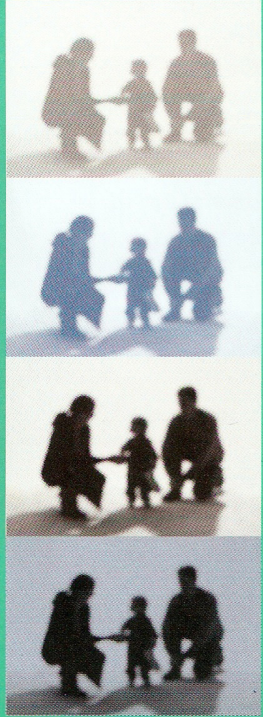


**napo** 2012 guidance on professional standards  
and family court practice



# Preface

This guidance is a response to a strategy adopted by Cafcass to achieve certain Key Performance targets whilst at the same time managing a contracting budget. The devices adopted in this strategy include the adoption of a duty office system, the application of ‘triage’ approach to work and the management of caseloads on a traffic light system. All of these are now embraced in the concept of ‘proportionate working’. It’s not without significance that when this concept was first launched it was called ‘safe minimum practice’, and it was to address this concept that Napo started drafting this document. The working title was to be ‘Safe Minimum Standards’ echoing a point made by Dr Julia Brophy to the House of Commons Family Justice Committee that there was no definition to ‘safe minimum practice’.<sup>1</sup>

In an attempt to offer some shape to Family Court practice, Cafcass drafted an operating manual, the intention of which was to offer staff complete clarity regarding their duties and the expectations placed upon them. The document is authoritative, making appropriate use of research and offering clear guidance to practitioners.

However, it was also flawed in a number of important respects.

1. It did not recognise the specific status a Guardian enjoys as an officer of the Service appointed by name in Family Court Proceedings.
2. It maintains the proposition that Cafcass is a child protection agency, rather than an agency with a duty to safeguard children.

In brief, Napo suggests the term ‘proportionate working’ is about finding short cuts to achieve agency goals, rather than optimising outcomes for children. It passes the responsibility for limiting and curtailing services from policy makers, where it belongs, to practitioners, and then attempts to suggest this is an exercise that celebrates the practitioners’ professional discretion.

This guidance is a response to this strategy. It is an assertion that irrespective of the financial and political imperatives, family court social workers have professional standards that they should not compromise, and that in the forefront of these standards is a duty to challenge and speak out against injustice when they see it.

Please Note: Throughout this guidance family support workers, family court social workers, enhanced practitioners and service managers are referred to by the single term, family court social worker.

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## Introduction – Scope and objectives

Napo is the professional association for probation staff and family court workers in the England. This Guidance states the values and ethical principles on which Napo suggests family court social work should be based. The Association has a duty to ensure as far as possible that its members are aware of their ethical obligations and that they are afforded the professional respect necessary for the safeguarding and promotion of the rights of people who use the family courts. Service users may be individuals (children, young people or adults), or families.

Napo is minded that those family court staff who are qualified social workers are required by Cafcass to be registered with the Health Professions Council. This body has clearly defined professional standards and their primary task is to monitor the maintenance of these standards. It follows that Napo expects those members employed by Cafcass to be mindful of these standards in all their work.

Napo is aware that their members in Napo are held accountable to two bodies which do not always operate in concert:-

- i. Members are accountable in law for the work that they do on individual cases to the Court that has commissioned that work, and in many

cases have appointed our members to act as parties on behalf of children in the proceedings.

- ii. Members are accountable to Cafcass through the line management structure for the standard of the work that is done within the framework of Cafcass's Key Performance Indicators.

Napo is aware of rulings in particular cases, and of practice directives which have conflicted with instructions issued by Cafcass Management. Napo is firmly of the view that all parties need to recognise the particular status Guardians exercise in law, and their special obligations to the children they represent are authorised by the order of the Court before any obligation to represent Cafcass policy. Napo advises that its members familiarise themselves with all those Court Rules that apply to their role in Court, and to the relevant practice directives.

Napo offers guidance in the context of a document Napo published in 2003, 'Family Court Values',<sup>ii</sup> which offers the following:-

“Napo recognises that children are some of the most vulnerable members of our society. They are particularly vulnerable if their separated parents or other relatives are in conflict over arrangements for their care.

More vulnerable still are children who have experienced significant harm and whose families are struggling to cope. Many families who become involved in the care system have had their life opportunities curtailed by poverty, discrimination and social exclusion.

Napo believes that people are capable of changing their perceptions, behaviours and attitudes for the benefit of themselves and their children. Set against this background, Napo is committed to:

1. Promoting the welfare of children in the spirit of the Children Act 1989<sup>iii</sup> and the United Nations Convention on the Rights of the Child.<sup>iv</sup>
2. Reducing the risk of harm to children.
3. Understanding and communicating the child's position.
4. Treating children and families fairly and openly according to their individual needs.
5. Valuing diversity and promoting equality and anti-discriminatory practice.
6. Reducing family conflict and opposing oppressive behaviour.
7. Facilitating family communication.
8. Building on the strengths of parents and other family members to plan and act positively for their children.

