

## **Evidence submitted by Napo**

### **A. INTRODUCTION**

Napo welcomes the opportunity to submit written evidence to the second inquiry into the functioning of the Family Courts since 2003.

Napo is the Trade Union and Professional Association for Family Court and Probation Staff. Napo currently has just over 620 members in CAFCASS, the majority of whom are practitioners and managers working within the private law arena, but Napo also represents an increasing number of public law and newly appointed staff undertaking both public and private law work. Collectively Napo's members have a substantial number of years' experience of assisting the courts to resolve family disputes, following separation or divorce, in the best interests of children. Napo has overseen many changes in emphasis of the tasks over the last 20 years and therefore feels well placed to comment on the issues that the Committee is currently investigating.

### **B. INITIAL INQUIRY**

Napo gave both written and oral evidence to the first inquiry into the functioning of CAFCASS, the Children and Family Court Advisory and Support Service. In that evidence in March 2003 Napo concluded:

Napo gave both written and oral evidence to the first inquiry into the functioning of CAFCASS, the period has been characterised by sound management intentions, which have not always been implemented in the workplace. For the future, CAFCASS urgently needs to develop a training strategy for existing staff and new recruits. It needs to examine the feasibility of a trainee or apprenticeship programme. CAFCASS needs to develop, in conjunction with staff, an IT database for case management. CAFCASS needs to take urgent steps to reduce unallocated cases. The organisation needs to develop a workload measure for practitioners and managers. CAFCASS needs to develop its Human Resources policies in order to retain and attract qualified workers. CAFCASS needs to implement family-friendly policies, which would have the effect of encouraging a diverse workplace".

Napo acknowledges that improvements have and are being made in the management of CAFCASS. However, Napo believes that there are still a number of areas that require significant attention, including the long-term training strategy and the proposals for a case recording system. Napo welcomes the reduction in unallocated cases in some geographical regions, but still believes that the time taken to complete cases because of staff shortages and workloads is unacceptable. There is still need for human resources policies to be developed in order to attract and retain qualified workers, and CAFCASS would benefit from family-friendly policies to encourage a diverse workforce.

### **C. GREEN PAPER—PARENTAL SEPARATION: CHILDREN'S NEEDS AND PARENTS' RESPONSIBILITIES**

Napo has submitted evidence on the Government's Green Paper on Parental Separation. Copies of this will be made available to the Committee if required. In its evidence Napo gave cautious support to the Green Paper and its emphasis in supporting parents to "problem solve" and focus on their children's needs in an early stage of the dispute. In addition, Napo concurred with the view that there should be improved information and

support made available to separating parents, with a view to avoiding unnecessary adversarial court disputes. This information needs to be a mix of legal advice and information that enables parents to better understand their children's needs and responses to the separation, and what will help them manage this in the least problematic way. Napo also recognises that the management of parental separation is an ongoing process and not a single event and that there needs to be a broad range of information and support services available to parents and children at different stages of the process.

## **D. KEY AREAS**

### **1. Is the Family Court System being run effectively?**

Napo is concerned that any analysis of whether the Family Court System is being run effectively should be based on the underlying principles of the Childrens Act and the focus should be on the welfare of children. Recent activities of some pressure groups and the media attention they have achieved, should not obscure the intention of the Family Court System which is fundamentally to meet the welfare needs of children. The definition of "effective" is therefore crucial.

Napo supports the principles enshrined in the Green Paper of early support and intervention with the small proportion of families that are accessing the Family Court System. There are already many examples of good practice in which as a result of collaborative working between families, the judiciary, CAFCASS staff and other professionals, effective resolutions are reached. Napo would be supportive of continuing development of this work.

Napo is, however, of the view that considerable caution needs to be exercised in understanding the underlying problems that the Family Court System may appear to present. The Family Court System cannot resolve all family disputes to the satisfaction of all involved, nor did it create them in the first place. The majority of cases coming before the courts are extremely complex and time consuming and courts are often faced with managing contradictory needs and unrealistic expectations.

