

Senedd Cymru | Welsh Parliament

Y Pwyllgor Plant, Pobl Ifanc ac Addysg | Children, Young People and Education Committee

Gwasanaethau i blant sydd wedi bod mewn gofal: archwilio diwygio radical | Services for care experienced children: exploring radical reform

Ymateb gan Cafcass Cymru | Evidence from Cafcass Cymru

Cafcass Cymru provides a statutory service on behalf of Welsh Ministers in the non-devolved family justice system in Wales through The Children Act 2004. The service is located in the Health and Social Services Group of the Welsh Government. We only become involved in the lives of children and young people when ordered to do so by the court and we provide expert child-focused advice and support to safeguard children. An integral part of our role is to ensure the voices of children and young people are heard in the family courts and their wishes and feelings are clearly communicated so that decisions can be made to promote their welfare interests throughout their minority.

Variation in care rates

CYPE comment: *We are interested in the reasons behind the varying care rates between Welsh local authorities, even when deprivation is accounted for. We are also interested in the significant difference in the care rates between England and Wales and note the higher rates of children in Wales that remain placed with the family but on a care order. How the ‘threshold criteria’ of significant harm is being evidenced.*

Cafcass Cymru response

Cafcass Cymru practitioners work across the 22 local authority areas in Wales and our knowledge and experience reflects only those cases that come before the court and not those that remain managed by local authorities. Our practitioners report that cases coming before the court meet the threshold of significant harm as set out in legislation. If this threshold is not met, the matter will not remain before the court, although in our experience there are very few cases that come before the court that do not meet the threshold. Our practitioners have a duty to consider all the viable options available to the court and make welfare recommendations on each child and young person’s individual circumstances considering their current and future needs and whether and how the plan before the court can meet those needs.

We fully support the ongoing work programme of the President of the Family Division and the Public Law Working Group of which we are actively involved in, enabling us to be strong advocates for the children and young people of Wales. As a result, our practitioners are mindful of all guidance issued and how this should be implemented when making recommendations to the court in respect of children and young people. Of relevance to this enquiry is the Public Law Working Group final report (March 2021) where there is a clear message:

‘Court proceedings must be necessary and proportionate, an option of last resort, be clear why this application, why now’.

‘where threshold is met, it is not always right or proportionate to arrange a legal gateways/planning meeting’.

Local authorities are expected to consider how this risk can be managed in an alternative way to court proceedings.

- Cafcass Cymru recognises there is a variable approach by local authorities regarding how their resources are managed. This can lead to a variation in the provision of pre-proceedings services and in the implementation of the Public Law Outline (PLO) process.
- The variations and approaches in PLO implementation are widely recognised. We understand Care Inspectorate Wales (CIW) is undertaking a thematic review of several local authorities in Wales to provide external scrutiny, assurance and to promote improvement regarding the quality of practice in relation to the care planning for children and young people subject to the PLO pre-proceedings. Following completion of the reviews, we understand CIW will publish an overall report on its findings.
- A thematic audit of public law cases undertaken by Cafcass Cymru in November 2020 looked at 75 care applications (in which we were involved) made during March 2020 and considered in depth the experience of 131 children before, during, and at the conclusion of proceedings. It considered any emerging

themes before concluding with recommendations to improve practice and consider what could be done differently to enable children to be safely diverted away from court.

- Our key findings indicated 38 applications (51%) were made where the local authority had not initiated the PLO process. We concluded that 31% of those children not subject to PLO may have benefited from being protected at an earlier opportunity. The lost opportunities to protect them mainly stemmed from families who had been known to the local authority for more than two years with repeated referrals and closures and no apparent oversight or analysis of the impact on the children of the ongoing neglect / abuse.
- We believe that robust PLO pre-proceedings work is essential in ensuring good and timely decision making for the lives of children and young people.
- Where there is a plan for a child or young person to remain or return home under an order / no order, our practitioners would expect to see an evaluation of all the options available to the court undertaken by local authority social workers. This should include a thorough analysis and a balancing exercise of all the options. Our practitioners are required to provide an analysis of the realistic plans and make subsequent recommendations to the court.
- The Public Law Working Group issued clear guidance about the “*mis-use of care orders at home*” the reasons must be “*exceptional*”. Our practitioners report there has been a reduction in the practice where children are placed at home on care orders, and such plans are now subject to more scrutiny by the court. We hope the launch of the best practice guidance developed by the Public Law Working Group on supervision orders (*Recommendations to achieve best practice in the child protection and family justice systems: Supervision orders October 2022*) alongside Care and Support Plans under the Social Services and Wellbeing (Wales) Act 2014 further reduces placement of children at home on care orders.
- Working with local authorities and the judiciary, we developed the protocol across Wales for the accelerated discharge of care orders. This has enabled the length of court proceedings to be shortened, reduced the number of court hearings, and achieve more timely outcomes for the child/young person.

