

Separate Representation of Children

Response from the National Youth Advocacy Service (NYAS), 99-105 Argyle Street, Birkenhead, Wirral CH41 6AD

List of questions for response

We would welcome responses to the following questions set out in this consultation paper. Please email your completed form to: Kevin.rose@hmcourts-service.gsi.gov.uk or fax to: 020 7210 8681. Thank you.

Question 1. **Is the requirement of a legal need sufficient to cover the criteria when a child should be given party status? If not, what other criteria or circumstances should the court apply?**

Comments: NYAS do not consider that the requirement of a 'legal need' is sufficient to cover the criteria when a child should be given party status.

No definition is given for this term in the paper. It is clear however that the interpretation of this term is intended to be significantly narrower than the guidance set out in the President's Practice Direction of 5th April 2004 and that the intention is to reduce the number of 9.5 appointments.

Whilst NYAS agrees that it is not appropriate for all children in Section 8 cases to be separately represented under r9.5 we are concerned that the needs of a significant proportion of children who are involved in difficult and protracted legal disputes, will not be

met. It is significant that the requirement of 'legal need' as set out in the paper takes no account of the welfare of the child, which is the starting point for the court under Sc 1(2) of the Children Act 1989 – “the child's welfare shall be the court's paramount consideration “ There is no acknowledgement in the requirement of the child's rights under Article 6 of the Human Rights Act 1998 or Article 12 of the United Nations Convention on the Rights of the Child. It is significant that the UK has not signed the 1996 Council of Europe Convention on the exercise of Children's Rights and that the United Kingdom has been criticised for the disparity in child representation between public and private law.

It is the experience of NYAS that the guidance within the President's Practice Direction of the 5th April 2004 provides a robust framework when considering the appropriateness of a child being separately represented. The Practice Direction takes proper account of the full range of critical factors in the child's life to be considered when deciding whether to make the child a party and to appoint a guardian ad litem, whilst allowing the judiciary the discretion to make the decision based upon the particular facts of a case. The clarity and thoughtfulness of the Practice Direction, coupled with measured judicial consideration of each individual case ensures, in NYAS' view results in appropriate party status in those cases where separate representation will be most effective and gives rise to the benefits of long term resolution for those children who need it most, with a significant saving to the public purse.

Question 2. Given the regional differences if this proposal is applied nationally do you think that a greater level of consistency will be achieved?

Comments: No.

Although the Cardiff Research report 2006, 'Research into the operation of Rule 9.5 of the Family Proceedings Rules 1991' identifies regional differences it does not examine the reasons for this. There is no evidence to suggest that changing the court rules in order to provide that 'legal need' be the sole criteria for directing that a child be given party status, will lead to greater levels of consistency.

Question 3. What are the possible reasons for the regional variations?

Comments: The reasons for regional variation have not been established. There is likely to be greater take up in those areas where the judiciary have experienced the effectiveness of separate representation and where they know there are experienced and available

practitioners.

Question 4. What else can be done to address this inconsistency?

Comments: NYAS believes that interdisciplinary training is crucial to enable judges and practitioners from the key disciplines to have a shared understanding of those cases that would benefit most from an appointment under r9.5, and to understand better what can be achieved through separate representation.

NYAS participates in the process of continuing professional development for the judiciary presenting at the Judicial Studies Board on a regular and ongoing basis.

Question 5. Do you agree that CAFCASS should be the preferred choice of the court to act as the Children's Guardian?

Comments: NO.

The use of the word 'preferred' suggests that no other agency can offer a comparable or in some cases more effective service. The Consultation Paper does not provide any evidence that CAFCASS provide children with a better service than that provided by NYAS. Nor does it provide evidence that CAFCASS provides a service for less money than that provided by NYAS.