It is Napo's view that the effectiveness of the courts is significantly impaired by delay, lack of court time, the over adversarial approach adopted by some of the players, lack of access to specialist resources and in some areas poor court buildings and infrastructure. These issues will be referred to again.

Napo would make a number of specific points about the running of the Family Court System:

#### **(a) Pressure to reach agreement**

Napo fully supports the principle currently underlying much Family Court work which encourages parental agreement and the resultant reduction of conflict at as early a stage as possible. However, Napo is also concerned that pressure on parents to resolve matters early may lead to a greater disregard of their children's wishes and feelings and in some situations their safety. Specifically, where professionals have been involved in assisting the parents to reach agreement, then ensuring that the needs of the children remain central to any decision making becomes a joint responsibility with the parents. The experience of Napo members would suggest that at times of heightened distress following separation, there are occasions where one or both parents struggles to recognise how their children

are feeling and to listen to them adequately.

### **(b) Reports**

Napo believes, based on its members' experience, that the majority of reports that they prepare are on families with difficult and complex problems and as such represent an appropriate use of resources. In recent years, families with less intense problems have been diverted into the Mediation Service and therefore CAFCASS' input with parents and initial liaison at First Directions Hearings have significantly reduced inappropriate referrals for reports. Napo believes, therefore, that even if the proposals in the Green Paper are adopted, the potential for reduction in the number of requests for CAFCASS reports may be limited. This in turn leads to questions of resources as many of the proposals contained in the Green Paper, for example rolling out of initiatives such as the Family Resolutions Pilot, suggests that CAFCASS would be involved in additional work.

Napo believes, therefore, that there has to be a full cost analysis undertaken of the additional resources needed to implement any proposals that would lead to greater efficiency. Napo believes that work with hostile separated parents is difficult and demanding and requires great emotional and mental energy from practitioners. In Napo's experience overworked and exhausted practitioners are unlikely to be as effective in their work.

### **(c) Safety from harm**

Allegations of domestic violence and issues of the safety of children are a significant feature in family proceedings. Napo is concerned that the current focus on parental rights and ill-informed views from some commentators, should not lead to a change in culture, in which the safety of both parents and children is considered a high priority.

Current systems for managing these issues would benefit from further research and consideration. For example, Napo members report that parents do experience pressure from the judiciary and legal representatives to avoid Finding of Fact Hearings and on some occasions may agree to a Schedule of Admissions. Such admissions can sometimes represent only a small part of any alleged violence and in Napo's view do not then assist any assessment of risk. Napo also believes that many court facilities are unsatisfactory in that separate waiting areas are not provided and that victims of alleged violence often do not have access to the resources offered to vulnerable witnesses in the criminal courts, such as evidence by video link

A strategy paper in relation to Napo's approach to domestic violence is available at [www.napo.org.uk/cafcass/](http://www.napo.org.uk/cafcass/)

### **(d) Mediation**

Napo welcomes the Green Paper's commitment to continue to promote mediation as a means of supporting parents to resolve disputes without recourse to court. This can only result in greater efficiency and effectiveness. However, there are occasions where mediation may not be appropriate, particularly where child protection or violence issues are live. In this context Napo members have expressed concern about the current requirements for parents to explore mediation prior to taking matters to court if they wish to access public funding. This can also be problematic where contact has completely broken down, can add to delay in the restoration of contact where appropriate and can potentially,

therefore, damage the relationship between the child and non-residential parent.

### **(e) Role of CAFCASS practitioners**

Within many courts, CAFCASS practitioners are actively involved in problem solving and dispute resolution. Good relationships often exist with local judiciary and legal representatives and significant efforts are made to resolve disputes at an early stage to avoid costly court hearings. Napo recognises that a more consistent approach could be developed nationwide and therefore welcomes many of the suggestions in the Green Paper. However, Napo does not believe that the proposals contained in the Green Paper which are aimed at greater efficiency in the Family Courts necessarily represent a significant shift for CAFCASS practitioners. Underpinning the work of private law practitioners is an understanding that parents in dispute continue to hold responsibility for their children and continue to do so long after the court is involved in their family life. Napo believes that a problem solving approach that encourages all parties to respond to the feelings and needs of the children lies at the heart of enquiries and reports and informs all intentions in court.

