

**Cynulliad Cenedlaethol Cymru**  
Pwyllgor Iechyd, Lles a Llywodraeth Leol

Ymchwiliad i Wasanaeth Cynghori a  
Chynorthwyo Llys i Blant a Theuluoedd  
(CAFCASS) Cymru

Gorffennaf 2009



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**National Assembly for Wales**  
Health, Wellbeing and Local Government  
Committee

Inquiry into the Children and Family Court  
Advisory & Support Service (CAFCASS)  
Cymru

July 2009



The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales and holds the Welsh Government to account.

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Catherine Hunt – Deputy Committee Clerk  
Ryan Bishop – Committee Support Officer

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## Chair's Foreword



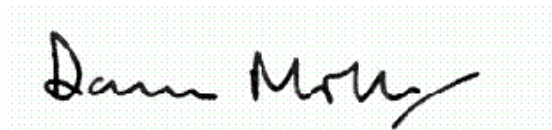
The Children and Family Court Advisory and Support Service in Wales (CAFCASS Cymru) has an important and influential role to play in the family justice and children's services arena. CAFCASS has a statutory duty to safeguard and promote the welfare of children who may be the subject of family court proceedings and it provides expert advice to the family courts. On behalf of the Members of the Committee, I would like to pay tribute to the many CAFCASS practitioners who work hard and professionally to help resolve some of the most difficult and intractable cases that come before the family courts.

As a Committee, we recognise the progress that CAFCASS has made since the service was devolved in 2005. However, as a matter of urgency, we believe that CAFCASS needs to make significant further progress if the Welsh Government's vision for children and young people, set out in its Seven Core Aims, is to be realised in the context of CAFCASS. We have heard evidence from several organisations that the experience of Welsh children in family court proceedings is not as positive and child-centred as they would wish given the commitment in Wales to the United Nations Convention on the Rights of the Child (UNCRC). The Committee is of the strong view that as a statutory function of the Welsh Government, CAFCASS's work should be an exemplar in this area.

There is certainly a view that things could be better. I have particular concerns about the real dilemma for CAFCASS in separating their professional assessment of what is in a child's best interests and the whole area of wishes and feelings, which is critical to a children's rights approach. We also have serious concerns about the increasing amount of work and responsibility which volunteers are having to undertake in supported child contact centres, and the ad hoc way in which child contact centres in Wales are funded and supported.

This Inquiry has highlighted the complex interrelationship between the devolved and non-devolved elements of the family justice system, which need to be urgently resolved, in order to deliver improved outcomes for children involved in family court proceedings.

On behalf of the Committee, I should like to express my gratitude to all those who have contributed to this inquiry. This report contains a number of recommendations that we believe will help CAFCASS to deliver improvements to its services in line with the Welsh Government's priorities set out in its Seven Core Aims. I commend it to the Deputy Minister for Social Services and to the Assembly.



**Darren Millar AM**  
**Chair, Health, Wellbeing and Local Government Committee**

**July 2009**

## Section 1 - Background

### Background

- 1.1 The Children and Family Court Advisory and Support Service in Wales (CAFCASS Cymru) looks after the interests of children involved in family proceedings in Wales. It works with children and their families and then advises the Courts on what it considers to be in the Children's best interests.
- 1.2 Examples of matters that may be taken to family courts include when parents who are separating or divorcing cannot agree on arrangements for their children, an adoption application, or when children are subject to an application for care or supervision proceedings by Social Services.
- 1.3 The Welsh Ministers (Welsh Government) assumed responsibility for the functions of CAFCASS Cymru from 1 April 2005. The Chief Executive is accountable to the Deputy Minister for Social Services for the operational effectiveness of the organisation and is supported by the CAFCASS Cymru Advisory Committee.
- 1.4 CAFCASS Cymru's main duties are set out in the Children Act 2004<sup>1</sup>. In family proceedings where the welfare of children is in question their role, on behalf of the Welsh Ministers, is to:
  - safeguard and promote the welfare of children
  - give advice to any Court about any application made to it in such proceedings
  - arrange for the children to be represented in such proceedings
  - provide information, advice and other support for children and families
- 1.5 They also have other legal responsibilities under the Children and Adoption Act 2006<sup>2</sup>. CAFCASS Cymru practitioners have to tell the court immediately of the potential dangers if, while working on a case, they suspect that a child may be at risk. They are also legally required to monitor contact and compliance with contact activities in cases where this is directed by the court.

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<sup>1</sup> [The Children's Act 2004](#)

<sup>2</sup> [The Children and Adoption Act 2006](#)

## Section 2 - The Inquiry

### Introduction

- 2.1 On 22 January 2009, we scrutinised CAFCASS Cymru on their work. We also took evidence from the CAFCASS Cymru Advisory Committee and from the Children's Commissioner.
- 2.2 As a result of these sessions, and particularly the Children's Commissioners suggestion that we might want to "hear evidence from other organisations"<sup>3</sup>, we agreed to conduct a wider inquiry into the operation of CAFCASS Cymru.
- 2.3 The main purpose of our inquiry was to examine the work of CAFCASS Cymru and to review the arrangements for the delivery of their services for children and young people in Wales, since it was devolved to the Welsh Government in April 2005.

### Terms of Reference

- 2.4 We agreed that the inquiry should focus on the following key areas:
  - The effectiveness of CAFCASS Cymru in conducting assessments and analyses to facilitate decision making in the best interests of the child
  - The integration of CAFCASS Cymru into the safeguarding children framework in Wales
  - The extent to which the Welsh Government's approach to children's rights is reflected in the way CAFCASS Cymru delivers and develops its services
  - The effectiveness of CAFCASS Cymru in addressing the needs of diverse groups
  - The effectiveness of performance management tools used to assess the performance of CAFCASS Cymru service areas, including compliance with national standards
  - Strategic direction and leadership in delivery of the CAFCASS Cymru Strategy
  - The allocation of resources to CAFCASS in Wales by the Welsh Government, which supports the delivery of its statutory responsibilities and reflects national and local priorities
  - The availability and accessibility of child contact centres for children and their families in Wales.

