

Children and Young People Committee
C4.

Inquiry into the work of CAFCASS Cymru

Evidence from FNF Both Parents Matter
Cymru



RESPONSE TO ASSEMBLY **CHILDREN'S COMMITTEE REVIEW OF CAFCASS CYMRU**

FNF Both Parents Matter Cymru is a Welsh charity that supports parents and grandparents to remain in contact with their children following divorce or separation. We have structured the aims of our charity around the articles of the UN Convention on the Rights of the Child (specifically Articles 9 and 18) to ensure that **we align ourselves with the Children's** Rights agenda developing in Wales. We are members of the Cafcass Cymru Advisory Committee that meets on a quarterly basis.

We are mindful of the special status of Cafcass Cymru conferred under the Children Act 2004 - the service being one of a very small number of direct delivery functions of Welsh Ministers. Staff of the service provides advice to Courts in Wales on behalf of Welsh Ministers - who are the primary duty holders. We acknowledge that carrying out direct functions of Ministers - particularly in the highly charged and emotional arena of family disputes over the care of children is an extremely difficult task.

QUESTION 1

Progress made in implementing the recommendations of the Care and Social Services Inspectorate Wales (CSSIW) inspection of November 2010 and the subsequent organisational restructure of CAFCASS Cymru;

In our evidence to the CSSIW Inspection in 2010 we acknowledged the huge stresses on the service - caused by the growing volume of cases in both Private law and Public law, and the inherent difficulty of the work. We acknowledged that many Family Court Advisers are dedicated individuals who strive to produce child focussed reports for Courts often in the face of great adversity and hostility from parents and carers. We also acknowledge that our charity is unlikely to hear from those service users who are satisfied with the recommendations made by FCAs in their cases and that inevitably colours our evidence here.

CSSIW assessed the service to be Satisfactory in relation to six of the areas examined and Inadequate in relation to six others. In relation to its Overall Effectiveness it was found to be Satisfactory, whilst its Capacity for Improvement was found Inadequate.

Many of the specific recommendations of the CSSIW Inspection were administrative and 'internally' focussed e.g. overall structure of the organisation / change management strategies / effective performance management etc. However we felt **that the key 'external' recommendations related to the Complaints Processes,** Strengthening relationships with Local Authorities and other social care and

advocacy agencies and the development of systematic feedback and evaluation from service users which contributes to change in practice and policy. We are therefore **focussing our response towards the second group of 'external' recommendations.**

Complaints handling - We acknowledge that real effort has been undertaken to improve the handling of complaints. However our service users remain wholly dissatisfied with outcomes in the vast majority of cases - often feeding back to us that they do not pursue complaints formally as they feel there is little point in doing so as Cafcass Cymru is unlikely to take their comments on board in a meaningful way. Until recently there was also an attitude that pushed complaints about the recommendations of individual FCAs into a Court arena which was unlikely to be an effective means of dealing with them given the huge time and resource pressures already present in the Family Courts.

Strengthening relationships - we are aware through the Advisory Committee that Cafcass Cymru has instituted a regular framework of meetings with Local Authorities. However as a representative body for a major group of service users we have found it extremely difficult to engage with the service either on a policy / strategic or an operational level to date. We would however greatly value the opportunity to improve those relationships as we believe it essential for the improvement needed in service delivery.

Development of systematic feedback - We have to acknowledge that in terms of our corporate feedback on behalf of the charity we have failed to engage with Cafcass Cymru at any level. We have written to Gillian Baranski on this matter very recently in an attempt to improve engagement and overall relationship with the service.

In terms of individual cases we have raised the problem of feedback at many of the Advisory Committee meetings we have attended in the past two years. We are concerned that organisational performance continues to be evaluated and monitored on a process rather than an outcomes basis with an over concentration on quantitative rather than qualitative measurement -i.e. the numbers of cases dealt with rather than the effectiveness of the outcomes achieved. The service has been prepared to admit that it struggles to find an effective method to monitor feedback from adult as well as children service users, but I have been encouraged in recent months by a recognition at a senior level that qualitative analysis need to be given greater emphasis.

QUESTION 2

How effectively CAFCASS Cymru is delivering its services in line with the United Nations Convention on the Rights of the Child (UNCRC) for example user engagement, decision-making in the best interests of the child;

The debate turns on the relative emphasis given to Articles 3 and 12 on one hand (the view held by Cafcass Cymru) and Articles 9 and 18 on the other - which we would **emphasize. We believe that the presumption of contact meets the 'best interests' test and that Article 9.3's caveat to the presumption principle properly addresses the** perceived conflict between the two Articles.

