



Cafcass Prioritisation Protocol

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1. Introduction

- 1.1 The Cafcass Prioritisation Protocol is a response to the impact of the pandemic on Cafcass which saw a substantial increase in open active work driven by lower throughput and case closures in the family justice system: 26% more at the peak in April 2021. Increasing durations for open work have exacerbated the problem with the need to provide additional reports and take account of changes to family circumstances.
- 1.2 The current level of demand in private law coupled with the reduced throughput and slower disposals in the family courts, means that the caseloads of too many Family Court Advisers (FCAs) have been building up to unsafe levels; unsafe for staff in terms of their health and wellbeing as well as potentially unsafe for children in terms of the impact on the quality of practice and decision making.
- 1.3 While the current delays and excessive volumes are a whole family justice system challenge, the risks arising from both the quantum of work and the ability of the system to process it falls disproportionately onto Cafcass. This is because the applications that we are ordered by the courts to work on represent open active work to our social work practitioners. We are an important point of contact for families and children in distress and we are having to manage the decisions and incumbent risk associated with prioritising the highest ever number of open active cases.
- 1.4 This protocol sets out the consistent approach we will take when, on the basis of management information reviewed monthly, that we will no longer be able to maintain safe caseloads and associated quality assurance within a service area without seeking extensions from the court.
- 1.5 The protocol sets out an approach to working with the courts when we are no longer able to meet agreed timescales and provides an outline of our intention to work collaboratively and constructively with local partners to do three things:
 - a) assess whether amendments can be made to local ways of working which will avoid the need for prioritisation;
 - b) agree local arrangements for how prioritisation can practicably be implemented in the local context; and
 - c) develop a plan for reducing the backlog and deactivating prioritisation.

- 1.6 The objectives of the protocol are to: protect allocation of public law and high-risk private law children's cases; maintain manageable workloads for frontline practitioners; and to restore capacity for management oversight and supervision. The intention is to communicate effectively with the court and with families and children (where their age makes this appropriate and possible) so that both families and the court are clear about what we will do and when we will do it. This will help the court to make orders which are feasible.
- 1.7 The protocol only applies to private law work where further work for Cafcass has been ordered after the first hearing. Public law work is categorised as high priority work (and therefore with only specific exceptions described in the table below, will always be prioritised for prompt allocation) in respect of the needs of the children and the risk and extent of harm they live with in their lives, it remains important to consider this work in the context of other decisions managers will be making where demand outstrips our capacity to allocate work safely.

2. SUMMARY

Summary for children & young people

Our job is to understand what life is like for you and to help the court to understand this too. We need to know what is important to you and how what is happening in your family is affecting you. We need to know how you feel and what you want to happen, so we can advise the courts on the best plan for you. To do that well your Family Court Adviser (FCA) needs to have enough time to get to know you and to listen to you. That has been getting harder because our FCAs have more children to help now than they did a year ago, before the pandemic. We have been talking to the judges in your area about this and we have had to decide which children and families the courts want us to help we should work with first. We need to work first with those children who may no longer be able to live safely with either of their parents. We know other situations can be hard for children to deal with too, and we are so sorry that this means you may have to wait longer before we can arrange for an FCA to see you. But we are still here for you. If things are getting so bad that you need someone to talk to, especially if you don't feel safe, you should contact [allocation hub Business Services Officer] who will arrange for someone to talk to you about what is happening and get in touch with the courts about what should happen next.

- 2.1 Cafcass has operated a duty allocation system for many years in order to enable the flow of allocations to FCAs in a timely way. Cases held on duty are overseen by qualified social workers who can prioritise and manage the pressures and capacity safely. They provide families with a single point of contact whilst their case awaits allocation. Service managers oversee the duty allocation system alongside a system of duty officers who will speak to families and attend urgent court hearings or provide absence cover when this is required.
- 2.2 Since the start of the pandemic in March 2020, the number of cases held on duty has risen and it is taking longer to allocate some private law cases to an FCA. This is attributable to rising demand, longer case durations and slower throughput in the courts which has resulted in a 25% increase in open active work in the 12 months following the first national lockdown. A number of steps have been (and continue to be) taken in collaboration with our Family Justice System partners to seek collective responses to these challenges so that the best use can be made of Children's Guardians and Family Court Advisers. However, in some areas of the country we have reached the point where it is becoming increasingly difficult to allocate work from the duty system in a timely way because the caseloads of FCAs are too high.