The figures set out in the Consultation paper are seriously misleading as they do not provide truly comparative costs. The Consultation paper does not set out accurately the number of 9.5 orders made in respect of NYAS' appointment. The information given is in fact the number of children who have been granted funding certificates. In the year April 2005-March 2006, the number of Rule 9.5 orders to NYAS was 111, as there is often more than one child in a family, compared with the number of certificates given in the paper of 158. This shows a comparatively small percentage of 9.5 orders to NYAS. If the statistics shown for 9.5 orders to CAFCASS are calculated in the same way, the actual number of 9.5 orders will not provide evidence of a significant rise in the number of 9.5 appointments.

The Consultation Paper states that 'using NYAS to act as Children's Guardian is more costly by approximately 53%.' Within the CAFCASS statistics whilst the Unit costs to CAFCASS are shown, there is no reference to the separate legal costs of £3,330. (Para 31, page 47). The figures given within the NYAS statistics include caseworker and legal costs. The reality is that based on these figures, NYAS provides a saving of some £1,627 per case, to the

public purse overall. It should be noted that NYAS do not pass on the full unit costs to the LSC. Further, the actual costs provided for CAFCASS are inconsistent. Unit costs are given as £52 an hour (Para39, page 49), Average time spent on a case is given as 75 hours(Para 36, page 48) The average cost for a CAFCASS case using these figures would be £3,900, that combined with the legal cost of £3,330 (Para 31, page 47) gives a total cost to the public purse for CAFCASS intervention of £7,230.

We agree that CAFCASS should, as the statutory agency, be considered prior to any other suitable agency or person to act as Guardian, as is currently the case under the direction given in paragraph 5 of the President's Practice Direction of 5th April 2004. This premise is repeated and supported by the voluntary protocol agreed between CAFCASS and NYAS in December 2005.

CAFCASS' proposed focus on early interventions is to be welcomed, but it must be acknowledged that they do not have the capacity to respond appropriately to all private law matters. The HMICA Report 2006 draws attention to CAFCASS' deficits in relation to private law practice and to withdraw NYAS from providing this service to children would result in an already over-stretched agency being required to support even more children, with fewer children having access to reliable and quality services.

The stated intention of the NYAS/CAFCASS protocol is incorrect. (Page 25). This voluntary agreement between the two agencies was intended to mark the development of an improved partnership approach, working to the guidance of the Practice Direction and recognising that there are some families who will work more effectively with an independent organisation. The appointment of NYAS is not intended to be limited to those cases where there has been a breakdown in the relationship between the family and CAFCASS. NYAS is of the view that the choice of agency should be at the discretion of the judge, with clear reasons given for that choice.

Question 6. If your answer to question 5 is yes – how best can this be achieved?

Comments: See above.

It is current practice for the LSC to require NYAS to produce evidence to show that both the President's Practice Direction and the NYAS/CAFCASS protocol have been adhered to before consideration of whether NYAS can be granted funding for a child. NYAS encourage the judiciary to set out these reasons on the face of the order. Whilst this should help to reduce delay in NYAS obtaining funding and beginning work on behalf of the child, in

practice the LSC are currently not accepting the order of the court and are putting pressure on CAFCASS regional offices to accept appointments where they have already indicated that they do not have the capacity to do so. It is of concern that the LSC is gate keeping the decisions of both the judiciary and CAFCASS and it is clear that their focus is a purely financial one. The LSC does not recognise the benefits of the Tandem Model, which reduces the length of proceedings, and therefore the cost to them of all represented parties. It does not acknowledge the longer-term cost saving, or the future benefit for children and families in effectively resolving the issues, which arise from an acrimonious relationship breakdown.

Question 7. Are there any circumstances when NYAS or other independent practitioners should be used instead of CAFCASS to act as the guardian?

Comments: Yes, under the guidance of the Practice Direction 2004. Further:

I – Where there has already been significant CAFCASS involvement but the CAFCASS officer has not been able to move the case on and the court is of the view that a new impetus is needed with further attempts made in the best interests of the child concerned.