### **(f) Best practice**

Napo recognises that there needs to be dissemination of what is currently considered to be best practice in respect of in-court conciliation and that is likely to need additional resources. Napo also believes that there needs to be monitoring in the interests of effectiveness and accountability in respect of ensuring that safety and diversity issues are fully addressed in the process. Napo believes that in most areas systems are already in place to ensure that reports are only ordered when necessary and that it is unlikely that the number of reports will be reduced significantly as the Green Paper emphasises. Napo reinforces its view that the high levels of hostility, domestic violence, substance misuse and mental illness are significant features in many of CAFCASS reports, and it may therefore be unwise for decisions to be made at an earlier stage in court without an informed assessment of the impact of parental behaviour on children concerned.

## **2. Do Family Court Judges have sufficient powers?**

Napo is not convinced that the arguments have been made to support a significant increase in judicial powers. Napo is more concerned that the lack both of in-court resources and more specialist resources within wider society effectively limit the options available to the judiciary.

Napo believes that a more punitive approach to parents is likely to be unhelpful and that the suggestions made in the Green Paper that judges need additional powers to jail parents in certain disputes would be counter productive. This would cause considerable hurt to children, would demonise one parent, and could lead to admission to local authority care. If the parties are deeply entrenched and the courts need a punitive model then one should be developed that does not impact adversely on children. Consideration should be given to therapeutic intervention or the use of the fine. It is difficult to envisage circumstances where children would want to see their father send their mother to jail, or vice versa. Napo has a number of other comments related to the powers of the courts which have also been referred to in the response to the Green Paper.

Napo, whilst concerned about a punitive model towards parents, would however support a model which holds parents to account on behalf of the court.

### **(a) Safety**

Napo reiterates its earlier comments on the need for judges to focus on the importance of parental and child safety and to follow the President's Direction in relation to domestic violence. The experience of Napo members is that implementation of these guidelines are inconsistent across the country. We would welcome any emphasis on the need to ensure that contact is safe for both the child and the main carer. It is now well accepted that where there is abuse or neglect, exposure to domestic violence, or severe parental conflict the effect on children can be extremely damaging.

### **(b) Shared residence**

Napo does not support proposals by some that residence of children should be automatically split between the parents. Napo members have daily contact with children who are suffering as a result of their parents' inability to focus on their welfare rather than the parental argument. Experience suggests that court arguments over shared residence are not infrequently a means by which parents play out their disagreements and power struggles rather than a response to the child's needs. Napo would not favour any change in legislation that altered the primary focus of the court from the welfare of the child.

Children's needs must continue to be considered on an individual basis. The families Napo members encounter come from a wide variety of backgrounds and the adults within these families consequently adopt different parenting roles. This could be influenced by many factors including culture, gender, employment, finances, class, health and disability. The gender of a child may also be a factor that affects how parents relate and interact with them. The way in which parents carry out their responsibilities may change over time according to the age and gender of the child. Siblings may have a different quality of relationship with one parent than the other. All these factors Napo believes need to be taken into account when determining the right arrangements for the child following separation. An automatic "one size fits all" may meet the needs of the parents but in all probability will not meet the needs of the child. Overall Napo does support the position that for most children it is in their best interests to have a meaningful relationship with both parents where it is clearly safe to do so.

### **(c) Parental accountability**

Courts, and generally non resident parents, are rightly frustrated in a small proportion of cases where the resident parent refuses to co-operate with court proceedings or court orders. Napo agrees that this is a genuine problem, but does not consider there to be an easy resolution which maintains a focus on the child's welfare. Napo is well aware of situations where the conscious or unconscious behaviour of the resident parent effectively damages a child's relationship with the other parent, or other family members.