We have also exhausted the capacity of practice supervisors because many of them are holding too many cases for them to provide sufficient practice supervision and support practice improvements. Some of our duty systems are, therefore, becoming saturated.

- 2.3 In order to respond to this growing challenge, Cafcass has developed a fair and transparent system for holding cases that cannot be allocated in a timely way. This system may be activated in a particular area by the Cafcass Covid-19/Recovery Board following consultation with family justice system partners and a Challenge Meeting to ensure that everything that can be done has been done to maintain the timely allocation of cases. This system ensures careful consideration of the welfare of the child along with openness with the courts, advocates, children and families and regular communication about the progress of the case to allocation.
- 2.4 Cafcass cannot in law restrict the amount of work that it is asked to do by the courts. The Child Arrangements Programme provides a structure for initial safeguarding in all Child Arrangements Order (CAO) applications and Cafcass has committed to continuing to undertake that initial assessment in those cases. There are some limited options within the Child Arrangements Programme for dealing with circumstances where the capacity to undertake work does not meet demand. The court can subsequently make an order for a report to be prepared under section 7 and, if the court specifies a date for the filing of a report, Cafcass currently may write to the court to seek more time to do so. These extensions of time to provide a report will become more frequent because children are prioritised in terms of the likely risk of or actual harm to them. The appointment of 16.4 guardians may not be allocated within the timescale of the proceedings and the Family Procedure Rules provide for an alternative. A number of additional flexibilities have been negotiated at local level, for example under Practice Direction 36Q.
- 2.5 This protocol does not recommend or even suggest our staff ignore court orders but instead to identify those children where we have concluded that there is less or no risk of harm to them. For these children and families, we will work with the courts to agree a revised timetable that is achievable, taking account of Cafcass' squeezed capacity to undertake the work, and therefore set realistic timescales for completing reports without need for further extensions other than in exceptional circumstances. The courts will be able to seek to clarify the decision making and will be able to overrule the decision to delay allocation. This protocol sets out the arrangements we need to ensure resources are placed where they are most needed and we intend to act with effective communication, strong leadership oversight, collaboration, mutual respect and ultimately in the best interests of children, their families and carers.
- 2.6 Whilst the prioritisation arrangements will be de-activated as soon as the measures taken to bring demand and capacity back into balance have taken effect, it is the view of the Cafcass Covid-19/Recovery Board that the option of this system will be required – alongside other recovery measures for the family justice system as a whole - until the proposed private law reforms divert demand away from the family courts and/or enable more efficient use of the family justice system.
- 2.7 The development of the protocol has been shared with members of the senior judiciary and Cafcass recognises that the decisions about what work is necessary in response to applications to the family court are judge-led and Cafcass is not seeking to usurp the role or authority of the court. Cafcass will not act in contempt of the court and ignore the direction for a report for example, but there will be a delay in being able to comply. The intention is to work with the judiciary so that when orders are made, they are done so in consultation with Cafcass about the risk, the urgency, and the timescale. The expectation is that Cafcass the judiciary and the courts will work

collaboratively, recognising the need to prioritise those children who are most at risk while maintaining a robust system of review of those cases which are delayed, and allowing for every case to be moved into a higher priority if the need arises. However, ultimately case management will remain a judge-led function.

- 2.8 Cafcass acknowledges that the decisions of the court will dictate the progress of the application and the protocol includes reference to the procedure whereby the court can challenge the decision to defer allocation of a particular case. Unless there is a change of circumstance resulting in a revised order from the Court, Cafcass expects those cases which are referred to the allocation hub will be substantively allocated within 20 weeks, following which Cafcass will ensure the work ordered is prioritised for completion. It is essential that families who have had to wait for their case to be allocated to a Family Court Adviser are not subjected to further delay so there will be no further applications for extensions at this point, unless there are truly exceptional circumstances.

