

NSPCC

Response to

**FAMILY JUSTICE REVIEW
CALL FOR EVIDENCE**

NSPCC
Weston House
42 Curtain Road
London
EC2A 3NH
Tel: 020 7825 2500
Fax: 020 7825 2505
www.nspcc.org.uk

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NSPCC'S RESPONSE to FAMILY JUSTICE REVIEW CALL FOR EVIDENCE

Introduction

The National Society for the Prevention of Cruelty to Children (NSPCC) is the UK's leading charity specialising in child protection and the prevention of cruelty to children. The NSPCC aims to end cruelty to children in the UK over future generations. In pursuit of our vision we will:

- Create and deliver services for children which are innovative, distinctive and demonstrate how to enhance child protection most effectively;
- Provide advice and support to ensure that every child is listened to and protected;
- Provide advice and support to adults and professionals concerned about a child and if necessary take action to protect the child;
- Work with organisations which work with children to ensure they effectively protect children and challenge those who do not;
- Campaign for changes to legislation, policy and practice to ensure they best protect children;
- Persuade everyone to take personal responsibility for preventing cruelty to children;
- Inform and educate the public to change attitudes and behaviours towards children;
- Use our statutory powers as necessary to protect children.

As recommended by the Call for Evidence, we have only focused on those questions which are relevant to the work of our organisation.

Overarching issues and the case for change

1. What does the family justice system mean to you? What should the purpose of the family justice system be? What should not be included in the family justice system?

- 1.1 The purpose of the family justice system should be to safeguard the interests of children in all cases involving children. The welfare of the child should be paramount in court decisions which affect them, in accordance with the principles set out in s.1 of the Children Act 1989 and also in Article 3 of the UN Convention on the Rights of the Child which requires that in all actions concerning children, including in courts of law, administrative authorities and legislative bodies, the best interests of the child shall be paramount.
- 1.2 The courts should seek to make fair decisions which are in the best interests of children having regard to the law and evidence before the court.

2. What should the role of the state be when dealing with family related disputes that do not concern the protection of children or vulnerable adults? To what extent should the state fund this?

2.1 We are concerned that this question suggests that the Family Justice Review may result in a move away from private law matters that concern children where there is no evident child protection issue. We would urge caution against making assumptions that there is not a role for the court in these matters. The courts still need to probe cases for child protection issues to ensure that the safety and welfare of the children concerned will be secured. We know from our experience and research that a significant proportion of child abuse goes undetected and is committed without the knowledge of child protection and law enforcement agencies. Some of these children will be in private law proceedings.

3. How effectively does the current family justice system meet the needs of its users? E.g. Does it have the capacity to deal with all cases comprehensively? How could capacity in the system be increased? How efficient is the system? Does the system ensure equality and diversity?

3.1 There is an unacceptable level of delay in cases involving children in the family justice system. There is a shortage of court time which is likely to become more pronounced when the proposals to close courts around the country are implemented.

3.2 There is a shortage of experienced child law solicitors already and the shortfall is becoming more critical as a result of the latest round of family law tenders undertaken by the Legal Services Commission (LSC). We note that the numbers of firms assigned to family law work are to be cut from 2400 to 1300. We understand that the level of this reduction in the number of firms was not anticipated by the LSC. We are alarmed at this drastic reduction in access to justice and we are particularly concerned about the impact on cases involving vulnerable children. We are aware that the Law Society has initiated a judicial review of the family law tenders.

3.3 There is a marked increase in the number of litigants in person which inevitably adds to the amount of time required to deal with these cases.

3.4 Added to this, the NSPCC is very concerned about the level of service from Cafcass which has resulted in an unacceptable backlog of cases in public and private proceedings for long periods. The history of Cafcass has been troubled since its inception. It has never been satisfactorily resourced and there have been problems in bringing together under one service GALs and Court Welfare Officers from very different backgrounds and traditions. The issues of resources and leadership need to be addressed. Please see detailed response regarding Cafcass at Question 25.

