

# Seeking Agreement

## *Children and Family Court Advisory and Support Service (CAFCASS)*

**A Thematic Review by MCSI of the operation of  
schemes involving CAFCASS at an early stage in  
private law proceedings**

**December 2003**

### ***Acknowledgements: Advisory Group, CAFCASS staff and Judiciary***

*Seeking Agreement* was greatly assisted by an Advisory Group whose members were:

Senior District Judge Gerald Angel, Principal Registry of the Family Division; Dr Gerard Bates, HM Inspector HMIP; Harriet Bretherton, Service Manager (Research) CAFCASS; Dr Christine Piper, Department of Law Brunel University; Sharon Witherspoon, Deputy Director Nuffield Foundation and colleagues from the Department for Constitutional Affairs (formerly Lord Chancellor's Department) led by Nicola Webster from the CAFCASS sponsorship unit.

The views expressed in this Review are MCSI's and are not necessarily shared in full by the Advisor Group.

MCSI is grateful to members of the Judiciary and to CAFCASS for their co-operation with the Review.

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# Chief Inspector's Foreword

*Seeking Agreement* is MCSI's review of the arrangements in place across England and Wales to resolve disagreements about the future of children without recourse to a full court hearing. These schemes aim to help parents, who have decided to divorce or separate, reach agreement about the future for their children, reduce levels of acrimony, and avoid painful and long drawn-out court proceedings.

In an ideal world, seeking agreement is the best course to resolve an argument. Actually achieving agreement may be a much more difficult challenge. This is particularly so where parents, following divorce or separation, cannot reach an accord as to where their children should live or with whom they should have contact. Most parents manage in one way or another to reach some kind of agreement without resorting to fully contested court proceedings, but significant numbers do not. In applications under the Children Act (1989), courts make some 36,000 requests each year for reports from CAFCASS to assist them decide future arrangements for the children. In many court areas, there are different kinds of scheme in place that involve both courts and CAFCASS.

Courts, solicitors, CAFCASS and others are drawn into the struggle to decide what is in the best interests of children and the wider family. It is an extremely painful time for everyone concerned. As the Family Law Act (1996) section 1, recognised, there are important general principles which should be given due regard, including:

*“that a marriage which has irretrievably broken down and is being brought to an end should be brought to an end*

- i. with minimum distress to the parties and to the children affected;*
- ii. with questions dealt with in a manner designed to promote as good a continuing relationship between the parties and any children affected as is possible in the circumstances;*
- iii. without costs being unreasonably incurred in connection with the procedures to be followed in bringing the marriage to an end; and*

*that any risk to one of the parties to a marriage, and to any children, of violence from another party should, so far as reasonably practicable, be removed or diminished”.*

This Review explores how the various schemes operate and considers how well they work. However, defining success in such fraught family situations and deciding how to assess it is problematic. In discussing these and related issues, *Seeking Agreement* sets out both the findings and possible ways forward to develop and improve practice.

To have an effective dispute resolution scheme in most courts and CAFCASS areas may be a desirable goal. One conclusion from this Review is that more developmental work and careful research will be needed before such an aim can be achieved. Another is that there is no quick and easy way forward.

I am grateful for the encouragement MCSI received from CAFCASS when the Thematic Review was first proposed and for the enthusiastic support MCSI has received in undertaking this Review. Courts and CAFCASS staff, as well as members of our Advisory Group, have given invaluable help and time.

A handwritten signature in black ink that reads "Stella Dixon". The signature is written in a cursive, flowing style.

**Dr Stella Dixon**

**Chief Inspector MCSI**

October 2003

# Executive Summary

## Background and context of the review

In April 2001, the Government combined three separate organisations<sup>1</sup> into the Children and Family Court Advisory and Support Service (CAFCASS) to provide a unified support service to family proceedings across England and Wales. CAFCASS is a national body made up of nine English Regions and CAFCASS Cymru.

HM Magistrates' Courts Service Inspectorate (MCSI) is responsible for inspecting and reporting on CAFCASS as well as conducting thematic reviews of particular aspects of CAFCASS' work.

*Seeking Agreement* is MCSI's first Thematic Review of CAFCASS. It focuses on the part played by CAFCASS in arrangements that operate at an early stage in private law proceedings. These are typically contested applications about children for residence or contact following the divorce or separation of parents. Throughout this Review these arrangements are referred to as **schemes**. The schemes were inherited by CAFCASS from the 54 former probation services that had developed them in varied ways to suit local arrangements.

MCSI's first report about CAFCASS (*Setting Up*)<sup>2</sup> reflected on the wide variations in practice between localities and within teams generally. This Review reports on one aspect of service delivery, namely the operation of schemes at an early stage in private law proceedings involving CAFCASS. It brings together an overview of a range of practices operating across CAFCASS. It also identifies common themes and different approaches, asks questions about effectiveness, value for money and service delivery to stakeholders (courts) and service users (children and families). *Seeking Agreement* suggests actions that CAFCASS might take to deal with issues arising from the Review Findings in order to make better use of existing schemes and to assist with any plans for future developments.

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<sup>1</sup> The three services were The Family Court Welfare Service from the probation services; the Guardian ad litem and Reporting Officer Service; the Children's Division of the Official Solicitor's Department.

<sup>2</sup> *Setting Up*, March 2002, p22.

**Methodology**<sup>3</sup> The Review was conducted in two stages. Using a telephone questionnaire, the first stage sought systematic information from CAFCASS about the extent and range of practice that operated in the schemes. On the basis of the information provided by CAFCASS, schemes were then arranged into nine broad groupings with differing characteristics. In the second stage of the Review, MCSI visited seven areas using a variety of schemes to consider how they operated and gather evidence of outcomes, customer focus, the involvement of children and diversity issues.

**Findings** The Review found:

*Support for schemes* There was widespread support for dispute resolution approaches from professionals involved with them. By and large, they were satisfied with the practices that they were familiar with and proposed few, if any, changes to their local scheme.

*Common definitions, purposes and role* There was no common definition in use that described the work undertaken by the schemes. Without a common language, it was difficult to identify a clear purpose for each scheme. Day-to-day practice was determined by the particular practice of the professionals involved.

*Information and informed consent* There was an absence of reliable and systematic information for service users about schemes. The information that was available was insufficient for practitioners in any of the schemes to be confident that parties had given their informed consent to participate in them.

*Involving children and young people* Children were routinely included in only one scheme, although there was provision within some others to interview children at the request of parents or courts. The views of professionals about whether children should or should not be included in schemes were held strongly, but were divided between those for or against participation.

*Diversity issues* Schemes were not included in the monitoring guidance issued by CAFCASS in 2003 and no schemes included the monitoring of the race and ethnicity of service users.

In most CAFCASS areas, there were low proportions of staff who were Black, Asian or from minority ethnic communities.

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<sup>3</sup> Full details of the methodology are included in Annex A.

*Risk assessment* From what was observed, there did not appear to be enough information at the directions stage in proceedings to assess risk sufficiently; even where consent to participate in dispute resolution had been given, MCSI was not satisfied that issues of safety had been reliably addressed.

*Use of time* In all schemes, CAFCASS staff reported that there was insufficient time to undertake the tasks required in each case.

In all the schemes visited, MCSI observed examples where time was wasted because parties failed to keep appointments, inappropriate cases were listed for schemes or there was poor liaison between court administration and CAFCASS staff.

*Training, supervision and recording* Although there had been some specific training in some schemes that predated CAFCASS, the apprenticeship model of training applied to all the schemes visited.

CAFCASS had not identified the core competencies required to deliver this service and the operation of schemes was not included in its arrangements for supervision and appraisal of practitioners:

- Records about the schemes followed no common system, as each had been developed to meet differing local needs.
- CAFCASS staff were unclear if, and how, to apply the policy and practice of risk assessment to the schemes. As a result, a wide variety of practice was observed during the Review and some of the inherited guidance was judged by MCSI as unacceptable and unsafe.

*Data, evaluation and standards* No reliable data was collected about the schemes and there was no agreement about optimum staffing levels that would ensure efficient and effective use of resources.

Apart from one scheme, no others had baseline information which would allow them to be measured or evaluated and none had any monitoring of performance against standards.

The culture of each scheme was maintained without benefit of critical appraisal or the identification and development of best practice, value for money or assessable outcomes.

**Suggested actions** In the light of the above findings, MCSI suggests the following actions to CAFCASS:

*Strategy* Develop a strategy about the provision of dispute resolution services funded by CAFCASS that includes a clear definition of the purpose of schemes, supporting policies and the deployment of staff.

<i>Best practice</i>	In consultation with key stakeholders, develop protocols and guidance covering best practice issues.
<i>Managing performance</i>	<p>In order to provide core management data about performance, establish monitoring for all schemes.</p> <p>In order to assist managers monitor and develop the work of practitioners, issue guidance for them.</p>
<i>Protocol</i>	<p>Agree criteria for ordering court welfare reports (section 7) about section 8 matters.</p> <p>Work with courts around listing, referral criteria to schemes and best use of IT.</p>
<i>Diversity</i>	Introduce into all schemes the CAFCASS monitoring of race and ethnicity and undertake an impact analysis of schemes in line with Commission for Racial Equality guidelines.
<i>Human Resources</i>	<p>Undertake a review of staffing involved in schemes, informed by best value principles and attention to diversity issues.</p> <p>Identify core staff competencies for working within schemes, develop a programme of training and include performance within schemes in staff supervision and appraisal.</p>
<b>Conclusions</b>	<p>A common sense view of these schemes would be that it is better to resolve disputes by agreement than by order of the court. It is also preferable to seek agreement without the expense and delay of a section 7 report. The evidence that these schemes do sustain agreements and reduce the need for a report tends to be more anecdotal than factual. In the absence of national agreed criteria for the ordering of section 7 reports, it is difficult to compare schemes consistently.</p> <p>The Review did not cover every scheme operating across CAFCASS as the information that was made available to MCSI for the first stage was incomplete. The findings from this Review suggest a desirable starting point for future planning about alternate dispute resolution schemes. The Review also confirms that much more needs to be known about schemes. Policies, protocols and best practices need to be agreed before there can be an informed discussion about any possible increase in resources.</p>

The schemes observed by MCSI were developed locally to service local need as defined by local practice. This means, by and large, that professionals have a vested interest in maintaining what works in their experience. Were significant changes to be proposed, there is a risk of disruption to the service provided.

The development of a protocol for the ordering of section 7 reports is viewed by MCSI as a priority. Similarly, the question of involving children needs to move beyond debate towards some resolution. Finally, MCSI is of the view that any focus on ‘settlement-seeking’ should not be at the expense of safeguarding children and adults from risk of harm.



# Introduction

*This Review reports on one aspect of CAFCASS service delivery in private law matters, namely the part played by arrangements that operate at an early stage in private law proceedings: typically, during contested applications about children for residence or contact following the divorce or separation of parents. Throughout this Review these arrangements are referred to as schemes. In many respects, CAFCASS practice in private law reflects society's search for ways to cope with the wide variety of need – and often distress – associated with disputed contact and residence issues concerning children after separation or divorce.*

*It is a truism, often repeated, that court should be the place of last resort to resolve disputes in family law and alternative courses to the court process (for example, mediation<sup>4</sup> or information giving<sup>5</sup>) have been tried and reviewed. Nevertheless, parties do take their disputes to court because it is the accepted system for judgement in contested matters. However, as this Review reports, it is not always clear what parties are seeking when they take their dispute over children to court.*

## Background

H M Magistrates' Courts Service Inspectorate (MCSI) reports to the Lord Chancellor on the organisation and administration of the magistrates' courts in England and Wales in order to improve performance and disseminate good practice. Since April 2001, the Inspectorate has also been responsible for inspecting and reporting on the work of the Children and Family Court Advisory and Support Service (CAFCASS). In addition the Inspectorate carries out thematic reviews that focus on particular aspects of the work of the courts and CAFCASS in order to promote good practice.

In March 2002, MCSI published *Setting Up*. This was the Inspectorate's first report on CAFCASS and its progress in consolidating the new arrangements from April to December 2001. *Setting Up* reported a series of themes and findings, one being the:

*“quite wide variations in practice between localities and even within teams. Such variations sprang from diverse local cultures and traditions. These in turn reflected how the 100-plus organisations that now make up CAFCASS formerly operated. They also reflected a paucity of investment in practice evaluation that would help provide a sound evidential base for ensuring consistent practice approaches country-wide”<sup>6</sup>.*

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<sup>4</sup> The debate about mediation as reported over many years in the journal *Family Law* is both substantial and lively.

<sup>5</sup> Information Meetings and Associated Provisions within the Family Law Act 1996.

<sup>6</sup> *Setting Up* March 2002 page 22.

That finding is equally true of the schemes examined in this Review. *Seeking Agreement* reports on the operation of schemes involving CAFCASS at an early stage in private law proceedings concerning disputes between parents (or other significant adults, such as grandparents) about children. These are usually disputes about:

- residence: that is, who the children should live with following the parents' divorce or separation
- contact: that is, whether, or how often, a child should have contact with their non-resident parent (or other adult) following the parents' divorce or separation.

Applications for Residence and Contact (and other relevant matters such as specific issues) are made under Section 8 of the Children Act 1989. If parties to these proceedings are unable to resolve their dispute by alternate means, the Court may then order a report under section 7 of the Children Act. CAFCASS staff prepare those reports:

*“to provide the court with information about matters relating to the welfare of the child which will enable the court to make decisions that are in the child’s best interests”*<sup>7</sup>.

