

HM Inspectorate of Court Administration

Children's guardians and care proceedings

An inspection undertaken between
January and March 2007 of the
Children and Family Court Advisory and Support Service
concerning front-line practice in care proceedings

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Chief Inspector's foreword

Applications for care orders are made by local authorities where there is strong evidence that the child concerned is suffering, or is likely to suffer, significant harm. Children's guardians are appointed from Cafcass in these proceedings. Their prime task is to safeguard and promote the welfare of the child and to ensure that the child is represented. The decisions that the family courts reach in such cases are serious and far-reaching – both for the child and the child's wider family. For the State to intervene so decisively into family life, courts must be satisfied that the legal criteria are met, that an order is necessary and that the local authority's care plan will meet the child's immediate and long term needs to the greatest extent practicable.

The social work advice offered to the court by the children's guardian on behalf of the child must be independent of the other parties in the case – that is, the local authority and the child's parents. Their advice is of great weight and influence. The guardian's experience and professional skills are combined with the advocacy of the child's lawyer who is usually instructed by the guardian. This is often known as the 'tandem model' and is a powerful voice for children. It needs to be, when such important issues about their lives are at stake.

The inspection reports on the practice of children's guardians. Much of their work is good enough but some is not. There are practice weaknesses that need to be addressed urgently in order to ensure that:

- the parents' capacity to parent their child is assessed in a robust, fair and transparent manner;
- similar standards apply when children's guardians advise on contact between a looked after child and a parent;
- the guardian's scrutiny of the local authority care plan is credible, and grounded in a thorough, systematic, Cafcass-wide, approved approach.

Five recommendations are made that aim to help Cafcass bring about important improvements.

This is the last inspection of Cafcass to be undertaken by HMICA. In April 2007, responsibility for inspection of Cafcass transferred to The Office for Standards in Education, Children's Services and Skills. Since the first formal inspections of Cafcass in 2002, the service has become a key agency within the wider family justice system, both locally and nationally. I hope that future inspections will continue to make a positive contribution to further raising standards of services for children involved in family proceedings.



Eddie Bloomfield

HM Chief Inspector of Court Administration

September 2007

Summary and recommendations

Summary

Focus

HMICA inspected section 31 care proceedings in Cafcass. The scope of the inspection was proceedings where interim or final care orders are sought by local authorities under the Children Act 1989. The inspection focused on:

- the quality of practitioners' work with children and families from referral to the final hearing in section 31 care proceedings
- the role and tasks of children's guardians
- how the work of practitioners contributes to improved outcomes for children
- the organisational accountability, support and development of children's guardian practice.

HMICA conducted this inspection through the use of a wide range of standard methodologies. These included:

- national and regional self-assessments
- advance information from Cafcass
- a questionnaire to children's guardians
- a meeting with young people who had experience of children's guardians' work
- meetings with the judiciary, lawyers and local authorities
- practice observations of interviews with children and families
- observation of practitioners' meetings with other agencies
- file and court report reading
- meetings with service managers, children's guardians, senior managers and the Chief Executive of Cafcass.

The wider context

Children's guardians' care-related work derives from the Children Act 1975. A national system of panels of children's guardians was set up in 1984 and operated as a local authority responsibility. In most care-related proceedings the child is separately represented from other parties, usually by a children's guardian and a solicitor. This is known as the 'tandem model'.

The Court Rules set out the duties of children's guardians. The role of children's guardians was further extended with the introduction of the Children Act 1989 and supported by guidance issued by the Department of Health.

Local panels of guardians were replaced in 2001 by a single organisation covering England and Wales. Cafcass also assumed responsibility for the family court welfare services and the children's work of the Official Solicitor's Department. Between 1984 and 2001, children's guardians were known as guardians ad litem.

Key findings

Roles and tasks

Children's guardians' work in care related proceeding is subject to the Court Rules, which outline their powers and duties. This results in a broad consensus about the children's guardian role. However, there is insufficient guidance as to how the tasks should be undertaken to ensure a consistent and high quality service. Further, a key responsibility for children's guardians in care related cases is to validate the work undertaken by the local authority that normally initiates the proceedings. This role sometimes leads to boundary confusion, particularly about the respective functions of the children's guardians and the local authority social workers.