II – Where one or both parties, or the child has complained about CAFCASS and the relationship with CAFCASS has broken down.

III – Any circumstances where CAFCASS may be embarrassed at or has difficulty in providing a new officer.

IV – Where CAFCASS is not able to allocate an officer within a reasonable timescale and an alternative organisation can allocate sooner so as to avoid unnecessary delay.

Question 8. What would be the likely overall impact on your business?

Comments: The overall impact on the work of NYAS would be very serious, both for the children that we represent and for the ability of the Charity to carry out its mission statement.

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 proposals in this paper will severely restrict and even deny the rights of children caught

up in acrimonious and protracted proceedings to legal representation and an effective voice in proceedings before the court.

Question 9. What do you estimate would be the cost to your business (if any) of this proposal? It would be helpful if you could show how you reach that figure.

Comments: The cost to our business of this proposal would be damaging and significant. It has already been made clear to us by the LSC that they do not intend to continue to fund the NYAS Tandem Model. The LSC do not accept that the welfare element of our work is an appropriate part of legal representation. This despite Sc 1(2) of the Children Act 1989 which makes the child's welfare the court's paramount consideration.

Unless an alternative source of funding is identified, this would make it impossible for NYAS to offer the Tandem model for separate representation, a model that is shown to bring about effective and timely outcomes for the most vulnerable children.

Question 10. Should all levels of court and judiciary have authority to make the child a party to proceedings?

Comments: No. It is NYAS view that Rule 9.5 should only be used in difficult cases and as such should be transferred to the County Court for consideration. All Private Law District Judges and Family Judges of the County and High Courts should have the authority to make Rule 9.5 appointments so as to avoid the additional costs and delay which would follow from transfer to a circuit judge in order for a decision to be made.

Question 11. Do you agree that applications for leave made by children should be heard in all tiers of family court?

Comments: NYAS supports the view expressed by our patron Dame Margaret Booth (Report of the Children Act Sub – Committee of the Advisory Board on family Law, (2002) *Making Contact Work*) that in view of the difficulties and delays in such procedures, children should not be required to seek leave to commence proceeding. NYAS submits that if it is accepted, that the child is competent, having been assessed by a child panel solicitor, leave should not be necessary.

All applications from children should be heard in the County Court and higher courts on

account of the range of sensitive and complex issues involved.

Question 12. To what other family proceedings should the provisions in Rule 9.2A be applied and why?

Comments: It is the view of NYAS that rule 9.2A should apply to all family proceedings in which the child has the right to apply for party status and to all family proceedings in which the child has the right to issue proceedings, including those cases where at present the child or young person first needs the leave of the court before they can issue. This will ensure that all children who are competent are able to make applications and apply to be parties to all family proceedings in their own right. This will promote and protect the rights of competent children under Article 12 of the UNCRC and Article 6 of the HRA 1998.

Question 13. Other than being written into court Rules, how else could the provision of Rule 9.2A Family Proceedings Rules 1991 be promoted to competent children?

Comments: NYAS does not believe that children should be encouraged to become involved as parties in court proceedings per se, by promoting the use of Rule 9.2A. However it is our view that where appropriate for competent children, they should be made aware of their right to seek to become involved as party to proceedings and should be given information on how to obtain specialist legal advice. This information needs to be imparted to children and young people in ways that are child friendly and accessible, as set out in responses to questions 17 and 19.

Question 14. Is it necessary for the solicitor to attend all hearings?

Comments: Yes. Without attendance throughout, significant evidence may not be heard by the representing solicitor and the child is without effective legal representation.

Question 15. Would restricting the role of the solicitor to certain hearings where they must actively represent the child (rather than hear the evidence of other parties) be detrimental to the best interests of the child?

