimes that today we have such great gaps between one culture and another, but it is real. The youngest children are used to showing more awareness of these gaps and of the outside world than the adults do, who seem anxious, raw and immature. In all these years that I have taught English in Brazil, this has been in evidence.

Over the years I have met the most different patterns of children in dealing with their family issues at school. They turn into teenagers in front of my eyes, focusing on their studies and struggling to get their place in the world. They do bring their family matters to the classroom and it is often discussed in an essay, homework, or in some supportive discussion. One case that has really stayed with me concerned eight year old twin sisters. They were so similar, at first it was hard to find a trait that could help in identifying which was which, though one was talkative most of the time, while her sister

was quieter. The first tended to speak for her sister and complete her unspoken thoughts and ideas. The girls were from a very troubled family with no father at home. Whenever they had the chance to call or see him, he would never return their calls or talk to them. And even with such dreadful circumstances, the girls would just accept the situation with no distress over their condition and what their parents should give them as a matter of love and care. They talked casually about it as though they were talking about someone else's life and soon it would seem fine with a play or a spelling game. It is for the teacher in such a situation to try to bring a story or a tale that while allowing them to develop some English skill, would also help them gain some important knowledge about healthy relationships and the unconditional love that inspires us to be our own guides when we face difficulties – not an easy task.

Teaching means all that to me. You must be a supportive and encouraging partner to children, not an intruder into their minds. Sometimes children say: *"shall I think first in Portuguese, then change it to English before saying anything?"* or: *"these native speakers of English are very strange, they say and write things that have no meaning or sense."* Then there is need to explain the values, the culture and the realities of other countries and that we, here in Brazil, are similar to other people, though we equally have our traditions and expressions that may also be hard for foreign people to understand. This realisation can help open a huge door for these children, but what they make of it is their choice and linked to individual merit.

So, that is my experience of teaching in Brazil. Experiencing the children turning their fears into confidence, finding themselves despite family problems and their gratitude afterwards is something that I will carry throughout my life.

Daniella Gomes is an experienced teacher and published novelist. She has produced stories and materials for school children.

Past and present views of family court practitioners: a centenary perspective

Background to family work

The Summary Jurisdiction (Married Women) Act of 1895 gave the impetus for magistrates courts to use police court missionaries to encourage reconciliation. They became involved in court procedures to sift applications for partial relief for provision of informal legal advice and assisting in accessing charitable funds for legal representation. Despite this, 'A Handbook of Probation' published in 1935, gave the view that *"the problems of domestic relations are relegated to a comparatively unimportant position in the work of the courts"*.

The Summary Procedure (Domestic Proceedings) Act 1937 established the task of matrimonial conciliation as part of a probation officer's statutory duties. Prior to that it had been limited to the 'Kindred Social Work of the Courts'.

The 1946 Committee on Procedure in Matrimonial Causes then introduced the idea of social work to the divorce court. The Committee saw the service serving two purposes: to promote reconciliation; and as a preventative child care measure. Probation officers were officially assigned as welfare officers to the London Divorce Court in 1947 to report on the 'marital and social situations of families as they related to the welfare of children'. The Royal Commission on Marriage and Divorce (1956) emphasised traditional child welfare policies based on investigation followed by supervision or taking children into care.

The two pieces of legislation that set the framework for probation officers to operate as welfare officers in matrimonial proceedings were the Matrimonial Proceedings (Children) Act 1958 and the Matrimonial Causes Act 1958. Divorce

courts could then require welfare officers to provide reports and supervise children.

The Divorce Reform Act 1971 made it easier for couples to separate. It created the 'quickie divorce' and introduced the principle of 'irretrievable breakdown' as grounds for separation. It was hoped it would encourage future harmonious relations between parties and their children, but actually had little impact on the adversarial nature, conflict and bitterness of divorce. The Act led to the divorce rate rising dramatically in England and Wales between 1971-1987 and increased probation workloads.

The 1974 Finer Committee Report recognised the plight of divorcing families and was dissatisfied with the existing legal framework. The Committee supported conciliation (mediation) and drew a distinction between 'reconciliation', a reuniting of the parties, and 'conciliation', assisting the parties in reducing conflict over parenting arrangements for their children. Finer led to a great deal of interest in conciliation and mediation amongst social workers, lawyers, probation officers and families suffering marital breakdown.

The Children Act 1989 provided a coherent legislative framework for private and public law relating to children. The Act promoted 'parental responsibility' and the view that children are generally best looked after in the family by both parents without resort to legal proceedings. The Act required courts to treat the welfare of the child as the paramount consideration and was a call to parents to rise above their emotions over the breakdown of their relationship to put their children's interests first. Under the Act court welfare officers needed to work to these principles as well as those of minimum intervention and

minimum delay. These basics led to formulation of the 1995 Home Office 'National Standards for Probation Service Family Court Work'.

'I think that the Act is the most constructive piece of legislation to come out of 17 years of Tory government' (Nicholas Crichton, Stipendiary Magistrate, London, 1998).

The early times

Joyce Belcher, retired Probation Officer:
"In those days (1950s/60s) women officers supervised girls, females and little boys only. After boys became 12 they had to go to the male officers. We did matrimonial work. We did throughcare work. We dealt with neighbours' quarrels. We had to mediate between neighbours who had quarrels... We weren't actually responsible for placing children for adoption but we did the Guardian ad Litem work and also divorce court welfare." (2007, *Changing Lives: an oral history of probation*, Napo)

Vernon Young, retired Senior Probation Officer:
"I think we achieved a lot as a court welfare service. You had an opportunity to put parents together to consult about the best interests of children. The court ordered it, so you had an automatic in to a situation where there was no cooperation. I think it was a really positive achievement." (2007, *Changing Lives: an oral history of probation*, Napo)

Court welfare work in the 1980s

Peter Barker, Family Court Adviser, Norfolk 2006-2011:

"1981 was an exciting year as I was promoted to Senior Probation Officer in Tunbridge Wells, got married and began life with my readymade family of two step-children and a dog. I felt uncomfortable with a wide range of responsibilities including a field team, community service and a specialist Court Welfare Officer. But I was blessed with an avuncular officer near retirement who was excellent at supporting children and families and savoured implementing supervision orders.

After about 18 months I used the opportunity of a colleague's retirement to focus on change and improvement; the vogue at the time was joint interviewing. There was little focus on domestic violence and we had little knowledge of its effects. Safeguarding barely existed and we were content with short reports and agreements between parents.

I look back with dismay at our ignorance and lack of serious engagement with children, which resulted from our emphasis on parental agreement. But on a more positive side we introduced a range of initiatives: setting up a centre for access on Saturdays; and running Divorce Experience Courses. Co-operation with a local charity, Parenthood, enabled us to deliver this programme, which used an educational/information model to help parents look at the consequences of divorce. I suppose this anticipated the current PIP courses, though we were thirty years in advance. By the standards of the time our joint interview based assessments were efficient, timely and Courts appreciated the quality of our work.

It was not until 2006 that I took the plunge and joined CAF/CASS. I was impressed by the care taken to engage with children and the huge advances in understanding domestic violence. Contact centres were available everywhere and arrangements were possible for direct supervision of contact. I was pleased with the scope for in-Court dispute resolution and the Norfolk scheme for Extended Dispute Resolution (EDR) which replaced a significant number of reports and brought families into a much better state of communication."

Former Divorce Court Welfare Officer:

"When I think realistically of my early experiences of Divorce Court Welfare work in the 1980s there's no doubt that it was of higher quality than most of what is done now. Nonetheless, we thought our work was amateurish and needed honing and developing into something professional. I joined a specialist court welfare team in probation on set up in 1983, before any

national standards. A few interested probation officers, a judge, social work lecturer and child psychiatrist got together and put together the service that might most effectively meet the needs of children and families. Private and public law were viewed as equal aspects of the same work with no mutual competition for resources. The team agreed that private law reports would usually be filed in six weeks (and they were, though were brief if more work was needed on a case). A conciliation (mediation) service was provided that took referrals from courts and was also advertised to the public. Up to three sessions were offered, the first for parents only, though might later involve meeting or including children. We also ran Divorce Experience courses for service users and the public in conjunction with another probation service.

The specialist team recruited and trained volunteers who were well qualified in allied professions, a family doctor, child psychiatrist, paediatrician, court manager, family lawyer, two members of the national step-parent association. We mediated in male/female pairs and held our own monthly training events, usually for a half-day and the judiciary were invited to join us to network over a sandwich lunch and glass of wine. We identified our training needs which were provided either by a team member with the necessary expertise, or externally. We developed our own computer programme that helped increase expertise and in gathering statistics. The work of the team was filmed for a TV documentary.

The team was cohesive, mutually supportive, well respected and felt good to work in. As probation officers we had worked with substance abuse and domestic violence so were well aware of the risk to children and parents, though some pieces of key research were not available then, especially on the emotional damage conflict does to children and we did not have the benefit of advance police and local authority checks (the best contribution Cafcass made to private law). But we did work with emotional abuse.”

Making a difference

Judith Timms OBE, founder of NYAS and former member of Cafcass Board:

“The ‘value added’ of the Guardian’s input lies not in merely being another report to set alongside the local authority’s but in the independence and clear sightedness of its recommendation, untrammelled by any other consideration beyond the welfare of this particular child at a crisis in their life.” (2009, ‘Twenty-five years of Guardians - where next?’ in *Seen and Heard* Vol 19 Issue 2)

Julie North, Family Court Adviser, Lincoln:

“Some 10 years ago I prepared a report in a residence application. It involved a young boy aged around 3 who I will call Sam. He was living with his teenage mother Hannah in rented accommodation in a deprived area of town. There were allegations that she used drugs and was unable to meet her son’s needs. Children’s Services had been involved on a number of occasions. The applicants were the child’s paternal grandparents. They were middle class people who had raised their own children and had a lovely relationship with Sam. He visited their home in the country frequently where he had his own room and lots of toys. The grandparents got on well with his mother too but firmly believed they could provide a better childhood and level of care than she could. In all the circumstances I did not support a change of residence. The Court maintained the status quo with generous contact to grandparents.

Just last week I saw Hannah again. In spite of the years she remembered me. She was with her husband, their severely disabled child Ben and 13 year old Sam who looked very grown up and smart in his school uniform. She talked to me about her life and the challenges that Ben had brought her. She seemed calm and confident, very different to the struggling teenage mum I met before.

This experience made me reflect on our work. We enter families’ lives for a relatively short period but we can make such a

difference. Only rarely in my experience do we discover how our intervention impacts upon the family in the long term. Hannah appears to have developed a really happy and stable family life for herself and Sam and to be meeting unexpected challenges in raising Ben. I expect Sam still enjoys visiting his grandparents too.”

Owen Pennell, retired Divorce Court Welfare Officer/FCA 1983-2009:

“Having transferred to divorce court welfare in 1983 the expectation then in the Service was that one returned to the Probation role after 3/5 years. My experience was, like many of my contemporaries then, that Private Law family work although demanding was so absorbing that I did not wish to return to the Probation task. However, after a short interlude back in a field team of Probation I did resume working in Private Family Law from 1991 until retirement in 2009.

As Cafcass came into being in April 2001 (no comment on the fact it was All Fools Day!), I believed it was right that family court proceedings separated from the Probation Service. For example, those of us in long term practice knew only too well that it was ludicrous, if not potentially dangerous for certain offenders and families/children to come together in offices at the same time. Sadly, for me, and for many others, Cafcass has been a massive disappointment. It developed into a bureaucratic shambles with a top management that seemed determined to snuff out individual/team/co-working professional creativity with the scope for original thinking, in the fairly straightforward responsibility of reporting to the Courts. However, I am an optimist, so have to believe Cafcass will ultimately change for the better. I would wish to pay a warm tribute to Jonathan Tross, a creative and responsive civil servant who did a superb job as interim director of Cafcass.

Working with families in the throes of crisis and carrying out the functions in Private Law over a long period has been an enormous

privilege. I occasionally think of children in specific cases that I met and hopefully made a positive and significant difference to their lives at times of considerable distress and disruption. I think of a seven year old boy sitting sadly in his bunk bed who really needed an arm around his shoulder, for which I had no compunction in doing, who tearfully told me that he felt so bereft and helpless at his situation. I think of a time when as a Reporting Officer in adoption proceedings, a young single mother told me that although she was giving her child up she had made a Will leaving her small collection of LP’s, her only asset, to the daughter she was never likely to see again. One has memories of many others and of the respect from Judges/Magistrates for our interventions.

I thoroughly enjoyed my job as a family court adviser and am grateful to have had as much freedom with appropriate supervision to get on with it as I did. Equally I am hugely grateful to my supportive colleagues, particularly in using the co-working model and short-term intervention that I was introduced to in the 1980’s. It proved effective in helping us get the best possible outcomes for children and ensuring we did not work in isolation.

Has it all been worthwhile? Absolutely. Would I like to work for Cafcass again? Not as it currently exists. If I were asked by a potential FCA with relevant qualifications about to embark on a career, I would strongly suggest if possible become a self-employed private practitioner.”

On Cafcass and the Family Justice Service

Jim Lawson, Chair, Association of Family Court Welfare Officers and Chief Executive of the National Council of Family Proceedings, 2001:

“I believe that Cafcass needs to be a managed service at the same time as cherishing the continued independence of practitioners and recognising their need to maintain as much professional autonomy as possible to do a good job. Management

needs to operate with a light touch... If I have a fear in this area it is that CAFCASS will become excessively bureaucratic. Should this happen, I suspect that the benefits achieved (from the establishment of a national organisation) will be minimal beyond perhaps a notional sense of covering itself as an organisation.”
(‘Hopes and Fears - a family court welfare perspective on the establishment of CAFCASS’ in *Representing Children*, Vol 13 No 4 2001, p258. NYAS.

Jonathan Tross, Chief Executive, Cafcass:
“Overall, the key themes were... to: get the core service working effectively and to do so before moving on to broader ambitions; think through what was meant by convergence of public and private law practice; tackle a range of issues to do with recruitment and development of staff; get in place better information and performance targets and the professional knowledge to underpin our practice; improve our communications; and think through what was meant by the ‘S’ for ‘Support’ in our title... We also need to remember the broader context. In some parts of the UK, CAFCASS inherited fewer practitioners than we believe we need. So some of the problems have roots in the past.

Another aspect of CAFCASS’ creation is that people’s expectations went up. CAFCASS was not set up just to continue as before with a range of practices, approaches and performance across the UK. We are being measured, understandably so, against higher expectations. I believe people underestimated the effort and time it takes to set up a national organisation like CAFCASS bringing together, as it did, people from three different services and 117 employing authorities.”
(‘CAFCASS – moving forward’, *Family Law*, Nov 2002)

Brian Kirby, former Private Law Development Manager, Cafcass National Office:
“I joined Cafcass as a middle manager with loads of enthusiasm and a desire to

contribute to the organisation’s development. I joined national office to work directly to the Chief Executive, Jonathan Tross, on the national development of private law work. It was pioneering work but, after he left the organisation my input was no longer valued. As Cafcass began to lose its way I continued to contribute my professional views as before, but they were no longer welcomed and were viewed as subversive. Colleagues kindly referred to me as the last manager to have worked at national office who understood private law. After being subjected to significant management hostility, I left in 2008.”

A Children’s Guardian:
“Many practitioners believe Cafcass “hijacked” relevant legislation during the time of New Labour to serve its own managerial needs and develop itself as a safeguarding agency, managed in the main by ex-local authority personnel, relegating its role as a service to the Courts along the way. To suggest Cafcass ‘lost its way’ is tantamount to heresy, but tension was created in many Courts because of the lack of perceived commitment to proactive provision of advice and support... Munro’s analysis of the increasing proportion of time spent recording, rather than in direct work with children, echo the findings of a decade of serious case reviews and failure to minimise harm and maximise welfare.”

Elizabeth Ewart-James, Family Court Adviser/Children’s Guardian, Gloucester:
“I was frankly horrified by the amount of money spent on welcome packs, leaflets for children and parents, a huge number of which are now gathering dust in our office. The whole idea of children emailing each other and FCAs, created more problems than it solved. Most children do not need to look far to find another child going through parental separation. With proportionate working I welcomed some of the savings, but we now have an office with weeds growing in the window boxes, which used to be colourful and cheerful and rubbish in the car

park. A tiny fraction of what used to be liberally spent before would solve this problem, create a much better image for visitors to the office and boost staff morale.”

A Children’s Guardian leaving Cafcass:

“How sad it is, this could have been such a great organisation. It started with such high hopes - to be the best service provider for children and employees - and just look at what a coercive and punitive organisation we now have...”

Liz Fulop (2009):

“Current organisational hierarchies are ‘obsessed’ with ‘continual newness’ ignoring their histories and repeating past mistakes. There is a surprising re-emergence of old-style industrial relations and ‘macho-management termed ‘New Management Aggression.’”

Liz Hurwitz, Children’s Guardian:

"It really would not have taken a lot to turn me into a loyal employee - I loved Probation, never wanted to leave it, felt valued etc - and would have, like a child with good attachment, transferred that loyalty to Cafcass automatically. Actually, I did do so, it has just been whittled away over the years by the way I have been treated."

Kay Demery, Family Court Adviser, PRFD London:

"The courts and Cafcass are the warring parents and the FCAs are the emotionally abused children caught in the middle, who are without proper guidance and support as we try to carry on with our daily (working) lives. Told one thing by the court and something different by CAF/CASS, but blamed by both whatever we do."

Simon Crowder, Children’s Guardian, Luton:

“I expect some retired colleagues of mine, managers as well as practitioners will not have positive memories of Cafcass - 2005-2011. However, with the IT, ‘safeguarding’ and operational policies that have had to be introduced... the organisation is more professional and our practice is relatively

safe for the children we serve. It is very different from when I joined Cafcass in March 2005 with virtually no operational policy at all. Of course, like all other public sector organisations, Cafcass is having to do more with less money. We Guardians are being instructed to work ‘proportionately’ and I have a caseload of 25 plus active public law cases. That makes the job demanding and I have to prioritise every minute of my working day. The introduction of laptop computers and encouragement to work from home has benefited my family as I have children of school age who like having me about the house. The work is still there and increasing year on year but I’m relatively positive about the future.”