- Our practitioners report an increase in the use of family group conferencing and have experience of this being used positively, impacting on better outcomes for families with the development of robust care and support plans leading to less orders being sought and made. This is encouraging but it is not consistent across Wales.

Public Law proceedings

CYPE comment: *The Public Law Outline (PLO) and the quality of pre-proceedings work undertaken with families, the statutory requirement to complete public law cases within 26 weeks, the impact of the relaunch of the PLO and whether it impacts on the sufficiency of time to complete complex parenting assessments with some families.*

Cafcass Cymru response

Cafcass Cymru welcomes the President of the Family Division's re-launch of the PLO and the drive for right and timely outcomes for children and young people. We also recognise cases can be complex and multi-faceted involving external factors that impact on the speed in which cases can be concluded. Whilst some cases may rightly take longer, these should be appropriately timetabled by the court and be focussed on achieving the right outcome for each individual child and young person even if this takes longer than 26 weeks.

- Cafcass Cymru is acutely aware of the current difficulties faced by some local authorities in Wales with recruiting and retaining social workers and this can impact on the timely completion of assessments. This can also result in some local authorities having to rely on independent social workers undertaking assessments on their behalf, which can incur further delays.
- Our practitioners report some excellent examples in the quality of pre-proceedings work undertaken within the PLO across Wales but also note inconsistencies in practice between, and within, local authorities.
- In June 2022 we and Cafcass (England) undertook a parallel audit of care proceedings cases in Wales and England respectively that were over 48 weeks long. We identified 42 cases in which we were involved that met this criteria: a

relatively small number compared to the 1414 in England. The findings provided a brief snapshot of what was causing the delay and highlighted the complexity of the cases before the court and the acute issues that impact on the lives of children in public law proceedings. The findings of the Wales audit showed:

- **19 cases (45%) listed assessment outcomes outstanding**
 - **15 cases (36%) listed awaiting final placement**
 - **5 cases (12%) listed international complexities**
 - **3 cases (7%) listed parallel criminal proceedings.**
- The recent re-launch of the PLO emphasises that expert assessments should only be considered if they are ‘absolutely necessary’ and are required to resolve the case justly. This re-focus should help to rebalance the status of local authority social workers and guardians being considered as ‘*experts*’ within the family court.
 - Our practitioners recognise the impact external factors have on any assessor’s ability to properly consider all risk factors and information. For example, information from health professionals, the police, the probation service, as well as increasingly the social media records of parents, are often relied upon to reach conclusions and recommendations, but this information can be delayed or excessive in volume, thus impacting on timescales.
 - The re-launch of the PLO highlights the importance of compliance with court timetables to ensure timescales are maintained for the best interests of children and young people awaiting permanency decisions about their futures. At the re-launch of the PLO, members of the Family Justice Young People’s Board challenged all professionals working in the sector to not carry-on accepting delays but to know the impact it has on children, their families, services, and the courts.
 - We recognise the delicate balance in making sure sufficient time is given to enable assessments to be robust and not rushed, whilst understanding the need to achieve a timely outcome for the child or young person and focussing on their individual needs. Our practitioners report that cases involving the request for purposeful delay in decision making to enable better outcomes for children and young people are viewed favourably by the Court and supported by an extended timetable. However, our practitioners would also recognise cases in which drift

has occurred causing unnecessary delays, which are unacceptable. We support the recommendations from the Logan Mwangi Child Practice Review published by Cwm Taff Morgannwg Safeguarding Board and will work with partners to implement them.