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<sup>3</sup> Paper to Committee - HWLG(3)-02-09p4 - 22 January 2009

## **Witnesses and Evidence**

- 2.5 Along with CAFCASS Cymru officials and the CAFCASS Advisory Committee, we took oral evidence from BBC Children in Need, Tros Gynnal, NSPCC Cymru, the Association of Directors of Social Services (ADSS) in Wales, The Honourable Mr Justice Sir Roderic Wood kt and the Deputy Minister for Social Services, Gwenda Thomas AM. We also received 5 written responses to our call for written submissions. Further details are set out in Annexes A-C.



that the Welsh Government has adopted. In our view, Ministers need to be much clearer with CAFCASS on how they should resolve these tensions. Within the context of the current legal framework, we believe that CAFCASS's work should be guided to the greatest extent possible by the rights based approach implicit in the Welsh Government's adoption of the UNCRC and the Seven Core Aims for Children and Young People.

- 3.5 Welsh Ministers also need to ensure that the UK Government is aware of these tensions given the different approaches being adopted in Wales and England.

**We recommend that the Welsh Government ensure that CAFCASS's operational guidance includes a firm commitment to a rights based approach to its work, within the context of the legal framework within which it operates. [Recommendation 1]**

**We recommend that Welsh Ministers ensure that the UK government is fully aware of the need for CAFCASS Cymru to operate as a child-focused organisation and discusses with UK Ministers how the rights of Welsh children in family proceedings and CAFCASS services in Wales can be delivered within a rights-based framework. [Recommendation 2]**

### **Hearing the voice of the child**

- 3.6 The Inquiry highlighted concerns that some children do not have any knowledge or awareness of how they could have brought about any change or review of their situation, and that some children are struggling to manage fairly complex family situations. Some witnesses<sup>8</sup> felt that CAFCASS officers' management responsibilities and authority in relation to the management of children's guardians in individual cases was not clear and that it would be helpful to strengthen and clarify the management role and to quality assure individual case work.
- 3.7 There was some confusion around the definition and status of independent advocacy and the contribution that advocates, including solicitors, could make to the outcome for children and young people. Specifically, there were different views as to how effective the Welsh Government's Model for Advocacy Service for all children and young people would be for those involved in family court proceedings.
- 3.8 There was evidence from witnesses<sup>9</sup> that many children felt disempowered and that they would have liked their views to be taken into account to a greater extent. The Judiciary recognised that sometimes listening to children will not be enough, and they will need an independent investigation of their situation and separate representation of their interests in court. However, they were clear that children should not make representations direct to the court and

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<sup>8</sup> RoP, 2 April 2009, p.16

<sup>9</sup> RoP, 22 January 2009, p.25; RoP, 5 February 2009, P.10; RoP, 2 February 2009, p.13

that independent advocacy should be a decision for the court (eg it was felt that the focus should be on the importance of explaining to the child why a decision was made<sup>10</sup>).

- 3.9 The Deputy Minister was clear in her evidence that the welfare of the child is of paramount importance, though she highlighted that the “welfare checklist” embodies the rights of the child. In referring to the work done by CAFCASS Cymru officers, the Deputy Minister said: “they have a statutory duty to ensure that that child is listened to, and to report faithfully to the court on the wishes of the child. They have another statutory duty to ensure that they, in a professional capacity, produce a report that would give their professional opinion as to what is in the welfare of that child”<sup>11</sup> This view was supported by the Judiciary, though the Children’s Commissioner for Wales argued for the separating out of these roles.
- 3.10 We do not dispute the Minister’s explanation of CAFCASS officers’ legal duties and we have no reason to believe that children’s wishes are habitually or wilfully ignored. Nevertheless, a number of us are aware from our constituency work of cases where the weight given to a child’s views appears far less than ideal. We also heard evidence, for example from the Children’s Commissioner<sup>12</sup> and Tros Gynnal<sup>13</sup>, of cases where children feel they have not been listened to or have not been able to be accompanied by a person of their choice when being interviewed by a CAFCASS officer. The Children’s Commissioner’s office has heard directly from children that they are being forced to have contact with a parent whom they do not want to see, contrary to Article 9 of the UNCRC.
- 3.11 CAFCASS see their role as being the primary independent advocate for the child in court cases (or, in certain circumstances, appointing a legally qualified advocate). In many circumstances these will be entirely appropriate and adequate arrangements but we are concerned that there will be other cases where the child’s voice will be better heard with the support of an independent advocate of their choice, particularly when a child already has a trusted advocate. We are also concerned that a legal advocate, while an important and necessary part of the court procedure, may not always be in the best position to ensure that the needs of children and young people are properly identified and their views, wishes and feelings established and reported.
- 3.12 We believe that it is important to clarify and understand the role of different people and how they represent the child’s best interests. There is a legal responsibility on CAFCASS officers and the child’s solicitor to safeguard that child and say what they think is best for the child. We have heard that the CAFCASS officer and the child’s solicitor normally spend time with the child to obtain his or her views but the inherent tension between those involved directly in court proceedings

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<sup>10</sup> RoP, 30 April 2009, p.15

<sup>11</sup> RoP, 19 March 2009, p.15

<sup>12</sup> RoP, 22 January 2009, p.25

<sup>13</sup> RoP, 5 February 2009, P.14

who have a legal responsibility to determine what is best for the child and the mechanisms by which the child's voice is heard can mean that the child's voice can get lost. It is inevitable that while CAFCASS officers, and the child's solicitor may consider and report the wishes and feelings of the child, they also have to say what they think is best for the child and are not, therefore, always effective in putting forward the child's views where there is a tension.

