

'The Need for Guidelines'



A Discussion Document for Consideration by the Court Users Group CAFCASS

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Submitted by

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BACKGROUND

Under the auspices of the Lord Chancellor's Department work is proceeding on the arrangements for the creation of Children and Family Courts Advisory and Support Service. (CAFCASS) This will be a single body whose staff will be drawn from the present Family Court Welfare Service, Guardians-ad-Litem and elements of the Office of the Official Solicitor.

Four Advisory Groups have been set up, one of which is termed:

Children and Families Advisory Group. (Users Group)

Membership of this committee is drawn by invitation from the LCD's department, from a wide selection of what may be termed 'support groups'. Each group brings to the table the experience of their particular field of expertise, the whole making a rich contribution to the overall debate.

Terms of Reference of the Children and Families Advisory Group.

1. To advise the Project Team on the setting up and of development of the new service.
2. To concentrate particularly on best practice and procedures to be adopted by the new service in the future.
3. To ensure that the Project Team is aware of all matters of concern to children and families which are relevant to the setting up and operation of the new service.

ASP believes this discussion document falls within the remit of all the Terms of Reference.

It is clear from the exchange of minutes of the other three groups that much detailed and valuable work is being carried out to ensure a smooth changeover to the new single body.

However, examination of papers received to date would suggest that the current stakeholders are primarily and understandably concerned with the 'nuts and bolts' of the necessary arrangements.

This could suggest that the new service may well deliver its product in much the same way as now. This possibility is of concern to the Children and Families Advisory Group.

The Users Group would ask the Project Team to keep in mind that we are stakeholders. We see ourselves as the only group that can speak on behalf of the children, the actual consumers of the present services. Bearing in mind that the over-arching framework should be the delivery of the ethos and the spirit of the Children Act 1989, then input from a group such as ours is vital.

Undoubtedly, expansion of the various areas of concern to the Users Group will follow in due course as the meetings progress. This paper will address one matter only : 'Guidelines'.

At the meeting of the Users Group on 25th July 2000 the topic of 'Guidelines' was discussed. (Minute 4.8.)

It was subsequently agreed that the Association for Shared Parenting would submit a discussion document on the subject of 'Guidelines' for distribution prior to the next meeting on Wednesday 6th September 2000. (Minute 8.2.)

The Association for Shared Parenting.

The Association for Shared Parenting (ASP) was formed in late 1993. Its sole aim is to promote the child's right to the nurture of both parents after separation or divorce. It has no interest in the gender of whichever parent turns to it for help.

ASP(West Midlands) became a Registered Charity in 1994.

ASP operates a 24hour Helpline as well as monthly support meetings. Membership is drawn from all over the UK.

In 1996 ASP opened a Child Contact Centre in Birmingham with the help of a generous grant from the West Midlands Court Welfare Service.

The throughput of over 1000 cases since formation has given the organisation a wealth of practical experience to underpin comment. Negotiating the myriad of issues that can beset contact and residence difficulties, plus the delivery of practical contact via the Contact Centre has provided ASP with a solid platform for informed comment.

Various officers from ASP serve on local Family Court Business Committees. From time to time ASP organises conferences and seminars to address particular topics.

Caveat.

ASP operates almost exclusively within the Private Law side of the Children Act. Only very occasionally does a case spill over in the Public Law arena. We have no first hand experience of Local Authority involvement. Our primary concern is with the work which has been carried out by the Family Court Welfare Service and to a lesser extent the Office of the Official Solicitor.

AREAS OF CONCERN

1) Current Fragmentation.

For historical reasons the current services are fragmented both geographically (October 1998 - 47 Probation Services in England plus 7 in Wales) and by virtue of product delivery from the three agencies. Reform of the current state of affairs is at the heart of the process already underway.

Fragmentation has led to inconsistencies. Each area has tended to build up its own culture, ethos and practices.

Examples of the effects of fragmentation. (The list is not exhaustive.)

a) Inconsistent interviewing.

One parent and child seen at the parent's home - other parent and child seen at the FCWS office. Result - first interview is in familiar surrounding with familiar people and toys etc., whilst the second interview is in unfamiliar surrounding with unfamiliar people and toys.

Another area may seek equity in interviewing.

b) Draft Reports.

Some areas will happily discuss a draft Welfare Report with the parties prior to the report being finalised, other areas will produce the report only at the court door. The parent seeking a court order then has just a minute or so to read this vital document.

c) Complaints.

ASP has on its files three distinct systems for handling complaints. All are at variance with each other. Remarkably one area has instituted a policy of having to obtain the leave of the court before a complaint can be processed.

d) Conciliation/Mediation.