Napo is committed to challenging and raising awareness of practices that have a negative impact upon children and their families.

Napo expects all individuals working within Cafcass to take individual responsibility for developing their practice in line with the above.”

Napo reasonably assumes that its members are qualified staff who understand their task, and as such do not require an operating framework to prescribe how the task is done. Napo believes members will be better served by outlining guidance as to the professional conduct in order to better assert themselves when instructed to work unprofessionally.

# GENERAL GUIDANCE

## Ethics in family court social work

Central to the professional practice of family court social workers or indeed any social worker is ethical awareness. Their ability and commitment to act ethically is an essential aspect of the quality of the service offered to those who engage with family court social work. A respect for human rights and a commitment to promoting social justice are central to family court social work.

Human rights and social justice serve as the motivation and justification for family court social work. In solidarity with those who are disadvantaged, the profession strives to alleviate poverty and to work with vulnerable and oppressed people in order to promote social inclusion. Social work values are embodied in the social work profession's national codes of ethics (GSCC).

The practice principles are not intended to be exhaustive and the guidance is not designed to provide a detailed set of rules about how family court social workers should act in specific situations. Rather, by outlining the general ethical principles, the aim is to encourage family court social workers across Cafcass to reflect on the challenges and dilemmas that face them and make ethically informed decisions about how to act in each particular case in accordance with the values of the profession.

Ethical problems often arise because family court social workers, for example:

- **Work with conflicting interests and competing rights**
- **Have a role to support, protect and empower people, as well as having statutory duties and other obligations that may be coercive and restrict people's freedoms**
- **Are constrained by the availability of resources and institutional policies in society.**

## The international definition of social work

The social work profession promotes problem solving in human relationships and the empowerment, social change and liberation of people to enhance well-being. By using theories of human behaviour and social systems, social work intervenes at the points where people interact with their environments.

The principles of social work in its various forms addresses the multiple, complex transactions between people and their environments. Its mission is to enable all people to develop their full potential, enrich their lives, and prevent dysfunction. Professional social work is focused on problem solving and change. As such, social workers are change agents in society and in the lives of the individuals, families and communities they serve.

### ***Theory:***

Social work bases its methodology on a systematic body of evidence, informed knowledge derived from research and practice evaluation, including local and indigenous knowledge specific to its context. It recognises the complexity of interactions between human beings and their environment, and the capacity of people both to be affected by and to alter the multiple influences upon their lives. The social work profession draws on theories of human development and behaviour and on theories of social systems to analyse complex situations and to facilitate individual, organisational, social and cultural changes.

### ***Practice:***

Social work practice addresses the barriers, inequities and injustices that exist in society. Social work uses a variety of techniques, skills and activities consistent with its holistic focus on persons and their environments. Social work interventions range from primarily person-focused psychosocial processes to involvement in social policy, planning and development. These include counselling, clinical social work, group work, social pedagogical work, and family treatment and therapy as well as efforts to help people obtain services and resources in the community. Interventions also include agency administration, community organisation and engaging in social and political action to impact social policy and economic development. The holistic focus of social work is universal, but

the priorities of social work practice will vary from country to country and from time to time depending on cultural, historical, legal and socio-economic conditions.

### ***Within the Context of the Court:***

Family court social work operates within the framework of the relevant legislation applying both theory and practice in order to assist the courts in their duty to exercise sound judgements, and arrive at the optimum outcomes for children.

## **Values and ethical principles**

### **HUMAN RIGHTS**

#### ***Values***

Social work is based on respect for the inherent worth and dignity of all people as expressed in the United Nations Universal Declaration of Human Rights (1948)<sup>v</sup> and other related UN declarations on rights and the conventions derived from those declarations, including the European Convention on Human Rights<sup>vi</sup> incorporated into UK legislation as the Human Rights Act 1998<sup>vii</sup>.

#### ***Principles***

##### **1 The principle that the welfare of the child is paramount (The Paramountcy Principle).**

Family court social workers should be mindful at all times that the driving philosophy behind the Children's Act was the sole justification for state intervention in family affairs was to ensure the welfare of the child; that on those occasions when there

is a conflict between the rights and welfare of the child and the rights and welfare of an adult, the child's interests will prevail.

This will also apply when the rights and welfare of the child are compromised by institutional and agency constraints.

## **2 Upholding and promoting human dignity and well-being**

Family court social workers should respect, uphold and defend each person's physical, psychological, emotional and spiritual integrity and well-being. They should work towards promoting the best interests of individuals and the avoidance of harm.

## **3 Respecting the right to self determination**

Family court social workers should respect, promote and support people's dignity and right to make their own choices and decisions, irrespective of their values and life choices, provided this does not threaten the rights, safety and legitimate interests of others, and particularly children.

## **4 Promoting the right to participation**

Family court social workers should promote the full involvement and participation of people using their services in ways that enable them to be empowered in all aspects of decisions and actions affecting their lives.

## **5 Treating each person as a whole**

Family court social workers should be concerned with the whole person, within the family, community, societal and natural

environments, and should seek to recognise all aspects of a person's life.