It has been suggested in the Green Paper that CAF/CASS should routinely contact parents following the making of an order. Whilst in sympathy with the intentions behind this proposal, Napo believes that this would be against the principle that the proceedings are private and that once they are concluded the parents have a responsibility to carry on without any undue interference from the state, and should be encouraged to do so. Napo believes that the process of contacting a parent after proceedings may cause them to identify problems that they may otherwise have resolved themselves. It could create a situation of making them dependent on outside agencies that was unnecessary.

However, Napo members do report concern that, after an order is breached following a final hearing, it can often take a considerable amount of time for the matter to be heard again by the court, during which time the parent/child relationship can be again disrupted. There may therefore be merit in exploring the possibility of a rapid response system which would be a form of regionalised breach court whereby matters could be heard quickly with the assistance of a CAFCASS officer, as at first direction hearings, and the problem resolved and contact restored where appropriate. Care would need to be taken to ensure that parents did not abuse this process in order to have their case in effect reheard.

#### **(d) Support for families in proceedings**

Napo is concerned at the lack of an adequate range of support for families whose problems are deeply entrenched and believes this is a significant issue for both Family Court Advisors and the judiciary. Most areas report a lack of access to counselling and therapeutic services, for example within the NHS. Where services do exist they are generally overstretched and waiting lists can effectively make referral meaningless from a court perspective. This concern is also reflected in the inability of many social services departments to offer services to families where children are not within the child protection system. Napo members are concerned at the number of children who are emotionally damaged by these proceedings, but whose needs local authorities are unable to prioritise.

Napo can see possible benefits in some increase in the number of Family Assistance Orders in order to provide a short-term level of support following the making of a final order. This would be appropriate in situations where there was a clear focus and tasks to carry out and informed consent had been obtained from all parties and the children. Napo believes that it is not really effective when the judiciary make Family Assistance Orders without the involvement of CAFCASS staff, primarily because in such cases there is generally a lack of clarity about the purpose of such orders, lack of considered agreement and often an expectation that CAFCASS staff have at their disposal "miracle" cures to intractable problems.

Families with complex problems are often in need of more long term intervention than the Family Assistance Order can provide. However, Napo believes that if an increase in the number of Family Assistance Orders occurs there would need to be specific resources set aside to ensure this work is carried out effectively and that it is not marginalised by the pressure of more immediate work for the courts. Napo would also welcome additional resources to allow those parents who are particularly intransigent to have access to intensive therapy and support for change and the increased availability of creative programmes.

#### **(e) Enforcement**

Napo believes that an approach which focuses on ensuring parental co-operation could be seen as more advantageous for the children concerned than punitive orders for non-compliant parents that are likely to harden attitudes further. Napo therefore reinforces the need to focus on parental accountability rather than punishment.

### **3. Issues surrounding delay in the system**

Delay is a significant issue within some courts and can result in long term damage to children and limit the courts' ability to intervene effectively. Napo members frequently

report serious delays as a result of lack of judicial time and this problem is often exacerbated in the higher courts. Napo members report cases which, despite having been listed for several months do not go ahead on the day due to double or multiple booking in the judge's list. It can then lead to a further adjournment of two or three months or longer before a new date can be agreed. In situations where there is currently no contact taking place this is particularly damaging. It is a common experience for public law cases to take priority in a judge's list, which in Napo's view reflects a lack of understanding of the emotional harm experienced by children during parental separation and conflict. It is also the case that such delays are extremely expensive in relation to professional time and the cost of public funding.

Delay is also a significant feature in accessing expert opinion. In many areas there are very limited numbers of child and adult psychologists and psychiatrists available for court work. It is therefore not uncommon for there to be an adjournment of several months simply waiting for an appointment to see a specialist.

It is also the case that Napo members report frustrating delays as a result of parties meeting counsel on the morning of a full hearing. It is commonplace for CAFCASS officers to spend several hours waiting while barristers introduce themselves to clients, familiarise themselves with the case and then become involved in advice giving and potential problem solving. It is also not uncommon for this to lead to a further adjournment as time allocated for a judge to hear the case has then been lost. Napo would support a system which ensured that counsel were fully briefed prior to any final hearings and options for resolution had been explored fully before the date of the hearing itself.