3.5 The NSPCC is concerned that the current legal and policy framework for neglect encourages:

- a view of neglect as only a chronic phenomenon and hence waiting for neglect to persist before intervening;
- practitioners to see harm caused unintentionally as less serious and more remediable, when this may not be the case;
- unwillingness on the part of the courts to accept neglect as significant harm without traumatic incidents or evidence of developmental damage over a prolonged period; and
- a minimising of how even short-term neglect can seriously compromise outcomes for children.

3.6 There are several frameworks governing neglect, in criminal, family and education law. A review of their inter-relationships and their impact on professional practice, is long overdue. In England the criminal law governing neglect is Section 1 of the Children and Young Persons Act 1933; in family law it is the Children Act 1989. Currently there is only one area of parental responsibility where neglect impels clear sanctions and intervention, namely, the requirement in education law to ensure a child's educational needs are met.

3.7 A number of cases of neglect fall between the thresholds set by that legislation and those set out in the government's *Working Together to Safeguard Children* guidance (Para 1.36), which defines neglect as:

“The persistent failure to meet a child’s basic physical and/or psychological needs, likely to result in serious impairment of the child’s health and development”.

The use of the term “persistent” suggests that neglect has to be long-term and sustained before a care order can be made. Inconsistent care, as in a pattern of recurrent neglect with periods of temporary improvement, is not always taken into account for its cumulative effect on a child. This can result in the courts being unwilling to accept neglect as significant harm without major traumatic incidents or evidence of life-threatening developmental damage over a prolonged period.¹ Thus, action is likely to be too late, with harm having already occurred, and/or severe developmental damage being predicted, even when this was foreseeable due to poor parenting practice.

3.8 The difficulty is compounded by the wording of *What to do if you’re worried about a child* (DfES 2006), which states that “there are no absolute criteria on which to rely when judging what constitutes significant harm. Some children live in families where their health and development are neglected. For them, it is the corrosiveness of long-term emotional, physical or sexual abuse that causes impairment to the extent

¹ (See for example Dickens, J (2007) Child neglect and the law: catapults, thresholds and delay. *Child Abuse Review* Vol 16(2), pp77-92).

of constituting significant harm". Short of a potentially criminal incident, neglect is not seen to constitute significant harm unless and until it endures over time.

- 3.9 These definitions suggest that neglect meets the significant harm threshold only when it is prolonged; and that children who are neglected have to undergo "corrosive" abuse before formal intervention can take place. Indeed, Gardner found that:

*"Even when children showed strong evidence of neglect, a parent's action or inaction did not necessarily meet the criminal threshold, while recurring incidents just below the 'significant harm' threshold were often not recorded and considered for their cumulative effect as meriting intervention under the Children Act."*²

- 3.10 In a series of interviews with practitioners, Gardner found that many thought that these descriptions create problems in convincing the courts that neglect in the form of inconsistent patterns of care can constitute significant harm.
- 3.11 Practitioners also reported spending a lot of time and energy on the question "What degree of failure of care does this child need to undergo, for how long, before there is a mandate for intervention?" For some, this meant permanent anxiety because monitoring could not be continuous, inconsistent care was hard to track and recurring failures could escalate to endanger a child's health and welfare.

The NSPCC therefore recommends that:

Guidance should be revised so that it is clear that time limits should be built into a child's care plan to ensure timely assessment of the child's needs, parental capacity to meet those needs and potential to do so within the child's time frame. The following wording is proposed in support of this: *"If following the provision of services for a child they have been on a child protection plan for more than a year (whether the year is one consecutive period of time or made up of shorter periods) and the child's health or development is still judged likely to be significantly impaired by remaining within their current care setting, professionals should take action to ensure consistency of care that meets the child's needs."*

² Gardner R, (2008) *Developing an effective response to neglect and emotional harm to children*. University of East Anglia and NSPCC. Available from: http://www.nspcc.org.uk/Inform/research/NSPCCResearch/CompletedResearch/DevelopingAnEffectiveResponseToNeglect_wda56702.html

Better courts and alternatives to legal processes

4. Are there areas within the current system where we could adopt a more inquisitorial approach, whereby the court actively investigates the facts of the case as opposed to an adversarial system where the role of the court is primarily that of an adjudicator between each side? What are the options, and advantages and disadvantages, for Private disputes arising from divorce or separation? Public matters, where the state intervenes to ensure the protection of children?

