



# House of Commons Committee of Public Accounts

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## Cafcass's response to increased demand for its services

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### Sixth Report of Session 2010–11

*Report, together with formal minutes, oral and  
written evidence*

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## The Committee of Public Accounts

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Eric Joyce (*Labour, Falkirk*)

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Powers of the Committee of Public Accounts are set out in House of Commons Standing Orders, principally in SO No 148. These are available on the Internet via [www.parliament.uk](http://www.parliament.uk).

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### Committee staff

The current staff of the Committee is Philip Aylett (Clerk), Lori Verwaerde (Senior Committee Assistant), Ian Blair and Pam Morris (Committee Assistants) and Alex Paterson (Media Officer).

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## Summary

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The Children and Family Court Advisory and Support Service ('Cafcass') has a vital responsibility to vulnerable children suffering huge disruption in their lives. Following the publicity around the Baby Peter tragedy in 2008, Cafcass experienced a significant and sustained increase in demand for its services, receiving around 34 per cent more care cases in 2009–10 than the previous year. This led to chaos across the family justice system, and exposed Cafcass as an organisation that was not fit for purpose in dealing with the increased number of cases.

Cafcass has undergone major changes since it was established nine years ago. Although judges in the family court are satisfied with the quality of the advice and reports that Cafcass's family court advisers provide, Cafcass has failed to get to grips with fundamental weaknesses in its culture, management and performance. These problems have been to the detriment of children: eight out of ten Cafcass areas failed Ofsted inspections, which in 2009 gave overwhelming evidence that the service it provided for children and families was inadequate.

In the period from September 2009 to June 2010, Cafcass took up to 40 days on average to fully allocate a care case to a family court adviser. In private law, around a third of section 7 reports to the courts are more than 10 days late. The data which Cafcass holds on cases centrally contain inaccuracies. Sickness absence is unacceptably high, and staff morale is low, reflected in the difficulty management has in achieving staff compliance with requirements of the organisation.

Cafcass was only able to respond to the increase in demand following the Baby Peter tragedy through the use of measures which allowed it to do less work or to delay work on cases. The President of the Family Division (the judge who is head of Family Justice) issued Interim Guidance that allowed 'duty allocation' of care cases as a temporary measure so that Cafcass could get on top of its unallocated workload. From 1 October 2010, the President and Cafcass have made a joint agreement introducing transitional arrangements for another year, pending the outcome of the Family Justice Review. The agreement aims to continue reducing delays in allocating cases, while minimising the use of duty allocations.

While there have been some improvements in Cafcass's performance, the Committee does not share the Department for Education's confidence that the substantial organisational problems will be overcome by 2011. Cafcass also faces the challenge of dealing with the relentless rise in open cases that is putting pressure on all organisations working in the family justice system. Renewed energy and vigour are needed to sort this situation out if Cafcass is to become the world-class organisation it aspires to be.

On the basis of a Report by the Comptroller and Auditor General,<sup>1</sup> this Committee took evidence from Cafcass and the Department on Cafcass's response to changes in demand, its performance monitoring, and staff and their performance. The Committee would like

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1 C&AG's Report, Session 2009–10, *Cafcass's response to increased demand for its services*, HC 289

to record its gratitude to the President of the Family Division and the Family Division Liaison Judge for Greater London for the valuable evidence they gave to the Committee on their views as customers of Cafcass.

## Conclusions and Recommendations

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- 1. Cafcass, as an organisation, is not fit-for-purpose.** Many areas still do not provide a timely service to the courts, and the average time to fully allocate care cases at 27 days, down from 40 days, is still well above what it should be. Cafcass and the Department should report back to the Committee in a year, when we will expect to see that they have completed firm actions and undertaken rigorous monitoring to achieve the large amount of improvement that is still required.
- 2. With duty allocation needing to reduce quickly and substantially, there is a risk that the reductions could result in the scale of unallocated cases returning to the unacceptable levels seen in summer 2009.** Cafcass should establish plans with clear milestones for every area to manage the reductions in duty allocation of care cases and take prompt action in circumstances where unallocated cases start to rise.
- 3. Cafcass did not see the crisis coming, nor did it have a contingency plan in the event of a significant increase in demand.** The specific impact of the Baby Peter tragedy was hard to predict, but the possibility of a sustained increase in cases was a scenario that Cafcass should have planned for. It should prepare robust contingency plans so that it is prepared to act when changed circumstances affect its business.
- 4. Cafcass took far too long—until October 2008—to put in place an acceptable performance management framework and is still dealing with the legacy of under-performing staff and low morale.** Cafcass's senior team should develop and implement a clear action plan to address existing and emerging skills gaps, and to raise performance and staff morale.
- 5. Sickness absence among frontline staff is unacceptably high and significantly exceeds levels elsewhere in the public sector.** Cafcass should develop a comprehensive set of actions to drive sickness absence down to acceptable levels, building on best practice elsewhere in the public sector. The Department should monitor Cafcass's progress against the implementation plan.
- 6. Judges remain satisfied with the quality of reports to the courts, but caseloads carried by family court advisers have been increasing, which brings new risks to the quality of service provided to the courts and families.** Cafcass should manage individuals' caseloads so that staff morale does not fall and the quality of reports to the courts is maintained or improved. Cafcass should also plan for the succession of the many experienced and longstanding family court advisers who are approaching retirement, in order to protect the continuity and quality of service.
- 7. Low compliance by staff with important requirements has been a persistent problem, and has undermined Cafcass's efforts to improve performance.** In driving through its Transformation Programme, Cafcass's top management should take personal responsibility for effectively communicating changes to staff. Managers at all levels should be assessed on their effectiveness in both inspiring staff to comply with corporate requirements and holding them to account for non-compliant behaviour.

8. **The quality of assessments on care cases by local authority social workers varies. Poor quality assessments place an additional burden on Cafcass as the courts must request a new assessment from Cafcass family court advisers if they cannot rely on the work of local authority social workers.** The Department should work with local authorities to ensure that they are fulfilling their responsibility under the Public Law Outline to undertake appropriate pre-action work with the family, and to produce good assessments so that cases can proceed without requiring extra interventions or investigations by Cafcass.
9. **It is shocking that Cafcass has not previously collected all the information it needs to manage its workload more effectively.** Shortcomings in the Case Management System make compiling trend data laborious but even so, Cafcass must undertake the data collection it needs to manage its business. It should agree with the Department the quality and type of information required and put in place measures to secure it. In addition, the Department should support Cafcass in securing a better service from the provider of its corporate IT systems.
10. **Cafcass has taken too long to secure essential changes, and much of the responsibility lies with top management.** Driving through the Transformation Programme while overseeing consistent improvements in the level of service will take strong and vigorous leadership and communication. The Department should regularly monitor Cafcass's progress in implementing the Programme, holding senior management to account for any delay. Cafcass and the Department should review the robustness of the Programme regularly and take action promptly to resolve emerging problems.



# 1 Responding to the increase in demand

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1. Cafcass looks after the interests of children involved in family court proceedings in England, who are often vulnerable. It provides an independent view of children's circumstances, advising the court on the child's best interests. The majority of cases occur when a local authority is applying for a care order for a child ('public law care cases') and where separating parents cannot agree on contact or residence arrangements for their children ('private law cases'). Cafcass works with many other agencies in a complicated system designed to keep children safe.<sup>2</sup>

2. Cafcass was created in 2001 from 117 predecessor organisations with differing cultures.<sup>3</sup> In 2003 the Chief Executive and the entire board were removed following a critical Select Committee report.<sup>4</sup> The current Chief Executive took up post in 2004 and began the process of seeking to create a unified organisation. Many basic functions needed a complete overhaul, including human resources and finance.<sup>5</sup>

3. By 2008 many of Cafcass's organisational problems had not been resolved, and it was not well placed to deal with the unprecedented and sustained increase in demand that followed the Baby Peter tragedy.<sup>6</sup> Cafcass's management expected, based on previous similar cases, that demand would increase by around 3 per cent or 4 per cent, and then would return to previous levels.<sup>7</sup> However, within a month demand for care cases had risen by over 30 per cent and has remained above that level. Cafcass did not have a suitable plan to respond to these circumstances. While Cafcass could not have predicted the full extent of the rise in demand, both the Department and Cafcass accepted that it was too slow to respond.<sup>8</sup>

4. Temporary measures introduced by the judiciary considerably helped Cafcass meet the increase in demand.<sup>9</sup> In October 2009 the then President of the Family Division introduced Interim Guidance to the judiciary setting out temporary arrangements to prioritise cases, allocate care cases on a duty basis, and reduce the amount of work requested by the court on private law cases.<sup>10</sup>

5. Duty allocations are interim allocations to a family court adviser to assess incoming cases and queries, intended to ensure early attention is given to riskier cases.<sup>11</sup> Following the introduction of the duty allocation of care cases, the number of unallocated care cases

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2 Q 30

3 Q 69

4 Committee on the Lord Chancellor's Department, Third Report of Session 2002–03, *Children and Family Court Advisory Service (Cafcass)*, HC 614-1

5 Q 69

6 Q 1; C&AG's Report, para 31

7 Qq 38 and 46

8 Q 39

9 Qq 3–4

10 Qq 25, 42, 80; C&AG's Report, para 18

11 C&AG's Report, para 2.17

reduced from a peak of 1,000 in August 2009 to 150 in September 2010.<sup>12</sup> Cafcass also reduced the average time to fully allocate a care case from 40 days in September 2009 to 27 days,<sup>13</sup> but this level remained well above its goal to allocate all care cases within two days.<sup>14</sup> Duty allocation of care cases was unpopular with some Cafcass staff, courts, solicitors and local authorities.<sup>15</sup> These bodies regarded it as potentially detrimental to the children Cafcass was supporting, because the amount of work initially conducted on a duty case could be small.<sup>16</sup>

6. When the Committee took evidence from the Department and Cafcass, the President of the Family Division was not planning to extend the Interim Guidance, and there was anxiety across the family justice system about the impact this would have upon Cafcass's performance.<sup>17</sup> Fifty per cent of remaining duty allocations were in London, where demand was most pressing, and duty allocation was also significant in South Yorkshire, where the local judiciary was keen on the process.<sup>18</sup> The Chief Executive of Cafcass was working with the judiciary to put in place similar local agreements for another year.<sup>19</sup> The Chief Executive told us that his relationship with leading judges in the family courts around the country was strong,<sup>20</sup> and he was confident that agreements would be reached.<sup>21</sup>

7. Cafcass and the President of the Family Division have since made an agreement,<sup>22</sup> effective from 1 October 2010 for one year, on arrangements to assist Cafcass until the Family Justice Review is implemented. The agreement builds on the joint working and local agreements that were encouraged by the Interim Guidance. By having the judiciary and Cafcass operating to the Public Law Outline,<sup>23</sup> it aims to continue the reduction of backlogs in the allocation of public law cases to family court advisers and prevent their recurrence where they have been eliminated. The Guidance also seeks to minimise the use of Cafcass nominated duty advisers, except where the Designated Family Judge has agreed and published circumstances in which they may be used. The Department told us that the Family Justice Review,<sup>24</sup> due to report in 2011, was considering Cafcass's role and may recommend changes across the system.<sup>25</sup>

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12 Qq 15 and 18; C&AG's Report, para 12

13 Q 18

14 Qq 19–22

15 C&AG's Report, para 2.19

16 Q 15

17 Q 77

18 Q 18

19 Q 14

20 Q 77

21 Q 14

22 [http://www.cafcass.gov.uk/news/2010/joint\\_agreement.aspx](http://www.cafcass.gov.uk/news/2010/joint_agreement.aspx)

23 Qq 100–102

24 Family Justice Review: The current Government has confirmed the previous Government's appointment of David Norgrove to lead a review of the family justice system, examining how it can be reformed to better support children and parents. It will look at the best methods of avoiding confrontational court hearings, and resolving family disputes outside of the court system, together with management of the family justice system.

25 Qq 5 and 100–102

8. A further major challenge for Cafcass is management of the increased number of open care cases. At the end of September 2010, Cafcass had nearly 12,000 fully allocated open care cases, over 2,500 more than a year before.<sup>26</sup> The rate at which courts were closing care cases fell from around 550 a month before the autumn of 2008 to around 150 a month in June 2010.<sup>27</sup> In the teams with the highest caseloads, family court advisers were at the limit of what Cafcass considered a sustainable workload.<sup>28</sup> To attempt to manage the increased caseload, Cafcass had improved throughput per family court adviser.<sup>29</sup> Its Chief Executive told us that their productivity had risen by 17 per cent over the past 15 months. Cafcass is developing a workload distribution system in partnership with trade unions to ensure fair allocation of work across and within teams, and limits on individuals' workloads.<sup>30</sup>

9. The President's Interim Guidance had also resulted in a large drop in the number of reports requested by the courts on private law cases. In some areas, reports were requested in only 10 per cent of cases, whereas in others they were requested in 40 per cent of cases.<sup>31</sup> In court areas where a lower proportion of cases required reports, late filing occurred less often. Unlike the situation for care cases, the rate of new private law cases is falling slowly, and Cafcass closed more than 500 additional cases than it opened in the year to September 2010.<sup>32</sup>

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26 Q 25; <http://www.cafcass.gov.uk/pdf/Cafcass%20October%202010%20Update%20.pdf>

27 C&AG's Report, para 2.21 and Figure 10

28 Q 83

29 Q 81

30 <http://www.cafcass.gov.uk/pdf/Cafcass%20October%202010%20Update%20.pdf>

31 Qq 16, 44–46

32 Q 75; <http://www.cafcass.gov.uk/pdf/Cafcass%20October%202010%20Update%20.pdf>

## 2 Managing the performance of staff

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10. The President of the Family Division and the Family Division Liaison Judge for Greater London told us that the judge's role in the family court had been extended to encompass case management, including the casework carried out by the family court adviser.<sup>33</sup> Judges now issue directions to family court advisers about the work they want carried out on cases, a significant change from the former practice whereby the advisers had independently determined the scope of their enquiries. Some advisers regarded the changes as a challenge to their independence.<sup>34</sup> Despite the pressures on Cafcass staff from changes in organisation and working practices, the judges told us that family court advisers had maintained the quality of their advice and reports to the courts.<sup>35</sup>

11. Prior to autumn 2008, Cafcass's performance across a range of other measures was nevertheless unsatisfactory.<sup>36</sup> Ofsted inspected 10 of the 21 Cafcass service areas between December 2008 and April 2010, and assessed the overall effectiveness of eight as inadequate and only two as satisfactory.<sup>37</sup> Cafcass's response was to appoint what it viewed as stronger performance managers.<sup>38</sup> In 2009, it underwent a corporate restructuring,<sup>39</sup> and replaced the senior managers who had established the organisation's infrastructure with managers with experience of running busy child protection services.<sup>40</sup> Four of the five subsequent Ofsted visits reported that areas had made satisfactory progress against previous recommendations, but progress was judged inadequate in one.<sup>41</sup>

12. Prior to 2008, Cafcass's system for managing staff performance was not adequate.<sup>42</sup> Work started on an improved system in 2006, and a new system was introduced in 2008. After 2008, around 150 staff were managed out of Cafcass because of underperformance. Cafcass put in place a new tier of staff—family support workers—to support its family court advisers, and increased the number of service managers to increase the supervision of staff and of complex cases.<sup>43</sup> At the time of our hearing, there were still around 100 staff whose performance was being addressed through action plans and practice improvement notices. The Chief Executive told us that he considered poor staff performance to be under control and no longer the issue it had been a few years previously.<sup>44</sup>

13. Sickness absence among family court advisers had also been a particular problem for Cafcass, and in 2006–07 it set a target to reduce sickness absence to an average of 9.0 days

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33 Qq 101, 109, 125

34 Q 125

35 Qq 114–116, 127

36 Qq 1–2

37 Qq 1 and 28

38 Q 60

39 Q 53

40 Q 61

41 C&AG's Report, Appendix Two

42 Q 69

43 Q 72

44 Q 83

per employee per annum.<sup>45</sup> However, in 2009–10 sickness absence averaged 11.6 days per staff member, and was 16.1 days on average for family court advisers. By comparison, the public sector average was 8.3 days in 2009.<sup>46</sup> Cafcass attributed the high rate of sickness absence to the stress associated with all social work, as well as to the relatively older age of many of its staff. Cafcass told us that it had recently taken action to reduce the number of staff on long-term sickness absence, and had reduced the total cost per year from £3.3 million to £2.5 million. For the first five months of 2010–11, sickness absence had reduced to 13 days per year pro rata for family court advisers.<sup>47</sup>

14. Cafcass acknowledged that the morale of its staff was unacceptably low before 2008, and said that staff had become tired of constant change.<sup>48</sup> The Department told us that the frequency of new instructions, combined with the pressures of day-to-day work, had led to negative attitudes, and contributed to sickness absence.<sup>49</sup> Cafcass also suggested that the pressure from senior managers to improve performance and drive down sickness absence affected morale.<sup>50</sup> Staff morale remained low in some service areas.<sup>51</sup>

15. Cafcass had experienced a high turnover of staff, through retirement and those leaving for performance reasons, and had a vacancy rate of three per cent in September 2010. Despite problems in attracting people into the wider social work profession, Cafcass said it did not find it difficult to recruit new practitioners.<sup>52</sup> Cafcass nevertheless accepted that there were risks to be managed where teams had a high proportion of staff approaching retirement age. There was potential for key people to leave at around the same time. In reflecting on the quality of family court advisers' advice and reports to the courts, the President of the Family Court expressed some anxiety about the risks of losing knowledge and experience.<sup>53</sup>

16. The compliance of Cafcass's staff with its corporate initiatives in some areas was poor. For example, at 15 July 2010, four of the 21 areas had still not submitted business plans for 2010–11. Cafcass had only recently extended core national systems, such as business planning, down to the local level.<sup>54</sup> It is involving staff in developing tools to reduce bureaucracy and improve consistency in practice.<sup>55</sup>

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45 C&AG's Report, para 3.20

46 CBI report Absence and Workplace Health Survey, June 2010

47 Ev 24

48 Qq 2 and 36

49 Qq 4 and 37

50 Q 37

51 C&AG's Report, para 3.23

52 Q 81

53 Qq 81 and 115

54 Q 70; C&AG's Report, para 15

55 <http://www.cafcass.gov.uk/pdf/Cafcass%20October%202010%20Update%20.pdf>

### 3 Improving Cafcass's performance

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17. Cafcass has not collected and retained all the data on cases it needs to properly manage the organisation.<sup>56</sup> Both the NAO and Ofsted had found problems with the quality of data held by Cafcass, a situation which was confirmed by Cafcass's own data audits.<sup>57</sup> The Department told us that data quality was, however, showing signs of improvement.