Comments: Yes. Active representation of the child involves hearing the evidence of all parties and their witnesses and contributing to Case Management and Directions Hearings. A partial presence in proceedings would be detrimental to the best interests of the child,

resulting in them having unequal representation in proceedings. The child's legal representative should on behalf of the child be given full opportunity to participate throughout the proceedings. Children who are legally represented should be afforded the same respect, ability to participate and right to a fair hearing through representation at all court hearings as the adult parties are given.

Question 16. Might the requirement for the guardian at all hearings be relaxed in some way? What should the test be?

Comments: Yes with the leave of the Judge. In circumstances where the legal representative has full instructions, including details of the Guardian's availability and contact details.

Question 17. What sources of information for children are you aware of?

Comments: NYAS has delivered a Pilot project for the Legal Services Commission offering a Family Breakdown Service for children and young people. This provides them with direct access to information, legal advice and where appropriate child-focussed mediation with their parents. They can access advice and information by telephone, text or on-line chat via the web site.

NYAS Participation service delivers children's participation events on children's rights, and NYAS has developed and delivered courses for school children on rights and citizenship.

We are also aware of the CAFCASS website, and the DCA leaflets produced for children.

Question 18. How good do you think the current information for children is?

Comments: It should not be assumed that all children have internet access, nor that all children can readily understand the written word, or written English. It would be helpful for new and additional child friendly information to be developed using a range of media so that the information is readily available and easily accessed by children of different abilities and in different family situations.

Question 19. How could it be improved?

Comments: See response to Questions 17 and 18. Information in the form of leaflets, drop

cards, information sessions or audio visual aids should be made available in schools, youth clubs, public libraries, doctors' surgeries and hospitals, wherever children and young people may go for help and assistance.

Question 20. In what other ways could information be made available for children?

Comments: Information should be made available for children by including the issue of family breakdown and children's rights as part of the citizenship curriculum in schools. This could include talks to be given by key professionals. Access to a free phone information service has been very well received by children and young people where it has been publicised in schools and piloted on Merseyside.

Question 21. Do you feel that judges should speak to children as a matter of course?

Comments: No. It is not appropriate in every case. Children should not be made to speak to judges if they do not want to do so.

The Judge should have the discretion to decide if it is appropriate, and this will depend upon a range of factors, including the age of the child, whether the professionals in the case, (including the Family Court Reporter, Guardian, Social worker) consider that it may be helpful for the child or the judge, and whether the child has expressed the wish to see the judge.

It is essential that the child is clear about the limitations on any information that they give in a private discussion with the Judge, and there should not be false expectations engendered in the child about the outcome of that meeting. Any such meeting cannot replace the extensive consideration of welfare issues carried out by the Guardian.

Not all family judges feel confident to talk to children and if they are to be encouraged to see children who want to see them, there will need to be additional training provided in communicating with children.

Question 22. Acknowledging that the judge cannot use children's views as evidence in making judgments and cannot uphold confidentiality over the duty to safeguard the interests of children, what are the other considerations in relation to the judge hearing the child in person?

Comments: See response to Q21.

Children should not be made to speak in front of the other parties to proceedings if they do not want to, or for some other reason it is not felt to be appropriate.

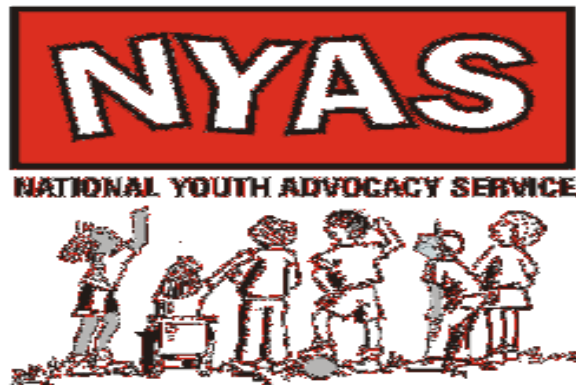
Judges should retain the discretion to see children in private if the children asked to see them and the judge considers it appropriate.

Question 23. How can the court environment be made friendlier to children?