4.1 Please refer to our responses regarding mediation and responses regarding the paramount importance of safeguarding the child in all proceedings which illustrate the benefits of an inquisitorial approach in some areas.

5. How far are users able to understand the processes and navigate the family justice system themselves? Are there clear signposts throughout the system? Do users know how and where to access accurate and timely information and advice? - Is it readily available? What are the options to support/enable people to resolve these issues without recourse to legal processes?

The NSPCC has researched this important matter and established that children and young people do not understand the court processes and have considerable difficulty navigating the family justice system.

5.1 The problems are set out in two of our research reports: 'Your Shout!' by Judith Timms and June Thoburn, (2003) which contains the views of over 700 children in public care. This report can be accessed on line at: www.nspcc.org.uk/inform/research/findings/yourshout!

5.2 Our second report: 'Your Shout Too!' by Judith Timms, Sue Bailey and June Thoburn (2007) is a survey of the views of children and young people involved in court proceedings when their parents divorce or separate.

It can be accessed on line at:

www.nspcc.org.uk/inform/research/findings/yourshouttoo

5.3 NSPCC experience of preparing and supporting young witnesses for criminal court could be used to ensure an enhanced understanding of family court processes.

6. How best can we provide greater contact rights to non-resident parents and grandparents?

Children in Public Care

6.1 The NSPCC's research (Your Shout! NSPCC 2003) regarding the views of 706 children in public care demonstrated that more than a third of the

sample, 238 (37%) did not see enough of siblings, while 321 (49%) did not see enough of other family members. Although the questionnaire included grandparents in 'other family members' many children also specified their wish to see grandmothers and grandfathers in their written comments.

- 6.2 The results indicated that children in public care struggle to maintain contact with key people in their lives. More attention needs to be given to the dynamics and management of the impact of loss and separation on children in public care. The Children Act 1989 Guidance and Regulations emphasise the importance of maintaining contact between a child and family members and other important people, unless this is clearly contrary to the child's interests. Children's wishes and feelings are being ignored in relation to their wish to stay in contact with the people who are important to them in their lives. This is in spite of the Guidance and Regulations. The NSPCC believes the courts should carefully consider contact for children in care, with siblings and grandparents and agree to it unless it would be unsafe and/or would be against the child's or sibling's best interests.

Children in Private Proceedings

- 6.3 The NSPCC understands that one quarter of the twelve million children in the United Kingdom will experience the separation of their parents³ and has long believed that children involved in family breakdowns must be helped to enjoy safe and positive contact with grandparents and siblings after their parents separate.
- 6.4 The NSPCC's research (*Your Shout Too!* 2007) demonstrates that 30% of children do not see as much of the grandparents on the side of their non-resident parent as they would have liked.⁴ The NSPCC is committed to upholding these children's wishes and feelings in accordance with s.1 of the Children Act 1989. The NSPCC understands that an estimated 1 million children lose touch with their grandparents as a result of separation or divorce.⁵
- 6.5 Of those with siblings, 23 per cent did not see enough of their siblings living elsewhere. Among these, the "write in" comments indicated that for an important minority this was a cause of sadness, anxiety and/or frustration. Siblings were mentioned as the most important source of support after parents and grandparents. Some had lost contact altogether. There were indications that it may sometimes be the sibling contact that is sacrificed in the interests of parity or a "trade off" between parents.