18. The NAO report found that data quality could be further improved by better Information Technology (IT) systems.<sup>58</sup> The Chief Executive of Cafcass confirmed that upgrading IT and improving its reliability was a big issue for Cafcass.<sup>59</sup> Its main office IT system, the Cabinet Office sponsored 'flex' system (run by Fujitsu), was yet to show significant benefits. Cafcass had introduced initiatives to make its IT systems fit for purpose, thereby improving management information.<sup>60</sup> For example, one of the projects aimed to provide practitioners with tools to record information while out in the field and store it more quickly on Cafcass's Case Management System. Cafcass argued it could achieve a 10 per cent improvement in productivity with better IT.<sup>61</sup>

19. The Department had struggled to find the right set of performance measures it needed to oversee Cafcass. The range of Key Performance Indicators (KPIs) had changed year on year. The Department was confident that the range of seven KPIs it now had in place provided the information it needed for effective oversight of Cafcass, and that the targets were pitched correctly. However, it was also committed to keeping the range of indicators and associated targets under review.<sup>62</sup> As part of the agreement with the President (paragraph 7), in future combined Cafcass and Court Service performance data will be provided quarterly to local areas and Designated Family Judges.<sup>63</sup>

20. The efficiency and quality of the casework done by the local authority social worker has a big impact on the amount of work required on each case from the Cafcass family court adviser, and therefore on their productivity. Where the family court adviser concludes they can accept the work done by the social worker, the case can proceed relatively smoothly, but if not, the family court adviser may decide to investigate further or be asked by the judge to provide a second assessment. Different local authorities have radically different demands upon them, with much greater pressures in areas of high social deprivation. Even so, all local authorities are obliged to follow the Public Law Outline. The Public Law Outline expects the local authority social worker to properly prepare each care case before it gets into the court system, when it starts to become expensive.<sup>64</sup>

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56 Q 7

57 Q 9; C&AG's Report, para 28

58 Qq 9 and 84

59 Q 84

60 Q 84; C&AG's Report, para 3.9

61 Q 84

62 Qq 9–10 and 51

63 <http://www.cafcass.gov.uk/pdf/Cafcass%20October%202010%20Update%20.pdf>

64 Qq 96–98, 103–105; C&AG's report, para 1.1

21. In mid-2009 the Department commissioned a review by external consultants (at a cost of £253,000<sup>65</sup>) to assess the gap between Cafcass's capacity and that needed to meet the increased demand.<sup>66</sup> The review highlighted a number of productivity and business process improvements to make better use of its staff.<sup>67</sup> Subsequently, Cafcass brought together eight current and new initiatives into a single Transformation Programme, for which the Department provided an additional £10 million in 2010–11.<sup>68</sup> The Department paid the consultants a further £216,000 to support Cafcass in developing an effective plan for responding to the issues identified in the review.<sup>69</sup> The Programme to transform Cafcass was planned to take until 2011, by which date the Chief Executive informed the Committee that he believed Cafcass would be a transformed organisation.<sup>70</sup> The Permanent Secretary expressed confidence in the current Chief Executive. He told us that his confidence was greater now the Transformation Programme was under way, which he was certain would bring the required change and improvement to the organisation.<sup>71</sup>

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65 Ev 24

66 Q 1; C&AG's Report, para 24

67 Q 6

68 Q 6

69 Ev 24

70 Q 73

71 Q 50

# Formal Minutes

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**Wednesday 3 November 2010**

Members present:

Rt Hon Margaret Hodge, in the Chair

Mr Richard Bacon  
Stella Creasy  
Jackie Doyle-Price  
Matthew Hancock  
Joseph Johnson

Rt Hon Mrs Anne McGuire  
Mr Austin Mitchell  
Nick Smith  
James Wharton

Draft Report (*Cafcass's response to increased demand for its services*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 21 read and agreed to.

Conclusions and recommendations 1 to 10 read and agreed to.

*Resolved*, That the Report be the Sixth Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report.

[Adjourned till Tuesday 9 November at 10.00 am



## Witnesses

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### Tuesday 7 September 2010

*Page*

**David Bell**, Permanent Secretary, Department for Education and **Anthony Douglas**, Chief Executive, Cafcass

Ev 1

### Tuesday 12 October 2010

**Rt.Hon. Sir Nicholas Wall**, President, Family Division and Head of Family Justice and **Sir Mark Hedley**, High Court Judge, Family Division

Ev 17

## List of written evidence

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1	Department for Education	Ev 24
2	Cafcass	Ev 24

## List of Reports from the Committee during the current Parliament

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The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

### Session 2010–11

First Report	Support to incapacity benefits claimants through Pathways to Work	HC 404
Second Report	Delivering Multi-Role Tanker Aircraft Capability	HC 425
Third Report	Tackling inequalities in life expectancy in areas with the worst health and deprivation	HC 470
Fourth Report	Progress with VFM savings and lessons for cost reduction programmes	HC 440
Fifth Report	Increasing Passenger Rail Capacity	HC 471
Sixth Report	Cafcass's response to increased demand for its services	HC 439

# Oral evidence

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## Taken before the Public Accounts Committee

on Tuesday 7 September 2010

Members present

Margaret Hodge (Chair)

Richard Bacon	Anne McGuire
Stephen Barclay	Austin Mitchell
Chris Heaton-Harris	Nick Smith
Joseph Johnson	Ian Swales
Eric Joyce	James Wharton

**Amyas Morse**, Comptroller and Auditor General, **Robert Prideaux**, Director, Parliamentary Liaisons and **Angela Hands**, Director, National Audit Office, gave evidence

**Marius Gallaher**, Alternate Treasury Officer of Accounts, was in attendance.

*Witnesses:* **David Bell**, Permanent Secretary, Department of Education and **Anthony Douglas**, Chief Executive, CAF/CASS, gave evidence.

**Q1 Chair:** Right, welcome. We're a bit chaotic; this is the second day back. Welcome to David Bell and Anthony Douglas. Thank you for coming to see us. Now, David, if I can turn to you first. I think we all understand the impact of the Baby Peter case. I think we can take that as a given, but on reading this report, there is a whole range of performance measures where CAF/CASS have been failing. To take a few, not just in the non-allocation of cases, where, at its worst, there were children subject to care proceedings for 40 days on average—so goodness knows what the worst case in that was. If you look at the timeliness of the reports to the courts, there is a figure there that 37% were late and nearly a third of those were over 11 working days late. If you look at staff sickness and staff morale issues, they are dreadful. If you look at the inaccuracy of data, it is shocking—27% of the data in one area, South, was inaccurate. One in five of the areas had not submitted a business plan four months into the financial year. If you look at the Ofsted inspections, eight out of 10 failed; it was not just that they were on the “okay/adequate” line, they had actually failed. If you look at overspending, they spent more than their budget consistently; we have had to bail them out. All that reads to me as—it is one of the most shocking reports that I have read—of an organisation that is not fit for purpose; and you are responsible for it.

**David Bell:** I wouldn't dispute those facts that you have laid out because they were in the report, but I would want to say two or three things by way of introduction. First of all, CAF/CASS was subject to a massive change after a damning Select Committee Report in 2003, and it was almost unprecedented to have the whole board removed. That actually illustrated the depths of difficulty that CAF/CASS faced. From that period onwards, there was a very significant programme of change and improvement; and it was moving forward—it wasn't moving perhaps as fast as we would've wanted—but I think as you have acknowledged, and the report acknowledges, it was then significantly blown off course by the events

of 2008. Now, I don't sit here and make excuses for what then happened, but it was, to use the words of the report, “unprecedented”.

What we then did, what CAF/CASS did, was to try to react and respond. In all the areas that you have described, I think we now see improvements—whether it's on the sickness absence, where the figures for the period that we have just gone through are substantially down from where they were previously; whether it's to do with the improvements on the back of the Ofsted “inadequate” judgments that you've pointed out; whether it's on the business planning; whether it's on the data—all of these we have seen improvement. In fact, from the Department's point of view, we ourselves took action through the Accounting Officer's review that I commissioned in 2009.

One of the features of that report, I think, was the recognition that while there were improvements that CAF/CASS had to make itself in relation to its own operating procedures and so on, it was also under very significant pressure because of the other demands after Baby P, and that's why we had to put in extra money. So I think we have been very clear throughout the process on the pressures that CAF/CASS has been under, the areas of underperformance, and we have sought, with CAF/CASS, to bring about improvement. Now, we're not where we need to be yet, but with all of those measures that you described, I think we can point to improvements and, perhaps, as this hearing goes on, we can say more about that.

**Q2 Chair:** I just want to come back to you because this organisation has now been in being, I can't remember—2001.

**Mr Bacon:** Eight years.

**Chair:** Eight years.

**Mr Bacon:** Nine years.

**Chair:** I remember when I had responsibility for it that we tried to completely reconfigure it; you had a 2003 report, which was damning, we are now 2009, and we all accept that, okay, Baby P created an

increase in demands for children to go into care, but I cannot—and I don't think any of us who read this report can—accept that that was the sole reason for every indicator. Find me one indicator which demonstrates that CAF/CASS is providing an efficient, effective, value-for-money service to the courts, to you as the commissioning Department, to the public and to the taxpayer. There is not one indicator. You can come here and say, "Of course, since they did the report, it's all got a bit better", but actually this is eight years of failure to perform.

**David Bell:** There are key performance indicators that the Department sets for CAF/CASS that we can point to in relation to improvement and allocation of cases and so on, which we will come to, but, Madam Chair, on the point regarding 2008, I am not sitting here and saying that it was all the result of the new pressures that hit us in the aftermath of 2008. For example, I don't think anyone could argue that staff morale and sickness levels in CAF/CASS were at an acceptable level prior to 2008; I'm certainly not arguing that at all. We are simply trying to understand in a sense the magnifying effect that 2008 had on some of those pressures that CAF/CASS was facing. Of course, it meant that the progress that CAF/CASS was making was knocked sideways and, in some cases, put back as a result of 2008. So I am not under any illusions about what was happening.

**Q3 Chair:** Were the Ofsted inspections post-2008? No.

**David Bell:** Indeed, that it is what I am saying. In fact, the five areas which have now had a revisit or re-inspection by Ofsted have moved from "inadequate" to "satisfactory", so we have seen these failures or problems highlighted, and since those Ofsted inspections have taken place, we have seen improvement. I just want to make one more comment before Mr Douglas might want to comment on the performance indicators. I think the system, which CAF/CASS is a part of, is recognisably under strain. For that reason, the previous Administration—and it's been maintained by the current Administration—have a review under way and in progress of the family justice system. Now, we don't know what the outcome of that review will bring and I can't obviously preempt it, but I think that in itself was a recognition that we have a system—not just CAF/CASS, but we have a system—that is under pressure and hence this review which will report at some stage next year.

**Q4 Chair:** We will come back because I think CAF/CASS has been helped by the system. But if I look at paragraph 22, page 9, that seems to suggest that the problems were there and that what happened with the Baby Peter case was that it simply was the last straw. It was the last straw and it ended up in complete chaos. I think blaming it on that—trying to say that this is all resulted from an increased workload; it was all there before, so maybe we should have had this report in 2008 before Baby Peter. I am not sure the report would have been any better before 2009, when there was the publicity.

**David Bell:** November 2008, yes.

**Chair:** That was when the case went into the public domain. If we'd had a report from the National Audit Office mid-2009, I think we would be sitting here saying more or less the same things.

**David Bell:** I think in relation to staff morale, organisational cohesiveness and so on, that was part of what was being dealt with, worked on, and Anthony might say more about that in a moment. I think as the first recommendation of the NAO report points out, and, in a sense, as my Accounting Officer report pointed out in 2009, there was clearly a change fatigue in the organisation which was manifesting itself in negative attitude; it was manifesting itself in sickness absences, as you have pointed out, and it has taken time to bring about those sorts of changes. There have been a very large number of performance disciplinary cases against staff to take action where performance is poor. The sickness absence has been improved.

**Q5 Chair:** We want to deal with the staffing issues separately. I just want to come back to my very first question. CAF/CASS is your organisation. Is it fit for purpose?

**David Bell:** Yes, it is. It is, Madam Chair, fit for purpose, but we recognise—and I think the previous Government recognised and current Government recognised by maintaining the family justice review—that the system is under pressure, and it's not just as a result of the immediate aftermath of Baby P. The kinds of numbers of cases that are coming into the system are maintaining at a very high level. For that reason, CAF/CASS is doing the best job it can in these circumstances, but I think we do have to look into the future to see what the system will be like in the future.

**Q6 Chair:** Are you saying that in a time of financial constraints the only way that you can make an effective, efficient, value-for-money organisation is by giving it more money?

**David Bell:** No, and in fact actually if you looked—the NAO report touches on this—the Accounting Officer report of 2009 highlighted that there were a number of productivity improvements to be made, a number of business process improvements to be made, dealing with sickness absence and dealing with poor performance. All of those are about making better use of the people that you've got. We are under no illusions about the spending review that we are about to enter; we cannot make assumptions about the CAF/CASS budget expanding massively. We have of course, as you know, put extra money in to address some of the demand pressures since 2008, and the Department has also put in an additional £10 million to assist the change and transformation programme.

**Q7 Chair:** I'm going to let other people come in. I'm just going to say one other thing to you before I go to Anthony Douglas. If you look at page 18, the two figures there, it's just gobsmacking, honestly, to find that CAF/CASS was not even collecting the data before April 2009 either on care cases or private cases. It's gobsmacking. Whatever happened to workloads or caseloads, they didn't even know. That's the sort of thing that makes me think, if you are running an

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organisation, and your organisation is about dealing with cases, and you are not even collecting the ruddy stats, how on earth can you know? What have you got to say about that?

**David Bell:** Well, we have detail about aspects of what CAF/CASS is doing; but again I think we absolutely recognise that not in every case or against every measure was the data complete. That's why we have agreed with CAF/CASS to set up performance measures which are referred to in the report to provide that data. So the data was incomplete. There is no denial of that.

**Q8 Chair:** It was not just incomplete; it was outrageously awful. You didn't know how many care cases you were having. You didn't know many private cases. If you had known—there is another trend graph somewhere—you would have seen that the trend was upwards, Baby P or not.

**David Bell:** Madam Chair, we did know in a sense. We expected the growth to be on a fairly even trajectory. We knew that in the aftermath of any major case you would get about a 3% or 4% increase. What we didn't anticipate, of course, was what was coming. Madam Chair, if you are happy, perhaps Mr Douglas might want to deal with specific points about the data that you have just raised there.

**Chair:** We will in a minute, but Stephen come in; you were just going to say something.

**Q9 Stephen Barclay:** Paragraph 1.13 backs that up—does it not?—where it says, “Poor data validity compromised the usefulness of some of the performance indicators”.

**David Bell:** I'm sorry, Mr Barclay, I didn't catch the latter point of the question.

**Stephen Barclay:** Page 15, paragraph 1.13, “Poor data validity compromised the usefulness of some of the performance indicators”.

**David Bell:** Yes.

**Stephen Barclay:** And indeed the Department's performance indicators seem to be changing year on year as well.

**David Bell:** On the first point, we accept that, and in fact again I can point to improvements in data quality, given the reference in the report to improvements in data quality in certain areas. In relation to the key performance indicators, I think one of the issues that arose from our Accounting Officer's report and before was trying to get the right measures to be able to tell us what we really needed to know. So we've now got these seven key performance indicators, which are designed to give us exactly the kind of information that we require. Behind that, of course—that is the Department's key performance indicators and measures for CAF/CASS—will be other data that CAF/CASS itself will hold, but these are the headline measures which are our KPIs.

**Q10 Stephen Barclay:** This year, you have got seven performance indicators; last year, you had four; the year before, you had eight—so it's a moving feast. Can I come back to another comment that you just made? You said things are rosier now because there is improvement on the sickness front. Do we actually

have enough data in order to make that conclusion? Is it possible that those improvements are seasonal?

**David Bell:** Could I ask Mr Douglas? I can answer the data numbers, but for your specific question, if the Chair agrees, perhaps Mr Douglas can touch on that one.

