

Section 11 A – P (Children Act 1989) Guidance

Guidance to Cafcass Practitioners on their roles in supporting the courts in their use of the section 11 A - P provisions, Children Act 1989 (as inserted by the Children and Adoption Act 2006)

1. Introduction

1.1 On 8 December 2008, sections 1-5 and 8 of Part 1 of the Children and Adoption Act 2006 came into force. Their effect is to amend section 11 of the Children Act 1989, by inserting sections 11A-11P into the 1989 Act. These provisions confer additional powers on the courts, when they are dealing with applications for contact orders made under section 8 (Children Act 1989). The provisions also place a number of specific new duties on Cafcass. This guidance describes the new provisions, in terms of what Cafcass officers should do in supporting the work of the courts. The guidance has been drafted in consultation with the Magistrates' Association, the Association of HM District Judges and the President of the Family Division, Sir Mark Potter, who has disseminated this guidance to the judiciary, with his endorsement of its contents. This means that the courts will be anticipating that Cafcass will undertake its work in the ways described below.

2. Making and Monitoring of Contact Activity Directions and Conditions (sections 11E and 11G)

2.1 Section 11E of the (amended) Children Act 1989 enables the court to ask for information from a Cafcass officer ('an officer of the Service') in the process of making a contact activity direction (CAD) or contact activity condition (CAC). Section 11G enables the court to ask the Cafcass officer to monitor and report on compliance with any CAD or CAC. A CAD can be given at any time when the court is considering making, varying or discharging a section 8 contact order. A CAC can only be made when a court makes or varies a section 8 contact order.

2.2 There are to be three types of contact activity:

- information/assessment meetings about mediation (provided by LSC-approved providers on a one-off basis, free of charge to both parties if either party is publicly funded)
- parenting information programmes (provided by DCSF-commissioned providers, typically involving two two-hour groupwork sessions, free of charge to those parties who are publicly funded or who would experience hardship if they were required to pay (the financial regulations may be found at http://www.opsi.gov.uk/si/si2008/pdf/uksi_20082940_en.pdf) (NB mediation itself cannot be ordered by the court)
- domestic violence prevention programmes (provided by DCSF-commissioned providers) involving an intensive programme of 60 hours' intervention. These are also free of charge to those who are publicly

funded or who would experience hardship if they were required to pay (the financial regulations may be found at http://www.opsi.gov.uk/si/si2008/pdf/uksi_20082940_en.pdf).

2.3 Before making a CAD or CAC, the court must satisfy itself about the appropriateness of making a direction/imposing a condition. The court must consider:

- the local availability of contact activities (information about approved providers may be found at http://cafint01/Intranet/knowledge_base/partnerships/partnerships_map.aspx)
- the accessibility of the location of the activity,
- the suitability of the party to participate in the activity (taking account of religious beliefs and work/education commitments), and
- the likely effect of undertaking the activity.

The court must also consider the suitability of the provider, though this has been addressed by ensuring that all providers are approved by either the LSC or DCSF (on behalf of the Secretary of State). The child's welfare is the court's paramount consideration. A Cafcass officer is under a duty (under section 11E(7)), if requested by the court, to inform the court about all of these issues.

2.4 In practice, the Cafcass officer is very likely to have suggested to the court, either at the first or second hearing in a contact case, that participation in a contact activity might be beneficial. The potential benefits of a CAD/CAC might well have been identified by the Cafcass officer at the first hearing, either in a Schedule 5 letter to the court or orally. If recommended subsequently, the recommendation is likely to be made in the Initial Analysis and Recommendations on the basis of a Cafcass assessment. If the court accepts such a recommendation, the court may then ask the Cafcass officer to provide information about the issues listed at 2.3 above.

2.5 In practice, the attitude of the parties towards the potential activity will be a key consideration to address, not least because of the possibility that one or both parties might be required to pay for the cost of the activity. This will be an important factor to address in any oral or written report to the court. In the case of mediation assessments, those parties in cases whether neither person is publicly funded will be required to pay (a sum of about £80). Both parties will be required to participate, but can initially be seen separately. In the case of parenting information programmes, a self-funding party will be expected to pay about £200. In this type of contact activity, it will generally be the case that both parties are required to participate, though the programmes will be delivered to parties separately from one another. In the case of domestic violence prevention programmes, they will be focused on one party, who has conceded, or where it has been found through a finding of fact, that

they are responsible for causing harm (as defined by the President's Practice Direction dated 9 May 2008 'Residence and Contact Orders: Domestic Violence and Harm'). In addition, support services are likely to be offered to any adult victim of harm and to any current partner of the perpetrator. For a party who is not eligible to be subsidised, the cost of participation in the programme (up to £2,500) is likely significantly to influence the potential participant's perspective. In this type of intervention, a suitability assessment by the potential programme provider will be undertaken, in addition to any work carried out by Cafcass, in order to give the best possible information to the court about the party's suitability and the likely impact of the activity.

