Association of **Lawyers for Children**

Promoting justice for children and young people

FAMILY JUSTICE REVIEW

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Appendix One

ORAL EVIDENCE – ALC OPENING PRESENTATION

You want change. We all want change. But it is axiomatic that, before you fix something you need to have a firm and understanding why it has not worked in the first place. There is no getting away from that. And while it is, in our view, healthy to ask the blue sky questions, it is vital that, when you look at the sky, you keep your feet firmly rooted on the ground. Whatever system results from this review it needs to be fair, sustainable, and insofar as it bears on children, it is their welfare, their safety, their rights that should be paramount.

Over the course of the few minutes that we have, we are going to set out thematically, and with brief examples, where and why we believe the existing system has not delivered and then we are going to summarise our main proposals for reform. So from us you will get diagnosis as well as prescription because we believe that you can't have one without the other

As you will know, yours is not the first review since the Children Act came in. But it is perhaps instructive to recall that the primary recommendation of the first, Dame Margaret Booth's in 1996, was that the family justice system should be better resourced.

That recommendation has never been put into practice. We have had all manner of reforms and initiatives other than that which was the most obvious and necessary. And what we are largely dealing with is the consequences of a system that all within it (from the President of the Family Division downwards) see as chronically under-resourced – a system expected to carry burdens and meet targets that, absent adequate upfront funding, it was never going to carry and meet, and which, in delays, increased costs and poorer justice, has seen the inevitable product of one false economy after another.

That is not to say that changes cannot be made, and savings secured, but it is to warn against conflating the system as it could and should be with the system that under-resourcing has left.

So what are the lessons of the past that should inform the future? They are these – and this is our purposive diagnosis, because we believe that, unless you enshrine these principles, whatever system you create will fail:

(1) Recognise your pressure points and avoid false economies – the public law provisions of the Children Act were built upon the assumption that local authorities would be able to discharge their duties before, during and after proceedings – don't give them the resources to do that, and predictably we have had longer and costlier care proceedings, with more interim hearings and a rise in outside expertise to plug the gaps.

(2) Let's have proper joined-up thinking – expert evidence in care proceedings should only be directed where necessary and outwith the experience and expertise of the local authority and Children's Guardian – and yet Children's Guardian are not allowed by Cafcass to disclose on their reports the experience and expertise that they have.

(3) Let's make the best use of the resources and the expertise that we have – as I speak, highly experienced, specialist children law solicitors all around the country are going out

of business, because for no good child-centred reason they have been denied LSC contracts – how, we ask, does that serve to provide access to justice for those in greatest need?

(4) Let's put an end to the culture of micromanagement – we are just deluged with paper - guidance, case-law, practice directions, templates, tick boxes – and with all of it, we have lost sight of the child and we have literally lost sight of the wood for the trees – we support the aims of both the Public Law Outline and the Experts Practice Direction, but, especially at a time of high demand, the former would have been far more effective at 4 pages rather than 40 whilst the latter would have been far improved by having the test for expert evidence emblazoned on the front page rather than referred to obliquely at paragraph 4.3(8).

(5) Let's have a system that makes harmonious and objective sense – why we ask is so much High Court judge time devoted to resolving summary jurisdiction disputes in international child abduction cases, when, from the perspective of the child, the far more important permanent relocation decision is often taken by a less senior judge?

(6) Let's get the balance right – you cannot have a situation where the Public Law Outline pulls one way and the Court of Appeal pulls another – the former tries to keep a lid on further assessments, the latter positively encourages them. And

(7) Finally let's have some honesty and realism from government itself – anyone reading the Children and Adoption Act 2006 could tell that implementation was going to cost, and yet the impact assessment predictably said cost neutral, whilst it is perfectly plain that the last government wholly underestimated the very profound impact that the Human Rights Act has had and continues to have throughout the field of children law – in the volume of extra paper that we have, in the nature and breadth of the arguments that we see run, and in the perceptions of the litigants themselves, to which your question 6 bears eloquent testimony. But it is more than that. The family justice system is a sponge – a sponge for the society that we have, and for the way that government acts. Drugs, immigration, benefits – if government could get a handle on those issues, we could run our system far better than we have been able to.

Turning to the specifics, within the public law field, we see no case to change the quasi-inquisitorial, quasi-adversarial system that the Children Act has spawned, and can we be clear that is what we have. We see the tandem model of representation for the child to be one of the great successes of the current system and we see no sound reason to alter the existing balance of responsibility between court and local authority.

And with more specialist family judges, more family sitting days, better trained, more empowered social workers, and Children's Guardians freed from the yoke of Cafcass, you would see how much more efficiently the system could run. You would get judges with time to case manage properly, and you would get fewer, shorter and quicker hearings in consequence.

And it follows that a key recommendation of ours will be to take away the remit of Cafcass within the public law field – it is an experiment that just has not worked - Cafcass cannot

meet the expectations of Parliament, it increasingly does not meet the expectations of the courts, its own proposals are to diminish not enhance the rights of the child, whilst the disaffection and disillusionment that we find among its front-line staff is as striking as it is utterly avoidable. And by signalling the end of Cafcass within the public law field you would make double-savings – you would save on the bureaucracy and over-management which have become its hallmarks and you would save because you would get enthusiastic Guardians doing what they should be doing – working with and for children, and helping courts to reach timely child-focused solutions.

Within the private law field, we see great scope for identifying those cases which need to be in court and those that frankly do not. There is, for example, no objective justification for cases about the quantum of contact (of which there are so many) either to be publicly funded or to require judicial determination.

We would create two routes – a court-based route for those private law cases which need to be there (for example those where determinative safety issues are genuinely involved, where the principle of contact is in issue or where contact enforcement is required, and those involving issues of relocation and abduction) – and a non-court based route for the quantum of contact cases that I've just mentioned and for the comparatively less serious parental disputes such as over choices of school, a route involving not just mediation but also collaborative law and, for where agreement cannot be reached, arbitration. We would underpin those routes by clear guidance as to what goes where and have the capacity for one route to transfer to another if it appears to be more appropriate.

The corollary of that approach is not only quicker, more child-focused, consensual and ultimately cheaper outcomes, but also the freeing up of court resources and public funds for those public and private law cases which, because of their importance to the child, genuinely need to be there.

Appendix Two

FAMILY JUSTICE REVIEW

Appendices to the ALC Response

Appendix One	**Note of the ALC's opening at the Family Justice Review oral evidence session on 28th July 2010**
Appendix Two	**ALC submission to the Justice Select Committee's Inquiry into the Working of the Family Courts**
Appendix Three	**Official Solicitor's standard letter to solicitors seeking his appointment, issued 13th May 2010**
Appendix Four	**ALC letter of 21st January 2010 to HMCI/OFSTED**
Appendix Five	**ALC letter of 28th May 2010 to the National Audit Office, annexing a series of contributions on "The Principle of a single named guardian for the child throughout care proceedings" (*Seen and Heard,* volume 19, issue 4, pp 32-53)**
Appendix Six	**'Comment' in the June 2010 issue of Family Law journal**
Appendix Seven	**Joint Position Statement of the Interdisciplinary Alliance for Children (IAC), issued on 28th July 2010**
Appendix Eight	**Guide to the Scottish Children's Hearing System, prepared by Alan Inglis**

Appendix three

IAC Joint Position Statement (attached separately)

Appendix four

Letter from Official Solicitor to ALV (attached separately)

Appendix five

Angela Hands
Director – Children, Schools and Families value for money team
National Audit Office
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10 May 2010

Dear Ms Hands

REQUEST FOR INFORMATION ABOUT CAFCASS

Thank you for your letter of 6th May 2010 requesting our input in respect of a value for money study that you are conducting on Cafcass.

Can we begin by making two general observations?

The first is that we take the view that the core functions of Cafcass are to give children a voice in the legal proceedings that they find themselves involved in, and to assist the court to arrive at the best possible outcome for those children – "to be the eyes and ears of the court". Accordingly, we suggest that any "value for money" study needs to measure the extent to which Cafcass is fulfilling these functions. We believe that this would require an in-depth study, to include a representative sample of the views of the children themselves, the views of the lawyers who present those children's cases, and the views of the judges who are making the decisions.

The second is that whilst we appreciate that you have requested our views on how Cafcass has handled the situation since late autumn 2008 (i.e. in the aftermath of the Baby Peter case) our Association has been consistently raising issues as to how Cafcass deals with demand in public law cases for many years, particularly since 2003. We do not think that it is possible to deal adequately with this issue without looking at the longer-term picture, and how Cafcass has responded over its nine year history, in particular to the criticisms, trenchantly expressed and highly relevant to the situation today, of the House of Commons Select Committee's report in 2003 *(Lord Chancellor's Department : session 02/03)* e.g. "Conclusions and recommendations" 1,5,8,11,16,20,21,22, 39 and 46. What is set out there is, we believe, a benchmark against which change during the past seven years can fruitfully be measured.

