

NSPCC Cymru/Wales

Evidence for:

**Health, Wellbeing and Local Government Committee
Follow up inquiry into CAFCASS Cymru**

March 2011

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About us:

The National Society for the Prevention of Cruelty to Children (NSPCC) aims to end cruelty to children in the UK by fighting for their rights, listening to them, helping them and making them safe.

We share our experience with governments and organisations working with children so together we improve the protection of children and we challenge those who will not learn and change. We campaign for better laws and we educate and inform the public to improve understanding about child abuse.

Our services include the NSPCC Helpline, for adults worried about a child, and ChildLine, the UK's free, confidential helpline for children and young people.

As part of the NSPCC's Strategy to 2016 we are reshaping our services to be more innovative, distinctive and designed to capture and disseminate learning. Through providing cutting edge new services we hope to better understand the real issues and challenges in prevention, protection and the treatment of abuse.

The NSPCC strategy focuses on a number of key priority themes; of particular relevance to this consultation are Looked After Children and Physical Violence in High Risk Families which cut across the work undertaken by CAF/CASS Cymru. These strands of work aim to:

- Reduce the incidence of abuse of looked after children and minimise the harmful experiences of their experiences so they have the best possible life chances.
- Focus on children who live in families where there are multiple risk factors, particularly domestic abuse, alcohol or substance misuse and parental mental health concerns.

Examples of services currently provided by the NSPCC in Wales around those themes include:

- Caring Dads: Safer Children (Cardiff, Prestatyn) to address positive parenting in abusive fathers.
- Groups in Cardiff and Prestatyn to enable mothers and children to work together in recovering from domestic abuse.

We hope that the emerging learning from these services can inform the Committee's legacy report.

General

NSPCC Cymru/Wales welcomes the opportunity to provide both written and oral evidence to the Health, Wellbeing and Local Government Committee in their follow-up scrutiny of CAFCASS Cymru.

The NSPCC in Wales has had regular contact with CAFCASS and since 2005 CAFCASS Cymru, as a significant number of the children and young people we whom we work have or are likely to come into contact with the court system.

In our evidence we highlight what remain the key outstanding issues in relation to the work undertaken by CAFCASS Cymru, based on previous evidence we gave to the Committee in February 2009,¹ and the recent inspection completed by the Care and Social Services Inspectorate Wales (CSSIW).

Role and Remit of CAFCASS Cymru

There has been an increase of cases referred to CAFCASS Cymru following the Peter Connelly case, and NSPCC Cymru/Wales recommends that there needs to be an increase of resources to address this. The overall number of public law referrals has increased by over 27% during the last three year period from 939 in 2007-08 to 1,197 in 2009-10. During the period April 2008 to March 2010 the total number of Section 31 applications has increased by 59%. In March 2010, CAFCASS CYMRU received 84 Section 31 applications, the highest ever received in one calendar month. In addition, the growth in private law cases over the last three years is 13% and reflects the trend of continuous growth year on year. CAFCASS CYMRU also dealt with additional work which is not included in the above figures, such as Dispute Resolution cases which pose a significant workload for Family Court Advisors.²

We are alarmed to hear of the recent proposals from CAFCASS in England suggesting they are to have a 'watching brief' system which would replace guardians in all but the most pressing cases³ and we would oppose such a system being rolled out in Wales. Under proposals being discussed in England, a named practitioner would monitor proceedings by keeping in contact with the child's solicitor and would only be involved if it became a pressing case. We consider this to be a very risky approach which could in practice 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 could be potentially unsafe but also question whether this is legal given the provisions of s.41 of the Children Act 1989.

This is because 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.

¹ <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-scrutiny-committees/bus-committees-third-hwlg-home/bus-committees-third-hwlg-agendas.htm?act=dis&id=116645&ds=2/2009>

² CAFCASS Cymru Annual Report 2009-10

³ <http://www.communitycare.co.uk/Articles/2010/04/07/114228/cafcass-to-introduce-watching-brief-role-for-guardians.htm>

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.

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. It also gives the court the unbiased information it needs to give paramount importance to the best interests of each child.

The role of the named guardian throughout the court proceedings is to promote and represent children's views, wishes, 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 perspective throughout the proceedings and if necessary seeking a directions hearing solely on the issue of timetabling and the impact of delay upon the child.

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 their rights, in particular their best interest and their wishes and feelings, can be fully addressed. Together they constitute what we consider 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 each individual child. Without the continuity of the guardian, this aspect is weakened to the point where it is in danger of being lost.

