

Evidence from the Children's Commissioner for Wales

Health Wellbeing and Local Government Committee
Scrutiny Session – CAFCASS Cymru
Thursday, 22 January 2009



The Children's Commissioner for Wales does not have the power to enquire into or report on any matter which is or has been subject to court proceedings (Section 77 (1) Care Standards Act 2000) or to exercise any function which is exercisable by CAFCASS (Section 77 (2) Care Standards Act 2000). This prevents him investigating any matters raised with him relating to court proceedings or the involvement of CAFCASS Cymru.

Each year, on average, around thirteen percent of cases referred to the Commissioner's advice and support service concern family law proceedings. However, as most of the information received is the view or perception of only one parent, grandparent or a member of the extended family, in a complex case it may not be an accurate description. Additionally, the information received cannot be relied upon as it is a one sided view point. Moreover, the Commissioner cannot investigate the issues raised due to the legal restraints noted above.

When someone contacts the Commissioner's advice and support service, its Officers try to encourage children and families to share the information with their solicitors, to use the CAFCASS Cymru complaints procedure or to complain to the relevant bodies, such as social services or other regulatory bodies. Where appropriate, for example when a child or young person appears to be able to instruct their own Solicitor or if the child or young person is looked after, Officers can also arrange for an advocate or Solicitor to represent a child or young person.

On one occasion the Commissioner's advice and support service has supported a child in making a complaint and during another exceptional occasion one of the service's Officers forwarded a letter from a child expressing his wishes and feelings to CAFCASS Cymru and the Court directly.

When giving advice and support in relation to Family Law Proceedings, Officers of the Commissioner's advice and support service will always have regard to the United Nations Convention on the Rights of the Child, particularly Articles 3, 9 and 12 which say:

Article 3

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Some of the common issues raised with us include:

Private Family Law Cases:

1. The main issue raised with the Commissioner's advice and support service is that the child's voice is not being listened to, in particular when the children are aged between 8 and 12 years old. There is a perception that the CAFCASS Cymru Officer/ Welsh Family Proceedings Officer will detail in their Court Report what they consider to be in the best interests of the child and not include the child's wishes or feelings or what they have said. Parents and others have expressed their concerns that a Court does not have a full picture from the CAFCASS Cymru / Welsh Family Proceedings Officer's report.
2. Children have told the Commissioner's advice and support service they feel they have not been listened to and / or have not been allowed to

be accompanied by the person they chose to support them when being interviewed by a CAFCASS Cymru Officer.

3. The Commissioner's advice and support service has heard directly from children that they are being forced to have contact with a parent whom they do not want to see. This is contrary to section 3 of Article 9 (UNCRC, see above).
4. Children may express strong views about wanting a change in residence to live with their other parent (with whom they do not currently live) or wanting more contact or even no contact. The Commissioner's advice and support service has received calls from parents or extended family claiming that the CAFCASS Cymru Officer / Welsh Family Proceedings Officer will dismiss the child's views as having been influenced by a parent or family member involved. Parents report feeling disempowered to support their children through these proceedings for fear of such an accusation or because they feel the CAFCASS Cymru Officer / Welsh Family Proceedings Officer has taken a dislike to them or is biased towards the other parent. Parents express feelings of frustration and distress at not knowing what to do. They tell the Commissioner's advice and support service that their child may be clearly indicating to them that they do not want contact with the other parent but they are being told that they must continue to enforce that contact.

Public Family Law Cases:

1. Many of the calls to the Commissioner's advice and support service come from grandparents who say they cannot financially afford to instruct solicitors in Care Proceedings as they do not have the same access to legal aid as parents. They say they feel powerless to have any impact on decisions being made about the futures of their grandchildren. They express feelings of being overlooked and dismissed by CAFCASS Cymru Officers/ Welsh Family Proceedings Officers when requesting contact or to be considered as a carer for their grandchildren in line with what they say their grandchildren are requesting.
2. Parents and grandparents complain to the Commissioner's advice and support service of the CAFCASS Cymru Officer/ Welsh Family Proceedings Officer being heavily influenced by the local authority and unwilling to challenge anything the local authority says. This is an issue also raised in private family law cases with grandparents trying to maintain contact with grandchildren.
3. Children have contacted the Commissioner's advice and support service when an attempt to change their guardian, because of the breakdown in relationship, has been refused.

4. A recent call from a child was very positive about the involvement of CAFCASS.
5. Parents and grandparents have raised concerns about the quality and regulation of expert witnesses and their feelings of powerlessness in challenging them.

Additional source:

The NSPCC Review of Legislation Relating to Children in Family Proceedings (2003)

Dame Elizabeth Butler-Sloss prepared a report on behalf of the NSPCC in 2003 which questioned the effectiveness of CAFCASS as an advocate for children in court proceedings. The report highlighted that children and young people did not feel they were being heard in public and private law proceedings. Since the publication of the report, CAFCASS Cymru has been incorporated into the Welsh Assembly Government. The report states:

4. The voices of children and young people must be heard much more clearly in all public and private law proceedings. Too often young people feel that they are not being heard. In order for this to change the Children and Family Court Advisory and Support Service (CAFCASS) must function effectively as an advocate for children, both in court proceedings and as a contributor at national policy level. It is clear from the review findings that this is not currently the case.

5. Contact needs a drastic rethink and should be much more child centred in both private and public law. A shocking result of the review is the extent to which children's wishes regarding contact are ignored in private law proceedings and overlooked in public law proceedings. Nowhere is this more evident than in the apparently cavalier manner in which contact between siblings may be terminated.

Review of legislation relating to children in family proceedings, NSPCC, 2003
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There is profound concern, not to say alarm, about the quality of services being provided by CAFCASS and the knock-on effect of this in terms of undermining the capacity of the newly combined service to safeguard the welfare of children involved in both public and private law proceedings. The service has been the subject of a parliamentary select committee of inquiry. Respondents would not wish to see CAFCASS' organisational difficulties used as a justification for non-implementation of Section 122 of the Adoption and Children Act 2002 (or any other legislation that impacts directly or indirectly on children's right to appropriate representation). Nor should they be a reason for cutting down on the duties and responsibilities of the CAFCASS officers, for example, in respect of timetabling of cases and becoming re-involved in cases if it becomes clear that care plans are not being implemented and that changes are detrimental to or contrary to the wishes of the children. The role of CAFCASS in relation to the protection of children's human rights should also be clarified as a matter of urgency. There is profound disillusionment and disappointment about CAFCASS's failure to grasp the opportunities offered by the establishment of the new combined service. The Lord Chancellor's Department Select Committee of Inquiry report published in July 2003 made 48 welcome recommendations for the changes necessary to enable CAFCASS to function effectively. These recommendations should not be overlooked and should be implemented as a matter of urgency.

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The full report is at:

http://www.nspcc.org.uk/Inform/publications/Downloads/reviewoflegislation_wdf48138

It may well be that the Committee would wish to hear evidence from other organisations such as the NSPCC or advocacy providers.

A handwritten signature in black ink that reads "Keith Towler". The signature is written in a cursive style. Below the signature is a long, horizontal, slightly curved line that extends to the right.

Keith Towler
Children's Commissioner for Wales.

16 January 2008