

This is the final version of the Cafcass IRO Practice Note issued 24.05.07.
This replaces the Practice Note dated November 2004.

CAFCASS PRACTICE NOTE 2007

CAFCASS AND THE WORK OF INDEPENDENT REVIEWING OFFICERS

1. Introduction

- 1.1 The purpose of this Practice Note is to explain the functions and duties of Cafcass in relation to cases which involve Independent Reviewing Officers ('IROs'). There are two instances when Cafcass practitioners¹ come into contact with IROs: as part of family proceedings when a child is looked after or when a referral is made in accordance with s18 Adoption and Children Act 2002. Guidance on what to do in the former is detailed in section 2 and for the latter in section 3 below.
- 1.2 This replaces the previous Cafcass Practice Note, dated November 2004.
- 1.3 This Practice Note applies to Cafcass in England. It is issued for Cafcass staff (including self-employed contractors). It will be of interest to IROs, local authorities and other relevant professionals but does not replace or contradict in any way the DfES guidance. It will be reviewed in 2008 and annually thereafter.
- 1.4 Separate arrangements apply in Wales. Enquiries should be directed to: the Social Care Team, Legal Services, National Assembly for Wales, Cathays Park, Cardiff CF10 3NQ, telephone 02920 826813.

References

- 1.5 The key regulations and guidance are:
 - a. The Children and Family Court Advisory and Support Service (Reviewed Case Referral) Regulations 2004 ("the Cafcass Regulations")
 - b. The Independent Reviewing Officers Guidance: Department for Education and Skills: June 2004 ("The DfES Guidance"): available on the Internet at www.dfes.gov.uk/adoption.
 - c. The Review of Children's Cases (Amendment) (England) Regulations 2004 ("The IRO Regulations").
 - d. The Adoption Agencies Regulations 2005.

¹ In this practice note, 'CAFCASS practitioner' is used to represent the statutory roles of "officer of the Service" as defined in the Criminal Justice and Court Services Act 2000 and "officer of the Children and Family Court Advisory and Support Service" as referred to in the Review of Children's Cases (Amendment) (England) Regulations 2004.

2. IROs and Cafcass in Care Proceedings

2.1 IROs monitor the implementation of plans for children who are looked after by a local authority. Because IROs work with all looked after children, some of their work will be with children who are subject of current care proceedings or placement proceedings. These children will also have a Cafcass practitioner, appointed to act as children's guardian. In these cases, both the children's guardian and the IRO will need to consider what communication is necessary in order to promote the best possible care planning process for this individual child. As a minimum, the children's guardian will:

- a. identify who is the named IRO within the local authority, with responsibility for the child;
- b. contact the IRO and provide the IRO with the children's guardian's name and contact details;
- c. read copies of all review documentation;
- d. ascertain whether the IRO has any concerns about the care planning process in this case. For example: where one exists, have any stages of the local dispute resolution process been triggered, or have any complaints or representations been received about the child's case?

2.2 In all cases where the child is expected to remain looked after following proceedings, the children's guardian should consider seeking the permission of the court to disclose the following to the IRO for the purpose of possible referral to Cafcass at a later stage: any necessary documentation filed in the proceedings including the final care plan with amendments agreed at the final court hearing; the children's guardian's report; any expert witness reports, and transcripts of any relevant judgements where available.

2.3 In all cases where the child remains looked after following proceedings, the children's guardian should consider what liaison is necessary with the IRO. One effective mechanism is for the children's guardian to meet with the IRO. This meeting can involve older children or young people to clarify future planning, timescales, and what the child or young person can do if matters drift or she or he has other anxieties. It will be important that this is part of the closing of cases by the children's guardian and not a drift into extended involvement. (Practitioners should refer to the Cafcass Safeguarding Framework paragraph 2.55.)