In our view, it is vital that the named guardian should represent the child's best interests and (if old enough) views at every stage of the proceedings. Whilst we acknowledge that this proposal is being discussed in England, we felt it important to raise this concern now.

United Nations Convention on the Rights of the Child

In our previous evidence to the Committee, we expressed disappointment at the lack of direct reference to the United Nations Convention on the Rights of the Child (UNCRC) in CAFCASS' statement of its aims, objectives and principles.

This is particularly relevant in light of the new Right of Children and Young Persons (Wales) Measure, as the functions of CAFCASS have since 2005 been transferred to the Welsh Assembly Government.

However, we are pleased that the recent CSSIW inspection of CAFCASS Cymru places a strong emphasis on children's rights issues, as recommended by the Health, Wellbeing and Local Government Committee in its July 2009 report. The inspection reveals that family court advisers have knowledge of the UNCRC and children's rights issues, which NSPCC Cymru/Wales welcomes:

*"The family court advisers demonstrated knowledge of (...) the UNCRC and its applicability in family court social work. They also demonstrated a good understanding of policy and research pertaining to their work and to children's rights. Most children and young people consider that their views are accurately reflected in the court report (...). There is evidence of very skilled and subtle work undertaken to ensure the courts have all the information and to enable the child to express wishes and feelings."*⁴

⁴ Inspection of CAFCASS Cymru 2010, CSSIW November 2010, p.18

However, it remains our view that referencing the UNCRC would set a clear message that the organisation is working in the best interests of the child (Article 3), is committed to protecting children from abuse and neglect (Article 19) and to hearing and giving weight to the views of children and young people in accordance with their age and maturity (Article 12). A clear commitment to the Convention would also be consistent with the Welsh Assembly Government's rights-based approach to children and young people's policy, and provide the foundation for the participation work being undertaken by CAFCASS Cymru.

Safeguarding and child protection

CAFCASS Cymru plays a crucial role in safeguarding and protecting children and young people in Wales. Its role in this is clearly set out in both the guidance relating to the Children Acts 1989 & 2004, *Safeguarding Children: Working Together under the Children Act 2004*⁵ and the *All Wales Child Protection Procedures*.⁶

CAFCASS Cymru is not a statutory partner of LSCBs, although the guidance states that it "*should remain a key member of each Safeguarding Board*".

We highlighted in our previous evidence the importance of ensuring that CAFCASS Cymru be involved in local safeguarding arrangements and considered that LSCBs should, wherever possible, actively seek to involve the organisation as a member of the Board. Such an involvement helps CAFCASS understand local issues and challenges for LSCBs' member organisations. It also provides a good opportunity for knowledge transfer and the sharing of best practice.

We are therefore pleased that CAFCASS has secured representation on all LSCBs in Wales through its 10 operational Area Directors, who also sit on LSCBs sub-groups. In our experience, their contribution has been valuable and has helped to strengthen local safeguarding arrangements.

Furthermore, we welcome the integration of CAFCASS Cymru into the inspection framework in Wales. Following the Committee's recommendations regarding a formal inspection regime for CAFCASS Cymru, we have read with interest the first inspection report produced by the CSSIW. While we note that the overall effectiveness of CAFCASS Cymru is judged satisfactory, we are concerned that key areas of leadership and management are deemed inadequate, with no lines of accountability reaching across the whole organisation.

Advocacy and Participation

We are pleased that the July 2009 Committee report focused strongly on advocacy provision in its recommendations. In particular, the Committee called for CAFCASS officers and guardians to work cooperatively with a child's existing advocate wherever possible, and to make children and young people aware of the availability of independent advocacy services as a matter of course. It also recommended that the Welsh Assembly Government clearly sets out how it will provide independent advocacy to children and young people involved in court proceedings.

We welcome the Welsh Assembly Government's positive response to the Committee's recommendations around advocacy provision, and the assurance that

⁵ <http://wales.gov.uk/docs/dhss/publications/091126safeguardingchildren.pdf>

⁶ <http://www.awcpp.org.uk/9547.html?diablo.lang=eng>

CAFCASS Cymru will continue to build relationships with any independent advocates involved with the children it works with, to ensure that their wishes and feelings are always heard and taken into account. We are, however, unclear whether and how information about independent advocacy services is being provided to children and young people involved in court proceedings at present. We would like to see further clarification of how CAFCASS Cymru fits into the universal advocacy framework the Welsh Assembly Government is seeking to deliver.