We have repeatedly called for an acceptance of Article 9.3 (the presumption of direct contact and a meaningful relationship) by FCAs when they commence their reporting. This has been rejected by Cafcass Cymru on the grounds that it conflicts with the Paramountcy Principle in the 1989 Children Act. We are however encouraged by the moves of the UK Government to amend the Paramountcy Principle to include a

presumption of contact in the Children and Families Bill which will be brought before Parliament in the New Year. It is clearly regrettable that a Welsh Government function finds itself at odds with proposed UK legislation particularly when that legislation is seeking to strengthen a specific Article of the UNCRC. We do have a written statement from the Welsh Government setting out their position on the implementation of the Rights Measure which we would be happy to share with the Committee.

We believe that a correct reading of Article 12 around the voice of the child should be a priority for the delivery of Welsh Government policy in relation to children. We have grave concerns that there is a **misconception around 'Wishes and Feelings' in the 1989 Children Act** and the Voice of the Child under Article 12 and this is placing pressure on children to make adult decisions about contact and residence issues. We are already **seeing more and more cases where contact is denied on the basis of the 'wishes and feelings' of a child and with an acceptance by professionals that the expression of a rejection of contact by is a 'trump card' which should not be over-ruled.**

The Children's Commissioner for Wales, Keith Towler, spoke powerfully at the launch of the Cafcass Cymru strategic plan in January 2012 about the experience of children who are caught up in contact and residence disputes. While undertaking his role as a member of the Family Justice review he spoke with a child who described the experience as **'like being caught in a washing machine, pulled in all directions and feeling like you're going to drown.'** The Commissioner used this example to emphasize that most children do not want to choose between their parents, and wish to maintain a relationship with both.

We believe it is very important that the wording of the legislation in Wales – particularly Article 12.1 - is studied closely and its correct meaning understood as this gives the child a **'Right to express ...views freely in all matters affecting the child, the views being given due weight in accordance with the age and maturity of the child.'**

The right of the child is not an excuse or justification for decisions that properly rest with adults to be forced upon children.

We do however believe that the voice of the child is an important element in the child protection process. There will be cases where children are justifiably averse to contact with a parent who is a threat to them. It is essential that professionals thoroughly investigate opposition to contact to ensure children are protected both from the parent they wish to avoid and from a controlling or alienating parent seeking to unduly influence them against contact. A child expressing an aversion to contact is not a natural reaction and that needs to be recognised by all parties involved in the Court process and child protection procedures. It is with great regret that we note that **CAFCASS Cymru is not able to align itself with Parental Alienation as an accepted concept/condition.'** However on a positive note we are delighted by the numbers of FCAs who have taken up our invitation to attend the seminar on Parental Alienation we are holding in Cardiff on the 15th November, and we hope that bodes well for the future.

QUESTION 3

How effectively CAF/CASS Cymru is delivering its role in the provision of child contact centres:

Through our membership of the Advisory Committee we have been aware of the re-organisation of funding for contact centres and of some of the discrepancies this review has highlighted – particularly in respect of the paucity of public funding in Gwent. Any realignment of funding has the propensity to create difficulties and confusion but it seems undeniable that allocating resources on the basis of actual need must be a sound basis for the use of public money. We support Cafcass Cymru in the principle and await the results of the budget allocation.

QUESTION 4

The implications of the Family Justice Review and its effect on the work of Cafcass Cymru

Whilst our service users are increasingly coming to us for help in respect of Public Law issues our primary area of expertise lies in Private Law so we are restricting our response to that area. Many of the implications of the Family Justice Review have already been set out earlier in this response.

Work To First Directions Hearings- The infrastructure needed to support a greater emphasis on work to First Directions Hearings had already been put in train. Focussing the work of Cafcass Cymru towards the supply of initial assessment information for Courts should be helpful. We are concerned however that the service **has reported to Courts that 67% of Private Law cases have raised 'safeguarding issues'**. We believe that significant attention must be given to establishing criteria and thresholds for the assessment of safeguarding checks rather than adopting a mechanistic approach simply passing on information gathered from other statutory agencies without assessment.

Parenting Plans - One of the specific recommendations was the development of a Parenting Agreement. Such a document exists in England provided by CAFCASS - including a Welsh language version - yet Cafcass Cymru have not felt the need to address the specific requirements of parents in Wales - particularly in respect of the **diverging public policy agenda around Children's Rights. We would strongly recommend that the Children's Committee ask Cafcass Cymru to reconsider its position in this regard.**

Family Justice Network - The creation of a Family Justice Network for Wales in which Cafcass Cymru participates was the central response of the Deputy Minister to the FJR. We are gravely concerned that it is the position of the Welsh Government that the views of service users and third sector agencies can be represented on the Network by Cafcass Cymru, and we would ask the Committee to look at this issue specifically and make appropriate recommendations to Welsh Government about the composition of the Network to more properly reflect public policy in Wales around citizen centred services.

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