We answer your specific questions as follows:

A: Predicting the increase in demand since autumn 2008

- **Whether Cafcass or the Department for Children, Schools and Families could have done more to anticipate the increase and its impact on services.**
- **Capacity for local and/or national liaison with local authorities or other organisations about trends in future demand.**

1. It is instructive to consider the HC 2003 Select committee report which observed (conclusions/recommendations) :

> " 8. The increase in demand – which did not start post-CAFCASS and should have been anticipated – and the shortage of appropriately qualified staff made it all the more important that CAFCASS hold on to the staff it was inheriting. The protracted dispute [with

self-employed guardians] damaged relations with experienced guardians and staff the organisation desperately needed in order properly to fulfil one of its core functions. Key front-line practitioners were lost…

11. It is important that, as well as using and developing its employed guardians, CAFCASS senior management embrace the principle of a mixed economy and repair relations with self-employed guardians"

2. We are wholly unconvinced that the problem is simply a question of increase in demand since autumn 2008. As practitioners we know that:

(i) Before 2001, guardians were appointed almost invariably immediately upon issue of proceedings;

(ii) Since 2001 most local offices have struggled to achieve appointment within two days, and the history of the past 9 years has been one of a series of episodes in which backlogs in cases awaiting appointment increase (to quantities which vary over the country, but which typically have equated to delays in 1-3 months in appointment), then gradually reduce, with a short period in which it has been possible to have a guardian appointed more or less straight away, before the cycle repeats itself;

(iii) the number of guardians carrying out public law work has decreased sharply since 2001;

(iv) the proportion of self-employed guardians has decreased sharply since 2001.

3. We have not, as busy practitioners, kept precise records of these cycles. Nor do we have access to statistical information as to the number of new cases/current cases. That information is collated by HMCS and Cafcass. Nor, of course, do we have access to personnel data. We do not have any data for the period 2000 -2005. There are, however, statistics published by Cafcass for the period from April 2005 onwards[1]

Month	05/06	06/07	07/08	08/09	09/10
apr	546	507	497	379	669
may	532	595	569	398	639
jun	547	613	514	368	789
jul	564	569	590	485	779
aug	559	614	542	494	676
sep	565	546	504	482	715
oct	521	606	511	500	713
nov	581	595	539	594	759
dec	501	480	422	721	732
jan	563	558	514	668	656
feb	504	525	502	662	725
mar	630	578	537	745	832
Total	**6,613**	**6,786**	**6,241**	**6,496**	**8,684**

[1] Cafcass website "CAFCASS CARE DEMAND - LATEST QUARTERLY FIGURES (Quarter 4: 2009-10)"

Given that, by March 31st 2009, some months following the Baby Peter case, the annual total starts of 6,496 were lower than the starts at the end of 31st March 2006 (6,613) and 31st March 2007 (6,786), it appears to us that some explanation is required as to the reasons why Cafcass was unable to absorb the workload at that point in time.

It is impossible to ignore the trends at 2(iii) and 2(iv) above, which are clear to us even without access to relevant data. In the Birmingham office, for example, in 2001 there were 25 guardians working on a full-time basis. There were approximately the same number of employed and self-employed guardians (13 employed, 12 self-employed). That figure of 25 has now reduced to 15, all employed, and there are, we understand, no self-employed guardians who are being offered new cases (they are able to work on cases which have not yet finished since only the court, as the law presently stands, can terminate a Children's Guardian's appointment). It is unclear to what extent there is a policy of not giving work to self employed Guardians. It would probably be necessary to conduct an in-depth audit to determine that. There are certainly a large number of experienced Guardians who are ready, willing and able to take on new cases but are not being offered them. We are unclear as to what proportion of these have been assessed by Cafcass management as not meeting certain performance criteria and so disqualified from taking further cases. These performance criteria appear to have been arrived at in ignorance of the role of the Guardian in public law cases. We do not know whether they have been formulated by Cafcass management itself, or put together in conjunction with Ofsted, but, in any event, they seem to bear little relationship to the Guardian's statutory duties in such proceedings.[2]

There has been, self-evidently, a stark reduction in capacity.

In London, Cafcass management have suggested that the current number of employed guardians (said by management to be around 50 at any given time, allowing for absences) would need to be increased to 200 in order for guardians to work in the way that they have been accustomed to in the past. This is based on the numbers of cases in London, and what Cafcass says about the numbers of cases that continue beyond 60 weeks after issuing.

4. We are not able to establish how many front-line staff are currently employed as Children's Guardians in public law proceedings. That information is not available from Cafcass's published accounts and annual reports. There is also an issue as to whether, in

[2] By way of example, the so-called "Every Child Matters outcomes" have no relevance to the duties of Children's Guardians, since Cafcass is not a body included in the relevant sections of the Children Act 2004, yet a failure to refer and deal with these in a Guardian's report is understood from discussions with Guardians to have resulted in the report being graded as unsatisfactory. The failure to evidence clearly on a public law file that police checks have been carried out and safeguarding checks with the local authority carried out will result in a similar grading of the Guardian's work on the case as unsatisfactory, despite the fact that the Guardian has no such role in public law proceedings (it is the Child's solicitor who obtains criminal antecedents and the local authority applicant who will conduct any other checks required).

its accounts, and other data it collects, Cafcass counts local office management as front-line staff. It would be helpful to clarify that, since it would help establish accurate trends both in respect of people actually doing the work, and the percentage of Cafcass's budget expended on the actual work, as opposed to management (whether at local, regional or national level).

5. We have concerns about the reliability of the statistical information presented by Cafcass. We have not seen the information collected by HMCS for the period 2007-2010 for overall case starts, and would want to have an opportunity to compare their data. That data was supposed to be made available to quarterly meetings of the National Family Justice Board (of which we are a member). It was included in an "integrated pack" of data (but not broken down) presented to the NFJB on 26th October 2009, but only Cafcass data was presented at the next meeting on 18th January 2010. There has been no meeting of the NFJB since then.

6. We are unable to comment on what liaison there has been, or is, with local authorities about future demand.

B: Responding to the main risks to delivery of an effective service

- **Whether Cafcass understood the causes of the increase in demand correctly.**
- **Whether Cafcass's response addressed the most important issues.**
- **Consultation with organisations like yourselves.**

1. As we have stated, in answering A above, it appears to our practitioner members that there has been a steady degradation in Cafcass's ability to respond flexibly to changes in demand throughout its period of responsibility for providing Children's Guardians in public law proceedings, despite the stark warnings of the 2003 HC report.

2. The required response would have been, albeit belatedly, to have embraced the conclusions and recommendations of the 2003 HC report, and in particular :

> "11. It is important that, as well as using and developing its employed guardians, CAFCASS senior management embrace the principle of a mixed economy and repair relations with self-employed guardians".

3. We can see no sign whatsoever that senior management are willing to embrace those conclusions.[3] All the evidence we have points to the contrary conclusion, and a

[3] The suggested solution in a current Cafcass discussion paper called "Proposed workforce development strategy: developing the workforce of the future" is:-
To achieve this, it is proposed that Cafcass should introduce a Newly Qualified Social Worker (NQSW) programme (sic). Social work graduates would commit to 3 years with Cafcass. In order to gain necessary local authority experience, the second year of the programme would be spent on

culture within Cafcass that is inherently hostile to the exercise of professional judgement, which it sees as creating insuperable tensions in organisational terms[4].

4. In respect of consultation by Cafcass with organisations such as ourselves, there was no liaison prior to the formulation of the President's interim guidance published in July 2009.

5. In relation to Cafcass's general understanding of causes of increase in demand, we find it puzzling that Cafcass should have pressed in recent years to be given additional responsibilities[5], without seeking additional funding towards the costs of those responsibilities. It appears self-evident that this would inevitably impact on its ability to service adequately its existing commitments, including the provision of Children's Guardians in public law cases.

C: Delivering the changes to service effectively since autumn 2008

- **Speed of reaction.**
- **Communication to staff and partners.**
- **Deployment of resources to deliver improvement.**

1. As stated in answering section B above, there appears to have been no real engagement over the past 21 months with the core problem (insufficient front line staff, and re-engagement with self-employed guardians).

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secondment to a local authority. In return Cafcass would receive on secondment a recently qualified social worker from the hosting authority. This programme would be mutually beneficial for Cafcass and Local Authorities and aims to build wider system capacity over the longer term. In this second year, it would then be possible to gain experience of local authority work with children in need, looked after children, child protection etc and bring a more rounded professional skills-set and experience base back to Cafcass. .. At present it is proposed that NQSW's in their first year will focus primarily on private Law cases, that the second year is spent on secondment to a local authority in a child safeguarding team and that in the third year they continue to work on private law and are also introduced to public law cases.

[4] See generally the contributions to "The principle of a single named guardian for the child throughout care proceedings" (*Seen and Heard* volume 19, issue 4, and in particular Mervyn Murch CBE at pp 47-51 and Alan Bean at pp 34-36, a copy of which is submitted with the hard copy of this response.

[5] e.g. risk assessments under s.16A of the Children Act 1989 (inserted by Children and Adoption Act 2006, s.7). The Chief Executive of Cafcass was quoted as drawing attention attention to these responsibilities in a recent interview for *Community Care*, 26th May 2010 : "We have a statutory responsibility to risk assess, which was recently strengthened under section 16 (sic) of the Children Act. The expectation that we spend more time and resources on safeguarding is from legislation." The question is surely begged as to what impact assessments were done in 2006 by Cafcass and the sponsoring government department.

2. We are aware, because our members work closely with Guardians, of serious issues relating to communication between management and staff, but we consider that it is more appropriate that this aspect be dealt with by organisations representing those staff.

3. Insofar as we are a "partner" organisation, we have attended such meetings Cafcass's Legal Liaison Group which have taken place. Regrettably, no meetings were organised by Cafcass during the period from the beginning of 2008 until 14th July 2009. We attended meetings on 14th July 2009, 20th October 2009 and 9th February 2010, in the course of which we have, in common with other representative bodies attending, expressed our continuing concerns.