Comments: The Guardian or child's solicitor should be prepared to arrange a visit to the Court before the hearing and should accompany them throughout the process.

Courts should have suitably equipped waiting rooms with age appropriate activities, such as computer games for older children, comics and magazines, and drawing materials.

Consideration should be given to the timing of any meetings to avoid confrontation with other parties and to minimise waiting for children.



Response of the National Youth Advocacy Service (NYAS) to the Partial Regulatory Impact Assessment set out in the DCA paper Separate Representation of Children Consultation to Inform the Content of New Court Rules CP/20/06

About The National Youth Advocacy Service

NYAS is a unique 'not for profit' registered children's Charity which, building on more than twenty five years experience of providing advice, advocacy and representation for children, works to provide a safety net for children and young people through the provision of seamless socio-legal advice, information and advocacy services for children and young people aged 0 – 25, throughout England and Wales.

NYAS legal department has a Specialist Family Legal Help Contract with the Legal Services Commission and has developed a specialist service providing separate representation for children and young people under Rule 9.5 of the Family Proceedings Rules 1991 when invited by the courts to do so. NYAS uses the Tandem Model approach bringing together the skills of an experienced social work practitioner and solicitor working closely together to protect a child from the damaging effects of being caught up in difficult and protracted legal proceedings. NYAS provides training for all Caseworkers and Advocates, and all our work is managed within a robust framework for Quality Assurance.

Article 12 of the United Nations Convention on the Rights of the Child underpins NYAS' Mission statement. Article 12 states that:

“Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child”.

“For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law”.

The rationale for any proposals for change to those procedural rules, such as are set out in the Partial Regulatory Impact Assessment, are therefore of considerable concern to this Charity.

Objectives and Rationale

NYAS response to Question 1 of the consultation identifies the weakness of the proposal to make a child a party in section 8 applications only where there is a 'legal need'. It is our view

that the President's Practice Direction issued in April 2004, coupled with judicial discretion in individual cases, provide excellent criteria for a working framework for the decision as to whether to give a child party status.

The policy driver stated at Para 9 (page 43), 'to ensure that the case warrants separate representation and that those cases be targeted so that children's best interests are at the forefront', contains an implicit assumption that this is not the current position. NYAS does not provide separate representation for all cases referred and works hard to ensure that the child's best interest is at the heart of all our work. In contrast, the rationale set out in para 10 (page 43) and the 'preferred option' set out in para 38 (page 48) clearly identify costs and 'pressure on legal aid budget' as the drivers for these proposals, and it is our view that this will serve to seriously undermine 'the Government's commitment to improve outcomes for children by ascertaining their wishes and feelings' (para 3).

It is NYAS view that the impact of these proposed changes will be to reduce access to child-focussed justice, as CAFCASS alone will not be able to 'achieve better outcomes for children in a sustainable way', without adequate resources, and the retention of highly experienced child care social work practitioners. The recent HIMCA reports (*Domestic Violence, Safety and Family Proceedings: Thematic Review of the handling of domestic violence issues by the Children and Family Court Advisory and Support Service (CAFCASS) and the administration of family courts in Her Majesty's Courts Service (HMCS), (2005)*, and *An Inspection undertaken between October 2005 and March 2006 of the Children and Family Court Advisory and Support Service (CAFCASS) concerning private law frontline practice (2006) HIMC*, clearly identify the shortfall in CAFCASS current practice with 'insufficient focus on the interests of the child.'

The Cardiff research has been misinterpreted. It does not show a current inappropriate use of Rule 9.5, but rather that ten of the fifteen children interviewed said that they had been greatly helped by separate representation. [G Douglas, M Murch, C Miles and L Scanlan, Final Report for the DCA: *Research into the operation of Rule 9.5 of the Family Proceedings Rules 1991 (DCA 2006)*] The paper makes no reference to the excellent outcomes shown in the NYAS research (2005 Fam Law 49).