³ *"Beyond the Nuclear: Including the Wider Family"*, The Grandparents' Association, Families Need Fathers and Finer Day. Available at: http://www.fnf.org.uk/downloads/Including_the_Wider_Family.pdf

⁴ *"Your Shout Too"*, supra

⁵ Grandparents Association estimate, 2009

- 6.6 The question arises as to how the children could have initiated change. It was clear that children perceived contact largely as something dependent on the goodwill of adults, rather than as a right to be respected.
- 6.7 The NSPCC understands that children suffering maltreatment are more likely to turn to a friend or relative for help rather than to a professional⁶ and that grandparents and friends have been found to be children's key confidantes in the weeks following their parents' separation.⁷
- 6.8 Further, the NSPCC understands that child maltreatment is often linked to money worries in the family: 78% of the children who said they had been neglected reported money worries, and 44% said that they were neglected as a result of financial problems.⁸ The NSPCC recognises that 34% of grandparents give financial help to their grandchildren or support the parents in meeting the cost of bringing up their children.⁹ The NSPCC therefore welcomes the potential for a reduction in maltreatment through the promotion of contact between grandparents and grandchildren.
- 6.9 The NSPCC understands that under the current law, grandparents rarely make applications for contact at court¹⁰ and is concerned that the leave requirement may be a deterrent. The NSPCC recognises that grandparents report that such court proceedings are expensive and lengthy,¹¹ and going to court is an expense that many grandparents just can't afford.¹²
- 6.10 The NSPCC recognises the important role the court must play in determining whether or not to make an order for contact with the non-resident parent and this role would be essential in contact decisions regarding siblings and grandparents as well. The NSPCC is concerned that the court should have particular regard to a child's wishes and feelings when making any decision about contact with these key family members.

⁶ *"Child Maltreatment in the Family: The Experience of a National Sample of Young People"*, supra.

⁷ *Do Grandparents Matter? The Impact of Grandparenting on the Well Being of Children*, University of Hertfordshire and Family Matters Institute, 2009

⁸ *"Child Maltreatment in the Family: The Experience of a National Sample of Young People"*, supra.

⁹ *Do Grandparents Matter? The Impact of Grandparenting on the Well Being of Children*, University of Hertfordshire and Family Matters Institute, 2009

¹⁰ *Residence and Contact Disputes in Court*, Prof Carol Smart and Dr Vanessa May, Centre for Research on Family, Kinship and Childhood, University of Leeds [2004] Fam Law 36.

¹¹ *"Do Grandparents Matter? The Impact of Grandparenting on the Well Being of Children"*, University of Hertfordshire and Family Matters Institute, 2009

¹² *"Beyond the Nuclear: Including the Wider Family"*, supra

7. How effective is ADR, such as mediation, collaborative law and family group conferencing? What types/models of ADR are more effective and for which circumstances? Does this differ according to cases? How could we improve it and incentivise its use and what safeguards need to be put in place?

7.1 The NSPCC recognises the increasing inquisitorial role that mediation is playing in resolving family disputes, and the advantages to children that can stem from disputes being resolved by mediation rather than court proceedings. We consider that as mediation allows parents to reach agreement between themselves (which may consequently be more likely to be abided by than a court order), and may improve communication between parents, it is generally in the best interests of the children.

7.2 We consider that meditation can improve outcomes for children by reducing hostility and conflict between parents, and deliver faster resolution of issues. We firmly believe that ongoing conflict between parents negatively affects the wellbeing of the child involved.¹³

7.3 The NSPCC would welcome a more extensive role for mediation in family disputes but with three crucial caveats:

- Children must be protected throughout the mediation process.
- Children must be listened to throughout the mediation process.
- The mediation must be properly resourced in terms of the service and expertise it can offer,

More needs to be done in order to ensure the caveats are addressed.

(a) Children must be protected throughout the mediation process:

7.4 The NSPCC is committed to campaigning for changes to legislation, policy and practice to ensure they best protect children.¹⁴ More safeguards are needed to ensure that mediation is not attempted in circumstances where children are not fully protected. We are mindful of the key role of professionals who come into contact with children in ensuring child protection, and consider that more could be done to ensure that mediators are effectively protecting children.

7.5 We recognise that currently parents who want to be publicly funded by the Legal Services Commission are required to consider the use of mediation if they wish to issue court proceedings, with certain

¹³ See *Families in Britain: An Evidence Paper*, DCSF, December 2008: "Although conflict may be part of family life, intense parental conflict has been identified as a key mediating variable in reducing parenting quality and producing negative outcomes for children, including those in intact families."; "Amicable relationships between parents are reported to reduce negative outcomes of divorce on children".