Managing the Confusion: the views of CAF/CASS Service Managers, Sept 2007, Napo briefing paper:

“Everyone commented on the impact of constantly changing working arrangements and structures on the ability of the organisation to perform... damaging to staff capacity to work at their optimum level and fundamentally destabilising for the organisation... Several commented on the absence of evidence for change, the incompetent nature of that change and their frustration that CAF/CASS felt this was acceptable... Every manager present described a culture of oppression, even bullying, coming at them from the centre... (they) were being given the strong message that criticism, however constructive, was not acceptable... that the organisation was becoming highly controlling and unable to deal with legitimate criticism... (concern too) about the negative impact on CAF/CASS’ reputation with the judiciary, local authorities and other key organisations.”

Peter Barker, Family Court Adviser, Norfolk 2006-2012:

“Sadly my retirement from CAF/CASS in 2011 was at least partly triggered by the reliance on bureaucratic methods to assess risk, the fading away of dispute resolution

and the transfer of resources to mistaken goals. I have also been shocked to find that the overwhelming priority to safeguard children has not been reflected in efforts by CAFCASS to save a vital Contact Centre serving a population of 150,000. As a direct result many children have 'lost' their parents. I am currently volunteering to try and put this right."

The future

Peter Senge (1993):

"It's not just possible anymore to 'figure it out' from the top and have everyone else following the orders of the 'grand strategist.' The organisations that will truly excel in the future will be those that discover how to tap people's commitment and capacity to learn at all levels of organisations."

Following the Munroe Report and the Family Justice Review, Mr Justice Ryder's resulting report on the modernisation of Family Justice was published on 30 July 2012. The modernisation programme will be divided into two phases. By the end of 2013, the first will put in place structures, leadership and management principles and publish evidence-based practice and supporting materials. The second phase, 2013-14, will include judicial training and prepare for implementation of the Children and Families Bill. This legislation is expected to introduce the Government's stated desire to limit most care cases to 26 weeks.

There is to be a single family court where all levels of judge and magistrate will sit and frameworks will be put into place for leadership and good practice.

Most private law parties will fall outside the scope of public funding in April 2013. The judiciary will take steps to ensure that those who are entitled to family justice are provided with access to it, whether represented or not. A private law pathway will be published to describe what a court can and cannot do and how it does it, to assist court users. In conventional cases there may be restrictions on the rights of a party to

cross-examine the other, relying instead on parties having their say with the judge adopting a more inquisitorial role. The judiciary are not responsible for pre-proceedings processes being put into place.



The Family Justice Service - suggestions please?

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How do we know what we are doing? Evidence-based policy and practice

Harriet Bretherton

In a search for earlier Probation Journal/Family Court Journal articles worth reprinting for interesting or relevant content to mark the Napo centenary, a number of excellent pieces were found that were intriguing for their historical quirkiness or their continuing relevance. Due to lack of space in this issue not all could be reproduced. This piece was chosen from the January 2003 inaugural issue of Family Court Journal and reminds us of some basic principles of what we should be about in a time of uncertainty. As relevant now as then, it outlines the importance of research evidence both for practitioners and in putting together a new family court service. To update the piece references to 'Cafcass' have, where relevant, been replaced with 'Family Justice Service (FJS).'

What turns you on?

The world can probably be divided into the small minority who are turned on by the acronym EBPP (evidence based policy and practice) and the vast majority who switch off immediately. Or perhaps there are many people, like myself, who struggle through the ungainly words to the challenging concepts behind them.

Evidence-based policy and practice

So what is EBPP? In a nutshell, the idea is that if you intervene into someone's or in the life of a community, the individual or community needs to know that the intervention is going to be effective. If the intervention is paid for by taxpayers, they, or their political representatives, need to have confidence that their money is being well spent.

EBPP originated in the medical world with the development of a scientific basis for diagnosis and treatment. Take blood-letting - it is certain

that many people would not have died prematurely if doctors up to the nineteenth century had not routinely taken blood from their patients. They did this in ignorance of the physiology of the human body and in the absence of RCTs (randomised control trials), which would have quickly demonstrated the dangers of the practice. However, over the centuries leeches continued to be applied to patients because of strongly held (but unchecked) beliefs and the authority of a group of professionals.

On the other hand, the introduction of tamoxifen as an element in the treatment of breast cancer illustrates the power of evidence. RCTs held over many years and in several countries showed both that tamoxifen reduced the likelihood of cancer recurring and the situations in which it was most effective. Many lives have been saved as a result.

EBPP and the Family Justice Service (FJS)

So what is the relevance of EPBB to FJS as an organisation and to you as a practitioner? Are we still in the blood-letting era or have we moved to a position where we can be confident that our interventions, at an organisational and individual level, are effective?

Do we agree on outcomes?

The answer is complex. EBPP depends on a general agreement between users and professionals about the desired outcome. In the case of medicine, outcomes can be reasonably clearly agreed and identified, for example, in terms of an increase in life expectancy or a reduction in morbidity. In the social work and judicial fields, outcomes are much harder to pin down. However, the Children Act 1989 makes it clear that, when making a decision about the upbringing of a child, "*the child's*

welfare shall be the court's paramount consideration". Any intervention or decision made under the Children Act 1989 should therefore be judged in terms of its contribution to the child's welfare.

The Criminal Justice and Court Services Act 2000 (CJCSA 2000) and the Key Objectives set out in the (Cafcass) Corporate Plan 2000/3 defined more precisely how its work (*was*) to be assessed. To give just two examples: one of the primary duties of Cafcass as set out in the CJCSA 2000 is to "*safeguard and promote the welfare of the children*" and the first Key Objective in the Corporate Plan is to "*represent, safeguard and promote the welfare of children involved in Family Court Proceedings*".

Even if the overall outcomes are agreed, and who would disagree that the proposition that interventions should promote the welfare of children in family proceedings, there is a problem about measurement. Parents in the same family will hold different beliefs about what constitutes 'welfare' for their child and professionals outside the family may take yet another view. So more precise measurements need to be agreed as indicators of 'welfare'. An example might be the use of a standardised test, such as the Goodman Strengths and Difficulties Questionnaire (SDQ), which gives an objective measurement of the extent of a child's emotional and behavioural problems. Or the reduction in the level of conflict a child experienced could be measured, on the grounds that research has shown that outcomes for children of separated parents are better where child-focussed conflict is minimal (Rodgers and Pryor, 1998).

Intervention and outcome

But even where outcome measures are agreed, there still remains the problem of making the link between an intervention and an outcome and of measuring outcomes over time. How, for example would we know that a particular intervention had had a particular effect? One way is to use the randomised controlled trial, where the only difference between the two

groups is the fact that a particular intervention has or has not been used. For example cases could in principle be randomly assigned to be co-worked or individually worked. The outcomes of the cases could then be assessed in terms of a variety of measures, such as the rate of parental agreement before trial, the reduction in parental conflict, the child's SDQ score a year after the end of the proceedings and parent and child satisfaction with the process.

RCTs are however, far from being the only legitimate sources of evidence for the development of practice and they would rarely be used as the basis for the formulation of policy. Research studies can be reviewed and key findings distilled for use in individual cases and in the development of policy. Research studies such as Hester and Radford (1996) and Morley and Mullender (1994), changed the way practitioners assessed cases in which domestic violence was a feature and prompted the introduction of policy and practice guidance on assessing the implications of domestic violence where there had been none before. Rodgers and Pryor (1998) provided concrete evidence about the effects of conflict on children following parental separation.

The children and parents who use the FJS should provide another source of evidence. It is important to seek their views on their own experience of the preparation of a report in family proceedings and more generally on the objectives and process of FJS interventions.

The age of enlightenment?

Evidence from research findings is already used by family court advisers in their assessments of individual cases, but the extent to which this happens depends very much on personal interests and enthusiasms. There is a long way to go in developing and making easily available an accepted body of knowledge related to assessments in family proceedings. We have not even begun to evaluate our practice in terms of its outcomes and we have no means of finding out what

parents and children think about the service they receive. The systematic gathering and application of evidence to policy and practice (in this work) has, in my estimation, hardly begun.

Evolution and revolution?

The development of an evidence-based culture promises to be both evolutionary and revolutionary. The change in culture will be noticed when staff at all levels ask such questions as, “*How do I know this to be true?*” and, “*What is the basis for making such a statement?*” and just as important, when some of these questions can be answered, it is possible that some assumptions that underlie current practice may be seriously challenged. It is equally possible that many assumptions will be shown to be correct and that current interventions will be demonstrated as effective. But what is certain is that practice and policy will be based on surer and more transparent foundations than they are at present.

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Harriet Bretherton worked as Research Manager for Cafcass for four years and had a 30-year professional career spanning probation, court welfare and Cafcass. Her work helped Cafcass contribute to achieving better outcomes for children. Included in her achievements were: the Library and Information Service established in September 2006 in partnership with Barnardo’s; and the Cafcass annual research conferences that attracted eminent academics and researchers from Britain and abroad, and highlighted exciting pieces of research.

CEOP – tackling child sexual exploitation online and offline

Maurine Lewin

The Child Exploitation and Online Protection (CEOP) Centre was opened in April 2006 and is the UK's national law enforcement agency committed to tackling the sexual abuse of children online and offline - with the principal aim of identifying, locating and safeguarding children and young people from harm.

CEOP has built partnerships with children's charities, industry partners, education establishments, government departments and law enforcement agencies at home and abroad to bring a holistic approach to tackling child sex abuse. CEOP also represents the UK in the Virtual Global Taskforce – an international alliance of law enforcement agencies set up to provide a global response to child sexual exploitation. Since 2006, CEOP's work has led to the safeguarding of 1,465 children and the arrest of 1,836 suspected child sexual offenders (CEOP Annual Reviews 2006-12).

CEOP's team of specialist Child Protection Advisers, seconded by the NSPCC, work alongside the Centre's police investigators and support UK and international investigations to ensure the needs of children come first and are always understood.

CEOP receives reports relating to online and offline child sexual abuse. Reports to the Centre come from UK and international law enforcement, industry sources, child protection organisations and charities, as well as the public. Parents and children can report via the ClickCEOP button which is now embedded into hundreds of websites, including many of the virtual environments and social networks most popular with young people.

Reports relate to self-generated indecent images of young people, sharing of child abuse images or grooming and suspicious contact by

an adult towards a child. These reports reached unprecedented levels in 2011-12, with a total of 16,550 reports received, an average of 1,300 a month. Compared to the volume of reports received two years ago this represented a 263% increase (CEOP Annual Review 2011-12).

The online world is becoming an increasingly integral part of children's lives, in the way they learn, develop, explore their imagination and socialise. Social networking environments that offer a complete range of online services, mixing personal profiles with live chat, postings and video streaming have become the environment of choice for young people. They offer excitement and often, boundless opportunity for self-expression, communicating with friends, developing interests and creativity. But with these opportunities come risks that children, parents and those entrusted to protect young people need to be aware of.

In the same way that children should be cautious of unwanted approaches from strangers in the real world they should also be careful if approached in the online world. The anonymity of the Internet can encourage children and young people to take risks or act in a way they would not in the real world. This can make them vulnerable to people who wish them harm so they need to think carefully about what they are doing online because their actions may have severe and sometimes lifelong consequences.

Children can access the Internet from an increasingly diverse range of devices including not only computers and laptops, but games consoles, and mobile phones. The newer phones are able to access the Internet on the move, allowing children to update their status on social networking sites, instant message

friends, take and share photos online in an instant, making their potential exposure to risk even greater.

Child sex offenders are manipulative, coercive and devious and will use any tactic or means to target children. This includes pretending to be someone they are not in online areas that are popular with children. Offenders will also use social networking sites to target high numbers of children to increase their chances of success.

Often, adults who want to engage children in sexual acts, or talk to them for sexual gratification will seek out young people who desire friendship. They will often use a number of grooming techniques including building trust with the child through lying, creating different personas and then attempting to engage the child in more intimate forms of communication – including compromising a child with the use of images and webcams. Child sex abusers will often use blackmail and guilt as methods of securing a meeting with the child.

In the past year, CEOP received reports indicating that children were being incited to perform sexual activity via webcam by means of targeted criminal coercion (Threat Assessment of Child Sexual Exploitation and Abuse 2012). One recent CEOP investigation saw offenders use an instant messaging (IM) service to target children online. They would take control of the child's account and incite them to engage in sexual acts on webcam, recorded by the offender. Threats would be made if the child did not comply with increasingly serious sexual activity, resulting in the victims continuing to be exploited and abused in the hope they would get their accounts back.

The internet is borderless and this is a truly international crime, with offenders able to target children in other countries and jurisdictions. This creates challenges not only in terms of investigation and prosecution but also the safeguarding and protection of those

children targeted. With the forecasted growth of the Internet across the world, particularly in developing countries, it is increasingly likely that UK children will be targeted by offenders based overseas.

Preventing abuse from happening in the first place has always been the cornerstone of CEOP's activity. The Centre does this through empowering children to protect themselves, increasing the awareness of parents/carers, deterring offenders and making online and offline environments hostile places for child sex offenders to operate. The Centre's Thinkuknow (www.thinkuknow.co.uk) programme empowers young people to stay safe online using a range of contemporary resources. Last year alone, its network of volunteers, ambassadors and trainers delivered important safety messages to more than 2.5 million children.

Possession of indecent images of children is alarmingly commonplace and causes multiple forms of harm, including the sexual abuse involved in creating the image, the further violation with every new viewing as it is circulated online, the impact on the viewer and the contribution it makes to further offending.

The significant risk posed by those who possess indecent images of children cannot be underestimated and social work practitioners, the courts and the police need to understand these risks so they can make informed decisions.

Research undertaken by the Centre for CEOP's 'A Picture of Abuse' report, published in June (A thematic assessment of the risk of contact child sexual abuse posed by those who possess indecent images of children), found a clear link between 'image only' offenders and those who commit contact sexual offences against children. This report drew together both current academic thinking and operational police experience in the form of case studies and practitioner debriefs. One meta-study which looked at prevalence rates between the two crime types established a correlation of

55%. CEOP's research also highlighted the increasing volumes of child abuse material on the internet and analysis shows that the images found in collections appear to be becoming more extreme, sadistic and violent with victims in abuse images becoming younger and younger. *A Picture of Abuse* made recommendations about the way police officers prioritise cases involving the possession of indecent images of children so police forces can manage the increased volume of images in circulation and protect more children.

At the forefront of all indecent image possession investigations should be the notion that any case may result in the identification of a victim of contact sexual abuse. The size of an image collection and the severity of the abuse in the images should not be taken as the sole indicator of risk. Opportunity and access to children should be taken into consideration by investigating officers and others managing the risks these offenders pose. This access may be through their family circumstances, their profession, or activities and memberships or roles in the community. The report also calls for more resources to be allocated to dedicated victim identification teams and high-tech crime units, in order to support the highly motivated and dedicated officers working in this challenging area.

The impact on child victims of sexual abuse recorded in indecent imagery is devastating. One child victim quoted in *A Picture of Abuse* said: "I won't walk on the street on my own because I'm scared other paedophiles will follow me," while another stated: "I'm scared because there are photos of me on the internet and other paedophiles know what I look like. I don't know if they know where I live".

CEOP joined forces with over 40 police forces and officers from the Serious Organised Crime Agency (SOCA) in Operation Tharsley, coordinating two days of action on Tuesday 12 and Wednesday 13 June, in a bid to crack down on those individuals thought to be in possession of child abuse images.

This nation-wide police operation targeting known and suspected child sexual offenders

resulted in more than 167 search warrants being executed, 102 suspected offenders being arrested and 96 children safeguarded and protected from abuse. The suspects were identified as a result of intelligence received directly from CEOP as well as from investigations conducted locally.

Child sexual exploitation through 'on-street grooming' has been subject to extensive media attention following a number of prosecutions of adult males for the grooming and sexual exploitation of children and young people in various UK towns and cities. One example of this was the recent jailing of a gang of nine men who groomed and abused young vulnerable girls in the Rochdale and Oldham areas. Shabir Ahmed, 59, the leader of the gang, was one of nine men convicted at Liverpool Crown Court in May of sex offences including rapes, sexual assault and trafficking for the purposes of sexual exploitation. Not named at the time because he faced further charges relating to raping and sexually abusing a child, Shabir is now serving a sentence of 22 years.

CEOP's thematic assessment *Out of Mind, Out of Sight*, published in 2011 (*Out of Mind, Out of Sight: Breaking down the barriers to understanding child sexual exploitation*), was the first attempt by a UK police-led agency to assess the extent of and response to this form of sexual exploitation. Drawing on the experiences of police forces, NGOs, academia and victims, it found that while some areas of the UK had victim focussed services with agencies effectively working together to identify victims of child sexual exploitation, this was not the case in all areas. Tim Loughton, the Children's Minister, launched the Government's Action Plan for tackling child sexual exploitation in communities on 23 November 2011, bringing together actions by the Government and a range of national and local partners to protect children from this largely hidden form of child abuse.

Understanding the full nature and scale of this devastating form of child abuse is one of five

priority areas for the Centre in the coming year. This brutal form of child abuse often involves rape. It is premeditated, planned and carried out systematically with a complete lack of respect or empathy for the victims, who are often singled out for their vulnerability, and its damage can last a lifetime. Victims often go missing from home or are living in care but they can come from all backgrounds and all parts of the country.