CAFCASS private law practice was inherited from the Family Court Welfare Service (FCWS) of the 54 former Probation Services. Expenditure on FCWS work accounted for less than 10% of Probation Service spending on staff and resources. FCWS had acquired a close relationship and status with the court and to a certain extent had been allowed professional discretion to develop and deliver schemes on a local basis, to suit the requirements of FCWS, the courts and legal representatives. Consequently, a wide variety developed in the resource allocation, practice, purpose, aims and names of these schemes. Current practice owes much to former local initiatives developed by Probation Services.

*Seeking Agreement* is a review of the purpose and practice that is reflected across the range of this provision. It considers the variety of ways in which CAFCASS and the courts interact and through a series of visits examines what is happening in practice in seven schemes. It is based on the information made available to MCSI by CAFCASS, but that information was neither complete nor comprehensive. Consequently, the Review does not cover every variety of scheme that operates across CAFCASS nationally. The Review:

- identifies a range of schemes
- considers the essential features of schemes
- promotes a customer focus
- discusses key issues that arose from the schemes that were visited
- incorporates current thinking from *Making Contact Work*<sup>8</sup> The Family Law Protocol<sup>9</sup> and the Select Committee Report<sup>10</sup> about CAFCASS
- reports on findings
- suggests practice that should be changed
- offers suggested actions to CAFCASS.

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<sup>7</sup> National Standards for Family Court Welfare Work section 4.3.

<sup>8</sup> *Making Contact Work (2002)*: A report to the Lord Chancellor on the facilitation of arrangements for contact between children and their non-residential parents and the enforcement of court orders for contact.

<sup>9</sup> Family Law Protocol 2002 The Law Society.

<sup>10</sup> House of Commons Committee on the Lord Chancellor’s Department: Children and Family Court Advisory and Support Service (CAFCASS) 2003.

## Definitions

Schemes involving CAF/CASS are known by a range of names, such as ‘conciliation’, ‘mediation’, ‘dispute resolution’, ‘conflict reduction’, ‘court duty’, ‘family hearings’ ‘settlement seeking’ and so on. These names are often used interchangeably to describe a process but there is no general consensus as to what the words mean.

## Seeking Agreement

The Review report is divided into five chapters:

- Chapter One sets out the standards that both govern and monitor the schemes
- Chapter Two describes the first phase of gathering information, identifies a range of schemes operating across CAF/CASS and discusses themes that emerge
- Chapter Three reports on issues arising from the day-to-day practice of the seven schemes observed by MCSI
- Chapter Four draws together themes and findings
- Chapter Five summarises the review findings, proposes actions that MCSI considers will contribute to the overall goal of improving schemes involving CAF/CASS, and sets out some conclusions.

# 1 Service principles and standards

***This chapter sets out the standards that both govern and monitor the schemes. In particular, the Review assesses how well schemes visited by MCSI complied with the CAFCASS Service Principles and Standards (formerly the National Standards).***

- 1.1 In March 2003, CAFCASS issued its *Service Principles and Standards* (the Standards) to:

*“provide a framework for the work of CAFCASS Practitioners and require that they place the interests of children at the forefront”<sup>11</sup>. The Standards “do not have the force of law but are subject to primary and secondary legislation, Court Rules and Orders of the Court”<sup>12</sup>.*

*“Measures for performance against the Standards are developed and incorporated within policies, procedures and practice guidance”<sup>13</sup> and “the Service Standards provide the basis on which CAFCASS Managers monitor and develop the work of Practitioners”<sup>14</sup>. The Standards “are applicable to the work of all CAFCASS Practitioners, both employed and self-employed”<sup>15</sup>.*

*“They replace the National Standards for Probation Service Family Court Welfare Work and the National Standards for the Guardian ad Litem and Reporting Officer Service”<sup>16</sup>.*

- 1.2 Prior to March 2003, the schemes covered by this review were subject to *National Standards for Probation Service Family Court Welfare Work (Home Office 1995)*. Chapter 2 set out the standards for ‘Directions appointments and assistance to the court’ and Chapter 3 the standards for ‘Mediation – the resolution of disputes’.
- 1.3 With regard to the operation of the schemes, the new *Service Principles and Standards* replicated the former national standards in their entirety except for the former section 2.8. That section stated that *“parties to the proceedings should be provided via the courts if that is appropriate, with written information about the role”* of the practitioner....and *“be given details ...of the complaints procedure...and any sources of further information”*.

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<sup>11</sup> Section 1.13.

<sup>12</sup> Section 1.8.

<sup>13</sup> Section 1.17.

<sup>14</sup> Section 1.14.

<sup>15</sup> Section 1.11.

<sup>16</sup> Section 1.1.

- 1.4 It is not clear to MCSI why these provisions were not included in the new *Service Principles and Standards*. Chapter Four of this Review will argue for the need to provide such information.
- 1.5 The Standards distinguish between schemes that provide assistance to the court (generally non-privileged) and schemes that provide what is known as mediation, conciliation or dispute resolution (often, but not always, privileged). In general terms, this means that what is said during privileged discussion (except concerning matters of child protection) cannot be reported to the court unless both parties agree that it can be. The nature of a privileged meeting offers the opportunity to approach the disputed issues with a flexible, open discussion. Offers made by either party, discussion entered into, and advice provided, by professionals remains confidential unless both parties agree that it can be disclosed to the court.
- 1.6 The full text of the Standards that apply to these schemes is as set out below:

## Specific Considerations Applicable to Private Law

### **Directions Appointments and Assistance to the Court in Private Law (cases where the Practitioner is not acting as Guardian ad Litem under rule 9.5<sup>17</sup> of the Family Proceedings Rules 1991)**

3.21 Assistance to the Court should take place before or during initial directions appointments at the request of the court and when parties have given their informed consent.

3.22. In those circumstances the Practitioner will:

- 3.22.1 assist the court to decide on the most appropriate and efficient means of handling the case;
- 3.22.2 identify any areas of agreement;
- 3.22.3 clarify those areas that are in dispute;
- 3.22.4 identify whether there is any prospect of agreement without the continued involvement of the Court

3.23. The discussions with the parties are not privileged (anything said during the meeting(s) can be reported to the Court without the permission of the parties).

3.24. When it is possible to assist the parties in reaching agreement, the CAFCASS practitioner will report this to the Court and advise whether an Order is necessary.

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<sup>17</sup> Family Proceedings Rules 1991 (SI 1991/1247) (FPR). Rule 9.5 grants courts power to make children parties to private law Children Act 1989 proceedings and to appoint a guardian ad litem for them.

**Mediation/Conciliation/Dispute Resolution in Private Law (cases where the Practitioner is not acting as Guardian ad Litem under rule 9.5 of the Family Proceedings Rules 1991)**

3.25. Privileged discussion (anything said during the meeting(s) may be reported to the court only if both parties agree) will take place at the request of the Court, when parties have given their informed consent and on court premise or elsewhere.

3.26. In these circumstances the Practitioner will:

- 3.26.1 facilitate communication between parties in the dispute;
- 3.26.2 identify and clarify issues about which there is dispute;
- 3.26.3 remind parties of their continuing parental responsibility for their children and that the welfare of the children is paramount;
- 3.26.4 encourage and help the parties to reach an agreement which is in the best interests of children;
- 3.26.5 comply with CAFCASS child protection policy and procedures. As an exception to privileged discussion, any statement of one of the parties clearly indicating that the other has caused in the past, or is likely in the future to cause, serious harm to the well being of a child may be reported to the relevant agency and the court informed regardless of the parties' agreement.

3.27. The Practitioner will:

- 3.27.1 ensure that parties are clear about the mediation process;
- 3.27.2 ensure that the parties are clear that the process is privileged, what this means and that they give their consent to proceed.

3.28. If agreement is reached, the Practitioner will provide each party with a copy and advise them to notify the Court of the agreement, through their solicitors if appropriate.

3.29. If CAFCASS is subsequently ordered to prepare a report by the court, another Practitioner should be assigned to the case and should not be given access to any information or statements made during the course of the mediation process.

1.7 Later chapters comment on the way the above Standards are used in the schemes visited by MCSI in the course of this Review.

## 2 Phase One – Gathering information

*Chapter Two covers the initial, information gathering phase of the Review. It identifies practices that operate throughout England and Wales, groups them into a range of schemes and discusses themes that emerge.*

### Scoping the field

- 2.1 In the first stage of the Review, MCSI undertook a telephone survey to identify the range or scope of practice in schemes across CAFCASS England and Wales. Each of the nine CAFCASS Regions and CAFCASS Cymru appointed a liaison officer<sup>18</sup> to collect information in advance of the telephone questionnaire.
- 2.2 The questionnaire<sup>19</sup> asked whether schemes:
- were optional, compulsory, privileged or non-privileged
  - requested children to attend
  - operated with a judge, magistrate or clerk present in the meeting
  - had solicitors present during the meeting
  - had a screening process or risk assessment
  - obtained user views about the service provided
  - provided written or other information about them
  - took account of diversity issues in the design and provision of the service
  - were monitored, evaluated or had records kept about them.
- 2.3 The questionnaire also collected information about:
- the amount of CAFCASS resources that were expended on schemes
  - the purpose of schemes
  - practice guidance and training for CAFCASS practitioners who were involved in the schemes.
- 2.4 Information was obtained from seven of the CAFCASS Regions and CAFCASS Cymru by the date required by MCSI. Two Regions were unable to provide complete information and few were able to give an accurate breakdown of all the relevant information that was requested.
- 2.5 The questionnaire at Annex A sets out what MCSI considered was basic relevant information about schemes. However, no Region could provide this in full. The available information was therefore more limited than was anticipated.

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<sup>18</sup> This was not an official position, other than to provide the liaison link between the region and MCSI for the first stage of this review.

<sup>19</sup> See Annex A.

2.6 When this review was undertaken, CAF/CASS did not have a computerised data management system that could readily identify answers to the questionnaire. Liaison officers were therefore dependent on local information that for various reasons was often not available.

2.7 Most of the CAF/CASS Regions and CAF/CASS Cymru are large geographical areas made up of many former probation services. Each of those services had their own data and management information system or did not record any systematic information about these schemes. The reliability of the data collected from the CAF/CASS Regions and Wales varied in its quality, quantity and availability. CAF/CASS did not inherit from its predecessor organisations a legacy that was rich in either data or research and it was apparent that it might take several years to construct a practice database to manage practice performance.

2.8 This Thematic Review was undertaken during 2003 and at the same time as MCSI’s ongoing programme of baseline inspections of CAF/CASS<sup>20</sup>. Like this Review, those inspections also reported on the data available at the time.

**A range of schemes**

2.9 Based on the information resulting from the questionnaires, the range of practice, process and purposes of schemes operating in over 350 courts across CAF/CASS was established. Once the range was identified, MCSI then sorted the data into categories of scheme, each distinguished by varying characteristics (see Figure 1).

*Figure 1: Range of schemes arising from the telephone survey*

On call scheme at court	CAF/CASS at court	CAF/CASS at court	CAF/CASS & Mediator at court	CAF/CASS away from court	CAF/CASS & legal reps. at court.	CAF/CASS with judge in court. Formal Children involved	Mediation service away from court	CAF/CASS full-time service at court
Scheme A	Various Schemes not visited	Scheme B	Scheme C	Scheme D	Scheme E	Scheme F	Not visited	Scheme G

2.10 The schemes visited by MCSI are summarised below:

- Scheme A does not have CAF/CASS practitioners at court to service it. Instead, practitioners attend court an ‘on call’ basis. This is a non-privileged scheme.
- CAF/CASS provides five practitioners one day each week at court in Scheme B. This is a non-privileged scheme.

<sup>20</sup> MCSI’s baseline inspections of CAF/CASS are its first formal inspections of CAF/CASS as a newly established organisation. As such, they examine selected key functions, collect available information and reach judgements about overall performance and service delivery. *Setting a Course*, the overview report of six baseline inspections, was published in March 2003.

- Scheme C has a mediator and CAFCASS practitioner present at court one morning each week. Discussion with the mediator is privileged, discussion with the CAFCASS practitioner is not.
- Scheme D operates away from court, for one day each week, involves two CAFCASS practitioners and is not privileged.
- Scheme E has one CAFCASS practitioner at court for one morning (sometimes all day) each week. Legal representatives are present during the discussion with parties. It is a privileged scheme.
- Scheme F has two CAFCASS practitioners at court all day, twice a week. A team of CAFCASS practitioners is based in offices within the court building. The judge is present during the privileged discussion with the parties. Children and young people are expected to attend and are interviewed by CAFCASS practitioners. Children and young people do not come into court.
- Scheme G has one full time and one part time CAFCASS practitioner based in offices within the court building. The scheme operates each day (although not always for the whole day) of the week and is not privileged.

## Themes arising from the telephone survey – the scoping stage

### *Teamwork, relationships and the local culture*

2.11 In almost every scheme, the quality of the relationships between the professionals<sup>21</sup> was said to determine how each scheme worked. In other words the *local culture* determined the nature of the scheme and it included such issues as:

- the quality of professional practice
- how often professionals worked together
- the ease and openness of communication between them
- a mutual agreement about purpose and process
- an understanding of systems and protocols between court staff, the judiciary, legal representatives and CAFCASS.

2.12 MCSI was also told that schemes created and maintained relationships with smaller courts. Some liaison officers suggested that because of this they should continue to be staffed irrespective of resource implications or the amount of work generated for CAFCASS on the day. CAFCASS claimed that working together established and nourished mutual understanding and respect. They were also said to raise and maintain the profile of CAFCASS within the court setting.

2.13 In general, MCSI was told that relationships determined “*how things are done here and how they work*”.

### *The assessment of risk to children, adults and CAFCASS staff*

2.14 Risk in this context covered the extent to which children and adults were at risk of physical, emotional, sexual or racial violence, abuse, intimidation and harassment.