3. PRINCIPLES AND NATIONAL STANDARDS UNDERPINNING PRIORITISATION

- 3.1 In developing this protocol and prioritisation matrix, the following principles have been developed through discussion with our partners:
- a) The prioritisation system should not become a permanent structural or cultural feature of the family justice system and Cafcass and the courts should continue to work together to find alternative ways of responding to the increase in children's cases that are an ongoing feature in the wake of the pandemic.
 - b) The need for a prioritisation system is understood and agreed by family justice partners on the basis that there is a need for an upper threshold to practitioner caseloads in order to maintain the safety and quality of work in the interests of children, alongside a need to protect Service Manager and Practice Supervisor capacity to support and oversee the safety and quality our work.
 - c) Case-management remains a judge-led function, drawing on the advice of Cafcass and other family justice professionals about the needs of the child and family.
 - d) Courts will take into account the available resources of Cafcass locally when ordering work by FCAs.
 - e) Courts will consider Cafcass advice on its capacity and ability to meet the court timescale.
 - f) Courts will consider the assessment of Cafcass as to the relative priority of the case before ordering work.
 - g) The decision to activate an allocation hub will only be made following consultation with the relevant Designated Family Judge(s).
 - h) An allocation hub will not be implemented – i.e. with some cases held in the hub rather than allocated to an FCA - unless and until all measures to reduce workloads in a short timescale have been explored and tested.
 - i) Public law care and supervision applications will be exempt from this system
 - j) The prioritisation system will be subject to national standards (see Para 3.2 below) to support a consistent approach, but will be tailored to the local context, through negotiation with the local judiciary and courts.
 - k) While it accepted that implementation of prioritisation means initial delay for some children and families, Cafcass will work with courts to ensure that there is as much certainty as possible about revised timescales. There will be clear communication to children and families affected about the implications for their case.

- l) There will be a clearly defined route to challenge through the courts, namely by the parties to proceedings making an application to the family court.
- m) The operation of the protocol will be reviewed, and learning shared with the National Recovery Group.

3.2 The prioritisation system will be subject to the National Standards to support a consistent approach:

- i. Only cases in priority categories 2,3,4 (as set out in Annex A) can be transferred into the hub providing that the following features are either not present or remain unresolved:
 - Significant risk is present that needs assessing
 - Connected children who require safeguarding
 - Unclear arrangements that may be unsafe for the child
 - Diverse or specific needs of adults or children that may increase vulnerability (such as significant mental health needs)
 - 16.4 is likely to be necessary or a view on this has been requested
 - 16a or referral to LA has been felt appropriate by the Early Implementation Team
- ii. The maximum period a family will remain in the allocation hub before being allocated to a Family Court Adviser will be 20 weeks
- iii. The maximum filing time for a s7 report will be 26 weeks from point that the requirement is communicated to Cafcass by the court. Extensions will only be sought in exceptional circumstances and with at least 4 weeks' notice.
- iv. Children and families affected will receive a letter from Cafcass within five working days of a decision to allocate their case to the hub. This will offer reassurance that the situation of the children and family is important to us, that there will be oversight of the child's case and will provide detail of the process for this. It will provide details of who to contact for advice, if they have a concern or wish to share information. Where appropriate, it will offer a referral to the Separated Parents Information Programme.
- v. The child (age appropriate) and family members will be updated on progress towards allocation to a named FCA for the assessment to begin.
- vi. All cases held within the hub will be reviewed a minimum every 2 weeks by the Practice Supervisor. According to the risk/RAG rating a child's case may be reviewed more frequently. The review will be recorded in the contact log and will provide the rationale for the case remaining within the hub.
- vii. Receipt of an alert on a child's file will trigger a review within one working day and appropriate action, which may result in a change of Priority Status and transfer back to the local team for allocation to an FCA.