This is a complex crime posing many challenges for police and other agencies trying to tackle it, not least in gaining the trust of victims to build successful cases against offenders. Many victims fear the police and court processes and are intimidated and threatened by offenders so a long-term and coordinated approach to supporting these young people is needed. The grooming process itself can mean victims do not see themselves as victims of sexual abuse and are unwilling to disclose information to police or other authorities. Offenders often act together, establishing a relationship with a child or children before sexually exploiting them. Some victims may believe that an offender is in fact an older 'boyfriend'. They may initially be groomed with gifts such as a mobile phone, food, drugs, cigarettes - having initially met an offender away from their home, usually in a public space. These victims introduce their peers to an offender group, providing the group with further potential victims.

Areas cannot conclude they do not have an issue with child sexual exploitation simply because this has not been researched locally and all agencies, as well as the wider community, must be alert to the issue to identify children at risk. *Out of Mind, Out of Sight* found that while each local authority has a Local Safeguarding Children Board (LSCB) responsible for coordinating the protection of children from sexual exploitation through agencies working together, under clear statutory guidance, a comparatively small number were effective in this. Membership of LSCBs includes the police, the Local Probation Trusts, Youth Offending Teams, NHS Trusts,

and the Connexions Service with representation from schools and involvement from voluntary and community sector organisations. *Out of Mind, Out of Sight* made recommendations to help LSCBs, the police and other agencies identify and tackle child sexual exploitation, improve data collection and sharing and develop a victim focussed approach to support victims.

Supporting vulnerable victims during court proceedings is vital to successful prosecution of these cases. Victims often find the court process traumatic and difficult. CEOP recommended a review of all prosecutions in child sexual exploitation to identify barriers to taking cases forward, and outline best practice in relation to the support available for victims. After rescuing a record number of 427 children in the past year (CEOP Annual Review 2011-12), CEOP has made it a top priority to target sex offenders who use anti-police tactics in an attempt to hide their activities online and avoid detection. A key area of attention in the next year will be offenders who share indecent images of children (IIOC) and try to hide their digital footprints in online environments where other criminals operate (For more details see Threat Assessment of Child Sexual Exploitation and Abuse 2012). There is a perception from some that there are areas of the internet in which individuals can be anonymous. CEOP is clear that this is not the case and that there is nowhere to hide online. The Centre's reach is greater than ever before through its network of partners and it is using increasingly sophisticated methods to catch offenders. The full range of policing resources available at CEOP are being targeted at this group of offenders who mistakenly think their activities are not detectable.

Users who engage in websites that they believe are 'hidden' are often creating or sharing new or 'first generation' indecent images of children. Many images and videos are seen for the first time on such sites, suggesting many of the users are involved in the production of the material and contact sexual abuse. CEOP data shows a 30% increase in the number of offenders producing IIOC in 2011.

Children who go missing or who regularly run away from home face multiple risks, including sexual exploitation and abuse. CEOP assumed the national strategic lead for missing, abducted and kidnapped children on 1 July 2011. Reports about missing children should continue to be reported to the local police service in whose area the child went missing. CEOP's work on missing children focuses on raising awareness, developing strategic knowledge, tactical support and coordination for high-risk incidents that have an international dimension. CEOP has launched resources, including an awareness raising film for use by frontline practitioners, which are specifically aimed at helping children at risk of running away and the families of missing children. The Centre also runs the Missing Kids website (www.missingkids.co.uk) which provides the latest information on missing children, information for children who are missing or thinking of running away, as well as support for families and carers.

Last year CEOP launched *My Choice*, a short awareness raising animated film, which has the key message that however bad things may seem, children do have a choice about running away from home or care and there is support out there whatever their circumstances. It was developed in collaboration with representatives from local authorities, the police, schools, the voluntary sector as well as independent experts. It is part of a new CEOP web area (www.ceop.police.uk/missing), aimed at simplifying access by children and families to support services.

Sadly, every day vulnerable children suffer appalling sexual exploitation and abuse. This happens in every society in the world, and in every community. Children are particularly at risk of abuse and exploitation wherever there is poverty and deprivation, but it occurs in even the richest of nations. Each country has its own challenges to meet in order to safeguard its children.

The ease of travel and the potential for using the Internet to target children for abuse has

opened up opportunities for UK sexual offenders to travel to countries where they believe they can find victims. Through partnerships with national and international law enforcement agencies, non-government organisations (NGOs), industry and governments, around the world, CEOP is tackling the activities of would be UK sex offenders travelling to abuse children.

CEOP's International Child Protection Network (www.ceop.police.uk/icpn) has seen the creation of in-country advisory panels that bring together governments, law enforcement and other agencies such as charities to protect children and bring offenders to account in areas such as South East Asia. Advisory Panels now exist in Thailand, Vietnam, Cambodia and the Philippines. ICPN activity is targeted at countries where there is a significant threat from the UK visitors who seek to sexually exploit children. Through this network CEOP is delivering a variety of initiatives including training police officers and child protection staff as well as raising awareness among young people and communities about the risks these individuals pose.

Safeguarding children in foreign jurisdictions can be complex and CEOP's Offender Management Team focuses on non-compliant, high risk Registered Sex Offenders and UK nationals who are suspected of travelling overseas to sexually abuse children. They support and achieve extradition requests, including from countries that may not have such agreements; locating offenders overseas who are wanted in the UK for child sexual abuse and tracing high-risk offenders overseas.

Looking forward, CEOP will form an integral part of the National Crime Agency (NCA) that will be established in 2013. The NCA will enable CEOP to access extra resources when needed and provides an environment where CEOP can influence and support national policing more effectively. Within the NCA CEOP will have the capacity to further develop its unique approach to preventing child sexual exploitation and abuse, to protect children who

are at risk of becoming victims and continue to pursue offenders who target children in the UK and overseas.

Website: www.ceop.police.uk

*All the documents referred to in the above article can be downloaded from:
www.ceop.police.uk/publications*

Maurine Lewin was called to the bar in July 1982 and was a court service lawyer between 1984 and 2008, specialising in family law in 1999. Maurine is Head of Legal for CEOP. She formerly worked as Deputy Justices Clerk at Inner London Family Proceedings Court.

Children, same sex families and the law

Marisa Allman and Sarah Greenan

This article is based on a workshop delivered at the NAPO Family Court Conference in May 2012 when Elina Nhinda-Latvio and Sarah Greenan presented scenarios focussing on two different areas of law where there have been recent developments for same sex families:

- *The availability of parental orders (following surrogacy) to same sex couples since s.54 of the Human Fertilisation and Embryology Act 2008 came into force on 6 April 2010.*
- *The Court of Appeal decision on the case of A v B & C [2010] EWCA Civ concerning private law disputes between two women in a same sex relationship and the biological father.*

The above are both scenarios in which CAFCASS Officers will increasingly be required to prepare welfare reports to assist the court and the case studies for the workshop with discussion points are reproduced at the end of this article for those who missed the workshop.

Legislative changes

There have been successive legislative changes in recent years aimed at achieving greater equality for same sex families. Key legislative changes relative to private law applications are:

- The Adoption and Children Act 2002. which permitted same sex couples to adopt.
- The Civil Partnership Act 2004.
- The Human Fertilisation and Embryology Act 1990 which permitted, for the first time, a child conceived with donor sperm to have no legal father. Many women in same sex relationships utilised this in conjunction with a joint residence order to ensure that they became the only people with parental responsibility for a child.

- The Human Fertilisation and Embryology Act 2008 (HFEA 2008) which facilitated in particular:
 - i) Two women to become a child's only legal parents from birth if the agreed female parent conditions are met (UK clinic conception only).
 - ii) Two women to become a child's only legal parents from birth if they are in a recognised civil partnership (assisted reproduction only, conception anywhere).
 - iii) A man and a woman to conceive a child together using donor gametes even where not in a relationship (i.e. a gay woman and a gay man can create a child through IVF of which they will be the only legal parents even if only one / neither of them is a biological parent).
 - iv) Men or women in an enduring same sex relationship (whether or not a civil partnership) to become a child's only legal parents following a surrogacy arrangement.
- To the Children Act 1989 to expand the categories of people who can hold parental responsibility for a child.

The statutory changes are not retrospective, and the period of time over which these changes have taken place has resulted in families having different legal relationships to each other depending upon factors such as:

- When the child was born.
- Where the child was conceived / born.
- How the child was conceived.
- Whether the birth mother was married or in a civil partnership at the time of the birth.

Cafcass involvement

The most likely factual circumstances in which a Cafcass Officer may become involved in court proceedings concerning same sex families are:

- Breakdown of a same sex relationship, and consequent private law dispute concerning any child(ren) of that family.
- Breakdown of a relationship between the couple bringing up the child(ren), or intending to do so (e.g. following a surrogacy agreement breaking down) and the genetic mother or father.
- The court requiring a parental order report after receiving an application by the intended parents for a parental order following a surrogacy arrangement.

Parentage and parental responsibility

In any court proceedings involving a same sex family it is particularly important to be clear about legal parentage, genetic parentage and who holds parental responsibility or might be able to acquire parental responsibility. This will impact upon the range of orders that the court can make, as well as welfare considerations. Because having a child in a same sex relationship requires the assistance of a third person, and that third person may be in a same sex or opposite sex relationship themselves, there are often a number of significant adults with different legal and biological relationships to the child(ren) concerned. There may also be a number of siblings and grandparents with varying degrees of relationship with the subject child(ren) to consider.

The House of Lords made it plain in 2006 in the case of *Re G*, which concerned the breakdown of a same sex relationship, that there is an important link between genetic parentage and welfare, and that any legal or genetic relationship must be put in the context of the ‘on the ground’ significance of that relationship for the child. To quote Baroness Hale:

“So what is the significance of the fact of parenthood? It is worthwhile picking apart

what we mean by ‘natural parent’ in this context. There is a difference between natural and legal parents. Thus, the father of a child born to unmarried parents was not legally a ‘parent’ until the Family Law Reform Act 1987 but he was always a natural parent. The anonymous donor who donates his sperm or her egg under the terms of the Human Fertilisation and Embryology Act 1990 (the 1990 Act) is the natural progenitor of the child but not his legal parent: see ss 27 and 28 of the 1990 Act. The husband or unmarried partner of a mother who gives birth as a result of donor insemination in a licensed clinic in this country is for virtually all purposes a legal parent, but may not be any kind of natural parent: see s 28 of the 1990 Act. To be the legal parent of a child gives a person legal standing to bring and defend proceedings about the child and makes the child a member of that person’s family, but it does not necessarily tell us much about the importance of that person to the child’s welfare.”

There has not yet been a reported case in England where a genetic parent who is not a legal parent has applied for residence or contact orders, but it is only a matter of time since the law has changed relatively recently.

Private law disputes between same sex partners

There are some differences in the court’s approach to issues of residence and contact for children following the breakdown of a same sex relationship, to that taken in opposite sex family cases. The difference arises because in many same sex families one of the parents will be the legal, genetic and psychological parent of the child(ren) and hold parental responsibility, and the other parent will be a psychological parent, and in the case of children born after 2009 might be a legal parent, but will not be a genetic parent. They may not have parental responsibility, and the only way for them to acquire parental responsibility may be a residence order; the issue of parental responsibility may then impact upon the type of order that is appropriate. The welfare checklist still applies

in the usual way, but following the House of Lords guidance in *Re G*, the significance of genetic parentage cannot be ignored. This does not amount to a presumption that a child should be brought up by a genetic parent rather than a psychological parent, and the Supreme Court in the later case of *Re B* in 2009 was at pains to stress that genetic parentage should not be allowed to overshadow other welfare considerations:

“All consideration of the importance of parenthood in private law disputes about residence must be firmly rooted in an examination of what is in the child’s best interests. This is the paramount consideration. It is only as a contributor to the child’s welfare that parenthood assumes any significance. In common with all other factors bearing on what is in the best interests of the child, it must be examined for its potential to fulfil that aim.”

The welfare checklist remains the only criterion for making welfare decisions, but within that genetic parentage is not to be ignored.

Private law disputes with a genetic mother or father

This is an area of law that is rapidly developing as more cases reach the Court of Appeal following a breakdown in the relationship between the same sex couple and the other genetic parent. The cases reported from the High Court and Court of Appeal to date have concerned applications by genetic fathers in circumstances where they are also legal fathers and are known to their children and the child is being brought up by two women in a same sex relationship. It is likely that in the future the courts will see applications brought by birth mothers or genetic mothers where the child is cared for by two men under a parental order, but where the birth mother or genetic mother is known to the child and recognised by the child as someone of significance in their life. There will also undoubtedly be applications in the future from genetic fathers who are not the legal father of a child.

The case of *A v B & C* heard in March 2012 was unusual on its facts but raised many of the

issues common to cases where the genetic father is known to the child who is being brought up by two women. The genetic mother and father had been good friends for a number of years, both were in same sex relationships. The mother and her partner wished to have a child together, the father agreed to assist them. The mother’s family were highly religious and would not have been accepting of the mother’s sexuality or a child born out of wedlock. Consequently the mother and father married prior to the child being conceived. The father was therefore the legal and genetic father and shared parental responsibility with the mother. The child, now aged 2 was being brought up by the mother and her partner. The relationship between the adults had broken down because of issues regarding the extent of the role to be played in the child’s life by the father. The father appealed to the Court of Appeal not because of the shared residence order made in favour of the two women, or the extent of the contact order in his favour, but because the court at first instance had characterised his future relationship with the child as a ‘limited relationship’

The Court of Appeal surveyed the authorities relating to children being brought up in same sex relationships with known fathers, and particularly the line of authority then being developed in the High Court of ‘principal parents’ and ‘secondary parents’. The Court of Appeal rejected this developing line of authority, and in particular rejected the idea that there is any universal principle applicable to the relationship between a child and his / her biological parent when being brought up in a same sex relationship:

“A’s involvement in the creation of M and his commitment to M from birth suggest that he may be seeking to offer a relationship of considerable value. It is generally accepted that a child gains by having two parents. It does not follow from that that the addition of a third is necessarily disadvantageous”

The court rejected in particular the concept of treating the father as a ‘donor’ in this situation, and deprecated the use of the label ‘donor’ to describe a genetic father.

Consistent with the earlier case of *Re TT*, (also in the Court of Appeal and with similar facts save that the father had not been known to the female parents prior to him offering to create a child with them), the focus of the court was the significance to the child of the relationship with the father, irrespective of the legal framework or labels or any prior agreement between the adults, or indeed the desire of the female parents to keep their nuclear family intact and free from undue interference from the biological father.

In the 2010 case of *Re TT* the Court of Appeal endorsed the making of a shared residence order between the mother, the father and the mother's female partner so that all three significant adults shared parental responsibility.

This remains a developing area and the Court of Appeal in the case of *A v B & C* suggested that expert input should be sought from child psychologist Dr Sturge. Further guidance is therefore expected to emerge.

Parental orders

The court has been able to make parental orders following a surrogacy arrangement since the Human Fertilisation and Embryology Act 1990 came into force. However, until 2010 when the relevant parts of the HFEA 2008 came into force, parental orders were only available to opposite-sex married couples. Now parental orders can also be made in favour of civil partners and in favour of opposite or same sex couples in an enduring relationship.

The effect of making a parental order is the same as an adoption in that after the parental order is made, the holders of the parental order are treated in law as the parents of the child for all purposes, and no other person is, in law, to be treated as a parent of the child.

In common with adoption, the welfare checklist in the Adoption and Children Act 2002 applies, and those are matters for investigation and consideration by the Parental Order Reporter. There are some key differences from adoption though:

- A parental order can only be made by agreement: there should not be any contested parental order proceedings, but the court has responsibility for vetting the application assisted by the parental order reporter to ensure the requirements of s.54 of the HFEA 2008 are complied with. The requirement for agreement includes the agreement of the birth mother's spouse or civil partner if she has one (unless they cannot be found or are incapable of giving agreement - this is a difficult issue).
- The local authority is not involved in any application for a parental order, all independent enquiries are made by the Parental Order Reporter.
- There must be two applicants, one of the applicants must be a genetic parent of the child. Neither of the Applicants may be the woman who carried the child.
- At least one of the applicants must be domiciled in the UK.
- The child must have been conceived via assisted reproduction.
- The application for a parental order must be made within 6 months of the child's date of birth.
- The child must be living with the applicants at the time that the application is made.

In any case the parental order reporter will be a Cafcass officer appointed by the court to report on the criteria for a parental order and the best interests of the child. If the surrogacy arrangement took place wholly within the UK and there are no unusual features, then any application is likely to proceed through the local Family Proceedings Court. In complex cases or cases involving an international element, the case is likely to be heard in the High Court and be dealt with by Cafcass legal.

Quite extensive investigations are required. The duties of the Parental Order Reporter include being required to investigate the factors in s.54 HFEA 2008:

- Genetic parentage and how the child was conceived.
- The degree of relationship between the Applicants.
- Ensuring the case is within appropriate time limits.
- Ensuring that child's home is with the applicants.
- Ensuring that at least one applicant is domiciled in the UK and both are over 18.
- Establishing that all relevant people freely and unconditionally agreed to the making of the order on a date not less than six weeks after the child's birth.

A further key matter which the Parental Order Reporter must investigate is the issue of whether any money or other benefit given or received by the Applicants exceeds 'expenses reasonably incurred'. Whilst surrogacy is legal in the UK, and endorsed by the availability of parental orders, commercial surrogacy is not, and there are strict and detailed rules surrounding what constitutes a commercial surrogacy arrangement. If the surrogacy arrangement took place abroad in a country where commercial surrogacy is permitted, that can still affect the question of whether a parental order should be made here and careful consideration is required to balance the prohibition of commercial surrogacy against the best interests of the child concerned.

Case Study 1:

Carmel agreed to be a surrogate mother for John and Simon, who are in a civil partnership. Carmel already has two children to her husband Roger, and wanted to help her friends John and Simon to have a baby together. Money is quite tight for Carmel and Roger and John and Simon agreed to buy Carmel a car to use whilst she was pregnant, and have helped out with the cost of maternity clothes.

On 1 April 2012, baby Florence was born and since then she has been cared for by John and Simon at their home in Leeds; Carmel and her children have visited from time to time. John is Florence's genetic father. On 10 June 2012

John and Simon applied for a parental order and you have been ordered to prepare a parental order report for the court. What factors do you need to consider in making your recommendation?