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<sup>21</sup> The term ‘professionals’ is used throughout this review to include the Court and CAFCASS. Where the term also includes legal representatives this is made clear in the text.

- 2.15 MCSI saw examples of inherited or ‘legacy’ guidelines<sup>22</sup> from the former Probation Services that covered the assessment of risk to children and adults.
- 2.16 MCSI was told that those guidelines were still in operation, although CAFCASS had issued guidance to all staff regarding *Safe Working Practice* that in general terms was applicable to these schemes.
- 2.17 Schemes operated at an early stage in proceedings, usually at or before the initial directions hearing. All regions indicated that there was insufficient information at this stage in proceedings for a formal risk assessment to be carried through. Consequently an *informal* risk assessment procedure operated and the assessment of risk was said to be ongoing throughout the meetings with parties.

### *Information about schemes and the issue of informed consent*

- 2.18 CAFCASS *Service Principles and Standards* 3.21 state:
- “Assistance to the Court should take place before or during initial directions appointments at the request of the Court and when parties have given their informed consent”.*
- 2.19 MCSI had seen legacy leaflets and information sheets that had been updated in some Regions with the CAFCASS logo. However, one Region inappropriately used information leaflets that bore the name of the former Probation Service and cited the name of the Chief Probation Officer with whom complaints should be lodged. CAFCASS has not issued a specific leaflet that explained these schemes to service users.
- 2.20 There was no co-ordinated responsibility to inform service users about the schemes. Some Regions were unsure about whether there was any information or who was responsible for distributing it to service users. There were no posters that advertised the schemes nor was there any information about them on the CAFCASS website.
- 2.21 In some Regions, information about the schemes had been translated into languages other than English, but this was not common practice.
- 2.22 In general, liaison officers thought that it was disingenuous to describe the schemes as optional. Even where choices were given, the court expected parties to co-operate with them and in some cases they were compulsory.
- 2.23 One liaison officer summarised this as:

*“parties are invited to these meetings but they are not really given a choice as to whether or not to attend”.*

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<sup>22</sup> These legacy guidance policies and procedures were inherited from the former Family Court Welfare Services.

### *The purpose of the schemes and the pressure of time*

- 2.24 A consistent view was expressed by CAF/CASS about the time pressures on the schemes. The short time that was available for each case was seen to be a contributory factor to parties making pressurised decisions or agreements. Consequently, some liaison officers cast doubt on the value of decisions that were made in such circumstances. However, opinions as to whether or not the schemes provided enough time for each case perhaps depended more on what the schemes were intended to do rather than what actually happened in practice.
- 2.25 *Service Principles and Standards* Section 3.22 (former Standard 2.5<sup>23</sup>) sets out the purpose of these schemes as follows:
- assist the court to decide on the most appropriate and efficient means of handling the case
  - identify any areas of agreement
  - clarify those areas which are in dispute
  - identify whether there is any prospect of agreement without the continued involvement of the court.
- 2.26 Some schemes were clear about their purpose, for example:

*“The meeting will last about 15 minutes as the purpose is to identify what is agreed and what remains in dispute in relation to the arrangements for the children concerned”.*

### *The views of service users, monitoring and research*

- 2.27 Canvassing service user views, monitoring or research all offered different opportunities to evaluate or obtain feedback about the schemes. With one exception, all Regions identified the court, rather than children and families, as their primary service user.
- 2.28 Where there was any formal feedback from Court, this was usually through the Family Court Business Committee. There was regular informal feedback from individual judges or magistrates. Parties were not canvassed routinely as to their views anywhere in CAF/CASS. Schemes were neither evaluated nor researched, other than in two exceptions<sup>24</sup>. Compliance with the former National Standards had not been monitored.
- 2.29 As part of the general management information that was collected by CAF/CASS each month, Regions counted the resources that were given to schemes in terms of the number of hours that was allocated by CAF/CASS practitioners. The information was not used to inform practice.

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<sup>23</sup> *National Standards for Probation Service Family Court Welfare Work (Home Office 1995).*

<sup>24</sup> Greg Mantle *A Consumer Survey of Agreements Reached in County Court Dispute Resolution (Mediation)* National Probation Service: Essex Probation Occasional Papers December 2001 & Carole A Morgan *Findings of a Research Project into the effectiveness of mediation in West Glamorgan Family Court Service* (1996) (unpublished).

## *Administration*

- 2.30 One often mentioned consequence of these schemes was that they were said to ease some of the administration for CAF/CASS within the local systems by, for example, ensuring that accurate information was recorded, or court papers were more efficiently dispatched to CAF/CASS, if CAF/CASS staff were present at court.

## *Training*

- 2.31 There had not been any formal training for CAF/CASS staff involved in these schemes since CAF/CASS was created in April 2001. The majority of staff had been trained by the Probation Services who were formerly responsible for the schemes. In general, training had been conducted by experienced staff who then inducted newer practitioners into how the scheme operated. This was informal, apprenticeship-style training based on local practice, without evaluation or agreed competencies.
- 2.32 Three Regions indicated that, pre-CAF/CASS, there had been some formal training in managing conflict, dispute resolution or basic mediation skills. However, it is important to note that some CAF/CASS practitioners were also mediators who had received formal training and accreditation through the organised Mediation Services, independently of CAF/CASS.

## *Involving children*

- 2.33 With one exception,<sup>25</sup> children were not included in schemes on a systematic basis. Children's involvement is considered in a separate section later in this review.

## *Diversity issues*

- 2.34 In the report *Setting Up*, MCSI said:
- “Diversity is a shorthand term that tries to capture a range of concepts, attitudes, behaviours and legal requirements. Diversity is against practices that are illegal, such as many forms of discrimination but it is also about behaviours and attitudes of both service users and staff and it is also for developments that help promote better services for the public. In the CAF/CASS context, these might include, for example, ensuring that its premises are accessible to those who are disabled, providing written information in a range of languages and having sufficient knowledge and skills to understand the relevance to the proceedings of particular cultural norms or religious beliefs.”<sup>26</sup>*
- 2.35 The majority of Regions said that there was access to interpreter services, although the need for an interpreter might not be apparent until the parties arrived at court. Access to bilingual practitioners was identified as a major issue in parts of CAF/CASS Cymru. Leaflets were available in various languages in one Region. Monitoring (including race and ethnicity) was conducted in two Regions only, but it was not

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<sup>25</sup> Scheme F page 33.

<sup>26</sup> *Setting Up* section 2.3 page 27.

analysed. The guidance issued by CAFCASS in July 2003, about race and other monitoring, made no reference to the schemes.

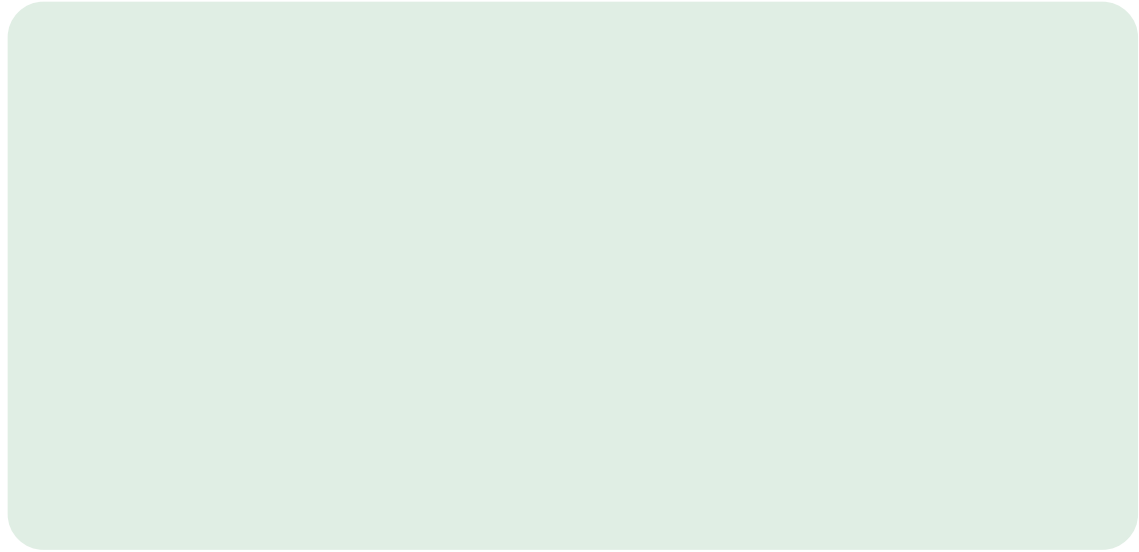
- 2.36 There was a general acknowledgement that gender issues had to be approached with a sophisticated understanding of power within relationships including the fact that the majority of CAFCASS practitioners were women.
- 2.37 Regions highlighted issues of access including rural issues and compliance with the Disability Discrimination Act 1995. The poor condition and availability of interviewing facilities at some courts were also diversity-related concerns.
- 2.38 One practitioner drew attention to the small proportion of black or minority ethnic CAFCASS staff running these schemes. As a black practitioner, she highlighted the importance for service users that her presence at court represented, whilst recognising the limitations and specificity of her own cultural skills and understanding across the wide range of racial, ethnic or religious communities with whom CAFCASS worked.
- 2.39 Liaison officers said:

*“Diversity issues hit you in the face in this region and there is a major issue about the fact that white, middle-class practitioners may not understand other cultures or the way that they try to resolve disputes”*

*“The commitment to actively address issues of Diversity is a core value”*

*“This is a huge issue. The concept of dispute resolution may not be understood at all. How can you provide a service to people who are at different starting points with constraints on time and accommodation? The current set up is hardly ideal”*

## 3 Phase Two – Visits to seven schemes



### Methodology

- 3.1 MCSI visited one scheme from each category in the range that were staffed by CAFCASS. Each visit comprised:
- direct observation of the scheme by an Inspector
  - separate meetings with judges, CAFCASS practitioners and CAFCASS managers.
- 3.2 All the meetings covered the same agenda:
- purpose and practice of schemes
  - evidence of outcomes
  - what works now
  - desirable and realistic changes
  - consent of parties to participate, assessment of risk and potential safeguards
  - involving children
  - diversity issues.

### Service user views

- 3.3 As part of the overall methodology for the Review, MCSI set out to conduct a postal questionnaire of service users to ascertain the degree of satisfaction with the service provided by CAFCASS in these schemes. MCSI was reliant upon CAFCASS data and recording systems to establish a sample of service users. However, except for one scheme, the information was not readily available from CAFCASS to be administered in a cost-effective and timely way.

- 3.4 The findings from a limited survey of only one scheme must, therefore, be treated with caution; but, in the absence of any other data about service user views apart, from the two studies mentioned above<sup>27</sup>, views expressed could be indicative of areas of concern or compliment that might help inform policy and practice development. The results of the survey are at Annex B.

### Scheme A: an ‘on call’ model

- 3.5 This scheme was visited by MCSI but, given the nature of the scheme, it was not possible to observe it directly. MCSI met separately with judges in two courts, with CAFCASS practitioners and CAFCASS managers. All the professionals interviewed by MCSI had experience of the scheme pre- and post-CAFCASS.
- 3.6 This was a scheme that had been developed locally and served the needs of the local system. The differentiating feature of this scheme was that it did not have CAFCASS staff on duty at court to service it, nor did it have a protocol in the sense that the expectations and responsibilities of each professional were formalised. This scheme had developed since CAFCASS began in April 2001. At that time, managers in the Region had decided with the court that scarce resources would be better used in the preparation of section 7 reports rather than providing a court-based service at directions hearings. Instead, it was agreed that CAFCASS would provide assistance to the court *if* it were needed rather than routinely by way of court duty. One judge commented that:

*“the need is for access to CAFCASS rather than having them in court”.*

- 3.7 There had been an in-court scheme pre-CAFCASS, so it was possible for professionals to compare and contrast the two different arrangements.
- 3.8 MCSI was told that the current scheme was dependant on a mutual understanding and reciprocal respect for the needs of CAFCASS and the needs of the court.

### Comparisons pre- and post-CAFCASS

- 3.9 Judges, CAFCASS practitioners and managers agreed that the current arrangement was better, for reasons that included:

- a lack of clarity of purpose in the former scheme:

*“It was nice to have someone there but hard to know what effect it had”*

- there was a better use of resources in the current arrangement because

*“in the former system you might have only done effective work in one hour out of four to say nothing of the time spent reading the papers in advance”*

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<sup>27</sup> See page 17.

- the efficiency test, which was described as:

*“whether there is an increase or decrease in section 7 reports”.*

CAFCASS told MCSI that there had not been a change overall in the volume of section 7 reports requested by this court.

- pressure within the former system where:

*“people agree to things in court because they are under pressure”*

- the purpose of the former system:

*“if a scheme is set up to make agreements it’s then difficult to resist making agreements”*

- safeguarding children:

*“At court conciliation you only meet the parents and do not hear from the children. In addition, from a child protection perspective you can’t make the checks in a court scheme”.*

## **Scheme B: ‘in court’ dedicated model**

### ***How the scheme operates***

- 3.10 All appointments for first directions were listed to be heard by one judge in one court on a specific day each week. Five CAFCASS practitioners serviced the scheme for up to 22 cases in that one court. The court sent out an explanatory leaflet in advance and parties would either attend with their legal representatives or represent themselves.
- 3.11 A CAFCASS practitioner interviewed the parties together (without the legal representative) to identify the best way forward. Each case was called into court in turn (with the legal representative, if relevant). The CAFCASS practitioner then outlined the nature of the case to the court and identified the options available, including areas of agreement (if any) and a suggestion as to the next steps.
- 3.12 The judge then discussed matters with the parties (and representatives) and, if necessary, made directions.