2.6 In accordance with section 11G, the court may decide to ask the Cafcass officer to monitor whether the party (or, more usually, the parties) attended the contact activity and to report to the court on any non-compliance with the CAD/CAC. Cafcass is under a duty to provide this information to the court. In addition, the court may also ask Cafcass to provide information about the impact, beneficial or otherwise, of attendance, in terms of helping to address the issues in the case. Both elements will require there to be liaison with the provider, information from which should be reported to the court, together with any additional Cafcass analysis and recommendations. In some cases, the Cafcass officer will have been asked by the court to have other forms of involvement with the parties and/or the child during the period of participation in the contact activities, the outcome of which should also be reported to the court.

3. Requirement to monitor a contact order (section 11H)

3.1 When the court is making or varying a section 8 contact order, it may ask a Cafcass officer, who is under a duty to respond to the request, to monitor whether there is compliance with the terms of the order and to report to the court about compliance-related matters. This may relate only to the period when the proceedings are before the court or it may, alternatively or in addition, relate to a period (of up to 12 months) after the proceedings have ended.

3.2 With nearly 40,000 contact orders having been made in 2007, this provision has major potential resource implications for Cafcass. It has been agreed with the President that the general assumption is that the provision should not be used in 'consent order' cases where proceedings have ended. Instead, consideration of its use should be limited to those cases where the issue of contact has remained in dispute during the proceedings and where a trial and judicial determination of the contact issue has taken place. For example, where there is a strong feeling of dissatisfaction on the part of one or both parties, the court may consider that the imposition of a monitoring requirement is appropriate. Unlike the situation with Family Assistance Orders (see Section 6), the consent of the parties is not required.

3.3 The court may end the proceedings, having made a contact order with a monitoring requirement, or it may set a further date for a review hearing

(usually before the same judge). In either event, it is essential that timely monitoring takes place in the immediate aftermath of the contact order (and monitoring requirement) being made. This monitoring is likely primarily to take the form of telephone contact with both parties and, where children are of sufficient age and level of understanding, also with the children. To assist in this process, the Cafcass officer should consider recommending to the court the type of arrangements that need to be included in the contact monitoring requirement to enable it to be operated effectively. For example, the parties may need to be directed to provide telephone contact details to Cafcass, to respond to phone calls, voicemail messages and other communications from Cafcass and to facilitate communications between Cafcass and the subject children. This is provided for by section 11H(8). The focus of the monitoring should be on the issue of whether there is compliance with the terms of the order. The act of monitoring is neither a punitive nor a welfare intervention. Where early contacts with the parties and children reveal that compliance is adequate, it may be appropriate to reduce the frequency with which monitoring takes place, especially in the case of requirements that are of many months' duration.

3.4 The court may request that it be notified in writing about the outcome of the monitoring, either at the end of the monitoring period if compliance has been adequate, or at an earlier stage if the Cafcass officer forms the view that compliance is inadequate. Non-compliance may take the form of an absolute refusal by the resident parent to allow contact to take place, which may occur at the point at which the order is made or at a later stage. At the other end of the spectrum, non-compliance may take the form of a chronic series of more minor failures to observe the terms of the contact order. Such chronic cases should not be allowed to 'drag on' across many weeks or months. Instead, the court should be notified that, in the view of the Cafcass officer, there has been non-compliance, together with details of the series of minor (or more major) infractions. The court should also be asked for guidance about how it wishes to proceed.

3.5 On receipt of such a notification, the court may, if a review date has been set, choose to bring forward a hearing in order to consider the matter. Alternatively, if proceedings are at an end, the court will need to await the making of an application for enforcement (see Section 4 below) by a party. In either case, the Cafcass officer will need to ensure that any letter of notification to the court is also sent to both parties. In addition, the Cafcass officer will need to consider how this letter's contents might best be communicated to the affected children. Once non-compliance has been notified to the court, the parties and, in the most appropriate way, the children, monitoring should continue while the guidance of the court is awaited about how it wishes to deal with the reported non-compliance.