D: Impact on timeliness of service

- **Changes in speed of: case allocations; Cafcass's actioning of cases; casework.**

1. The picture is a confused one, in which the true state of affairs regarding Guardians actually starting to work on cases is obscured by differences in terminology, and a number of practices which have reported by our members as occurring.

2. The use of the term "allocation" is, we consider, most unhelpful since it enables Cafcass to report a case as being worked on in circumstances where:

(i) the case has been "allocated" to a manager to conduct some sort of triage exercise, at a particular point, or on an ongoing basis;

(ii) the case has been "allocated" to someone to look at on a duty basis;

(iii) the case has been allocated to a manager, who has in turn (in breach of the interim guidance) appointed a solicitor to act for the child, which enables the solicitor to report from time to time, to assist the manager in "triaging" the case;

(iv) the case has been allocated by a manager to a named guardian, who is consequently appointed by the court under s41 of the Act, notwithstanding that the guardian concerned has no capacity for that work, and cannot in practice start to work.

3. The principal measure, we suggest, of the extent to which the problem is being addressed, is the delay between commencement of a case and the date at which a named guardian begins to work on it. Since this data is not available, our Association is in the course of conducting a survey of all children representatives on the Law Society's Children Panel (who are, in practice, the only persons to be appointed to represent children by courts and guardians), which is intended to provide a reliable picture as to such delays, in different areas, since 1st January 2009, and whether the trend is worsening or improving, both generally and in particular areas. The results of that survey are unlikely to be available until the end of June 2010.

E: Impact on quality of service

- **Standards of risk assessment and safeguarding.**
- **The duty system.**
- **Quality of Cafass's casework.**

1. Because of the delay in appointing a guardian who is in a position to commence work, the solicitor for the child is inevitably in difficulties in the early stages of proceedings, and hampered in presenting evidence either:

   (i) that the risks to the child/children are too great for them to remain at home, where, despite contra-indications, that is the preliminary plan of the local authority; or

   (ii) that the risks to the child/children of remaining at home are outweighed by the damage they will suffer as a result of removal, and that consequently removal is disproportionate and unjustified.

2. The child's solicitor is dependent on the Guardian to visit the home, or any prospective relative carer's home, interview the parents and other key relatives, and examine the local authority's own files[6], which frequently contain important evidence which is not before the court, particularly in the early stages of a case.

3. We, in common with the Children's Guardians we work with, find it astonishing that senior Cafcass management appear oblivious to the inadequacies inherent in having to rely on selective written evidence filed with the court. The following is an extract from the transcript of an interview with the Chief executive of Cafcass:[7].

   "CUFFE cont: This is a paper check, I mean, you are not actually going and visiting the child to see the circumstances or even talking to the child.
   DOUGLAS: Paper is important, it's full of assessments. Most of our work is a forensic analysis of assessments of a child's needs and their plans for the future. 50% of children in the care system are under six, so to talk to babies or two year olds is not the way we work. Children's guardians have only ever spent between 5 and 10% of their working week with children.
   CUFFE: But they visited these children in their family setting or wherever they are placed. You are making crucial decisions about whether a child's case is urgent or not and whether a child is safe simply by looking at pieces of paper. Is that really safeguarding children?
   DOUGLAS: I think there is a lot of evidence that the forensic analysis of what has gone on in a child's life to date is an important protection and that is part of our core job."

It would be more helpful if Cafcass felt able publicly to comment on how inadequate this was. Their position in this context is in marked contrast to the evidence recently submitted by Cafcass, in the context of the reporting of family court proceedings[8]:

[6] Section 42 of the Children Act 1989 gives the Guardian, when appointed under s41 of the Act, the right at all reasonable times to examine and take copies of the local authority's records. Neither the solicitor for the child, nor any other party has that right.

[7] From the transcript of BBC Radio's *File on Four – Cafcass* (transmitted 23rd and 28th February 2010.

"6. It is vital that Cafcass practitioners are able to engage effectively with young people in order to ascertain their wishes and feelings and to communicate these to the court, along with Cafcass analysis and recommendations about how the court might best promote their welfare. When undertaking casework, especially involving older children and young people, it is important to establish an open dialogue. This essential work requires care and skill, and may take some time to complete, as many young people are understandably cautious about disclosing sensitive personal information to an adult who has only recently become known to them."

4. The duty system created by the interim guidance of the President of the Family Division in July 2009, was designed to give Cafcass an opportunity to deal with the emerging crisis in the provision of a service to children. In London, in particular, it has proved wholly ineffectual, with unallocated cases for Greater London currently standing at just under 400 (with up to 700 children lacking a guardian, as a result).

There is real concern that Cafcass did not use the duty scheme as allowed for under the interim guidance. That guidance is very clear that the legislation and rules that set out the role and responsibilities of the guardian remain in force; and that the only possible departure from the legislation and rules has to be in accordance with the guidance. Thus, the duty Cafcass advisor is permitted to attend the first hearing to advise the court and the parties, but that is all.

In London, Cafcass seemed to expect the duty advisors to hold cases beyond the first hearing and carry out further work on them, in breach of the guidance. The designated family judge for London took the unusual step of writing to Cafcass (having consulted with the President) to confirm that this was impermissible.

The concern remains that despite the resources used by Cafcass, through the duty scheme, the number of cases without a guardian has increased, and that this has been as a result of mismanagement of those resources.

Coincidentally, money was made available to pay for self employed guardians to take on cases to ease the pressure in London. However, having been told earlier in 2009 that Cafcass would not be allocating any more work to self employed guardians until the new financial year in 2010, those self employed people had had to find other work (for instance as independent social workers), and few of them were available, at short notice, to take Cafcass work.

[8] In a submission dated 17th January 2010 to the Joint Committee of the Houses of Parliament on human rights.

5. There is no doubt at all, from the experience of our members, that quality is being affected. Despite the best endeavours of the conscientious professionals involved, the increase in their caseload has made this inevitable. Home visits are delayed and less frequent than necessary. Establishing the sort of rapport referred to at paragraph E.3 above (and which is essential with younger children also) has become very difficult.

F: Other impacts

- **Staff case loads.**
- **Meeting court dates.**
- **Service user satisfaction.**
- **Stakeholder goodwill.**

1. Anecdotally, we are aware that these have risen to unrealistic and impractical levels.

2. The Guardian's express professional duty is to the court. Our perception is that they are doing their best, once formally appointed and in a position to begin work, to provide court reports on time.

3. We take issue (as we set out below under "Other evidence") to the omission, from the list of service users, of the courts and the children's solicitors. Guardians in public law cases expressly carry out their duties to assist the court[9] and they are required to appoint and work in tandem with a solicitor. We would regard their levels of satisfaction as key performance indicators. Whilst of course it is important that guardians operate with courtesy and professionalism in their dealings with children, their parents and other family members (who appear to be regarded by Ofsted and Cafcass management as the service users) we would regard that as only one indication of overall performance, and not one of the key indicators. Courts and solicictors will, in practice, report on the obvious detriment to children and their families of a delay in meeting with, and being able to engage with the Guardian in a particular case.

4. We suggest that "stakeholder goodwill" continues to be tested to the limit.

G: Measuring progress

- **Accuracy of Cafcass's performance figures on: allocations, backlogs, case loads, etc.**
- **Addressing variations in quality and timeliness in the 21 Cafcass areas.**
- **Whether Cafcass is on track to clear backlogs.**

1. We have responded on the first point (figures on "allocations", backlogs etc) in answering question D, in our replies at D.1-D.3.

2. We are unclear as to the criteria on which variations in quality, between areas, is being judged. We would have very considerable reservations about assessments of quality carried out by Cafcass internally, and Ofsted externally, since they appear to be based on criteria many of which are meaningless or simply wrong[10].

3. The question of whether or not Cafcass is on track to clear backlogs can only be resolved once proper data is available (see our reply at D.3 above). Our perception, however, is that the reverse appears to be the case, certainly in London.

- **Any impact, including financial, of Cafcass's response on your organisation.**

1. Insofar as our practitioner members represent parties in care proceedings, then there is a financial impact for those bodies financing their work, namely individual local authorities and the Legal Services Commission.

2. Delays in appointment of a Guardian (by which we mean s41 appointment of a named individual who is, in fact, in a position to commence enquiries) inevitably prolong proceedings and costs money.

3. As an organisation, we regard the current issues relating to Cafcass as the most pressing problem within the family justice system.

H: Implications for future performance

- **Sustainability of any improvements, in the medium/longer term.**
- **Cost effectiveness of Cafcass's response.**
- **Potential contribution of Cafcass's workforce planning, IT and estate strategies.**

1. We repeat our response to question B at paragraphs B.1 to B.3 above. We do not think there can be any sustainable improvements until those issues are addressed.

2. We do not know how much money, and how many hours of practitioner's time, has been spent, and continues to be spent, on the so-called "duty system". We consider that

[9] See sections 41 and 42 of the Children Act 1989 and rules 4.10, 4.11, 4.11A of the Family Proceedings Rules 1991

[10] E.g. whether or not a report refers to the 5 "every child matters" outcomes, which have no place in proceedings under the Children Act 1989 but are nevertheless an Ofsted inspection criterion.

time and money would have been much better spent in addressing the main issues, ie at B.1-B.3 above, and in providing a service by a duly appointed guardian.

3. We have addressed Cafcass's workforce planning at a number of points in our response, and in particular at B.1 to B.3 above.

4. We are aware of difficulties with regards to IT issues, but consider that these will be better and more fully addressed by Guardian's representative bodies.

5. We do not know enough about Cafcass's estate strategies to comment usefully.

Other evidence about Cafcass relevant to this study

Is there anything you would like to add that does not fall within these themes? If so, please feel free to add additional, relevant material.

