



Working agreement between Cafcass and Cafcass Cymru for the transfer of cases and the disclosure of information

The Criminal Justice and Court Services Act 2000 (Chapter II) sets out the functions of Cafcass in respect of family proceedings in which the welfare of children is or may be in question. The Children Act 2004 (Part 4) sets out the equivalent functions of Cafcass Cymru in respect of family proceedings in which the welfare of children ordinarily resident in Wales is or may be in question. Section 36 of the Children Act 2004 makes provision for arrangements to be entered into between Cafcass and Cafcass Cymru to each undertake functions on the other's behalf.

Both Cafcass and Cafcass Cymru are committed to achieving the very best outcomes for the children we work with. To this end any case transfer needs to take place in as timely a way as possible and ensure any delay is kept to an absolute minimum.

Transfer of private law cases

Cases can be securely transferred directly between Cafcass and Cafcass Cymru (and vice versa) without a court order, when the ordinary residence of the child indicates that this is appropriate. The transferring agency is responsible for informing the court of the transfer.

Safeguarding enquiries reports (SERs) / safeguarding letters should be prepared by Cafcass in respect of children living in England and by Cafcass Cymru in respect of children living in Wales, regardless of the location of the court dealing with the case. If either agency identifies that an application has been received in respect of a child not living in their area, they will email the application, response and any court orders to the safeguarding team of Cafcass or central administration team (CAT) of Cafcass Cymru as appropriate, in order for the relevant body to undertake the safeguarding enquiries:

Cafcass – PrivateLawApplications@cafcass.gov.uk
Cafcass Cymru - CafcassCymruCAT@gov.wales

There may be occasions when a case needs to be transferred following a FHDR (First Hearing Dispute Resolution Appointment), for example if the subject child were to move from England to Wales (or vice versa) during the proceedings. In such an instance, where permission of the court is required to transfer the case from one

organisation to another, consideration would also have to be given to a change of court venue. Once agreed the transferring agency will securely email to the other the application and response, all court orders, the safeguarding letter / SER, statements, disclosed materials and other documents contained in the case file.

If a child moves once safeguarding enquiries have commenced, that agency remains responsible for completing the safeguarding enquires. Consideration will only be given to transferring the case once the FHDRA has taken place, and then only if further input of Cafcass or Cafcass Cymru has been ordered by the Court.

All cases transferred directly between Cafcass and Cafcass Cymru (and vice versa) remain the responsibility of the transferring agency until confirmation is received from the receiving agency that they have accepted transfer of the case.

A court order will be required prior to transfer of a section 7 or a r16.4 case if a named Cafcass / Cafcass Cymru practitioner has already been referenced or appointed by the court.

Issues in relation to ordinary residence

Cases in which the ordinary residence of a child is in doubt or disputed and the court has not made a decision on this issue, will not be transferred without prior discussion between a Service Manager / Head of Practice within Cafcass and a Practice Manager / Head of Operations in Cafcass Cymru.

The test which the courts apply to determine ordinary residence is that there must be a degree of “*settled purpose*”, whether of short or long duration. Factors for Cafcass and Cafcass Cymru to consider may include: the length of time the child has lived in each area; how recent the move is; whether the child is attending school and is registered with health services; and the resource implications for either agency of taking the case.

If a consensus on transferring the case cannot be reached then the body named in the court order should apply to the court for directions as to whether Cafcass or Cafcass Cymru should exercise its functions, and remains responsible for the case until the court determines the issue.

Transfer of public law cases

Public law cases will only be transferred following discussion between a Service Manager / Head of Practice in Cafcass and a Practice Manager / Head of Operations in Cafcass Cymru. If a named guardian has already been appointed a court order discharging the guardian will be required before a different person is appointed; it is the transferring agency’s responsibility to obtain an order if so required.

If it is identified at the outset of a public law case there is an issue about ordinary residence that affects whether Cafcass or Cafcass Cymru should exercise its functions, the relevant Service Manager / Practice Manager will make contact with their counterpart as soon as possible to discuss the possibility that the court may require a children’s guardian from their agency. The local manager will appoint a children’s guardian who may instruct a solicitor to represent the child at the first case management hearing and will draw the court’s attention to this issue. In cases where

a Welsh local authority has issued proceedings in respect of a child who is residing in England, it will usually be appropriate for Cafcass to appoint a children's guardian. Similarly where an English local authority issues proceedings in respect of a child who is living in Wales, it will usually be appropriate for Cafcass Cymru to appoint a guardian.

Where there are situations other than those described above discussion between the two organisations as to the appropriate way forward needs to take place.

Exercising functions on behalf of another body

Cafcass and Cafcass Cymru can each request the other to undertake functions on their behalf. It is agreed that where it represents best use of resources, each agency will at the request of the other undertake limited functions such as home conditions reports and witnessing consent in step-parent adoptions and parental order applications. The point of contact for such requests is the Service Manager / Practice Manager of the relevant operational area.

Disclosure and transfer of information

The Family Procedures Rules 2010 permit the disclosure of information between Cafcass and Cafcass Cymru in respect of closed cases or separate family proceedings. When sharing and storing information, both agencies are recognised as data controllers and are required to comply with the provisions of the Data Protection Act (DPA) 2018 and the General Data Protection Regulation (GDPR). To comply with these the information disclosed must be relevant and necessary. Requests for disclosure must state the purpose for which information is required. Both open and closed case files, including court reports, will be redacted prior to transfer to remove details of any third parties not involved in the current proceedings. When reports have been shared between the two agencies, it will be the responsibility of the receiving agency to further redact any information (including third party information) it deems to be neither relevant nor necessary for the required purpose, prior to the report being shared onwards or disclosed for court proceedings. Permission of the Court is required in order for reports from one set of proceedings to be disclosed into new proceedings. Whole case files will not be transferred between Cafcass and Cafcass Cymru (or vice versa) unless necessary to meet the required purpose of the request.

Implemented 15 August 2017

Amended (Cafcass email addresses) 23 August 2018

Amended (DPA/GDPR references) 12 December 2019

Sandie Hayes, Assistant Director, Cafcass

Matthew Pinnell, Deputy Chief Executive, Cafcass Cymru

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Contact details for Cafcass

PrivateLawApplications@cafcass.gov.uk

PublicLawIntake@cafcass.gov.uk

Cafcass National Business Centre
University of Warwick Science Park
Milburn Hill Road
Coventry
CV4 7JJ

Call Centre: 0300 456 4000

See the [Cafcass website](#) for a full list of office locations.

Contact details for Cafcass Cymru:

CafcassCymruCAT@gov.wales

CafcassCymru@gov.wales

Cafcass Cymru
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

See the [Cafcass Cymru website](#) for a full list of office locations and contact details.