**Anthony Douglas:** Yes, on sickness, our current data is 7.7%; that is seasonally adjusted. It's 2% below the public sector average, and the number of days by our practitioners, which is the most important measure, has come down from 16 to 13 days.

**Q11 Chair:** That's not—that's way above the public sector average, way above.

**Anthony Douglas:** For Children's Services, which is notoriously higher because of some of the stresses of the role.

**Q12 Chair:** Can we have help from the NAO? Do we know what public sector averages are? Do you know either of you? I think it's something like five days a year and private sector is about two or three.

**Angela Hands:** It's just under 10—9.7.

**Anthony Douglas:** And we're at 7.7 at the moment.

**Stephen Barclay:** In the family courts?

**Angela Hands:** No, that's a public sector average.

**Q13 Stephen Barclay:** And that's for what period of time?

**Anthony Douglas:** That's our current snapshot at August. Most of the figures that I'll be giving you are from last August to this August, so they will be up to date, compared to a year ago. So there won't be any seasonal adjustment. We have done a lot of work particularly to crack down on long-term sickness, which was the age-related problem. But 35% of our sickness is stress, anxiety and depression. The rest is necks, backs, and other—cancers—that affect a working group whose average age is above 50, but the primary one to get a grip of is stress-related, and particularly related to the pressures of front-line work.

**Q14 Stephen Barclay:** Sure, and are these pressures not going to increase post-September, when the President's Guidance is removed and in certain localised areas the scope to use the duty allocation drops away?

**Anthony Douglas:** We've worked very hard to get a replacement for the President's Interim Guidance, and I am confident that before the end of September we will jointly announce an extension of local schemes. So the current local agreements—we have 42 around the country—will continue for a further year in all likelihood, so the impact of the family justice review and the comprehensive spending review can be properly taken into account. So we do need another transitional year, and I am confident that the progress we have made will be consolidated into a new set of agreements.

**Q15 Chair:** That is pretty shocking in itself, because the concerns expressed by the president, as I understand it, of the risks involved with the interim procedures and guidance will therefore continue to the

detriment to children for a further year, because you're still in a mess.

**Anthony Douglas:** Well, all our indicators are in the right direction, apart from the stocks and flows in the public law system. We have now 150 unallocated public law cases; it was a 1,000 a year ago now. That is 150 too many, but the guidance has helped in both public and private law to help the system get a greater grip of a record increase in demand.

**Q16 Chair:** The average time for private law cases—the average—is now 58 weeks, which is over a third increase in the length of time. So you allocate them; you have too big a workload; and you don't get on with the work. So, from the point of view of the kids, that is an average—over a year in the life of a child on average, before you have provided the reports that will start enabling the courts to take a decision on the child's future. That's dreadful.

**Anthony Douglas:** But the context of that is this time scale reflects the residual group of the most complicated and intractable private law cases.

**Chair:** No, it's an average. The average is 58 weeks. Some will be undoubtedly three or four years.

**Anthony Douglas:** But the President's Guidance has restricted the number of reports we write very successfully. The cases that we are left with are the most complicated and the work goes on over about a year, as it does in a public law case, culminating in a report. These are not simple cases to report.

**Chair:** I'm sorry Mr Douglas; it's an average, an average of 58 weeks. That means your most complicated must be three or four years. It's an average, which is an outrageous time. Not every case is complicated; some will be, and if you had said to me, "We've got 20 up there at a high level", fine. This is an average and it's a 33% increase.

**Anthony Douglas:** What I could say, Madam Chairman, is this year we do have, through the President's Guidance, four different types of work in private law cases. We have seen the timescales drop considerably since we've been narrowing the issues on cases with judges, and we're trying to do the same now in public law cases. So the President's Guidance, which was Stephen Barclay's original point, has made a positive difference.

**Q17 Stephen Barclay:** It was only a temporary measure though, wasn't it?

**Anthony Douglas:** It was, and it will be extended as another temporary measure. We do need permanent, sustainable measures in the family justice system.

**Q18 Stephen Barclay:** If you go to figure 8, if you want to go on that line, you see the brown line going up to a record high in June; so duty allocation is at a historic record high, which correlates with the green line going down, which suggests that the way the numbers are being managed is by using the duty allocation. One of the problems with that is that people—the guardians—are making a judgment just on a paper reading of the file, and then when someone actually looks at it in detail, they're often giving different judgments, which is one of the problems the courts are facing, is it not?

**Anthony Douglas:** The major shift in the figures over the last year, particularly in the last few months, is that duty allocations have stayed the same at around 1,000. Substantive allocations to children's guardians have come down from waiting 40 days on average, which is far too high, to 27. The numbers of unallocated cases have gone down. So we've seen an increase in allocated work and a decrease in unallocated work, with duty work remaining much the same. It is really only now a feature in London, which has half of the duty cases, and South Yorkshire, where the leading judges in South Yorkshire are very fond of that system and it works very well, but in the bulk of the country we're ending the majority of duty systems and replacing them with permanent allocations.

**Q19 Stephen Barclay:** You're saying, in essence, "We're putting things in place. It's going to be okay moving forward." Could I just take you back to what you said in the past? On 18 October 2005, when you launched your consultation paper, "Every Day Matters", you were saying then, and this was a year into your tenure as a CEO, "Every child referred to CAF/CASS through the family courts will have a social-work qualified practitioner allocated to their case within two days". Has that ever happened?

**Anthony Douglas:** Yes, as Madam Chairman said, in 2004 we had an organisation with record numbers of unallocated cases. We had to put an organisation together; we had to retrofit an organisation. For the first few years—it's a long time ago—but certainly we had to put an infrastructure together and it did take us two to three years. By 2006, we had no unallocated public law cases.<sup>1</sup>

**Q20 Chair:** Were you allocating within two days in 2006?

**Anthony Douglas:** In all but a tiny minority of cases.

**Q21 Stephen Barclay:** Can I just comment on that because Community Care reports that between April 2005 and February 2006 in London only 15.2% of cases were allocated within two days. You are giving the impression that this isn't really a problem.

**Anthony Douglas:** Well, I'm trying not to generalise from London. We had a particular problem with London just through volumes and we still do. It's where a disproportionate amount of our work comes from; but in the bulk of the country, we had cracked all of those difficulties until 2008.

**Q22 Stephen Barclay:** What I'm driving at is that in 2003 we had the report, which is referred to on page 16 paragraph 1.14, where there was an enquiry by the Committee of the Lord Chancellor's Department which criticised CAF/CASS for its lack of forecasting. You are quoted in the media in 2005–2006 saying this is your key priority; you're taking personal control; and every child is going to have access within two

<sup>1</sup> Note by Witness: I should have said that it was by 2008 that we had very few unallocated public law cases. In May 2008, 98.8% of all public law cases were allocated. During the same period the allocation for section 31 care and supervision cases were: 79.0% allocated within two days; 94.6% allocated within seven days; and 98.5% allocated within 28 days.

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days. Yet, when I speak to the magistrates courts, they say there is a serious problem with unallocated cases; we've had a temporary solution with the duty allocation; and we're having, in the magistrates courts, children removed from their families under temporary orders, removed from their families with no guardian to represent their interests, and this is six years after you took over.

**Anthony Douglas:** The situation now is that of the 150 cases that are not allocated and the 1,000 that are duty allocated there is work going on on those cases until the allocation, on average, on the 27th day.

**Q23 Stephen Barclay:** When you say "allocated", because you're putting great stress on "allocated", does that mean work has started, work is happening, or does it mean that it has just been given a name?

**Anthony Douglas:** It varies from case to case; but in each case, we operate a triage system.

**Q24 Stephen Barclay:** So, when you say 'allocated', it doesn't mean actually any work is happening?

**Anthony Douglas:** Well, it means that the case is triaged for priority.

**Q25 Stephen Barclay:** Is that a yes or no? Does it mean, in all cases, you have allocated them? This is a very material issue; this is a magistrates court hearing to remove a child from their parents, whether a guardian has done any work on that. You are saying that it is fine because in only 150 cases has it not been allocated. Are you saying when it has been allocated work has happened or not in all cases?

**Anthony Douglas:** Yes, the practitioner is responsible for it—we have a system of proportionate working—and does what needs to be done. We have 2,500 more open public law cases on our practitioner caseloads than a year ago.

**Chair:** Can you answer the question?

**Anthony Douglas:** I've answered by saying that work is being done proportionate to the needs of each case. In cases where children have already been removed, at the point where the case comes to court, and are in stable foster care, not in danger, they need less work in the short term than a case where a local authority is applying to immediately remove the child. We would be involved in much more depth in those cases.

**Q26 Stephen Barclay:** In some cases, will the duty allocation purely be someone speaking over the phone?

**Anthony Douglas:** Sometimes, to gain intelligence and positions from different people, particularly where a child is in a stable situation. What we have to spot straight away is the immediate risks and dangers either of a child being left in an unsafe situation or a potential miscarriage of justice for a parent. That is our priority in the first few days. Now, these cases, on average, are in the courts for anything between 46 weeks and 65 weeks. Our involvement, if it doesn't come actively for the first two to three weeks, is still there in the case for well over 40 weeks and usually 60 to 70 in the toughest cases.

**Q27 Stephen Barclay:** Would you describe this—where the duty allocation is quite similar to having a quick scan of the papers, perhaps no work has started or someone just makes a call over the telephone—as a world-class service?

**Anthony Douglas:** I would say that certainly a scan of the papers is crucial, because to understand the history of what has happened to the family, and particularly any benchmark reports, the forensic analysis and review, particularly of children's services' involvement in a family, is a crucial part of the guardian's role, sure.

**Q28 Stephen Barclay:** The reason I use the phrase "world-class service" is that you're paid more than the Prime Minister. In the 2004–05 accounts, which were the first ones you signed off, you referred to delivering a world-class service. In the 2003 report, there was reference to the problem of forecasting which we have had reference to. What I'm trying to understand is, in your eyes, given what happened in 2009—as the Chair has referred, Ofsted said eight out of 10 regions were "inadequate", none were "good" or "outstanding", so it failed on quality, and we've also seen that it's failed on timeliness—is it a world-class service?

**Anthony Douglas:** I believe it is.

**Stephen Barclay:** You believe it is.

**Chair:** On what basis?

**Anthony Douglas:** We have represented in the course of our history from 2001 well over a million children

**Q29 Chair:** Yes, but that's numbers; that's not quality.

**Anthony Douglas:** In many of those cases we have saved children's lives by either preventing them from being removed or insisting they are removed. There is no system—

**Chair:** But that is your job.

**Q30 Mr Bacon:** Hang on. Can I just stop you there because this is interesting? You were asked whether you think it's a world-class service, and you say yes. The two reasons you have given so far are, one, because you have intervened in a million cases, which, as the Chair says, is a quantitative measure—it is not a qualitative one—and the second one is because you have saved children's lives. Neither of the things that you've said indicates whether or not it's a world-class service. So the question I'd like to ask you is, for you, what would be the main criteria for identifying a world-class service?

**Anthony Douglas:** It's a service in which children are kept safe and put back on their proper and normal development. The children we come across are quite often in the most horrendous circumstances imaginable. Our role is to play a part—one part among many agencies, as the Permanent Secretary said, in a complicated system—to make their lives better. I believe on that measure we have been successful.

**Q31 James Wharton:** I don't envy you in the area in which you work. I think it must be incredibly difficult, because you are managing a large organisation with finite resources and are dealing with some, as you

rightly point out, very, very difficult individual circumstances; and of course like any organisation of this nature, you are reliant on the people who work for you, who are delivering the service at the hard end, as it were, at the front end and actually dealing with these cases and making assessments.

There are just two areas in the qualitative assessment that I'd like to explore briefly with you. One is a point that has been raised with me. Now, I don't know whether you measure this; I would be interested in whether you do and whether you've considered this as a measure of your performance. How often, once reports are provided to the court, does the judge actually seek a second opinion, because they don't feel that that report is of sufficient quality for them to make their decision based on it?

**Anthony Douglas:** From CAF/CASS?

**James Wharton:** From the people who are actually doing the work for your organisation. Do you measure that and have any idea how often judges effectively say, "I need a second opinion" and get further consultation?

**Anthony Douglas:** We don't. We have proxy measures for when, in other words, cases are referred, under certain categories of law, to other organisations because there might be a conflict of interest. Along with the Legal Services Commission, we have measures, but it's a very small number.

**Q32 James Wharton:** Not where there is specifically a conflict of interest, but where a report is provided to a court and the judge looks at the report and decides, for whatever reason, a second opinion is needed, which, of course, in terms of many of the measures of performance that we looked at from CAF/CASS, would actually be, "Job done. The report has been provided. We have gone through that process. We have done all that we can up to that stage." However, because of the low quality of the report and the information that has been provided, the courts actually seek further opinion, delaying the process, causing that further potential danger for the child in question or the children in question. It sounds like you don't measure that, and you may want to consider that?

**Anthony Douglas:** We don't specifically measure it, but I don't believe that those cases would be more than a dozen in my time. I have letters about some of those, but the vast majority of the thousands of reports we produce are welcomed by judges who find them helpful. Sometimes, we've had to do work with our practitioners to be clearer in their recommendations and we have had some cases that have been played wrong, as every organisation would do, and we have had to take action to correct them and send in a second report, sometimes by another practitioner.

**Chair:** You have taken disciplinary against 10% of your staff. We hear it from our constituents.

**Stephen Barclay:** It's 5%, because it's over two years.

**Chair:** 5% over two years. Presumably, it's the quality of their work that you're challenging. We all hear it, round the table, we all hear it from our constituencies that all too often either cases aren't allocated, CAF/CASS doesn't appear, doesn't attend at hearings, someone doesn't appear and reports have to

be rewritten. There is too much of this, and you're not measuring it, of course, because you don't measure anything that is difficult to you.

**Q33 James Wharton:** It should be relatively easy to assess. Your perception as someone at the top of the organisation is that these reports are going in, and it's very rare that on the basis of the quality of the report, the judge would seek to get a second report. Setting aside a conflict of interest and so on, you said that you would be surprised if there were more than about a dozen reports or so where the judge believes he needs to get a second opinion.

**Anthony Douglas:** Standard judicial court practice is to refer it back to us, with an adjournment, and we would either have that practitioner carry out better work or reallocate it for a second opinion from one of our own practitioners.

**Q34 Chris Heaton-Harris:** Sorry, can I just quickly ask? How does that get communicated up the management network now in CAF/CASS where there has been a problem? Does it just stay at that kind of local level, get reassigned, whatever it might be? Is there now a reporting mechanism to higher management?

**Anthony Douglas:** We have escalation measures for serious concerns. That situation would be dealt with at local Head of Service level by one of our 21 Heads of Service across the country, as normal operational day-to-day responsibility.

**Chris Heaton-Harris:** Okay.

**Q35 Mrs McGuire:** Just to keep on this theme, I used to do safeguarding in Scotland; I appreciate the system is entirely different. One of my internal benchmarks used to be how many times my interpretation of the best interest of the child was rejected by either a sheriff or a children's panel. We can talk about incompetent work that is not up to scratch, but do you have any feel or can you give us any information on whether or not the recommendations of your practitioners are accepted in the overwhelming majority of cases? I'm not saying, obviously, that the people who do these reports are infallible, but it is quite an interesting internal way of judging whether or not there is a quality element both in the analysis and in the recommendations.

**Anthony Douglas:** We do cover that in the supervision of frontline staff, and of course, courts have to record a decision they make if they disregard our advice. We have had some quite high profile cases, particularly in cases where we felt that unsupervised contact in a private law case posed risks to a child and where that advice that has been disregarded which has led to a debrief. Of course, judicial decisions are not subject to serious case reviews or other parts of the examination process, but we do debrief them and it is relatively rare; in the vast majority of cases our recommendations are accepted. The work we have to do is to make sure that we don't sit on the fence in any case and make a very clear recommendation. As Madam Chairman and many of you have said, we've still got further work to do on the quality of that.



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**Q36 Austin Mitchell:** You said, Mr Bell, the service was satisfactory before the big explosion in demand in 2008, but all the evidence here indicates that it was a bit of a mess. In fact, the Department has been concerned with timeliness. There have been concerns with quality, as Mr Wharton as raised, and I indeed raised and the Chair has raised, in individual cases. Now if it was a mess, and I think it was, why was it a mess? Was it because of lack of staff? Was it because of lack of money? Was it because of lack of morale? Was it because Mr Douglas was too busy writing books on resilience to show any in the service? What was the problem before the big explosion in demand in 2008?

**David Bell:** I think there were a number of factors coming together, Mr Mitchell. I think the legacy of the effect of the 2003 changes was being worked through. There was low morale among staff; I don't think there is any doubt about that.

**Q37 Austin Mitchell:** Why?

**David Bell:** I think, as Mr Douglas has perhaps touched on, this is very stressful work. This is in children's services. This is very much at the sharp end of dealing with cases that are particularly difficult. There was low morale. There was a sense, not just of the pressures of the day-to-day work, but CAF/CASS itself having undergone a number of changes, which were referred to earlier as a kind of "change fatigue". There was also, to be frank, the kind of proper pressure that Mr Douglas and senior managers were bringing to improve performance and drive down sickness absence, and that, frankly, does cause ripples in organisations, and I do think that some of the absence was probably attributable to a harder line being taken exactly in the ways that Mr Douglas described.