- 3.13 We believe that the role of the CAFCASS officer is significantly different to that of an independent advocate and we support the Children's Commissioner's view on separating these roles<sup>14</sup>. In our view, the CAFCASS officer should represent the wishes and feelings of a child or young person within the overall context of what would be in their best interests, while an independent advocate would communicate the voice of that child, irrespective of what others may consider to be in his or her best interests. We believe that where there is a child of sufficient age, who wants someone else to talk to, the child should always be guided to an independent advocacy worker who is independent of the court proceedings.
- 3.14 It is our view that CAFCASS should proactively draw children's attention to the availability of independent advocacy services, particularly the Welsh Government's new Advocacy Service when it is fully established. Where a legal advocate is appointed, in the form of the child's solicitor, CAFCASS should ask them to work with existing advocates and to provide information to children on advocacy services. At the very least, we believe CAFCASS and the child's solicitor should in all circumstances try to work with a child's existing advocate. While an advocate may not be able to act for the child in court, they can provide valuable support to the child, and to the CAFCASS officer, in the process of drawing up their advice for the court.

**We recommend that the management role of CAFCASS officers in relation to children's guardians is strengthened and clarified with a greater emphasis put on quality assurance of individual case work. [Recommendation 3]**

**We recommend that CAFCASS officers work cooperatively with a child's existing advocate wherever possible and encourage legal guardians to do likewise. [Recommendation 4]**

**We recommend that CAFCASS officers inform children as a matter of course of the availability of independent advocacy services particularly the Welsh Government's new Advocacy Service when it is fully established and encourage legal guardians to do likewise. [Recommendation 5]**

**We recommend that the Welsh Government clearly sets out how it will provide independent advocacy support to children and young people involved in family court proceedings, highlighting what services will be provided by the Welsh Government's Model for**

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<sup>14</sup> RoP, 22 January 2009, p.25

## **Advocacy Services and how this will fit in to the existing advocacy service provided by CAFCASS Cymru. [Recommendation 6]**

### **Assessment**

- 3.15 The Committee heard evidence that there are different patterns of contact between CAFCASS, family members and other agencies, for example, children seen at the mother's home, at the father's home, at a CAFCASS office and in other settings. Some witnesses felt that there is a need for greater consistency in practice around seeing children and recording their views. The witnesses were very clear about the importance of ensuring that the needs of all children and young people are properly identified and their views, wishes and feelings are established and reported<sup>15</sup>. However, some concerns around how often a CAFCASS Cymru officer can meet with a child were raised<sup>16</sup>.
- 3.16 A key issue was the need for closer working relationships between health and social care professionals when conducting assessments, especially the need for trained child psychologists to be engaged with CAFCASS Cymru when assessing children's emotional health and development. Linked to this, several witnesses<sup>17</sup> felt that staff recruitment, training and development should be given more consideration including recruitment of highly skilled health professionals with a background in child health and child welfare, play therapists to improve communication and training in child development, child protection and domestic abuse.

**We recommend that Ministers should ensure that CAFCASS Cymru is sufficiently well resourced to ensure its officers have the time and flexibility to deliver a tailored child-centred service to children and young people, which is determined by the child or young person's individual needs and requirements, including establishing and reporting their views, wishes and feelings.  
[Recommendation 7]**

**We recommend that CAFCASS examines its working practices to ensure a consistent and appropriate approach is adopted when making contact with children, family members and other agencies.  
[Recommendation 8]**

**We recommend that CAFCASS develops a multi-disciplinary team approach to the conduct of assessments to ensure that experienced social workers, child psychologists and other health professionals and therapists are involved as appropriate in assessments.  
[Recommendation 9]**

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<sup>15</sup> RoP, 12 February 2009, p.11

<sup>16</sup> RoP, 5 February 2009, p.13

<sup>17</sup> HWLG(3)-11-09: Paper 18; HWLG(3)-10-09: Paper 4

## The impact of domestic violence

- 3.17 Several witnesses felt that CAFCASS Cymru needed to improve its relationships with other partner agencies. Specifically, the NSPCC<sup>18</sup> felt that there needs to be increased multi-agency working in relation to families where domestic violence is an issue, including joint-working with the police, courts, social services departments, and voluntary sector organisations.

**We recommend that CAFCASS ensures that it builds strong relationships with other partner agencies in order to support the need for increased multi-agency working in relation to families where domestic violence is an issue. [Recommendation 10]**

## Meeting the needs of service users

- 3.18 The extent to which CAFCASS Cymru addresses equality issues in its provisions to service users, in terms of gender, ethnicity, disability, religion or race was unclear. For example, specific issues in relation to children with special educational needs or a disabled child going through a contact dispute were identified. There was also the view<sup>19</sup> that some vulnerable children and young people need an independent advocate who can build a relationship with that child, to articulate his or her views and help him or her to get his or her views across. Several witnesses mentioned the lack of provision and services for children with additional learning needs and older children and teenagers, especially in relation to child contact centres.
- 3.19 A key issue has been the lack of Welsh language provision. While CAFCASS Cymru has taken steps to improve Welsh language provision through a Welsh Language Officer being appointed, the needs of Welsh speaking and the needs of ethnic minority groups within Wales are still not being fully met. Similarly, we believe that CAFCASS needs to ensure that it has the capability to deal with the diverse needs of children and families including those with learning difficulties, disabilities and multiple needs.