1. We attach a copy of "The principle of a single named guardian for the child throughout care proceedings" (*Seen and Heard* volume 19, issue 4, pp 32-53) many of the contributions to which are directly relevant to the issues being considered.

2. We are concerned that Cafcass's resources are being wasted, and its management style and culture reinforced, in seeking to comply with its inspection regime. We attach a copy of our letter to Her Majesty's Chief Inspector dated 21st January 2010, a copy of Christine Gilbert's response dated 5th February 2010, and our further letter of 23rd March 2010. A meeting between Ofsted and the representative bodies referred to in that last letter is scheduled to take place on 25th June 2010.

3. We are unable to derive, from Cafcass's published accounts, a meaningful picture of how much money has been spent over the years, and continues to be spent, on front-line staff and how much is spent on different management functions (including regional and local managers). We strongly suspect that over the period of Cafcass's operations, increasing amounts have been spent on management and correspondingly less on front-line staff.[11] To the extent that money is spent employing agency staff, the question again arises for us as to why that money is not being spent instead on appointing highly experienced, self employed guardians to represent the vulnerable children towards whom Cafcass has that statutory duty.

Yours sincerely

Alan Bean, Piers Pressdee QC, Co-Chairs

[11] Our understanding is that the costs of management of the various Guardian ad litem panels, prior to the formation of Cafcass, was considered in studies undertaken at that time and that the figure averaged around 10% of the overall budget. That figure is now over 40%. The costs of local office management are, however, not included in the accounts as management costs, so the degree to which management costs exceed 40% is unclear.

Appendix six

Seen and Heard article on Principle of Single-names guardian (attached separately)

Appendix seven

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Ms Christine Gilbert
Her Majesty's Chief Inspector
Ofsted
Aviation House
125 Kingsway
LONDON
WC2B 6SE

21st January 2010

Dear Ms Gilbert

Re: Cafcass

I am writing to request a meeting with *Ofsted*, in order to discuss the basis and manner in which inspections of *Cafcass* are undertaken. As you will know, these are set out in three documents which were published in October 2009 However, no consultation about these documents appears to have been undertaken either with ourselves or with a number of other organisations which might legitimately be regarded as stakeholders in respect of *Cafcass*.

The three documents are:

- Ofsted inspects – Cafcass: A framework for the inspection of Cafcass and guidance for inspectors from April 2009 [document reference number 090218];
- The Cafcass evaluation schedule: Evaluation schedule and grade descriptors for the inspection of the Children and Family Court Advisory and Support Service (Cafcass) from April 2009 [document reference number 090217];
- Self-evaluation form: Pro-forma for self-evaluation by Cafcass service areas [document reference number 20090055].

The Association of Lawyers for Children is a national association of lawyers working in the field of children law. It has over 1,200 members, mainly lawyers who act for children, parents, other adult parties or local authorities, together with associate members from other professions involved in court proceedings relating to children. Its Executive Committee members are drawn from a wide range of experienced practitioners practising in different areas of England and Wales, with representation in metropolitan areas, shire counties and small rural areas. Several leading members are specialists with 20-30 years of experience in children law, including local government legal services. Many have written books and

articles and lectured about aspects of children law and several hold judicial office. We are members of the National Family Justice Board, and are habitually consulted on all major developments and proposals concerning children within the family justice system.

As an organisation, we have been concerned since before 2003 about the development and performance of *Cafcass*, and our membership is well placed to comment on, and indeed has a great deal to say about, the organisation.

Against this background, it is disappointing to note that neither ourselves (nor indeed it would seem any other sister organisation, e.g. Law Society Family Law committees covering a particular region, or Resolution's regional committees) have been consulted, either about the framework for inspection, or in connection with individual regional inspections.

It may be helpful if I set out some examples of our concerns. These include:

(1) The list of statutory functions makes reference to sections 11 and 16A of the Children Act 1989, but not to sections 41 and 42, and not to the Family Proceedings Rules 1991 (as amended), which sets out at rules 4.10, 4.11, 4.11A, 4.11AA and 4.11B the detailed obligations of children's guardians, and children and family reporters.

(2) There is no reference either to section 1 of the Children Act 1989, or, insofar as placement and adoption applications are concerned, section 1 of the Adoption and Children Act 2002.

(3) There is no reference to the European Convention on Human Rights or to the United Nations Convention on the Rights of the Child.

(4) No reference is made to the different roles of officers of *Cafcass* when acting as *children's guardian* in public law proceedings, *guardian ad litem* of a child joined as a party in private law proceedings, or *children and family reporter* in private law proceedings.

(5) The relevance of Every Child Matters outcomes for the child [as opposed to the fulfilment by the Cafcass officer of obligations imposed by (1), (2), (3) and (4) above] is not explained, and is not, in our view, readily explicable.

(6) There is no reference to the Law Society's Children Panel.

(7) In the references to "partners and key stakeholders" at paragraph 8 of the framework document, as amplified at paragraph 53 and 54, there is no reference to solicitors, whether Children Panel solicitors or otherwise. This appears to us to be an extraordinary omission. Under the tandem model of representation in public law proceedings and where a child is joined as a party in private law proceedings, the child's solicitor is in a unique position to comment constructively on *Cafcass* practice. S/he can assist in answering such questions as to what value has been added to the work done e.g. by the local authority in care proceedings, or in an application to discharge a care order.

(8) Cafcass plays a key role in court proceedings, and we see the contribution of its officers (in public law and private law proceedings) in advising the family courts as its core

function, in line with the statutory provisions and court rules set out at (1) above. There are real and acute concerns throughout the family justice system regarding Cafcass's ability to deliver in respect of that core function. Temporary measures are in place (in the form of the President's Interim Guidance for England 30 July 2009) to cope with the situation. However, the difficulties persist, particularly in London.

It seems probable to us that other interested organisations/stakeholders would welcome an early opportunity to discuss these issues with you. We would anticipate that these would include representatives of the Judiciary (particularly at Family Proceedings Court, District Judge and Circuit Judge levels) and NAGALRO.

I look forward to hearing from you.

Yours sincerely

Alan Bean
Co-chair

Cc: Baroness Howarth
Jennifer Bernard
Professor Ian Butler
Erica De'Ath
Mark Eldridge
Ernie Finch
Mary MacLeod
Harry Marsh
Shireen Ritchie
Richard Sax
Nicholas Stuart
June Thoburn
Margo Boye-Anawoma
Anthony Douglas
Baroness Morgan
Sir Mark Potter, President of the Family Division
Ann Haigh, NAGALRO
Uma Mehta, Law Society
Elspbeth Thomson, Resolution

Appendix eight

Association of **Lawyers for Children**

Promoting justice for children and young people

THE JUSTICE SELECT COMMITTEE'S INQUIRY INTO THE WORKING OF THE FAMILY COURTS

SUBMISSION OF THE ASSOCIATION OF LAWYERS FOR CHILDREN

13 September 2010

Contact:
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A.1 EXECUTIVE SUMMARY

The Association of Lawyers for Children ["ALC"] is a national association of lawyers working in the field of children law. It has over 1200 members, mainly solicitors and family law barristers who represent children, parents and other adult parties, or local authorities. Other legal practitioners and academics are also members. Its Executive Committee

members are drawn from a wide range of experienced practitioners practising in different areas of the country. Several leading members are specialists with over 20 years experience in children law, including local government legal services. Many have written books and articles and lectured about aspects of children's law, and several hold judicial office. The ALC exists to promote access to justice for children and young people within the legal system in England and Wales in the following ways:

(i) lobbying in favour of establishing properly funded legal mechanisms to enable all children and young people to have access to justice;

(ii) lobbying against the diminution of such mechanisms;

(iii) providing high quality legal training, focusing on the needs of lawyers and non-lawyers concerned with cases relating to the welfare, health and development of children;

(iv) providing a forum for the exchange of information and views involving the development of the law in relation to children and young people;

(v) being a reference point for members of the profession, Governmental organisations and pressure groups interested in children law and practice. The ALC is automatically a stakeholder in respect of all government consultations pertaining to law and practice in the field of children law.

A.2 **CAFCASS** is considered at pages 3 to 9. In our submission we contrast the delivery of a service to children in public law cases before CAFCASS took over responsibility with the position as it has developed under CAFCASS's stewardship, and we call for radical and urgent reform of the way in which the services provided by Children's Guardians in particular are delivered.

A.3 **CHANGES TO LEGAL AID** are considered at pages 10 to 18. The bulk of our submission addresses the contracting changes proposed by the 2010 bid round, which of course, at the time this submission is lodged is the subject of a pending application for judicial review. We contrast the willingness of the Legal Services Commission to enter into detailed discussion over drastic changes to the fees structure (which eventually resulted in broad consensus) with their failure to enter into any such discussion about the tender criteria (which has resulted in an outcome viewed in all quarters of the family justice system as potentially disastrous).

A.4 **ALTERNATIVE DISPUTE RESOLUTION** is considered at pages 19 to 20. We emphasise that such services require to be properly funded if they are to be effective, and that a high degree of skill and experience are essential attributes of the professionals involved if such initiatives are to work.

A.5 **CONFIDENTIALITY AND OPENNESS IN FAMILY COURTS** is considered at pages 21 to 28. We draw attention to the fact that, in constructing the new rules and legislation, the views of children and young people were ignored, and that the current legislation raises substantial problems and concerns (including compliance with the UN Convention on the Rights of the Child) while leaving the media even less clear than before as to what can be reported. We call for a proper and detailed consultation on these issues.