Emphasis on and resources devoted to these elements vary widely from area to area.

2) Home Office National Standards.

Whilst the present Home Office National Standards booklet contains some excellent points, it is still nothing more than a voluntary code for the production of reports. Complaints that the booklet is being disregarded can be met with the remark that it is only a voluntary code.

Worse, it falls silent on the crucial area at the nub of welfare work - that of actual contact/residence issues.

3) The Risk of Hidden Agendas from within.

EXAMPLE 1

From the Home Office booklet (above) we learn:

* *'The role of the court welfare officer is to inquire professionally and impartially into the circumstances of the case in order to discover information likely to assist the court and to report clearly and concisely to the court.'* (4.4: 16)

* *'the child is at the centre of the enquiry and should normally be seen.'* (4.6: 16)

* *'The enquiries should be even handed and be fair to both parties.'* (4.9 17)

But

Employment as a FCWO can involve membership of the National Association of Probation Officers. (NAPO)

NAPO has various policies on a variety of subjects. One is an anti-sexism policy:

'NAPO Anti-sexism policy is written to assist all members to develop and implement strategies which enhance and strengthen the role of women in all their range of activities.'

'POLICY OBJECTIVES'

(a) To develop and promote policies and strategies which strengthen and enhance the ability of women to make and carry out choices within separating families.

(b) To develop and implement policies and strategies which challenge the experience of oppression of all women in separating families.

(c) To support the rights of lesbians as mothers and carers.

(d) To develop policies and strategies which challenge the discrimination against women in contested residency and contact decisions.

Without doubt organisations such as NAPO are correct in having an anti-sexism policy. ASP makes no comment on the merits or otherwise of the policy itself.

The worry is that by giving weight to these alternative priorities may well place welfare officers in a difficult position. The interests or 'rights' of one of the parents as interpreted by NAPO may take precedence over those of the of the child but be offered as being in the best interests of the child.

EXAMPLE 2.

From Home Office Research Study 191 'Domestic Violence' 1996 British Crime Survey.

'4.2% of women and 4.2% of men said that they had been physically assaulted by a current partner or former partner in the last year. 4.9% of men and 5.9% of women had experienced physical assault and/or frightening threats.

Again from NAPO we learn that:

'Generally, domestic violence is perpetrated by men against women the assault or harassment may take the form of physical, sexual, emotional, mental or economic abuse, damage to property, or a combination of these' (1996:11)

It is beyond debate that domestic violence is a serious issue. ASP abhors all violence.

Does a subjective statement from a professional body such as NAPO contribute to the objective handling and eventual reporting of cases?

4) Hidden Agendas from parents.

Parents who cannot agree on issues of contact /residence and turn to the law, are, by definition a self-selecting group. The implication is that the applicant parent wishes to remain in the life of the child and be part of the child's upbringing.

Not all separated parents do remain in the life of their child. There is a wide range of reasons why this should be so. That is not the issue here. This document is concerned with the parents who feel obliged to employ the Children Act in an effort to stabilise or remedy a particular situation. The state places no obligation on parents to resort to law. The law is simply there if needed.

Around the time of entering the legal system some parents will seek out and contact a support group of amongst which is ASP.

In the first instance a broad overview will be taken. Status of the parents - married or un-married, number and ages of the children, history of contact, family background, any legal proceedings so far etc. - in fact all the information that may be gathered by the FCWS themselves.

At a suitable juncture they may well be asked:

'What do you feel is driving this case? Where is the energy coming from?'

Invariably, out will come revelations of human behaviour at its worst or most vulnerable:

- * Jealousy
- * Spite
- * Interference from the wider family.
- * Racial (even tribal) issues.
- * Religious differences.
- * Revenge.
- * Behavioral/personality changes brought on by the actual birth - probable clinical illness.
- * Blatant sperm stealing.
- * Hatred.
- * Bitterness
- * Blackmail.
- * Raw hurt
- * Violence
- * Loss

- * Guilt
- * Repetition of learned behaviour.
- * Immaturity of the parent with care.

This non-exhaustive list encapsulates something that the drafters of the Children Act failed to foresee. It is the all powerful element of *emotion*. Becoming attracted to someone we meet is an emotional response. Deciding to live together married or not is an emotional decision. Conceiving a child is unarguably an emotional encounter. If the relationship prospers then all well and good. If it founders then emotions can tend to intensify - with love all too easily turning to hate.