## ***Observations on the day that MCSI visited, time spent and use of resources***

- 3.13 The meetings between the CAFCASS practitioners and parties that were observed by MCSI on the day took about 20 minutes each. The format that they followed was:
- the CAFCASS practitioner explaining the process of the meeting
  - clarification of each party's perception of the issues in dispute
  - collection of information (such as parties' addresses, dates of birth, solicitor details)
  - identification of any involvement with other agencies such as Social Services Department or NSPCC
  - questions about violence
  - information to service users about the preparation of a section 7 report
  - an opportunity for service users to ask questions of the CAFCASS practitioner.
- 3.14 The CAFCASS practitioners then returned to the court, with the parties and their legal representatives, to report to the judge their findings and proposals for next steps. Not all parties who were on the court list attended their directions appointment. The five CAFCASS practitioners had meetings with parties on the list for one court and each case was called into court in turn, causing a degree of waiting around for the CAFCASS practitioner. CAFCASS did not have an office in the court and there was not suitable space for practitioners to be engaged productively in other work during the waiting time.
- 3.15 The CAFCASS office was within a few minutes' walking distance of the court.

## ***Purposes of the scheme***

- 3.16 The purposes of the scheme were described by professionals as:
- *to resolve matters without further intervention by the court and identify when CAFCASS practitioners are required*
  - *to ensure that a report is ordered only where it is necessary*
  - *an element of dispute resolution*
  - *a quick screening mechanism*
  - *to ensure that there is minimal delay by streamlining the court procedure*
  - *to assist separating parents to identify and discuss the issues in dispute and, if possible, to enable them to reach an agreement without having to go through court proceedings.*

*"We believe we are in the business of resolving and making agreements"*

## ***Consent and the assessment of risk***

- 3.17 All the professionals accepted that parents came to court with a variety of expectations and that *"no one can be forced to speak [to CAFCASS] if they are not happy to do so"*. Consent was assumed, which was described by some CAFCASS practitioners as *"if viewed from a service user perspective, I would feel coerced"*.

- 3.18 Court staff marked the court file with an alert indicator to signal issues of significant risk, where known. However it was agreed that at this stage in proceedings “*there is not enough information to do a risk assessment*”. It was also felt that the scheme was in need of “*modernisation*” in the light of current thinking about risk and domestic violence.

*“Time has moved on and directions hearings have had their day. The increase in domestic violence and mental ill health means that this scheme isn’t as effective as it once was because it hasn’t developed to meet current need”.*

### ***Involving children***

- 3.19 Judges and CAFCASS staff agreed that, under current arrangements, children should not be involved. This was because of the physical environment (this was a combined court centre with criminal and family cases heard in the same building) and the level of distress in most cases. MCSI was told that “*As it is now it’s disturbing enough for adults*”.
- 3.20 However, given more thought it was agreed that whilst “*it might demand great skill to set it up... there were ways and means. Overall it depends on age and understanding*”. If it were to happen, then “*moving the scheme from the court to the CAFCASS office*” was preferred by some.

### ***Diversity issues***

- 3.21 CAFCASS staff described a high incidence of mental ill health in the area. They also identified that “*more could be done around improving mobility access*”.

### ***Outcomes, practice issues and improvements***

- 3.22 The scheme had not been reviewed, nor evaluated. It was felt that “*basically it works well*” but was in need of more resources and some improvements to the very cramped interview facilities. However, some professionals felt that there should be more clarity of purpose:

*“Unless you know your purpose it’s hard to say what works, we just do it”.*  
*“We need more time to make agreements”.*

- 3.23 The idea of inviting parties into the office before reporting to court was mooted (see Scheme D).

## Scheme C: CAFCASS in partnership with a mediation service

### *How the scheme operates*

- 3.24 Every private law application that, on the basis of the court papers was considered suitable by the judge, was listed for a ‘mediation appointment’ at court. These were heard once a week with a CAFCASS practitioner and a mediator present at court until 1pm. CAFCASS was in partnership with the mediation service and provided some funding to it through a service level agreement.
- 3.25 CAFCASS was provided with the court list two weeks prior to the mediation appointment and at that stage basic social services checks to inform a risk assessment were carried out. At court, on the appointed day, the CAFCASS practitioner saw all parties to screen for child protection or domestic violence issues. If suitable, parties were encouraged to see the mediator who in turn explained the purpose and process and made an appointment for mediation away from the court building. Parties could be seen within three weeks for up to four mediation sessions. MCSI was told that “*nearly everyone who agrees at court to attend mediation does so*”. The mediation sessions are privileged meetings and, as such, following mediation, the court is only informed whether or not an agreement was reached.
- 3.26 Both CAFCASS and the mediation service agreed that their roles overlapped and resources were duplicated. Plans for change were in hand.

### *Observations on the day that MCSI visited, time spent and the use of resources*

- 3.27 None of the parties that were listed for a mediation hearing attended court on the day that MCSI visited this scheme. The Inspector met separately with the Judge, CAFCASS practitioner and with the mediator.

### *Purposes of the scheme*

- 3.28 The purposes of the scheme were described by professionals as:
- *to inform parties about alternatives to court*
  - *to persuade them about the benefits of mediation, explaining that their right to their day in court is not taken away*
  - *to begin the mediation process and steer parties away from an adversarial approach*
  - *to resolve disputes quickly and amicably*
  - *to free up CAFCASS time by diverting parties away from the necessity to prepare a section 7 report.*

### *Informed consent and the assessment of risk*

- 3.29 Parties were given oral and written information about mediation and completed what was known as a ‘willingness test’ to determine consent to participate. The CAFCASS practitioner screened each case using a standard checklist that systematically covered child protection, domestic violence and the involvement of other agencies.

### *Involving children*

- 3.30 The professionals held different views about whether or not children should be involved. Some emphasised the need to encourage parents to make decisions about their children, seeing it as an issue of *parental responsibility* rather than an issue about the *inclusion of children*. However, the involvement of children was encouraged when their parents agreed that it was appropriate to do so. Professionals were interested in having further discussion together about including older children (defined by them as ten years and above) and particularly about the idea of having ‘children’s sessions’ at court to ascertain wishes and feelings rather than full section 7 reports.

### *Diversity issues*

- 3.31 Parties using the scheme at this court were drawn from a wide and long-established minority ethnic population. It was reported to MCSI that there was a good use of self-help groups and that local solicitors were responsive to the diverse needs of the local community.

### *Outcomes, practice issues and improvements*

- 3.32 Professionals expressed a range of views about the scheme. For some, it was seen not to be cost effective because an increasing number of cases that went through mediation still resulted in a request that CAFCASS prepare a section 7 report. MCSI was told by CAFCASS and the judge that this was due to an increase in the number of more complicated cases that were not suitable for mediation such as those involving child protection, violence or substance misuse.
- 3.33 All agreed that there was unnecessary duplication, with the presence of both a mediator and a CAFCASS practitioner on the same day at court.

## **Scheme D: an ‘out of court service to adults’**

### *How the scheme operates*

- 3.34 Scheme D was conducted away from court premises. The interviewing of parties by CAFCASS was completed in advance of the initial directions hearing at court. When the application was made, the applicant was given an appointment to see a CAFCASS practitioner at the CAFCASS office. The appointment was made by administrative staff at court and at that point the respondent was not aware of it. The majority of referrals to this scheme were from the County Court. CAFCASS administrators then sent a letter of appointment to both parties with accompanying information about the scheme. In the absence of a contra-indicator it was assumed that parties would attend the meeting together for a ‘joint interview’. However, parties could request a separate interview. Throughout the process, arrangements would be made to try to ensure that applicants and respondents felt safe.
- 3.35 The majority of matters dealt with were Children Act section 8 applications but other issues were referred to the scheme, such as satisfaction reports<sup>28</sup>.

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<sup>28</sup> Section 41 Matrimonial Causes Act 1973.

3.36 The interview was called an *assessment meeting* and eight meetings were scheduled for thirty minutes each on one day per week. The meetings were conducted by one practitioner and the emphasis was that CAFCASS “*looked at things through the child’s eyes*”. Two practitioners staffed the scheme and conducted up to four assessment meetings each per day.

3.37 After the assessment meeting, CAFCASS wrote a ‘directions letter’ to the court with a recommendation as to the best next steps for each case. The report might recommend, for example, a further appointment with CAFCASS (there could be up to two more meetings) or referral on to another agency, such as mediation. It might indicate that sufficient progress had been made in the meeting for the parties to withdraw their application or, on the other hand, that a full enquiry with a section 7 report was necessary.

### ***Observations on the day that MCSI visited, time spent and the use of resources***

3.38 The time spent in the five meetings that were observed by MCSI ranged from thirty minutes to about an hour. One of the meetings was a joint appointment with both parties present. The rest were single meetings, with either the applicant or respondent present. On the day, all appointments were kept except one. Meetings followed a similar format:

- the CAFCASS practitioner explaining the process of the meeting
- collection or clarification of administrative information (such as parties’ addresses, dates of birth, telephone numbers, solicitor details)
- collection of qualitative information from each party about their perception of the issues in dispute
- a basic risk assessment which included standard questions about violence and whether the children were known to other agencies such as the Social Services Department or the NSPCC
- initial feedback by CAFCASS to parents about what was likely to be conveyed back to court in the directions letter as to the best next steps.

### ***Purposes of the scheme***

3.39 The purposes of the scheme were described by professionals as:

- *to identify, and try to resolve, problems there and then*
- *to clarify what was at issue, inform parties about what could and could not be achieved and refocus parents on the child’s best interest*
- *(that) the directions report was a guide in best ways forward*
- *(that) the primary purpose is to enable parents to reach an agreement, the secondary is to reduce the number of cases that go to report and the sub aim is to keep people out of court.*

### *Consent and risk assessment*

- 3.40 Consent was assumed, or indeed was seen, by professionals as a fait accompli: “respondents feel obliged to attend rather than consent to it”. All agreed that there was a lack of information provided to CAFCASS prior to the interview. Whilst risk would be assessed during all interviews as a matter of good practice, it was recognised that the absence of sufficient prior information was in itself a potential risk to both parties and staff.

### *Involving children*

- 3.41 Professionals were circumspect about involving children at this stage. They told MCSI that:

*“The focus is on the child and who better to do that than the parents. Children shouldn’t be drawn in at this stage”*

*“The scheme is built around the premise that by helping parents to settle and make decisions it means that children are thereby protected”*

*“Things are beginning to change in the debate as it is being recognised that parents are not always good at making decisions about their children”*

### *Diversity issues*

- 3.42 It was claimed that there was an opportunity in the assessment interview for parties to explain the impact of their culture on the issues raised. Whilst this would indicate good practice, MCSI did not observe this on the day.

### *Outcomes, practice issues and improvements*

- 3.43 The scheme had not been evaluated since CAFCASS began, although the former Probation Service had undertaken a limited statistical review during the 1990’s. That review found that, on average, a full agreement was reached in 24% of cases and a partial agreement in 22%. No agreement was reached in 45% of cases.
- 3.44 In discussion with MCSI, the scheme was appraised with optimism by the court and CAFCASS alike:

*“The worth of this scheme is in the opportunity to reach an agreement”. “There is an assumption that it is better for people to come to this scheme than go to court. It is not as anxiety raising and is away from the adversarial system”.*

3.45 The merit of the scheme was identified in two key areas: firstly, in its speed:

*“an appointment is made almost immediately”; secondly, that “there is ready access to the ‘right type’ of professional to consider children at the ‘right time’ “an assessment can be made at an early stage, at the lowest point of intervention, where stakes are not raised”.*

*“It is more akin to outpatients rather than the operating theatre”*

3.46 Improvements needed were identified as:

- the need to improve information in advance to enhance the assessment of risk including the exchange of information with other agencies
- the desire to locate a CAFCASS office at court in addition to the current arrangements. This would improve liaison with the court and develop working relationships
- shorter adjournment times to prepare reports
- the need for a separate waiting facility at the CAFCASS office
- better access to solicitors and including them in the scheme in specific circumstances
- CAFCASS having a greater part in determining who is referred to the scheme
- better information to parents to *“reassure them and explain the scheme before they come”*.

## **Scheme E: CAFCASS with parties and their legal representatives**

### ***How the scheme operates***

3.47 Following an application, the court sent the service users a directions appointment. This is a one hour meeting with a CAFCASS practitioner at court. The meeting is described as ‘conciliation’. Between three and five conciliation appointments are listed on one day each week. Initial information (the form C1) is sent from court to CAFCASS, who then write to parties with information about the scheme.

3.48 The conciliation meeting is privileged<sup>29</sup> and is conducted by one CAFCASS practitioner. Legal representatives of the parties are present in the meeting. They are there to advise parties rather than participate in the conciliation process as such.

### ***Observations on the day that MCSI visited, time spent and the use of resources***

3.49 MCSI observed two conciliation meetings. Both meetings lasted about twenty-five minutes each. On the day, three conciliation meetings had been listed and in two of those meetings the parties attended with their legal representatives.

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<sup>29</sup> The distinction between a privileged and non-privileged meeting is set out at page 11.

- 3.50 Meetings followed a similar format, the CAFCASS practitioner explained that:
- CAFCASS had been asked by the court to see whether parties could reach agreement
  - the meeting was privileged (excepting child protection matters)
  - the meeting would focus on seeking agreement rather than hearing about the history of the dispute
  - parties should not interrupt but hear what each other had to say.

3.51 The practitioner then conducted the conciliation meeting with a view to seeking, and then clarifying, areas of agreement that could be reached on the day. The result of the meeting was then put before the judge who then decided on best next steps. An agreement was reached in one of the two meetings.