¹⁴ NSPCC 2009 – 2016 Strategy for Children

exemptions. One exemption is where the applicant has made an allegation of domestic abuse against a party to the mediation that has resulted in a police investigation or the issuing of civil proceedings for the protection of the applicant in the last 12 months. Further, the mediator has the general power to decide that mediation is unsuitable for the dispute, the parties, and all the circumstances in a case where domestic abuse is alleged.¹⁵

7.6 We further recognise that the Legal Services Commission requires that family mediation is provided in accordance with a Code of Practice designed to ensure that parties participate in mediation only if they are willing and not influenced by fear of violence or other harm, and that cases where either party may be influenced by fear of violence or other harm are identified as soon as possible.¹⁶ The Family Mediation Council (FMC) also has a Code of Practice.

7.7 Given the NSPCC's recommendation that professionals working with families where domestic violence is found should always treat any child present as at risk of maltreatment even if there is no evidence of violence having been directed at them,¹⁷ we are concerned about the risks that mediation between parents may pose to children in cases where domestic violence is present.

7.8 We are concerned to ensure that similar safeguards would apply to any compulsory mediation assessment sessions in both privately-funded and publicly-funded cases, so that mediation assessment sessions are not compulsory in circumstances where there is a risk to children. We are also concerned to ensure that there is close scrutiny of which cases are, and are not, suitable for mediation, and that the safety and welfare of the children concerned should be the primary consideration in making this decision. This is important for ensuring consistency with the principle of the child's welfare being paramount in court decisions which affect them, as established by the Children Act 1989, and also Article 3 of the UN Convention on the Rights of the Child. This requires that in all actions concerning children, including in courts of law, administrative authorities and legislative bodies, the best interest of the child shall be paramount.

Consequently, the NSPCC recommends that:

- (a) Mediation assessment sessions are compulsory only in "suitable" cases, regularising the position between publicly funded and non-publicly cases.
- (b) In determining whether a case is "suitable" for mediation, primary consideration is given to the welfare of the children involved.

¹⁵ *Understanding Publicly Funded Family Mediation*, Legal Services Commission, June 2009

¹⁶ *Funding Code Procedures*, Legal Services Commission, April 2010 at D95.2

¹⁷ Cawson, P (2002) *Child Maltreatment in the Family: The Experience of a National Sample of Young People*, London: NSPCC.

- (c) Mediators are trained to be alert to signs of domestic violence and are given clear guidelines on procedures for referral to child protection services.

(b) Children must be listened to throughout the mediation process:

- 7.9 The NSPCC is committed to listening to children's wishes and feelings about their future in the event of a family breakdown.¹⁸ This is consistent with Article 12 of the United Nations Convention of the Rights of the Child which grants children who are capable of forming views the right to express them freely in all matters affecting them. It has been shown that it is decidedly unhelpful for children to be "kept in the dark" about what is happening during parental separation.¹⁹ There is also some evidence to show that mediation that takes place in consultation with children can be a positive experience for them as well as for their parents.²⁰
- 7.10 We are encouraged that in publicly-funded mediations, the mediator is required to have arrangements in place to ensure that the parties are encouraged to consider the welfare, wishes and feelings of each child, and whether and to what extent each child should be given the opportunity to express his or her feelings during the mediation.²¹ We are further encouraged to learn that mediators who have contact with children should have particular training. We consider that such safeguards ought to extend to privately-funded mediations, but that further safeguards should be put in place.
- 7.11 We have conducted research into children involved in residence and contact disputes resolved by way of court proceedings, and note that of those who did not attend court, 40 per cent would have liked to do so and to talk to the judge, whilst 60 per cent would not have wanted to attend.²² The NSPCC considers it unacceptable that none of the young people who responded to the study exhibited any awareness of anything they could personally do to initiate change in their residence and / or contact arrangements.
- 7.12 More needs to be done to ensure that the children's wishes and feelings emanate from the children themselves rather than through their parents' voices. We recommend that subject to agreement of the child, in all suitable cases the mediator should meet with the child directly in order to ascertain their wishes and feelings. The mediator can then determine