Trying to counter actions based on deep and sometimes hidden emotions - sometimes not understood by those displaying them - with the dry logic of law can be as futile as trying to nail a lump of jelly to the wall. Coaxing out and identifying the emotional dynamo requires particular skills, a lot of patience and a non-judgmental approach as a first step towards offering help.

The concern is that the case details may be viewed by the FCWS through a contaminated filter. The filter has various possible sources of contamination. Inexperienced and or poorly trained FCW officers, political agendas and the wide variation in operating procedures between different offices can combine to produce welfare reports of little value to the resolution of a case.

ASP has found that these intense and negative emotions can often become entrenched and surface in court as spurious accusations of sexual abuse and/or domestic violence. Each allegation has to be treated as potentially genuine - all leading to delay and a frustration of the rights of the child, whilst the true 'energy source' remains submerged.

Cases can of course feature genuine abuse and/or violence and such elements should be dealt with the full force of the law.

5) 'Implacable Hostility'

Whilst this is not an official term, it is now generally recognised to describe a characteristic of seemingly stubborn resistance to the resolution of a case.

The legal system has wrestled with this problem for years.

('Contact and the Obdurate Parent.' Ingman, Newcastle Law School. Family Law. October 1996 p.615)

ASP finds difficulty in accepting that the term 'implacable opposition' is accurate. ASP feels that the label makes it all too easy to give up searching for a solution. It is the experience of ASP that underneath the apparently illogical resistance and defiance is always an ulterior motive or energy source. Apparent opposition continues simply because the underlying motive or energy source has not yet been identified.

It is the experience of ASP that the present Welfare Service operates an undeclared policy of refusing to explore the underlying problems. *'We can't go into that – we can only deal with things as they are ...'* As a clear consequence the underlying motive or energy source remains intact surfacing as implacable hostility. Clearly, whilst at present the first efforts at investigation are usually carried out by the FCWS, the same task will soon fall to the officers of CAFCASS. Will the new service be any better in preventing or helping to resolve this long-running problem than the present service?

6) 'Schooling' 'Undue Influence'

These euphemisms are descriptions generally recognised by the courts and welfare service to describe the situation of a child being encouraged by one parent to reject the other parent.

Support groups would prefer the adoption of the more robust description - Parental Alienation. (The addition of the word 'syndrome' to the term has served only to provoke sterile argument over semantics. Such pointless debate serves only to let the 'system' off the hook.)

Recognition of the phenomenon and use of the term is however creeping into legal debate.

(The Emerging Problem of Parental Alienation' Willbourne and Cull, Barristers, Family Law 1997 p.807.)

A useful working check-list appears in the above article to help identify alienation.

Accepting the existence of alienation and moving on to recognise it as a form of emotional abuse seems at the moment to be some way off.

Perhaps the main problem is that the courts and the welfare service feel powerless to offer a remedy?

7) Other Areas of Concern.

The Users Group has identified and expressed concern over the issues of:

- a) Training
- b) Outcomes
- c) Qualifications
- d) The voice of the child.
- e) The difficulty of extracting a case from the legal process.

It is clear from the minutes of the other groups that some of these issues - such as training, continual professional development and qualifications - are being addressed in detail by the relevant working groups.

This document will concern itself with the elements, some of which have been amplified above and that may not be addressed by the other working groups.

Clearly, the concerns of the Users Group focus on the PRODUCT of the present service and the danger that the new service will continue to deliver in much the same way.

Looking back, Taking Stock and Looking Forward.

When the Children Act 1989 was introduced the then Lord Chancellor Lord Mackay called it:

'The most comprehensive and far reaching reform of child law which has come before parliament in living memory.'

At the same time from their booklet 'An Introduction to the Children Act 1989' the Department of Health said:

'... the children Act was designed to bring about radical changes and improvements in the law and provide a single and consistent statement of it. The Act gave the opportunity to re-think practices which unless done would lose a rare and vital opportunity to improve the lot of children.'

This document proposes that the present amalgamation of the three services provides exactly such a 'rare and vital' opportunity for significant change.

But what changes and how could changes be implemented?

How are welfare reports to be produced in a manner which allay the disquiet and worries expressed above?

ASP believes that the answer lies in examining METHODOLOGY.

In particular the consideration and adoption of two new working practices both of which are tried and tested in the public services and commerce.

1) The use of GUIDELINES

coupled with

2) RISK ASSESSMENTS

----- GUIDELINES.

Guidelines could be seen as taking up where the present National Standards leave off. For the first time issues of contact quantum and residence should be addressed to set a working framework for the new service. Guidelines could be introduced to set out in plain language the obligations of both the new service and of separating parents.