3.6 The new provision for the imposition of contact monitoring requirements may replace the use of addendum reports in many contact cases, with brief reports instead being focused on the facts of compliance. The task of monitoring compliance with contact orders is one that might most appropriately be undertaken by Family Support Workers, working in

consultation with the Cafcass officer who has undertaken the bulk of the work during the previous proceedings. This arrangement may also be an effective one where contact monitoring is ordered as part of Cafcass' intervention during ongoing proceedings

4. Making and monitoring of enforcement orders (sections 11L and 11M)

4.1 Where a contact order, to which a warning notice is attached, is considered to have been breached, an application for an enforcement order may be made. If the court is satisfied beyond reasonable doubt that a person has failed without reasonable excuse to comply with the contact order, it may make an enforcement order imposing an unpaid work requirement (of between 40 and 200 hours) on the person who has failed to comply with the contact order. Cafcass will be sent by the court a copy of each C79 enforcement application that is received, to enable Cafcass to undertake updating screening checks with the relevant local authority and the police (see the Cafcass Private Law Enforcement Interactive Pathway for further details). Some applications will be made subsequent to a Cafcass notification of non-compliance, while others will arise in cases where Cafcass has not recently been actively involved. In either type of case, the outcome of the checks needs promptly to be notified to the courts, together with any other requested information. The court has discretion to join the child as a party to enforcement proceedings. The child is not automatically a party even where he or she was a party to the original proceedings which led to the making of the contact order. Cafcass may be asked to advise the court whether the child should be joined as a party. In practice it will rarely be necessary, and Cafcass Legal can advise in cases of difficulty.

4.2 Before making an enforcement order against a person who has failed without reasonable excuse to comply with a contact order, the court is required to satisfy itself that an enforcement order is necessary to secure the person's compliance with the contact order and has to consider the likely effect of an enforcement order on the person, including in terms of any conflict with the person's religious beliefs or their education/work arrangements. The court also has to be satisfied that provision for unpaid work is available locally. A Cafcass officer is under a duty to provide information about suitability and availability if the court requests it. In order to inform the court about the local availability of unpaid work, it will be necessary to liaise with the local National Probation Service (NPS), which stands ready to provide unpaid work to those ordered by the court to undertake it. If the court does not grant leave to Cafcass for disclosure of information about the case to the NPS, the court's leave should be obtained before doing so. When considering whether to make an enforcement order with an accompanying unpaid work requirement the court must take into account the welfare of the child who is the subject of the contact order that has been breached, but the child's welfare is not its paramount consideration.

4.3 On making an enforcement order, the court is to ask a Cafcass officer to monitor compliance with any unpaid work requirement that it has imposed when making an enforcement order. The monitoring of individuals' compliance with unpaid work requirements will be undertaken by the NPS, on a similar basis to that followed with those referred to it by the criminal courts. The Cafcass officer will need to notify the NPS (which will fulfil the role of the 'responsible officer'), which in turn will report to Cafcass on compliance. In cases where the NPS determines that there has been non-compliance without reasonable excuse, this will be reported to Cafcass. Similarly, if an individual is or becomes unsuitable to perform unpaid work, Cafcass will also be notified of this by the NPS. In both instances, the Cafcass officer must report such matters to the court. In addition, there may be other matters that are reported to Cafcass by the NPS for onward communication to the court, such as a situation in which an individual moves from their address without providing a new address.

5. Compensation for financial loss (section 11O)

5.1 Where a contact order has been made and, as a result of one party's non-compliance with its terms, the other party suffers financial loss, that party may apply to the court for compensation to cover the cost of that loss. While Cafcass is unlikely to be aware of such applications having been made, it is possible that the court will seek information from Cafcass about the welfare of the child, given the requirement placed on the court by section 11O(14) to take into account the welfare of the child concerned. Cafcass should respond in accordance with the specific request made by the court. The court has the discretion to decide whether to join the child as a party. (See para 4.1.)

6. Family Assistance Orders (FAOs) (section 16) and Risk assessments (section 16A).

6.1 In addition to the provisions relating to contact with children, which amend section 11 of the Children Act 1989, Part 1 of the 2006 Act made two other amendments to the 1989 Act, both of which were implemented on 1 October 2007. Section 16 of the Children Act 1989 has been amended to remove the 'exceptional circumstances' requirement relating to the making of FAOs and has increased their maximum duration from six to twelve months. Cafcass guidance on FAOs may be found at <http://www.cafcass.gov.uk/publications/policies.aspx>. Section 16A of the Children Act 1989 now places a duty on Cafcass to make risk assessments (and report them to the court) wherever there is cause to suspect that a child is at risk of harm. Cafcass guidance on risk assessment is set out in the [Cafcass Safeguarding Framework](#).