**We recommend that CAFCASS ensures, when carrying out assessments of very young or vulnerable children, that independent advocates through the Welsh Government's new Advocacy Service are used to build relationships with children and help them to articulate their views. [Recommendation 11]**

**We recommend that CAFCASS takes urgent action to ensure that it is providing a high quality service to Welsh speaking children and families, to ethnic minority groups and to children and families with learning difficulties, disabilities and multiple needs. [Recommendation 12]**

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<sup>18</sup> RoP, 12 February 2009, p.11

<sup>19</sup> RoP, 12 February 2009, p.11

## Safeguarding children and young people

- 3.20 There was general agreement among the witnesses that CAFCASS Cymru should be a part of the structure of safeguarding children boards, though there was some debate<sup>20</sup> about whether they needed to be represented on all 22 local safeguarding children boards and particularly at what level.
- 3.21 The Association of Directors of Social Services (ADSS)<sup>21</sup> pointed out that CAFCASS was currently represented on the majority of Local Safeguarding Children's Boards (LSCB) and in 16 out of the 21 boards who provided them with information, CAFCASS is represented at the executive level. Other LSCBs have managerial group or sub groups sitting below the executive group and in these authorities CAFCASS are represented on these managerial groups. Although these arrangements are accepted at local level, in Wales, CAFCASS are not listed as statutory members of LSCBs. However, the Act makes provision for CAFCASS to be members with LSCB agreement. However, in England CAFCASS are listed as statutory members of LSCBs.
- 3.22 The NSPCC said "CAFCASS Cymru is absolutely crucial in advocating for and supporting children and young people who go through the court system. It is vital that CAFCASS is linked into the safeguarding agenda. If it cannot sit on local safeguarding children boards because of capacity – there is a need to look at how the boards are engaging with the regional CAFCASS office to ensure that the thousands of children going through the court system are not slipping off the agenda and being forgotten"<sup>22</sup>.
- 3.23 We agree that it is extremely important for CAFCASS to be closely involved in the full range of safeguarding children work and for their experience and expertise to be available as a matter of course to local safeguarding children boards. We believe this commitment should be strengthened and clarified by making CAFCASS a full statutory member of each local safeguarding children board in Wales.

**We recommend that the Welsh Ministers amend statutory guidance to ensure that CAFCASS Cymru is represented on all local safeguarding children's boards. [Recommendation 13]**

## Child contact centres

- 3.24 There was consensus about the importance of child contact centres in providing a safe place for children to see their non resident parent(s) or siblings. Sir Roderic Wood said "The queues to get into them go around the block, and many children, in the absence of them, will simply not see the other parent and/ or the courts will be deprived of the relevant material for reaching a decision"<sup>23</sup>.

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<sup>20</sup> RoP, 12 February 2009, p.7; RoP, RoP, 2 April 2009, p.4-9

<sup>21</sup> HWLG(3)-11-09: Paper 16

<sup>22</sup> RoP, 12 February 2009, p.8

<sup>23</sup> HWLG(3)-10-09: Paper 2

- 3.25 The Inquiry highlighted that the distribution of child contact centres throughout Wales is patchy and that there has been a lack of development of child contact centres in Wales. Contributors identified local and regional variations, including gaps in existing provision.
- 3.26 There was consensus that child contact centres are heavily dependent on third sector funding to subsidise and sustain their existence. Related to this were concerns about the long term sustainability of child contact centres, short-term funding contracts, and the continued disparity around which centres CAFCASS Cymru choose to fund.
- 3.27 Several witnesses were concerned that not all child contact centres are accredited and some questioned the role and function of the National Association of Child Contact Centre (NACCC) in supporting child contact centres in Wales. In our view there is a need for the NACCC to accept that they have responsibilities to their Members in Wales and provide them with greater support, including financial support, in the Welsh context. Alternatively, contact centres in Wales should consider whether establishing a Welsh based umbrella organisation might better serve their needs at this point.
- 3.28 Several witnesses raised serious concerns about the safety of contact arrangements for children, specifically in relation to supported child contact centres<sup>24</sup>. The Inquiry highlighted concerns around the lack of systematic risk assessment and child protection training for volunteers. A number of us visited Child Contact Centres as part of this inquiry and we believe they do an excellent job in difficult circumstances. The work of volunteers is to be highly commended and is generally of a very high standard. However, the precarious funding position of contact centres may mean that they are not always able to provide the consistently high level of training and support that is needed, particularly in supported contact centres. There is also a need for mandatory risk assessment to see whether child contact is safe to be extended to supported child contact centres
- 3.29 The lack of child contact centres in Wales was seen to affect the ability of referrers to find available and appropriate centres. In particular, the NACCC felt that there are not enough supervised child contact centres in Wales, leading to more demand and inappropriate referrals to supported centres.
- 3.30 We are concerned at the patchy provision of contact centres around Wales. We are also very concerned that their funding position is so precarious and that the funding that CAFCASS provides to them is both relatively limited and carries no guarantee of continuity of funding from one year to the next.
- 3.31 Much of the funding that centres receive comes from other charitable organisations, such as BBC Children in Need. These organisations themselves face difficulties in maintaining funding levels in the current economic climate. There must also be some question as to

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<sup>24</sup> RoP, 12 February 2009, p.14

whether it is appropriate for services required by statutory bodies, such as the courts, to be so heavily reliant on charitable funding.

3.32 We were told CAFCASS funding for some of the smaller contact centres had been set 10 years ago and had not been increased since. When we visited centres in early March they had still not been told whether they would receive funding in the following financial year (that is, just three weeks later). We do not think this is acceptable and we believe that CAFCASS and the Welsh Government should, as an immediate step, offer three year funding to the centres it supports. During this time CAFCASS and the Welsh Government should draw up a clear funding strategy for all contact centres in Wales, including those not currently funded, which should:

- build upon the strengths of the existing network of centres;
- ensure that provision of centres is more evenly spread across Wales and addresses local and regional variations and gaps in existing provision;
- link funding clearly to a training and risk assessment strategy;
- consider, with the UK Government, what role the courts or the Ministry of Justice should play in supporting the work of contact centres in Wales.