### *The purposes of the scheme*

3.52 The purposes of the scheme were described by professionals as:

- *to focus on the child*
- *to achieve resolution at an early stage before battle lines have been drawn and agendas set that influence future relationships*
- *to resolve issues without the need for a section 7 report*
- *to enable communication for the first time since the separation*
- *purposes are manifold. The scheme benefits parents and ultimately children. It reinforces parental responsibility because it helps parents to make decisions together in the best interest of their children*
- *to look at what intervention is the most appropriate if agreement can't be reached as a 'gate-keeping' exercise to the next steps*
- *it's a beginning at a difficult time. It asks 'what can we do at the moment' and sets principles about how best to seek agreement.*

### *Consent and the assessment of risk*

3.53 MCSI was told that CAFCASS outlined the nature of the conciliation meeting in the appointment letter that was sent to parties. In addition, there was a general belief by professionals that legal representatives informed parties, but that a leaflet was needed. Consent was assumed and there was no formal risk assessment.

3.54 All professionals were uncomfortable with the limited nature of the initial information available prior to the conciliation meeting, especially regarding risk. Where, for example, the fear of violence and intimidation was known or became evident, then no face-to-face meeting between parties took place. Instead there was what was known as 'shuttle conciliation' where the CAFCASS practitioner shuttled between both parties (and their legal representatives) to convey the offers from both sides to each other to seek agreement if at all possible.

## *Involving children*

3.55 Professionals expressed a variety of views:

- *there are cases where it might be helpful but it isn't practical to sift them out*
- *it could be done by arrangement in the afternoon but there would be a need for training and better facilities if it became a matter of routine*
- *I'm aware that this goes on elsewhere but I strongly disagree with involving children at this stage*
- *a better way to do this would be to undertake a section 7 report that was restricted to an enquiry into the wishes and feelings<sup>30</sup> of the child and there are more of these now coming out of conciliation meetings.*

## *Diversity issues*

3.56 Again, professionals commented on the limited information that was available prior to the conciliation meeting. They would not be aware of whether there were any particular diversity issues until parties attended the meeting. In other words, there was no monitoring or early information that might be used to prepare usefully for the meeting. Professionals said that they were mindful of the implications of race, gender, ethnicity and language. They also drew attention to the needs of service users who lived in rural areas and were disadvantaged by poor transport and the distances that had to be travelled to courts in this Region.

## *Outcomes, practice issues and improvements*

3.57 Research about this scheme had been commissioned by the former FCWS, pre-CAFCASS<sup>31</sup>. That study found that about one half of mediation agreements remained intact for at least six months and three-quarters of agreements that broke down did so within three months. The study identified a range of suggested changes including an improved service to women through screening for risk factors.

3.58 The statistics that are kept about the scheme cover the percentage of conciliation meetings that:

- reach full agreement
- reach part agreement, with and without a report
- do not reach agreement, with or without a report.

3.59 Most of the professionals agreed that the scheme worked well:

- *rates of agreement are high, the process is productive and healthy and the scheme has a proven track record*
- *it's team work. If one professional group did it alone issues would be missed*
- *it works well with legal representatives present because that provides balance and ready access to legal advice.*

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<sup>30</sup> See the welfare checklist section 1(3) Children Act 1989.

<sup>31</sup> A Consumer Survey of Agreements Reached in County Court Dispute Resolution (Mediation) Essex Probation Occasional Papers: Greg Mantle 2001 National Probation Service.

3.60 Some changes were canvassed:

- *there is a need to determine what an agreement really is before we can say what the purpose of the scheme is*
- *[how to avoid] the time wasted when parties do not turn up*
- *the need for better information prior to the conciliation meeting.*

## Scheme F: In Court Conciliation Model. Children included.

### *How the scheme operates*

3.61 Two courts sit on one day, and one on a second day, each week for conciliation hearings where parties are given a ‘conciliation appointment’. A CAFCASS practitioner is available to each court. In advance of the conciliation appointment, parents are sent a leaflet by the court that explains how the scheme works. One expectation of the scheme is that children aged nine years and over are to attend. A team of CAFCASS practitioners is based in the court building where this scheme operates.

### *Observations on the day that MCSI visited, time spent and the use of resources*

3.62 MCSI observed the scheme as it operated in one of the two courts that were sitting on the day of the visit. The CAFCASS practitioner sat with the judge in court and assisted in the conciliation sessions. The sessions were conducted by the judge. Parties were accompanied by their legal representatives and everyone present took part in the conciliation session. Three of the five cases observed by MCSI took between forty minutes and an hour. In most of the cases, the CAFCASS practitioner undertook an advisory role to the court.

3.63 However, the unique CAFCASS role in this scheme became evident in the one case where a child was interviewed. That interview lasted thirty-five minutes and was conducted in a quiet room outside the court room itself. This was an interview room that was not equipped specifically for child interviews.

3.64 MCSI observed a skilful, child-friendly interview. The young person (age 12) clearly understood her role in this part of her parents’ dispute. At the close of the interview, the CAFCASS practitioner went through what would be relayed back into the conciliation session, before reporting the young person’s views back to the court.

### *The purposes of the scheme*

3.65 The purposes of the scheme were described by professionals as:

- *the provision of an early intervention without statements and thereby without raising the stakes*
- *an opportunity for parties to hear the indication of likely outcomes in a much less formal process than directions*
- *an opportunity for children to have a voice early on, to speak freely without it being written down and passed around*
- *to get parents to gain a greater insight into the effect of their dispute on the children*

- *to ensure that the child's point of view is represented and that the child's dimension is fed back in court to both parents*
- *to help the parties to resolve problems and not go through the witness box experience*
- *to save judicial time and reduce the need for a section 7 report*
- *to ensure that the negotiation remains real because it is done within a legal context*
- *part of due process. The system is a precursor to the adversarial process and does not disqualify resort to an adversarial dispute*
- *a sifting process for the court to sort out those cases that can be diverted and those that need a report. Diversion is better for the court and for families, both financially and stress wise*
- *CAFCASS give the scheme a legitimacy because they are experts with children. We need their guidance and they are essential when children attend*
- *it's a marker to all that these hearings are different. CAFCASS experience and insights are invaluable and where children are seen the cases are often turned on their head*
- *it's a team work issue. If parents only see CAFCASS outside court they don't see it as important*
- *the CAFCASS contribution is crucial when children attend and desirable in others...they provide advice to parents about how their children are coping with the separation*
- *CAFCASS practitioners help with the conciliation, keep child focused, interview children and safeguard them in the process against unskilled other professionals.*

### **Consent and the assessment of risk**

3.66 Consent was assumed to be implicit within the process. Parties were informed through the leaflet and, if they had one, their legal representative. The scheme is compulsory for those who have brought their case before this court. *"If they don't want to participate they have to go before the District Judge of the day"*. All professionals were mindful of the need to assess risk. There was no formal risk assessment but the teamwork approach was seen to be a safeguard to *"not being alone with the issues"* and, as elsewhere *"risk assessment is done as the case unfolds"*. CAFCASS practitioners would intervene if there were some risk involved in the agreement reached, so that the focus remained on the child rather than on 'agreement seeking'.

### **Involving children**

3.67 There was a united and positive view about involving children. The view was expressed that these issues *"cannot be dealt with without hearing from the children"* and that *"the Children Act 1989 says that the child's voice should be heard"*. *"The dispute is about and involves children. They have a voice and if they don't attend how do you ascertain their wishes and feelings?"* *"In conciliation, children can't be used as pawns."*

3.68 Some of the professionals interviewed by MCSI who had experience of this scheme over many years (it began in 1983), were of the view that the child's contribution was crucial and that *"it was not a harmful experience"*. There needed to be better safeguards

“where there is a high level of animosity or fear of the parent”. In those circumstances, ‘good’ solicitors would do the vetting, but this was not considered to be a sufficient safeguard.

### **Diversity issues**

- 3.69 There was a minority view that “*conciliation is probably a white, middle-class issue*” and all recognised the need to “*recognise how different cultures or religions settle disputes*” whilst acknowledging that “*we are not always sensitive enough*”. On the day that MCSI visited, there was a very wide range in the ethnicity, race and language of service users at this court. This was not unusual and, consequently, diversity issues were described as “*self evident*”.

### **Outcomes, practice issues and improvements**

- 3.70 The scheme had not been evaluated and, consequently, it was acknowledged that views about outcomes were subjective. The voice of the child was emphasised, as was the informality of the conciliation appointment:
- *when parents do hear what children really say they can change their minds*
  - *because it’s conciliation, judges can be freer to give a view about the likely success of any application, which they can’t do outside of conciliation.*
- 3.71 MCSI was told that local practice played a part in whether the scheme ‘worked’ or not. It:

*“depended on the fit between individual judges and CAFCASS practitioners themselves. Not all judges can do conciliation or move away from the strict conciliation model. Some are of the view that they should judge, not conciliate”.*

- 3.72 Ideas as to improvements included telephone follow-up with the children to offer support if necessary. There was also the need for:

*“ready and easy access to mediation services, with a first appointment booked before parties leave the court building”.*

## **Scheme G: Full-time service to the court**

### **How the scheme operates**

- 3.73 Two CAFCASS practitioners were based at the court, one on a full-time basis, the other part time. The court provided office accommodation and an interview room for their sole use. Whilst CAFCASS provided a service to all the courts that were sitting each day, practitioners were mainly concerned with cases in the directions court.

3.74 Before the directions court began, the CAF/CASS practitioner met with the judge to review the cases that were listed. CAF/CASS then made preliminary enquiries arising from those cases (for example, of Social Services, GPs or Health Visitors) and updated the court as necessary.

3.75 The CAF/CASS practitioner:

- responded to matters arising from the court list as and when they arose
- conducted privileged mediation meetings by appointment
- interviewed children by appointment.

### ***Observations on the day that MCSI visited, time spent and the use of resources***

3.76 When MCSI visited this scheme, both CAF/CASS practitioners were on duty. There were 22 cases on the directions court list. CAF/CASS dealt with any matters arising from court business on the day. MCSI observed one of the CAF/CASS practitioners with:

- a mother who “*wanted a word*” with a duty solicitor. CAF/CASS gave brief advice
- two grandparents who were given advice by CAF/CASS about the meaning of parental responsibility
- a mother and her solicitor requesting an appointment for an interview with CAF/CASS regarding father’s application for variation of contact. CAF/CASS provided appointment dates to interview both parties and their daughter
- solicitors who “*wanted a word*” about their case and to “*put their side of the case*” to CAF/CASS. CAF/CASS advised that a contact centre was necessary and would arrange accordingly
- a solicitor asking CAF/CASS to see parents who had “*almost reached agreement*”
- solicitors requesting a meeting with CAF/CASS about mother’s application for contact and residence. CAF/CASS advised either a short adjournment to interview the children or a full report. Matters were to be put before the judge

3.77 MCSI also observed that:

- CAF/CASS had a pre-meeting about, and then gave evidence in, a case where the child was represented by CAF/CASS Legal and leading council; this case took about an hour.
- CAF/CASS informed solicitors that social services had closed the file on the family; CAF/CASS then sat in on the solicitors’ meeting and gave opinions.

### ***The purposes of the scheme***

3.78 The purposes of the scheme were described by professionals in the following terms:

- *to assist the court to handle cases comprehensively in the children’s interest*
- *broker agreements and start some interim arrangements going*
- *breaking the ice takes the heat out of the situation*
- *cuts down on the number of section 7 reports*
- *co-ordination of information between agencies*

- *you need a dedicated person at court to do the joining up*
- *this scheme has many dimensions. It meets need with minimum intervention*
- *CAFCASS speeds things up through their availability to make enquiries and get information quickly and informally*
- *they make agreements and so the resolution after the initial hearing is helped considerably*
- *they settle things, or it would be twelve weeks for a report.*

### ***Consent and the assessment of risk***

3.79 Consent was assumed. There was general agreement that at this stage in proceedings there was insufficient information to assess risk adequately.

### ***Involving children***

3.80 There was a wide range of views:

- *a lot of cases are resolved on the day without the need for children to be involved*
- *they should be involved only when it is relevant but they shouldn't be exposed to the cockpit of court*
- *children should not be involved when parents have reached agreement*
- *children should be involved where agreements are 'iffy'*
- *I'm against. It's damaging in the raw emotional case and dangerous to involve them*
- *sometimes it would be helpful*
- *this court isn't conducive to them coming.*

3.81 In one of the cases observed by MCSI, the CAFCASS practitioner made arrangements to interview a child with both parties by appointment. This was within the wide and flexible arrangements of this scheme and outside the provisions and structure of a section 7 report.

### ***Diversity issues***

3.82 Professionals drew attention to the different issues arising from the rural and urban communities served by this scheme, including access and transport difficulties.

### ***Outcomes, practice issues and improvements***

3.83 The scheme had not been evaluated and consequently the following views about outcomes were subjective:

- *if CAFCASS was not here then decision taking about, and results for, children would not be as good*
- *this scheme reflects what we have become used to. Perhaps solicitors have become dependent on CAFCASS. We've always had this system here. It would be a nasty shock if we didn't have it*
- *the more delay there is, the more interim hearings there are, the more important this scheme is*

- *there is need for more time for each case*
- *there is a need for better communication with other agencies. We often provide continuity in a case where social services staff have moved on*
- *there is a need for a database and linkup with CAF/CASS records to cover risk.*

## 4 Findings, themes and discussion

*Chapter Four sets out the main findings of the Review and then discusses them in the wider context of six highlighted themes.*

### Overview of the schemes

- 4.1 CAFCASS is a national organisation that, in private law proceedings has inherited the FCWS responsibilities of 54 former probation services. Schemes have evolved over time and reflect local cultures or the practice preferences of the professionals involved.
- 4.2 There was an absence of mechanisms to assure quality and accountability of CAFCASS service delivery on these schemes. Consequently:
- schemes were not evaluated or reviewed
  - outputs and outcomes were not defined
  - standards were not monitored
  - CAFCASS staff were neither supervised nor appraised about their performance on these schemes
  - CAFCASS staff were qualified in social work. In addition, the apprenticeship model prevailed for those practitioners who were new to the schemes
  - the purpose and outcome of schemes was unclear and reflected the wide parameters set out in CAFCASS *Principles and Standards*.