There were also obviously internal business process issues, which CAF/CASS had recognised, so I think it's very difficult to identify one particular factor that had given CAF/CASS its difficulties. I just would say, and this should not, again, be seen in any way as making an excuse, this was a really tough job that Mr Douglas took on that was not likely to be susceptible to change within a very short period. Progress was being made slowly, but it was being made; that inevitably meant that there was turbulence and the kind of morale and the impact that you've described.

**Q38 Austin Mitchell:** Mr Douglas has been there since 2004. The Baby P case was August 2007. You weren't involved in that, but I would have thought that bells would have rung and some surge in demand could have been anticipated from the very facts of that case, because it was going to send alarms through local authorities. Now, why wasn't there any contingency plan for dealing with a sudden surge in demand, such as was predictable and did in fact occur? Why were there no contingency plans?

**David Bell:** Just for the record, it was the autumn of 2008 when the Baby P case hit the headlines and the report points out that CAF/CASS's assumptions based on previous such difficult situations had been of a spike of around 3% or 4%. So you would have a major incident in the courts generate quite a lot of publicity.

You would get a 3% or 4% rise in demand, and what tended to happen was a kind of settling down after that. We all remember just the explosion in the publicity, in public interest, anxiety and concern. Of course, you got this massive increase in the aftermath of Baby P, and what happened then was very different then to what had happened previously, where you didn't get a settling back; in fact actually, even if you look at this year, this calendar year that we're in, there are months where we have got a higher number of cases than had even been the case in the aftermath of 2008.

**Q39 Austin Mitchell:** But you had no slack in the organisation to cope.

**David Bell:** Should CAF/CASS have anticipated that kind of demand? I think the NAO report says that nobody in the system—the Department and nobody else in the system—anticipated that we would get that massive increase in demand in light of Baby P. So I don't think it is fair to say that CAF/CASS should have spotted it and should have dealt with it immediately. It did take CAF/CASS a number of months to react and to respond to the demand and both Mr Douglas and I would accept that that probably wasn't perhaps as fast as it should've been to respond, but it was a very, very exceptional period of time, and it was in the light of the increasing demand and some of the other concerns that Committee Members have raised, that I thought it was important to do the Accounting Officer review in the Autumn 2009, which has then led to us taking this next phase of change and improvement in CAF/CASS.

**Q40 Chair:** Mr Bell, I just want to ask you this question, though, because we can continue to have an argument about the impact of Baby P, but what is also clear from the report is that cases are remaining open for much longer; there has been a fantastic increase. Now, I don't know whether data was collected to look at that. What has the Department done, as well as the organisation, to ensure that there is proper capability within CAF/CASS to deal with the fact that cases do remain open longer?

**David Bell:** The whole point of the change programme that CAF/CASS has taken on, which has been funded by the Department, is to deal with that and a whole range of other aspects.

**Chair:** And are you confident that they can?

**David Bell:** I am confident that CAF/CASS can, in those circumstances, but perhaps on this specific issue, Mr Douglas, Madam Chairman, may want to comment.

**Anthony Douglas:** If I may Madam Chairman, just as the Permanent Secretary said, we have had 766 care applications in August, as of one week ago; that is compared to 687 in last August. The increases we are looking at are of the scale of about 30% to 35%. For all of the planners in the Department, the Ministry of Justice, its predecessor organisations, the worst scenario planning was on 3% to 4% increases, because that's what it had been for a decade.

**Q41 Chair:** Can you answer about cases remaining open for longer?

**Anthony Douglas:** I'm trying to say simply say what has happened because it has come up as a question—if I can beg your indulgence. There has been a lot of research through the Local Government Association and ourselves—

**Q42 Chair:** The question that I asked is that there is a 40% increase in the length of time in which cases now remain open. That impacts on your work. Have you got proper systems in place now and capability to deal with that trend? It's a trend; it's not God suddenly hitting us. If you look at the stuff, it's absolutely a trend over time.

**Anthony Douglas:** Much more than we had; had we not, we would not have been able to absorb 2,500 more cases; we would not have reduced the unallocated figure to 150. The way we're working is through a series of local agreements, controlled by judges, within existing legislation, to work more proportionately on cases.

**Q43 Chair:** You're doing less work on cases as your way of coping?

**Anthony Douglas:** We've had what could be called "mission creep" over the years, from the time of the Children Act, when a case took 12 weeks to go through the courts, to now when it takes 46 weeks in South Yorkshire and 65 weeks in London. So that expansion of work is becoming, has become, unaffordable and unsustainable. So we are all having to look at ways of working that make a difference; the main way we're working is to get in as early as possible to cases and then to particularly focus on the local authority assessments, the threshold for care and their outline care plan and to, then, cease the involvement with the permission and authority of the court.

**Q44 Chair:** You're doing fewer section 7 reports?

**Anthony Douglas:** Well, in private law, that has been a hugely successful programme. The private law system is impacted—

**Q45 Chair:** Cut by what?

**Anthony Douglas:** Well, we've absorbed 16% more work and there are more cases closing in private law than—

**Q46 Chair:** How many fewer section 7 reports, proportionally?

**Anthony Douglas:** Percentage-wise, we're now down to only 10% in the best areas of applications to courts and 40% in the worst areas. And we have the new model of single issue reporting, which is also controlling costs and time. So the president's guidance on private law has been hugely successful. Public law work is much more complicated to get right. And, in relation to your question, of all the indicators, not just for us, but everybody else, they remain a problem; after previous tragedies like Victoria Climbié, the system reverted back to its underlying trends after three to six months; this has now been going on for 18 months. It is not so much a blip, but an underlying trend. In all parts of the country, apart from two or three, there are two or three times the number of new

cases as of cases being closed, so that isn't just a CAF/CASS problem; it's a whole system problem.

**Q47 Chair:** The cases remain open because the people aren't doing the work, I would suggest.

**Anthony Douglas:** They are being open because often we are asked to do more work, sometimes because of the complexity.

**Q48 Chair:** To be honest, given the paucity of data, you don't know whether they're more complicated, you're being asked to do more work, or actually because you're not doing the work, and therefore they remain open and they create work. So you may be in a terrible downward spiral because the inefficiency of the organisation keeps cases open and therefore requires more work. With the data that we've got—because you're so bad at collecting data—I don't think either of you can with your hand on your heart say, "Actually, it's all to do with the complexity of the cases. No, it's nothing to do with the inefficiency of the organisation."

**Anthony Douglas:** As with every complex issue, Madam Chairman, we have some inefficiencies still to get to grips with. Many cases are complex; we're often asked to stay in them, not just by courts but sometimes by solicitors.

**Chair:** I don't believe it's down to increasing complexity of cases. I believe it is also to do with the inefficiency of the organisation.

**Q49 Joseph Johnson:** Okay, I just wanted to address some questions of governance within CAF/CASS and the Department for Education. In the private sector, this litany of failure against key performance indicators and the general underperformance of CAF/CASS would have led to management change. Mr Douglas has been in the post since 2004, during which time you've been paid, as Stephen mentioned a second ago, some pretty substantial sums by any standard: £168,000 salary, including performance pay in 2008–09; £157,000 in 2009–10; and you have accrued a bonus pot of £1.7 million, if this is correct—CETV, cash equivalent and transferrable value. I think that is the bonus pot—pension pot—that you've accrued. Those are pretty chunky numbers. I support exceptional pay for exceptional performance, but, in your words, would you say that you have delivered exceptional performance to warrant that level of pay?

**Anthony Douglas:** I would, relative to the salaries for directors of children's services, chief executives, in my line of work. Now, there are changes afoot, as you well know, and that may change in the future; there is always an option for Ministers or Permanent Secretaries to change the management at the top of the organisation. What I have achieved, I think, has been to put in place a viable and sustainable organisation which, at the point the Chair was involved, was not there.

Now, we've had lots of achievements and we've made lots of mistakes. We're still a young organisation. We may or may not continue with our present remit. I suspect that will change because you have seen the pressures and, of course, everything is changing at the moment. I do think, to answer your question bluntly,

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whilst of course others put a value in terms of my salary, I don't either set it or award myself any benefits. I do think, as has been said by many people, it is a pretty tough job and one that I do believe needs stability at the top of the organisation. We've made huge numbers of changes.

**Q50 Joseph Johnson:** You've had a lot of stability: 2004—you are getting on; you're entering your seventh year in this organisation. It doesn't look from the reading of it, despite the comments from the Permanent Secretary that things have been improving in recent months, as though you're making a dramatic impact on it. I wonder, turning to the Permanent Secretary, whether the senior management of this organisation still commands your confidence?

**David Bell:** Yes, is the answer to that question. It is also fair to repeat the point that Mr Douglas is not responsible for setting the salary; that is a decision that is made ultimately by the Department and I believe that the salary set, at that time, was appropriate and, to some extent, probably slightly under the market rate, as Mr Douglas said, for directors of children's services. Who knows what the future will bring? But this is a very tough and complicated job, and I don't underestimate at all the kind of pressure that has been there. Mr Douglas and I would have both, I'm sure, wanted a kind of magic, quick, corporate turnaround of this organisation; it was, frankly, not susceptible to that kind of overnight transformation. Actually, it is the sort of organisation, given the nature of it and its history, that was going to take time to improve. So the answer is, yes, I do have confidence in Mr Douglas, and I have to say I have even greater confidence now that we have with CAF/CASS a transformation programme which will bring, I'm absolutely certain, the next change and improvement within the organisation.

**Chair:** Right, I've got a list of people—Ian, Richard, Stephen, and Anne.

**Q51 Ian Swales:** I would just like to talk again about key performance indicators. We've heard that the list has been changing. Are you satisfied now—and this is particularly from the Department's point of view—that you have got a list that will stand year by year, and therefore can be monitored continually? Is it sufficiently long? And above all, are the targets that are within it for achievement those that would describe a world-class service? I often say to people, "If one is making parachutes, what is the right failure rate in terms of manufacturing?" It's not an entirely flippant comment because we are obviously, sadly, talking about matters of life and death sometimes in this area. I would like to hear you describe how challenging and aspirational the key performance targets are.

**David Bell:** Well, just distinguishing those different parts of your question, if I may, Mr Swales. I think the number we've got—the seven we've got—now cover the areas that are appropriate to cover. It's always a judgment call: should we have 10; should we have five; or whatever? I do think they do cover the key areas, covering the allocations of public and

private law cases, safeguarding and the use of engagement, and so on.

In relation to what should the benchmark be, I guess, in any organisation you would like to think you would have a 100% achievement of any target. I think it does depend, frankly, on the business that you're in. So in some businesses you can't really avoid any failure—the example you gave is a good one—others, I think you have a very high target, but you do recognise that getting to a 100% may not be appropriate. So, to give you a very specific example, if you talk about the 97% target in relation to the allocation of public law-private law cases, that is not to say, "Well, it doesn't matter if you don't reach 100%."

What that, in a sense, reflects is to some extent something that Mr Douglas said: some cases will be so complex that actually achieving the full 100% target will not be possible. And/or, if you're using the triage system that Mr Douglas said, you may have to decide that some cases, on the basis of a first analysis, are not as sufficiently requiring the intervention that other cases might require. So I think if you're talking about targets of this sort, it seems to me this is about right, and I suppose the whole theology of targetry is to have something that is stretching but not completely impossible. I think we've got that about right, but we'll have to keep that under review.

**Q52 Ian Swales:** The reason I raised the question is really to say if the targets are reached, are you satisfied that you have got the right quality of organisation? Because there is a difference between saying that we've reached a certain target and we can breathe a sigh of relief and just deal with doing better, or we've missed a target which we need to reach and we need to talk about what this 3% or 4%, or whatever, actually consists of and drive it out of the process. So there is a very different mindset in terms of the target setting.

**David Bell:** I absolutely agree, but it would seem to me that if we got into a situation where we were consistently achieving any targets set, inside the organisation and beyond, people would say, "Well, that's not a very demanding target, is it? Because what you've done is just set it at a level where you'll just get to it without too much difficulty". If that is less than 100%, you're bound to ask the question, "Well, why can't it be better?" So I don't have a view that, if you reach the target, all is well; you can tick that box. It seems to me if you get to a position where you're consistently reaching the target, you've probably got the wrong target and you probably do need to increase the demand that you're placing on the organisation.

**Q53 Mr Bacon:** Mr Douglas, I'd like to address briefly this question of changes at the top, because you mentioned that there have been a lot of changes at the top. Page 53 of your annual report says, "Early termination other than for misconduct would result in the individual receiving compensation as set out in the individual's contract." Given these corporate management team changes that are referred to in the annual report, with various people leaving, how much did you spend on compensation payments?

**Anthony Douglas:** Altogether last year we had a corporate restructuring and we lost over 50 staff and it cost £900,000.

**Q54 Mr Bacon:** £900,000, and how many of those were these management team people, corporate management team?

**Anthony Douglas:** Three were corporate directors.

**Q55 Mr Bacon:** That is Wooderson, Booth and Malik, is that right?

**Anthony Douglas:** Indeed.

**Q56 Mr Bacon:** And how much did they get paid?

**Anthony Douglas:** Between them?

**Mr Bacon:** No, I mean each.

**Anthony Douglas:** One was £166,000; one was—

**Q57 Mr Bacon:** Sorry, which was which? Who got £166,000?

**Anthony Douglas:** Ms Wooderson got £166,000.

**Mr Bacon:** To leave?

**Anthony Douglas:** Those were her accrued benefits over, I think, 29 years.

**Mr Bacon:** She was paid £166,000 to leave the organisation. That's right; that's what you're saying.

**Anthony Douglas:** Indeed.

**Q58 Mr Bacon:** Okay, and the next one, Jane Booth?

**Anthony Douglas:** I believe approximately £45,000.

**Q59 Mr Bacon:** And Sherry Malik?

**Anthony Douglas:** £43,000, but I would stand corrected on the absolute detail, and I will send you a note if those figures are—

**Q60 Mr Bacon:** Yes please, if you could send us a note anyway,<sup>2</sup> just to confirm, that would be great. Why were they leaving the organisation?

**Anthony Douglas:** I took the view, particularly in response to the Ofsted inspections, that the organisation had moved on and needed to put in place stronger performance managers with a local authority background.

**Q61 Mr Bacon:** So these people weren't strong enough performance managers?

**Anthony Douglas:** Well, they did a terrific job to bring the organisation from where it was to where we got to in 2008. They put the infrastructure together, but in my job you have to have the team around you at any one point in time that is right for the situation. Faced with the demand increases that we had and the various accountability regimes like Ofsted, we needed to have very strong performance managers who were used to managing heavy-end child protection services. That was the basis of our change to the structure. We didn't particularly want to change the structure—as the Permanent Secretary said, it can give you more change fatigue—but we did also make £2.7 million corporate savings, so they were three of over 50 staff when we downsized; in fact, we're going to have to do the same again in a few months to again stay within budget to meet these extra pressures.

**Q62 Mr Bacon:** I'd like to come on to the other 50, but you've mentioned Ofsted. In paragraph 3.22, it says that "Ofsted recommended that CAF/CASS should ensure that service managers understand and implement stated priorities", so that sounds so mind-blowingly obvious that you would hope that an external regulator wouldn't have to come along and recommend that service managers understand and then implement stated priorities. It should be sine qua non of being a service manager that you understand the priorities and you implement the priorities. It makes it sound that, from what you're saying about these people, that they weren't strong enough performance managers—that is basically what you said—even though they did stuff to get the organisation up and running.

**Anthony Douglas:** Operational matters.

**Q63 Mr Bacon:** But they weren't strong enough performance or operational managers; they weren't up to that and you paid them an awful lot of money to go. Why didn't we have managers in the organisation in the first place who were capable of understanding and then implementing the stated priorities—in other words, managing?

**Anthony Douglas:** Well, I think there are two different questions. We did have the right people to put together an infrastructure; those particular three directors did put together the performance management system we had. They were central managers. The emphasis that we needed to place, especially with this huge increase in demand, was to have very hands-on operational managers, and we replaced a number of corporate people around the corporate centre with a smaller, tougher group.

**Q64 Mr Bacon:** They were organisational designers, rather than operational managers?

**Anthony Douglas:** Well, they were strategists. Under pressure, you lose strategists and you put in place operational managers. On the point about service managers, they are often between a rock and a hard place; they have demands from the organisation at the centre, but also they work in a fundamentally unmanaged system, the family justice system, where many of the demands do come from local judges, local courts, who don't directly manage them, and they have to somehow balance the local demands for the service, which may sometimes conflict with the central demands, but certainly our levels of compliance are no longer a significant problem.

**Q65 Mr Bacon:** You mentioned that there were 50 staff altogether; three of them seem to have got £250,000 or so between them. You mentioned £900,000 spent in compensation in total. The other £650,000 was distributed among the other 47. Is that right?

**Anthony Douglas:** Indeed.

**Mr Bacon:** And how was it distributed? What would have been the largest payment after these three here?

**Anthony Douglas:** It maybe more sensible if you want me to itemise the payments for me to send you a note, but they would've been in descending order; some of our long-serving central managers would

<sup>2</sup> Ev 24

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have attracted, legitimately because of accrued benefits, £70,000, £80,000—right down to administrators who would have only qualified for £10,000.