Case Study 1: Discussion

Key points: UK surrogacy, Applicants in a civil partnership, living with the baby, application made in time. One Applicant is the genetic father. Are they over 18? Domiciled here? Both Carmel and Roger's consent are required to the parental order - when was it given? Was it reasonable for John and Simon to buy Carmel a car?

Duties of the parental order reporter set out in r16.35 FPR 2010. Parental order reporter also has to consider the criteria in s.54 of the HFEA 2008 and the welfare checklist in s.1 ACA 2002 (not the CA 1989):

- So includes the factors of the child ceasing to be a member of their original family and the relationship that the child has with relatives, including the likelihood of any such relationship continuing and the value to the child of doing so.
- Paramount consideration is the child's welfare throughout her life.
- Must give due consideration to the child's religious persuasion, racial origin and cultural and linguistic background.
- Range of orders: key for any surrogacy situation - what are the implications and alternatives for this child if a parental order is not made?

PD 16A FPR 2010 also provides that a parental order reporter must attend all directions hearings unless the court orders otherwise and must advise the court on:

- The appropriate forum for the proceedings.
- The appropriate timing of the proceedings or any part of them.
- The options available to it in respect of this child and the suitability of each such option including what order should be made.

- Any other matter on which the court seeks advice or on which the parental order reporter considers the court should be informed.

The parental order reporter also has a duty to inform people whom he or she considers should be joined into the proceedings.

Case Study 2:

Alison and Dorothy have been in a relationship for seven years and have considered having a baby for some time. Dorothy is 45 and Alison is 32, so they agreed that Alison would carry the baby. Alison was keen that the baby should know his or her father, but Dorothy is anxious that she is not marginalised by the father becoming too involved. They found it difficult to identify the right father for their baby.

Early in 2010 Alison's friend Dan offered to donate sperm to Alison and Dorothy. He is single and has not found the right partner but would like to be a father, not really hands on but in the background. Alison and Dorothy and Dan met together a few times and discussed what would be involved and Dorothy felt better that Dan would not try to push her out. Alison conceived in May 2010.

Baby Jack was born in February 2011 and is a much loved child. In fact, as time has gone on Dan has become more and more besotted with Jack and longs to spend long weekends with him and take him away on holiday, but Alison and Dorothy are not keen on overnight contact. Relations between them have become rather tense and Dan feels unwelcome in their house now. Alison and Dorothy have also been arguing about it and now feel that Dan's insistence on extensive contact with Jack is placing stress on their relationship. Dan feels that Alison and Dorothy are being utterly unreasonable and has issued a shared residence application. You are asked to prepare a Cafcass report to assist the court.

Case Study 2: Discussion

Establishing the legal framework:

- Who are Jack's legal parents? Cafcass Officers will need to ask the right questions

to make sure they understand the dynamics.

- Who has parental responsibility for Jack currently? Who is on the birth certificate? Is there a joint residence order in place between Alison and Dorothy if Dan is the legal father?

Establishing the factual framework:

- What contact has Jack been having with Dan? - Focus of the courts has been what is the child's perception of the relationship - does Jack see Dan as a parental figure?
- What was agreed between Dan, Alison and Dorothy about Dan's role? - but see *A v B & C*: parental agreements are not determinative.

Principles to be applied in relation to the three parent scenario? None according to *A v B & C* other than the usual welfare considerations.

Welfare checklist: as always. No welfare concerns here but consider in particular:

- Effect on the child of any change in his circumstances: need to ensure security in the immediate family unit.
- Emotional needs: significance of each of the adults to Jack.
- Ability of each of the parents and any other person in relation to whom the court considers the question to be relevant in meeting his needs.
- Range of court powers: e.g. court can share residence between all of the adults as in *Re TT*, if Dan does not have PR should he have PR? Should there be conditions in relation to contact? The court can be creative in the structure of the orders.

Marisa Allman has practised exclusively in family law since 1998.

Sarah Greenan has practised in the field of housing law for over twenty years. She received an appointment as Deputy District Judge in 2007.

The above together with Elina Nindha-Latvio, Anthony Hayden QC, and HH Judge Jai Penna, are the authors of 'Children and Same Sex Families: A Legal Handbook', published by Jordans. Follow us on Twitter: @SameSexFamilies.

(See 'Book reviews' for a review of '*Children and Same Sex Families: A Legal Handbook*' Ed.)

Private Family Law: whom does the legislation favour?

A Children's Guardian

The duties and powers of the state to intervene where harm is identified are framed by statute, yet the achievement of change in the lives of children torn asunder by parental separation is frequently precluded by human nature rather than deficits in the legislative framework. The shift in accountability and responsibility over the course of the past decade, for both the quality and quantity of work done on behalf of children and parents in Private Law, is closely linked to competing responsibilities for safeguarding and advocacy within current legislation. The outcome of the Family Justice Review will prove a critical milestone in the provision of services to vulnerable children and families in the field of Private Law.

Inadequacy of legislation

Alongside primary legislation to address the welfare of children in private law proceedings, there is in existence a plethora of policy and practice guidance. Despite this, legislative attempts to promote coherent strategies to meet diverse needs are often precluded by the harsh realities of diminishing resources and competing and conflicting government agendas. This is exacerbated by the frequently irrational behaviour of parents and carers struggling to achieve or retain equilibrium following separation and divorce. As a battle-scarred private law Guardian, I am acutely conscious of the impact of mental health problems, domestic violence, drugs, alcohol, downright dishonesty and the inevitable conflict of interests and 'rights', between conflicted parents and children struggling to navigate the turbulent waters of post-separation adjustment.

The traditional adversarial pathway into private law is 'peculiarly' tailored (Clulow and Vincent, 1987) to the 'theatre of broken dreams' (my words) where many parents and

children consider themselves unwilling victims of unwarranted behaviour or harm. The origins of family problems are often located (Murch and Hooper, 1992) in the unique characteristics of those involved. Legislation cannot provide a universal panacea that may be applied to resolve difficulties that have their roots in emotional problems. Legislation alone cannot provide a remedy to guarantee radical improvements to the long-term life chances and expectations of children, who often remain 'prisoners' of corrosive conflict following relationship breakdown.

Dispute resolution, risk and emotional safeguarding

Attempts at dispute resolution and mediation are all affected by individual experience and the necessity to balance the best interests of the child with the Court's need to be seen to be doing justice to the parents and parties involved (Borkowski et al, 1983). In my experience, Judges are very careful not to be seen to impose their own views. The progression of cases in private law is as significantly affected by the 'shuttle diplomacy' between lawyers as public law cases are similarly 'shaped' (Pearce et al, 2011) by counsel rather than judicial oversight.

The implicit assumption in private law within the Children Act 1989 is that 'Welfare' is paramount (S.1(1)CA1989) and best promoted by a child having a relationship with both parents, providing it is safe to do so. The 'No Order' principle (S1(1)5 Children Act 1989) however, is frequently held as the cause of unsafe agreements being brokered (Doughty, 2008) even when not in the best interests of children. Contact does not always lead to the best outcomes for children (Trinder and Kellet, 2007). The presumption that contact with an

absent parent is almost always beneficial was established in *Re: O* (1995) Contact: Imposition of conditions. 2 FLR, 124 and *Re: K* (1999) Family Proceedings Rules 1991 S11(1), with exceptions outlined in *Re: M* (2003) Intractable Contact Dispute: ICO (2003) EWHC 1024 (Fam) (2003), 2 FLR, 636, Wall, J, where risk of harm to children may outweigh possible benefits. Assumptions that children are better off with their birth families are no less open to challenge in private law, when responsibility for significant emotional harm lies with those responsible for their care. Challenges to these assumptions arose from groups dealing with the aftermath of domestic violence and research (Hester and Radford, 1996) evidencing the largely hidden impact of exposure to avoidable risk or harm in the family home.

The strengthening of legislation with regard to exposure to domestic violence (S120 Adoption and Children Act 2002) has been of immense benefit in embedding relevant research (Sturge and Glazer, 2000) into everyday practice. Unfortunately, wider acknowledgement of the psychological pressures on young children and proactive use of existing legislation to ensure the emotional safeguarding of children (Cantwell, 2010) has been affected by pressure to reduce/limit the number of Section 7 reports, the introduction of telephone interviews for parties prior to first hearing and an increasing perception amongst the Courts that they have been sidelined (Hunt, 2009). Telephone interviews are unlikely to harness trust and confidence in the disclosure of highly personal issues connected with sexuality, maturity, disability etc.

Casework or safeguarding?

Safeguarding functions may be met by work to first hearing processes, but the identification and resolution of possible alignment or parental alienation (Bala et al, 2007) requires proactive time-consuming casework. Models of proportionate working preclude tactile engagement (Ferguson, 2010) with service users in their home environment and the necessary time to gather relevant, verifiable risk factors required of robust assessment.

Recent legislative change (via part 3 of the Family Procedure Rules 2010) lays out the rationale for mediation prior to proceedings and acknowledges the difficulties created by an adversarial legal approach to family dispute and emotional harm. The political drive to promote mediation is however, at the expense of proactive casework and is a consequence of alignment between the Legal Services Commission and other non-departmental government bodies to reduce costs. The transfer of Cafcass to the Department of Children, Schools and Families from the Ministry of Justice highlighted the extent to which legislation (2000), designed to harness the energies of the best Guardians and Family Court Advisers, was subsequently 'hijacked' by the introduction of Every Child Matters (2004).

This is not an indulgent semantic argument over the difference between safeguarding and the provision of an ideal welfare service to Court. Many practitioners believe Cafcass 'hijacked' relevant legislation during the time of New Labour to serve its own managerial needs and develop itself as a safeguarding agency, managed in the main by ex-local authority personnel, relegating its role as a service to the Courts along the way.

To suggest that Cafcass has 'lost its way' in attempting to be 'all things to all people', is tantamount to heresy, but the 'elephant in the corner' in many Courts remains the tension created as a result of the lack of perceived commitment to proactive provision of advice and support within the Family Court. Recent budget cuts of up to 30% have resulted in unrealistic expectations of a service that was already struggling to meet demands and promotion of Court-based advocacy for children, is seen to represent a philosophical challenge to the safeguarding function demanded by Cafcass managers. The ongoing focus on 'output' rather than 'outcomes' appears related to the breakdown of trust within the organisation that has led to a toxic atmosphere amongst practitioners. This precludes the promotion of emotionally

intelligent supervision practice (Morrison, 2007) and has precipitated the departure of many valued, experienced practitioners.

Good enough practice?

Differences of opinion, over the core functions of the body introduced to provide a holistic service for vulnerable children and families continue to preclude a full realisation of the agency's potential within existing legislation. One can argue that emotional needs of children have been downplayed in an attempt to process unprecedented increases in cases appearing before the Courts. Practitioners no longer feel that their professionalism and loyalties are accountable to the Courts and rule of law, but to internal quality assurance mechanisms and corporate managerial targets. Munro's analysis (2004, 2008, 2011) of the increasing proportion of time spent recording, rather than in direct work with children, echo the findings of a decade of serious case reviews (Brandon et al, 2008, 2009, 2010) and the failure to minimise harm and maximise welfare. Legislation alone cannot protect children who require unconditional support and dedicated time, effort and commitment from practitioners who should not be fettered by notions of proportionate/performance management, if 'best interests' decisions are ultimately to be reached, nor is it 'good enough' (sic).

Experienced private law practitioners embraced the Children Act 1989 as a move away from the culture of blame generated by previous legislation, towards more collaborative and inclusive analysis of parenting capacity, responsibility and the needs, wishes and feelings of children. The need for greater consistency (Law Commission, 1988) and a more systematic approach (Bainham, 1998) led to the attempt to provide structure to the concept of welfare as outlined in the 1989 Act. The 'welfare principle' (S1 Children Act 1989) should ensure the child's welfare remains the Court's paramount consideration, yet the complexity of decision-making required, including due attention to risk, human rights, individual choice (not to mention the wishes and feelings

of those least likely or able to engage in constructive, reflective, decision-making (Cantwell, 2007), frequently and almost inevitably results in disappointment and despair for both parents and children. Parental failure to work collaboratively to minimise harm mirrors the lack of coherence in private law, despite the significant expertise and efforts of those committed to best practice.

Residence Orders (SS12-14 S.11(4) and 5 Children Act 1989) were of course designed to be more flexible than previous custody and access arrangements of yesteryear, yet ancillary financial issues unrelated to safeguarding frequently negatively impact on proceedings where the redistribution of the material assets of the parental relationship remain unresolved and focus on the needs of the child is lost. The negative impact of ancillary matters on informed education and debate remains linked to the climate of fear, mistrust and blame (Ayre, 2001) generated by Media spin, where accusations of alleged hidden agendas and malpractice enable the self promotion/lobbying of politicians (See *'Family Law Week'*, 27.05.08 Article by D Chaplin (publisher) in relation to J. Hemming MP and criticisms by Wall LJ of abuse of his position as an MP.) and Fathers 4 Justice (*The Guardian* (08.05.06) Report on 3 year campaign by Fathers 4 Justice to create the impression of an unjust legal system. *Claims of denial of access of 40% to be grossly exaggerated. A plot to kidnap Leo Blair led to the break-up of F4J*) to question the competence and motivation of the Family Courts.

Early intervention

Unlike public law, the identification and evidence base for risk/intervention is usually gathered and managed by individual practitioners, without legal representation for either themselves or the children. As a result, these cases that often require significant work to address serious mental health issues, domestic violence and substance misuse, are not accorded early prioritisation. The President's Private Law Programme

(Framework for New Private Law Programme for Judiciary, HMCS and Cafcass, 2004) was revised (2010) to address relentless criticism of backlogs and delays in the preparation and presentation of reports to Court and a failure to address unmet needs.

The recognition of the 'revolving door' (in relation to repeated court applications) phenomena led to a framework designed to proactively divert parents away from entrenched and heavily conflicted proceedings utilising mediation and other forms of dispute resolution. Early Intervention Teams, along with Extended Dispute Resolution schemes have had enormous success reducing the number of Section 7 requests, diverting parents into Parenting Information Programmes (Contact Activities via introduced by the Children and Adoption Act 2006 as tools to facilitate contact. Amendments to S11 Children Act 1989 under S11 A-P Children Act 1989) and mediation where possible, yet children's voices remain unheard in this process. Recent findings (Trinder et al, 2011) suggest better preparation, clarity over expectations and proactive follow-up would optimise the benefits of early intervention prior to Court.

Delay is frequently, however, an inevitable consequence of the need for ongoing forensic identification of risk and evidence gathering, where clinical verification of salient issues is often required relating to decisions over residence, contact or relocation etc. Those with residential care (frequently mothers) are often accused of sabotage or frustration of contact. Accusations of bias in favour of women continue to dog the good intentions of legislation to promote a constructive relationship between both parents. One cannot legislate for personalities in crisis. Parents, who prior to separation cooperated effectively in discharging their duty of care, evidencing love, empathy and compassion, frequently metamorphose post-separation into adults with little apparent regard or cognisance of their child's age, understanding, emotional security, vulnerability or resilience.

Unwelcome delay is also often driven by persistent applications to Court and can give advantage to the status quo just as in public law. This prolongs uncertainty, a traumatic process for the child and may pre-empt decisions of the Court. Robust enforcement is required to deal with individuals who hold the law and Court in contempt, even though they may not articulate these views to their legal representatives. Litigation cannot resolve emotional problems or family dysfunction, which are often exacerbated by repeated, frivolous or malicious applications to exert control/influence. Robust defence of a child's right to peace of mind often requires the use of Section 91 (14) (CA 1989) to fetter those who persistently fail to prioritise the needs of their children. Research (Harold and Murch, 2005), easily demonstrates the pernicious nature and corrosive impact of conflict upon the emotional and psychosocial development of children, yet there is little congruence or logic within private law legislation reflecting the need/capacity for the state to intervene in comparison with powers available via public law proceedings.

Sifting for efficiency

Sifting applications prior to first hearings means there are no 'simple' Section 7 reports. Legislation designed to produce analytical reports from experienced professionals has been compromised by policies implemented to suppress the provision of reports and reduce costs, citing corporate efficiency and effectiveness to justify a superficial congruence with that of safeguarding. The prioritisation of the Every Child Matters (2003) agenda disregarded the integrity of the established welfare checklist framework in addressing risk and harm. It is clearly impossible to provide a level of service akin to that of previous decades in a climate of swingeing budget cuts and efficiency savings, yet the past decade has been characterised by the relentless quest of more for less, at the expense of quality service to children (i.e. time spent with them). This is echoed by the findings of Munro (2004, 2008) whose observations on the wider impact of increased regulation and prescriptive assessment make

salutary reading. Risks may be perceived differently by different professionals (Davies and Ward, 2011) when energies are focussed on the needs of parents.

The importance of ensuring a child's voice is heard within proceedings was endorsed by Baroness Hale (Re:D 2007) highlighting the fact that children, rather than parents or professionals, have to live with the consequences of decision-making within the Court forum. The requirement to examine the child's expressed wishes and feelings amidst adult problems (about which a child may have a limited cognisance), outlined in S.1(3) of the CA 1989 and article 12 UNCRC, is given an extra dimension with the need to ensure competent, independent representation, as outlined in article 6 (effective participation) and article 8 (right to family life) of the UNCRC, placing the spotlight on the differential 'rights' of separate representation for those children in public law who experience harm. Children who are not perceived to be at risk of significant harm in private law are not considered for separate representation via Rule 16.4 Family Procedure Rules 2010 (ex 9.5 Family Proceeding Rules 1991).

