

Evidence submitted by HM Magistrates' Court Service Inspectorate (MCSI)

STATUTORY REMIT OF MCSI

1. MCSI welcomes the decision of the Constitutional Affairs Committee to examine family justice and the family courts.
2. Under the terms of the Justices' of the Peace Act 1997, HM Magistrates' Courts Service Inspectorate (MCSI) is required to inspect and report to the Lord Chancellor on the organisation and administration of magistrates' courts for each magistrates' courts committee (MCC) area. MCSI's powers to inspect CAFCASS are set out at section 17 of the Criminal Justice and Court Services Act 2000. The same Act also established CAFCASS.
3. Under the Courts Act 2003, from April 2005 MCSI will cease to operate and will migrate to become HM Inspectorate for Court Administration (HMICA) with responsibilities for inspecting the system that supports the carrying out of the business of the courts (HM Courts Service). Its responsibilities for inspecting CAFCASS will continue in England. In Wales, where under provisions in the Children Bill currently before Parliament CAFCASS will be devolved to the Wales Assembly, HMICA will inspect the service.

BACKGROUND

4. MCSI has not routinely focused its inspection of MCCs on family proceedings. However, in May 2001 it published "A Review of Case Administration in Family Proceedings Courts". Since April 2001, MCSI has built up a systematic body of inspection evidence and has published 20 reports of the inspection of CAFCASS. These include Seeking Agreement (December 2003), the report of a Thematic Review of dispute resolution schemes involving CAFCASS at an early stage of private law proceedings. This report is specifically relevant to proposals that are set out in the Green Paper Parental Separation: Children's needs and parents' responsibilities (July 2004) and MCSI's headline response to the consultation is set out below at paragraphs 18-24.
5. MCSI gave oral evidence to the Select Committee of Inquiry into CAFCASS in April 2003 and submitted its inspection reports as advance information.
6. MCSI's relevant recent sources of information for the current Inquiry include, in particular, its inspection reports:
 - Thematic Review—Seeking Agreement (December 2003).
 - Overview report—Towards Year Three (April 2004).
 - Tackling Delay (July 2004).
 - Training and Quality Assurance for Service Delivery (July 2004).
 - Managing CAFCASS (August 2004).
 - South West Region (October 2004).
7. All the above reports are available on MCSI's website at: www.MCSI.gov.uk

THE FAMILY JUSTICE SYSTEM—RECOGNITION AND DEVELOPMENTS

8. There is widespread recognition that although there are courts that are not explicitly called "family courts", there is a well-established set of arrangements across England and Wales. Government departments and a wide range of professionals know these as "the family justice system". There have been many initiatives to continue to develop and improve the effectiveness of the family justice system. For example, there have been the President's Inter-disciplinary Committee, the interdisciplinary conferences held every two years (with published papers), publications such as *Working in the Family Justice System* (1998), the outputs from The Advisory Committee on Family Law and the Protocol for Judicial Case Management in Public Law Children Act Cases (2003). This year has seen the establishment of the Family Justice Council. MCSI believes that setting up HM Courts Service will also help further align practice, procedure and efficient deployment of resources in family proceedings.

THE FAMILY JUSTICE SYSTEM AND ITS LACK OF OVERALL AIMS

9. However, MCSI also notes the absence of clear and agreed aims for the family justice system. Instead, there is a range of arrangements such as departmental objectives and public service agreements. Some of these, such as increasing the level of contact between children and their separated/divorced parents, approach what might be considered as an example of a family justice objective. Delivering due process and justice might be considered as another. But, in family matters, justice for a parent may conflict with the need to ensure justice and welfare for the child.

10. Clear aims for the family justice system would in turn facilitate the development of objectives, performance indicators and targets. These would help assess the performance of the family justice, identify where it needs to improve, and make better use of the considerable resources that it utilises. These developments should encourage the specification of the next generation of judicial statistics that need to be generated.

OUTCOMES FOR CHILDREN

11. Among the key aspirations underpinning Every Child Matters and the children bill currently before Parliament is defining what is meant by better outcomes for children. To support this ambition, the process has begun of setting set out measurable indicators. These should provide more reliable evidence as to whether, over time, such outcomes are being achieved. Clear links will be needed to join up these kinds of developments with the family justice system in order to assess its contribution to the delivery of better outcomes for children.

12. Joint Area Reviews are one of the children bill provisions that aim to link the contribution made by a wide range of services in some 150 areas across England to achieving improved outcomes for children. There is an opportunity to link such outcome measures related to services for children with court generated evidence about those children who are the subjects of decision-making in family proceedings.

EXPECTATIONS OF PROFESSIONALS AND THE PUBLIC ABOUT THE AIMS OF FAMILY JUSTICE

13. MCSI's inspections of CAF/CASS show that once one moves beyond protecting and

safeguarding children who are, or may become, the subject of family proceedings, there are wide differences of professional view about the purpose of family justice related work, as well as the best ways of achieving improved results. Similarly, it is increasing apparent to MCSI that the parents and children as service users whose views inspectors elicit have very different opinions. These cover what they want and expect, as well as what they feel entitled to and need from their dealings with the family justice system.

14. There are also different expectations by the public at large, and some professionals about what are, or should be, the aims for care proceedings initiated by local authorities on behalf of the State (Children Act 1989 section 31), as well as how in practice they are delivered. The position is sometimes characterised by the criticisms that either the authorities have acted precipitously early or far too late. Whilst there may well be more agreement about the need to ensure the best welfare outcomes for the child, there are differences of view about the optimum ways of achieving these.

