

## APPENDIX 11

# CAFCASS Practice Note (Representation of Children in Family Proceedings)

[April 2004]

### Introduction

1. This Practice Note is issued in conjunction with the President's Practice Direction dated April 2004 relating to the Representation of Children in Family Proceedings and with the President's approval. It supersedes the CAFCASS Practice Note dated March 2001 found at [2001] 2 FLR 151.

### Appointment of CAFCASS officers in private law proceedings pursuant to rule 9.5 Family Proceedings Rules 1991 ('FPR 1991')

2. Where the court has decided to appoint an officer of CAFCASS as guardian the preferred order should simply state that '[name of the child] is made party to the proceedings and pursuant to rule 9.5 Family Proceedings Rules 1991 an officer of CAFCASS be appointed as his/her guardian'. It is also helpful for CAFCASS to know whether the court considers there is any reason why any CAFCASS officer who has dealt with the matter so far should not continue to deal with it in the role of guardian.
3. The decision about which particular officer of CAFCASS to allocate as guardian is a matter for CAFCASS.
4. In cases proceeding in the High Court, a copy of the court file, including the order making the rule 9.5 appointment and any information about the court's reasons, should be sent for the attention of The Manager, CAF-CASS Legal, 1st Floor, Newspaper House, 8–16 Great New Street, London, EC4A 3BN or by Document Exchange to DX 144 London Chancery Lane. If the appointment of a CAFCASS officer as guardian is urgent then the judge or a member of the Court Service is encouraged, if possible, to telephone on 020 7904 0867 to discuss the matter before an order is made; alternatively, the order and any information about the court's reasons can be faxed to CAFCASS Legal on 020 7904 0868.
5. In cases proceeding in the county court, the order making the rule 9.5 appointment should be faxed to the local CAFCASS office responsible for

private law cases unless the case falls within any of the categories identified in paragraph 10 below when it should be referred to CAFCASS Legal following the procedure in paragraph 4 above.

6. In either case CAFCASS will make a decision within five working days of receipt of the papers from the court about whether it will provide an officer of the Service locally (as will be the case in most county court cases) or from CAFCASS Legal (as will be the case in most High Court cases) to act as guardian. It is the responsibility of the local CAFCASS service manager and CAFCASS Legal to liaise whenever necessary to ensure that the most appropriate CAFCASS officer is appointed as guardian.
7. The CAFCASS office that is to be responsible for the matter will notify the court of the name and professional address and telephone number of the particular officer who will act as guardian. If for whatever reason there is likely to be any significant delay in an officer of the Service being made available CAFCASS will notify the court accordingly to enable the court to consider whether some other proper person should instead be appointed as guardian.
8. If the CAFCASS officer to be appointed as guardian is based at CAFCASS Legal there will normally be no need for a solicitor for the child also to be appointed as the litigation will usually be conducted in-house pursuant to section 15 Criminal Justice and Court Services Act 2000.
9. If the CAFCASS officer to be appointed as guardian is based at a local CAFCASS office then legal representation will be provided either through CAFCASS Legal or by the appointment of a local solicitor to act for the child. It is normally the guardian's responsibility to appoint a solicitor pursuant to the combined effect of rules 9.5(6) and 4.11A(1) FPR 1991. A local solicitor can apply for legal aid for the child in the ordinary way enabling the guardian (funded by CAFCASS) and the child's solicitor (funded by the Legal Services Commission) to work together in the same way as they routinely do in specified proceedings.

**Cases that should be referred to CAFCASS Legal whether or not involving an appointment pursuant to rule 9.5 FPR 1991 and whether proceeding in the High Court or the county court**

10. Whilst the great majority of cases are likely to continue to be referred by courts to local CAFCASS offices the following categories of case should be referred to CAFCASS Legal:
  - 10.1 cases in which the Children's Divisions of the Official Solicitor or CAFCASS Legal previously acted for the child;
  - 10.2 exceptionally complex international cases where legal or other substantial enquiries abroad will be necessary or where there is a dispute as to which country's courts should have jurisdiction over the child's affairs (for example, a case in which two children previously the subject of adoption and then care proceedings in two other countries

were brought to England illegally and made the subject of further care proceedings here);

- 10.3 exceptionally complex adoption cases (for example, where there is a need to investigate a suspected illegal payment or placement; adoption proceedings following a mistake during fertility treatment involving the use of unauthorised sperm; and the circumstances arising in *Flintshire County Council v. K* [2001] 2 FLR 476);
  - 10.4 all medical treatment cases where the child is old enough to have views which need to be taken into account, or where there are particularly difficult ethical issues such as the withdrawal of treatment, unless the issue arises in existing proceedings already being handled locally when the preferred arrangement will usually be for the matter to continue to be dealt with locally but with additional advice provided by CAFCASS Legal;
  - 10.5 any free-standing human rights applications pursuant to section 7(1)(a) Human Rights Act 1998 in which it is thought that it may be possible and appropriate for any part to be played by CAFCASS or its officers;
  - 10.6 any additional categories of case for referral to CAFCASS Legal that may from time to time be added to this list.
11. In such cases the referral to CAFCASS Legal should follow a similar procedure to that set out in paragraph 4 above.

**Other cases that may be referred to CAFCASS Legal**

12. Other family proceedings in which the welfare of children is or may be in question may be referred to CAFCASS Legal where they are exceptionally difficult, unusual or sensitive (for example, a care case in which death threats were made against the child and other professionals necessitating special security measures including false identities for some of those under threat; and an adoption case in which there had been serious misconduct by the local CAFCASS officer originally appointed).

**CAFCASS Legal acting as advocate to the court**

13. CAFCASS Legal may be invited to act or instruct counsel to appear as advocate to the court in family proceedings in which the welfare of children is or may be in question (for example in a recent case an issue arose about the extent of the court's powers in Hague Convention proceedings to give directions designed to prevent further abduction pending trial, which led to CAFCASS Legal briefing counsel as advocate to the court).
14. Sometimes it will be more appropriate for the Attorney General or the Official Solicitor to fulfil this role. Reference should be made to the Memorandum on Requests for the appointment of an Advocate to the Court issued by the Attorney General and the Lord Chief Justice on 19 December 2001.

**Liaison between CAFCASS Legal and the Official Solicitor**

15. In cases in which there is any doubt as to whether CAFCASS or the Official Solicitor should provide representation, staff of CAFCASS Legal will liaise with staff of the Official Solicitor's office to ensure that the most suitable arrangements are made.

**Provision of general assistance by CAFCASS Legal**

16. CAFCASS Legal is available to provide legal advice to officers of CAFCASS, whether employed or self-employed, in connection with their professional responsibilities.
17. CAFCASS Legal is also available to offer informal advice to judges and other professionals engaged in family proceedings in which the welfare of children is or may be in question without necessarily being appointed as a guardian or advocate to the court (recent examples include for instance in relation to passport applications for accommodated children); and the issue of whether the court can order a local authority to look after children subject to Hague Abduction Convention proceedings to prevent further abduction pending trial, which led to CAFCASS Legal briefing counsel as advocate to the court).
18. Lawyers at CAFCASS Legal take it in turn to carry a mobile telephone through which they can be contacted any day of the year by the High Court out of hours duty judge if their help is needed, for instance in relation to a medical treatment emergency.

Charles Prest  
Director of Legal Services, CAFCASS  
6 April 200