Hearing children

Irrespective of the existence of legislation, carefully crafted over decades, the meaningful participation of children in proceedings (Mabon v Mabon and Re: D 2005) is also affected by the postcode lottery of ancillary service provision. The spectrum of difficulties faced by children and parents can be exacerbated by the failure of local services to ensure equality and diversity of service delivery. Recent budget cuts in Cafcass have led to 16.4 appointments being challenged, in a further attempt to restrict the Court's capacity to influence the appointment of Guardians and control resources according to the agency's agenda rather than that of the Judiciary. The reality is that some cases need intensive, proactive intervention of a kind found in the most complex Public Law scenarios, but the time to 'work' these cases is not readily given

and often resented by managers who lack private law experience. The impact of parties representing themselves in proceedings after the legal aid cuts, who are unable or unwilling to prioritise their children's welfare, is likely to test the mettle of all working in the Courts.

In my view, all children experiencing the pain of parental separation suffer emotional harm and without amelioration of that distress many can be defined as being 'in need' (S17 (10) Children Act 1989). For some, significant harm follows exposure to relentless conflict or possible exposure to domestic violence (S120 Adoption and Children Act 2002) and results in Local Authority referrals (S47. Local Authority duty to investigate under S47 [1] [b]). Inevitably, energies are diverted from the developing needs of children to adults demanding attention to their human 'rights'. The language and promotion of 'rights' versus 'responsibilities' remains a barrier for many parents who believe the law is there for them to 'win' their case - yet in whose best interests (Taylor et al, 1982)? The notion of the child's right to participate in decisions (article 6) lies at the heart of many contested decisions in private law. Decisions must not simply be about finding of relevant fact but acknowledgement of individual family experience and ownership of their own future and destiny. Legislative frameworks have little influence unless they render meaningful the particular situation (Brophy, 2003). The relevance of context (Brearley, 1982) in analysis of harm in cases of domestic violence, was reinforced by the 2009 President's Practice Direction (Sir Mark Potter, Practice Direction: Residence and Contact Orders: Domestic Violence and Harm, 14.01.09).

Historically, the Courts have been criticised for not hearing children's wishes. Brandon et al (1998) suggest that the right to participate is not consistently applied through the Act, but depends on age, level of maturity and the issue under consideration. Of significance for practitioners is the key question (O'Sullivan, 2011) relating to when children 'move' from being consulted to being genuine participants

in decision-making. The onus is on the practitioner to be mindful of child development and extent of any possible manipulation or alignment. The Children and Adoption Act 2006 promoted the child at the 'heart' of social work practice, within proceedings concentrating on and dominated by adult agendas. The specific use of risk assessment was implemented to focus the collective energies of all parties on individual needs of the child (Children and Adoption Act 2006 - 16A was inserted to impose a duty on Cafcass to conduct a risk assessment). Increasing use of robust risk assessment and wishes and feelings reports has assisted decision-making and child-centred practice. One has to question how it can be right for private law applicants to have to struggle (Re: D 43 hearings with 16 different Judges) to persuade Courts to allow extra contact time, often spending huge sums in the process (Munby, 2004) whilst in public law, supervised contact is provided (via the public purse) for parents with established deficits in parenting and whose personal difficulties with regard to drugs/alcohol provide a less than optimistic prognosis for progress.

Intolerance

Children are frequently unwilling prisoners of perverse and irrational adult intent to sabotage a relationship with an ex-partner and current legislation with regard to enforcement (S11J Children and Adoption Act 2006 provision to impose an unpaid work requirement for failure to comply with a Contact Order) is rarely implemented with any success. The lack of robust enforcement or sanctions against those who flout Court Orders often encourages those intent on sabotaging contact and does not promote insight or reflection on the harm caused to children or themselves. Reflection on my own case files over a decade of heavily conflicted private law Guardianship, demonstrates that denial of evidence remains a significant barrier.

Religious or cultural intolerance (particularly with regard to homophobia and sexism) remains a permanent barrier to collaborative working and achieving consensus. My direct

interventions with religious institutions would suggest children are frequently ostracised as a consequence of a parental fall from grace. Also in my experience, children of dual heritage with parents unable to agree adherence to dietary or religious practices often suffer a degree of intolerance and or bigotry that is breathtaking to behold. Ironically, attention to the 'rights' of separate representation was brought into strong focus by a case of gender realignment (Re: C Contact: Moratorium re Change of Gender (2007) 1FLR 1642 NYAC).

Indeed, applications for Specific Issue Orders, such as removal from jurisdiction, or change of name, highlight issues of diversity in relation to culture and identity, demanding close attention be paid to feelings alongside cognitive development. Significant weight is given to expressed wishes and feelings of children aged 10 or over, as younger children rarely have the capacity or the life experience to distinguish the difference between what is probable/possible, or that of past/present or possible future events.

S13(1) Children Act 1989 (Practice Direction (1995) FLR 458 lays out procedure to follow re change of surname for a child) makes it clear that where a Residence Order is in force, nobody may change a name without permission of those with parental responsibility or leave of the Court, but many people take advantage if a Residence Order is not in place. Contested hearings in relation to parental disputes over surnames frequently evidence a need to fetter the capacity of those seeking to use legislation to exert power/control/influence over a child's sense of identity and belonging. Other influences, such as differential rates of maturity and the impact of education and intelligence, alongside religious or cultural expectations or interference cannot be ignored.

Conclusion

Decades of child-centred legislation have yet to yield a system to suit the ever-changing, diverse needs of all children and families. This will remain the case given significant changes in the constitution and reconstitution of

families within Britain in the 21st Century. Legislation cannot prevent the harm already caused to children who wish/need to remain estranged from their parents. One study (Johnston at al, 2005) has found that 44% of such children had experienced some form of domestic abuse perpetrated by either their mother or father. We know the majority of research focuses on cases coming to Court and cannot assume that the children of the 90% of families not subject to applications are not suffering some form of significant harm. We also know that there is a lack of political will to legislate against the tens of thousands of adults who abandon or do not support their children following separation. In my view, it is not legislation, but wider moral and ethical awareness and education connected with abrogation of parental responsibility, which lies at the heart of possible solutions to endemic social problems in society created by family breakdown.

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The author of this article has long experience as a Children's Guardian in both private and public law. It was felt necessary to publish it anonymously for fear of reprisals or disciplinary action from the author's employer

Meeting children's needs in a compliance culture: what Munroe has to say to Cafcass

Alison Paddle

This article was first delivered as a speech to the Napo Family Court Conference on 3 May 2012.

The current position

The continuing rise in care applications over the past three years means ever-increasing numbers of children are coming into the care of local authorities. Removed from their parents because of abuse and neglect yet subject to the vagaries of institutional parenting by local authorities, these children are uniquely vulnerable. The achievement of a secure family, via a timely, coherent plan, can so easily be undermined by limited resources, delay and all too frequent changes in social worker, foster placement, and children's guardian.

Proportionate working

Within Cafcass there have been huge increases in workloads and stress with no increase in staff, only reductions here too. Cafcass has reduced the service that practitioners are able to provide to children. 'Proportionate working' is Cafcass' senior management's attempt to rationalise their cuts in service to these vulnerable children. But the service now offered is proportionate to what? It seems to be proportionate to the fraction of the Cafcass budget spent on frontline services rather than to the needs of each child.

Professor Munro argues for proportionate work in her report (2011). For example, she has successfully proposed that the government should do away with rigid assessment timescales to provide more scope for autonomous judgment by practitioners about what work will meet the needs of each case. Deciding what is 'proportionate' work for each case is a valid professional judgment to be made by practitioners. Practitioners do this all the time.

But, and this is a very important but, the judgment can only be made with integrity where the practitioner has control of their workload. AND it is the practitioner who must decide what is necessary for them to do in order to form their professional judgment. Practitioners need to be in a position where they can refuse to take a case because they are too busy. Munro takes the view that social workers have been subject to too much managerialist over-prescription and need to be treated as competent, responsible professionals. Practitioners need to be empowered to make the decisions about what work they need to do

A dishonest shift of responsibility

Cafcass has found a simple solution to its politically embarrassing waiting list. The waiting list is now carried, invisibly to the outside world, by its practitioners. Cases are allocated by email, without discussion, regardless of capacity to take on the work needed by a new case, regardless of existing workloads. Even when a practitioner is on sick leave for months solicitors report being told that cases cannot be re-allocated because they are already allocated.

So Cafcass has shifted the burden of responsibility for coping with increasing caseloads. All the burden and all the risk is borne by the practitioner not the organisation... and of course by the child - and the child's family - who now receive a significantly reduced service.

Cafcass, in its Operating Framework, tells practitioners it is their professional judgment to decide what work to do on each case - but when they are not given the necessary time to do what children need these are weasel words. It is unacceptable practice. Accountability has moved from the agency to the individual.

Practitioners cannot decide how Cafcass should allocate its budget, how many managers to employ, what slice of its budget goes on premises, salaries, pensions etc. They cannot exercise their professional judgment on an individual case basis unless they have the power to manage their own workload.

Colleagues report that managers pressure them not to do work that is seen as 'non-essential' e.g. seeing children who are under about 6, not seeing children more than once, not seeing children and parents in their homes, in placement, at contact; not reading local authority files, not attending court, not writing a report longer than five pages, regardless of the complexity of the case. Courts are being asked to order that guardians see children or attend court in order to ensure that Cafcass managers cannot prevent staff undertaking vital work. Practitioners have even taken leave in order to make visits their managers have forbidden them to undertake.

At the Napo Conference I pointed out that the GSCC (General Social Care Council, the regulatory body for social workers) Code of Practice for Employers is not implemented, unlike the Code of Practice for practitioners. The Health and Care Professions Council which has superseded the GSCC does not even have a Code of Practice for Employers.

Comments from practitioners

Some comments given to me by Nagalro members. These are from members who decided they had to leave:

- "...it's not that practitioners lack the skills to work effectively... but that workloads and managerial pressures to meet targets only allows them to skim the surface."
- "I left Cafcass because of the impossibility/dangerousness of this way of working"
- "If anything goes wrong the blame will be on the shoulders of the practitioner for not making the right decision."

And these are comments from members still working for Cafcass, highlighting their concerns about proportionate working:

- "I feel deskilled, worried about a tragedy occurring, and looking like a fool in the witness box."
- "It's impossible to build the same kind of relationship with children... even with this low level of relationship-building I am working 60-70 hours a week."
- "Cafcass never questions if my enquiries are thorough enough but I know they are not and I carry that around with me in my head."
- "I feel I failed that child."
- "I cannot see how a valid report can be written only with analysis, dependent on facts from other people's reports... it is important to show how we reached our conclusions."

What Munro has to say to Cafcass

The Munro Review of Child Protection did not look at Cafcass - even though one might think that the court-facing part of social work should have been included in any truly systemic analysis of the child protection system. Nor, incidentally, did the Family Justice Review (Norgrove, 2011). So although the House of Commons Justice Select Committee in 2011 expressed deep misgivings about Cafcass the agency has escaped scrutiny in two analyses of the major social systems within which it operates. That is unfortunate - for children at least.

The Munro report did set out a number of principles that should apply to child protection social work that are also appropriate for Cafcass:

- A child-centred system – children have rights including participation in decisions.
- A system that values professional expertise.
- There is complexity involved in assessing whether a family can meet the children's needs.
- Helping families means working with them: the quality of relationship between family and professionals impacts on the effectiveness of help.

- Children's needs are varied - the system must be able to provide a matched level of variety.

Cafcass should be a child centred service, where children have rights including participation in decisions

Children are citizens who have rights and who require adults to ensure their rights are fully respected and taken into account. Given its key purpose Cafcass clearly should be a child-focussed service. Its remit is one that is wider than just a safeguarding role, which is to safeguard children's interests. This is different from the local authority's 'safeguarding' responsibility and means thinking about all that needs to be in place for the child to achieve their full potential throughout their childhood and into their adult life.

Taking an independent view is a crucial aspect of Cafcass roles – independent of all the other parties in the case – including, in public law, the local authority. Social work witnesses represent their employers' interests, which may not be the same as the child's: think for example of resource-led placement decisions and recommendations that assist local authorities to meet adoption targets. In private law separating parents can lose sight of their children's best interests.

It is not good enough for a Cafcass analysis to rely on the case presented on paper to the court by a local authority. The child has a right to a proactive, skilled, knowledgeable service from someone who personally tests out the validity of the case from their knowledge of the child as a real person.

A system that values professional expertise

Professor Eileen Munro emphasised the importance of social workers being empowered to exercise their professional judgment in a more autonomous way. That also fits with the work that Cafcass practitioners undertake: dealing with some of the most complex and intractable family situations requires highly experienced and skilled practitioners. Cafcass has steadily dismantled and undermined practitioner autonomy, replacing

it, despite plenty of advice about their wrong-headedness, with exactly the kind of system that Munro finds has been wrong for social work and wrong for children and families: i.e. over-prescriptive, managerialist, centralised - in short a bureaucratic straitjacket, without the scope for skill and professional judgment.

Munro reminds us that management culture is reflected in how practitioners relate to children and families. Cafcass practitioners work with controlling and abusive parents. They know the impact of being bullied and belittled. The cost to practitioners of working in oppressive organisations is considerable both for their health and their sense of professional confidence.

The huge amount of overtime that Cafcass practitioners put in to complete even the bare essentials of what they think is needed by the children for whom they have responsibility tells its own story of commitment to the work. Numbers of colleagues have retired early from a job that they love because they find the Cafcass corporate culture is too often oppressive and treats good people badly. Is this an organisation that values professional expertise, a corporate culture of which anyone can be proud?

Effects of proportionate working

These are the concerns that I hear judges, lawyers, parents and social workers express about the impact of proportionate working on what Cafcass practitioners do or are allowed to do now:

- That children are not being seen at all or often enough.
- Practitioners are told they do not need to see young children, and only need to see children at the beginning of a case.
- Arms-length risk assessment e.g. via telephone interviews and reading statements without interviewing parents in person and at home, which is unsafe practice.
- Overall that the service is reduced to a 'rubber stamp' for local authorities.

It is extremely concerning that when local authorities are cutting their services children's cases receive such limited attention from Cafcass. The risks are that: children's rights are being undermined; wrong decisions will be made in some cases; some children will remain in abusive families when they should be protected; and that some children will be adopted when they could have remained within their own families and/or extended families.

President's Judgment in re K

This important judgment needs to be widely studied by all in Cafcass. It is a very useful tool for practitioners because it sets out the respective responsibilities of Cafcass the agency and the individual Cafcass practitioner.

The court rejected Cafcass' view that a manager can instruct a practitioner on what view to take and made clear that a manager cannot override a guardian's personal responsibility for reaching an independent view about the child's best interests:

"It was not for Cafcass to replace the guardian: it was not for Cafcass to substitute its views for those of the guardian."

The President said he *"yields to no-one"* in his support for the guardian's independence. The judgement acknowledged that Cafcass has a quality assurance role, but if a guardian and a manager disagree then the court has to decide and Cafcass would need to apply to be made a party to put its separate view to the court for adjudication.

What is happening outside Cafcass

The Interdisciplinary Alliance for Children (IAC) is a grouping of 22 organisations concerned with children. It has taken up the following issues about the Cafcass Operating Framework with government:

- That it does not reflect the statutory position.
- It fails to distinguish private and public law roles.
- It does not set out the rules and statute properly.
- It is far too long to be a suitable working document for practitioners.

The IAC submitted an alternative model for the family justice service to the Norgrove Family Justice Review. This included Cafcass practitioners but without the current over-heavy management structure and this model received some positive comment.

The IAC is lobbying for government to introduce a KPI that will require Cafcass to ensure children in public law are seen and receive a service of good enough quality. Such a KPI could specify what a child is entitled to get from Cafcass e.g:

- A children's guardian who meets with them, who sees them where they are living and meets their family members.
- Children should have their guardian's phone number and name.
- The child should understand the guardian's role and purpose.

Cafcass has not supported such a KPI - it is hard to know what Cafcass objects to in this.

Conclusion

Article 12 of the United Nations Convention on the Rights of the Child deals with the child's right to be heard in any decision-making process about them. As Lady Butler-Sloss noted, a child needs to be known as a person, not just seen from a distance as an object of concern. A key part of the Cafcass practitioner role is to enable the voice of the child to be heard in proceedings, so that the court knows what the child's wishes and feelings are. This means a child needs to have a person, a relationship, someone whom they know who can help them to understand what is happening in their lives, someone independent, someone who can help their voice be heard in whatever way is appropriate.

The importance of the personal relationship between the child and the Cafcass practitioner is to help each child to contribute to the court process throughout as they wish to. This is not a straightforward task: Munro's principles about the complexity of this work and about the importance of the quality of relationship between family and professionals both have

relevance here. It takes time and skill to communicate with children who have experienced insecurity and change, abuse and neglect, who are uncertain and worried about what the future holds for them. When this is lost the heart of the role is lost.

The diminution in quality of the service undermines the whole guardian role. It threatens the existence of this crucial service to children, for which Cafcass is currently responsible. Many are asking whether the service adds any value. Yet both public and private law roles provide a vital statutory protective mechanism for children at the crossroads, at the most vulnerable point in their lives. This should not be destroyed by the very agency charged with providing it.

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Alison Paddle is Policy and Press Officer for NAGALRO. Previously a local authority social worker and manager in Manchester, Inner London and Cumbria, Alison has been a Children's Guardian in Cumbria since 1991 and also works as an independent social worker in the North West. Her area of special interest is in attachment, trauma and loss. She was chair of NAGALRO the professional association for Children's Guardians and ISWs from 2003-2008 and now undertakes policy and press work for the association. She teaches on the children and families module of Lancaster University's social work courses.

Stalking: why and how we changed the law

Laura Richards

The murders of Jane Clough in Lancashire, Christine and Shania Chambers in Essex, Angela Hoyt in Hertfordshire as well as the murder of Chris Brown and attempted murder of Sam Stobbart in Northumbria by Raoul Moat, unfortunately continue to remind us of the serious consequences that can result from cases involving stalking.

Just over a year ago the national charity Protection Against Stalking (PAS) and Napo, the probation and family court union, launched a campaign in Parliament to raise awareness about the dangers of stalking. Stalking was previously an invisible crime - it was everywhere and no-where as it was not named and was allowed to remain hidden.