(I) THE EFFECT OF CAFCASS'S OPERATIONS ON COURT PROCEEDINGS, AND THE IMPACT ON THE COURTS OF THE SPONSORSHIP OF CAFCASS BY THE DEPARTMENT OF EDUCATION

1.1 The ALC has addressed these issues in correspondence this year with OFSTED (as the body inspecting CAFCASS) and with the National Audit Office (in connection with their report dated 28/7/10 on *Cafcass' response to increased demand for its services*) and we submit, as supplementary material:

(i) letter to Ofsted dated 21/1/10;

(ii) letter to the National Audit Office dated 28/5/10.

We draw attention in these documents to the ways in which CAFCASS's priorities have been skewed by the agenda of their sponsoring department and the inspection regime to which they have become subject.

1.2 The core functions of CAFCASS are to give children an independent voice in legal proceedings, and to advise and assist the court in achieving the best possible outcome for them. In public law cases, they must also ensure that children are protected against poor social work practice and decision-making. Whilst the difficulties in obtaining timely CAFCASS reports in private law cases are also severe, this submission focuses primarily on the chronic failure of CAFCASS to offer adequate representation to the abused and neglected children who are the subject of care proceedings.

1.3 CAFCASS's hierarchical management culture, combined with its hostility to the independence and status of the Children's Guardian, have had a disastrous effect on the representation of these children. From its inception, CAFCASS has reduced the professional standards, capacity and morale of the pre-existing service, one which its own chief executive now refers to as "the Golden Age". Although one of the principal aims of government in establishing CAFCASS was to produce savings through a unified and managed service, CAFCASS now costs more than twice as much to run as the 3 services which preceded it- currently £138 million in 2009/2010 as opposed to £66.5 million in 1998. Adjusted for inflation (approximately 34% from 1998-2010), this represents a cost increase in real terms of 66%.

1.4 CAFCASS blames its failures on a surge in demand for public law and private law reports. In fact, the demand for public law guardians now is no higher now than it was in 1997-1998[12].

PRE- CAFCASS: the Guardian Service

1.5 The three services which offered investigation, representation and advice to the court in children's cases were the court welfare service (private law : investigating and reporting function), the guardian panels (public law including adoption: child representation, investigation and reporting), and the Official Solicitor (child representation, investigation and reporting in complex, mainly High Court proceedings). The combined annual costs of these services in England for 1997-1998 were estimated by government to be £66.5 million[13] **.**

1.6 In 1998, Guardians were appointed in about 13,300 cases, of which about 4,400 (33%) were adoption proceedings. The remainder (**about 8,900 cases)** were Children Act

[12] see further paragraph 1.5 below. The number of public law cases requiring a guardian in 1998 was 8,900; in 2009-2010 it was 8,684. In 1997, the number of private law welfare reports was 36,100. In 2009-2010, the number of private law requests received by CAFCASS was 38,449.

[13] "*Support Services in Family Proceedings: Future Organisation of Court Welfare Services" DOH, Home Office and LCD consultation paper, July 1998***,** paragraph 5.1

specified (public law) proceedings[14]. In 2009-2010, CAFCASS statistics show that public law requests for guardians were **8,684.** In 1997**,** the Family Court Welfare Service, operated by the Probation Service, undertook about **36,100 reports** per year[15]. In 2008-9 CAFCASS received **38,449** requests for private law reports (CAFCASS Annual Report, July 2009 page 17). Thus, demand for public and private law reports and services is broadly similar to that in 1997-1998.

1.7 As at March 1998, there were an estimated 1,011 guardian panel memberships in England. Some individual guardians were double-counted as they belonged to more than one panel. Of this total, 843 (approx. 80%) were self-employed. About 70 persons in England and Wales were designated panel managers, supported by 92 clerical and administrative staff[16] The total budget for the guardian service was £26.193 million, of which £18.5 million (**70%)** was spent on guardians' salaries, fees and expenses[17]. Waiting lists were rare and were easily absorbed by guardians from neighbouring panels.

1.8 Guardians were highly qualified and experienced: *"One characteristic of most of the current practitioners is the length and breadth of their expertise in family, child and court-related areas, linked to formal academic qualifications."*[18]

1.9 It was common ground that the guardians offered a very high level of service to the children and the courts: ***"****The current service provided by the Family Court Welfare, Guardians ad Litem and the Official Solicitor's Office are highly regarded by the courts and many other agencies with whom they have contact. This is also evidenced by inspection reports of the Family Court Welfare and the Guardian Services. That professionalism is recognised and valued. It needs to be sustained and where possible enhanced."* [19] *"The role of the guardian ad litem in particular is widely regarded as one of the major success stories of the Children Act*." [20]

POST-CAFCASS

1.10 Even before its inception in 2001, CAFCASS was opposed to the use of self-employed guardians, and the guardians' professional association, the National Association of Guardians ad Litem and Reporting Officers (NAGALRO) successfully sought judicial review of CAFCASS on this issue. Nonetheless, the opposition to the use of self-employed guardians continued. In 2003, the House of Commons Select Committee observed that "*the increase in demand- which did not start post-Cafcass and should have been anticipated- and the shortage of appropriately qualified staff, made it all the more important that CAFCASS held on to the staff it was inheriting. The protracted dispute [*with self-employed guardians*] damaged relations with experienced guardians and staff that the organisation desperately needed in order properly to fulfil one of its core functions….It is important that, as well as using and developing its employed guardians, CAFCASS senior management embrace the principle of a mixed economy and repair relations with self-employed guardians."* [21]. This advice was ignored. In 2009, despite increasing waiting lists, CAFCASS issued a directive

[14] ibid; para. 1.25
[15] Ibid. para. 1.14
[16] ibid. paras 1.24 and 1.25.
[17] ibid. para. 5.6
[18] Ibid. para 3.28
[19] Ibid. para 1.6
[20] Ibid. para 4.4
[21] Report of the Select Committee, paras 8 and 11

that no further cases would be allocated to self-employed guardians. By March 2010, the number of self-employed guardians had reduced to 311.

1.11 The most recent CAFCASS Annual Report (July 2009) shows an annual budget of £130 million. Almost half of CAFCASS employees (908 out of 2,083, or 44%) are non-practitioners. Although CAFCASS asserts that about 60% of its budget goes to remuneration of "front-line staff", this includes all regional staff, managers, administrative staff and practitioners in both public and private law (known collectively as "Family Court Advisors" or FCAs). No separate figures are published for the fees and salaries of practitioners, but, given the high proportion of non-practitioner staff, it is safe to assume that the proportion of the total annual budget spent on their remuneration is less than 50%. This represents in our view a major misdirection of public money towards a growing and unnecessary bureaucracy, at the expense of the children that CAFCASS is meant to represent.

1.12 Many of the most experienced self-employed guardians have been forced out of the service or have taken early retirement, so that hundreds of years of experience have been lost to the family courts. In March 2010, the number of self-employed guardians in England remaining was 311, compared to a total of 1140 employed FCAs. Entry level qualifications for guardians have been reduced to 3 years' post qualifying experience and CAFCASS proposes to reduce them even further, so that newly qualified social workers with no experience will be able to be employed by CAFCASS. Further, CAFCASS plans to extend the use of unqualified family support workers to carry out some of the tasks of the guardian.

1.13 CAFCASS now officially defines a case as "allocated" when it is "either a case substantively allocated to a named practitioner or a case allocated on a duty basis to a named Cafcass practitioner" (CAFCASS Annual report page 27). Employed guardians have now been allocated so many cases that many feel they are unable to offer even a minimum service to the children they represent. Workload agreements in 2004 envisaged about 12 cases per employed guardian. According to the National Association of Probation Officers (NAPO), employed practitioners are now carrying an average of 25 cases. In some cases, their case loads far exceed this figure. This places the guardian in an invidious position, as the statutory duty to investigate and report in each case is placed squarely on his shoulders. Anxiety is very high and morale is very low. The number of employed guardians leaving the service is increasing, and NAPO report staff turnover rates of between 20 and 30 % in some areas.

NAGALRO SURVEY

1.14 A national survey of its members by NAGALRO[22] found that 40% of care cases in the survey sample had been unallocated for more than 2 months, including 10 % for over 3 months. 2 % were unallocated for more than 5 months. In early autumn 2009, a conservative estimate was that there were over 860 cases awaiting allocation in the offices from which the participants reported.

1.15 Guardians were concerned about the limitations of the "advisory" or "duty guardian" role, particularly about the quality of advice that could be offered to the court, and the

[22] *Time for Children" January 2010*

dangers posed to the child by an "arm's length" process of risk assessment[23]. There is also lack of continuity for the child. Over 80% of respondents said that they were being instructed by Cafcass managers to prioritise tasks other than the work done with and for the child. This is echoed by reports that managers in some areas are instructing guardians not to make home visits and to interview families by telephone.