**We recommend that the Welsh Ministers consider, with Child Contact Centres in Wales and the NACCC, how centres in Wales can best be represented and supported at an all-Wales level and in the wider UK context. [Recommendation 14]**

**We recommend that CAFCASS offers Child Contact Centres in Wales that they already fund, immediate three year funding arrangements at the level of their current funding. [Recommendation 15]**

**We recommend that CAFCASS and the Welsh Ministers draw up a funding strategy for all Child Contact Centres in Wales, including those not currently funded, based on the principles outlined in this report. [Recommendation 16]**

### **Provision of information, advice and other support for children and young people**

3.33 Several witnesses<sup>25</sup> highlighted the need for a range of integrated support services to be made available to children during and after parental separation. The priority given to court-ordered child contact arrangements was seen to be focused at reducing parental conflict and there were strong views that there needed to be greater support for children themselves. Some witnesses felt that there should be a duty on CAFCASS Cymru to signpost or to make arrangements for children and young people to understand where and what direct services are available for them and how they can be accessed. It was felt that a nationally co-ordinated range of direct support services for

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<sup>25</sup> RoP, 12 February 2009, p.12

children and young people experiencing parental separation, familial conflict and domestic violence should be a high priority.

**We recommend that the Welsh Ministers consider how a nationally co-ordinated range of direct support services for children and young people experiencing parental separation, familial conflict and domestic violence can be provided and the role that CAFCASS should play in directing children and young people toward these services. [Recommendation 17]**

### Public Law cases

- 3.34 There was consensus that the public law outline and its implementation in Wales had been successful. It was felt that it had led to improved practice and has helped to reduce the timescales of court proceedings, though it is not yet fully implemented across all local authorities<sup>26</sup>.
- 3.35 Several witnesses<sup>27</sup> felt that CAFCASS Cymru needed to play a greater role in early resolution work in order to reduce the number of referrals to CAFCASS in Wales. There was the view that CAFCASS Cymru had a role to play in early intervention, which should be adequately resourced through Children and Young People's Partnerships and captured in the Welsh Government's policy and legislative developments for vulnerable children.
- 3.36 There were mixed views<sup>28</sup> about the role and independent status of Independent Reviewing Officers (IROs). CAFCASS Cymru expressed concerns in its strategic plan about the lack of referrals to IROs, though ADSS Cymru<sup>29</sup> did not support CAFCASS's position in relation to this matter. They felt that IROs are sufficiently independent and are best placed within local authorities. On balance we concur with that view.
- 3.37 Although, we offer no specific recommendation on this point, **we believe it is highly desirable for CAFCASS to do more proactive work around early resolution** to help parents settle their disputes out of court and to reduce the number of public law applications.

### User engagement

- 3.38 To improve the experience of Welsh children and young people in family court proceedings, the participation of those children and young people, in line with the All Wales National Children and Young People's Participation Standards was seen to be crucial. Several witnesses felt that the views of children and young people about the services they have received needs to be regularly collected and analysed by both Welsh Government and CAFCASS Cymru in order to

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<sup>26</sup> RoP, 2 April 2009, p.11

<sup>27</sup> RoP, 22 January 2009, p.10

<sup>28</sup> RoP, 2 April 2009, p.12

<sup>29</sup> RoP, 2 April 2009, p.12

review the effectiveness of provision and in ensuring these view influence policy and practice development.

**We recommend that CAFCASS Cymru develop and implement a Participation Strategy that is in line with the All Wales National Children and Young People’s Participation Standards.  
[Recommendation 18]**

## **Performance management**

- 3.39 In order to fulfil its key functions, several witnesses felt that CAFCASS Cymru should have national standards, performance targets, data collections and monitoring regimes that help ensure continuous improvement in the delivery of high quality and consistent child-focused services. Several witnesses identified the need for nationally recognised performance tools to evidence the practice and performance of CAFCASS in Wales that demonstrates that it is a child-focused organisation and that steps have been taken to identify and address areas for improvement, including listening to children.
- 3.40 We find it somewhat surprising that four years after the devolution of CAFCASS functions to the Welsh Government, its key performance indicators are still set by the UK Government, apparently without reference to specific Welsh issues. The Minister for Social Services in her oral evidence<sup>30</sup> accepted the need for performance indicators reflecting priorities for CAFCASS in Wales. We accept that, there needs to be a continuing dialogue with UK Ministers on performance indicators. This is needed to ensure that there remains a broad basis for comparison between CAFCASS in Wales and England and to ensure that CAFCASS in Wales continues to meet its commitments to the courts. However, in our view there is also an urgent need for performance indicators that evidence the practice and performance of CAFCASS in Wales and which demonstrate that it is a child-focused organisation. The Welsh Government needs to be involved in agreeing these indicators and CAFCASS should be clearly accountable to Welsh Ministers for delivery against the indicators.
- 3.41 The Deputy Minister also confirmed at the meeting on 19 March 2009<sup>31</sup> that the Care and Social Services Inspectorate for Wales (CSSIW) would become responsible for the inspection of CAFCASS in Wales. Several witnesses highlighted the importance that the United Nations Convention on the Rights of the Child (UNCRC) forms the basis of the inspections of CAFCASS in Wales, and that the inspections should provide an independent and external evaluation of quality and standards to help drive forward improvement across the service as a whole. Some witnesses felt that there should be joint inspection arrangements between Her Majesty’s Inspectorate of Court Administration (HMICA) and CSSIW, which would deal with the interrelationships with the court and safeguarding issues.

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<sup>30</sup> RoP, 19 March 2009, p.25

<sup>31</sup> RoP, 19 March 2009, p.25

- 3.42 We welcome the fact that CAFCASS in Wales will now be subject to external inspection and we are content that CSSIW should lead on this. We agree that CAFCASS's compliance with the UNCRC, particularly in relation to the views and wishes of the child, should be a key focus of any inspection arrangements. We believe that it would be helpful to the inspection process if HMICA's expertise can be used in the inspection process although we are not convinced that formal joint inspection with HMICA is required. We feel that once the new inspection regime is in place, CAFCASS Cymru should be subject to a regular cycle of inspections.