¹⁸ "More support for family breakdown children", NSPCC Press Release 10 July 2007. Dame Mary Marsh, Director and Chief Executive of the NSPCC said "*Children living through family breakdown often say they don't know who to turn to for advice. In many cases their feelings and wishes for the future are not heard or overlooked.*"

¹⁹ *The Voice of the Child in Private Family Law Proceedings in England and Wales*, Mervyn Murch, Professor of Law at Cardiff Law School, [2005] IFL 8

²⁰ J McIntosh (2000) *Child Inclusive Divorce Mediation: Report on a Qualitative Research Study*, 18 *Mediation Quarterly* 69; *ibid.*

²¹ *Funding Code Procedures*, Legal Services Commission, April 2010 at D95.3

²² "*Your Shout Too*" research by the NSPCC and CAFCASS, Judith E Timms, Sue Bailey and June Thoburn, NSPCC Policy Practice Research Series, 2007

whether the child should participate directly in the mediation sessions or not.

7.13 We further recommend that mediators receive specific training in determining suitable cases, interacting with the children and making these decisions. In cases where it is not suitable for the mediator to meet with the child directly, further thought should be given to methods of assuring the children that their wishes and feelings will be listened to.

7.14 We are mindful of the law that if it is in a child's best interests to be made party to residence and contact disputes, the court may appoint a guardian ad litem.²³ Children's opportunities to be represented should not be reduced if a dispute is resolved by mediation rather than by the court process. We therefore consider that provision ought to be made for a similar individual to be appointed if the mediator considers it to be in the child's best interests.

The NSPCC therefore recommends that:

- (a) In all "suitable" case, mediators meet directly with children to ascertain their wishes and feelings.
- (b) Mediators are specifically trained in how to determine the appropriate extent of a child's direct involvement in mediations, and how best to ascertain children's wishes and feelings.
- (c) Further steps are taken to communicate to children that their wishes and feelings are being listened to, even if it is not appropriate for them to be directly involved in the mediation.
- (d) Mediators should have the power to appoint a representative for the child (analogous to a guardian ad litem) to participate in the mediation if it is in the child's best interests.

7.15 In summary, the NSPCC considers that compulsory mediation assessment should only be undertaken if the above safeguards are put in place and there is a clear commitment by the government to properly resource effective mediation.

9. Are there elements of cases which could be considered outside of a court setting and if so by whom? For what type of cases would this be appropriate and what sort of settings might be suitable alternatives? What are the benefits and disadvantages?

9.1 Please see our comments on mediation above.

²³ Rule 9.5, Family Proceedings Rules 1991

Governance and management (We do not deal with all the questions in this section but this response is in respect of questions 11-13)

11.1 We consider it vital that there is a role within the court system which addresses responsibility for the management of cases including ensuring that eg court orders are circulated in a timely manner which often means that they must be circulated urgently. Our experience at the NSPCC is that it is not uncommon to be sent an order eg for disclosure of documents within a time limit that has already expired. This can cause considerable delay in these cases which is against the interests of the child.

Workforce development

19. Please tell us about your role in the family justice system. What value does this add to the family justice system?

19.1 Please refer to the Introduction section of this response.

A more user friendly and child focused system

22. How could the system be improved to ensure it meets the needs of users and secure positive outcomes for children?

22.1 Please see all of above responses.

24. In what types of cases is it important to hear the voice of the child to assist with decision making? How should the child's voice be heard in the family justice system?

24.1 The voice of the child should be heard either directly or indirectly throughout all cases involving children. Please refer to our responses above and our research reports, 'Your Shout!' and 'Your Shout Too!' also referred to above.

25. How effective are Cafcass and Cafcass Cymru? What should their role and remit be in the future?

25.1 The NSPCC is very concerned about the level of service from Cafcass which has resulted in an unacceptable backlog of cases in public and private proceedings for long periods. Cafcass is not resourced properly and has not been able to carry out its statutory work. This has resulted in the backlogs and led to the adoption of a 'minimum safe standard' which is less than required by statute and has not worked in any case.

