

Response of the FJC to the proposed LSC Guidance Changes

27.10.08

1. This response has been informed by a review of the material produced by the LSC in relation to its changes to the LSC manual, and a discussion at the FJC Council meeting on 20th October 2008 (the Council was much assisted in this respect by the contributions from Sara Kovach-Clark of the LSC, Annabel Burns from DCSF and Fiona Green from CAFCASS).

Provision of Legal Services

2. The FJC recognises the function of the LSC is the provision of legal services, and that its funds should be used for this purpose.

Risk assessments

3. The FJC understands that the LSC will continue to fund risk assessments which are beyond the scope of CAFCASS work; the FJC recommends that para.5.7 (para.8(a)) should be redrafted in order to reflect this.

Contact Centres, and Contact activities

4. The FJC recognises that the funding of Contact Centres and the funding of contact activities is outside the scope of the provision of legal services; such funding should not, strictly speaking, fall within the LSC budget.
5. However, there is no clear statement from Government about how these invaluable contact centre resources (and, in due course, court ordered contact activity directions / conditions) are going to be financed, and such statement needs to be made urgently and clearly so that the stakeholders in the family justice system can be informed, and where relevant re-assured, as to the true state of the funding of services.
6. There is much anxiety among the family justice community that the financial burden of providing contact services will fall directly on those who are unable to support it. Means testing for representation in private law cases has resulted in a significant increase in the number of litigants in person in the family courts; we would be concerned if delays (and the stresses associated with contact applications) were exacerbated by the

lack of funding for necessary contact services. This would have extremely harmful effects on children and families.

7. The current lack of information is highly regrettable given the imminence of the implementation of the relevant part (Part 1) of the Children and Adoption Act 2006.
8. We understand (ref our discussion on the 20th) that the Government is committed to investing no less than £4.6m in the current year, and yearly thereafter into CAFCASS so that CAFCASS can add contact centres and contact activities into its 'suite' of services for children and families. We are informed that this figure is more than compensatory for the 'spend' which is currently dedicated by the LSC.
9. We believe that it would be helpful for there to be an urgent confirmation:
 - (a) from DCSF, as to the precise level of expenditure on a year-on-year basis;
 - (b) from CAFCASS that this annual figure will be ring-fenced for the provision of contact services;
 - (c) from DCSF and CAFCASS that there will be no hiatus in the delivery of the services between now (i.e. the point at which the LSC formally withdraw), and when CAFCASS assume responsibility.
10. The FJC is deeply concerned by the possibility that if there is a hiatus, some contact centres will be forced to close due to lack of funding; once closed, it is unrealistic to believe that they would be able to re-open and they will be lost for ever. If contact activities cannot be delivered under the 2006 Act from the point at which the Act comes into force, the effectiveness of the Act will be drastically undermined.
11. There is a further concern that CAFCASS has not been able yet to engage sufficient providers of contact services in all areas. Coalitions may need to be formed between CAFCASS and independent organisations, but these have not yet been adequately or sufficiently formed; providers will need to be recruited, but they have not yet been recruited. The situation is far from satisfactory.

12. Although we have been told that a procurement process is being run for the domestic violence programmes, this is – on the current information – likely to be limited in the early days of the implementation of the Act.
13. If services are not available for children and families because of a lack of providers, this will have a huge and damaging impact on the welfare of children, and on the credibility of the family justice system and its organisations.

Rule 9.5 Appointments

14. We understand that there is a year on year increase in the number of rule 9.5 appointments in private law cases, reflecting the increasing complexity of cases.
15. The FJC noted that the terms of para.5.9 of the revised Guidance appeared to indicate that CAFCASS would hereafter be the sole provider of representation for children in private law disputes; on one construction of the modified guidance, it would appear to exclude organisations such as NYAS as being a provider. This would of course have had a drastic (ruinous) effect on NYAS, which would be prevented from delivering the invaluable nationwide service of representation for children and young persons in cases which demand this.
16. It would also have placed a significant burden on CAFCASS at a time when CAFCASS is already, in some areas, finding it hard to deliver services in a timely way.
17. We understand from our subsequent discussions (meeting 20th October) that this is not the intention of the revised Guidance. We are told that:
 - (a) the principle of representation under rule 9.5 remains fully within the scope of funding,
 - (b) that the LSC remains committed to representation for children in these cases;
 - (c) the Guidance was not intended to disturb the current arrangement by which CAFCASS and NYAS work together under their mutually agreed protocol.

18. We are greatly re-assured by this. The FJC recommends that the LSC re-write this part of the Guidance to remove any ambiguity about NYAS' position.
19. The LSC should not underestimate or undervalue the important work of NYAS which provides key services in complex cases. This work has been regularly praised by Courts at all levels (including publicly in the Court of Appeal) within the Family Justice system. We would be greatly concerned if the proposals meant that access by children to justice was in some respects diminished by these proposals.
20. The FJC is concerned to learn that NYAS considers that it is being inhibited in what it can (or will be permitted to) deliver under its unified contract, but trust that these difficulties will not prevent the continuation of the current service offered. The FJC recognises that contractual issues are strictly outwith the purview of the Council.

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