**We recommend that "made in Wales" performance indicators are drawn up, involving UK Ministers as necessary, between the Welsh Government and CAFCASS as a matter of urgency with clear accountability by CAFCASS to Welsh Ministers for delivery against these indicators. [Recommendation 19]**

**We recommend that CSSIW's inspections of CAFCASS should include a clear focus on compliance with the United Nations Convention on the Rights of the Child and should be undertaken on a regular basis. [Recommendation 20]**

**We recommend that CSSIW's inspections of CAFCASS should draw on relevant expertise from Her Majesty's Inspectorate of Court Administration with respect to interrelationships with the court and safeguarding issues. [Recommendation 21]**

## **Leadership and management**

- 3.43 The CAFCASS Cymru Advisory Committee is made up of representatives of 20 organisations. The main function of the committee is to represent stakeholder's interests and to provide suggestions to CAFCASS Cymru on a range of practice issues. A key issue was that some members felt that they needed to be more involved in the early stages of the planning process in order to influence policy and practice development and that there was little scope to direct or oversee the work of CAFCASS in Wales. There was also some concern<sup>32</sup> that the committee's governance arrangements needed to be clearer particularly in relation to the accountability of CAFCASS officers.
- 3.44 The Advisory Board has the potential to carry out an important role within CAFCASS's management structure. We do not believe that the Advisory Committee as currently constituted is an appropriate body to exercise a directive or executive role but should continue as a broad representative body of organisations involved with children's issues in Wales. However, we agree that it does need to be more closely involved in CAFCASS's planning process across a much broader range of issues. The Board also needs to be empowered to constructively challenge CAFCASS senior managers on the organisation's performance, particularly in relation to the child-focused aspects of

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<sup>32</sup> RoP, 2 April 2009, p.16

CAFCASS's performance. The Board's relationship with Ministers is also unclear and needs to be clarified.

**We recommend that the CAFCASS Advisory Board should be more closely involved in the planning process across a much broader range of issues. Its remit should include the ability to challenge CAFCASS officers and senior managers on the child-focused aspects of the organisation's performance. [Recommendation 22]**

**We recommend that the Welsh Government reviews and clarifies the CAFCASS Advisory Board's relationship with Ministers. [Recommendation 23]**

### **Workforce development and planning**

- 3.45 The importance of highly trained staff with good experience was highlighted by several witnesses<sup>33</sup>. There was some concern about the capacity of CAFCASS in Wales to recruit and retain skilled social workers in the context of increasing demands on the service. The CAFCASS Cymru Annual Report 2007-08 states that there has been a growth in the number of children and young people who were involved with CAFCASS over the last three years to March 2008 of around 13 per cent<sup>34</sup>. This includes an increase in both the number of private law cases and public law applications. Sir Roderic Wood made the point that: "One thing that we have all become conscious of in the past few months is the likely wash from the baby P case. There has been a great surge in public law applications across England and Wales, and we anticipate that there will be more...They are enormously expensive as a category, and they take a significant part of the budget in CAFCASS in England and CAFCASS Cymru. I would not like to see a diminution of service in private law proceedings because of an inevitable and necessary concentration on the really very serious public law cases"<sup>35</sup>.
- 3.46 We share Sir Roderic's concerns although we were reassured by the Deputy Minister's view that we "might have turned a corner in Wales in the recruitment of social workers"<sup>36</sup>. We agree that CAFCASS should ensure sufficient prioritisation for private law cases but we are concerned that the demand led nature of the service CAFCASS provides might inevitably, and understandably, lead to a lower priority being given to private law cases if the predicted increase in very serious public law cases occurs. As demand is led by a non-devolved service (the courts), if these demands increase the Welsh Government has to find additional resources for CAFCASS Cymru. This is essentially a transfer of resources from the Welsh Block to a service that the UK government is ultimately responsible for funding. This is, at the very least, anomalous and needs to be resolved between the two governments as a matter of urgency. In our view, the UK government should make a contribution, outside the Welsh block, to CAFCASS's

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<sup>33</sup> RoP, 30 April 2009, p.14; RoP, 2 February 2009, P.15

<sup>34</sup> CAFCASS Cymru Annual Report 2007-2008, p.14

<sup>35</sup> RoP, 30 April 2009, p.22

<sup>36</sup> RoP, 19 March 2009, p. 21

costs where these are led by additional demands from the courts. In particular, the Welsh Government and CAFCASS Cymru need to consider the increased pressure which will be placed on Child Contact Centres following the commencement of the Children and Adoption Act 2006 which allows courts to make orders for contact in private law cases.

**We recommend that the Welsh Government seeks urgent discussions with the UK government on its financial contribution to the work of CAFCASS in Wales. [Recommendation 24]**

### **The statutory powers of the Children’s Commissioner for Wales**

- 3.47 A key issue is the limited statutory powers of the Children’s Commissioner for Wales to make representations about issues affecting Welsh children in non-devolved matters. As he explained in his written evidence<sup>37</sup>; “The Children’s Commissioner for Wales does not have the power to enquire into or report on any matter which is or has been subject to court proceedings (Section 77 (1) Care Standards Act 2000) or to exercise any function which is exercisable by CAFCASS (Section 77 (2) Care Standards Act 2000). This prevents him investigating any matters raised with him relating to court proceedings or the involvement of CAFCASS Cymru.”
- 3.48 As a result the Commissioner highlighted concerns that some children and young people are unclear as to whether they can contact the Children’s Commissioner about issues that relate to family court proceedings. The NSPCC said “our view is that the children’s commissioner’s office is, and should be, a good safeguard for all children in Wales and the challenge in relation to the court process is...that cases involving children going through courts are not within the children’s commissioner’s powers”<sup>38</sup>.
- 3.49 We accept the principle that the Children’s Commissioner should not be able to challenge decisions made by the courts and that it is for the courts to decide what weight should be given to CAFCASS Cymru reports and evidence. Nevertheless, we cannot see any fundamental reason why the Commissioner should not be able to enquire into how CAFCASS carries out its work in a more general sense and in relation to ensuring that it operates in a positive and child-centred way. We also see no reason, notwithstanding the existing legal constraints, why CAFCASS should not be open to working in partnership with the Children’s Commissioner’s office on individual cases where children have raised concerns with the Commissioner.