1.16 The lack of opportunity for the guardian critically to appraise and, if necessary, challenge the local authority's actions and arrangements for the child at an early stage was another major area of concern:

> "*Some of the case examples in the survey indicate that the local authority case was being accepted uncritically, raising the fear that the wrong decisions may have been made and the options for the child not fully explored. If too much time elapses between the child's removal from home and the final placement decision, then the outcomes may be determined through the passage of time rather than on the original facts of the case."* [24]

1.17 CAFCASS's current operational target is to offer a purported "safe minimum service" in all public law cases. NAGALRO's response is as follows:

> *" The concerns raised by respondents in relation to the fettering of their professional discretion are indicative of the gap which is opening up between the organisational target of the "safe minimum standard" of service delivery and the statutory duty of the children's guardians under the Children Act 1989- to give paramount consideration to the child's best interests. Practitioners are rightly concerned that the present systems may put them in breach of either their professional codes of practice or their statutory duty. The concept of a "safe minimum" is essentially a subjective rather than an absolute concept, dependent on different local and managerial definitions. This has resulted in considerable confusion and anxiety for front-line staff concerned about potentially dangerous practice……The case examples given by the survey respondents vividly illustrated the anxiety and stress experienced by practitioners who are all too acutely aware of the vulnerability of hundreds of children who are waiting for a guardian***."** [25]

1.18 The ALC supports and adopts these observations. It also supports the radical reform of the delivery of guardian services to children and to the courts. It goes without saying that these are the most vulnerable group of children in our society. Many of them have suffered grave harm. They need independent representation by high-calibre guardians. It is clear from the comparatively modest cost of the previous services that a return to the standards which existed pre-CAFCASS is not a pipe dream or a "Golden Age". It is an affordable, do-able alternative to an organisation which spends less than half its annual budget on the salaries and fees of public and private law practitioners, and prioritises bureaucratic tasks above direct, investigative work with children and their families. The good will, dedication and expertise of the existing guardians can be harnessed to offer a high quality service to the child and to the court. A service which protects and respects the role and professionalism of the guardians would also be able to attract and retain high calibre new recruits from the social work profession.

[23] Ibid. para 1.2
[24] Ibid. para 1.2
[25] Ibid. para 1.7

(II) THE IMPACT ON COURT PROCEEDINGS AND ACCESS TO JUSTICE OF RECENT AND PROPOSED CHANGES TO LEGAL AID

2.1 By "recent and proposed changes to legal aid" we understand the Select Committee to refer to:

(A) Part 1 of the family fee changes, effective October 2007;

(B) Part 2 of the family fee changes, due to come into effect in October 2010;

(C) the contracting changes proposed by the 2010 bid round;

(D) other changes to the scope of funding to be introduced in October 2010 as a result of the 2010 contracts consultation, e.g. the capping of independent social work fees.

We deal with these in turn:

(A) Part 1 of the family fee changes, effective October 2007

2.2 Our members' principal complaint was that these changes failed properly to remunerate solicitors who did their own advocacy for time spent (sometimes many hours) in preparing for hearings.[26] Following considerable and productive discussions with the LSC this issue will be remedied shortly, when the Part 2 fee scheme comes into force.

2.3 In terms both of access to justice and the impact on court proceedings, there is clear evidence from our membership that the quality of parent/other adult party representation (i.e. work other than advocacy) in care proceedings has declined since the introduction of fixed fees for case preparation. That fee is, on the face of it, quite substantial[27]. There has been a noticeable increase in the number of parents who are not being adequately represented, and there is a strong suspicion amongst our membership that commercial decisions have been taken to move into this market on the basis of corners being cut and a minimal service provided. This indeed is market forces at work!

2.4 There are anomalies in the scheme where a client transfers instructions to another solicitor. These could be for a wide range of reasons, including conflict of interest, the client acting in such a way as to require the solicitor to withdraw from the case, the solicitor ceasing practice or being subject to an intervention. Restrictions on the second solicitor's remuneration makes taking on such cases financially unviable. This has an impact both on access to justice and the court process.

(B) Part 2 of the family fee changes, due to come into effect in October 2010

2.5 Broadly we consider that these changes will result in improved quality of advocacy and will have a positive impact on court proceedings. By offering reasonable remuneration for complex work they will encourage providers to continue to offer publicly funded services in this field, and they can be expected to have a positive impact also on access to justice.

2.6 We would like to highlight that this scheme was developed as a result of detailed and lengthy discussions between representative bodies and the LSC over many months. It is clear evidence that such constructive engagement *is* possible, in stark contrast, unfortunately, to the history of the contracting changes, below.

[26] An absence of proper statistical information resulted in all solicitors, whether or not they did advocacy, receiving payment for preparation for advocacy as part of the standard preparation fee.

[27] It varies between £2,621 and £5,966 depending on which region of the country and which tier of court.

(C) The contracting changes proposed by the 2010 bid round;

2.7 For public law work, the results of the family bid round are, at present, disastrous - both in terms of future access to justice and future quality of work. There are many parts of the country where provision will plainly be inadequate, and large numbers of highly experienced and very well-regarded children panel solicitors who have been excluded from taking on work under the new contract.[28]

2.8 It is clearly of the utmost importance to understand how this has come about. Our limited understanding of how the process developed (which includes no knowledge at all of crucial elements such as the Legal Services Commission's planning processes and decision making) is as follows.

2.9 By the final report stage of his review of Legal aid Procurement, published in July 2006, Lord Carter's brief had been extended to family law. Published simultaneously with his report was a consultation paper from the Legal Services Commission and Department for Constitutional Affairs "Legal Aid: a sustainable future". Our association's response is annexed[29]

2.10 At a meeting of the Civil Contracts Consultative Group held on 27/1/09 it was clearly articulated as being the policy of the Ministry of Justice that smaller providers should be eliminated from the 2010 bid round[30]. Some months later, in their Consultation Response, the LSC confined themselves to observing that "We would stress that five providers per procurement area will be a minimum rather than a target and that in the majority of areas we would anticipate letting more contracts than this"[31].

2.11 In a letter dated 14/1/10 to the Law Society, Carolyn Regan (then Chief Executive Officer of the Legal Services Commission) stated that there was no intention to make significant cuts in the supplier base. She repeated that assurance to one of the signatories of this submission on 18/1/10, at a meeting of the National Family Justice Board. She envisaged that, as a result of the tender process, a few providers might drop out and a few new players might come on board, but that broadly the supplier base would remain as it had been.

2.12 We know from the Magee report[32] that there were considerable tensions between the policy departments of the Ministry of Justice and Legal Services Commission[33]. We also know that the Ministry of Justice "won"[34].

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[28] The Law Society commenced an application for Judicial Review of this process on 27th August 2010. A group of 12 existing providers who had been refused family contracts were given permission by Irwin J. to intervene, on 3rd September 2010. The full hearing of the application for judicial review is listed for 21st September 2010, with judgment expected to be delivered on 24th September 2010.

[29] *Lord Carter's Independent Review of Legal Aid Procurement. Legal Aid : A sustainable future. Submission of the Association of Lawyers for Children 12th October 2006.*

[30] This emerged in the context of a discussion about consortia, and whether family practitioners would be permitted to form them. The MoJ were only prepared to consider consortia in the field of social welfare law, on the basis that they were satisfied with their impact assessments in the family law field and were not interested in contracting with small family practices.

[31] *Civil Bid Rounds for 2010 Contracts :A consultation response June 2009*, paragraph 4.3

[32] "Review of Legal Aid Delivery and governance" by Sir Ian Magee CB, March 2010

How then were the criteria formulated on the basis of which a substantial cut in the supplier basis was indeed achieved?

2.13 Annex A to the LSC's Consultation Response to the Civil Bids Round for 2010 contracts consultation, which was published in June 2009, set out on page 1 a summary of the minimum entry requirements for Family work. This sets out a number of requirements, including:

- minimum numbers of NMS, and the requirement to provide service at all levels;
- a quality standards which required a satisfactory peer review rating, the LSC's "Specialist Quality Mark" standard or equivalent;
- supervision requirements limited to "supervisor standard in family" - that is to say (coupled with the requirement that there be a minimum of one supervisor to each [full-time equivalent] caseworkers, one person who satisfied the Specialist Quality Mark supervision standard for a firm with 1-6 fee earners, and an additional supervisor if the firm had 7-12 fee earners, etc.

2.14 Significantly, at this stage there was *no requirement*[35] for any specific panel memberships, over and above the standard requirement that a supervisor be a member of one of a number of accredited panels operated by The Law Society[36] and Resolution.

2.15 There was no consultation with the ALC, and none that we are aware of with other representative bodies subsequently in the eight months between the Consultation Response and the opening of the tender as to any further requirements, beyond those set out in Annex

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[33] See paragraphs 197 to 201

[34] Although Magee envisaged that there would be "further consideration of the case for an Executive Agency to replace the LSC" (final paragraph of Part 6 – recommendations) the Ministry of Justice not only immediately announced that the LSC would be moved to an Executive Agency of the MoJ, but stated, in a press release of 3/3/10 that "This change will be effective from Monday 8 March 2010" (notwithstanding the need for primary legislation to give effect to such change!)

[35] The LSC had originally proposed that bidders for public law contracts would require to have a supervisor who was a member of the Children Panel. This was a requirement that the ALC supported for the reasons set out at paragraph 2.3 above, in order to raise quality of representation for parents, and help to prevent delay in proceedings. In fact the LSC decided not to do this. They explained their reasoning at para. 390 of their Consultation Response, as follows:

> "However, following consideration of the impacts, particularly on those public law children providers that specialise in the representation of parents and *therefore may not sit on the Children Panel* (our emphasis) we are not proceeding with this proposal."

The ALC (and also the Family Justice Council) queried this with the LSC and it rapidly became apparent that the LSC did not appreciate that membership of the Children Panel (formerly the Child Care panel established in 1985, and so in existence for 24 years at the time of the Consultation Response) was not limited to solicitors representing children. There is a level of qualification as a parent's representative, and a higher level of qualification as a children's representative, but most panel solicitors choose to qualify at the higher level so that they can include representation of children in their caseload. The LSC had apparently enquired of the SRA (who had been administering the Children Panel at the time of the consultation), were told that there were very few parents representatives, and so jumped to the conclusion that they would not be able to include panel membership as a requirement!