Delay in allocating and processing S7 reports has been an issue since the creation of CAFCASS in April 2001. The causes of the delay have included a lack of court time and space, insufficient administration, increasing demand in some areas, too few CAFCASS staff and a lack of judges.

However, by the Autumn of 2004, it is clear that in many places backlogs are not as severe as they have been in the past. Napo is nevertheless concerned that the regular quarterly figures which detail time taken to allocate reports no longer seem to be available.

## **Case management**

Napo welcomes and supports the principle of good case management to minimise delay and to ensure continuity, as being in the best interest of children, where this is practically possible. Napo does not believe that all delay is necessarily negative. A reasonable amount of time for report preparation allows the writer to work with a family, to observe contact, to allow parents space to reflect on discussions, and importantly to allow for the children to be consulted. Napo believes it is commonplace for Children and Family Reporters, with parental consent, to trial arrangements that can then be reviewed at a later stage. Such delay can be constructive in assisting parents to reach a final informed agreement and has the benefit of being more successful than a hastily imposed Court Order.

Napo would emphasise that the most significant and problematic delays are usually with the court process itself, significant waiting times for hearings and over-listing for contested hearings, which means that many parties do not get heard on the day which is initially appointed.

#### **4. Whether people using Family Courts are getting the service they deserve**

Napo finds it difficult to define the concept of "the service they deserve". The Family Court System should be run efficiently and paramount should be the best interests of children. A number of assertions have been made recently about bias in the Family Court System particularly against fathers. However, Napo's own research in this area refutes this suggestions and demonstrates that there is a significant increase in contact between child and non resident parent (often the father) as a result of the work of CAFCASS officers.

During the summer of 2002 Napo undertook a survey of the work of the Children and Family Court Advisory and Support Service in contested residence and contact cases. In all 300 families were detailed in the survey. The survey found that, at the commencement of proceedings in 156 cases children were having direct contact with the parent with whom they were not resident. In 126 cases there was no contact at all.

By the end of the proceedings, which often took many months, in only 18 cases was there no contact with the father, and in seven of those domestic violence was established as a fact. No contact had therefore fallen from 42% to 6% of cases.

Napo would refer to the work of Carol Smart and others in respect of the difficulties encountered by children who are subject to shared care arrangements. Napo also refers to evidence which suggests that some children do not see their parents as often as they or their resident parent would wish, and that split home arrangements can be highly disruptive. The Women's Aid movement has complained vociferously in the past that often children are forced to see dangerous fathers. Napo would wish to see independent research funded to investigate this concern further.

##### **(a) Problem solving versus adversarial approaches**

Napo endorses the view that separating parents should be given high levels of support to enable their difficulties to be resolved without recourse to adversarial court proceedings. However, once court proceedings have commenced, this should not mean that a problem solving process inevitably stops. Napo believes there has been misunderstanding in the Government Green Paper about the routine work of CAFCASS staff. Napo believes that the Government Green Paper fails to recognise that most Children and Family Reporters, through the process of preparing a report, work with families with a view to supporting the adults concerned in order to reach agreement in the best interests of the children. In reality most Children and Family Reporters do not just comment or commentate on proceedings but are actively engaged in a problem solving process with the family, in the way the Green Paper actually recommends. It is as a consequence of this approach that contested hearings are often avoided and that parents do receive an efficient service.

Napo also recognises, however, that there is a value in some situations in cases being fully heard by a judge. Many parents are unable to reach agreement, a not uncommon reason for this being a belief that this would imply that they had given up on their child. A judicial decision, is for some parents the only way that proceedings can be concluded. Hearings also allow judicial comment on the arrangements or the behaviour of parents, which at times can be very powerful.

##### **(b) Domestic violence**

Napo reiterates its concern at the impact of domestic violence within families. It is Napo's

belief that the Green Paper survey of court files, which identifies domestic violence as a feature of 35% of cases coming from the courts is probably an underestimate. Napo members report that often domestic violence is not referred to in initial court documents but that allegations become more apparent either at first directions hearings or in the course of report preparation. In Napo's own survey domestic violence was a feature in 77% of reports on which Napo members were working. Napo believes that once the new application and response forms are introduced, directly asking the question about domestic violence, the figure of 35% will significantly rise.