**Mr Bacon:** If you could send us a note with a breakdown, including these ones here in the annual report, so it's in one place, that would be very helpful.<sup>3</sup>

**Q66 Eric Joyce:** It may be an ignorant question—it probably is—what is an accrued benefit?

**Anthony Douglas:** Accrued pension rights over a long period of time.

**Eric Joyce:** It's not cash; it's pension rights.

**Anthony Douglas:** And statutory redundancy rights.

**Chair:** Right, I've got Stephen and Nick. Eric, do you want to come back in again? Stephen.

**Q67 Stephen Barclay:** Can I just clarify what you were saying about 50? On page 8, it refers to 150 employees left or chose to retire following the assessment of their performance as poor. How many of those 150 got some sort of pay off?

**Anthony Douglas:** Well, nobody got a pay off in those terms. Everybody who left got the statutory minimum they were entitled to. Some of that group would have exercised a right to early retirement—not early retirement, but they were eligible for retirement. Some, especially if their posts were going, were in that group of 50-plus. They would have had a legitimate redundancy right; others would've resigned potentially prior to dismissal.

**Q68 Stephen Barclay:** So do you have management information that clarifies exactly how many went, for example, without any pay off?

**Anthony Douglas:** Yes.

**Stephen Barclay:** And you can share that with us?

**Anthony Douglas:** Yes, okay. If you wanted a larger group that left as a result of performance and conduct procedures then we can send you, anonymised, every single one.

**Q69 Stephen Barclay:** Why did it take you four years to put in place a performance management system for staff? Because that was introduced in 2008.

**Anthony Douglas:** We had performance management measures but not an adequate system for a national organisation. The development of it we started in approximately 2006. I think the question the NAO had is the one that obviously the Chair has, which was, was the pace of change quick enough? Many of you are saying it wasn't. All I can say is that, for a national organisation bringing 117 predecessor organisations and cultures together, that got off to a pretty disastrous start by common consent, to retrofit the organisation from 2004 or thereabouts, it did take us working flat out three to four years to put that infrastructure together. We had, if you like, no HR service of note. We had a finance service that needed a complete overhaul, so many of the basic functions needed a complete overhaul. You cannot replace groups of staff who you're not able to retrain overnight. These processes do take time. You have to follow due

process and, in the meantime, you have to keep a service going and that is always most important—what is happening now, around the county, in our 93 teams on individual cases.

**Q70 Chair:** I've just got to say this: six years on, you have an organisation where four of your districts haven't put a business plan in four months in. The report says there was no implementation plan for the new judicial process and the report criticises your communication. This is all six years on. We keep coming drip, drip, drip. Of course, the work you do is important. I would hope to goodness that the work you do does improve children's outcomes and save lives at the very worst, but it's not acceptable six years on to find all these things in such a bad, bad way.

**Anthony Douglas:** For the record Madam Chairman, we do now have 21 business plans from local service areas.

**Chair:** We are now in September.

**Anthony Douglas:** Yes, we had to train at a local level. We've always had a very solid national, corporate business plan. What we've been seeking to do, particularly as the Permanent Secretary said, in our current programme this year is to extend what had become viable national systems down to the local level and that's very much in keeping with policy now. And for our local areas to have really good business plans based upon good evidence and data has taken us a while to put in place.

**Q71 Stephen Barclay:** But 150 people were managed out for poor performance, some of whom got a pay off. That was over two years, so we're talking about 5% of staff. In the first four years that you were in charge, what percentage was managed out for poor performance?

**Anthony Douglas:** I would suspect it would have been a gradual rising percentage, probably starting at 20 per year and increasing year on year, as we put more of an infrastructure together. We started with the central teams, as you have to; we didn't have the capacity to overhaul some of the local teams that needed it. That took us more time.

**Q72 Stephen Barclay:** What I am trying to understand is that in 2004, with much fanfare in *The Guardian*, you introduced a 10-year workplace strategy, so what was different about that workplace strategy? Why was it in that workplace strategy that you didn't have a systematic framework for managing staff, which was introduced in 2008?

**Anthony Douglas:** Well, we've always had a workforce strategy, and in particular it was to train frontline practitioners to increase standards. We have over the years put in new tiers of staff, family support workers. We have increased the number of service managers to give the supervision of complex cases more priority. So we have done a lot of things. What we didn't have was a sufficiently rigorous performance management system that would stand up to the tests of an employment tribunal at the local level. To do that, we needed a good HR service; it took us until 2006 to change the previous dysfunctional service to a good service.

<sup>3</sup> Ev 24

**Q73 Stephen Barclay:** But Mr Bell has just said that this is an organisation not susceptible to a quick turnaround—I think those were your words—but you were saying in 2004 that this implies a step change with your 10-year plan.

**Anthony Douglas:** Well, I have always said, from 2005, that the programme to transform CAF/CASS would last until 2011. We have been on the record about that now for several years and that illustrates the various steps that need to be taken. We also don't work in isolation. For many of the changes we need to make, we're not in the position of, say, a local authority, able to set eligibility criteria, to control budgets and to say, "We will do this work and that work", which you can change very quickly. We've had to negotiate each single change with colleagues in the judiciary, and we've had to build up a consensus, because in the family justice system, there isn't a single point of authority to determine change. That has taken some time. I would say that we're on track to deliver what we said, despite these record increases in demand, by 2011. And it's just as well, given the additional pressures that we face and the next CSR.

**Q74 Stephen Barclay:** Can I just come back to Mr Bell? You commissioned I think PA Consulting to do a review of progress, presumably against the 10-year implementation plan. Can you tell me how much that cost, when it was printed, and when it's going to be made public?

**David Bell:** I can't tell you off hand how much it cost, but I'll certainly write to you and let you know.<sup>4</sup> That, I think, would fall into the category of policy advice, which normally would not be made available, but it's advice to me as the Permanent Secretary and Accounting Officer, so it wasn't intended for publication.

**Chair:** Anne, I've got you next. If people can keep their questions a bit tight—sorry, Anne, I know it's your first time.

**Q75 Mrs McGuire:** Can I say first of all that I am sympathetic to organisations that are not in control of their own agenda—and effectively you're not in control of your own agenda—and particularly when those organisations have to interface with something as powerful as the court system, who can make quite significant demands. However, over the course of the last three quarters of an hour or so, I'm still not clear how we move forwards, because we have had explanations—I'll not call them excuses—about inefficiencies, an older workforce which is more liable to be sick and more liable to be stressed. We've got complexity of cases, increase in numbers, trends, inadequate performance management, but what I am not clear about with all of those explanations is how we get to that transformation goal of 2011.

Now, we're only four months away from 2011. Where actually are we in terms of that plan, given the fact that you're still going to have to meet the demands of a court system, in whatever manifestation you survive? Is it about money at the bottom line? And if it's about money, is there a case to be made that this is an organisation that has transformed itself and

therefore will respond to the needs of children? Because what concerns me about all this, as I say, given my own background about doing work with the courts in Scotland about judging the interest of the child, is that sometimes you don't have the 40 days or the 63 weeks or the 48 weeks, or whatever it is; those judgments have to be made really quite quickly, and I'm just not sure where you are in this. As I say, we've had some great explanations this morning, but where are we in September 2010 to meet that goal of 2011?

**Anthony Douglas:** Okay. The private law system, dealing with the most difficult residence and contact disputes in England, is pretty much in balance and working better. As I've tried to show by the 30% increase in the demand from local authorities for care in the last year, that is the system everyone is worried about. Referrals to local authorities continue and actually before Baby P they started to rise I think because the expansion of provision has brought, for a good reason, more children to attention. We are more aware of the needs of very vulnerable children. That has gone on into high numbers of child protection plans and court applications. So the system as a whole, including pressures on foster carers, shortages of adopters for some children, is under great pressure. From my organisation, we have improved our productivity by 17% over the last 15 months, which has met ministerial expectations. So we are just about getting through the work. Now, what we will have to do over the next year is to negotiate a further set of changes with the judiciary to pare our work back to the work that adds the most value, and I've tried to set out what I think it is.

**Q76 Mrs McGuire:** Can I just unpick this a wee bit about the work that adds the most value? If you're saying that there is an increasing complexity out there of cases—I think most of us looking even at the daily newspapers would say, with some of the stories that are filtering through with parents taking unbelievably violent action against their children, that we appreciate that there is a complexity of cases out there—how do you negotiate a position where you pare back on some of those complex cases? Because I would've assumed that at some point earlier down the line there is some initial gate-keeping about what sort of cases come to you anyway, so you're actually going to get the cases that somebody else cannot solve.

**Anthony Douglas:** Yes, it does get progressively more difficult because if there were any easier cases they don't come through any more. I think, as you said, one of the most worrying recent trends is in private law cases where the court application has triggered a higher level of tension and violence; we've seen a number of homicides and suicides of parents and their children in private law cases.

So I think that what I meant by "complexity" is that the court process itself can sometimes escalate difficulties, especially if children are in limbo for long periods of time, as you've all said. We know that there needs to be a different solution and system, but it's not easy; there are several principles that have grown up over the years that are United Nations Convention compliant, the independence of children's guardians is

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one, so that there is a check and balance for children that need it most. I'm just saying that when you're in the situation that we're in, people like myself have the responsibility to manage it as best we can, and the most successful step we've taken is jointly with the judiciary to forge agreements that have helped us collectively to at least stay on top of the work, rather than letting it get, if you like, completely chaotic and out of control, which was a risk about a year ago.

**Chair:** Nick, are you all right there; so I've got Nick, Chris, James, Eric—just so you know you're there.

**Q77 Nick Smith:** Thank you, Chair. I want to come in on that point actually. Like Anne, I'm sympathetic to the context in which you find yourself, in which you were establishing your new organisation and that you had to deal with the shock of the Baby P case. We all understand that; that seems fair enough. However, this issue about the systemic situation you find yourself in; you're not a prisoner to it though, are you? What are you saying to the people around you that you have to work with, in this complex judicial system that is ever so difficult, ever so time-consuming because of the individual cases that you have to deal with? What are you saying to that organisation around you to make things clear, simpler, easier for children? It seems to me that, because you're in it, you're not subject to it; you're subject to it to a degree, but equally you are a strong voice for change and improving it. So are you going to do about that in terms of working with the judicial system? And I wonder what more you're going to do in terms of engagement with service users, with children and families, who'll be constructively critical of the service you provide? Because it seems to me looking through the reports that you haven't been very good at doing that either, and that's something that's come out of the Ofsted review of your work. What are you doing about the system? And what are you doing to engage with service users?

**Anthony Douglas:** Well, I have strong working relationships with the leading judges in the country. They have been forged over many years. That, I would say, is partly a reason that we've been able to secure some agreements and some change. At the end of the day, we are a group of people managing the system together through negotiation, so I am going to carry on doing that and, as you've said, the report talks about anxiety about the end of the interim guidance, but between us we are putting a continuance of that together. Around the organisation, I am personally championing a different model of working, which is to say this work is more important than that work, and, under this pressure, this is what we do. I go to every team about that and every service area and we have made a lot of changes through that approach. I missed the last part of your question; I do apologise.

**Q78 Nick Smith:** What are you doing to engage with service users?

**Anthony Douglas:** Yes, well, again, we're having to set internal priorities and what we're saying is most important is to handle complaints promptly and properly and to share information, particularly case

records and reports, with people who use the service. Those are the two points we are prioritising.

**Q79 Nick Smith:** Chair, those do seem to me to be quite weak answers. It feels as if you're just dealing with the cards you've dealt, rather than addressing the system. And it feels to me that you're not really engaging with service users in a good, strong way. You've got to do better at that, surely.

**Anthony Douglas:** With respect, I think the best engagement is, as the performance indicator says, to allocate all of our work, at a snapshot, 97% of the time. If you have an allocated children's guardian if you're a child, or if you have allocated work in a private law case, then that is the service. And the service to get good service user engagement is prompt contact, listening to someone, reflecting their case properly in a report and, if you go against them, because, in our work, you often have to be for someone and against someone else—we're not in a situation where we can agree with everybody—you have to work that through properly with the person, so we think we have most work to do in getting service user engagement on cases, as quick as it can be.

**Q80 Chris Heaton-Harris:** I'm not even sure if I should declare an interest, because I've got an in-law who is a family law barrister who works either for you or against you, depending upon how she's paid and, indeed, a couple of friends who work within your organisation. My concern: actually, I think they're unique because my concern is actually in 3.17. We've heard about the problems in the past, but 3.17, page 36, talks about the 200 employees that are expected to retire in 2010–11, the age profile demographic of your staff and where it is going forward. Realistically, I would like you both to talk about the risk that the organisation faces and how you're going to deal with that, because there is a risk, obviously, for the organisation itself, and I would also like to know how the Department perceives that risk and how it's helping you address those matters.

**David Bell:** Perhaps I'll kick off. If anything comes out of this session, it's just the increasing emphasis on the risk and the riskiness of the system that we're in, for all the reasons that have been described here. That was one of the reasons why I was very keen in commissioning the report in 2009 to ask ourselves what more can be done to first of all understand what we're facing and do something about it. I think we are aware that the kind of transformation and change progress that CAFCASS has got in train is a way of addressing the risks that we face. As one or two people have said here today, engaging the workforce is absolutely central to that. The NAO report, to be fair, does actually highlight in one or two places the work that Mr Douglas, particularly, but other senior managers were doing.

There is also then the question, and I just want to tease it out a bit, that once or twice Mr Douglas has made some observations that you have to make judgment calls about areas where you perhaps, to use his word, have to have a "proportionate" response. It's easy— isn't it?—to criticise that and say that means that

you're not going to be providing the same sort of service to every particular case that comes on to your books. But actually that is part of what you have to do in running a service like this. You have to make judgments about what is likely to be more risky or less risky; that in itself is risky, but the way of course of trying to minimise that risk is ensuring that the professional practice is right, and that is why Mr Douglas' change programme is absolutely focused on the quality of front line practice, because only if you get that right have you got the best chance of making the judgment. So it is risky, but I think we must improve the business processes, alongside the front-line practice. Just to be very clear, I'm under no illusions about the risk that we face because of the demand and the complexity of the system.

**Q81 Chris Heaton-Harris:** Mr Bell, that sounded fantastic, but it says here that six service areas currently have both higher than average vacancy rates and an age profile skewed towards older staff. The processes sound as though they are fantastic, but actually the processes for the last eight years have sounded pretty good and the statements have been pretty good, but you have a relatively old workforce, many of whom are leaving and want to leave; you've got high vacancy rates; you've got 200 employees retiring this year; and high sickness. So it all sounds great, but my concern is there is a different type of risk, which is actually what is happening in the six areas which have these problems.

**David Bell:** If it's alright by the Chair, I suppose to allow us to pick some of the actions that we've taken, or rather CAF/CASS has taken rather, in relation to recruitment and bringing in new staff.

**Anthony Douglas:** The first thing to say is that for social workers, it's a tough job and it goes on being a tough job, and the work of the Social Work Reform Board will be important to build a more sustainable profession over time. Our vacancy rates are now down to 3%, mainly because we've expanded our HR service to have stronger case management of individuals, particularly those who've been off sick. Actually, it is, in many ways, good to have some turnover. We don't have a problem recruiting new practitioners. We of course have budgetary constraints, but new practitioners are trained in newer methods and they are actually better, if you can generalise, at working faster on duty, faster throughput, and the PA report that was being referred to was particularly focused on productivity, and when you measure throughput per social worker, that's what we've been able to improve. And for many long standing practitioners, who've worked in a traditional way, they don't particularly like that; they don't like that extra degree of pressure. You might say that whether they like it or not doesn't matter because, in many ways, they are better because experience shows what you can do and what you leave alone. But generally recruitment isn't difficult—vacancy rates are quite healthy at 3%—and what we have got to watch is that we don't have everybody retiring in a particular team, so that we lose continuity in one team. It's another strategic risk, but I wouldn't say it was one of our high risks.

**Q82 Mrs McGuire:** Can I turn to these two questions? Now, I'm beginning to feel that somehow all of these older social workers out there have been utterly resistant and almost happily sabotaging some of the work—that is just the impression I'm getting. This ties into Nick's question about where was the engagement in terms of teaching these old dogs new tricks, because I fail to understand that they were all in the business of being adverse to change, unless that's what you're telling me.

**Anthony Douglas:** No, I should correct that impression.

**Mrs McGuire:** I have to say that I'm beginning to get it; maybe I'm feeling a bit sensitive about it.

**Anthony Douglas:** I do apologise. I simply said they're the group that are more likely to be in performance measures and more likely to want to go. Actually, they have been the bedrock of the service through thick and thin. I'm just saying that, if there is a trend, it's that where staff on the front line are able to leave through being eligible for retirement, they are tending to go perhaps a year or so earlier than they might otherwise have done. That simply reflects pressures. If you have been working for the last three years on a local authority duty desk, you're more used to the kind of work we have to do now.

Those are the changes that we've had to make from a service that, back in 2004, was fundamentally a court reporting service. We've had to make the change, added to by the recent pressures, to being effectively a front-line duty-based operational service. Many colleagues have made that change and they are at the forefront of mentoring the newer staff. I'm simply saying that a percentage of them haven't. Certainly, compliance levels are now not an issue. They were several years ago, but not any more. The issue is far more staff perhaps needing greater role clarity under this pressure, and that is what, through the transformation programme, we are seeking to give, although it is not in our total gift alone. It's not in my gift to say that you will do this type of work on cases full stop, because any court can say something different on any individual case, and they frequently do.

