



Response to the Care Matters Consultation
Family Justice Council
Children in Safeguarding Proceedings Committee

The Family Justice Council welcomes the publication of the Green Paper and endorses strongly its aim of ensuring a better childhood and future for those children and young people in care.

In this response the Council has limited itself to commenting only on areas which fall within the ambit of its work.

Question 1: Are the elements we suggest for our “pledge” the right ones?

The pledge is to be welcomed but the Council suggests that rather than proposing twice yearly health assessments for under 5s, and annual health assessment and twice yearly dental check ups for older children, an alternative wording might be: “all children in care should have access to, and receive, the same services as all of our children. This may require different systems in order to ensure that the children do/can attend services, and it will require timely access to the range of universal and specialist services.”

There is no reference to the importance in many cases of maintaining relationships between children and their parents and/or siblings. Although it is often complicated for local authorities to make arrangements to keep up relationships with families of origin, it is vital for children and should be an important consideration.

Question 18: Have we set out the right features in the comprehensive model of health care for children in care?

The NHS will always have higher priorities (acute service provision, primary care, waiting times) and as there will be no more money, there is no incentive for NHS organisations to comply. There needs to be more clarity and compliance with joint quality assurance and performance monitoring between the Local Authority services and Primary Care Trusts (who are the commissioners of health services); when one fails, they both do. For children in care, the NHS needs to be proactive in offering accessible services for this vulnerable and difficult to engage group of children and young people.

Question 27: How can Independent Reviewing Officers be made more independent and their role strengthened?

The introduction of s. 118 of the Adoption and Children Act 2002 was designed to remedy the lacuna identified in the House of Lords appeals in Re S and Re W [2002] 1 FLR 815, namely the absence of any power in the courts to monitor the Local Authority's exercise of its responsibilities once a care order has been granted and the consequent risk of breaches of a child's rights if the Local Authority fails to implement the care plan agreed, and approved, by the court. The "Independent Reviewing Officer" (IRO) created by s. 118 is required to refer the case to an officer of CAFCASS if s/he "considers it appropriate to do so". It is common ground that no such referral has been made but it seems unlikely that every single child accommodated by every single local authority since September 2004 has had their care plans implemented without significant failings. Why has s. 118 not worked as intended?

The Council's circuit judge representative, a care judge sitting in a busy care centre which takes cases from 10 Local Authorities, asks for LAC review documentation as a matter of course and has occasionally invited the IRO to attend court. There are examples of acceptable practice but standards are frequently poor. It is acknowledged, however, that cases which are running smoothly are less likely to be seen by a judge than those where everything is not going according to plan.

The causes of the present situation

1. The guidance issued by the DFES is to the effect that “*Legal proceedings should be considered only a last resort in extreme cases where all other attempts to resolve a problem within the local authority have failed*”

This approach seems at variance with what s. 118 says, and does not appear to reflect the intention of Parliament. Parliament deliberately imbued the IRO with a wide and unfettered discretion. Their simple function is to refer the case to CAFCASS “where they consider it appropriate to do so” thereby enabling a child’s welfare to be protected by an application made to the court.

2. A further development is that only when the IRO concludes that a child’s human rights are being breached can a referral be contemplated. Thus, for example, the CAFCASS Practice Note (2006) states at para 5 that “the IRO should refer the case of any looked after child to CAFCASS, where there is a risk that the child’s human rights are being breached due to the action or inaction of the Local Authority.”

The Council queries whether any IRO has the specialist qualifications and experience within the complex fields of European and domestic Human Rights law affecting children which would enable them to identify Art 6 or 8 breaches with confidence. It is for the court, not the IRO, to adjudicate upon potential breaches.

3. Instead of the procedures anticipated by Parliament and laid down with clarity in the Act, a structure of “dispute resolution procedures” has been imposed by Local Authorities and CAFCASS. These require IROs to engage in layer upon layer of negotiation - all of which is time-consuming, delays decision-making and which precludes IROs from performing their statutory duty effectively.
4. Thus the IROs potential power and authority has been neutered by hedging one of their central functions with such restrictions that it has never (and may never) be effectively implemented.
5. IROs lack authority for other, more pragmatic, reasons which include the following:
 - a) Many IROs are hugely overburdened. They carry excessive caseloads (some being responsible for well over 100 children within the authority). Many also carry responsibility for other demanding tasks. They simply do not have sufficient time to devote to individual children

- b) It was anticipated that IROs would be social workers of some experience and stature, certainly with the status of an experienced manager. That has not necessarily proved to be the case.
- c) In some authorities the management of reviews is a “team” process. An individual worker does not hold personal responsibility for a child. It is, for example, sometimes impossible for a judge to identify who will be the IRO for an individual child. The child will see a different face at each review. In some cases it seems that no one has a sense of personal responsibility for the particular child standing before the court.

The consequences for the effectiveness of the review process

- 1 The process of review ceases to be a challenging analysis of the key social worker’s proposals with input from a multi-disciplinary team which can then make appropriate proposals for the child's future. The review becomes a sterile box ticking exercise. Plans are not devised at the review, merely “rubber stamped”.
- 2 Simple procedures are frequently deficient. The following issues, worse in some authorities than others, have been brought to the Council’s attention:
 - (a) IROs seem to be provided with minimal background information and they do not appear to choose, of their own initiative, to carry out research. They generally do not have (or, if they do, do not appear to have read) important reports derived from the court process such as the Guardian's report or key expert reports upon the child. They often do not even have the care plan which was approved by the court.
 - (b) It is increasingly rare for the IRO to have the time, or to take the trouble, to meet a child prior to the review to seek their wishes and feelings in a less formal setting. Similarly, they almost always fail to visit a pre-verbal child in, for example, a foster home prior to the review simply to gain an independent impression of that child’s situation.
 - (c) Review documentation may contain no report from the child’s school and no reports in relation to their health.