Stalking and harassment can be life changing and extremely frightening. It is frequently injurious to victims' psychological, physical and social functioning, irrespective of whether they are physically assaulted. The majority of stalking victims experience symptoms of traumatic stress and other forms of psychological, social and vocational damage.

Too often stalking goes unreported and when it is reported there is a lack of understanding and low priority given to cases by police, Crown Prosecution Service (CPS), probation, magistrates and judges. In many cases the stalking campaign is missed and effective risk assessment and management is lacking which can have lethal consequences.

PAS know first-hand the devastating impact of stalking. Clare Bernal was stalked and murdered by Michael Pech in Harvey Nichols in 2005 and Rana Faruqi was stalked and murdered by Stephen Griffiths in 2003. Stalkers steal lives, and in the worst cases take

lives. Many incidents are hidden within criminal damage, malicious communication, common assault, interfering with a motor vehicle and burglaries and the pattern of behaviour is not being picked up. Even the murders are not identified as stalking. They would be called 'domestic' or 'arson', but rarely stalking murders. Therefore the stalking has continued to be hidden. It's also the case that courts do not always seem to be taking into account a course of stalking conduct when passing sentence.

We have worked on many cases where it is evident that the existing legislation passed in 1997, the Protection from Harassment Act, was no longer fit for purpose and seemed to deal with neighbour disputes rather than deal effectively with prolonged campaigns of stalking. Harassment, we strongly believe is very different from stalking. Stalking is about fixation and obsession - the hunter and the hunted.

Stalking: the facts

The latest statistics from the British Crime Survey would suggest that about 120,000 people a year are harassed or stalked, and 53,000 of those cases in 2009/10 were recorded as crimes by the police. However, the vast majority of cases appear not to be proceeded with. Just 2% receive a custodial sentence and in a further 10% of cases the perpetrator was either fined, given community service or a conditional discharge. The rest of the complaints seem to disappear. Currently in England and Wales, stalking is not legally defined. However, it is generally accepted that it is a long-term pattern of unwanted persistent pursuit and intrusive behaviour directed by one person to another, that engenders fear and distress in the victim.

One of the key challenges with stalking is that, taken in isolation, behaviours might seem unremarkable. However, in particular circumstances and with repetition, they take on a more sinister meaning. This is why it is so important to understand the history and totality of what has been happening, rather than just the ‘incident’ reported or presented. Unwanted communications may include telephone calls, letters, emails, faxes, text messages, sending or leaving unsolicited material, gifts, graffiti and messages on social networking sites. Unwanted intrusions include following, waiting, spying on, approaching, accosting and going to a person’s home. In addition to unwanted communications, the stalker may engage in a number of associated behaviours, including ordering or cancelling goods or services, making vexatious complaints to legitimate bodies, cyber-stalking, threats, property damage and ultimately violence. Very often the behaviour occurs over months and years.

The Independent Parliamentary Stalking Law Reform Inquiry

PAS and Napo jointly launched a parliamentary campaign under the auspices of the Justice Unions’ Parliamentary Group to review the law on stalking and harassment, the adequacy of police, probation, CPS, judges and magistrates training, review risk assessment, sentencing policy and practice and explore the need for proper victim advocacy and perpetrator programmes.

It was impossible to foresee that by April 2012 stalking, involving the fear of violence and also psychological harm, would become an offence in its own right. This was achieved through a remarkable consensus by parliamentarians of all parties and by the members of a unique Parliamentary Inquiry held during the summer and autumn of 2011 and organised by the campaign. PAS felt strongly that the victims’ voice should be placed at the centre of the Inquiry as well as evidence from frontline practitioners about the devastating impact of stalking, what was going on and what was going wrong.

PAS and NAPo met at an Association of Chief Police Officers stalking and harassment

working group in January 2011. PAS were co-ordinating the first UK National Stalking Awareness Week. A decision was taken to try and raise awareness in Westminster by organising briefing events in both the Commons and Lords in the early to mid spring of 2011. It was abundantly clear from these meetings that the levels of knowledge and understanding amongst parliamentarians of stalking was either low or non-existent. An early day motion, a means by which backbenchers can indicate support for an issue, was tabled, calling for stalking law reform and for support for the first ever National Stalking Awareness Week, which was to take place in April 2011. By the time the event took place over 80 parliamentarians of all parties had issued their support for a law review.

By July last year over 120 parliamentarians had pledged their support for the review. An approach was made to Elyfn Llwyd of Plaid Cymru, who is chair of the Justice Unions’ Parliamentary Group, of which Napo is a member, to set up a review. The Justice Unions’ Group is not an official all party parliamentary group but an independent forum that allows for an interface between the unions and parliamentarians. What evolved was to be momentous; a people’s inquiry into stalking law reform. PAS and Napo acted as specialist advisers to the group.

During the early summer approaches were made to a number of parliamentarians and all agreed to sit on the Inquiry and hear evidence from victims and professionals. Those joining the inquiry panel came from all political parties and from cross benchers in the House of Lords.

The first evidential session involved five victims and bereaved families whose daughters had been murdered by stalkers. They included Tricia Bernal and John and Penny Clough whose daughter Jane Clough was stalked and murdered in Lancashire in 2010 by Jonathan Vass. Claire Waxman and Tracey Morgan also gave evidence, both of whom have endured extensive and harrowing nine and ten year stalking campaigns at the hands of their

stalkers. Tracey's experience in the 1990s led to the Protection from Harassment Act. The session was crucial in setting the tone for the rest of the campaign. The parliamentarians were genuinely shocked at what they heard. One or two were moved to tears. They were told of campaigns of intimidation and terror, many of which had lasted for years and had rarely been taken seriously. When they were regarded seriously, professionals often told them that there was little they could do to stop the behaviour. In all cases the response of the criminal justice authorities was at best haphazard and at worse indifferent. The determination of the inquiry members was hardened and resolved. Mark D'Arcy of the BBC who attended, described it as:
"One of the most harrowing parliamentary events I've ever reported".

Further evidence followed from the National Stalking Helpline, cyberstalking experts, probation, lawyers, police, Magistrates Association, Women's Aid and the Victim's Commissioner. All, including DCI Linda Dawson from Hampshire who was involved in drafting the 1997 Act, believed that change was needed in order to transform and save lives.

In September 2011, Yvette Cooper, Shadow Home Secretary, was seen and she later announced at the Labour Party Conference her party's commitment to law reform. By November 2011 over 60 parliamentarians had been briefed using the evidence base from PQs and research as well as specific cases. A range of organisations were also asked to join in support and did, including the Police Federation, the Magistrates Association, PCS, POA and RMT trade unions, Women's Aid, the Commissioner for Victims and Witnesses, Victim Support and many more.

The Victim's Voice Survey: the experience of victims in the criminal justice system

During the winter of 2011 PAS published its influential and pioneering research, 'The Victims' Voice' which was an on-line survey (www.protectionagainststalking.org), detailing

over 140 women who had experienced stalking to ensure their voice informed changes within the criminal justice system (CJS), as well as better support for victims (www.surveymonkey.com/s/WK2TGVJ).

It revealed deep dissatisfaction with criminal justice professionals, secondary victimisation by the system, a lack of confidence in the judicial process and the horrific long term nature of stalking behaviour. It also highlighted that victims are rarely taken seriously and most of the time they are told that the police cannot do anything and *'their hands are tied by the law'*. Perpetrators are rarely punished or receive the appropriate treatment they require. They are allowed to continue with their unacceptable behaviour, increase in confidence and escalate their offending, in many cases stalking multiple women and moving from one victim to another. Whilst their confidence increases as they continue *'to get away with it'*, the victim's trust and confidence in the justice system conversely decreases and they fear no one can help or protect them. We also undertook a survey on the sentencing of 80 perpetrators that was published by Napo a month later. The findings echoed the Victim's Voice research: only once the perpetrator has seriously harmed and injured the victim does the system react and respond. By then it is too late. Early identification, intervention and prevention need to be at the heart of the CJS response.

In November, in response to the success of the people's inquiry, the Home Office announced it was to launch its own consultation on whether the law needed to change. In December, the advisers, at the request of Labour's Baroness Royall, drafted three amendments to the Committee Stage of the Protection from Freedoms Bill. These created a new stalking offence, made the offence of harassment triable in the crown as well as the magistrates court, and placed a duty on the Secretary of State to produce an annual report on action she had taken to combat stalking. This won support from all sides of the House and in February the government finally agreed to bring its own amendments for consideration.

Abusive behaviour can continue as some convicted men pursue their victims through vexatious claims in the family and civil courts. The process affects victims psychologically and can have a detrimental effect on children's welfare and health.

We know through research that separation and child contact is a time when abuse can escalate (Richards, 2003, 2004). Women's Aid research also shows that as many as 76% of survivors experience post-separation domestic violence, and this can be on-going for years, especially where there are children from the relationship (Humphreys and Thiara, 2002). However, child contact arrangements provide for the greatest continuation of post-separation violence in cases of domestic violence (see Saunders et al, 2003, HMIC, 2005, Radford et al, 1999, Aris et al, 2002). A 2002 study by Humphreys and Thiara found that almost 80% of the women had experienced continued violence post-separation and that child contact was a particular flashpoint for over 50%.

The study found similar issues to the report, 'Twenty-nine Child Homicides' (Saunders, 2004). Women's Aid compiled a list of 29 children (in 13 families) who were killed as a result of contact or residence arrangements in England and Wales during the previous decade to 2004 (however, since there are no national statistics kept on this, the actual figure may be higher). Ten children were killed between 2002 and 2004. With regard to five of these families, the court ordered contact. That publication raised the profile of child contact and the risks that unsafe child contact can pose to both the child and the non-abusing parent (usually the mother).

Further, in the past the male prisoners have obtained legal aid for the challenges, whilst the majority of female victims have had to rely on savings/loans to pay for their lawyers in order to defend the action or represent themselves. Many abused women have no knowledge of and are unable to understand the processes involved in family court proceedings and feel very isolated by the process.

The Case of ST

ST and GB formed a relationship and had two children. ST subsequently discovered GB was on the sex offenders register, following disclosure. He had been convicted of raping a young child years before. It was decreed that he should not be left alone with the children at any time. There were moves to place the children on the child protection register following the revelations. It became apparent that there had been harassment of other victims in the past too.

Subsequently GB attempted to kill ST when she confronted him about his behaviour. He was arrested and convicted. From prison he sent numerous text messages to the victim, wrote to her friends and family, gathered information and spread negative views. In prison he went on a course to learn how to use computers - and so he could use the computer to facilitate his stalking campaign. On release he was made the subject of a restraining order which he subsequently breached and there were more custodial sentences. This pattern of behaviour continued into a third custodial sentence and a restraining order. Then there were further short periods in custody. Again whilst in custody he learned he could access legal aid to try and get contact with the two children.

ST was not entitled to legal aid as she worked two days a week so had to represent herself as GB issued an application for contact via the family court with the assistance of legal aid.

ST had to constantly fight to have screens in court, which were denied initially. Despite the fact ST had been risk assessed as being at high risk of serious harm/homicide from GB, she was often left alone with him in court waiting rooms sometimes entering the area hours before the hearing. This was deemed acceptable by the courts and police. Further short custodial sentences followed for other breaches. Psychological assessments of GB were extremely negative and yet, still contact was being considered. Initially previous information was not made available to the

court by the police. ST had to ensure this happened herself - and GB could have objected to this.

A Section 7 report was eventually submitted by children's services to the family court outlining serious concerns around him having contact with the children and stated they would not support his application. GB withdrew his application the day before the final hearing and the case was vacated. Nevertheless the victim had to endure 12 months of harassment by GB through the family courts, causing immense distress and psychological damage to her and her children. No judgement was made in GB's absence, therefore leaving channels open for him to make another application for contact in the future. He has even moved closer to the area, giving ST significant cause for concern.

ST said this about her experience in the Family Court:

"I have been utterly shocked by my experiences of the family court. There is no care taken of the risks involved within a family setting and reluctance to recognise domestic violence and even sexual offending against a child. Judges are claiming that their decisions are 'in the best interest of the children'. My children continued to suffer the effects of GC's actions throughout the family court process and not at any time was this recognised by the court.

Each time I attended court there was a different judge on the case, suggesting to me that none of them had a handle on what they were dealing with. The judges were never quite sure whether Cafcass or social services should be dealing with the case. Cafcass had informed the court that they were unable to deal with such a case, but this continued to be ignored also.

I felt as though I was experiencing abuse all over again by the family court system. To be undermined, disempowered and disrespected in this way is shocking when undertaken by the system, especially when my only concern was the safety of my children, and my very real concern that the family court were in a legal

position to put them at great harm. There is a fundamental lack of understanding by the family court and an absolute refusal to listen to mothers' concerns".

Sadly, ST's case is not an anomaly. Rather, it has close parallels to many other 'abuse of process' cases we heard about, where the courts were being used by perpetrators to continue the stalking and harassment.

By mid-December the inquiry had been completed and several drafts of the final report, which the advisers compiled, were passed between the parliamentarians and a consensus was reached by mid-January 2012. There was total support for a comprehensive package involving a specific law of stalking, training for professionals, tougher sentencing guidelines, the ability of the criminal courts to suspend the parental responsibilities of abusive perpetrators to prevent them making vexatious applications to see their children through the family courts, and for amendments to the Bail Act. Many of the recommendations were informed by the victims, who were able to identify and extrapolate what needed to change in law and practice.

The Parliamentary Stalking Law Reform Inquiry report was formally launched on 7 February 2012 in the House of Lords, together with a draft Bill and commentary that would lead to the much needed comprehensive reforms. This received a lot of media focus.

Throughout February the campaign continued to lobby for support and finally on 8 March, International Women's Day, the Prime Minister announced support for law reform. The following day the government's amendments to the Protection of Freedoms Bill which was due for its Third Reading in the House of Lords were published. However, the amendments limited the definition of stalking to 'a fear of violence', which we knew was too difficult to prove. There was no mention of psychological harm, yet 80% of stalking involves mental health issues with half of women stalked on and offline experiencing

symptoms of post traumatic stress disorder and a third with similar symptoms when they are stalked online only.

There then followed a hectic 72 hours of negotiation and lobbying, including an intervention by Number 10, to ensure that the amendments were fit for purpose. By 12 March the government had agreed it needed to include a clause about psychological harm and tabled changes to its own amendments following consultation with the campaigners. The clauses in the Bill have now completed their final stages between the two Houses of Parliament and the new law will commence in November 2012. The intention is clear: to ensure that victims' report earlier, are taken seriously and the stalking behaviours are identified, risk assessed and appropriately managed and that perpetrators are properly punished and treated. In the meantime guidelines and training packages are being written with input from experts, victims and frontline staff. Whether the new legislation meets these objectives will be monitored carefully by PAS and Napo over the coming 12 months.

The campaign for reform was achieved in a remarkably short space of time and Mark D'Arcy from the BBC, who has followed the campaign throughout, remarked:

"It is impossible to imagine this kind of response to an all party report in any recent parliament".

The Domestic Abuse, Stalking and Harassment and Honour Based Violence (DASH 2009) Risk Assessment Model, stalking and risk

Many victims will experience multiple, repeated stalking behaviours before they report or disclose. In fact research (Sheridan 2005) tells us that victims are subjected to a hundred incidents before they report it to the police, so there will always be a history and it is important to assess the context and the behaviour.

The majority of stalkers are male and the victims female. Often the victim is an ex-partner or acquaintance but some women are

stalked by complete strangers. However, it is important to understand that domestic violence stalkers (ex-intimates) are more likely to be violent than any other type of stalker. Additionally if they make a threat, 1 in 2 of them will act on it (McEwan et al, 2009). It is important in domestic abuse cases that the Domestic Abuse, Stalking and Harassment and Honour Based Violence (DASH 2009) Risk Assessment Model (www.dashriskchecklist.co.uk) is used to assess risk of harm to the adult victim and children. It is also a gateway through to the stalking screening tool.

A number of warning signs have been identified from research.

- Is the victim very frightened?
- Is there previous domestic abuse or harassment history?
- Has the stalker vandalised or destroyed property?
- Has the stalker turned up unannounced more than three times a week?
- Has the stalker followed the victim or loitered near their home or workplace?
- Has the stalker made threats of physical or sexual violence?
- Has the stalker harassed any third party since the harassment began?
- Has the stalker acted violently toward anyone else during the stalking incident?
- Has the stalker engaged other people to help him/her?
- Has the stalker had problems in the past year with drugs (prescription or other), alcohol or mental health leading to problems in leading a normal life?
- Has the stalker ever been in trouble with the police or do they have a criminal history for violence or anything else?

It is essential that professionals receive appropriate training so that they can identify risk and take appropriate action. Yet few have been properly trained, and practice is worryingly inconsistent. Again, magistrates'

and judges' training is also crucial in order to understand the pattern of behaviour and levels of risk a perpetrator may present. Social workers, Cafcass and Probation officers, too, when writing court reports, need to ensure they understand and identify previous cumulative patterns of behaviour.

What do we know about the Stalkers?

Professionals need some understanding about why stalkers stalk and what motivates their behaviour. Stalkers come from all backgrounds and do not form one 'type'. Stalkers are not homogenous and they are more akin to sex offenders. Different risks exist given different motivation and typology. Stalkers vary in:

- What drives their behaviour.
- What they hope to achieve from their pursuit.
- The type of behaviour they engage in.
- The victims they pursue.
- The risks they pose and the factors associated with those risks.

There is no 'gold standard' typology as yet and the danger of this in risk assessment and case management is that a particular case can be deformed or adapted to fit a particular typological category. There are also severe limitations of actuarial predictive models in violence risk. Two better known typologies are: RECON (Mohandie, Meloy, McGowan and Williams, 2006) and the Stalker Risk Profile (Mullen, Pathé and Purcell, 2009).