### Purpose of schemes

***FINDING: There was no common definition that described, clarified or set limits to the schemes. Schemes were defined by aspiration and functionally by what happened on the day, which in turn was determined by the particular practice of the professionals involved. Without a common language, it was difficult to identify a clear purpose for each scheme.***

- 4.3 The purpose of schemes could be defined, simply as set out in the *Service Principles and Standards*. However, the reality of practice went beyond that and, consequently, their purpose might be defined by the practice rather than by the principle or governing standard. So, for example, some Regions emphasised the importance of *information giving* whilst others were very clear that the schemes were there to “*seek agreements*” or “*try and reach a solution*”.

4.4 In the schemes observed by MCSI, some CAFCASS practitioners demonstrated considerable skill and experience, dealing with a wide range of need as it presented itself on the day. The directions hearing might have been the first time that parties had discussed the issues, either separately or together, since their separation. Parties might have been confused and in need of information about options open to them, or about the Family Court set-up itself. Individuals might have been distressed, fearful or angry. Often they simply wanted to “*tell their side of the story*”.

***FINDING: Schemes did not have an agreed, clear focus in terms of goals, practice and achievements.***

- It was unclear what they set out to achieve (goal)
- Without a clear goal, it was difficult to identify what steps (practice) should be taken to lead to achievements
- In the absence of clear goals and steps, it was not possible to know what success would look like or to know what had been achieved.

### **Input, output, outcomes and throughput**

***FINDING: There was no reliable data about the schemes.***

4.5 There was no analysis to establish the nature of the relationship between inputs (the resources expended); outputs (the service delivered); outcomes (the consequence of the activity); and throughput (the number of cases dealt with in a specific time).

***FINDING: There was no agreement about the optimum staffing levels necessary for the most efficient and effective use of resources on any scheme.***

4.6 For example, on the day that MCSI visited, in one scheme there were more than twice as many CAFCASS practitioners dealing with fewer cases per day than in some of the other schemes observed. However, there is a question as to how to measure ‘outputs’ and ‘outcomes’ because there is a mixture of tangible outputs and intangible outcomes for these schemes.

## Themes

### *Theme One: Teamwork, Roles and Practice*

#### The nature of private law proceedings

- 4.7 It is rare for private law cases to go to a final hearing where evidence is examined, witnesses are called and a judgement is made by the court. The system is perhaps more accurately characterised as a series of filters whereby at each stage in the process decisions are taken to ‘sift’ cases. Agreements are reached, parties withdraw, drop out or perhaps give up. Consequently, the system could be described as ‘settlement focused’ rather than ‘judgement oriented’. This is based on the premise that agreements reached by parties are more likely to be followed than those contained in the judgement of the court. This premise is, in itself, worthy of study. In addition, parental responsibility and minimum intervention are two underlying principles of the Children Act 1989.

#### Who does what, and why

- 4.8 The importance of teamwork and the local culture were emphasised by professionals in each scheme. The ‘professionals’ in these schemes were the court (judges, magistrates and legal advisers or court clerks), CAFCASS (these were mainly practitioners but sometimes managers and business support staff played a part) and at times legal representatives (solicitors, solicitors clerks and barristers).
- 4.9 The professionals provided a service to parties (mainly adults, sometimes children) in private law Children Act (section 8) proceedings, with the needs of children paramount. Those professionals were said to be part of a team, each with their own part to play.

***FINDING: In general, a team could be expected to be an organised co-operation of professionals with a common goal or purpose. However, in the schemes that MCSI observed, in practice there were multiple goals and purposes.***

***FINDING: Whilst the broad objectives of each scheme were the same, they were discharged differently and met by different professionals, depending on each individual scheme.***

## The function of schemes

4.10 Each scheme was said to meet the same three functions:

- the requirements of the court
- the requirements of CAFCASS
- the needs of service users.

These are discussed below.

### (i) Court requirements

Put simply, this meant that the daily court list was completed efficiently and effectively, with minimal delay and that due process was followed. With the exception of Scheme A, all courts said that it would not be possible to complete as many cases as they did without the assistance of CAFCASS at court.

### (ii) CAFCASS requirements

These were both administrative and workload requirements together with an initial assessment of service user need. Administration included the accuracy of information and its speedy communication between court and CAFCASS. A major aim of the schemes was to seek to ensure that section 7 reports were only ordered where no other option could be found on the day.

The assessment focused on identifying what the particular needs of the case were and making a preliminary, informal assessment of any risk to children and adults. Assessment was undertaken to establish whether agreement could be reached between parties, a referral to mediation might be made or whether a section 7 report needed to be ordered.

### (iii) The needs of service users<sup>32</sup>

Based on what was observed during the review and on other baseline inspections, MCSI suggests that, in very general terms, service user needs can be divided into three broad categories:

- Those parties that were seeking assistance from the court to help them settle their dispute and, on the face of it, there appeared to be merit to the claims of both sides.

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<sup>32</sup> For reasons as set out in Annex A and pages 21 and 22, MCSI was unable to canvas the views of service users systematically for this review. At page 99 of *Divorce Mediation and the Legal Process* Dingwall and Eekelar Clarendon Press 1988 Davis writes “it is very important to acknowledge that not everyone wants or feels able to resolve these disputes through negotiation. That is why we have courts. For those who have tried and failed to reach an agreement there may be a kind of tyranny in the expectation that, even when they have got as far as a court room, they should once more attempt to exercise a responsibility which they have come to regard as beyond them. They may well prefer, by that stage, to be relieved of all the burden of decision making. This feeling may be exacerbated, in the course of negotiations on court premises, by the lack of time and a general expectation that some kind of agreement will be reached despite all the recent history.”

- Those parties that were unclear as to why they were at court and had little knowledge of how the Family Justice System operated or about alternative dispute resolution outside the court process. (This included formal and informal systems such as mediation, counselling, marriage guidance, religious, family or cultural assistance.) These parties needed access to information and advice. They also needed assistance to help them to identify, or understand fully, what their dispute was about. For example, what might have begun as a dispute over residence or contact might have been more about finance or one party not accepting that the relationship was over, rather than a dispute about children.
- Those parties who had become embittered by, and embattled within, their dispute and who were before the court for judgement. In these cases trust was low, there was sometimes a history of violence and there was often the need for a contact centre referral (sometimes supervised). Such cases needed a range of responses.

4.11 Each of these broad areas of need invites a combination of responses across a spectrum of services that MCSI sets out in the following table.

*Figure 2 the spectrum of service responses*

Information & advice	Counselling/support to children and adults	Alternate dispute resolution: Conciliation Mediation Conflict reduction Dispute resolution Brokering agreements	Casework intervention/restraint & oversight Drug/alcohol services Contact centres Social services Anger management Trial arrangements Court injunctions	Court judgement
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### Roles

4.12 In theoretical terms, the role of each professional could be defined, in summary, as:

- the court’s role was to make decisions on the best interests of children based on the evidence before it
- legal representatives were there to ensure the best interests of their client
- the CAFCASS role was to assist the court, broker agreements where possible and ensure that children were safeguarded<sup>33</sup> and their needs remained paramount.

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<sup>33</sup> Safeguarding children is not the sole responsibility of CAFCASS but is for all professionals to ensure. Paragraph 1.5 of the Joint Inspector’s Report *Safeguarding Children* noted that “*The term safeguarding has not been defined in law or government guidance. It is a concept that has evolved from the initial concern about children and young people in public care to include the protection from harm of all children and young people and to cover all agencies working with children and their families. We have taken the term to mean:*

- *All agencies working with children, young people and their families take all reasonable measures to ensure that the risks of harm to children’s welfare are minimised; and*
- *Where there are concerns about children and young people’s welfare, all agencies take all appropriate actions to address those concerns, working to agreed policies and procedures in full partnership with other local agencies”.*

***FINDING: In practice, roles were more fluid, flexible and, in some schemes, interchangeable. This was explained partly by how each scheme worked and partly by the nature of private law proceedings.***

4.13 For example, it was not simply a matter of the application of role as to who did what in each scheme or responded to the range of needs of each individual before the court. It was not the case that ‘judges make decisions’, ‘legal representatives advocate’ and CAFCASS practitioners ‘conciliate’ or ‘broker agreements’.

4.14 Sometimes the roles were:

- interchangeable or complementary (Scheme F)
- undertaken by one professional (Scheme A)
- duplicated (Scheme C)
- specific to that system (Schemes B & D)
- multiple (scheme G).

***FINDING: Each scheme was a specific, interdependent system with roles taken and ascribed within it. Sometimes this division of labour was explicit or sometimes it was unspoken as to who did what.***

4.15 For example, if it was known that in the local scheme CAFCASS practitioners interviewed all parties, brokered agreements and reported to the court, those functions might not then be undertaken or attempted by other professionals. However, where CAFCASS did not do this or were ‘too busy’, other professionals, including legal representatives, then began to broker agreements or conciliate, and so on, where this was possible.

*“If you are too busy this morning then I will have to do it myself”*  
*“If I don't have a CAFCASS practitioner I take a more interventionist role myself. I am aware that might not be the best way forward but experienced CAFCASS staff take the view that we judges should be more involved”*

4.16 If some aspects of each role are interchangeable, then an explicit understanding of what tasks can be undertaken by all the professionals could lead to a better use of their time<sup>34</sup>. For example, some courts had introduced systems where legal representatives did not attend at the initial stage of court proceedings. They were therefore released to conduct other pressing business and in some cases public money was saved.

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<sup>34</sup> See *Family Lawyers : The divorce work of solicitors* Eekelar, MacLean, Beinhart (2000) Hart Publishing Ltd.

## The unique role of CAF/CASS

4.17 CAF/CASS roles that were identified by professionals in this Review included:

- *independent voice in court about each case*
- *conduit to outside agencies (particularly social services)*
- *expertise in speaking on behalf of children (and in one scheme to children).*

4.18 CAF/CASS provided elements of a social work role to the court, adult service users and children. This role ranged from the assessment of risk and referral to other services to the conduct of privileged mediation and conveying the wishes and feelings of children to the court and to parents.

### Time

***FINDING: In all schemes, CAF/CASS staff said that there was insufficient time to undertake the tasks required in each case. MCSI was told repeatedly by professionals that there were tensions around achieving effective court listing.***

4.19 Any comment about possible improvements to the wider parts of the system are outside the scope of this Review.

4.20 As already noted, the practice in most of the schemes observed by MCSI went beyond the requirements of the Service Principles and Standards and led to the question:

*‘Is the purpose of the scheme defined by its practice or is the practice of the scheme defined by its purpose?’*

4.21 The answer would determine whether the recently issued service standards and principles were sufficient in scope and measurable against practice or whether schemes set unrealistic, albeit often unspoken, ambitions within the time limits set by a busy court list. MCSI believes that, when the purpose of schemes is more closely defined, it will be possible to be more specific about the time and resources required to provide an effective service.

***FINDING: In all the schemes visited by MCSI there were examples where time was wasted because parties failed to keep appointments, inappropriate cases were listed for schemes or there was poor liaison between court administration and CAF/CASS.***

4.22 For example, in one scheme visited, three cases had been listed for a meeting with CAF/CASS. In the first case, the applicant had withdrawn but CAF/CASS had not been informed of this by the court. In the next case, the application was for a change to a residence order from one parent to another. The original residence order had

been made as a result of a full contested court hearing and section 7 report. It became evident very quickly that the CAF/CASS practitioner was right in their initial assessment that conciliation was not appropriate in that case. CAF/CASS played a key role in assisting parties in the third case to reach an agreement on the day. However, this was one case in three and required the CAF/CASS practitioner to travel for 70 miles to deal with it. The conciliation in that one case took 25 minutes in total.

## ***Theme Two: Information – Gathering, Dispensing and Sharing Effectively***

### **Research, monitoring, Service Principles and Standards**

- 4.23 The CAF/CASS staff for these schemes are social work practitioners. They respond to the variety of need, including, as they see it, an opportunity to broker an agreement if possible. However, particularly with ‘in court’ schemes, there is sometimes less than 15 minutes in which to pursue agreement seeking or reach a solution. MCSI believes it is important to ascertain through research, monitoring and practitioner recording whether those ambitions were likely to be realised, or have any longevity, if they are framed quickly and under the pressure of court conditions.
- 4.24 In all schemes, the durability of agreements was not known and there was no comparative analysis of the degree to which there was any reduction in the number of reports requested by courts within the range of schemes.
- 4.25 There is a desire within and beyond CAF/CASS that these schemes should be promoted. In Making Contact Work, the Advisory Board on Family Law commented “we welcome the widespread support for an in court conciliation system to be operated by CAF/CASS at the first appointment in contact cases. Such a system should be operated throughout the country and at every level of court”.

