

**RESPONSE OF THE NATIONAL YOUTH ADVOCACY SERVICE TO THE
LEGAL SERVICE COMMISSION CONSULTATION
'PROPOSED CHANGES TO FAMILY GUIDANCE'**

NYAS is opposed to the proposals set out in the Legal Services Commission (LSC) consultation 'Proposed changes to family guidance', on changes to the LSC Manual. We are particularly concerned that changes to the Legal Services Funding Code will have a major impact on both the implementation of legislation approved by Parliament and on children and young people's access to justice.

Volume 3, Part C - para 2.5

The introduction of the Children and Adoption Act 2006 places the responsibility for specific orders, in relation to contact, firmly with the judiciary. The proposed identification of contact activities as irrecoverable and non allowable disbursements effectively undermines that new legislation, even before it is implemented. We are particularly concerned that the proposed changes will therefore have a major impact on the future implementation of legislation approved by Parliament.

There is a significant lack of consideration that parents involved in court proceedings often do not have the financial capacity to fund contact orders. Furthermore, the children whose right it is to have a relationship with their family are unlikely to have any disposable income to fund even in part contact costs. The proposals can only add for families to the already stressful and distressing impact of family breakdown.

The removal of the costs of contact activities effectively limits the right of some children and families to access to Family Life (ECHR Article 8).

The proposals do not take account of the lack of funds available to families for contact services. We know that the use of means testing in private law proceedings has resulted in a significant increase in the number of people who represent themselves and it is reasonable to deduce that separating parents will similarly find it difficult to meet assessed costs for contact activity. Children are to be placed at a significant disadvantage as a result of the proposals which do not support the right of children and young people to contact as set out in the Children Act 1989.

It is our view that the proposed changes to non allowable disbursements will:

- Impede children and young people's access to justice – by significantly reducing the number of children who have direct access to the courts.
- Impede children and young people's access to contact with their non resident parent – by removing funding for contact services. Parents already under stress from family breakdown may be unwilling or unable to

bear the cost of contact assessment and it is the child who will pay the highest price.

- Deny some of the most vulnerable children the right to family life (Article 8 ECHR). It is our view that children should have the right, whenever it is safe, to have contact with their parents and family members, and this should not be dependant upon parental income.
- Deny some of the most vulnerable children equality of arms (Article 6 ECHR). No other group has their right to access the courts determined by a commissioning body of the State.

LSC Manual Vol 1 D para 5.7

In spite of the judicial discretion given in the Children and Adoption Act 2006 to make specific orders relating to contact, there will be no funding for “all programmes and other work to or with a view to establishing, maintaining or improving contact with the child” (LSC Manual VOL 1 D para 5.7(8b)). “no prior authority will be granted for such costs or expenses and no payment can be made from the Community Legal Services fund..... even where they have been directed by the Court to be borne by the funded client” (LSC Manual D para5.7(9)). “suppliers should in relevant cases draw the attention of the judiciary to the extent of the availability of public funding as a Court Order cannot be followed by the Commission where excluded work would, as a consequence, be remunerated out of the fund” (LSC Manual D para5.7 (6)).

Positive steps to promote contact by specific order of the judiciary contained in the Children and Adoption Act 2006, are seriously undermined by the proposal to remove contact activities from recoverable disbursements.

In removing contact costs from scope the LSC assume that CAFCASS can undertake the volume of work currently undertaken by contact centres. Given that the Children and Adoption Act 2006 will seek an increased level of demand for CAFCASS services, there can be little optimism that that organisation would experience resolution of their ‘resource burdens’ should they be the sole provider of services. The existing shift in funding for supervised contact has resulted in no centre now being fully funded by CAFCASS and there is no evidence to suggest that there would be any transfer of additional funds from the LSC if the proposed changes are implemented.

It is of concern to us that an announcement was made to Contact Centres in April 2008 that this funding would cease in September 2008, indicative that a decision had been made long before this consultation was issued.

LSC Manual Vol 1 D. 5.9

“In respect of family proceedings in which the welfare of children is or may be in question it is a function of CAFCASS and CAFCASS Cymru to make provision for the

children to be represented in such proceedings and provide information, advice and other support for the children and their families.” “ It is not therefore necessary or reasonable for the limited Community Legal Service Fund to be diverted to provide, fund or support such services”.