**We recommend that the Welsh Government seeks changes to the law to allow the Children’s Commissioner to enquire into how CAFCASS carries out its functions. [Recommendation 25]**

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<sup>37</sup> HWLG(3)-02-09 : Paper 03 – 22 Jan

<sup>38</sup> RoP, 12 February 2009,p.10

**We recommend that CAFCASS agrees partnership arrangements with the Children’s Commissioner that would allow them to work together in cases where children have raised concerns about CAFCASS with the Commissioner. [Recommendation 26]**

## Section 4 - Conclusions and Summary of Recommendations

### Conclusion

- 4.1 The Inquiry has highlighted the complex interrelationship between the devolved and non-devolved elements of the family justice system. Several witnesses recognised that the experience of Welsh children in family court proceedings is not as positive and child-centred as they would wish given the commitment in Wales to the UNCRC. They did not feel that sufficient emphasis is being put on ensuring that the views, wishes and feelings of children are established and reported.
- 4.2 We agree with this assessment and believe that CAFCASS needs to make significant further progress if the Welsh Government's vision for children and young people, set out in its seven core aims, is to be realised in the context of CAFCASS.
- 4.2 However, we also recognise that this is in part a reflection of the tension between the welfare based environment in which CAFCASS is required to work and the more rights based approach that has been adopted in Wales. Given these tensions we want to pay tribute to the many CAFCASS Cymru practitioners who work hard and professionally to help resolve some of the most difficult and intractable cases that come before the family courts. We also recognise the progress that CAFCASS Cymru has made since the service was devolved in 2005 but believe this progress needs to continue with added urgency.

### Summary of Recommendations

**We recommend that the Welsh Government ensure that CAFCASS's operational guidance includes a firm commitment to a rights based approach to its work, within the context of the legal framework within which it operates. [Recommendation 1]**

**We recommend that Welsh Ministers ensure that the UK government is fully aware of the need for CAFCASS Cymru to operate as a child-focused organisation and discusses with UK Ministers how the rights of Welsh children in family proceedings and CAFCASS services in Wales can be delivered within a rights-based framework. [Recommendation 2]**

**We recommend that the management role of CAFCASS officers in relation to children's guardians is strengthened and clarified with a greater emphasis put on quality assurance of individual case work. [Recommendation 3]**

**We recommend that CAFCASS officers work cooperatively with a child's existing advocate wherever possible and encourage legal guardians to do likewise. [Recommendation 4]**

**We recommend that CAFCASS officers inform children as a matter of course of the availability of independent advocacy services particularly the Welsh Government’s new Advocacy Service when it is fully established and encourage legal guardians to do likewise. [Recommendation 5]**

**We recommend that the Welsh Government clearly sets out how it will provide independent advocacy support to children and young people involved in family court proceedings, highlighting what services will be provided by the Welsh Government’s Model for Advocacy Services and how this will fit in to the existing advocacy service provided by CAFCASS Cymru. [Recommendation 6]**

**We recommend that Ministers should ensure that CAFCASS Cymru is sufficiently well resourced to ensure its officers have the time and flexibility to deliver a tailored child-centred service to children and young people, which is determined by the child or young person’s individual needs and requirements, including establishing and reporting their views, wishes and feelings. [Recommendation 7]**

**We recommend that CAFCASS examines its working practices to ensure a consistent and appropriate approach is adopted when making contact with children, family members and other agencies. [Recommendation 8]**

**We recommend that CAFCASS develops a multi-disciplinary team approach to the conduct of assessments to ensure that experienced social workers, child psychologists and other health professionals and therapists are involved as appropriate in assessments. [Recommendation 9]**

**We recommend that CAFCASS ensures that it builds strong relationships with other partner agencies in order to support the need for increased multi-agency working in relation to families where domestic violence is an issue. [Recommendation 10]**

**We recommend that CAFCASS ensures, when carrying out assessments of very young or vulnerable children, that independent advocates through the Welsh Government’s new Advocacy Service are used to build relationships with children and help them to articulate their views. [Recommendation 11]**

**We recommend that CAFCASS takes urgent action to ensure that it is providing a high quality service to Welsh speaking children and families, to ethnic minority groups and to children and families with learning difficulties, disabilities and multiple needs. [Recommendation 12]**

**We recommend that the Welsh Ministers amend statutory guidance to ensure that CAFCASS Cymru is represented on all local safeguarding children’s boards. [Recommendation 13]**

**We recommend that the Welsh Ministers consider, with Child Contact Centres in Wales and the NACCC, how centres in Wales can best be represented and supported at an all-Wales level and in the wider UK context. [Recommendation 14]**

**We recommend that the CAFCASS offers Child Contact Centres in Wales that they already fund, immediate three year funding arrangements at the level of their current funding. [Recommendation 15]**

**We recommend that CAFCASS and the Welsh Ministers draw up a funding strategy for Child Contact Centres in Wales, including those not currently funded, based on the principles outlined in this report. [Recommendation 16]**

**We recommend that the Welsh Ministers consider how a nationally co-ordinated range of direct support services for children and young people experiencing parental separation, familial conflict and domestic violence can be provided and the role that CAFCASS should play in directing children and young people toward these services. [Recommendation 17]**

**We recommend that CAFCASS Cymru develop and implement a Participation Strategy that is in line with the All Wales National Children and Young People's Participation Standards. [Recommendation 18]**

**We recommend that "made in Wales" performance indicators are drawn up, involving UK Ministers as necessary, between the Welsh Government and CAFCASS as a matter of urgency with clear accountability by CAFCASS to Welsh Ministers for delivery against these indicators. [Recommendation 19]**

**We recommend that CSSIW's inspections of CAFCASS should include a clear focus on compliance with the United Nations Convention on the Rights of the Child and should be undertaken on a regular basis. [Recommendation 20]**