It must be acknowledged that there is a funding crisis within both the LSC and CAFCASS, but there is no evidence to support the view that restricting access to separate representation for difficult cases will produce better outcomes for children. The research does show that not all children would benefit from separate representation, but it does not show that too many children are currently given party status. There is no longitudinal study

available of the long-term outcomes of separate representation. Professor Jane Fortin makes a cogent argument that party status should be given to more children in private law proceedings, whilst recognising that it is not appropriate for every child. (*Children's Rights and the Developing Law, Butterworths, Lexis-Nexis 2003*) There is no research evidence, which suggests that current practice is placing undue stress on children.

A renewed emphasis by CAFCASS on early resolution may well serve to divert more families from the court process but will do nothing for those children who do become caught up in difficult, protracted and acrimonious battles fought out in court by their parents.

Consultation

NYAS is dismayed that we have not been included in any discussion about the development of the policy, despite being widely cited within the Consultation Paper and the PRIA. It is of concern that this policy is to be developed solely by the statutory sector, despite NYAS clearly having been recognised as the only voluntary agency making a significant contribution to practice development in this area.

Options

It is in our view disingenuous to suggest that there is 'the present situation' which with 'increased costs and delay is not in the children's best interest', when the paper provides misinformation about the present situation and about NYAS activity and costs in particular. Although there has been a rise in the number of cases, there is no evidence to support the view set out in Option 1 (page 44) that the number of cases with party status is high, or that appointment is currently inappropriate.

The ability of CAFCASS to allocate competent officers to cases most in need (Option 1, page 44), is in our view, already compromised and it is incredible to suggest that these proposals would 'resolve current delay in court procedure, resource burdens on CAFCASS and financial burdens on the legal aid budget by targeting separate representation to cases that warrant it' (para20).

It is of considerable concern to NYAS that the recent procedures introduced by the LSC, whereby all referrals to NYAS are reviewed by the LSC central London office is resulting in confusion and unnecessary delay, despite the court identifying on the order, the applicable criteria set out in the Practice Direction, and adhering to the voluntary NYAS/CAFCASS protocol. It is NYAS impression that a decision to restrict the appointment of NYAS has

been made by the LSC before consideration has been given to the responses to the Consultation Paper.

We agree that building on the early intervention by CAFCASS may help to reduce the number of difficult and protracted cases, but there is no evidence to show that without this activity such cases will be prolonged. NYAS is of the view that whilst it may be helpful for CAFCASS to focus on early intervention, this will not address the needs of those children who are caught up in intractable disputes.

Establishment of Court Rules

This is addressed in the main body of our response.

Costs and benefits

The costs as shown are seriously misleading. See response to question 5 of the Consultation.

It is of concern that NYAS figures provided to the LSC for another purpose have been published here without prior discussion or clarification, at the same time there is no record of costs for the 'private practice solicitors acting as Children's Guardians who use independent social workers who charge up to £60 per hour'. (Para 39, page 49) Similarly there is no reference to the cost where CAFCASS makes use of such independent social workers.

NYAS considers it to be essential for the child's legal representative to be present through out the proceedings, if the child is to receive fair and equal representation. We cannot envisage a situation where representation can be provided effectively (even only 'perhaps very occasionally' – Para 17), where a representative is not physically present in proceedings.

We are concerned that 'any administrative impacts will fall largely on CAFCASS in terms of how they report the wishes and feelings of the child to the court' (Para 18). It is difficult to understand how a reduction in report writing set out in the earlier DCA/DfES publication (Parental Separation: Children's needs and parents responsibilities. 2004), will allow an effective transmission to the courts of the child's wishes and feelings, and this will impede the judiciary in carrying out their duty under s1 (3)(a) of the Children Act 1989, to take account of the child's wishes and feelings.

As stated above the underlying assumption of Para 20 of the PRIA, is that children do not currently 'have an opportunity to express their views in ways conducive to their welfare, and that orders are made for separate representation in cases that do not warrant it. There is no supporting evidence for this in relation to work carried out by NYAS.