It is our view that it is inappropriate that the LSC should seek to limit the discretion of the Presiding Judge when a decision to give party status has been made so that CAF/CASS should be the only agency to make provision for the child to be represented.

Whilst we acknowledge that “it is a function of CAF/CASS and CAF/CASS Cymru to make provision for the children to be represented in such proceedings and provide information, advice and other support for the children and their families” and have established protocols for working with them in line with the President’s Practice Direction, we can not agree that this should solely be the responsibility of CAF/CASS. Whilst the wording of the consultation does not specifically exclude NYAS, neither does it acknowledge the role of NYAS as a key provider in complex cases. This ambiguity could be used a platform on which further changes could be introduced serving to prevent us from providing separate representation for children.

Para 5.9 does not take into account any of the established procedural requirements from the LSC to NYAS for the granting of new certificates, nor of protocols agreed between NYAS and CAF/CASS, and appears to seek to exclude NYAS as a provider for separate representation when we have been acknowledged widely as an important provider of this invaluable service for children and young people. If the LSC propose that the funding for such representation should be paid for by CAF/CASS alone this sets CAF/CASS as either sole providers or the gatekeepers for children’s representation. This may result in the denial of access to justice for the most vulnerable group of children who are caught up in the difficult and entrenched disputes of their parents. These children must be allowed access to skilled and independent representation and have equality of arms (Article 6 ECHR) without having their right to access to the courts determined by a commissioning body of the State.

Furthermore, the LSC has provided figures to the Law Society and CAF/CASS without reference to us as to their accuracy - a criticism of the original Separate Representation Consultation in 1996 - and CAF/CASS have made enquiries of NYAS as to the number of 9.5 appointment cases we currently have. This suggests to us that the LSC have already made its mind up on the outcome of this consultation before it has even closed, as it would appear to have done in relation to the funding of Contact Activities.

The proposals will severely restrict and even deny the right to legal representation of children caught up in protracted proceedings. It is widely acknowledged that CAF/CASS do not have the capacity to undertake all such cases, and some children will not receive the representation they are entitled to. By restricting choice and causing delay it is our view that children and young people are denied the right to effective remedy (Article 13 of the European Convention of Human Rights). The proposals will deny some of the most vulnerable children an effective voice in proceedings before the Court. These

children are invariably involved in the most intractable and acrimonious parental disputes, and under the proposals they would have nowhere else to turn for skilled and independent representation.

NYAS' Mission Statement has adopted article 12 of the United Nations Convention on the Rights of the Child "to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative body". The LSC must accept that the welfare element of our work is an appropriate part of legal representation when Sec 1(2) of the Children Act 1989 makes the child's welfare the court's paramount consideration.

Volume 3, Part C - para 20.9

NYAS welcomes the inclusion of children in the mediation process where it is deemed appropriate. There remain concerns about the capacity of CAFCASS to be the sole agency with this responsibility.

Funding arrangements for the assessment for mediation do not take account of the child in his or her own right. The financial eligibility test for the mediation process is likely to prejudice the intended benefit of that process, as those parents who are not eligible for funding are less likely to participate. If, as a result, the mediation process does not take place it is important that the child has access to separate representation to ensure that their views are given due weight and consideration.

Impact of the Consultation proposals on NYAS

The charity has worked hard to develop a credible, national service providing separate representation to children involved in protracted parental dispute, and child focussed supervised contact in response to directions of the court. We remain committed to cost-effective approaches which establish a holistic understanding of the needs of children and provide the strongest possible partnership, empowering children within private law proceedings. We are surprised and dismayed at the proposed changes to funding arrangements, which would reduce children's access both to the courts and to knowing their parents, and potentially excludes us from this important area of work.

The proposals would have a significant impact, both upon children and upon NYAS' ability to separately represent them effectively. Whilst we are aware of the pressure upon the public purse and the increasing need to reduce costs, we feel that it is short-sighted to seek to remove an efficient and effective remedy which, in the long term, moves cases swiftly through the Courts and achieves effective outcomes, reducing overall demand on the public purse. Access to separate representation and supervised contact not only reduces costs through removal from the court process but also provides a significant contribution to a preventative strategy which impacts on poverty, crime and the mental health of children and young people in this country.

NYAS 17.10.08