[36] The Children Panel was administered by the SRA between 2007 and July 2009, when it returned to the Law Society, who had administered it between 1985 and 2007.

A, page 1, or how particular requirements were to be scored. The LSC were asked for further details[37] but were unwilling to enter into any discussion as to their plans, only indicating the publication dates they were working towards. We do not know what the reasons were for not consulting in detail. Whatever the reasons, the results have been disastrous. Had there been proper consultation on the criteria which were finally adopted by the LSC and the scoring system, those criteria would almost certainly have been substantially modified[38].

2.17 Once firms' bids had been "scored", matters were then aggravated by the LSC's system of allocation. This was a "cascade" system, in which those firms with the highest score were allotted all the matter starts they had bid for, irrespective of the relationship between that number and the firm's track record of case starts. Provided there were five providers in each procurement area, if those top five scorers had bid for more than, or the precise amount of available matter starts between them, then no further bids were considered or contracts let. This was a "winner takes all" approach, which inevitably encouraged overbidding.

2.18 No consideration was given to the proportion of a firm's work which was devoted to "matter starts" (i.e. legal help) as opposed to court work (certificated work). This took no account of the fact that, in public law children's cases, the work done under a matter start may only constitute 1 or 2 % of the work done altogether, and that there is no matter start at all in cases where a provider acts on behalf of a child.

2.19 There was no requirement that staff at a particular office fulfil the criteria that the LSC devised. This enabled firms to make multiple bids in different contract areas, and effectively "knock out" long established firms with highly qualified and experienced staff, who failed to score sufficient points to be considered under the cascade system.

2.20 It is beyond the scope of this brief submission to go into details of the many anomalies thrown up by this ill-conceived tick-box tender, but they include:

- contracts going to firms which fortuitously had an employee who had qualified on one of the domestic violence panels before the announcement that this would attract specific points (enabling them to score the maximum 40 points) despite the fact that other firms had undoubted expertise in that area which they could have evidenced in other ways, if the tender form had allowed anything other than the ticking of boxes, and far greater depth and experience in other areas of practice than the "successful" firms;
- contracts being awarded on the basis of speculative bids rather than track record/ability to deliver services without the need to recruit;

[37] E.g.at meetings of the Civil Contracts Consultative Group (28/7/09) and Family Representative Body Meeting (13/11/09)

[38] The original proposals of the LSC for the Family Advocacy Scheme were considered by representative bodies to be disastrous in terms of their impact both on access to justice and the workings of the courts, and, as referred to at paragraphs 2.5 and 2.6 above, was radically transformed as a result of subsequent, detailed discussions and negotiations.

- no account being taken of the fact that a firm might have several highly experienced panel solicitors (over and above the minimum number of panel members required for supervision purposes);
- highly experienced children panel solicitors, many with 20 years or more practice in representing both children and parents[39], practising in metropolitan areas which have the greatest level of social deprivation and accordingly the bulk of public law cases, and held in high regard by the courts where they practice, being unable to qualify for a contract because of the automatic classification of such areas as Integrated Services A areas.

2.21 In summary, the peculiarities of the scoring criteria, coupled with the LSC's policies on cascading, and awarding contracts to do work across the board purely on the basis on New Matter Starts, produced unexpected, irrational and disastrous results.

(D) Other changes to the scope of funding to be introduced in October 2010 as a result of the 2010 contracts consultation

2.23 The ALC's main concern in this area is the decision to cap fees of Independent Social Workers, with effect from October 2010. We strongly opposed this proposal at the time of the Consultation[40] and remain strongly opposed. We understand fully the need for a review of experts' fees generally, but consideration of Independent Social Workers should have been included, with other expert's fees, in the remit of the Ministry of Justice's Central working Group on experts' fees.

2.24 In practice the LSC are already attempting to cap fees in advance of October 2010, and have, ahead of implementation, resiled from the policy in place since 2003[41]. The results have already been felt, with a number of very well regarded ISW's declining to accept further instructions and we have no doubt that this unwelcome change will impact seriously both upon the court process and upon access to justice.

2.25 We would support this decision being rescinded, with decisions over Independent Social Workers fees being included in the remit of the Central Working Group.

(III) THE ROLE, OPERATION AND RESOURCING OF MEDIATION AND OTHER METHODS IN RESOLVING MATTERS BEFORE THEY REACH COURT

Private Child Law

3.1 *Mediation* has been urged as an alternative to court proceedings for several years, particularly by the LSC, on the basis that it is a cheaper option. In practice this has not been borne out. Various schemes have failed due to lack of take up. Costs have been

[39] See footnote 10 to paragraph 2.14 above

[40] Paragraph 68 of our response, dated 27th March 2009, to the Legal Services Commission's Consultation on Family Legal Aid Funding from 2010, responding to Question 68 of that consultation.

[41] LSC's Information Pack – Public Funding Issues (October 2003) esp. paragraph 7.4 : "…the Commission will … follow the directions given by the court where it has given leave for an expert to undertake certain, specified work …In the circumstances, the Commission wishes to discourage applications for prior authority …"

commensurate with court proceedings. Mediation is a very useful way of deflecting cases from the courts, and can lead to significantly better outcomes in certain circumstances but it is not necessarily cheaper. Mediation services need to be properly funded. The lack of available legal advice in the most common family mediation models can lead to a duplication of work, although this is more of a problem with financial mediation rather than children issues.

3.2 *Collaborative law* (where the parties agree not to go to court, but to resolve their differences in 4 way meetings with their lawyers) has some advantages over mediation in that the parties have access to legal advice. The model of being able to call on the services of family consultants and child consultants to assist with the process can be particularly helpful. The involvement of lawyers and other experts can, however, mean that collaborative law is not always affordable for all who would benefit from it.

3.3 *Early neutral evaluation*, where a jointly instructed expert lawyer provides a neutral opinion as to an appropriate resolution, or likely court order can frequently avert court proceedings and can be very cost effective.

3.4 *Conciliation* has historically been successfully employed by CAFCASS officers as a way of resolving matters without further proceedings. This seems to be being used less now that extensive risk assessments are required prior to meeting the parents.

3.5 *Programmes of information sharing for parents* in private law cases with a view to reaching settlement through conciliation (or any other method) appear to be successful. When these require to be resourced centrally, rather than by individual legal fees, they have not been employed as extensively as they might have been. *Separated Parents Information Programmes* (PIPs) are steadily taking off. Such schemes do seem to reduce the number of child cases coming before the courts and, by making parents aware of the damage conflict causes children, limit animosity and encourage healthy resolution without the need for contested proceedings.

Public Child Law

3.6 The need to protect children and the inequality of bargaining power when a child's welfare is seriously at risk does make *mediation* and *collaborative law* difficult to use within public law. Studies and pilot schemes to promote mediation have not resulted in any significant role for mediation within public law. Collaborative law, precluding as it does court proceedings, does not give children the protection they need.

3.7 However, the use of *family group conferencing*, *pre-proceedings conferences*, *advocates meetings* and a more inquisitorial system enables professionals (lawyers, social workers and guardians) to utilise mediation and collaborative law skills to the benefit of parents and children. The multi-party nature of public law proceedings also tends to foster a more collaborative approach to problem solving in public law cases.

3.8 However, if these alternative methods are to work effectively, experienced lawyers (representing all parties) and experienced guardians and social workers are essential.

(IV) CONFIDENTIALITY AND OPENNESS IN FAMILY COURTS, INCLUDING THE IMPACT OF THE RECENT CHANGES IN THE CHILDREN, SCHOOLS AND FAMILIES ACT 2010. 4.1

Aims/objectives

4.1 Changes to the Rules in April 2009 permitting the media to attend family hearings[42], coupled with the provisions of Part 2 of the Children Schools and Families Act 2010[43] aimed to increase reporting and public awareness of the work of family courts - thus addressing any failing of confidence in this field.

4.2 Various claims have been made about the benefits of press attendance and reporting of family hearings. In brief, those in favour of media access in private law cases (predominantly fathers – albeit a relatively small group) argued courts were biased in favour of mothers, while those in favour of media access in public law hearings argued local authorities have removed children unfairly.

4.3 The latter group (along with some journalists) have also been critical of the work of certain experts. In addition, some parents argued that the rules restricting on 'onward disclosure' of court papers denied them an opportunity to discuss their cases with others from whom they might be offered support. Campaigning groups depicted family courts as 'secret', arguing judges and experts are unaccountable for their views and decisions[44].

4.4 Those opposed to media access to hearings argued children's hearings were not 'secret' but necessarily private. Children and many children's organisations argued children would be able to be identified from press reporting – even if names were not published. There was however an acknowledgment that more information about the system and the decision making process should be more easily available to the general public but that this information could not be achieved through the mechanism of press reporting – given other concerns and complexities.

4.5 Major concerns of children's organisations focused on the impact on children and their unwillingness to disclosure abuse and discuss wishes and feelings, and on family courts, in terms of increased delay and cost.

4.6 A further concern was that the media would only be interested in reporting sensational and salacious aspects of cases; the media are a commercial enterprise and this type of information sold newspapers/increased viewer ratings. People's rights to privacy about the most intimate details of their family life would thereby be infringed, and some of society's most vulnerable children would suffer further harm and risk through public exposure of intimate details of parents' disputes and failures leading to neglect and maltreatment. Children would be identifiable in local communities and would suffer further.