3. 'S118 Referrals' to CAFCASS

3.1 Section 118 of the Adoption and Children Act 2002 states that the IRO should refer the case of any looked after child to Cafcass where the IRO considers it appropriate to do so. The DfES Guidance states that this will be appropriate where there is a danger of the child's human rights being breached due to the actions or inactions of the local authority. The DfES Guidance also states that cases should only be referred by IROs to Cafcass as a matter of last resort, where all other attempts to resolve a problem within a local authority have failed or are failing.

3.2 A Cafcass lawyer is on duty every working day and is available to give guidance (but not legal advice) to IROs about the matters dealt with in this Practice Note. (See paragraph 5.1 for contact details). Unless there are

overriding child protection concerns, Cafcass Legal will instigate no action on the basis of informal telephone discussions unless requested to do so by the IRO. Any record will remain confidential unless and until the IRO makes a formal referral to Cafcass. If a formal referral is made, the record will be shared with the relevant Cafcass practitioner as part of the case.

- 3.3 A Cafcass practitioner is only authorised to bring judicial review proceedings or free standing applications under the Human Rights Act 1998 by virtue of section 26 of the Children Act 1989 (as amended by section 118 of the Adoption and Children Act 2002) and the supporting regulations referred to above.
- 3.4 Cafcass may only take such action against local authorities on referral from an IRO in accordance with the Cafcass Regulations and the IRO Regulations, or the Adoption Agencies Regulations. Other interested parties concerned about the actions of local authorities should continue to use the established procedures to make their concerns known to the local authority. They cannot refer cases directly to Cafcass.

Responsibility for Cases in Cafcass

- 3.5 All cases referred in accordance with this Practice Note should be sent to Cafcass Legal whose contact details can be found in paragraph 5.1 below. Some examples of the types of cases which may be suitable for referral can be found in the Annex to this Practice Note.
- 3.6 On receipt of a referral, Cafcass Legal will immediately refer the case to the local Cafcass manager for allocation to a practitioner. Cafcass Legal will also notify the Local Authority Legal Department.
- 3.7 The Cafcass practitioner will investigate every case referred under this procedure and report back to the IRO and to others. Cases will usually be allocated to a practitioner working in the local authority area that has responsibility for the child. In addition, a lawyer will be identified by Cafcass Legal to advise the practitioner.

Documentation

- 3.8 The documents to be sent to Cafcass Legal are set out in the DfES Guidance at paragraph 5.4.
- 3.9 It is not necessary to obtain permission of the court to disclose documents to Cafcass. Cafcass will need permission to disclose any documents filed in family proceedings onward in connection with judicial review or freestanding Human Rights proceedings. It will therefore save time if such permission is obtained before making the referral to Cafcass.
- 3.10 Where the documentation is for any reason not complete, the referral should still be made without further delay so that the Cafcass practitioner can begin his or her enquiries, but the IRO should stipulate a date when the documentation will be provided.

3.11 It is critically important that where the child is of sufficient age and understanding, the IRO conveys the child's wishes and feelings, including his or her views in relation to potential court proceedings.

3.12 In addition to the documentation listed at paragraph 5.4 of the DfES Guidance, the following documentation should be sent to Cafcass:

- a. names of relevant staff and contact details in relation to any other agencies involved such as the local education authority or an NHS Trust.
- b. relevant information about diversity issues for this child and family, including whether the child or family members will need additional assistance to aid communication.

Procedure

3.13 The Cafcass practitioner will gather information through the following processes, which are not set out in any order of timescale or importance.

- a. reading the documentation provided by the IRO, any information held by Cafcass, and any further documentation that may be requested by the practitioner;
- b. meeting the child;
- c. discussing the case with the IRO;
- d. discussions with any relevant person including staff from the local authority. If such discussions are to take place with persons who were not party to any previous family proceedings, the lawyer from Cafcass Legal will advise whether permission of the court is required;
- e. discussion with the previous children's guardian, where he or she is not the same person now allocated to the case;
- f. discussion with people with parental responsibility and wider family members (where appropriate). Again, if such discussions are to take place with persons who were not party to any previous family proceedings, the lawyer from Cafcass Legal will advise whether permission of the court is required

3.14 Whether or not proceedings have been issued, Cafcass will always consider the use of negotiation or mediation. The aim is to ensure that the local authority makes good any defects in the implementation of the care plan. The Cafcass practitioner will be mindful always of the need to avoid delay.