**We recommend that CSSIW's inspections of CAFCASS should draw on relevant expertise from Her Majesty's Inspectorate of Court Administration with respect to interrelationships with the court and safeguarding issues. [Recommendation 21]**

**We recommend that the CAFCASS Advisory Board should be more closely involved in the planning process across a much broader range of issues. Its remit should include the ability to challenge CAFCASS officers and senior managers on the child-focused aspects of the organisation's performance. [Recommendation 22]**

**We recommend that the Welsh Government reviews and clarifies the CAFCASS Advisory Board's relationship with Ministers. [Recommendation 23]**

**We recommend that the Welsh Government seeks urgent discussions with the UK government on its financial contribution to the work of CAFCASS in Wales. [Recommendation 24]**

**We recommend that the Welsh Government seeks changes to the law to allow the Children's Commissioner to enquire into how CAFCASS carries out its functions. [Recommendation 25]**

**We recommend that CAFCASS agrees partnership arrangements with the Children's Commissioner that would allow them to work together in cases where children have raised concerns about CAFCASS with the Commissioner. [Recommendation 26]**

## **Section 5 - Monitoring**

5.1 Where appropriate, we expect the Welsh Government to report on progress in implementing our recommendations within 12 months of their initial response to this report.

## Annex A

### Organisations and individuals who gave evidence in person to the Committee

Those giving evidence	Representing
<b>22 January 2009</b>	
<ul style="list-style-type: none"><li>• Derek Griffin</li><li>• Teresa Hallett</li><li>• Catrin Williams</li></ul>	CAFCASS Cymru
<ul style="list-style-type: none"><li>• Catriona Williams</li><li>• Sarah Mallorie</li><li>• Claire Sharp</li></ul>	CAFCASS Cymru Advisory Committee
<ul style="list-style-type: none"><li>• Keith Towler</li></ul>	Children's Commissioner for Wales
<b>5 February 2009</b>	
<ul style="list-style-type: none"><li>• Marc Phillips</li></ul>	BBC Children in Need (Wales)
<ul style="list-style-type: none"><li>• Roger Bishop</li><li>• Elly Jones</li></ul>	Tros Gynnal
<b>12 February 2009</b>	
<ul style="list-style-type: none"><li>• Kevin Gibbs</li><li>• Simon Jones</li></ul>	NSPCC Cymru Wales
<b>19 March 2009</b>	
<ul style="list-style-type: none"><li>• Gwenda Thomas AM, Deputy Minister for Social Services</li><li>• Keith Ingham</li><li>• Derek Griffin</li></ul>	Welsh Assembly Government - Department for Health and Social Services CAFCASS Cymru
<b>2 April 2009</b>	
<ul style="list-style-type: none"><li>• Albert Heaney</li><li>• Julie Rzezniczek</li></ul>	Association of Directors of Social Services Wales
<b>30 April 2009</b>	
<ul style="list-style-type: none"><li>• The Honourable Mr Justice Sir Roderic Wood Kt.</li></ul>	Family Division Liaison Judge for Wales

## Annex B

### Schedule of Committee Papers Provided to Inform Oral Evidence

Date	Name of Paper	Paper Reference Number
22 January 2009	CAFCASS Cymru	Paper HWLG(3)-02-09-paper 1
22 January 2009	CAFCASS Cymru Advisory Committee	Paper HWLG(3)-02-09-paper 2
22 January 2009	Children's Commissioner for Wales	Paper HWLG(3)-02-09-paper 3
5 February 2009	BBC Children in Need (Wales)	Paper HWLG(3)-03-09-paper 1
5 February 2009	Tros Gynnal	Paper HWLG(3)-03-09-paper 2
12 February 2009	NSPCC Cymru Wales	Paper HWLG(3)-04-09-paper 2
19 March 2009	Deputy Minister for Social Services	Paper HWLG(3)-07-09-paper 2
2 April 2009	Association of Directors of Social Services	Paper HWLG(3)-09-09-paper 1
30 April 2009	The Honourable Mr Justice Sir Roderic Wood Kt.	Paper HWLG(3)-10-09-paper 2
<b>Additional Written Evidence</b> (following oral evidence session)		
12 February 2009	Legal Services Commission Wales	Paper HWLG(3)-04-09-paper 3
30 April 2009	Deputy Minister for Social Services	Paper HWLG(3)-10-09-paper 3
7 May 2009	Association of Directors of Social Services	Paper HWLG(3)-11-09-paper 16

### Transcripts

Copies of all papers and transcripts of meetings can be found at:

<http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-hwlq-home.htm>

## Annex C

### List of Respondents to Call for Written Evidence

The following organisations responded to the call for written evidence

<b>Organisation</b>	<b>Committee Reference</b>
CAFCASS Cymru Service Users	Paper HWLG(3)-10-09-paper 4
Jack Wynne Williams	Paper HWLG(3)-10-09-paper 5
Relate North Wales	Paper HWLG(3)-10-09-paper 6
National Association of Child Contact Centres	Paper HWLG(3)-11-09-paper 17
Families Need Fathers	Paper HWLG(3)-11-09-paper 18
Families Need Fathers - South Wales West Branch	Paper HWLG(3)-11-09-paper 19

Please note that the above list does not include any organisation or individuals who indicated that they did not wish their details to be published.

## Annex D

### Welsh Government's Seven Core Aims for Children and Young People

The Welsh Government has adopted the **UN Convention on the Rights of the Child** as the basis of all its work for children and young people in Wales.

They have translated this into seven **Core Aims** through which they intend to work to ensure that all children and young people:

- have a flying start in life;
- have a comprehensive range of education and learning opportunities;
- enjoy the best possible health and are free from abuse, victimisation and exploitation;
- have access to play, leisure, sporting and cultural activities;
- are listened to, treated with respect, and have their race and cultural identity recognised;
- have a safe home and a community which supports physical and emotional wellbeing;
- are not disadvantaged by poverty.

More information is contained in the Welsh Government document "Children and Young People's Rights to Action" available at <http://www.assemblywales.org>