NYAS has experience of further delay being caused for children, by an increase in gate keeping by the LSC. Given the existing 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 this service.

It is our view that there would be a disproportionate effect on the specific and vulnerable group of children who are caught up in the difficult and protracted disputes of their parents. The lack of coherence in the concept of 'legal need' is evident in the statement about representation for children with disabilities, in that the 'court may consider in any individual case that the presence of such a disability means that there is a legal need for the child to be a party'. (page 45) NYAS finds it difficult to understand why children from ethnic minority backgrounds may not receive similar consideration. (Para23)

NYAS is unclear about how the quoted figure of 207 NYAS cases has been generated. In the period March 2005 to May 2006 NYAS had 143 cases, we therefore question the validity of statistics given in para 29.

Similarly there is no distinction made between Section 8 Children Act 1989 cases where there has not been separate representation, and those where there has been a Rule 9.5 appointment. It is not possible to draw any accurate conclusion as to comparative cost. This is acknowledged at Para 56. It is disappointing that the comparison made between the cost of representation of a person aged over 18 in Section 8 cases with those for a child, make no reference to the welfare issues for children which inevitably make these cases more difficult.

NYAS strongly refutes the statement that 'use of CAFCASS guardians would cost less on the public purse than if; for example NYAS or another independent practitioner were to be appointed as a children's guardian' (Para 33). The statistical tables do not compare like with like. The average case costs for NYAS as stated in the paper are £5,143. This includes the cost of legal representation and caseworker input. The CAFCASS unit costs are given as £3,440 for 05 – 06, and do not include legal representation for the child. (Para36).

The paper shows that the average cost for legal representation for the child, is at least £3,330. Accordingly, when a CAFCASS Guardian is appointed the total cost to the public

purse is £6,770. Using these figures, NYAS representation of the child provides a saving to the public purse of £1,627.

The costs for separate representation by private practitioners are not given.

The confusion in the figures provided is acknowledged in para 39, 'it is not possible to accurately cost the savings to the legal aid budget' and admits to relying on 'anecdotal evidence' to support proposal 2, with 'CAFCASS being the preferred choice of the court'.

There is no evidence to support the assertion that this would result in 'cost savings, from a more seamless approach and service with clearer and fewer interfaces.'

In marked contrast there is evidence to show that NYAS is both more cost effective and has established a seamless socio-legal Tandem Model, which is responsive to the needs of children and effectively meets the requirements of the Courts.

It is to be hoped that there will be a more reliable approach taken towards the proposals for quantitative and qualitative evaluation of any change. (Para 58 – 60.)

Competition Assessment

The overall impact of the proposals on competition will be very significant for NYAS. As shown above the protocol between NYAS and CAFCASS has been misinterpreted and misrepresented.

Enforcement, Sanctions and Monitoring

It is of note that to date the cost of monitoring of NYAS 9.5 activity for the LSC has been borne by NYAS, who regularly provide the LSC with detailed information about our activity. It is disappointing that this has been used in a different context and without prior discussion.

Conclusion

It is NYAS view that the resource problems of CAFCASS and the LSC, should not be addressed by restricting access to party status for children and young people who are subject to difficult, acrimonious and protracted parental disputes. The Practice Direction of April 2004 provides a sound and reliable framework criteria for the decision to make a child a party to proceedings. It is NYAS view that each Rule 9.5 appointment should be at the discretion of the judge, who should have the fullest possible information about the child and their individual needs.

NYAS has an established track record of providing a seamless socio-legal service for children, and this has achieved timely and highly effective outcomes in difficult cases. NYAS offers considerable saving to the public purse overall. It is hoped that a more joined up approach can be taken by the DfES and the DCA to encourage and build upon NYAS' partnership approach with CAFCASS, to address the resource burdens identified and to maintain established best practice for children in Separate Representation.

NYAS

November 2006