4. PROCESS FOR ACTIVATING PRIORITISATION IN A LOCAL AREA

- 4.1 Senior operational managers in Cafcass regularly review a range of data to assess whether the capacity of a local area is becoming saturated and to provide an early warning system where it is becoming increasingly difficult to allocate cases safely within normal timescales. This data set includes:
 - Current demand (average over last 4 weeks) compared to the average for the last 6 months, along with the trajectory of demand
 - The numbers of cases held on duty and the average days taken to achieve allocation

- The number of duty cases held by Service Managers and the impact on their capacity to provide management oversight of the quality of practice and decisions
 - The proportion of Practice Supervisors holding an excessive number of cases and the impact on their capacity to provide practice supervision
 - The proportion of FCAs with over 25 cases
 - Average filing times and rates of extensions to filing times
 - Average case durations
 - A staffing summary of vacancies, maternity leave and sickness absence
 - The impact of high caseloads and increasing demand on the quality of practice and decision making as assessed through routine quality assurance audits of casefiles and through management oversight of case plans and case closures.
 - The budget forecast
- 4.2 This data set is scrutinised by the Director of Operations who provides a monthly update to the Cafcass Covid-19/Recovery Board on the overall pressure and capacity across all 19 Service Areas/8 Cafcass regions, including any recommendations to hold a first Challenge Meeting. The Director of Operations will make a recommendation to the next available Cafcass Covid-19/Recovery Board to hold a first Challenge Meeting if the situation is becoming untenable. The three main areas of focus in these discussions are: ability to allocate public law cases in a timely way; FCA caseloads and extent to which they are saturated; and the capacity of Service Managers and Practice Supervisors to provide effective oversight and supervision. The relevant Cafcass Assistant Director will have met with local leadership judges to share the data set out above and to explore ways of rebalancing demand and capacity, prior to a recommendation to the Cafcass Covid-19/Recovery Board.
- 4.3 The Cafcass Covid-19/Recovery Board makes the final decision to hold a Challenge Meeting, giving the Assistant Director and the local management team 2-3 weeks to meet and consult with the FDLJ, local DFJ(s) and HMCTS. The President of the Family Division is informed about the pending risk of prioritisation in a local area(s). Once a first Challenge Meeting has been held, it would typically take at least a further 7 weeks before cases start to be held in an allocation hub, including a Checkpoint Challenge Meeting to assess the impact of measures to reduce workloads.
- 4.4 Local judicial consultation prior to the first Challenge Meeting will involve the relevant Cafcass Assistant Director setting up a meeting to review relevant local data to explain the specific demand and capacity issues; identify possible solutions and develop a draft local response plan. The local response plan should include the adoption of relevant measures set out in the President's 'Private Law Ways of Working' guidance and might include additional targeted action to review case lists – for example those held on duty prior to allocation, and cases where Cafcass has completed its work and has been ordered to attend a future hearing – to reassess whether Cafcass involvement is still essential.
- 4.5 The first Challenge Meeting is held between the Director of Operations, the relevant Assistant Director, and the local Cafcass management team, supported by performance data analytics and HR business partner. It provides the local management team with an opportunity to:
- Review the demand/capacity data
 - Set out all the measures they have taken to respond to the data reviewed by the Cafcass Covid-19/Recovery Board to prevent prioritisation. Explain any further measures planned as a result of consultation with local partners (with timescales)

- Assess the potential of the measures being taken to prevent prioritisation within a reasonable timescale
 - Consider the options and alternatives to prioritisation (within available resources)
 - Prepare a report to the Cafcass Covid-19/Recovery Board with a recommendation on whether or not to activate prioritisation or to defer the decision to give the additional measures more time to take effect
- 4.6 The report is considered at the next meeting of the Cafcass Covid-19/Recovery Board and a decision is made whether or not to activate prioritisation in the local area. If the decision is taken to activate, a minimum of 5 weeks is given for the Chief Executive to inform the Cafcass Board, the President of the Family Division, the Ministry of Justice, Her Majesty's Courts & Tribunals Service and Ofsted. The Assistant Director uses the 5 weeks to liaise and work with the local DFJ(s) and other relevant partners to continue to work on local plans to reduce the workload pressures in a way that enables Cafcass to allocate cases safely within normal timescales.