25.2 We recognise that there has been a very significant and continuing increase in the number of cases that have been referred to Cafcass, following the Baby Peter case, and that there has not been an increase in resources to address this.

- 25.3 However, we are alarmed to hear of the recent proposals from Cafcass suggesting they are to have a 'watching brief' system which would replace guardians in all but the most pressing cases. A named practitioner would monitor proceedings by keeping in contact with the child's solicitor and would only get involved if it became a pressing case. We consider this to be a very risky approach which could mean that cases where no guardian is involved will drift or the 'pressing cases' will be missed by solicitors who do not have the social work skills which are essential to promote the best interests of a child. We not only think that this approach is unsafe, we also question whether it is legal given the provisions of s.41 of the Children Act 1989.
- 25.4 S41(10) Children Act 1989 introduced a significant case management role for Guardians which includes advising the court on the timetabling and allocation of cases, considering whether the order applied for or any other is appropriate, and accepting service of documents on behalf of the child.
- 25.5 4.11A of the Family Proceedings Rules 1991 specifies that the appointed guardian shall have regard to the principle of minimising delay, and sets out precise duties that the guardian must follow throughout the proceedings.
- 25.6 The independent assessment of the child's situation carried out by the guardian working in 'tandem' with the child's solicitor provides courts with continuity of oversight of the case and the unbiased information it needs to give paramount importance to the best interests of each child.
- 25.7 The role of the named guardian throughout the court proceedings is to provide the child with the promotion and representation of their views, wishes and feelings and welfare. Most children in proceedings are too young to instruct a solicitor directly. The guardian is obliged to undertake a case management role, advising the court on the child's standpoint throughout the proceedings and if necessary seeking a directions hearing solely on the issue of timetabling and the impact of delay upon the child.
- 25.8 A significant strength of the current situation is the partnership or 'tandem' representation between the guardian and the solicitor. Neither can solely provide the range of skills and expertise needed by the child in order that both their rights (wishes and feelings) and their best interests (welfare needs) can be addressed properly. Together they constitute what we believe to be one of the most sophisticated and necessary quality assurance mechanisms found in any jurisdiction. They are able to present a considered and carefully constructed case on behalf of and for each individual child. Without the continuity of the guardian, this aspect is weakened to the point where it is in danger of being lost.
- 25.9 In our view, it is vital that the named guardian should represent the child's position and (if old enough) views at every stage of the proceedings.

30. What question would you have liked us to ask that we haven't posed and what would your response be?

To what extent are Child Assessment Orders being used? :

- 30.1 Kimberley Carlile, four, was starved and beaten to death in Greenwich in 1986. Her stepfather, Nigel Hall, received a life sentence for her murder while her mother was given 12 years' imprisonment for assault and cruelty. Hall frustrated attempts by social workers and health visitors to investigate. But an inquiry found that her death was avoidable and concluded that four key social work and health staff in Greenwich failed to apply the necessary skill, judgement and care in her case. This case led to a call by the NSPCC and others for legislation to support social work intervention when social workers were being denied access to a child.
- 30.2 The result was the Child Assessment Order which can be made under section 43 of the Children Act 1989 for cases where there are suspicions, but no firm evidence, of actual or likely significant harm but in circumstances not constituting an emergency. A Child Assessment Order directs a person who is in a position to do so to produce the child to the person named in the Order so that an assessment may take place and comply with any directions or other requirements included. The Order authorises the carrying out of the assessment in accordance with the terms of the Order.
- 30.3 The NSPCC is concerned because it appears that these orders are rarely applied for, even though we continue to hear of cases where social workers and others are having difficulties gaining access to a child. We propose that research is undertaken into the extent to which Child Assessment Orders are used, both in the form of an application to the court and including whether they are used as a threat which results in a court order becoming unnecessary. The research should include an assessment of the decision making processes by social workers.

For further information contact:

Barbara Esam, Lawyer
Child Protection Awareness and Dissemination Department
NSPCC
Weston House
42 Curtain Road
London EC2A 3NH
Telephone: 0207 825 2749
Email: besam@nspcc.org.uk