

APPENDIX 13

Family Division: President's Interim Guidance on the Appointment of Guardians

[25 February 2005]

THE APPOINTMENT OF GUARDIANS IN ACCORDANCE WITH RULE 9.5 AND THE PRESIDENT'S PRACTICE DIRECTION OF 5 APRIL 2004

1. An unanticipated effect of the President's Practice Direction on the representation of children in family proceedings pursuant to rule 9.5 of the Family Proceedings Rules 1991 has been a dramatic increase in the number of guardians in private law cases. This has had a major impact on the limited Community Legal Service fund and has led to an intolerable strain on an already overstretched CAF/CASS.
2. The following guidance is an interim measure designed to alleviate the concerns described in paragraph 1. It is hoped that once the President's Private Law Programme is fully implemented the guidance will no longer need to apply.
3. The President considers that for new private law applications made after 4 April 2005, and until further notice:
 - (a) Only a Circuit Judge should appoint a guardian in a private law case.
 - (b) In exceptional circumstances a District Judge may appoint a guardian (for example where the case is urgent and there is no resident Circuit Judge).
4. Where there are no exceptional circumstances, a District Judge who considers that a guardian should be appointed in a private law matter should adjourn the case and transfer it to a Circuit Judge.
5. The case should be listed before the Circuit Judge for a short directions hearing of no more than half an hour to consider whether an appointment should be made. CAF/CASS should be notified and invited to attend the directions hearing.
6. If the Circuit Judge considers that a guardian is necessary he should first consult CAF/CASS to see whether CAF/CASS is able to provide a guardian within the desired timeframe.

7. If CAFCASS is unable to provide a guardian within the desired timeframe then the Circuit Judge may appoint another person in accordance with rule 9.5 and the President's Practice Direction.
8. If the Circuit Judge does not appoint a guardian then the case should be transferred back to the District Judge.
9. If a guardian is appointed then the Circuit Judge should consider:
 - (a) Whether a Circuit Judge ought to retain the case;
 - (b) Whether the case is of sufficient complexity such that it ought to be transferred to the High Court;
 - (c) Whether, despite any appointment, the case could still be dealt with by a District Judge, in which case it ought to be transferred back.
10. For the avoidance of doubt this guidance does not apply to District Judges who sit in the Principal Registry of the Family Division.