Notification letters to: Cafcass Board, PFD, MOJ, DfE, HMCTS, Ofsted, ADCS (national)	Chief Executive
Notification to: local FDLJ, DFJ(s) and local authority Director(s) of Children's Services & ADCS (regional). Liaise with DFJ(s) to agree approach for wider local communication, including LFJB.	Assistant Director
Meetings with: local DFJs and senior judge(s), local authority Director(s) and Assistant Director(s) of CSC	Assistant Director

- 4.7 At the end of the 5-week period, a Checkpoint Challenge Meeting is held to enable the Director of Operations to ascertain whether there has been a significant improvement in the situation, including whether any improvement is sustainable, and then advise the next Cafcass Covid-19/Recovery Board whether to confirm that the allocation hub should now be opened and start to take cases from the existing duty system or whether the decision can be deferred. The Cafcass Covid-19/Recovery Board meets fortnightly on a Friday and if the decision is to proceed, implementation will be a minimum of 2 full weeks later to allow for local arrangements to be finalised and for the issue of final confirmation letters, briefing of local judiciary and courts. A period of at least 3 weeks between the Checkpoint Challenge Meeting and the opening of the allocation hub allows for final decision-making, communication and preparation to take place. This means that the period from initial decision by Cafcass Covid-19/Recovery Board to hold a first Challenge Meeting, to the final decision to open an allocation hub is likely to be 10-12 weeks and may be longer if the measures being taken locally are promising.
- 4.8 It is recognised that activating the prioritisation protocol in an area will mean delay in starting assessments for some children and families. It is for this reason that it will only be deployed when there is clear evidence that demand exceeds capacity and all other options have been exhausted, short of overwhelming FCAs with unsafe caseload levels and undermining the capacity of service managers and practice supervisors to provide the necessary levels of management oversight and supervision. The arrangement will be kept under review by the Director of Operations who will review the balanced scorecard information for all areas monthly and provide quarterly reports to the Cafcass Covid-19 Programme Board so that any unintended consequences can be addressed and Cafcass can respond flexibly to any change in circumstances.

5. OPERATING ARRANGEMENTS

- 5.1 An allocation hub is staffed by a social work qualified Service Manager or Practice Supervisor and a Business Services Officer, who are accountable on a day-to-day basis to a Head of Practice. Cover is provided by the local management team and the operation of the hub is monitored by the Assistant Director. The social work qualified staff undertake an ongoing risk assessment of children's situation, and monitor additional information, including any alerts about changes in circumstances that could affect the welfare of the child. The priority status of the case can be changed and passed to the local team for allocation to a FCA in the normal way. No case will remain in the allocation hub for more than 20 weeks, after which work ordered by the court will be completed within a maximum of 6 weeks. Our preference is to agree local arrangements where a realistic filing time is agreed with the court at the outset, so that there is as much certainty as possible for all concerned and especially for children and families.
- 5.2 The court retains the ultimate responsibility for the progress of the application and the prioritising of those cases which Cafcass assesses as those where the child is at risk is only feasible with the support of the court. It is intended that there will be collaborative decision making and regular communication between Cafcass and the court about cases which remain in the allocation hub. Cafcass remains bound by court orders and if the court disputes the risk assessment undertaken as part of the prioritisation process, it is the courts assessment which prevails. Where the court appoints a 16.4 guardian following consultation about the suitability of the order, Cafcass will confirm with the court the likely timeframe for allocation in order for the court to consider alternatives.
- 5.3 All cases allocated before prioritisation is activated will remain allocated and every effort will be made to complete the work in a timely way, without compromising the quality of practice. Supervision and management oversight will be maintained. The re-allocation of cases (including an application to the court to change the child's FCA) will only occur in exceptional circumstances such as sickness absence or maternity leave. Partner agencies and the judiciary will be kept informed of our approach to existing work.

6. HOW ALLOCATION HUBS WILL BE MONITORED

- 6.1 Regular discussions will take place between the Assistant Director and the local DFJ(s) to monitor the impact of agreed measures to bring demand and capacity back into balance and to keep the courts apprised of the current and near future capacity of Cafcass to get back to normal arrangements. The expectation is these discussions will take place at least quarterly, and that they will be informed by supporting data setting out the baseline data that led to activation of prioritisation and subsequent progress against key demand and capacity indicators.
- 6.2 The Director of Operations will provide an update as requested to the Cafcass Covid-19/Recovery Board on the operation of the allocation hub(s), the impact of any additional measures intended to reduce demand pressures and progress towards de-activating prioritisation. There is also monthly analytics update to the Covid-19/Recovery Board summarising pressure across Cafcass operational areas, focusing on any areas where an allocation hub has been opened and those that are likely to require a Challenge Meeting to assess the need for prioritisation.