Working with children and families

Inspectors found that interviews between children's guardians and children and families were well prepared and conducted. There is an unsatisfactory over-reliance on practice experience and personal styles of working rather than use of robust tools and frameworks. Inspectors consider that this may risk undermining the credibility of the children's guardians' reports.

From a service user perspective, there is a lack of transparency on the part of Cafcass about the way assessments are undertaken. This disadvantages those adults whose parenting capacity is being scrutinised.

The lack of transparency is also a key issue in case records, which often do not show how practitioners reach key assessments and recommendations.

Cafcass performance around the allocation of new referrals and the avoidance of delay is much improved.

Reports for court

Cafcass court report formats are generally complied with well. There has been good progress in making these reports more focused and less descriptive. However, analysis and evaluation of available options to the court are of varied quality. Inspectors found significant weaknesses in many reports.

Management and accountability

Progress has been made across Cafcass in developing management and quality assurance arrangements. These are not yet fully effective. Inspectors are concerned that this undermines the management of public law work and achieving consistent, high quality practice. Accountability

around the work of the children's guardian is subject to a fundamental confusion. Unlike in private law, children's guardians are personally appointed by the courts and these arrangements risk undermining internal Cafcass line management responsibilities. Although stakeholders considered the work of children's guardians was generally good, there was widespread concern that management arrangements for public law work were unsatisfactory. Stakeholders lack confidence that Cafcass effectively addresses issues of poor performance by its front-line staff.

Prospects for improvement

Cafcass senior management has started to implement important developments which, if carried through successfully, would help transform many aspects of the delivery of front-line services. Part of this strategy includes a significant organisational restructuring in order to prioritise front-line services. These changes also aim to strengthen Cafcass's capacity to successfully play its part in the implementation of planned changes in how courts manage public law cases from April 2008 onwards ('the Public Law Outline').

Senior management has successfully implemented some important Cafcass-wide developments. In other instances, senior management has been less successful in implementing change. Some elements within Cafcass have shown resistance to change and embracing a management culture. As such, Cafcass shares with many other organisations the challenges of change management.

Recommendations

HMICA makes five recommendations to help Cafcass improve practice and service outcomes for children. The recommendations cover the:

- standards and practice of the children's guardian's role
- protocols that deal with boundaries between local authorities and children's guardians
- development of frameworks, assessment tools and guidance
- improvement of case records
- impact of quality assurance on children's guardians' reports to court.

Recommendation 1

page 11

In order to ensure that children's guardians practise within a consistent framework that safeguards and promotes the interests of children in care proceedings, Cafcass should issue standards and guidance covering the children's guardian's role in such work.

Recommendation 2

page 13

Cafcass should explore with local authority national associations the feasibility of establishing protocols that address boundary issues covering their respective care-related court proceedings roles and responsibilities.

Recommendation 3

page 21

In order to equip children's guardians when assessing parents, contact or scrutinising local authority care plans, Cafcass should develop robust frameworks and assessment tools with supporting guidance.

Recommendation 4

page 28

Cafcass should take steps to ensure that the content of case records supports the children's guardians' assessments and recommendations to court.

Recommendation 5

page 34

Cafcass should ensure that children's guardians' reports to court are of a high standard and that its quality assurance system supports this aim.

Recommendation 4

Cafcass should take steps to ensure that the content of case records supports the children's guardians' assessments and recommendations to court.

Overall Cafcass response: Revised policy and procedures on the keeping of records was issued in November 2006. Further work has recently been completed to review the documentation kept on files and provide new formats for recording specifically in relation to anticipated changes in Public Law proceedings. This is being piloted and will be reviewed in March 2008 and revised as necessary.

Overall improvement target: Case records will contain the basis for assessments/analysis and recommendations.

Date: June 2008.

Recommendation 5

Cafcass should ensure that children's guardians' reports to court are of a high standard and that its quality assurance system supports this aim.

Overall Cafcass response: A quality assurance tool is already in place. This will be reviewed to ensure effective feedback is linked in to personal staff development plans.

Overall improvement target: Reports meet the desired standard.

Date: April 2008.