4.7 It was also argued that restricting attendance and reporting in family cases facilitates full and frank disclosure from parties and thus early settlement of cases. In cases of domestic violence and forced marriages women would be reluctant to seek the protection of the court if

[42] unless otherwise directed by the judge

[43] to facilitate reporting of family cases and the naming of experts

[44] Brophy J with Roberts C (2009) Openness and transparency in family courts: - other jurisdictions and messages for reforms in England and Wales, Briefing Paper No 5, Dept. of Social Policy and Social Work, University of Oxford.

told of the potential for press attendance at a hearing in which painful and difficult information has to be shared.

Evidence from other jurisdictions

4.8 Most of these issues have been rehearsed in other similar common law jurisdictions[45].

4.9 It is noteworthy that allegations about 'secrecy', family courts as a 'star chamber' and judicial bias against fathers continue in these jurisdictions despite for example the fact that the Federal Family Court of Australia has been open to the press (and the public) for well over 20 years.

4.10 Other jurisdictions have accordingly sought different ways of enabling the public to have access to better and more detailed information about modern family courts and how judges make difficult decisions about the care of children.

Changes to family court rules (April 2009) and Part 2, Children Schools and Families Act 2010

4.11 Many who support increased media access and reporting of children cases and those who opposed Part 2 of the Act, argue that in practice, the provisions are largely unworkable.

4.12 Both groups argue that, if implemented, Part 2 of the Act will result in adjournments[46], increased costs and delay. For the family justice system this would occur at a time when the system is already close to meltdown.

4.13 Journalists argue that they are now[47] even more unclear about what information they can report. Editors remain unclear about what may be published and will not risk limited resources sending out reporters to cover cases where media resources may become tied up in applications to resolve this.

4.14 The Act is thus unlikely to meet the needs of either group or the policy objectives set out by the (then Labour) Government. It will, however, have substantial resource implications.

4.15 For children's lawyers and others the implications are even more complex[48].

4.16 The ALC (along with some 22 key children's groups making up the *Interdisciplinary Children's Alliance*) is concerned that the legislation will not be sufficient to protect the

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[45] . e.g. family courts of Canada and Australia and more recently, New Zealand. See, *Brophy with Roberts (2009)* – see note 33 above.

[46] while judges determine on a case-by-case basis what information can be reported from children cases in order to safeguard their interests

[47] following the Children Schools and Families Act 2010. The Act sets out information that if published, will be deemed 'identification' information and thus a breach of confidentiality; it also sets out 'sensitive personal information' which if published would also be in breach of the Act. Despite the fact that the government did not set out an evidence base and did not consult on this latter provision, the Act allows - all other things being equal – for the restriction on publishing 'sensitive personal information' to be lifted at a future date.

[48] They have to explain to children and young people that (post April 2009) (a) a reporter might be in court and subject to the judge's agreement may be permitted to remain, and, (b) what information the reporter should and should not report. They cannot of course guarantee anonymity in any subsequent reporting – nor can they necessarily second-guess the outcome of an application by the press to publish certain information 'in the public interest'.

welfare and safety of children. This is a key concern not only for children's lawyers but also for social workers and doctors. The legislation undermines key ethical principles underscoring work with children[49].

4.17 Welfare, legal and clinical practitioners have all argued that information about media attendance in court will affect the willingness of children and young people to disclose/discuss further serious abuse and neglect by a parent/carer, and their own wishes and feelings with professionals – and will further undermine their trust in adults and family courts to protect them.

The views of children and young people

4.18 The above concerns were substantiated in recent research with children and young people.

4.19 An independent study of 51 children and young people with regard to press access to family courts[50] found almost all children and young people[51] were opposed to the decision to permit reporters into family court hearings. The major reason was that court hearings address issues that are 'private'. They concern events that are painful, embarrassing and humiliating for children and an overwhelming majority said this detail was not the business of newspapers or the general public.

4.20 Almost all children interviewed (96%) said once children are told a reporter might be in court they will be unwilling/less willing to talk to a clinician about ill-treatment or disputes about their care, or about their wishes and feelings.

4.21 These findings indicate substantial problems[52] and raise a range of concerns regarding compliance with Article 12 of the UN Convention on the Rights of the Child and General Comment 12 (conditions for the realisation of rights for children under Article 12).

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[49] This point was made in evidence at Committee stage of the Bill by children's organisations, childcare lawyers, judges and the Royal College of Paediatrics and Child Health. All argued that when talking to children who are deemed able to understand, professionals have to explain that the media may be in court. And it may be in the child's interests for the professional to advise them not to say anything further in the light of possible attendance and press reporting.

[50] Brophy J *(*2010) Media access to family courts: views of children and young people. London: Office of the Children's Commissioner for Children – England

[51] 79% in the public law sample, 91% in the private law group

[52] Where children and young people are unwilling/unable to talk about what has happened to them, judges/magistrates may be faced with making difficult and often life changing decisions about a child in the absence of, or with incomplete, 'sanitised' or changed evidence from the child, and limited or no information from clinicians. Children and young people said clinicians must inform them about press access to hearings at the start of an assessment interview - and *before* any substantive issues are addressed. This will enable young people to make informed choices about whether/how to proceed; they said any other approach would be dishonest and a betrayal of children's trust.

With regard to what information from cases and judgments might be published, children felt much information about them (their age, schools, interests and activities, religion, etc.) and about the content of cases (the allegations and concerns) by their very nature would allow for the identification of families. Crucially they are unconvinced that formal rules prohibiting publication of identifying information will automatically protect them. They do not trust reporters, they felt information would get out, allowing them to be identified, shamed and bullied.

Most children questioned about a sample judgment said children would not be happy for *any* information in the judgment to be reported in newspapers (79% in the public law group and 91% the private law sample). A minority of children in the public law group felt some information from a judgment could be published but without exception these children selected statements vindicating children of blame or responsibility for events

4.22 The research data indicates that, in the construction of new rules and legislation regarding media access and reporting in children cases, crucial elements were ignored - the views of children and young people, their concerns about privacy, safety and self esteem, and the ethnical and *practical impact* of new provisions.

4.23 At the point at which children feel most vulnerable and powerless it is not perhaps surprising to learn that the research indicates they may in effect 'vote with their feet, '*play safe, and say nothing'.* That may expose children to further abuse and places professionals and family court judges in an untenable situation.

4.24 In the light of these findings careful, more detailed, less rushed and a proper consultation needs to be undertaken and alternative options that increase information about the work of family courts – in a format that is user friendly - but which does not expose already vulnerable and often damaged children to further risks. Foremost in this is the need to provide anonymised judgments. A pilot scheme has begun[53] and this is to be welcomed. It

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leading to care proceedings: they wanted it known that they were not 'bad' or 'naughty' children and that they had done their best in awful circumstances.
With regard to whether there was any information in the judgment that it might be helpful for the general public to know, most children (and 91% in the private law group) said 'no' - and some were doubtful or cynical of a public education role on the part of newspapers.
The views of children/young people regarding their *privacy* and implications for their safety and welfare in their schools, homes and communities (notwithstanding respect for private and family life under Article 8 of the ECHR) – is thus somewhat different to that articulated by some adults and policy makers in government.
Young people also said judges/magistrates should seek the views of relevant children before deciding whether to admit the press to a hearing. This view - coupled with children's rights to be heard in any judicial and administrative proceedings (under Article 12, UNCRC) indicates welfare and legal representatives must seek their views in preparation for a hearing.
Objections to parents talking to the press about a case (even though children should not be identified in reporting) were strongest in the private law group: 92% objected to this during proceedings, 45% still objected once proceedings were concluded (and those who though parents could then perhaps be permitted to talk to the press, added conditions including seeking the agreement of the child concerned).
In the public law group 37% said parents should not be permitted to talk to the press during or after cases were completed; following completion, 41% felt parents could - but also added further conditions. And almost all young people (96%) said where children are capable of expressing an opinion parents should seek their *permission* before talking to the press.
Children and young people said the press sensationalise information, or construct bold headlines that do not reflect the content of cases, and will 'cherry pick' information. They are mostly doubtful that the press will print a truthful story and are doubtful - some cynical - about an educational function.
Children fear 'exposure'; they are afraid that personal, painful and humiliating information will 'get out' and they will be embarrassed, ashamed and bullied at school, in neighbourhoods and communities. This expectation is not limited to children in rural communities; it is equally likely in urban communities and is particularly relevant for children within ethnic minority communities. As indicated in evidence by children's organisation and clinicians during the Committee stage of the Bill, children are unconvinced about the capacity of laws and adults to protect them.
Some saw a role for public education in dispelling myths that children involved in care proceedings and those in long-term foster care are somehow 'at fault' but they did not generally think these issues could or should be addressed by reporting from real cases where the focus was on details that might put children at risk.
Most children and young people said newspapers should not be permitted to name professionals – unless a professional agreed. As to whether there might be a public interest in doing this, most rejected that view – they said there were other ways to achieve this.
Respondents were also strongly opposed to reporters having access to reports for courts (96% in the private law group). They said this would be a breach of their trust and privacy.

[53] The Family Court Information Pilot (pilot courts being Leeds (FPC), Cardiff (CC and FPC) and Wolverhampton (CC and FPC) will provide anonymised judgments, these to be placed on dedicated space in the British and Irish Legal Information Institute (**BAILII**) website – see http://www.le.ac.uk/li/digital/BritishandIrishLegalInformationInstitute

is however very early days and we await the evaluation report, which is essential before moving forward in this area of family justice.

Appendix nine

Comment by Piers Pressdee QC (co-Chair) in Family Law June 2010 (attached separately)