- 6.3 In addition to providing the President of the Family Division with regular updates, the Chief Executive will provide the Cafcass Board and the National Recovery Group with a regular summary of the prioritisation status of each Cafcass Service Area and will alert them if a decision to hold a Challenge Meeting is made in between the monthly reviews. The current status of each area and target date for deactivation will be presented quarterly to the Covid-19/Recovery Board for review and a list of the areas currently in prioritisation will be available on the Cafcass website.

7. HOW ALLOCATION HUBS WILL BE DE-ACTIVATED

- 7.1 Once an allocation hub is fully operational, the Assistant Director will work with the Director of Operations to devise a local exit plan. This will cover:
- the conditions which led to prioritisation, focusing on demand, capacity and ways of working;
 - the conditions which will be required to exit prioritisation, including any specified minimum levels for the three priority scorecard indicators (timely allocation of public law, FCA caseloads and saturation, capacity of Service Managers and Practice Supervisors), and how sustainability will be achieved;
 - the actions Cafcass has taken, and intends to take, with expected impact on key indicators;
 - actions requested of the courts and judiciary; and
 - the earliest target date for exiting prioritisation.
- 7.2 The Director of Operations will scrutinise the exit plan and balanced score card data set out at 4.1 above to assess the continued need for prioritisation, the impact of joint measures with partners to reduce demand, and whether progress towards deactivation of the allocation hub is sufficient to meet the target exit date.
- 7.3 The Assistant Director will meet with the local DFJ(s) at a frequency agreed locally (but at a minimum quarterly) during the activation process and provide a data summary to monitor progress towards reconciling demand and capacity across the system, and any further adjustments needed to local ways of working. The data will be considered by the Cafcass Covid-19/Recovery Board monthly, together with a statement of assurance from the Director of Operations that the hub is operating in line with the arrangements set out in this protocol and its annexes.
- 7.4 As part of the monitoring process, once the data demonstrates there is collective confidence that the system has been brought back into balance and the improved trends look sustainable, the relevant Assistant Director will request a Review Challenge Meeting, with the Director of Operations and prepare a deactivation implementation plan for review at that meeting. This will typically take place 6-8 weeks ahead of the target date for deactivation.
- 7.5 The deactivation implementation plan will set out the timetable over which no new children's cases will be transferred to the allocation hub and the expected date when cases in the hub will have been allocated to an FCA to undertake their assessment; any amendments to the local operating model following deactivation; and the local communication plan. The deactivation implementation plan will then be discussed at Director level with the local FDLJ and DFJs to inform the recommendation to the Cafcass Covid-19/Recovery Board.
- 7.6 A recommendation will be made to the Cafcass Covid-19/Recovery Board, as to whether to de-activate the allocation hub and return to the duty system for allocating

new work, together with the proposed implementation plan and timetable. The timetable for completing deactivation will be a minimum of 4 weeks, and typically 6 weeks, from the Covid Board to allow for effective communication with local and national partners, and with children and families affected.

8. The policy and the operation of the allocation hubs will be reviewed after the first year of operation. The review will consider the available data on the impact on staff, children and families with protected characteristics to assess whether any direct or indirect discrimination arises from this policy change. Feedback will be sought from judicial partners.

Date 1st agreed: 18 June 2020

Updated: 21 May 2021

11 June 2021

12 July 2021

8 April 2022

Approval for 1st release: Covid-19/Recovery Board, 16 July 2021

Approval for 2nd release: Covid-19/Recovery Board, 6th May 2022

Date for review: September 2022 (to take account of the evaluation of the first full year of operation). Interim review once the findings from a review of early operation has been reviewed and approved by Covid Board in March 2022.

Owner: Director of Operations