The CSSIW inspection report identified assessments, intervention and direct work with children as satisfactory, and it is positive that most assessments seen by the inspection team involved the active participation of the child whenever possible, as well as the family and other relevant individuals and agencies involved with the child.

We recognise that CAFCASS Cymru has invested a considerable amount of work in participation issues. The organisation sits on the Participation Consortium in Wales, and has also developed a Participation strategy and a complaints procedure for children and young people.

However, we are disappointed that evidence coming out of the CSSIW inspection report shows that these arrangements are yet to be implemented effectively: *“CAFCASS Cymru do not communicate effectively with children and young people about the quality of service they receive. Children and young people do not get a chance to comment on the services after they have received them. CAFCASS Cymru has recently written a participation plan, but this has yet to be implemented.”*⁷

The report comments further on the weakness of the complaints procedure: *“Complaints handling is inadequate. (...). CAFCASS Cymru informed inspectors that it is negotiating contracts with advocacy services to provide support for children and young people during complaints, but this service is not yet in place. It has also devised a complaints policy especially for children and young people in December 2009. The introductory letter sent out to service users does not contain an explanation of how to make a complaint and the evidence on case files indicates that complaints leaflets are not routinely sent out.”*⁸

Our view is that children and young people who are involved in court proceedings should be given a real opportunity to comment on and shape the services they receive.

Private law, domestic abuse and contact arrangements

Since 1996 NSPCC Cymru/Wales has delivered a holistic domestic abuse service, working not only with non offending parents/carers and children, but also with fathers who want to improve their parenting and who recognise past behaviours as abusive within the family (Caring Dads). From initially delivering this service in Cardiff, we have expanded and now also provide the service in North Wales. Through providing this service we have developed extensive knowledge of working with all aspects of domestic abuse. We remain concerned that since the original Committee inquiry into CAFCASS Cymru some children and young people are still uncomfortable with contact decisions.

From our experience, we know that it is often very difficult for a child or young person to honestly articulate what they want and who they want to live with. Children and young people go through conflicting emotions when their parents separate, even

⁷ Inspection of CAFCASS Cymru 2010, CSSIW November 2010, p. 30 &31.

⁸ Inspection of CAFCASS Cymru 2010, CSSIW November 2010, p.22.

when there is domestic abuse. These conflicts have been highlighted in a ChildLine casenote published in July 2008 on the subject of family relationship problems⁹. Examples of some of the comments children made to ChildLine are:

I feel stressed out by my parents arguing. Mum talks to me about her problems. Mum doesn't trust Dad and makes me spy on him and tell her what he's been doing. The stress is making me ill and made me lose friends (Girl, aged 11)

Mum and Dad have split up. Since then I feel like they've used me as a go-between in their arguments. Mum and Dad don't speak to each other and I'm expected to pass messages. (Girl, aged 16)

I want to see my Dad. He has been separated from my mum because he used to hit her. I feel confused and guilty. (Girl, aged 12).

It is positive that CAF/CASS Cymru has developed a variety of tools to improve their assessments and create a more robust evidence base for their decisions. Unfortunately, the CSSIW inspection report shows that the impact of domestic abuse on children in the context of private law proceedings is not always properly assessed: "CAF/CASS Cymru has a toolkit for use in cases where domestic violence is a factor but this is not used consistently, and it needs reviewing. (...) As a result, the impact of violence on children is not consistently assessed".

And: "In some cases where domestic violence was an issue, the (court) reports did not provide enough evidence of the child's views or the impact of violence on the child. One child told us:

"When I talked to the (CAF/CASS Cymru) woman, I felt she wasn't listening to me and I felt that I had no option but to see my dad. Me and my brothers are scared of our dad and the woman has not seen my dad angry before and this would not happen during a supervised visit. I don't think the woman believed what I was saying and I felt she twisted my words."¹⁰

This shows that CAF/CASS Cymru's tools to assess how domestic abuse affects children are being used inconsistently and their implementation should be strengthened.

We are aware through our domestic abuse team of circumstances where contact with both parents tends to be viewed by CAF/CASS Cymru as the best option, regardless of the impact it can have on children. The voice of the child is not separated from mothers' experience, and a child's refusal to have contact with his/her father is often only read in the context of the mother's fears. It is important to remember that violent men can behave very well during supervised contact, and children can appear to be coping, but that they are negatively affected afterwards.

This is an issue of concern to us, as this means that vulnerable children could potentially be put at risk through contact arrangements.