***FINDING: Schemes have not been routinely examined to determine, for example, effectiveness, best practice issues, defined purpose, value for money, product and outcome.***

- 4.26 The themes that emerged from the consultation leading up to the publication of Making Contact Work<sup>35</sup> were:
- a general dissatisfaction with the legal process as a mechanism for resolving and enforcing contact disputes
  - the need at an early stage to provide information for separating parents and their children about the likely effects of the separation, the difficulties they are likely to encounter and the means whereby those difficulties can be addressed
  - the need to address the problem by a wide range of different mechanisms which are not based on court proceedings
  - the need to ensure that those alternative mechanisms to court proceedings are in place and are accessible to those who need them.

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<sup>35</sup> Making Contact Work 1.2 page 10

- 4.27 The Family Justice System combines ‘law’ and ‘welfare’ principles. It reflects both the legal relationships within marriage and society’s expectation that, in general, court is the forum for the final settlement of disputes. The dissolution of a (married) relationship involves legal implications with the emotional processes associated with loss, such as anger or grief. Those emotional processes are neither susceptible to the law nor do they necessarily coincide with the demands of a legal timetable.
- 4.28 In some cases, family matters are never settled and decisions are made incrementally over a period of years, ‘along the way’ as part of the dynamic process within relationships. Moreover, once entered, the current system within family law is not sufficiently attuned to respond to those dynamic processes involving children. The more the law is used in the attempt to resolve private law disputes, the more the legal process requires an understanding of child welfare which is based on an authoritative source of knowledge<sup>36</sup> and evidence-based practice.
- 4.29 Notwithstanding “the general dissatisfaction with the legal process”<sup>37</sup>, it might simply be sensible to accept that parties expect a legal response to their dispute. MCSI takes the view that it is the shape of the response from the legal system that requires modification rather than a wholesale revision. The Family Justice System needs to embrace opportunities that may open up through more multidisciplinary, joined-up service provision in order to safeguard children and assist parties. It might then be possible to reserve busy and expensive court time for those cases of last resort.
- 4.30 In short, the needs of the parents who now make application to court might be met more effectively by the provision of a comprehensive range of services at the point of entry to the system.<sup>38</sup> These services should also be sensitive to the needs of children whose parents cannot reach agreement about arrangements following parental separation.

#### Measuring output, throughput and outcomes

- 4.31 Tangible outputs could include, for example:
- the number of section 7 reports arising out of each scheme as a proportion of the number of section 8 applications made
  - the numbers of agreements reached and, more crucially, just how long they lasted “*without the continued involvement of the court*”<sup>39</sup>
  - the number of cases referred to mediation or to contact centres and those outcomes.

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<sup>36</sup> For a more considered view of these issues see *How the Law thinks about children King and Piper (Arena 1995) Chapter 5, The child in mediation and divorce.*

<sup>37</sup> *Making Contact Work.*

<sup>38</sup> The importance of a holistic approach to family and relationship breakdown is recognised in the development of The Family Advice and Information Service (FAInS) which was introduced as a pilot in March 2001. (*FAInS Legal Services Commission 3<sup>rd</sup> Floor 85 Gray’s Inn Road London WC1X 8TX fains@legalservices.gov.uk*).

<sup>39</sup> Service Principles and Standards 3.22.4.

- 4.32 Tangible throughputs could include, for example:
- the number of cases that were dealt with by CAFCASS per scheme, time taken per case
  - the number of children interviewed
  - the number of cases where parties failed to attend court.

- 4.33 The less tangible outcomes could include, for example:
- the number of cases where parties began to communicate directly with each other for the first time since separation
  - the number of sessions that were ‘information giving’ generally, or further explained issues to parties.

#### Information, screening and consent

***FINDING: There was an absence of a reliable and systematic way to inform service users about schemes.***

- 4.34 MCSI concludes that, on that basis, it is difficult to be sure that service users consent to take part in schemes with full understanding.

- 4.35 MCSI suggests that CAFCASS should:
- reconsider its current policy on information
  - withdraw legacy material that is inaccurate
  - (in consultation with the court) establish who is responsible for devising and disseminating information about these schemes
  - ensure that service users are specifically asked for their consent.

***FINDING: There was insufficient information for, and about, service users at the directions stage of proceedings.***

- 4.36 Information for, and about, service users was not sufficient in any of the schemes to be confident that:
- parties had given their informed consent to participate in the scheme
  - there were no safety issues, even if consent had been given.

- 4.37 MCSI is of the view that to assume consent when it has not been specifically asked for is an insufficient safeguard against risk. There is a need to issue clear information about these schemes to service users indicating choices open to them and alternative options to court proceedings. The leaflets should be available in languages other than English, and an age-appropriate means to explain the schemes for children should be developed.

- 4.38 This is consistent with one of the recommendations of *Making Contact Work* that:  
*“the Lord Chancellor’s Department either prepares or commissions a leaflet setting out the approach of the courts to issues of contact. This should summarise the Sturge/Glaser report. It should also contain references to the decision of the Court of Appeal in Re L, V, M and H (Contact: domestic violence) and the approach of the court to cases where domestic violence is an issue. It should be designed to be made available to couples with children who have separated or who are contemplating separation”.*<sup>40</sup>
- 4.39 It would be helpful were CAFCASS to take the opportunity to consult with professionals and relevant parties about the screening needed to obtain necessary information at the point of entry to the system, often before the commencement of court proceedings. Screening might, for example, include more detailed questions about children and about domestic violence. The Family Law Protocol contains helpful guidance and information about this.<sup>41</sup>
- 4.40 The process of screening would also be assisted were it possible for more detailed information at the point of entry to be available. This could better enable CAFCASS to identify those cases that were, for example, most suitable to brokering agreement, or those where information or diversion was needed, or those where welfare considerations required a full assessment through a CAFCASS report. An earlier and more informed assessment could assist CAFCASS to allocate and target its resources more effectively.

### **Theme Three: The Assessment of Risk**<sup>42</sup>

***FINDING: The application of the policy and practice of risk assessment to these schemes was not clear to CAFCASS staff. There was a wide variety in the quality of the information relating to risk assessment and in the application of the guidelines (inherited or otherwise) as observed by MCSI in Phase Two. Some of the inherited guidance appeared to be too general and confused; some of it was unacceptable and unsafe.***

- 4.41 The guidance for a scheme in one region stated:  
*“all parties will be seen together except where there is clear evidence that one party is upset and frightened of being in the same room as the other (usually Domestic Violence cases). But it is not good enough for any party to say that they simply do not wish to meet with the other party – if there is any dispute or resistance then the matter should be referred to the District Judge for a decision.”*

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<sup>40</sup> *Making Contact Work* p113.

<sup>41</sup> Family Law Protocol Part VI.

<sup>42</sup> See *Residence and Contact Disputes in Court Volume 1* Carol Smart, Vanessa May, Amanda Wade and Clare Furniss Centre for Research on Family, Kinship and Childhood University of Leeds: Department for Constitutional Affairs Research Series 6/03 September 2003.

- 4.42 MCSI is of the view that such guidance conflated the two distinct issues of fear (because of domestic violence or otherwise) and ‘not wishing to meet’ (for whatever reason). The emphasis on a joint meeting (an agreement seeking focus) undermined attention to informed consent (a safety focus).
- 4.43 In the light of research evidence<sup>43</sup> and developing understanding about the nature and prevalence of domestic violence, statements like the one quoted above are not acceptable in guidelines for recommended practice.
- 4.44 In one of the schemes observed by MCSI, the CAFCASS practitioner asked parties in front of one another whether they had any objection to a joint interview there and then. This was asked in a busy public area of the court within earshot of other court users.

***FINDING: There did not appear to be enough information available at the directions stage in proceedings to assess risk sufficiently; rather, risk assessment was somewhat ‘hit and miss’. It was dependent on individual practice, attention and fortuitous disclosures.***

- 4.45 MCSI suggests that CAFCASS should, in consultation with practitioners and professionals (including legal representatives)<sup>44</sup>:
- review the information collected at the point of entry in Family Proceedings
  - review the use of legacy guidelines and issue guidance specific to these schemes
  - introduce a common risk assessment with a focus on raising the profile of a safety-oriented approach above that of an agreement-focused approach.<sup>45</sup>

#### ***Theme Four: Involvement of Children***

***FINDING: Children were included systematically in only one scheme across CAFCASS. There was provision within some other schemes to interview children at the request of parents or courts.***

***FINDING: The positions taken, and the views expressed, about whether children should or should not be included in schemes were held very strongly, whether for or against participation.***

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<sup>43</sup> Hester, Pearson and Radford (1997) National Survey of Court Welfare Officers and Voluntary Sector Mediation. Bristol Policy Press/Joseph Rowntree Foundation.

<sup>44</sup> *The Family Law Protocol* was issued and published by the Law Society in March 2002. In the foreword Dame Elizabeth Butler-Sloss, President of the Family Division describes it as a Protocol “*which covers best practice in all aspects of family law disputes*”. Part VI applies to domestic violence and includes advice on screening, making needs assessments and carrying out safety planning.

<sup>45</sup> Hester, Pearson and Radford (1997) Ibid.

- 4.46 From what MCSI observed, one of the principal drawbacks to schemes that excluded children was that any assessment was made from the parent’s perspective only. Consequently, although child focus was claimed by CAFCASS practitioners, any assessment completed or agreement reached fell short of the full assessment in a section 7 report with the assurance and thoroughness (if applied fully) of the welfare checklist.
- 4.47 It would be helpful for CAFCASS to take forward the debate about inclusion (or exclusion) of children in schemes beyond claim and counter-claim by further embracing:
- the UN Convention on the Rights of the Child and, in this context, Article 12<sup>46</sup> in particular
  - the implications of the growing desire to raise the profile of the wishes and feelings of children in private law proceedings.

### *Theme Five: Diversity issues*

- 4.48 The Race Relations (Amendment) Act 2000 places a responsibility on public bodies (as part of their general duty) to undertake an impact analysis to identify the impact of their policies on different racial groups. Impact analysis is also a useful means of assessing diversity issues other than race. MCSI is of the view that CAFCASS should consider each scheme in relation to:
- **Accessibility** – to what extent is the scheme physically accessible for service users? For example, the lack of good public transport links in some areas (such as Scheme G) might work against any development of schemes to include children routinely.
  - **Relevance** – to what extent are schemes relevant to, and inclusive of, the diverse range of cultural, ethnic or religious approaches to resolving disputes?
  - **Monitoring** – to establish the profile of people who use schemes locally.

***FINDING: No schemes are monitored at present and they have been excluded from the CAFCASS monitoring of race and ethnicity that was introduced in July 2003.***

- **Staffing** To inform a human resources strategy.

***FINDING: MCSI baseline inspections have shown that, despite the opportunities afforded by recruitment campaigns since CAFCASS began in 2001, the practitioner profile does not yet reflect the communities it serves. In most regions there is a low proportion of practitioners who are black, Asian or from minority ethnic communities.***

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<sup>46</sup> Article 12(1) provides that “State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child”.

- **Information** This should be available in a variety of languages and suitable print for the visually impaired. Information should be adapted to children's needs and the CAFCASS website should reflect these schemes appropriately.

### *Theme Six: Competencies, supervision, appraisal and practice development*

#### ***FINDINGS:***

- *Schemes were not included in the supervision and appraisal of practitioners.*
- *Recording systems had been developed locally and were not systematic.*
- *Apart from Scheme E, there was no baseline information from which to measure or evaluate schemes and there was no monitoring of performance against standards in any scheme.*

4.49 MCSI concludes that probably too much was claimed within and of the relationships<sup>47</sup> that sustained local cultures, particularly when they were long-established, rarely evaluated and, as it were, 'unspoken'. In those circumstances, there was the risk that relationships could have become uncritical or that the local culture dominated to the extent that the scheme was a reflection of the professionals running it.<sup>48</sup>

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<sup>47</sup> Court of appeal ReM (child) (Court of Appeal; Thorpe LJ and Wall J 31<sup>st</sup> July 2002) contains relevant judgement about the relationship between CAFCASS practitioners and the court.

<sup>48</sup> These issues were appreciated within schemes. For example professionals commented that: "*the courts become familiar with a settled staff and ways of doing things*", "*newer staff are uncertain about just what we are doing here on these schemes*", "*the scheme depends on the calibre of the people involved*".

4.50 MCSI suggests that schemes need to be:

- determined professionally by practice that is informed by reference to a combination of experience, theoretical understanding, research<sup>49</sup> and is based on evidence of ‘what works’<sup>50</sup>
- subject to agreed national training
- governed by national standards and practice guidance that are monitored and evaluated.

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<sup>49</sup> Dr Liz Trinder Centre for Research On The Child And Family, School of Social Work and Psychosocial Studies, University of East Anglia is currently undertaking research into the process and outcome of in court conciliation at first appointment in contact cases.

<sup>50</sup> The *What Works* Project was published in January 1998 by HM Inspectorate of Probation. In written evidence to the Select Committee on Home Affairs (1997/98 Appendix 15) the Chief Inspector described the Project as “a detailed and rigorous examination of the principles of effective practice and looks at targeting, design, programme delivery and general management issues. It has to be able to satisfy independent tests of reliability and validity in the programmes it had studied.”

In his book *The Reflective Practitioner*: Donald A Schon (Arena 1996) identifies “the need of an inquiry into the epistemology of practice” and begins with “the assumption that competent practitioners usually know more than they can say”.

## 5 Summary of findings, suggested actions and conclusions

*Chapter Five brings together the main findings of this Review and sets out some pointers for action that MCSI considers will contribute to the overall goal of improving schemes involving CAF/CASS.*

### Summary of findings

- 5.1 Whilst the broad objectives of all schemes were the same, they were discharged differently and met by different professionals. Each scheme was found to be a specific, interdependent system with roles taken within it. This meant that on occasions there was an explicit division of labour but sometimes ‘who did what’ was unspoken. In practice, these roles were found to be fluid and flexible and, in some schemes, interchangeable.
- 5.2 Information for service users:
- The Review found that there was an absence of reliable and systematic information to give to service users about schemes.
  - Information for and about service users was insufficient in any of the schemes to be confident that the parties had given their informed consent to participate in dispute resolution.

