



Debbie Singleton & Martha Cover
Co-Chairs
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Sent via email: admin@alc.org.uk

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24 October 2017

Dear Ms Cover and Ms Singleton

Thank you for your letter of 28 September 2017 in relation to the guidance document issued by Cafcass and Cafcass Cymru on the use of professional time to benefit children. I am replying on behalf of Cafcass and Cafcass Cymru.

It might be helpful to confirm the purpose of the document and to clarify the intended audience. As we have confirmed elsewhere, this is an operational tool intended to provide support and guidance to our staff. The document and discussions around it aim to encourage the judiciary to support the need for the flexibility necessary for our practitioners to be able to fulfil the demands on our service as a result of the increasing number of applications in both public and private law. It is not expressed in terms of an instruction and is not intended to be so. While it is anticipated that it will be of assistance to Cafcass and Cafcass Cymru staff it is hoped that other participants in the family justice system will support the decisions made by our staff in relation to the need to work flexibly and to recognise the constraints that they are working under. These constraints are clearly being felt by all who work in the family justice system, including judges and lawyers.

It is explicit within the guidance that it does not seek to fetter the discretion of the individual practitioner who is required by the Family Procedure Rules to carry out such investigations as they consider necessary. Rather it is intended to provide a framework for Cafcass and Cafcass Cymru staff to be able to work flexibly. We do not accept that it 'significantly erodes' the service or undermines the statutory independence of the children's guardian. The children's guardian will continue to work according to their own discretion, following legal advice, and at the direction of the court. The guidance is intended to work at the cultural level and is not binding in a particular case. There is no reference in the guidance itself that suggests that it is binding on our practitioners. The feedback we have received from practitioners has been positive. The suggestion of disciplinary action being taken fundamentally misunderstands the intention of guidance and would not happen as a result of not following this guidance in an individual case because the needs of a particular case are paramount.

Baroness Tyler of Enfield Chair
Anthony Douglas CBE Chief Executive

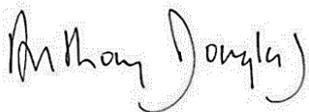


We have acknowledged that the guidance is a dynamic document and will consider the comments set out in your letter when it is reviewed in the next few months.

The contribution of Cafcass pre-proceedings has been in place for some years in England and is undertaken pursuant to section 12(1) (a) and (d) of our founding legislation: the Criminal Justice and Court Services Act 2000. You will be aware that the principal functions of Cafcass refer to family proceedings and the definition of family proceedings in the act includes proceedings which are proposed. In those areas where pre- proceedings work is undertaken, it has the support of the local judiciary and is only introduced with the consent of all the parties. Cafcass believes that there are real benefits to children of early intervention and cases being diverted away from court if safe to do so. The role of the Cafcass officer in the pre- proceedings work is not as a children's guardian. As you point out, that role is only appointed by the court, but we are as an organisation able to provide information advice and support to families and this is the function we fulfil in this area. We will not suspend schemes which have been successfully in operation for many years in a small number of local areas. Existing schemes are currently the subject of an evaluation and we will review their effectiveness at that point.

Finally, I agree with your suggestion that guidance about pre-proceedings services in both public and private law could usefully be re-worked into a single guidance document applicable across the family justice system. As well as other advantages, this could have the merit of using a best practice approach to highlight effective pre-proceedings work locally or regionally with a wider potential application. Cafcass and Cafcass Cymru would welcome this step as long as all agencies and professions in the system decide they can be partners for this purpose. It is clearly an issue that other agencies are pushing which is not specifically about our guidance.

Yours sincerely

A handwritten signature in black ink that reads "Anthony Douglas". The signature is written in a cursive style with a large initial 'A' and 'D'.

Anthony Douglas CBE
Chief Executive, Cafcass

cc. Nigel Brown, Chief Executive, Cafcass Cymru
Melanie Carew, Head of Legal, Cafcass