**Chair:** I've got three more and then I'm going to draw it to a close. I've got James, Eric, and Austin, okay.

**Q83 James Wharton:** We've discussed quite a lot looking back over particularly the costs of—and I hate the phrase—managing people out of the organisation, people who've left, costs that are just shy of £1 million in identifiable redundancy payment and other payments that have been made to people. How many or what measure have you got of the numbers of your staff who are still underperforming and may need to be managed out, and the cost of that? Do you have any idea what could be the cost of that, looking forward?

**Anthony Douglas:** Yes, I probably should just say, for context, that for the £900,000 the main purpose was twofold: the roles were no longer the ones we needed—we did follow due process and assess people who went for those roles and we made £2.7 million continuing revenue savings. The main purpose was a downsizing to get greater revenue savings.



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In terms of continuing performance management, we have a slightly lesser number, about 100 staff currently going through that process, but I would say two thirds of our staff that go through our performance system, through action plans, practice improvement notices, do change. It's a positive picture, on the whole. One third over the last two years have gone. In relation to the future, poor performance isn't anything like the issue it was and we now have a much more manageable group. The issue is far more: can practitioners absorb much higher case loads? In our teams with the highest case loads they are carrying around 35 active cases: probably at the limit of what you can carry to be able to do anything meaningful on any one case. It's a question of whether our workforce as a whole can get up to that benchmark, but we'll always have a small group of people, at any one time, to manage out. Really, our next corporate review that we have to go through is to stay within budget. These are not poor performing staff; if we have to make those changes it will be because of the budget and because we need to make savings.

**Q84 Eric Joyce:** This is a question about IT and the future, actually. I just noticed that in paragraph 3.3, it talks about developing new IT systems to support flexible working and then further down on page 33, maximising online services, and then in paragraph 3.5 on page 34, it talks about IT literacy improving but remaining an issue for some CAF/CASS staff. And it strikes me that changes in IT, particularly with online services and so forth—a bit of musical accompaniment. I hope that's improving my performance here—it occurs to me that IT changes are sometimes enormous in terms of organisational change. Particularly, although it's not always true, that older staff find it harder to learn new systems—that's a misunderstanding—but there are clearly going to be issues with quite a few of your staff, so how do you see those two things tying together in respect of developing the IT systems?

**Anthony Douglas:** It is a major part of our transformation programme to make our IT system more fit for purpose, working with a provider to get our management information system, that we've made several references to, our data quality is much better than it was at the time of this report but it could still be improved and we need to do more to facilitate our practitioners taking more work with better systems around them, particularly to be able to record more briefly out in the field and to be able to upload that onto the systems that we have—because we have a number of home workers—so giving people the tools for the job and improving basic IT, including its reliability, is a huge issue. I would say there is 10% more productivity improvement if we can get that right.

**Chair:** Austin, if your phone is all right.

**Q85 Austin Mitchell:** Paragraph 3.20 in the report, you've dealt with it partly, but sickness.

**Mrs McGuire:** Why don't you just switch it off?

**Austin Mitchell:** I have, I mean it's on silent, I'm sorry. It's just that I'm not used to something like this. Sickness absence has increased further. CAF/CASS's sickness absence rate averaged 11.6 per staff member.

Family Court Advisors missed 16.1 days on average, that's nearly 17,000 days. Why is that? Is that part of a reflection of the amount of work and change that has been pushed on them or is it a reflection of the crisis in social work generally where they are underpaid and over-exposed.

**Anthony Douglas:** About a third is stress related in some shape or form. Some of that is a combination of what goes on in people's personal lives in addition to what goes on at work, work based stress. The rest is, if there is a factor, is age-related: 5% on necks 5% on backs, cancers, not things that can be readily stopped. The area to case manage is long-term sickness—that's where we've made the biggest change recently. But it's still a big problem. At the time of the NAO report, we were losing £3.3 million a year to sickness; we've reduced that to £2.5 million, but that is a lot of frontline service that we're losing.

**Q86 Chair:** This report is a July 2010 report, fieldwork done in May and June. So, I can't believe—and we've had August in the middle, which I know the courts work, but lots of people take their holidays—the impression you've given that there has been a fantastic gap between this report and a sudden change. This is May, June, to the end of August. We're just the beginning of September. July is the only month you had to improve, really, because August everybody is on holiday. This is irritating.

**Anthony Douglas:** We have made a 34% reduction.

**Q87 Chair:** In July?

**Anthony Douglas:** Between July 2009 and this July in practitioner sickness. Now, that equates to about 400 days.

**Q88 Chair:** Can I ask our official? Your figures are May, June year-on-year?

**Angela Hands:** Yes, they were the previous, they were looking up to the end of—

**Chair:** What?

**Angela Hands:** They were looking up to the end of where we—

**Anthony Douglas:** I think it was the end of April.

**Chair:** What? I can't hear. I'm really sorry, I'm a bit deaf.

**Angela Hands:** Ours were up to the end April, so it was a year.

**Chair:** So, your figures ended when?

**Angela Hands:** April

**Chair:** April of which year?

**Angela Hands:** April '10.

**Chair:** April '10?

**Angela Hands:** Yes.

**Chair:** So you went April to April, you've gone June to June?

**Anthony Douglas:** July to July.

**Q88 Chair:** You've actually got figures have you?

**Anthony Douglas:** Yes, and I'm very happy to make them available.

**Q89 Chair:** So, it's only a three-month difference, and there has been this dramatic change? It stretches credibility.

**Anthony Douglas:** I'm more than happy to send you the figures if you like.

**Q90 Mrs McGuire:** Is it not a comparison between July 2009 and July 2010?

**Anthony Douglas:** Yes, indeed.

**Q91 Mrs McGuire:** It's like when they do things about how many car sales there are year on year. It's not the annualised number, is that right?

**Anthony Douglas:** The underlying trend is coming down by three days.

**Q92 Mrs McGuire:** Comparing last July with this July?

**Anthony Douglas:** Yes, but there has been a major improvement, particularly by case managing long-term sickness. I'm very happy to make detailed figures available.

**Chair:** Angela do you want to just clarify?

**Angela Hands:** I think if the Committee were to ask for the annualised figures that would be helpful - the figures for the whole year.

**Chair:** Okay, what every month, each month?

**Angela Hands:** And for the whole year as well, so that we—

**Chair:** Okay, what do you define as year?

**Angela Hands:** Yes, up to—

**Anthony Douglas:** We do it by quarter and if you look at the quarter by quarter—

**Angela Hands:** Good, you need them for every quarter.

**Chair:** I'm just finding all these things have dramatically improved and this is fieldwork May/June with report that came out, actually I remember, it was right at the end before we went on recess, so it was right at the end of July.

**Q93 Eric Joyce:** You're comparing last July with this July, so it's a trend that goes over a whole year rather than just over a three-month period, I think?

**Anthony Douglas:** Madam Chairman, if I may, I would just say that it has come down considerably, rather than either remaining static or going the other way, despite the pressures, and I think that shows the loyalty and commitment of our workforce to pick up new work and as Austin Mitchell said, they don't get a great press; the work is tough, but they have been, following the NAO report and the Ofsted inspections determined to pick up the work and, as best as possible, give every child a service. Otherwise we would not have got through this extra work.<sup>5</sup>

**Q94 Stephen Barclay:** When you're talking about it coming down, in 2006 when you targeted sickness because it was too high, your management targeted it, it then went up and then when you're now talking about it coming down, you're talking about it coming down from that higher point, you're not talking about it coming down from where it was when you were in charge in 2006.

**Anthony Douglas:** It has been an extraordinary 18 months. I don't want to use that as an excuse, but as an explanation, for anyone in social work, whether

you're in Local Authorities, the voluntary sector or organisations like mine, it has been the most intensely difficult period of any of our time. For people who are under pressure, they live in the margins and that extra pressure can just be too much for them. That is what happened; we were at our worst point for every indicator around July 2009. As the Chair said, we didn't predict it, but my defence would be, nobody predicted it; the care system hadn't gone through that kind of upheaval since the early 1990s or the early 1980s, with the big switch from residential care to foster care.

**Chair:** I think nobody in this room underestimates the importance of that change; our questioning is around, a) whether there was sufficient contingency planning in place to deal with these sorts of incidents, they will happen again, they happen with sad regularity; and b) whether that was the only cause of the poor performance. I'm going to bring this to an end now. I just wanted to ask David—

**Q95 Austin Mitchell:** Can I—just one final question? I mean, all politics is local and I noticed from Appendix 2, that area N4, which is mine, and encloses the four corners of the civilised world as far as I'm concerned is the only one that has two inadequate verdicts on it. Now, what's the problem there?

**Mr Bacon:** I blame the MP.

**Austin Mitchell:** Despite vigorous representation of the area, there are still two "inadequates". Now, what are Sharon Tappin and the gals and guys doing about it and what's the problem?

**Anthony Douglas:** The pace of change there has not been fast enough to deal with the problems and we've now put one of our managers from South Yorkshire in charge. We're running it slightly differently in consultation with the Department and Ofsted because it's been a very serious matter there; it's been the only area in the country that we've not been able to improve within a reasonable period of time. So, we're on, if you like, our third regime of formal intervention internally.

**Austin Mitchell:** Thank you.

**Chair:** Okay, thank you very much for your thorough answers to our questions. What I want to say to you is, there are concerns by the Committee. You, both of you, have given assurances that you think this is an organisation that is fit for purpose and will cope with any future changes, whether it is growth in numbers or length of time cases remain open. We will want to return to this issue to test that, and we will be reporting from the evidence that you've given us and from the NAO report before that, after we've hopefully taken evidence from others as well, so thank you very much indeed.

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**Tuesday 12 October 2010**

Members present:

Margaret Hodge (Chair)

Richard Bacon  
Stephen Barclay  
Jackie Doyle-Price  
Matthew Hancock  
Chris Heaton-Harris

Joseph Johnson  
Austin Mitchell  
Nick Smith  
Ian Swales  
James Wharton

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**Amyas Morse**, Comptroller and Auditor General, **Gabrielle Cohen**, Assistant Auditor General and **Angela Hands**, National Audit Office and **Marius Gallaheer**, Alternate Treasury Officer of Accounts, were in attendance.

*Witnesses:* **Rt. Hon Sir Nicholas Wall**, President, Family Division, and Head of Family Justice, and **Sir Mark Hedley**, High Court Judge (Family Division) gave evidence.

**Q96 Chair:** I welcome you both, Sir Nicholas and Sir Mark, and thank you very much for attending our hearing this morning. I know you felt some reluctance to do so, but, from our point of view, having had a session with both Cafcass themselves and their sponsor Department, the Department for Education, we simply thought it would be helpful, in coming to some helpful conclusions, if we heard a little from you as the customer of Cafcass. We are immensely grateful for you to agreeing to attend.

Can I also say thank you to you, Sir Nicholas, for sending the letter, particularly the one of 7 October, which gives us a basis on which to take the questioning? To start, in that letter you remind us quite properly that care proceedings are instituted by local authorities. You say there are variations in the performance of local authorities, which impact on whether backlogs have been eliminated. Would it be possible for you to expand on that observation? Why is the performance different in local authorities? What are you actually referring to? Is it that different standards are applied in terms of where they decide to take care proceedings? Do the children's department, the social workers, work in a different way? How does that impact on the contribution that Cafcass then has to make to your consideration of individual cases in the courts?

**Sir Nicholas Wall:** Under the public law protocol, you will appreciate that the local authority is obliged to undertake pre-action work with the family. There is a pre-protocol procedure, which means that the local authority should not only work with but assess the family. One of the problems has been that there have been differences in local authority assessments. If a local authority does its work efficiently and well, one tends to find—I am sure Mark would agree—that the guardian accepts the work done by the local authority, and the case can proceed relatively smoothly. If, on the other hand, the local authority hasn't done a full assessment, the judge who is charged with the duty of not only finding the threshold criteria satisfied but also deciding whether or not it is in the best interests of the child—whether the care plan is appropriate—can't make a care order and can't proceed. Therefore, there is a delay while sometimes a judge feels that he or she has to have a second assessment, or alternatively Cafcass feels it has to investigate the care work that

has been done by the local authority in much greater detail. There is a consequential delay. One does tend to find that some local authorities that do excellent pre-protocol work produce excellent assessments and cases proceed smoothly; if they do not, there is a delay.

**Q97 Chair:** Would you like to add anything particularly? We know London is particularly different.

**Sir Mark Hedley:** Different authorities have radically different demands made of them, depending on the social setting in which they are operating. You would expect one of the Royal Boroughs to produce something rather more polished than, say, Southwark or Lambeth, which operate under huge pressures in terms of the demands made of them. That is not to say that they do it badly, but there are radically different demands made on different authorities. I know from my experience of being liaison judge in Wales, as well, that you have problems in Blaenau Gwent, for example, which you most certainly don't have in, say, Pembrokeshire, simply because the demands are quite different. We have to live with the fact that there are very different demands. Different social services have recruitment and retention problems, which others do not have. They are often linked to the kinds of demands that are made. Those kinds of issues bubbling around in the background have an obvious impact on what local authorities can and cannot achieve.

**Q98 Chair:** In effect, if all local authorities performed at the level of the best, even having regard to the different demands, the ability of Cafcass to respond to the needs of the court would be far easier.

**Sir Nicholas Wall:** Yes, I think that is right. One of the things I have said to Government in correspondence is anything the Government can do to improve the lot of the social worker, and to raise the profile of the social work profession, would be greatly welcomed by the judiciary, because we are dependent on social workers for the competence of the work they do. If the work is not well done or if the work, because of the pressures that Mark has indicated, is poorly done, there is inevitably a delay, as the process presently stands, because the judge will say, "I am

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very sorry. I don't like your care plan. I am not impressed with your care plan. I don't think this is a case for a care order or this particular care plan. Will you please do the work again or will someone else do the work for you?"

**Q99 Stephen Barclay:** Would you describe the current service provided by Cafcass as "world class"?  
**Sir Nicholas Wall:** I don't think any judge is ever fully satisfied with the service that is provided by anybody. Certainly we would not have the Interim Guidance if we were entirely satisfied with the work that has been done. I am very anxious not to get into a political debate about Cafcass because, as you will appreciate, the Government funds and organises Cafcass, and the judges have to make do with what they're given. I think both Mark and I would be unanimous, and all judges would be unanimous, in saying that what we want is children properly and independently represented in care proceedings. Any organisation that does not deliver that for whatever reason—and that is a matter for you—is not world class.

**Q100 Stephen Barclay:** The reason for the question is that eight of the ten Ofsted inspections in 2009 found that the service was inadequate. In 2009 as well, there was a massive increase to 1,250 cases without someone allocated, but the chief executive of Cafcass feels it's a world-class service. One of the things I am trying to understand is the element of improvements you feel, as the users of the service, there needs to be, or whether actually the status quo is delivering what you, as the users, need.

**Sir Nicholas Wall:** No, I don't think it is. The position as I see it is of course the courts need a welfare service, and the courts want a welfare service that will undertake the tasks that the judges ask the court welfare service to undertake. If, for whatever reason, this service is unable to undertake the tasks that the judge requires, the judge will be dissatisfied. My predecessor Sir Mark Potter would not have introduced the Interim Guidance if every child had a guardian and if every report was on time. He would not have renewed it, and I would not have entered into the Agreement and, no doubt, we wouldn't have the review of the family justice system that we are having at the moment. None of us is complacent, but we do have to work with what we are given.

**Q101 Stephen Barclay:** Does it not flow from that, therefore, Sir Nicholas, that the extension of that Interim Guidance for another 12 months means that it will be some time before the service reaches the standard that it should?

**Sir Nicholas Wall:** With great respect, I don't think I have renewed the Interim Guidance for another 12 months. What I have said to Cafcass, if you look at the document—which I hope I've sent to you and I hope you've seen—my judges have been instructed to operate to the public law outline in clear detail, which means coming off the bench, case managing. We have also agreed, until the Family Justice Review reports, that we will case-manage guardians. In other words, we will say to a guardian in a particular case, "We

think this case is about *x*. Will you please investigate *x*?" I specifically agreed with Anthony Douglas that, if we want *x* investigated in a particular way, Cafcass will execute the work in the particular way we want it done. Cafcass has given me an assurance that not only will they allocate but they will ensure that, if there is an emergency or crisis, there will be a guardian to represent the child, so, for example, in an interim care order, or following an emergency protection order or police protection, the child will be represented. So I do not think, with respect, that I have renewed the Interim Guidance. I've made it very clear that Cafcass will operate the PLO, which I strongly believe should operate, and we will wait to see what the Family Justice Review comes up with. No doubt they will come up with ideas, which we'll then have to incorporate.

**Q102 Chair:** We're slightly muddled on this, if I'm honest with you, Sir Nicholas, because Anthony Douglas, when he gave evidence to us, suggested that the use of the duty advisers would need to continue for a further year. Now, you say in your letter that, by common consent, the duty advisers were generally not successful. I assume what you have just said in answer to Stephen is that you would not want Cafcass to continue employing duty advisers. However, within their resource constraints, and given that nobody sees there is going to be reduction in the pressures of children coming forward, with care proceedings being pursued, what's going to happen because, if they don't have duty adviser, they won't have support?