15. Some of the high profile views of groups representing parents of both genders about disputed residence and contact (Children Act 1989 section 8) also reveal a wide range of opinions. Here, there seems to be a lack of consensus about whether the current arrangements for making decisions about children in private law family proceedings are satisfactory. Again, as with public law, there are differing views and expectations about how child welfare is best assured in the context of the rights of both the children and their parents.

PROTOCOL FOR JUDICIAL CASE MANAGEMENT IN PUBLIC LAW CHILDREN ACT CASES (2003)

16. The ambitions of the courts led Protocol (to enable the court to deal with every care case justly, expeditiously, fairly and with the minimum of delay) are wholly commendable. MCSI visits to CAFCASS and courts suggest that significant progress is being made in achieving the Protocol targets. However, the Protocol requires a great deal of interagency co-operation and commitment, particularly from local authorities and CAFCASS, to feed into the courts. In many areas of the country, CAFCASS is able to play its full part. But in many other areas, it continues to have difficulties in appointing children's guardians promptly. This apparent lack of capacity is perceived by courts as significantly undermining their ability to meet Protocol targets. It also puts children at risk in the proceedings if their voice and needs are not properly heard through the children's solicitor and children's guardian (known as the "tandem model"). As MCSI has stated in its recent reports, it means that in some areas and for some children, CAFCASS is failing in its statutory duty to safeguard and promote the welfare of children in family proceedings, as set out in section 12(1) of the Criminal Justice and Court Services Act 2000, although it is not possible to put an exact figure on this.

PRIVATE LAW APPLICATIONS—DELAY

17. The effectiveness of family proceedings dealing with contested applications around contact and residence under section 8 of the Children Act 1989 is also dependent to some degree on how well courts and CAFCASS work together. Again, MCSI regrets having to report that delay in CAFCASS filing welfare reports in private law in a few parts of the country is up to 26 weeks. In MCSI's view, this is chronic and unacceptable. CAFCASS continues to address these matters nationally. In MCSI's view, there needs to be much greater flexibility in private law reporting by CAFCASS, particularly where a shorter and speedier report is needed about a single issue. This in turn would help, to some extent, to

free up capacity to deal with some of the most complex cases, including where in the higher courts the child is made a party under the provisions of rule 9.5. In its reports, MCSI has also urged CAFCASS and courts to agree protocols for the ordering of section 7 welfare reports. MCSI has undertaken extensive reading of CAFCASS private law reports. As such, it has some doubts whether the repetition of much background material from the applicants' and respondents' statements and other supporting documents about the history of the relationship and its breakdown adds sufficient value for the courts to aid them adjudicate issues, such as the child's contact and residence. The proposals in the Government's Green Paper discussed below offer CAFCASS a chance to re-align its resources and focus in private law matters.

SUMMARY MCSI RESPONSE TO THE GOVERNMENT'S GREEN PAPER PARENTAL SEPARATION: CHILDREN'S NEEDS AND PARENT'S RESPONSIBILITIES (JULY 2004)

18. MCSI welcomes the Government proposals set out in The Paper. The proposals are far reaching. Current arrangements demonstrate a need for a "social" rather than "legal" gateway into the system of Family Justice. MCSI is of the view that the full implication of the proposals is the recognition of the need for a social work service for those families facing relationship breakdown.

19. CAFCASS is given a high profile throughout most of The Paper and is well placed to take on and develop the social work tasks set out in the Government's proposals. MCSI anticipates that this would entail a reconfiguring of CAFCASS activity with consequent training implications.

20. The Paper provides a framework for a flexible, responsive, customer focused system for family justice. The proposed system opens up opportunities to provide support (care) alongside the enforcement of court decisions if necessary (control). Social work is at root the balance of care and control. However, MCSI considers that service users do not see CAFCASS as a support service and it would need to be marketed as such.

21. Until recently, Family Justice has not been subjected to systematic research or rigorous inspection. Consequently, views about it, whether supportive or critical, tend to be based on anecdotal rather than systematic evidence. In particular, there is little if any evidence about outcomes of the Family Justice System.

22. In MCSI's experience, there is little systematic evidence to support the claim made about in-court conciliation in The Paper that "such an approach is known to work where it is currently used". MCSI urges caution before steps are taken to implement the proposal to extend in-court conciliation systems nation-wide. Ideally, much more research evidence is needed to underpin the future direction of Government policy.

23. The Paper notes the extent and range of emotions bound up in adult separation and separation from their children. Based on meetings with service users and observations of practice, MCSI concludes that answers to almost all of the consultative questions need to be set in the context of such emotional responses. As such, in order to provide the right service for parents at the optimal time, intelligent, sensitive, child focused and systematic assessment skills will need to be brought to bear.

24. Implementation of many of the Green Paper's proposals is contingent in each case on the early assessment of risk to children, adults and the public. Currently, there is no tool for systematic risk assessment in use by CAFCASS or the courts.

MCSI'S CONCLUDING COMMENTS TO THE COMMITTEE

25. MCSI concludes that there is a need to try and reach agreement on a set of aims and key objectives for the family justice system, as currently constituted. All other developments, such as more effective interagency working by all the main constituents of the family justice system, need to contribute towards such aims and objectives. In MCSI's view, an agreed set of aims and objectives would help to:

- clarify the roles of all key stakeholder organisations and their work;
- provide a framework within which to locate further developments across the family justice system;
- help to reduce some of the public and professional confusion about achieving child welfare within family proceedings; and
- encourage explicit links between the children bill provisions and the family justice system aimed at achieving assessed better outcomes for children involved in family proceedings.

Arran Poyser

Director

Inspection of CAFCASS

1 November 2004