The Stalker Risk Profile typologies are taken from what drives their behaviour and includes:

1. The Rejected – ex-intimate or occasionally very close associate. Relationship breakdown. More likely to be violent.
2. The Resentful – stalker feels sense of injustice or humiliation, motivated by revenge or validation.
3. The Intimacy Seeker – stalker wants to establish an 'intimate relationship'. Intensity.
4. The Incompetent Suitor – stalker wants friendship or relationship. Indifferent or blind to victim's wishes or distress.

5. The Predatory - usually sexually motivated, stranger victims.

These typology labels are more helpful in a mental health setting rather than a court setting. The most common type of stalker that you are likely to deal with is 'the rejected' - where there has been an intimate relationship and these are the most likely to be violent. Clearly by the very nature of the behaviour there are psychosocial issues for those who stalk too. However, there are currently no perpetrator programmes in the UK for stalkers.

Equally, there remains an urgent need for the establishment of a Victims' Advocacy Scheme that would support, advise and signpost victims through the CJS. We know this will transform and save lives, as well as save money. The extent of both physical violence and psychological harm by stalkers to their victims remains utterly unacceptable; the priority now is obtaining funding for the victims' scheme.

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Professional notes: law and research

New learning from serious case reviews: a two year report for 2009-2011

This sixth two yearly analysis of serious case reviews (SCRs) was published by the Department for Education in July 2012. The full Research Brief can be downloaded from: <https://www.education.gov.uk/publications>.

The key findings include:

- 42% of the children and families were receiving a service from children's services. A further 23% of cases were closed, sometimes because of non-cooperation. In 14% of cases a referral had been made but not accepted, implying perhaps that thresholds to children's services were set too high.
- That the estimated number of violent and maltreatment-related deaths of children (0-17 years) in England is around 85 (0.77 per 100,000 children aged 0-17) per year. Of these, around 50-55 are directly caused by violence, abuse or neglect, and there are a further 30-35 in which maltreatment was considered a contributory factor, though not the primary cause of death.
- Neglect is a background factor in the majority of SCRs (60%), and for children of all ages, not just younger children.
- A possible sign of improvement is the fall in numbers of children at the centre of a review with a child protection plan in place - declining from 16% in 2007-2009 to 10% for the latest two year period, despite overall numbers of children with child protection plans rising. A possible sign of improvement in protecting babies is the decreasing proportion of reviews undertaken concerning infants - dropping from 46% to 36% of all reviews.
- Overall numbers of children dying from maltreatment are small, but many more suffer from lower levels of abuse or neglect and we need to learn from these cases.
- This review focused on serious case reviews for children aged 5-10. There were particular issues of 'hidden adversity' in this age group, risks to children associated with parental suicide, parental self-harming and the potential adverse effects on children linked with parental separation.
- Overall, there is a dearth of child development teaching on professional courses for those who will be working with children. Where children have communication impairments the onus is on the professional not the child to find ways of communicating.
- Many children between 5-10 are affected by parental separation. This is a context in which children are at risk of significant harm, particularly where the separation is coupled with domestic violence or controlling behaviour, where there are conflicts over parenting arrangements, or where children are caught in the midst of acrimonious separations. Domestic violence featured prominently in these cases, and it was clear in some cases that the impact on children did not stop when parents separated, often with ongoing threats or controlling behaviour affecting both mother and children. Some of these cases highlighted that acrimonious separations can present direct risks to children's safety and welfare, including risks of homicide. Even where the cases do

not progress to such extremes there is evidence that children suffer emotional harm, potentially being used by parents to get at each other, or being caught in the middle of ongoing conflict.

- Practitioners who did not get to know older children and young people or make a relationship with them, tended to pay insufficient attention to the impact of maltreatment on their development.

The review also studied the recommendations made at SCRs. The most startling findings were the huge volume of recommendations made after reviews (an average of 47 per review) and also that the task of making them specific, achievable and measurable resulted in a further proliferation of tasks to be followed through. Carrying through these, often repetitive, recommendations consumes considerable time, effort and resources - but the type of recommendations which are the easiest to translate into actions and implement may not be the ones which are most likely to foster safer, reflective practice. The typical route to grappling with practice complexities like engaging difficult families was to recommend more training and compliance with or creation of new or duplicate procedures. Fewer recommendations considered strengthening supervision and better staff support as ways of promoting professional judgement or supporting reflective practice.

Downing Street Divorce app.

The government is planning to give those facing family breakup a 'divorce app' to assist them with the process of separation. This will be a web-based application that will give access to information on how to divorce amicably. It will include advice on how to avoid quarrelling in front of their children.

The scheme will cost £14 million and will be downloadable to computers and mobile phones. Ministers want charities and private

organisations to bid for part of the fund to run innovative family support services. The Department for Work and Pensions has said that the funding will go to various groups to create a menu of support services for parents that will be accessible via the app. The advice will include guidance on: avoiding arguments; sorting out financial matters; dealing with stepchildren and meeting an ex-partner's new boyfriend or girlfriend.

The Daily Mail (25 June 2012) believes that critics will be outraged that millions are to be spent on such policies at a time of austerity.

Health and Care Professions Council (HCPC) registration

In July 2010 the government announced that the General Social Care Council (GSCC) would be abolished and responsibility for the regulation of social workers in England would be transferred to the renamed Health and Care Professions Council (HCPC). The preparations for this transfer were completed in August 2012. Details of social work professionals should have been automatically transferred and registered with the HCPC.

A letter was sent out to all new registrants in August together with key information on HCPC registration and standards.

Names of practitioners will appear on the HCPC's online Register following the transfer and each entry will show the new registration number, the current registration dates and the general geographical location of work address. It will be available to view via www.hcpc-uk.org. If prospective registrants are currently subject to any conduct proceedings, they will be separately contacted by the HCPC Fitness to Practise Department.

Prospective registrants will be asked to renew their registration and pay by 6pm on 30 November 2012. The first registration cycle will run from 1 December 2012 to 30

November 2014. Once they have renewed HCPC will issue a registration card and certificate.

The annual registration fee will be £76 per year, one of the lowest across all of the UK health and social care regulators. The reason it is higher than the former GSCC fee is because HCPC is an independent regulator and unlike the GSCC, it receives no subsidy from government. Income solely comes from the registration fee which covers HCPC operating costs. It has remained the same for over three years and the Council recently announced there would be no increase in 2012–13.

HCPC say it understands the potential impact the increase in fee may have and has, therefore, put in place a number of measures. It will be asking newcomers for payment for the registration period from 1 December 2012 to 30 November 2014. The fee is for a full two-year registration cycle and includes a free four-month period of registration from 1 August to 30 November 2012. Costs can be spread via a direct debit instruction. Active direct debit details that the GSCC held will be transferred. Registration fees for registrants who live and work in the UK are tax-deductible which means a reduction of 20 per cent (for standard rate taxpayers), lowering the fee by £15.20 to £60.80.

Queries about registration should be directed to the HCPC web pages: www.hpc-uk.org/apply/socialworkers, by contacting the Registration Department between 8am to 6pm Monday to Friday, on 0845 300 4472, or by email: registration@hpc-uk.org

'It's Happening Here'

Save the Children appeal to help UK children in poverty

Save the Children published results of a survey of 5000 families in September 2012. Results show that although families below the poverty line of £17,000 a year are worst hit, significant

numbers of parents in households with incomes of up to £30,000 a year are willing to skip meals, enter debt, avoid paying bills and replacing worn clothing, to ensure their children have enough to eat.

The aid charity best known for its work in Africa used the survey results to launch its first domestic fundraising appeal for UK families plunged into poverty by cuts and the recession. The appeal target of £500,000 is modest compared to the charity's international appeals, but, according to *The Guardian* (5 Sept 2012), will be seen as an attack on the Coalition's failure to tackle growing poverty, hardship and inequality in the UK.

At the launch of the 'It Shouldn't Happen Here' appeal, the charity said:

"It is shocking to think that in the UK in 2012, families are being forced to miss out on essentials like food or take on crippling debts just to meet everyday living costs".

Save the Children will spend the money on cookers, beds and essential household items and helping low-income families to provide at-home educational support for their children.

The survey revealed:

- 61% of parents in poverty say they have cut back on food and 26% say they have skipped meals in the past year.
- 20% of parents in poverty say they cannot afford to replace their children's worn shoes, while 80% have needed to borrow money to pay for food and clothes over the past year.
- 44% say they are short of money every week and 29% say they have nothing left to cut back on.
- Low-income parents were twice as likely as better-off parents to split up under the pressure and twice as likely to grow angry with their children.

Save the Children wants Ministers to stick to 2020 child poverty targets, encourage employers to adopt the living wage set at £7.20 - £8.30 an hour, and modify the welfare system

to allow families to keep more of their earnings before benefits are withdrawn.

Childcare costs survey 2012

Daycare Trust

New figures compiled by the Daycare Trust show above-inflation increases in the price of nursery care in Britain with the hourly rate for a child aged under two up 5.8%. The increase for a child aged two and over is 3.9%. In the same period wages have remained stagnant, only increasing by 0.3%.

At the same time new HMRC figures reveal the impact of the Government's cut to financial support for childcare costs in April 2011. By cutting the maximum level of support available through the childcare element of Working Tax Credit from 80% of costs to 70%, the average claim has fallen by over £10 per week, costing the low-income working families that receive it more than £500 per year. Furthermore, 44,000 fewer families are receiving this help with childcare costs.

The Daycare Trust survey reveals:

- Average childcare costs now exceed £100 for a part-time place (25 hours) in many parts of Britain with the average yearly expenditure for a child under two standing at £5,103. The most expensive nursery recorded by this year's survey costs £300 for 25 hours care (£15,000 for a year's childcare).
- Childminder costs have risen by a smaller amount with a rise of 3.2% for a child under two, and 3.9% for a child aged two and over.
- Significant gaps in childcare availability across Britain with a worrying lack of childcare for disabled children and parents who work outside normal office hours. Over half of local authorities said that parents had reported a lack of childcare in the previous twelve months.

Anand Shukla, Chief Executive of Daycare Trust said:

"These above-inflation increases in the cost of childcare are more bad news for families, heaping further pressure on their stretched budgets as wages remain stagnant and less help is available through tax credits. Daycare Trust warned that the Government's decision to cut tax credits would mean that some families are no longer better off going to work once they had paid for childcare. The latest HMRC figures reinforce Daycare Trust's fear that the loss of this vital lifeline is forcing families out of work and into poverty. At a time when family and government finances are so stretched, and the Treasury is looking to maximise tax revenues and reduce benefit expenditure, it is sheer folly that any parent has to leave work because they cannot afford to pay for childcare."

A copy of the survey can be downloaded from: <http://www.daycaretrust.org.uk/publications>

UK children's charities warn of dramatic rise in disadvantaged children and families

Action for Children, NSPCC and The Children's Society commissioned joint research, published in July 2012 ('In the Eye of the Storm: Britain's forgotten children and families') which calculates the impact of the recession and austerity measures on vulnerable children for the first time.

A coalition of the UK's leading children's charities warned that the number of children living in vulnerable families in Britain will rise markedly to over a million by 2015 unless urgent action is taken.

The most vulnerable families with children will be disproportionately affected by tax and benefit changes and significantly affected by other spending cuts, according to the research. By 2015 vulnerable families will be £3,000 worse off each year as a result.

The report reveals the large number of families struggling with unemployment, depression, poor quality housing and poverty, far more than government estimates suggest. Particularly worrying is the projected increase in the number of children living in extremely vulnerable families. Although currently fewer than 50,000, the number of children living in these families is set to almost double by 2015, to 96,000.

The charities are calling on the Government to protect children better from the effects of the recession, sharp cuts to public services, and major changes to the tax and benefits system, so they are not put at further risk.

Specifically the charities want to see:

- Integrated policies across government, in particular housing, health, employment, education and welfare, to make sure vulnerable children are better protected.
- An urgent assessment of how any further spending cuts, or tax and benefit reform, could impact on children.
- A commitment to track and report back on the number of children living in vulnerable families.

Although the government's Troubled Families Unit was set up to address some of the problems that vulnerable families face, the charities warn that the impact of the austerity measures on children has largely been overlooked. The research paper can be accessed on: <http://www.nspcc.org.uk>

Draft legislation on Family Justice published

September 2012

The government published this draft legislation just before the Family Court Journal went to press. The main provisions are:

Private law

Provisions are intended to promote the resolution of disputes away from court where

possible, ensure family court decisions on arrangements for children reflect the benefit to the child of the ongoing involvement of both parents and to streamline the court process for divorce or dissolution of a civil partnership:

- A prospective applicant to court must first attend a meeting to receive information about mediation and other means of resolving a dispute without going to court (family mediation information and assessment meeting - MIAM).
- Replacement of 'residence order' and 'contact order' by a 'child arrangements order' which will deal with the arrangements about who a child should live with, who the child should spend time with and who the child should have other types of contact with.
- Repeal of s 41 of the Matrimonial Causes Act 1973 and s 63 of the Civil Partnership Act 2004 to remove the requirement in divorce proceedings (or dissolution in the case of a civil partnership), where there are children of the family, for the court to consider whether it should exercise any of its powers under the Children Act 1989. Disputes about arrangements for a child resulting from divorce or dissolution will be dealt with by way of application to court via the Children Act 1989.

Public law

These changes are intended to ensure the more timely progression of care and supervision proceedings by providing a focus on the timetable for proceedings, ensuring that expert evidence is only requested where it is necessary and by streamlining processes. The key elements are:

- A maximum 26 week time limit for the completion of care and supervision proceedings, with the possibility of extension in a case by up to eight weeks at a time, should that be necessary.
- Ensuring timetabling decisions are child-focused.
- Removing the eight week time limit on the duration of initial interim care orders (ICOs) and interim supervision orders

(ISOs), and the four week time limit on subsequent orders, and allowing the court to make interim orders for the length of time it sees fit.

- Requiring the court to focus on the long-term provisions of the care plan.
- Ensuring expert evidence concerning children is permitted only when necessary to resolve the case justly.

At the Westminster Legal Policy Forum on the 'Future of Family Justice' on 6 September, initial reactions were almost universally critical.

John Hemmings MP, Chair, Justice for Families Campaign Group, said, "*the proposals will make the system a lot worse*" and viewed the reduced scrutiny of care plans as "*disastrous*".

Rt Hon Elfyn Llwyd MP (member of Justice Committee) was "*appalled*" that the government would not listen to opponents of the proposals and believed the proposals would not even deliver the hoped for cost savings.

District Judge Nicholas Crichton CBE, Family Justice Council, said he "*couldn't disagree more with the proposals*" and the restriction on scrutiny of the care plan was "*a nonsense*". He viewed the 26 week time limit as "*helpful as an aspiration*", but that if it was a "*straitjacket – we are heading for disaster*". Most delays in his experience were caused by the Legal Services Commission and others agreed with that view. An LSC spokesperson present, said they were simply carrying out government requirements as best they could and they did not make the rules. DJ Crichton believed 'shared parenting' to be important but said we should beware of words going into legislation such as 'equal' or 'shared', or parental hostility will be stoked.

Dr Annika Newnham, Senior Lecturer, School of Law, University of Portsmouth, questioned who was meant to be the target group for the government's proposals. She pointed out the poor statistics available from the courts' IT system, Familyman and restrictions on

researchers' access to courts means insufficient information is available on what is happening now, so it is "*foolish to reform before we know what were doing now*". Dr Newnham believed that parents fight over 'status' and 'symbols' and want a "*forensic enquiry into who is to blame*" but courts cannot give them that and that causes anger. She has made a comparative study of 'shared parenting' between England and Sweden, where shared parenting and 'shared residence' are more commonly promoted, but found Swedish courts faced many of the same problems as in England. Sweden is now emphasising the importance of, "*a realistic assessment of parents' ability to co-operate*" before such orders are made. Her research into what children report about shared residence shows they do not like it.

Unfortunately, in all the debate at this seminar about the government proposals and the various professional bodies who are involved and will be affected by them, one of the core organisations to be affected (Cafcass) was barely mentioned. Cafcass was not represented and the work of Family Court Advisers who labour hard and long in the family courts with much experience and expertise, seemed invisible. In the interests of economy, reform and freeing up professional expertise, their work needs urgent attention.

The draft legislation is available for download at: <http://www.official-documents.gov.uk>

R (R and Others (Minors)) v CAFCASS [2012] EWCA Civ 853

Appeal against dismissal of judicial review application contending that failure to appoint a children's guardian, or appoint one in a timely manner under the Children Act 1989 care proceedings was a breach by CAFCASS of statutory duty and/or a breach of the rights of the children under the European Convention on Human Rights (ECHR). Appeal dismissed.

This appeal was against the decision of the Divisional Court [Munby LJ and Thirlwall J] on 12th July 2011 dismissing a claim for judicial review brought on behalf of four children against Cafcass. Four cases were concerned which were typical of types of cases and delays and their basic facts were not contested. In one case of suspected non-accidental injury, no Guardian was ever appointed and the case was eventually discontinued; the other cases involved delays in appointment of between three and seven months.

The CAFCASS position was that guardians were allocated as soon as reasonably practicable, having regard to its resources and commitments. That was not challenged. The claimants submitted that CAFCASS failed in its duty to each because guardians were appointed so late that their duties and responsibilities could not be effectively discharged. The Divisional Court accepted that CAFCASS had a general statutory duty to provide for the representation of children in care proceedings but concluded that it did not amount to a specific obligation to individual children to effect the prompt or immediate appointment of a children's guardian.

The Court of Appeal dismissed the appeal after reviewing the legislative background to the role of children's guardian, the Children Act 1989 and the Criminal Justice and Court Services Act 2000. The key question was the one identified by the Divisional Court relating to a statutory duty owed to each individual child by Cafcass. It was not found possible to extrapolate from the CJCSA 2000 a duty on Cafcass to appoint *'to do anything in any particular case within any particular timescale'*. The claims that there was an article 6/8 ECHR breach in the four cases were also dismissed.