**Sir Nicholas Wall:** May I answer that in several ways? Firstly, it is by no means in every care centre that the duty scheme operates. For example in Wales, the duty scheme is unknown. In parts of England, we do not have duty guardians. Under the agreement that I have reached with Cafcass, there will only be duty guardians with the specific concurrence of the Designated Family Judge. I have had an assurance that if, because of constraints, as you rightly put it, duty guardians have to be appointed, they will nonetheless be available to represent the child on any application that is contested. That I think is the best that we can do in the particular circumstances. Whether that is going to work in London, Mark will tell you.

**Sir Mark Hedley:** Part of the new arrangement is that there is a greater stress on local arrangements, which I think Anthony Douglas told you something about. We have an agreement that is specific to London in terms of guardians and, in particular, in terms of removing emergency guardians. I am bound to say Cafcass has made real strides with that in the last few months, and we have seen a very significant reduction in backlogs. In fact, two of their offices have no backlog at all now, and the third has a backlog that they hope to have cleared by next month. Of course, it comes at a price; it means that practitioners are actually carrying twice as many cases as they did before. The issue is how that will filter through in terms of the service offered. I think one of the problems we have, if I may say so, is that, although there is a link between good systems and delivery, it is not infallible. If you talked to individual judges, you would find that most people were entirely satisfied

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with the quality of individual Cafcass officers' work. On the whole, it is recognised as being of good quality, profoundly conscientious and so on. Of course, there are systemic problems which mean delays, people are not represented and all the things that you are familiar with. The mere fact you get the system right does not necessarily mean to say that you will get the delivery right, if you are asking more of practitioners than the courts require them to deliver.

**Sir Nicholas Wall:** Certainly the objective of the Agreement I have reached with Cafcass is to eliminate the duty guardian. No one likes it: Cafcass doesn't like it; practitioners don't like it; and, in the past, undoubtedly, it has meant that children have been unrepresented.

**Chair:** I think the Committee would agree that Anthony Douglas was of the view that there would have to be duty guardians for a further year.

**Sir Mark Hedley:** He can't promise that there won't be in London. I daresay there are still one or two but, for the most part, I would hope that by the end of this year we will not have any more duty guardians, but there is no actual promise to that effect.

**Q103 Nick Smith:** Although Cafcass is the subject of our report, I am interested in your point of view on local authorities and the consistency of reporting and representation you receive from them as part of this process. I wonder if you could tell us a little more about that. Although it is good they have a first-class service in the Royal Borough of Kensington, equally, young people caught in the middle of this sausage machine should have the same excellent service in Blaenau Gwent. Can you just tell us a little bit more about that, please?

**Sir Mark Hedley:** It is simply that there is a correlation between care cases and social deprivation. Therefore, in areas of obvious social deprivation, there is a higher percentage of care cases. When I was responsible for Wales, we discovered—no one knew it until then—that there were more children in care in Wales per 100,000 of the population than there were in England. Nobody knew why; I do not know whether they know why now or not, because I'm not involved anymore. There is this correlation. The higher the number of children who may be the subject of interventions, the greater the pressure on local authorities, and social workers in particular. The greater pressure on social workers can have impacts on health, retention, recruitment and all the rest of it. My experience from being a local judge in Liverpool, which I was for about 10 years, was that Liverpool tended to attract the very best social workers, who relished the challenge, and those who could not find a job anywhere else. You had a huge spread of skill. The same will be true of Blaenau Gwent, Southwark, Lambeth and places like that. You will get some star social workers; you will also get those for whom it's all a bit too much.

**Q104 Nick Smith:** Are local authorities and their social workers the weak link in this particular chain of support for children?

**Sir Mark Hedley:** I think it would be unfair to say they're the weak link in it. Part of the trouble is that

we are coping with a huge upsurge, at least last year, in work, which has taken everybody slightly by surprise, in the way Anthony Douglas was describing to you. They are the weak link only in the sense that they are the point of entry into the system. I have considerable respect for the social work evidence that I've heard over the last 20 years. I would not want to characterise them as the weak link, but weaknesses show up first there, because they're the point of entry.

**Q105 Nick Smith:** Is that therefore the best place to engage your resources to try to deal with what you say is a growing issue?

**Sir Mark Hedley:** I think part of the PLO was indeed to try to front-load as much work as possible because, of course, once it gets into the court system, it starts to become expensive.

**Q106 Stephen Barclay:** Sir Mark, picking up on your point, it's very good news if the duty allocation is going to be phased out, notwithstanding London being slightly further behind. I am just trying to understand where the squeeze will then come. Are you expecting a squeeze in terms of the time taken to allocate cases fully?

**Sir Mark Hedley:** No, allocation is being dealt with quite quickly but, as I understand it—and it is only as I understand it—practitioners in London now are carrying case loads that are probably twice what they were in the previous year. What we were doing in our discussions was recognising that, in the life of every care case, there is, from the guardian's point of view, quite a bit of fallow time. There are four key points in which they need to be engaged: first hearing, case management conference, issue resolutions hearing and final hearing. Between the case management conference and the issue resolutions hearing, there is quite a lot of fallow time, when evidence is gathered, expert assessments are done and so on. There is also sometimes a bit of time between the issue resolutions hearing and the final trial, depending on court and judge availability. We were wondering whether those fallow times could be used by guardians taking on other cases and, as it were, focusing on those four moments in a case. How that will work and whether it will work remains to be seen.

**Q107 Stephen Barclay:** So in essence they will be taking on more cases. You are looking to phase the work almost.

**Sir Mark Hedley:** They will. That is why we don't yet know the cost, having got the backlogs down, which they have undoubtedly done, but with the same resources.

**Q108 Stephen Barclay:** Would there also perhaps be a risk of a longer period before cases are allocated?

**Sir Mark Hedley:** I think not. Because they want to allocate for first hearing, they will allocate quickly. I think it is just a matter of seeing what the impact on individual practitioners will be down the line. I am not in a position to predict that. Experience alone will determine it.

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**Q109 Chair:** Will there be an impact on the resolution of private law cases, because of the quite proper emphasis on prioritising public law cases?

**Sir Nicholas Wall:** Inevitably. Once again, this has become a matter of case management. Under the private law outline,<sup>1</sup> which I have sent to you, first of all we have tried to take as many cases as we can out of the system by making the first appointment effectively a conciliation appointment, where no evidence is filed, where the judge comes off the bench, the Cafcass officer is present and there is a chat with the family about the issues and whether they can be resolved then and there. The Government are also keen on a pre-action protocol for mediation. There is a very strong emphasis on mediation and conciliation. When cases come into the system, by definition, they will be the most difficult because 90% of people settle their own cases without coming anywhere near the court in the first place, and we hope to be able to divert a large number of other people away from the court process. It is very important—and the judiciary is learning this lesson and I think it is helping Cafcass—that we are focusing our reports. We are saying, “Look, we want a report about *x*. We don’t want a general report that takes six months to write, where you have to talk to everybody. We want a report on a specific issue. Here it is; go away and do it.” Cafcass has found that focused reports ordered by the judiciary have made it much easier for them to combine public and private law work. There are still delays, but fewer than they were.

**Q110 Chair:** In the NAO Report, as well as the increase in public law cases, there was—I think I am remembering the figure correctly—a 16% increase in private law cases, which appeared to be a trend. There was the worrying statistic that the average length of time for determination of those cases was over a year, which is a heck of a long time in a child’s life. With this new emphasis on ensuring a proper allocation of public law cases and, despite your best endeavours, nothing to suggest that upward trend in private law cases is suddenly going to change, should we be concerned?

**Sir Nicholas Wall:** The difficulty with private law cases—I’m sure Mark would agree with this—is that they are what we call “dynamic”. They do change. Parents who are at loggerheads over their children rarely behave rationally. Therefore, it is very difficult to bring termination to such disputes. We’ve all had experience—Mark more than most, I think—of what we call the “intractable contact dispute”, which goes on and on. Every time on a Friday afternoon you order contact for Saturday morning, you think you must have made it failsafe; it must work. It does not; something goes wrong. You know it is because the parents are not really arguing about the welfare of their child; they’re fighting each other. We’ve come to the conclusion that we simply cannot afford to go on having these endlessly long-drawn-out private law disputes.

<sup>1</sup> Note by witness: The reference should be to the Revised Private Law Programme (a Practice Direction). This was NOT sent in advance to the Committee. It is, however a public document.

What we will be doing under the private law programme is, firstly, trying to eliminate as many as we can from the system; and, secondly, identifying the issue swiftly and allocating the case appropriately. If, for example, it is a straightforward contact dispute when there’s no domestic abuse, and it’s simply a question of quantum, it would be dealt with by the family proceedings court or possibly the county court. The really difficult intractable cases will be left to the High Court. The length of the case is not necessarily an indication of inefficiency. It’s an indication of the difficulty of the dispute. I’ve certainly had cases in the past where parents have come back time and time again to argue about points which you thought any rational couple would be able to settle between themselves.

**Sir Mark Hedley:** That’s right. The problem is also, although cases take longer than we would like them to take, the trouble with the statistics is that there is no very great clarity about what is meant by the end of a case. The trouble with the kind of case that Sir Nicholas has been describing is that you make a final order, but it most certainly isn’t the end of the case. It comes back and back and back. It is therefore quite difficult to judge how long some of these cases truly take.

**Q111 Chair:** To conclude that little bit, your work would suggest that the trend that we have seen—that trend of 16%—is growing.

**Sir Mark Hedley:** It is true right across the westernised world. We had a presentation from an Australian academic recently, who was demonstrating that the private law trend is across the entire westernised world. Europe, Australia, North America, everywhere shows a similar trend, which has to do with the rise in consciousness of parenting, and a separation of parenting from divorce issues.

**Q112 Chair:** What is Cafcass’s role in that?

**Sir Mark Hedley:** They are profoundly involved. We try to focus on these single or short issue reports.

**Sir Nicholas Wall:** The other factor is the fact that there will be an increasing dearth of public funding, and public funding for private law cases will effectively disappear. We will have an increasing number of litigants in person. If people are determined to litigate, they will litigate in person, which takes longer. They will slow the system down.

**Q113 Chair:** Presumably in those cases, you are also more dependent on the professional judgment of the Cafcass adviser.

**Sir Nicholas Wall:** In an ideal world, one would send the couple off to a social worker or a mediator, and decide, “This is not a case for an adversarial dispute between the two of you. You should go away and lock yourself in a room with someone else and settle it.” That is why I said earlier that the court requires a welfare service, because we are not trained to do that sort of work. We can make decisions, but we can’t tell people how to settle cases or how to behave, necessarily.

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**Q114 James Wharton:** Could I go back a little to the challenges Cafcass has faced? We know that after Baby P there was a huge increase in the number of cases that they have to deal with. Something we explored in our previous hearing on this matter was the impact of that, if there is one, on the quality of the work that Cafcass is able to do. Obviously in any walk of life you have a balance to find between quality and volume. If you want to do more volume, you can reduce the quality but, when we're dealing with situations such as these, when you're dealing with individuals, with people and children, the quality is of paramount importance. I think you may have partly answered this with discussion of focused reports but, in terms of the pressures that Cafcass has come under, has there been any deterioration in the quality of the reports that they're actually bringing before the courts?

**Sir Nicholas Wall:** In public law work, I have not detected it. I am in regular contact with the Circuit bench, and I have had no reports of the quality of the work being done by guardians in care proceedings. I have had occasional complaints about the quality of work in private law cases, and I have raised them with Cafcass. They have assured me that they will take steps to try to ensure that they do not occur again. I have been in the Court of Appeal for the last six years, so I have not done this work directly until very recently, but Mark would be better able to speak on this. I have not found that the quality of the work in care proceedings has deteriorated.

**Sir Mark Hedley:** I think that's right. The increase in volume has worked itself out more in terms of delays than the actual quality of work ultimately done. That is because there is rightly considerable anxiety about delays. That raises issues about how you make the trade-off that you mentioned between volume and quality. Our anxiety is that, in care proceedings, we are probably making the most draconian orders that any judge has had the power to make since the abolition of the death penalty, because we can remove children permanently, direct that they are brought up by strangers, never see their parents again, etc. These are quite frightening powers, when you stop to think about them, so there is a high degree of anxiety to get these cases right. You would find us instinctively anxious about the idea of trading off quality.

**Q115 James Wharton:** Within that, how would you assess the quality of the Cafcass reports? How regularly, for example, does a judge ask for a second report or opinion?

**Sir Nicholas Wall:** One does not in care proceedings. I cannot think of a case in which one has said that the work of a guardian was so inadequate that it had to be done again by somebody else. One has to remember this is a worrying problem for the future, because most guardians are experienced social workers, many of whom have spent a long time in local authorities, and have then retired from local authorities and gone private or gone into Cafcass. As Anthony Douglas pointed out, one has an age problem, because you have an ageing workforce who are extremely experienced but are going to retire. Who is going to replace them? This is an anxiety we have.

**Q116 Chair:** One of our anxieties is that it's a very unhappy organisation. If you look at the sickness levels through to the number of people who have left or were managed out—I don't know quite how it works—it feels to us to be an unhappy organisation. The question to you is: does that impact on the quality of the work or the timeliness of the reports? Do you feel that, from your perspective as the customer?

**Sir Mark Hedley:** I am bound to say you would not detect it sitting as a judge in court. What I suspect is part of the problem is that the guardians pride themselves on the service they deliver. The pressure of volume is leading to constraints on what they're told they can do, and they do not like it. They want to deliver the service they have always delivered to the courts. There is probably a real tension bubbling around in there, but you would not know it from the courts' point of view. The guardians provide us, for the most part, with a very good service.

**Sir Nicholas Wall:** They are fiercely independent people. One of the points in the agreement I had to wrestle with very carefully was the independence of the guardian. Under the Children Act, the guardian is given very wide powers indeed. Section 42 is unprecedented in the powers it gives a guardian to go to a local authority, look at documents and turn it upside down, if they want to. Historically, guardians have been very independent people. It has been a genuine culture change for judges to be told, as I am telling them now, "You must case-manage the guardian. You must tell the guardian what to do. You say what you want. You must tell the guardian." Historically, one has said to the guardian, "You are the expert; get on with it. Look at the powers you have been given. Go ahead and do it." That is a real change. I do not think one should underestimate both the quality and the independence of individual guardians. They are fiercely independent.

**Q117 Jackie Doyle-Price:** You seem to hold Cafcass in very high esteem. I am wondering to what you degree you think this spike or difficulty has highlighted the issues with local authorities. Speaking as a constituency MP who deals with cases of children who move from local authority to local authority in care, I see a disparate level of performance between individual departments. To what extent is that where the real problem lies?

**Sir Mark Hedley:** We do not have any statutory involvement with children after a care order is made. The problem of children drifting around the care system tends to be a post-care-order problem. We do not come across that on the whole, except in so far as the children's societies and the like ensure that we know. I think within the local authorities themselves, again there is quite a lot of hand-to-mouth operating, but that is because care cases are on the whole very messy things. The care case, where you have a dead child and everyone wants to know why—which are the cases we get—although they are quite complicated, they are very easy as a concept. The substance-abusing parents who are substance abusing in the third generation, none of whom—grandparents or anybody else—have any experience of being properly parented, present extraordinarily messy cases

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due to the tension in local authorities between trying to give these families a chance to be families and intervening to wreck the show. They are extremely messy. In a sense, we have to live with that.

**Sir Nicholas Wall:** One of the points we have emphasised to the Family Justice Review is the need for there to be proper post-care-order monitoring of children under care plans. In the old days, when I started at the Bar, there was the Family Law Reform Act of 1969. The judge would make a care order and say, "Come back in six months' time, please, and tell me how it's going. Is it working? Is the child settling down? I want a report." The Children Act and a case called *A v. Liverpool Corporation* in the House of Lords made it absolutely clear that, once you have made a care order, that is it: you have no further responsibility and Cafcass has no further responsibility. The guardian drops out of the case; the judge drops out of the case. It is down to the local authority and, if it's an adoption case, the prospective adopters. I think there is this very clear division of responsibility, which causes us a degree of unease, and it makes making a care order very difficult because you get to the point where you say, "If I don't make a care order, the child will suffer. If I do make a care order, I don't like the care plan. What do I do?"

**Q118 Jackie Doyle-Price:** I think you were being a bit too generous when you said that areas of higher social deprivation will have more cases and, therefore, it is more difficult, because ultimately we need to have a system in which every child has the right to the same degree of protection. To what extent do we need to encourage better practice across the board in local authorities to ensure that that happens?

**Sir Mark Hedley:** I wasn't trying to suggest that you shouldn't. I was simply saying there is a correlation between social deprivation and the incidence of care cases, which I hope was no more than a statement of the obvious. Of course good practice is crucial. On the whole, my experience has been that I have found social workers a fairly impressive group that I have had giving evidence to me and that I have dealt with. The problems are often systemic, as perhaps we are facing in Cafcass as well. Therefore, when social work cases go wrong, it is very often not because the social worker is incompetent, but because they have either been given something they are not up to or have not been sufficiently supported in the tasks they have.

**Q119 Jackie Doyle-Price:** What is on my mind is this sudden spike or increase in cases in some local authorities. That has found its way into Cafcass because the volume has gone up, and the amount of work that could be done by Cafcass has gone down, which is obviously part of the problem.