Care experienced parents

CYPE comment: *our view on very strong evidence we have heard that care experienced parents face stigma and that their parenting capacity is pre-judged to be negative during social worker assessments.*

Cafcass Cymru response

Information about care experienced parents is not routinely captured by Cafcass Cymru. However, we recognise the value in doing so and are considering ways in which we could do this going forward.

- Part of the role of the Cafcass Cymru practitioner is to scrutinise plans and assessments undertaken by local authority social workers to ensure that all assessments are balanced and consider all the relevant factors.
- If it was considered the reports/assessments were pre-judged and negative because the parent involved in care proceedings was care experienced, we would expect our practitioners to highlight this to the court.

Workforce

CYPE comment: *The extent to which staff pressure, workload and turnover in local authority children's services has any impact on public law proceedings and in which ways (if relevant).*

Cafcass Cymru response

Cafcass Cymru is aware of the challenges facing local authorities across Wales in recruiting and retaining social workers, which can cause delay for children and young people both pre-proceedings and during proceedings which are unacceptable. We are also facing difficulties in recruiting experienced social workers into practitioner posts.

- It is evident there is a challenge for some local authorities to be able to recruit and retain social workers, especially those that have experience in care proceedings work. This can lead to multiple changes in allocated social worker pre-proceedings and during proceedings which may impact on timescales. More significantly for a family this can mean having to build relationships with new workers and repeat information.
- Turnover in social workers can impact the quality and amount of work undertaken pre-proceedings, cases should be ready and often the reality of local authorities' staffing difficulties mean that assessments are at times incomplete and need to be repeated during proceedings, which can lead to delays.
- The impact of a change in social worker can result in a lack of continuity for a child or young person and may mean that the Cafcass Cymru practitioner is the most consistent figure during proceedings. It is extremely important that the court has a full and detailed understanding of the child or young person's wishes and feelings to be able to make decisions about their future.

Placements

CYPE comment: *The quality, care, and availability of for children living in residential care homes and foster placements in Wales. Unregistered care homes for children in Wales, the extent to which they are used and the level of concern you have about their use.*

Cafcass Cymru response

Cafcass Cymru is aware of the difficulties faced by local authorities when trying to source appropriate accommodation placements for children and young people.

- Our practitioners are concerned about the increased use of unregistered placements across Wales and the impact this has on children and young people, their health, education, stability, and individual needs.
- Whilst our practitioners have experience of when **short-term** unregistered placements have met their immediate needs, it should be noted that these placements do not meet legal requirements under RISCA (Regulation and

Inspection of Social Care (Wales) Act 2016). We recognise the shortage of specialist secure placements for children and young people and the impact this has on their safety.

- In a recent judgement the President of the Family Division (Re: X – Secure Accommodation: lack of provision) published on 25th January 2023 highlighted the lack of secure placements as an issue for England and Wales often leading to the increased use of Deprivation of Liberty Orders under Inherent Jurisdiction in the High Court and the use of unregistered accommodation.

Advocacy Services

CYPE comment: *the provision of Parental Advocacy and Independent Professional Advocacy for children and young people and its impact on Public Law proceedings.*

Cafcass Cymru response

Cafcass Cymru has had positive experiences of working in partnership with Children and Young People's Advocacy services and we have recently developed a joint working protocol with advocacy providers in Wales which highlights each of our roles and responsibilities and how we work with children and young people.

- Advocates can have long standing involvement (before and after proceedings) in a child's life and the professional relationships they develop with children and young people can be invaluable in being able to understand their wishes and feelings and assist in accurately reporting them to the court.
- Whilst parents are legally represented from the time the PLO process commences, we welcome the Welsh Government's initiative to support the introduction of independent parental advocacy services for parents during pre-proceedings stage and within the court arena.

Corporate parenting

CYPE comment: *Your views on the extent of support from agencies in terms of support for care experienced children.*

Cafcass Cymru response

In our experience local authorities have a good understanding of their role as a corporate parent. However, our practitioners report occasions where other agencies could do more to meet the specialist and complex needs of care experienced children and young people. We welcome Welsh Government's work to strengthen the duty on agencies to support care-experienced children/young people, in particular health services.