3.15 In consultation with his or her manager and with Cafcass Legal, the Cafcass practitioner will seek, within two weeks² of the referral, to make decisions about the most appropriate action to take, based on the following questions:

- a. is there evidence that the child's human rights are being compromised by the actions (or inaction) of the local authority?
- b. if so, are there further opportunities for dispute resolution? By whom should this be initiated? By the IRO, by the family or by Cafcass?

² Cafcass Regulations, regulation 5

- c. could the problem be solved by other proceedings (for example an application under the Children Act for contact) and, if so, should Cafcass initiate these?
- d. are judicial review proceedings necessary or should there be a free-standing human rights application?

3.16 Where it is not possible to reach a decision on the action to be taken within the two week period, the Cafcass practitioner will send written notification to the persons included in the list at paragraph 3.22 and will seek to reach the decision as soon as reasonably practicable.

3.17 If further action is needed, then decisions need to be made about who should most appropriately take it. The following questions should be considered: where there is a need for court proceedings, is the child able and willing to instruct lawyers to start proceedings, or is there an adult able and willing to initiate proceedings? Only if neither of these applies will the Cafcass practitioner initiate proceedings.

Involving the Child

3.18 The Cafcass practitioner will involve the child in the case to the extent that is appropriate in the light of his or her age, understanding, needs and circumstances and in particular will:

- a. meet with the child to ascertain his or her views about his or her care plan, its implementation and the referral to Cafcass.
- b. provide information to ensure that he or she knows how to contact Cafcass.
- c. respond promptly to any representations from the child. If at any time the child wants to take over the conduct of the case from Cafcass and is competent to do so, the Cafcass practitioner will give as much help as possible including supplying a list of solicitors whom the child might wish to instruct.

Legal Proceedings

3.19 If, on referral from an IRO and having consulted with his or her manager and taken legal advice, the Cafcass practitioner decides it is necessary to bring civil proceedings such as judicial review, or a free-standing application under the Human Rights Act 1998, he or she will take steps to secure appointment as the child's litigation friend.

3.20 The Cafcass practitioner must seek to start any such civil proceedings within six weeks of receipt of the referral¹. In some cases, the timetable will need to be much shorter due to the urgent nature of the concern. Even after proceedings have been issued, the Cafcass practitioner will continue to try to settle the case.

¹ Cafcass Regulations, reg 7. Exceptionally Cafcass may take over litigation started by someone else on behalf of the child. The Cafcass practitioner may be appointed as the child's litigation friend in order to continue the proceedings.

Timetabling and Sharing Information

3.21 The Cafcass practitioner will at all times have in mind the principle that delay may be harmful to the child and will have regard to relevant limitation periods. He or she will write a report detailing with reasons the course of action to be taken in the case including, where appropriate, reasons for not taking any action requested by the IRO. The practitioner will seek to prepare the report within two weeks of the referral³. Regular progress reports will be provided thereafter, together with a final report within six weeks of judgment or settlement⁴.

3.22 The reports will be sent to the following people:

- a. the child, depending on his or her level of understanding.
- b. the IRO.
- c. the Chief Executive of the local authority and the Director of Children's Services or equivalent.
- d. the social worker and their team manager with day-to-day responsibility for the case.
- e. any person specified by the IRO in the referral.
- f. any other person the officer of the Service considers should be informed. The officer of the Service will take advice from Cafcass Legal for instance in relation to persons with parental responsibility.