**Sir Mark Hedley:** The reality is that Baby P drove down the thresholds of intervention by local authorities and families. We have always known the thresholds were variable. As a barrister, I used to do both Liverpool's and Cheshire's work. If Liverpool had applied the Cheshire standards of good-enough parenting, the system would have collapsed. There has always been a degree of flexibility, but there is no doubt that, because the intervention levels have been

driven down, we have acquired a huge number of extra cases, particularly concerning substance abuse and neglect. They are very messy; that is the trouble with them.

**Q120 Chair:** Do you accept what Cafcass said to us that the growth in public law cases, or the growth in the business to them, which is both public and private, comes entirely from Baby P?

**Sir Mark Hedley:** I would hesitate with the word "entirely". What is different this time is that, after each of these public inquiries, there has then been a dramatic increase in litigation. What has not happened here is that it has not spiked; it appears it might be plateauing. We have had a huge rise. I am not a social worker, but my guess is that the whole threshold of intervention has been driven down. There is now a much greater requirement to intervene than there perhaps was before.

**Q121 Matthew Hancock:** You say that the quality has not changed, and also you played down the idea of delays. You said that you're better targeting some of the work by specific focus on specific questions, but there must be increased pressure in the system, because of the massive increase. Where is that feeding through?

**Sir Mark Hedley:** Some of it is feeding through into delays, which are undoubtedly becoming longer, certainly in London. We are performing less well in terms of throughput of work. Well, the same amount of cases is going through; it is just that the number of outstanding cases is rising. It will work there. The other area it may work in, for example, is that Cafcass officers may be required to adopt a more restricted role in cases. I think I have seen signs of that. How that will work in practice it is far too early to say. I just don't know at the moment.

**Q122 Matthew Hancock:** On that point, is there a risk it works out in the magistrates' court as opposed to the High Court? You mentioned earlier that High Court judges are happy with the quality. Is it the experience of magistrates that they are also happy with the quality?

**Sir Mark Hedley:** There is no doubt we are spoiled in the High Court in the sense that any practitioner appearing will treat that as a big priority. You cannot extrapolate from High Court experience and say it applies everywhere. At county court level, which is what I was talking about principally, the degree of satisfaction is as we stated: there are problems. In the family proceedings courts, London is a bit atypical because we have quite a lot of professional judges as well as a unified lay bench. I am not aware—and I can only put it like this—of serious disquiet about the quality of public law work delivered by Cafcass, other than problems with allocation, delay and the like, which undoubtedly are around.

**Q123 Stephen Barclay:** The magistrates I spoke to before the previous hearing were telling me of instances of advice over the telephone, of desk-based reviews that are subsequently looked at.



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**Sir Mark Hedley:** This was the emergency guardian problem. I think Anthony Douglas certainly recognised to me in discussion that that is unacceptable; you cannot run a system like that. There appear to have been serious attempts to address it, but at what price elsewhere in the system?

**Q124 Stephen Barclay:** This flows from that question. What I am trying to understand is from where the squeeze is coming. If the quality is maintained, if timeliness is not being unduly affected, but there is a pressure on resources, an issue of high staff retirees coming up and a high sickness rate, logic would suggest that, as much as bright minds are looking at more focused reports and smarter ways of working, is that really picking up the full slack of the problems that we have addressed? That seems quite a leap. Are there other areas, perhaps in the magistrates' court or somewhere else, where the squeeze is being felt?

**Sir Nicholas Wall:** I have regular meetings with the Association of Magistrates' Courts and the family benches, and they have not raised the question of quality of work with me. If you have specific examples, I will address them. I agree with Mark that the real villain of the piece is delay because if, with increased volume in the system, no additional resources are made available, particularly in the judiciary or courts, and the likelihood of cuts in sitting days, cases are going to take longer and they are going to be delayed. That is where the real danger comes. I entirely agree with the observation that came out of this Committee last time that delays are deleterious to children. It is in Section 1(2) of the Children Act. It's in the statute that delay is to be avoided if humanly possible. Ultimately, this is where we come back to the divide between us, because this is a matter for Government. If the Government want to avoid delay, they must make resources available to ensure that delay does not occur.

**Q125 Austin Mitchell:** Amen to that. Sir Nicholas, you say in your letter that efficient and effective case management by the judiciary remains the key to the operation of a fair child-based care system. Are you satisfied that that efficient and effective case management is uniformly provided? If it is, why did the judiciary, as the customer, allow Cafcass get into the mess described in our interim report?

**Sir Nicholas Wall:** I think you must understand that case management is a relatively novel concept for a number of judges. The traditional role of the English judge is the arbiter. He or she sits back; the case is brought to him and her; he or she decides; gives a judgment, goes away and doesn't see the case again. The Family Justice System has, generally speaking, been bolted on to the common law, which means that we have the adversarial system and we have judges deciding cases. In family work, the premise since the Children Act came in, has been that judges must become case managers. They cannot sit back and wait for people to do things; they must ensure they happen. My latest exordium to my judges is that you all must become case managers now. That is a message that the younger generation, of whom I would think

myself, take on board much more easily, but it is not a message that is universally popular. They think, "Here one comes into the vexed area of judicial independence. Am I compromising the independence of the guardian if I tell the guardian what to do? Am I compromising my own independence if I come off the bench and tell the social worker what I want?" and so on and so forth. I am afraid the jury is still out on that. You will have to ask me that question in six months' time, when we have the revised PLO in operation. The Family Justice Review will no doubt tell us whether it takes the view that judges are effective case managers. If they are not, it seems to me there is no one else who is going to do the job.

**Q126 Nick Smith:** When talking about delay on this Committee, we have looked at the typical Public Accounts Committee terrain of processes, systems, staffing and so on. Listening to you today, we gain another impression of a system caught up in greater demands and complexity, in what Nicholas described as "dynamic" relationships between parents fighting their divorce, but in a different place here. If you talk about where the state should put its resources, it seems to me—and this is quite a discursive discussion today, rather than the pointed stuff we sometimes have—that the state ought to invest more in mediation, perhaps, to take some of the cases you are talking about out of this complex legal sausage machine, which you are doing a good job trying to manage.

**Sir Nicholas Wall:** In private law cases, that is undoubtedly true. Yes, I agree with that entirely. I think firstly the Government are a strong advocate of mediation; and secondly, the Private Law Programme, which I have sent you,<sup>2</sup> makes the first appointment—as I indicated when I spoke about it a minute ago—a conciliation appointment, where we try to take cases out of the system. I have been saying for years that the adversarial system is not the way to resolve private law disputes. When it comes to public law, you are talking about the state intervening in the life of a family and potentially taking a child away from his or her family, and giving that child to strangers or an institution. That is a different ball game altogether. You cannot mediate in those circumstances. You can have family group conferences, as local authorities are encouraged to do, to bring the family together and solve the problem within the family. They have been remarkably successful in cases where they have been operated, where the whole family has come together and solved the problem. Ultimately, someone has to decide whether the child has suffered significant harm, whether they are likely to and whether the child should be taken away from his or her parents. You cannot mediate that. It is very difficult to conciliate that. You need a system that deals with it. At the moment, we have a judicial system under the Children Act. The Family Justice Review will investigate that and tell us whether or not it is working. That is the system we have, and we cannot mediate that system.

**Q127 Chair:** Cafcass was created through the merger of a number of organisations and it seems to me that it

<sup>2</sup> Note by witness: This was NOT sent in advance to the Committee. It is, however a public document

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has shifted from crisis to crisis. There has been critical report upon critical report, with a little gap in between, but basically crisis to crisis. One of the questions we are asking ourselves is whether it is fit for purpose, in that sense, for you as a customer, providing a service to the courts. This merger does not appear to have worked. Is there a better way of organising a service that would then serve children and families better, through the work that you do in the courts?

**Sir Mark Hedley:** Both of us and many others will have grown up with the old system. Almost everyone who grew up with the old system was a fervent supporter of the concept of creating Cafcass. When it was born, it was born with considerable support from those within the family justice system. There has been a persistent argument, which you will know much better than I, about whether it was adequately funded and launched, and which obviously I have no views about, because I do not know. It was launched with a huge amount of good will, because we had learnt to value the guardian system. There were problems with the old guardian system about Article 6, independence, because they were funded by the local

authorities, whose work they were doing. There were problems there.

From a trial judge's point of view, which is where I can speak from, I consider myself to have been quite well served over the years, notwithstanding all the problems that I know have gone on in the background. I personally consider myself to have been quite well served. I could count on the fingers of one hand the public law cases where the guardian has completely lost it. There have been other cases where I have disagreed with them, but that is another matter altogether. There has been a tiny number where the guardian has simply been overwhelmed by the case. The service that is actually delivered on the ground for most of us is certainly fit for purpose. Whether the organisation is, I would not be in a position to make any comments, because we obviously see it through the lens of what is delivered to us in the courtroom.

**Chair:** Thank you very much indeed. I am hugely grateful to both of you for having given your time to give this evidence. I think it will add to the quality of our final deliberations, so many thanks indeed.

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#### Supplementary memorandum from the Department for Education

Question 74 (Stephen Barclay): *The cost of the review by PA Consulting and arrangements for its publication*

The total cost to the Department of the production of the report by PA Consulting was £253,049. The Department then provided a further £216,200 to PA Consulting to support Cafcass in developing an effective plan for responding to the issues identified in the report.

The report was commissioned to serve as policy advice to the Accounting Officer. The previous government intended to publish the report after Cafcass had prepared their action plan in response. Arrangements for whether, and how, publication will now happen have yet to be decided by the coalition government, but a decision is expected shortly.

*September 2010*

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#### Supplementary memorandum from Cafcass

Questions 53–60 and 65 (Mr Bacon): *The cost of redundancies*

Cafcass initiated a restructuring of its National Office and Corporate Service support functions in 2009. As a result of this exercise the individuals affected were entitled to contractual benefits. The payments made to each employee are detailed below.

<i>Job Title</i>	<i>Costs (£)</i>		<i>Total</i>
	<i>Severance</i>	<i>Pension</i>	
Employee 1	20,800.00		20,800.00
Employee 2	8,939.00		8,939.00
Employee 3	55,439.85	103,242.00	158,681.85
Employee 4	35,511.19	24,411.00	59,922.19
Employee 5	5,209.49		5,209.49
Employee 6		64,814.00	64,814.00
Employee 7	17,799.13		17,799.13
Employee 8	15,062.42		15,062.42
Employee 9		46,136.00	46,136.00
Employee 10	9,425.81		9,425.81
Employee 11 Corporate Director Sherry Malik	44,893.85		44,893.85
Employee 12 Corporate Director Lamorna Wooderson	164,610.78	27,913.00	192,523.78
Employee 13 Corporate Director	44,893.85	17,003.00	61,896.85

<i>Job Title</i>	<i>Costs (£)</i>		<i>Total</i>
	<i>Severance</i>	<i>Pension</i>	
Jane Booth			
Employee 14	15,844.89		15,844.89
Employee 15		11,655.00	11,655.00
Employee 16	37,363.00		37,363.00
Employee 17		12,242.00	12,242.00
Employee 18		17,705.00	17,705.00
Employee 19	12,570.28		12,570.28
Employee 20	17,472.20		17,472.20
Employee 21	20,223.23		20,223.23
Employee 22	7,183.02		7,183.02
Employee 23	5,103.10		5,103.10
Employee 24		17,631.00	17,631.00
Employee 25	14,191.74		14,191.74
Employee 26		0.00	0.00
Employee 27		16,897.00	16,897.00
Employee 28		4,493.00	4,493.00
Employee 29		13,769.00	13,769.00
Employee 30	32,323.57		32,323.57
Employee 31	2,838.35		2,838.35
Employee 32		2,105.00	2,105.00
Employee 33		9,903.00	9,903.00
Employee 34	13,966.88		13,966.88
Employee 35	18,733.10		18,733.10
Employee 36	9,366.55		9,366.55
Employee 37	6,918.47		6,918.47
Employee 38	4,372.59		4,372.59
Employee 39	2,128.76		2,128.76
Employee 40		27,090.00	27,090.00
Employee 41		2,752.00	2,752.00
Employee 42	2,215.84		2,215.84
Employee 43		2,159.00	2,159.00
Totals	645,400.94	421,920.00	1,067,320.94

The restructuring programme resulted in 50 posts being deleted from the organisation's structure.

The table above outlines payments made to 43 of these staff under the Cafcass Severance and Voluntary Early Retirement (VER) Scheme during this period.

Seven staff left as a result of the restructuring but did not meet eligibility criteria for benefits under the Severance or VER scheme and therefore no payments were made.

The restructuring achieved cashable efficiency savings of £2.7 million from 1 April 2010.

#### SEVERANCE

Cafcass operates a severance scheme which provides benefits to individuals who find themselves in a redundancy situation. Redundancy is a last resort once other options have been exhausted, eg redeployment to other posts. If a redundancy is unavoidable, the Cafcass scheme provides the following payments:

- 1 week for each year of service up to the age of 23;
- 2 weeks pay for each year of service between ages of 23 and 41;
- 3 weeks pay for each year of service age 41 and over; and
- these payments are subject to a limit of 66 weeks pay.

The severance payments outlined in the table above are based strictly on length of service and contractual pay only using the schedule outlined above. There were no enhancements made to any of the individual severance payments made.

#### VOLUNTARY EARLY RETIREMENT (PENSION)

Subject to eligibility, staff that are made redundant and are aged over 50 (55 from 1 April 2010) may also be entitled to early release of their pension benefits under the Local Government Pension Scheme.

The pension figures in the table constitute the employer costs of the "actuarial strain" of releasing pension benefits early in line with the Pension Scheme regulations.

Staff must meet strict eligibility criteria and be members of Cafcass' pension scheme, operated by West Yorkshire Pension Fund to access VER payments.

The pension payment and costs are based on pensionable service in the scheme only. No added years or enhancements were provided to any pension payments made.

Questions 86–93 (Chair, Mrs McGuire): *Sick leave*

The table below plots out the number of days lost to sickness amongst Family Court Advisers (FCAs) and amongst all other staff in 2009–10 and in 2010–11 to date. It then compares the two years to produce the year on year change to days lost to sickness.

	Year on Year—days											
	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
FCA days lost—2009–10	1,185	1,205	1,440	1,999	1,813	1,610	1,784	1,678	1,309	1,483	1,103	1,303
FCA days lost—2010–11	951	1,043	1,351	1,262	1,030							
Difference +/- %	-20%	-13%	-6%	-37%	-43%							
All other staff days lost—2009–10	562	540	724	796	654	755	870	793	556	624	509	656
All other staff days lost—2010–11	476	464	590	567	494							
Difference +/- %	-15%	-14%	-19%	-29%	-24%							
Total days lost—2009–10	1,747	1,745	2,164	2,795	2,467	2,365	2,651	2,469	1,862	2,093	1,600	1,947
Total days lost—2010–11	1,416	1,479	1,927	1,829	1,524							
Difference +/- %	-19%	-15%	-11%	-35%	-38%							

The data above highlights that there has been substantial reduction in sickness absence between 2009–10 and 2010–11. The average days lost for FCAs in 2009–10 was 16.4 (based on 1093.7 FTE—full time equivalent) and since 1 April 2010, this is now averaging 13.0 days (based on 1044.1 FTE). This is projected to reduce to 10–11 days by 31 March 2011. Cafcass is also currently in the process of recruiting a further 40 FCAs so the FTE figures will increase from October 2010.

Cafcass recognise the impact of sickness absence and there is a corporate focus on managing this in a supportive and business focussed way. Managers prioritise this and work in close partnership with HR to support improved attendance at work, and take formal action to challenge sickness where appropriate.

#### REDUCING SICKNESS ABSENCE

From April 2009 to August 2010 formal procedures have been invoked in over 225 sickness cases. In 35 of these cases, staff have left the organisation as a result of ill-health capability or retirement.

Preventive work (stress audits, well-being days) have been undertaken in 14 hotspot teams with the majority showing a decline in sickness absence.

Early intervention has been particularly successful in tackling sickness absence (eg: 95% of staff absent for more than 20 days are now referred to Occupational Health). The standard practice is for all staff to be referred to Occupational Health after two weeks of continuous absence.

Short and long term sickness absence are regularly monitored in Human Resources Management Information reports with analysis of trends and patterns shared with operational managers. Challenge and support to improve sickness absence is regular feature of Service Improvement Meetings (SIMs) and supported by HR.

There is a specific focus on tackling long-term sickness absence. There were 43 staff on long-term sick leave at the end of July 2010—this has been reduced to 28 staff as of end of August 2010 and is currently down to 18 staff as at 17 September 2010.

There is an active ongoing promotion and early intervention of Employee Assistance Programme support, specifically the Confidential Care and Counselling (CiC) service for stress, depression and anxiety cases.

#### THE RISE IN SICKNESS ABSENCE IN THE SECOND QUARTER OF 2009–10

The reasons for the increased FCA sickness rates in 2009–10 include:

- the new performance management framework (over 165 staff going through some form of performance procedures during this period) and substantial increase in work for the organisation. This intensive performance improvement drive did impact negatively on absence and turnover in the same period, with poor performers replaced with competent new staff;
- performance management linked to Cafcass' pay system, from April 2008. The significant tranche of staff had their performance appraised in April and May 2009. Only staff assessed as satisfactory or better were eligible for pay progression;

- robust performance management through direct supervision under the Quality for Children Framework (Q4C); and
- targeted support and intervention under the Cafcass Performance Conduct Policy.

*September 2010*

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