Guidelines commenting on contact quantum could take one of two forms:

a) **Prescriptive.**

An early example of prescriptive guidelines was produced in 1997 by Alan Sealey, the then Chair of the Association of Family Court Welfare Officers. **(Appendix 1)**

Arguments against prescriptive guidelines usually centre on the observation that each case is different and therefore needs a unique remedy. This line of thought needs to be viewed with some caution. Surely each case is likely to involve parents, children and differences over contact/residence issues?

However, at the time Sealey's proposals were ground breaking and caused a deal of comment and useful discussion.

b) **Non-prescriptive.**

An example of non-prescriptive guidelines appears on the web site (www.spig.clara.net) of the Shared Parenting Information Group. (SPIG) This is a group of academics who collate and research information from all over the world on contact and residence issues.

(Appendix 2)

It will be seen that the extract is prefaced:

'Guidelines for Separating Parents' but clearly the points are readily transposable to act as a framework for the negotiations and discussions with parents whilst in the welfare process.

ASP favours a tailor-made combination of both approaches.

At the moment it seems that possession is indeed nine-tenths of the law. The applicant parent finds themselves either struggling to gain any contact at all or struggling to increase contact to a level that permits the parental role to be of any value.

Notionally placing the child in the 'centre' of the divide between the parents and then arriving at a solution based on individual family circumstances would help to reduce any temptation to use the 'possession' of the child as a weapon to pursue the hidden motives or energy source.

Spelling out in clear language to incoming parents that GUIDELINES exist to cover both how their case will be handled and the duties that will be expected of them in terms of the final outcome, could well be the answer to some of the worries expressed earlier in this document.

WORKING PRACTICE GUIDELINES.

A detailed example of working guidelines exists already to shape the task of social workers when undertaking the assessment of a child.

('Protecting Children' 'A Guide for Social Workers undertaking a Comprehensive Assessment' Department of Health ISBN 0 11 321159 7)

This is commonly known as the Orange Book. **(Appendix 3 -Extracts of Contents)**

It should not be a task too far to adapt this most comprehensive work to act as a standard framework for the new service.

RISK ASSESSMENTS.

Whilst the call for guidelines may not be entirely new, introducing the concept of Risk Assessment to the work of the new service may well be.

To the best of our knowledge ASP has no evidence that would suggest that the work of the present service is influenced by or includes any reference to Risk Assessment.

It is interesting to note that whilst this paper was being compiled an article headed;

'Family Risk Assessments - Dangers, Dilemmas and Decisions in Practice' appeared in Family Law at p.555. This very useful piece showed how Risk Assessment can be applied to the work of social workers in the Public Law arena. **(Appendix 4)**

ASP sees no reason at all why such a document should not form the basis of a protective framework to cover the work of the new service. The article in Family Law is comprehensive and is therefore best digested as it stands. Applying the principles to the work of CAFCASS would introduce every safeguard against the present dangers and pitfalls of fragmentation, bias, inconsistency of standards and alternative agendas.

* Real issues of domestic violence would be dealt with in a structured and consistent manner.

- * Every conclusion and recommendation reached would have to be evaluated for risk.
- * False or malicious allegations would themselves be evaluated for the potential for risk to the child. So far as ASP understands a further move into hitherto uncharted territory.
- * Finally the finished product would be seen to be transparent and a clear combination of solid work with contributions coming from all parties.
- * The whole methodology must surely lead to a significant reduction in the level of complaints.

CONCLUSIONS

ASP believes that the production of a comprehensive set of **GUIDELINES** is the best way forward to achieve uniformity and a high standard of product quality. Coupled with the introduction of **RISK ASSESSMENT** procedures to test the products, procedures and outcomes against the demands of the Children Act 1989, the result could well be the emergence of a new service which becomes *'the envy of the world.'* (minute 3.4 meeting no.1, 9.4.00)

RECOMMENDATIONS

ASP recommends that the Users Group give favourable consideration to the adoption of **GUIDELINES** and **RISK ASSESSMENTS** for both the new service and parents.

Graham Porter National Chair Association for Shared Parenting August 2000

APPENDIXES

- 1) Alan Sealey - Prescriptive Guidelines.
- 2) 'SPIG' www extract - 'Guidelines'
- 3) 'Orange Book' - Contents list
- 4) FAMILY RISK ASSESSMENTS - Family Law August 2000

Additional Sources

Family Law August 2000

SPIG web site at www.spig.clara.net

Protecting Children - Department of Health ISBN 0 11 3211597

Family Breakdown - S.Secker Nene University October 1998

Magazine for Shared Parenting July 1997

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