4 Cases which are not appropriate for a 's118 referral' to Cafcass

4.1 The DfES Guidance explains when cases should *not* be referred to Cafcass:

- a. where the child is of sufficient age and understanding to bring proceedings himself or herself without the need for an adult to act on his or her behalf. In such cases the IRO should ensure that the child has access to a suitably experienced solicitor and an explanation about legal aid.
- b. where a suitable adult is able and willing to bring the proceedings on behalf of a child.
- c. Where existing dispute resolution mechanisms within the local authority have not been exhausted, and this process is operating within a timescale that the IRO deems reasonable for the particular circumstances of this individual case. For example, an immediate placement issue would require tighter timescales than a dispute about an educational placement provision planned for the following school year. Some situations (for example, an issue about sibling contact) can more appropriately be resolved by proceedings under the Children Act. It is not appropriate to pursue non-family litigation such

³ Cafcass Regulations, reg 5.

⁴ Cafcass Regulations, reg 9: the final report must contain full details of the outcome of the proceedings including the reason for any delays and the reason where applicable for compromising the case before hearing.

as a judicial review if a remedy may be available in current or new Children Act proceedings⁵.

- 4.2 Cafcass will not generally handle compensation claims, which will continue to be the responsibility of the Official Solicitor. Any money recovered or paid into court on behalf of or for the benefit of the child will be dealt with in accordance with the directions of the court under rule 21.11 of the Civil Procedure Rules. The court may direct that the money be paid into court for investment or, where the child will lack mental capacity to manage the money at 18, be administered in accordance with directions given by the Court of Protection.⁶
- 4.3 The Official Solicitor conducts a wide range of civil litigation on behalf of children. Cafcass Legal will pass on to the Official Solicitor any cases that are felt more appropriate for him. (See the Annex to this Practice Note.) IROs should therefore refer any suitable cases directly to the Official Solicitor whose contact details can be found in paragraph 5.2 below. In any case where it is anticipated that such a referral may be warranted, it is prudent to ask for the permission of the court to disclose papers to the Official Solicitor.
- 4.4 In some cases it may be unclear which course of action to take. Lawyers in Cafcass Legal and the Official Solicitor's Department are available for discussion or to give guidance to IROs about potential referrals.

5 Useful contact details

- 5.1 Cafcass Legal's address is:

8th Floor, South Quay Plaza 3, 189 Marsh Wall, London, E14 9SH
 DX: 42691 Isle of Dogs
 Tel no: 020 7510 7025
 Fax no: 020 7510 7104

- 5.2 The Official Solicitor's address is:

Senior Civil Litigation Lawyer, Official Solicitor's Department,
 81 Chancery Lane, London, WC2A 1DD
 DX: 0012 London Chancery Lane
 Tel No: 020 7911 7121
 Fax No: 020 7911 7105



Anthony Douglas
Chief Executive
 May 2007

⁵ Re: C (Adoption: Religious Observance) [2002] 1 FLR 1119: The judge was critical of the guardian who sought to challenge a local authority decision to place a child of mixed heritage with Jewish foster parents. The judicial review proceedings caused unnecessary delay when all that was required was a best interests decision in the care proceedings.

⁶ CPR Practice Direction: Children and Mental Patients 21PD8.

CAFCASS PRACTICE NOTE 2007**ANNEX****A. Examples of cases to be referred by IROs to Cafcass. In each example, the child could be either accommodated or subject of a care order or placement order:**

- i) Unreasonable failure by a local authority to meet the statutory requirements for the looked after child – for example, lengthy delays in allocating a social worker; failure to make timely visits to the child.
- ii) Unreasonable failure by a local authority to implement an important element of a care plan – for example sibling contact, or a foster placement for an asylum seeking child.
- iii) Unreasonable failure by a local authority to implement an important element of a care plan due to conflicts in decision making outside of the review process – for example, funding of a specialist placement.
- iv) A dispute between a local authority and another agency such as an NHS Trust over provision of specialist services for a learning disabled teenager.

B. Examples of cases more suitable for the Official Solicitor:

- i) A claim against a local authority not arising from treatment as a looked after child; such as a personal injury claim.
- ii) Where only compensation is claimed; for instance compensation for the harm a child has suffered through a local authority's failure to bring care proceedings.
- iii) Dispute in the case of a 17 year old young person who is incapable of managing his or her affairs due to mental disability, and likely to remain so after attaining his or her majority.