W (Children) [2012] EWCA Civ 999

Appeal by a father against an order for no contact to his daughters aged nine and six.

The children's parents were unmarried and separated in 2008. Following the separation, the parties initially agreed staying contact. After some later conflict, in November 2008, the mother made an application for residence and a prohibited steps order preventing the children being removed from her care. She also obtained a non-molestation order based on allegations of domestic violence. At a fact-finding hearing in January 2009, no findings were made, though the father conceded that on one occasion he had spat at the mother. The father was found a forceful character whom mother found *'hard to deflect and resist'*. The non-molestation injunction remained in force and father was arrested on a number of occasions in early 2009 for allegedly breaching its terms. Despite the judge ordering weekly contact at a later hearing, the mother failed to comply. A further order was made for contact in March and limited contact took place until April 2009.

The mother then made allegations that the paternal grandfather had sexually abused the eldest child and in July 2009 the children were joined as parties to the proceedings and were appointed a NYAS Guardian. The sexual abuse allegations were abandoned through lack of evidence. The mother was ordered to make the children available for contact, but the children said they did not wish to see their father. In December 2009 a psychological report was ordered. The report recommended that the children needed *"long term desensitisation to contact"* with their father. The psychologist recommended therapeutic intervention for help in developing the father's emotional awareness and empathy and help him control his anger.

A final hearing was held in January 2012. Attempts to arrange work with the children had failed and the mother had *"refused to engage with services offered, or with the desensitisation plan"*. The psychologist then recommended no contact as the mother's intense distress and anxiety about the father was genuine and she would not be able to facilitate contact. The Guardian supported contact via the assistance of a paternal aunt.

HHJ Marshall ordered no direct contact. The father appealed.

McFarlane LJ summarised the relevant legal principles and in particular pointed to the cases of *Re O (A Child) (Contact: Withdrawal of Application)* [2003], *Re J (A Minor) (Contact)* [1994] and *Re P (Contact: Supervision)* [1996]. It was held that the judge was correct in her summary of the applicable law, but McFarlane LJ considered she had erred in her conclusion. He held the evidence lacked sufficient cogency to justify denying direct contact.

A number of positive features pointed towards the re-establishment of contact between father and child, the father's commitment, changes in respect of his anger control and positive previous contact. McFarlane LJ also held that the judge had erred in her approach to the mother's position. Although the judge had correctly identified the mother's refusal to engage in therapy as the sole barrier to contact, McFarlane LJ held that by accepting the mother's position the judge could not be said to have 'grappled with all the alternatives that were open to her'. The focus of the court should have been on identifying and implementing what could be done to encourage the mother to engage in therapy.

McFarlane LJ also held that the weight the judge had given to the psychologist's evidence was too great in the light of the psychologist not having seen the mother for 18 months prior to the hearing and that many of the mother's protestations of distress over contact could potentially be self-serving. He found that her evidence had to be treated with extreme caution when it came to matters of fact.

The case was therefore listed for directions before a new judge and attempts would now have to be made by the Guardian to facilitate contact in the absence of the mother engaging in any work. McFarlane LJ stressed that it is an integral aspect of parental responsibility that parents should work to put aside differences and ensure that children have relationships with both parents.

Book reviews

Children and Same Sex Families: A Legal Handbook

A Hayden, M Allman, S Greenan, E Nhinda-Latvio, HH Judge Jai Penna
2012 *Family Law* £55.00 paperback

Children and same sex families a Legal Handbook (Jordan Publishing) seeks to guide families and professionals through what is a high profile and complex area of Family Law. The Handbook also demonstrates the important role that Family Law has in providing good outcomes for same sex couples and children within such relationships.

In what is becoming an extremely fast moving area of Family Law, both professionals in this area of law and same sex families require as much assistance as possible in accessing solid guidance in this area to try and achieve what is best for their family and in the best interest of any children within their family unit.

This Handbook deals with difficult subjects such as, the definition of Gender, Biological and Genetic Parenthood, Surrogacy. Together with guidance on making relevant Private Law applications and commentary on Civil Partnerships. All of the information is presented in an easy and informative way which can be understood by individuals and practitioners alike.

There is also included an excellent commentary on the consequences for same sex couples on the breakdown of a Civil Partnership and the impact such breakdown may have upon any children within the family unit and financial issues.

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All of the important information contained within the handbook is securely underpinned by the inclusion of the relevant up to date statutory authorities which set the legal framework in this area of law together with case law references.

In my view this handbook is a good tool and an essential point of reference for any practitioner or individual seeking guidance in this difficult and evolving area of Family Law.

Kenneth Kewley, Solicitor
Member of the Law Society Child Care Panel

Divorce Poison: How to Protect Your Family from Bad-mouthing and Brainwashing

Dr R A Warshak
2010 *Harper Collins* £5.99 (Amazon) paperback

Described as the new and revised edition of 'the classic guide to protecting and overcoming parental alienation', this is written as a self-help manual for parents and delivers practical advice on dealing with the various aspects of 'divorce poison'. The author is clinical professor of psychology at the University of Texas Southwestern Medical Centre. My curiosity was aroused by the book as 'experts' often disagree over terminology, assessment and over what interventions might assist alienated children.

Dr Warshak stresses that the conventional wisdom of experts in advising a target parent to do nothing when the other parent's behaviour is turning a child against them, is

misguided. He says a child's loss of parental love through psychological manipulation amounts to serious emotional abuse and the child needs assistance, as time alone cannot heal such wounds. While professional help such as psychotherapy and a good lawyer is often desirable, he believes the 'target' parent also needs to help the child and themselves.

The professional British reader may be sceptical and cultural differences are apparent, such as frequent references to using therapists - in America therapists are legion! The book stresses that therapists and 'custody evaluators' often fail to fully understand the effects of implacable conflict on children, feeding ongoing abuse. Hard to believe that experienced UK professionals are as naïve, but as new social workers in family courts currently get little/no specialist training on the dangers of family conflict and intervening effectively, the situation here is deteriorating.

Terminology includes: 'divorce poison', a general term for alienating behaviours, 'badmouthing' of one parent by the other, either directly to the children or overheard by them; 'bashing', meaning intensive badmouthing; and 'brainwashing', the programming of children, which is convincingly likened to the brainwashing used by religious cults. The reader may be wary of the positive references to the work of Dr Richard Gardner who introduced the controversial 'Parental Alienation Syndrome' (PAS) in the 1980s. PAS was viewed by fathers' groups as official recognition of the behaviour of malevolent mothers who 'brainwash' children to destroy children's relationships with fathers. Dr Warshak prefers the term 'pathological alienation' and believes alienation is often misinterpreted, grossly simplified and distorted through polarised perspectives and the gender bias found in highly conflicted cases, leading many professionals to steer clear of it.

However, a balanced approach is taken to the subject and the author knows his stuff. His views and experiences are akin to those of Dr Kirkland Weir, who has often acted as an

expert in British cases (see 'Intractable contact disputes - the extreme unreliability of children's ascertainable wishes and feelings', *Family Court Journal*, Vol 2 No 1, 2011).

Although anyone can be susceptible to suggestion, pressure to conform, thought manipulation and distorted memories, the reader is warned of the big difference between 'irrational' alienation, leading to loss of positive, loving feeling for the target parent and 'rational' alienation, that has a reasonable basis and can result from gross mistreatment by a parent. The book sensibly warns that false accusations of brainwashing can be made by those unable to face their own painful shortcomings. So, readers are cautioned to be brutally honest with themselves and given help to identify their motives before making an allegation of poisoning, or when being tempted themselves to manipulate their child. The author reveals the various ways children are manipulated and advises how parents (or therapists) can respond to manifestations of the alienated child's behaviour. Key is the vital need to maintain contact and avoid arguing with children about the origins of their criticisms and rejection. Practical steps are given on what to do, when, avoiding common errors and when to get professional help.

Pressure groups and parents increasingly claim that children are victims of parental alienation. Family court advisers need to be aware of the differing terminologies surrounding the phenomenon of the aligned or alienated child, the signs and symptoms of alienation and methods of intervention to counter the damage. Especially as their main employer is distancing itself from recognising and working with family conflict in private law. Parents need appropriately advice and courts need confidently presented evidence. Unlike America, there is no plethora of therapists here. Either family court advisers help the children, or little is likely to be done. I recommend this book.

Brian Kirby
Private Law Consultant and Mediator

Making Mediation Work For You: A Practical Handbook

K Aubrey-Johnson, H Curtis

2012 LAG £40.00 paperback

As someone who has recently trained as a family mediator I was keen to review this handbook. It contains a wealth of useful explanatory material about mediation in general, and about the way that mediation operates in particular areas such as community mediation, family mediation and workplace mediation.

The material is well presented and easy to understand, and the FAQs from established practitioners were helpful. I thought it odd though that several of the case studies set out a scenario and then explained that mediation had helped the parties to agree an outcome, without setting out what that outcome was. The sections on family mediation were well set out and clear and so apparently were the other subject specific sections.

For most readers though, I thought that in fact the coverage was likely to be a bit too rangy – I found myself skipping chunks of the book which were either teaching me to suck eggs, or covering areas which were not useful to my practice, notwithstanding an interest in other types of mediation. Whilst much of the material is apparently aimed at non-mediators, a large portion of the material appears to be aimed at mediators themselves or the legal advisers of the parties to mediation, for whom the more basic sections on what is mediation and why mediate are (one might hope) rather less necessary. So, to my mind, this is a book from which different people will pick and choose the chapters that interest or inform them, although few will benefit from every chapter.

However, as an introduction to the principles and benefits of mediation I would say this book would be invaluable, particularly for those who are likely to encounter one or more

types of mediation tangentially in their everyday work - I thought for example that a copy should be on the bookshelf of every District Judge and every CAFCASS Office, every Local Authority legal department and every legal outfit be it chambers or solicitors firm. There is much that is poorly understood about mediation and this book really does help to clarify the boundaries and limitations of mediation as well as its potential strengths and flexibility.

I think that this is a useful reference text to call upon as needed, but not one which is best suited to a cover to cover read.

At only £40.00 (£28.50 on Amazon) I think this book is well worth the money.

Lucy Reed,
Barrister and Mediator, St John's Chambers
(this review first appeared on the blog pinktape.co.uk)

Family Courts Without A Lawyer: A Handbook for Litigants in Person

Lucy Reed

2012 Bath Publishing £27.55
paperback

Lucy Reed is a Barrister specialising in Children and Family Law in Bristol. In the introduction of 'Family Courts Without A Lawyer' she writes that the book was a response to an anticipated growth in the number of litigants in person caused by the recent changes to legal aid.

Quickly to the point, this book is essential reading for anybody set on representing themselves in Private Family Law proceedings. It is methodical and thorough, written in plain English and entertaining with snatches of droll humour. What it achieves extremely well is making the business of process accessible to the lay reader.

Before I read the book, I set myself the exercise of finding out for myself how I would go about conducting litigation. I soon arrived at a confusion. Such advice is plentiful, perhaps too much so. It is varied in quality and in many cases it is suspect. There are certainly enough websites run by operators who encourage you to fight the fight for you, and of course your children's rights. Anything authoritative gets drowned in this lot.

But, this book offers a methodical explanation of process, the law, the environment, the main players and a very useful section on how to conduct yourself during a full hearing. The book is associated with a website <http://www.nofamilylawyer.co.uk> from which you can download the various forms you would need to manage your case. You need to buy the book to get the password.

The book is particularly strong because, just as a good advocate is a critical friend to his or her client, then Ms Reed is a critical friend to her targeted reader. Her advice, as you would expect from a critical friend, makes few compromises. Having once explained the players and the processes, Ms Reed invites her reader to take a reality check.

“Do not delude yourself that victory (whatever that is) will make things any easier or reduce the scope for tension between you and your ex.”

If I were a man of faith I would bless Ms Reed for the number of times this and similar messages appear throughout the course of the book. It is the sort of basic down to earth sensible guidance that you, as a social work practitioner, hope that all lawyers would offer their clients.

The book covers many aspects of private law, divorce, civil partnerships, finance, which fall outside our usual areas of practice. Other stuff, children, domestic violence, abduction, none-molestation orders and the like are more familiar territory. There were a number of minor points requiring attention. Some of

them are really picky. For example, in the section on Legal Research it is good advice to improve one's ability to search the Internet by using Boolean filters in a query line. Unfortunately, the link Ms Reed suggested to explain all this on the kent.ac.uk server is broken. An alternative way of getting this information is to enter *google boolean search tips* into Google.

A less picky error was suggesting that Cafcass officers were, 'usually social work trained, but sometimes ex probation officers'. All family court advisers hold, as the minimum required qualification, a Certificate of Qualification in Social Work, irrespective of whether they came from Guardian Panels, the local authorities or the Probation Service. The most regular challenge to a Family Court Adviser's credibility by litigants in person is that the FCA concerned is not properly qualified for their task. The repetition of this myth in a book of this quality is at best unhelpful.

That aside, I would strongly recommend that Cafcass supplies each of its workplaces with a copy of what I consider to be an essential reference. My advice to anybody who is embarking on litigation in person would be to get some serious advice first, but if you insist on proceeding by yourself, then buy this book. It may save you both money and heartache. £1 from each sale is donated to the Bar Pro Bono Unit

Andy Stanton
Chair, Family Court Committee, Napo

Letters

Dear Editor

Let me share with you my most recent experience of the Cafcass grievance process.

I made one claim for lunch this year. Yes, just one. According to the policy, if a worker is more than five miles from their place of work and is not a regular attendee at the place they are visiting, they are entitled to claim lunch. I had a full day hearing on a care case in Canterbury Court, which is 26 miles from my place of work.

In January, I went once to Canterbury for this hearing and once to the Canterbury office. The previous month, December, I had not been to Canterbury at all. The following month, February, I went to Canterbury twice, once to the County Court for half a day and once to the Magistrates Court for half a day, neither time claiming lunch.

So in January, I made one claim for lunch, nothing in December, nothing in February.

My January claim was returned, the Head of Service (HoS) saying I could not claim lunch as I had gone regularly to Canterbury. I pointed out that I had not gone regularly. "*In the interests of transparency*" - oh how I love that phrase - it usually means 'to show I am right' - the HoS said he had reviewed his decision with the policy and - guess what - he was right and I could not claim.

After much thought - after all, it was only £6! - I decided that this was such a blatant breach of Cafcass' own policy that I initiated the grievance procedure. I agreed to it being a paper exercise, as it seemed to me that there was nothing I could add other than to point out Cafcass' own policy - to which I also added the Inland Revenue rules and guidance,

since that is so often quoted as being the reason Cafcass decides issues. The IR rules are clear - it is not a place of work if you do not visit at set times and for substantial amounts of time over the course of a year. I also quoted the very similar group grievance from Sheffield, which had been upheld.

A second HoS looked at my grievance and agreed with me, I should have been allowed to claim the lunch allowance.

Wait for it though! Two weeks later I had another letter from this HoS: "*in the light of new information*" she had not adjudicated correctly and my lunch allowance was disallowed. The 'new information' she quoted was the Questions and Answers on the intranet, which she had already quoted in her original letter to me substantiating why she was upholding my grievance. I am still left wondering what the 'new information' was...

It is after all, only £6. But as a principle? Worth far more than that. Cafcass does not follow its own policies; and grievances even when upheld can have that decision unilaterally overturned. What kind of organisation is this? Oh yes, one that is 'transparent'.

Oh and by the way, my manager has told me that all future claims I make which have a lunch claim on it cannot be agreed by my manager but will have to be referred to the HoS (or did he say referred to Big Brother? Alas, at my age my memory often fails me).

Best wishes

Liz Hurwitz
Children's Guardian

Liz – so you made four visits in total over three months, to three different venues in Canterbury for varying time periods and as

you only spent one whole day at one venue, you made one lunch claim of £6. And you're being told that is regularly working at a venue in Canterbury - baffling to me!

BUT, if you read the policy again more carefully, you'll see it clearly means you CANNOT claim lunches full stop! Being in such error, your future lunch claims clearly need careful scrutiny by at least one senior manager. And no-one needs much acquaintance with Cafcass to know that it does 'U turns' and changes its mind regularly. An experienced worker should really not be surprised at finding a senior manager making two entirely contradictory rulings within two weeks, based on essentially the same evidence.

Seriously, if the organisation truly put children and public service first, rather than allowing two or more managers of differing status to waste time and resources over the interpretation (or misinterpretation) of its policies in relation to a sandwich and a coffee (that was clearly not a dishonest claim, even if mistaken), it might better deploy its resources on helping children. And in terms of people management, it should know better and give you the benefit of any doubt. Parting with the princely sum of £6, would be better than further damaging morale and offending the integrity of an employee. It risks weakening loyalty to the organisation and negatively affecting performance.

Ed.

Notices

Napo

2012 Centenary AGM - Torquay

Napo's 100th Annual General Meeting will be held in the Riviera International Conference Centre

Thursday 4 to Saturday 6 October

Registration for this event is now open. For more information contact Kath Falcon kfalcon@napo.org.uk

Institute of Family Therapy

Non-violent resistance and child focused practice: practical approaches to overcoming abuse and violence

12 and 13 November 2012

Peter Jakob and Jim Wilson

Child protection decision making: assessing and analysing the risks of future harm and the likelihood of change – an evidence based approach

3 and 4 December 2012

Dr Arnon Bentovim and Liza Bingley Miller

Details of the above from:
<http://www.ift.org.uk>

Nagalro Conference

Brave New World: new directions in family court proceedings and their implications for children

Woburn House, Tavistock Square,
London WC1H 9HQ

15 October 2012

Nagalro Training

Assessment and Intervention in Neglect and Emotional Abuse: analysing causes, evidence and theoretical frameworks

23 January 2013

For details of the above:
Tel: 01372 818504 | nagalro@globalnet.co.uk

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Katherine Jones, Director of Training
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k.jones@fatherhoodinstitute.org