Napo believes that it is generally in most children's interests that they continue to have contact post-separation with a parent with whom they have established a relationship and even where this has not been the case most children are assisted by knowledge of and contact with their non-residential parent. Effective court decisions balance this with the need for child and parental safety.

### **(c) Court premises**

Napo believes that many court premises currently employed are unsuitable for Family Hearings and have insufficient private and comfortable interviewing space. Napo believes that families involved in proceedings deserve a better service than this.

Napo is also concerned that problem solving can be equated by some in the legal process to agreement seeking and attempts to achieve this in court create difficulties. Napo believes that within the pressurised environment of a court building, and with limited time available, the parents can be persuaded to reach agreements that do not take into account the children's wishes or address fully any safety factors. Napo believes that the professionals involved in assisting parents, including the judiciary, legal representatives and CAFCASS officers, need to take this into account and be fully informed of any risks involved. Where a problem solving approach is being taken, there needs to be adequate, safe, private, comfortable facilities and this is often not the case. Napo believes that it can often be beneficial for a short adjournment, away from court buildings, to take place to allow for more consideration.

### **(d) Additional child-centred facilities**

In the Napo survey conducted in 2002, two-thirds of questionnaire respondents believed that additional child centred facilities would have assisted their work. A range of facilities for interventions would have been of considerable assistance in a quarter of the individual cases. In the survey 10% of the cases studied would have benefited from the provision of supervised contact facilities. Several staff reported that facilities were unavailable for older children and the need for supervision contact was a critical issue. Others felt that therapy and parenting classes would have assisted their work. Others felt that the service from Family Courts would be improved by a much wider range of resources ranging from the provision of extra support workers for children, anger management classes, and specialist Muslim support workers and interpreter facilities.

### **(e) Accessing data from other agencies**

The survey also found that the vast majority of respondents were able to access data from other agencies quickly and easily. However, in a quarter of cases there were difficulties experienced with one or more key agencies. Improvements in inter-agency liaison would therefore increase the quality of service that people who use the courts received.

The main problems were: lack of access to criminal records; problems with police domestic violence units; difficulties in accessing information from probation, health and social services; and specifically issues with confidentiality and data protection with mental health agencies.

## **E. CONCLUSION**

Napo recognises that the Family Court System is often not the best place to resolve complex family disputes and welcomes any thoughtful attempts to improve its functioning. However, it is important to recognise that the court system is responding on society's behalf, to what are often intractable problems that parents cannot solve themselves, and which do not lend themselves to easy resolution. Napo urges the Committee to be cautious about simplistic solutions in which the needs of the children may become secondary to the "rights" of the parents.

Napo does not believe there is any systematic bias in the Family Court System and notes that no independent evidence has yet been produced to demonstrate that there is. Napo members do report individual experiences where assumptions about gender roles are a cause of concern, for example where the father's role in a child's life is given inadequate acknowledgement, and Napo would not support sexist attitudes of this sort. However, we do not believe that this is systemic and would further note that such attitudes impact on both men and women. Research also indicates that a significant feature in maintaining gender based stereotypes in relation to parenting come from parents themselves. Experience and evidence would show that most fathers do not seek residence, even when they are raising criticism of the mother's abilities. Many resident parents, often mothers, are distressed at the failure of the non resident parent to spend more time with their children and Napo members are commonly asked if there is a way to force a father to have contact, something which the law has no ability to do.

There is, however, a case for improving inter-agency communication, for more child contact centres, for a reduction in delay, for greater access to resources within the health and social services and for additional resources for early resolution and intervention.

Napo supports the thrust of the Government's Green Paper in its focus on early resolution. Napo believes that many of the suggestions, particularly the emphasis on supporting parents to problem solve and early intervention, are already an integral part of the work of Children and Family Court Reporters and would seek the Committee's support in supporting and developing the work of CAFCASS as a key player in the Family Court System.

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2 November 2004