### Children

- The Review found that children were routinely included in only one scheme, although there was provision within some others to interview children at the request of parents or courts. The views of professionals about whether children should or should not be included in schemes were held strongly, but divided between those for or against participation.

### Diversity issues

- The Review found that the schemes were not included in the guidance issued by CAF/CASS in 2003 and no schemes included the monitoring of the race and ethnicity of service users.
- In most CAF/CASS areas, the practitioner profiles did not reflect the communities served and there were low proportions of staff who were Black, Asian or from minority ethnic communities.

### Training, supervision, recording and risk assessment

- The Review found that, although there had been some specific training in some schemes that predated CAF/CASS, the apprenticeship model of training applied to all of the schemes visited.
- CAF/CASS had not identified the core competencies required to deliver this service and the operation of schemes were not included in its arrangements for supervision and appraisal of practitioners.

- Recording systems had been developed locally.
- CAFCASS staff were unclear whether, and how, to apply policy and practice of risk assessment to the schemes. As a result, a wide variety of practice was observed during the Review and some of the inherited guidance was judged by MCSI as unacceptable and unsafe.
- From what was observed, there did not appear to be enough information at the directions stage in proceedings to assess risk sufficiently; even where consent to participate in dispute resolution had been given, MCSI was not satisfied that issues of safety had been reliably addressed.

## Use of time

- The Review found that, in all schemes, CAFCASS staff reported that there was insufficient time to undertake the tasks required in each case.
- In all the schemes visited, MCSI observed examples where time was wasted because parties failed to keep appointments, inappropriate cases were listed for schemes or there was poor liaison between court administration and CAFCASS.

## Data, evaluation and standards

- The Review found that no reliable data was collected about the schemes and there was no agreement about optimum staffing levels that would ensure efficient and effective use of resources.
- Apart from one scheme (E), no others had baseline information that would allow them to be measured or evaluated and none had any monitoring of performance against standards.
- The culture of each scheme was maintained without benefit of critical appraisal or the identification and development of best practice, value for money or assessable outcomes.

## Suggested actions

- 5.3 In the light of the above findings, MCSI suggests that CAFCASS should consider the following suggested actions:

### *Strategy*

- Develop a strategy about the provision of dispute resolution services funded by CAFCASS that includes supporting policies, the deployment of staff and a clear definition of the purpose of such schemes.

### *Best practice*

- In consultation with key stakeholders, such as courts, the legal profession and service users, develop protocols and guidance covering best practice issues, including:
  - roles and responsibilities of professionals and agencies involved in schemes
  - information to parties
  - informed consent
  - involvement of children and children's safeguards
  - risk assessment.

## *Managing performance*

- In order to provide core management data about performance, such as inputs, outputs, throughput and outcomes, establish monitoring for all schemes to inform:
  - routine review of current provision
  - comparison between schemes
  - planning for any future service development.
- In order to assist managers monitor and develop the work of practitioners, issue guidance for them.
- Work with courts around listing, referral criteria to schemes and best use of IT in order to:
  - ensure timely and accurate transfer of information
  - reduce non-productive time
  - agree criteria for ordering court welfare reports (section 7) about section 8 matters instead of dispute resolution or where such intervention has been unsuccessful.

## *Diversity*

- Introduce into all schemes the CAFCASS monitoring of race and ethnicity and undertake an impact analysis of schemes in line with Commission for Racial Equality guidelines.

## *Staffing*

- Undertake a review of staffing involved in schemes, informed by best value principles and attention to diversity issues.
- Identify core staff competencies and develop a programme of training, supervision and appraisal.

## **Conclusions**

- 5.4 A common sense view of these schemes would be that it is better to resolve disputes by agreement than by order of the court. It is also preferable to seek agreement without the expense and delay of a section 7 report. The evidence that these schemes do sustain agreements and reduce the need for a report tends to be more anecdotal than factual. In the absence of national agreed criteria for the ordering of section 7 reports, it is difficult to compare schemes consistently.
- 5.5 The Review did not cover every scheme operating across CAFCASS as the information that was made available to MCSI for the first stage was incomplete. The findings from this Review suggest a desirable starting point for future planning about alternate dispute resolution schemes. The Review also confirms that much more needs to be known about schemes. Policies, protocols and best practices need to be agreed before there can be an informed discussion about any possible increase in resources.
- 5.6 The schemes observed by MCSI were developed locally to service local need as defined by local practice. This means, by and large, that professionals have a vested interest in maintaining what works in their experience. Were significant changes to be proposed, there is a risk of disruption to the service provided.

5.7 The development of a protocol for the ordering of section 7 reports is viewed by MCSI as a priority. Similarly, the question of involving children needs to move beyond debate towards some resolution. Finally, MCSI is of the view that any focus on settlement seeking should not be at the expense of safeguarding children and adults from risk of harm.

## Annex A

# Methodology

### Phase One: Scoping the field

In September 2002, each CAFCASS Regional Manager was asked by MCSI to appoint a manager (liaison officer) to liaise with inspectors during the first stage of the Review. Principally, this entailed gathering sufficient information in advance of the telephone interview to be able to answer the questionnaire as fully as possible.

The questionnaire was sent to each liaison officer in October. Each telephone interview was conducted by the same inspector in late November and early December 2002.

The questionnaire (below) set out what MCSI considered was basic relevant information about schemes. Information was obtained from seven of the CAFCASS Regions and CAFCASS Cymru by the date required by MCSI. Two Regions were unable to provide sufficient information in time to be included in the Phase Two visits.

Based on the information that was supplied by liaison officers, MCSI established a range of practice, process and purpose operating in over 350 courts across CAFCASS. Once a range was identified, MCSI then arranged the schemes into groups. Each group usually had a different number of schemes in it. Inspectors arranged schemes into groups by the distinguishing characteristic that differentiated one scheme from another. The differentiating characteristics that emerged from Phase One were whether the scheme:

- was 'privileged' or 'non-privileged'
- was staffed at court by CAFCASS practitioners, mediators or both
- operated at court or away from the court building
- involved other professionals such as judges or legal representatives
- involved children and young people directly
- was operated by a team based in the court building
- offered a full-time service to the court.

## Phase 1 Questionnaire

### Telephone Questionnaire of CAFCASS Regions: Thematic Review of (Dispute Resolution) schemes

1.

Area code

Liaison Officer

Inspector



2. Give the number of courts (physically) in your Region dealing with Family Law Proceedings:

Court Type	Court Code	Staffing	How Staffed
High Court		Y/N	
County Court		Y/N	
Family Proceedings Court/Magistrates Court		Y/N	

3. For each court

a) What is the scheme called?

Court Type	Court Code	Title	
High Court			eg Mediation, conciliation, dispute resolution
County Court			
Family Proceedings Court/Magistrates Court			

b) What is each scheme's purpose?

c) is there practice guidance for each scheme?

eg agreement seeking, decide if section 7 report needed, clarify issues in dispute, broker to other services

4.

Is the meeting compulsory or optional for service users?		National Standard (NS) 2.5 “ensure parties are aware of the reasons for the meeting and have consented to it”
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5.

Is the meeting privileged/not privileged/or other? (define)		NS 3.9 broadly speaking privileged = meeting content cannot be reported to court unless both parties agree
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6.

a) are children asked to attend?	Y/N	
b) How are they seen		

c) Is the meeting in front of the judge/clerk(?)	
--	--

7.

Are solicitors present during the meeting?	
--	--

8.

Is there a screening procedure?		risk assessment/domestic violence
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9.

a) Are service users' views obtained about the scheme? (define service user)	
b) How?	

10.

Is there any training for CAFCASS staff who operate the scheme?	
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**11.**

a) Is there written information about the scheme for:

Adult parties		Children		Solicitors	
Others		[please state]			

[Please send copies of any written information]

<b>b) Is there any other information available eg website, poster?</b>	Y/N
[If yes please give details]	

**12.**

Identify the features of the scheme that cover diversity issues		diversity to include culture, language/ability/learning/disability
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**REPORTS**

In this Region please give the number of section 7 reports requested from CAFCASS by each court 1 April 2001-31 March 2002 (not addenda)

Court code	No. of reports

## Phase Two

MCSI visited one scheme from each category in the range that was staffed by CAFCASS. Visits were not made to schemes where CAFCASS practitioners were not involved, such as those that were staffed by practitioners from a Mediation Service. Schemes were included in the Phase Two sample because of their specific, distinguishing characteristic and accessibility within MCSI's resources.

Seven schemes were visited between May and September 2002. Each visit was undertaken by the same Inspector who had meetings with judges, CAFCASS practitioners and managers on site. All meetings followed the same agenda, which had been sent in advance. In every scheme (other than scheme C), MCSI observed the court process and sat in on CAFCASS interviews with service users.

## Service User Questionnaire

In each of the schemes visited, MCSI had planned to conduct a postal survey of a sample of adult service users. In those schemes, CAFCASS was asked on behalf of MCSI to send a letter, questionnaire and reply paid envelope to 200 individuals who had used the scheme in recent months and for whom their proceedings had ended. This survey was possible in only one of the schemes visited. In others, it was difficult either to identify a sample cost-effectively from the records kept or, despite best efforts, CAFCASS did not have the staff resources available to assist MCSI. Inspectors regret that this part of the methodology had to be abandoned. Consequently, it is not possible to draw any firm or reliable conclusions from the one scheme that was surveyed (Annex B). MCSI is very grateful to those CAFCASS staff who organised the survey and the 42 service users who replied to it.

## Annex B

# Analysis of the views of service users in one scheme based on 42 replies

The 42 responses represent 21% of the total sent out; 55% of the responses were from women and 40% were from men.

### Headline findings:

- 83% of users agreed or agreed strongly that the information they received explained the conciliation service
- 55% agreed or agreed strongly that they had a choice whether or not to take part in the meeting; 36% disagreed or disagreed strongly; 4% no reply
- 69% of users agreed or agreed strongly that they felt the conciliator had listened to them; 22% disagreed or disagreed strongly
- 61% agreed or agreed strongly that they had been treated fairly at the scheme; 28% disagreed or disagreed strongly
- 64% agreed or agreed strongly that they were able to say everything they wanted to during conciliation; 26% disagreed or disagreed strongly
- 64% agreed or agreed strongly that they felt the practitioner acted in the child(ren's) best interest; 34% disagreed or disagreed strongly
- 54% agreed or agreed strongly that the arrangement made at conciliation was the best possible under the circumstances; 29% disagreed or disagreed strongly
- 36% agreed or agreed strongly that their children should have spoken to the conciliation service; 24% disagreed or disagreed strongly; 14% neither agreed nor disagreed; 24% replied 'not applicable'
- 41% agreed or agreed strongly that their family's racial and cultural identity was understood and worked with appropriately; 4% disagreed or disagreed strongly and 41% of replies were either 'not applicable' or no reply
- 71% agreed or agreed strongly that they felt safe in the conciliation meeting; 12% disagreed
- 60% of users agreed or agreed strongly that overall they were satisfied with the conciliation scheme; 31% disagreed or disagreed strongly
- 19% said that they had been told how to make a complaint about the conciliation service; 69% said that they had not
- 45% said that the arrangements made at conciliation were still intact
- 48% said that there had been further court proceedings since conciliation
- 71% said that, in their case, a CAFCASS report was ordered by the court
- Of the case types, 69% were for contact, 14% for residence and 12% for contact and residence
- 88% of users identified themselves as white, 7% as Asian or Asian British and 2% as of mixed origin (41 replies)

## Service User questionnaire

### *Detailed replies from 42 service users in one scheme*

(All figures are percentages)

#### Information & consent

	Agree strongly	Agree	Neither agree or disagree	Disagree	Disagree strongly	Not applicable	No reply
Information I received explained the conciliation service	19	64	7	10	0	0	0
I felt I had a choice whether or not to take part in the meeting	19	36	5	24	12	0	4

#### The meeting

	Agree strongly	Agree	Neither agree or disagree	Disagree	Disagree strongly	Not applicable	No reply
I felt that the conciliator listened to me	36	33	7	10	12	0	2
I was treated fairly at conciliation	40	21	10	14	14	0	0
I was able to say everything I wanted to during conciliation	38	26	7	14	12	0	2
I felt that the conciliator acted in the child(ren's) best interest	43	21	2	10	24	0	0
The arrangement made at conciliation was the best possible under the circumstances	21	33	10	5	24	7	0
My children should have spoken to the conciliation service	17	19	14	5	19	24	2

**About you**

	<b>Agree strongly</b>	<b>Agree</b>	<b>Neither agree or disagree</b>	<b>Disagree</b>	<b>Disagree strongly</b>	<b>Not applicable</b>	<b>No reply</b>
My family's racial & cultural identity was understood and worked with appropriately	17	24	14	2	2	31	10
I felt safe in the conciliation meeting	33	38	10	12	0	2	5
Overall I was satisfied with the conciliation service	29	31	10	7	24	0	0
I was told how to make a complaint about the conciliation service		19		69		12	

**Outcome of conciliation**

	<b>Yes</b>	<b>No</b>	<b>NA</b>	<b>No reply</b>
(a) Are the arrangements made at conciliation still intact?	45	31	2	21
(b) Have there been further court proceedings since conciliation?	48	40	0	12
(c) In your case was a CAFCASS report ordered by the court?	71	19	0	10

**About your case**

	<b>Yes</b>	<b>No reply</b>
Contact	69	5
Residence	14	5
Both	12	5
Other	0	5

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