This highlights the need for independent advocacy services to be available to children so their wishes and feelings can be heard. There is also a question to be answered with regard to CAF/CASS Cymru commissioning "contact activities" for adults and its role as an independent "advocate" for children and young people within

⁹http://www.nspcc.org.uk/Inform/publications/casenotes/children_talking_to_childline_about_family_relationship_problems_wda59011.html

¹⁰ Inspection of CAF/CASS Cymru 2010, CSSIW November 2010 p.14, 18 & 19

the court system. There is a potential contradiction between representing the wishes of any children and young people who do not want contact with one of their parents while at the same time commissioning services parents would attend in order to get contact.

NSPCC Cymru/Wales shares concerns which have been expressed by the Committee in its previous inquiry into CAFCASS Cymru about the funding of contact centres. We are disappointed that very little progress has been made following the Committee's recommendation to draw up a funding strategy for Child Contact Centres in Wales. We understand from a response given by the First Minister to an oral question on 15th February that CAFCASS Cymru is in the process of exploring how to improve support for children and their families who are experiencing parental separation, and we look forward to the result of this work.

It is important to ensure that people who volunteer in supported contact centres have a good understanding of child protection and safeguarding, so that they can identify when a child is being manipulated, intimidated or is becoming distressed during contact. This is a vitally important safeguard to ensure that children and young people are protected during formalised contact arrangements. We are pleased that the National Association of Contact Centres is planning to introduce guidance for its members on how to write, introduce and implement a Safeguarding and Child Protection policy. This will include information about training, guidelines for identifying and reporting abuse and guidelines for managing confidentiality.

Public law cases and child neglect

One of the NSPCC's priority themes is child neglect. Neglect was the main reason for children being on the Child Protection Register in Wales at 31st March 2010 (50 per cent of registrations). Neglect has adverse short- and long-term effects, and in extreme cases, neglect kills. There is no single cause for neglect: most neglectful families experience a variety and combination of difficulties, such as depression, domestic violence, substance misuse and poverty.

NSPCC Cymru/Wales is aware of significant difficulties encountered by local authorities and guardians when trying to apply for Interim Care Orders (ICOs) in neglect cases. A number of legal thresholds have to be met before an ICO is granted. Most significantly, the local authority needs to demonstrate that the child is "suffering or likely to suffer significant harm", under section 31 (2) of the Children Act 1989. The chronic and cumulative nature of neglect does not lend itself well to the current thresholds of significant harm, and in the case of *GR (Children) and others (2010) EWCA Civ 871*, the judge stated that "being dirty and unkempt is not a safety issue".

Obtaining the removal of children from their parents' care as part of the Interim Care Order process in neglect cases can also be difficult. The court needs to be convinced that there are risks to the child's immediate safety to order separation. In the case of *MA (Children) [2009] EWCA Civ 853*, which involved the City and County of Swansea, the court heard an appeal by a guardian, representing three children, with cross-appeals by the parents arising from the dismissal of care proceedings where there had been allegations, among other things of neglect and physical abuse as punishment. The judge in the initial trial decided that the threshold for removal had not been met: he concluded that the allegations made in the case were true, but that the parents had declined to help him understand the cause of the assaults on the children, therefore he could not describe the harm caused as "significant" although there was evidence of neglect. The children's guardian appealed the judgement. One of the appeal judges stated that the parent's neglect of another child in their care (not the subject of the trial) had been so "grossly abnormal" that it signified that the other

children were significantly at risk. However, the two other appeal judges said that this did not amount to evidence that significant harm had been caused or would be caused and the appeal was dismissed.

NSPCC Cymru/Wales is concerned by this, as the tests rest on immediate harm and do not allow for the cumulative effect to be reflected. We would like to explore how we can work with CAFCASS Cymru and the judiciary around child neglect issues. There is research available about the neurological consequences of early relationships (see findings of Robin Balbernie, consultant Child and Adolescent Psychotherapist in Gloucestershire¹¹), which shows that lack of stimulation and neglect can cause damage and under-development to the brain. Neglect is a major cause of significant harm and should be treated as such.

Conclusion

NSPCC Cymru/Wales welcomes the positive dialogue that we have had with CAFCASS Cymru since it was devolved to the Welsh Assembly Government and looks forward to continuing this contact in the future in order to improve outcomes for the children and young people with whom we both work.

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¹¹ Balbernie, R. (2001) Circuits and circumstances: the neurobiological consequences of early relationship experiences and how they shape later behaviour. *Journal of Child Psychotherapy*, vol.27, no.3, 237-255.