- (d) It is sometimes clear that a further review is necessary before the expiry of the statutory 6 months, for example, when critical decisions have to be made urgently. Yet the review is routinely fixed at 6 months.
- (e) Many authorities do not seem to have any process where, if an emergency arises and plans need to change quickly, an IRO is notified and arranges an urgent review.
- (f) Reviews required by statute may sometimes not happen at all. In one case brought to the attention of the Council, the review was to consider whether the Local Authority should abandon the plan for permanence through adoption, which had been approved by a judge, aiming instead for a long term fostering placement. The IRO was off sick and the review did not take place. The children waited in limbo until the next LAC review 6 months later.
- (g) It is far from uncommon to see cases where children have been accommodated under s. 20 of the Children Act where no reviews have taken place at all prior to the issue of proceedings, let alone a review at 4 weeks.
- (h) Parents are not consistently consulted.
- (i) Documentation is inadequate. Standard forms to be completed by the key social worker prior to the review frequently lack key information. For example, the dates upon which the Social worker has seen the child and a coherent account of the child's wishes and feelings are often missing.
- (j) Decisions approved by a review are not effectively implemented.

3 The possibility of referring a case to the court via CAFCASS does not appear to be considered by the IRO. By way of illustration, the case at 2(f) above only came back to court as a result of the mother's application to discharge the freeing order. Although not yet determined, there are obvious and conceded failures in the Local Authority's attempts at identifying a prospective adoptive family. None of this was identified in the review documentation. When the belated review finally did take place it simply noted the Local Authority's change of plan and approved the search

for prospective foster carers. There was no comment upon the failure to conduct the previous review. There was no analysis of the merits of the change of plan, let alone a consideration of its impact upon the Art 8 rights of the children, or the desirability of a referral to CAFCASS.

The way forward

In the light of the feedback that the Council has received, the Council has been driven to the conclusion that the present system is failing lamentably in many parts of the country. The drastic step of relocating responsibility for IROs outside Local Authorities, for example, within CAFCASS or some other independent organisation demands serious consideration. However, the level of disruption and expense and the unlikelihood of any, or any sufficient increase in CAFCASS resources for the purpose, which such a course would involve is a strong argument against. Moreover, the issue of independence from the Local Authority, perceived or actual, is not, in the view of the Council, the central issue.

Steps should be taken to see whether the current position can be improved, radically, before such a drastic course is adopted;

1. The guidance requires amendment so that referral to CAFCASS, and the court, becomes a realistic and viable option in all cases where, as s. 118 provides and parliament intended, the IRO “considers it appropriate to do so”, if necessary alongside dispute resolution procedures within the Local Authority. The involvement of the court, with its focus on the welfare of the child and its ability to influence decision making within Local Authorities should not be viewed as necessarily negative, rather as a positive resource for the child and the IRO.
2. Prescriptive guidance should require Local Authorities to appoint a named reviewing officer to each child, someone who will take personal responsibility for that child’s journey through the care system. Faceless ‘teams’ where no named individual takes responsibility for the child should be phased out as quickly as possible. There must be limitations agreed on the number of cases any IRO can realistically be expected to handle. Good practice in terms of speaking to the child must be identified.

3. There must be a suitable training programme for IROs. There are pockets of better practice which could and should be spread.
4. IROs must be managed effectively and given appropriate professional supervision.
5. It is too soon to draw any firm conclusions on the pilot schemes providing a “face to face” handover from the child’s guardian. It does, however, seem clear that this approach would be helpful and appropriate.
6. It is the practice of some members of the judiciary when concluding a case with the granting of a care order:
 - a. To direct a transcript of the judgment which the IRO is invited to read
 - b. To identify other documentation which the judge would like the IRO to read before the first review which they conduct.
 - c. To identify issues considered likely to be significant, and which will require careful consideration, such as contact to parents/siblings/family members, whether a statement of Special Educational Needs should be pursued, whether psychological therapy is desirable and necessary, whether serious consideration should be given to discharge at a certain point etc, although these are all points which the IRO would be expected to consider as a matter of course.
7. There is an opportunity for practice to develop in this area alongside Guardian handovers. The review documentation should confirm exactly what the IRO has read.
8. The position of children accommodated under s. 20 is a cause for concern on many levels and requires further examination. In this context, as a minimum it is crucial that effective reviews actually start to take place as required by the Regulations, namely within in 4 weeks of the child being accommodated, to avoid the situation where the accommodated child is effectively “lost”. Perhaps IROs could be required, as a matter of policy, to report to the relevant Director and Inspectorate the identity of any voluntarily accommodated child whose review has not taken place as required (for whatever reason).

If, following genuine and thoroughgoing efforts to reform the current system, improvements are not obvious, then there may be little alternative but the relocation of the IRO system within CAFCASS assuming it has sufficient resources to cope.

General comments

The correct assumption is made that children in care need more and differently organised services than the majority of those not in care. But much of the difference in the quality of outcomes for children is due to systemic, organisational failures rather than the generally greater needs of children in care. The corporate parent is a poor parent, and often not even up to the standard of 'good enough'. If all children in care had the same adult commitment as the 'average' child in a family then all the integrated and complex systems would not be required.

If resources were channelled into ensuring that children in care had a committed adult carer, then much of what is suggested would not be required. This would mean doing something radical for foster care and alternative care providers such as paying them a reasonable wage and increasing their standing in the community.