## **6 Identifying and developing strengths**

Family court social workers should focus on the strengths of all individuals, groups and communities and thus promote their empowerment.

## **SOCIAL JUSTICE**

### *Principles*

### **1 Challenging discrimination**

Family court social workers have a responsibility to challenge discrimination on the basis of characteristics such as ability, age, culture, gender or sex, marital status, socio-economic status, political opinions, skin colour, racial or other physical characteristics, sexual orientation or spiritual beliefs.

### **2 Recognising diversity**

Family court social workers should recognise and respect the diversity of the societies in which they practise, taking into account individual, family, group and community differences.

### **3 Distributing resources**

Family court social workers should ensure that resources at their disposal are distributed fairly, according to need.

### **4 Challenging unjust policies and practices**

Family court social workers have a duty to bring to the attention of their employers,



policy makers, politicians and the general public situations where resources are inadequate or where distribution of resources, policies and practice are oppressive, unfair, harmful or illegal.

### **5 Working in solidarity**

Family court social workers, individually, collectively and with others have a duty to challenge social conditions that contribute to social exclusion, stigmatisation or subjugation, and work towards an inclusive society.

# PROFESSIONAL INTEGRITY

## **1 Upholding the values and reputation of the profession**

Family court social workers should act at all times in accordance with the values and principles of the profession and ensure that their behaviour does not bring the profession into disrepute. Napo recognises the tension that can and does arise when Cafcass perceives dissent and commentary as disreputable conduct, and holds that exercising legitimate criticism is a matter of professional integrity for a family court social worker.

## **2 Being trustworthy**

Family court social workers should work in a way that is honest, reliable and open, clearly explaining their roles, interventions and decisions and not seeking to deceive or manipulate people who use their services, their colleagues or employers.

## **3 Maintaining professional boundaries**

Family court social workers should establish appropriate boundaries in their relationships with service users and colleagues, and not abuse their position for personal benefit, financial gain or sexual exploitation.

## **4 Making considered professional judgements**

Family court social workers should make judgements based on balanced and considered reasoning, maintaining awareness of the impact of their own values, prejudices and conflicts of interest on their practice and

on other people. They should be open and transparent with such judgements. They should share professional judgements with the parties before they are published, and should be open to account for them to individuals, to the courts and to Cafcass management.

## **5 Being professionally accountable**

Family court social workers should be prepared to account for and justify their judgements and actions to people who use services, to the Courts, and to the employers.

Family court social workers should feel confident to stand by their judgements given the clear ruling made by His Hon. Nicholas Wall in his judgement *Re.K* (July 2011)<sup>viii</sup>.

## **6 Ethical practice principles**

Family court social workers have a responsibility to apply the professional values and principles set out above to their practice. They should act with integrity and treat people with compassion, empathy and care.

The ethical practice principles are not intended to be exhaustive or to constitute detailed prescription. Family court social workers should strive to carry out the stated aims of their employers or commissioning Courts, consistent with this guidance.

Napo expects employers to have in place systems and approaches to promote a climate which supports, monitors, reviews and takes the necessary action to ensure family court

social workers can comply with this guidance and other requirements to deliver safe and effective practice.

## **ETHICAL PRACTICE PRINCIPLES**

### **1 Developing professional relationships**

Family court social workers should build and sustain professional relationships based on people's right to control their own lives and make their own choices and decisions.

Social work relationships should be based on people's rights to respect privacy, reliability and confidentiality. Family court social workers should communicate effectively and work in partnership with individuals, families, groups, communities and other agencies. They should value and respect the contribution of colleagues from other disciplines.

### **2 Assessing and managing risk**

Family court social workers should recognise that people using social work services have the right to take risks and should enable them to identify and manage potential and actual risk, while seeking to ensure that their behaviour does not harm themselves, other people and particularly children. Family court social workers should support people to reach informed decisions about their lives and promote their autonomy and independence, provided this does not conflict with their safety or with the rights of others. Family court social workers should only take actions which diminish people's civil or legal rights if it is ethically, professionally and legally justifiable.

### **3 Acting with the informed consent of service users, unless required by law to**

### **protect that person or another from risk of serious harm**

Family court social workers should ascertain and respect, as far as possible, each individual's preferences, wishes and involvement in decision making, whether or not they or other persons have powers to make decisions on the person's behalf. This includes the duty to ascertain and respect a child's wishes and feelings, giving due weight to the child's maturity and understanding, where the law invests power of consent in respect of a child in the parent or guardian. Family court social workers need to acknowledge the impact of their own informal and coercive power and that of the organisations involved.

### **4 Providing information**

Family court social workers should give people the information they need to make informed choices and decisions. They should enable people to access all information recorded about themselves, subject to any limitations imposed by law. Family court social workers should assist people to understand and exercise their rights including making complaints and other remedies.

### **5 Sharing information appropriately**

Family court social workers should ensure the sharing of information is subject to ethical requirements and the Rules of the Court in respect of privacy and confidentiality across agencies and professions, and within a multi-purpose agency.

## **6 Using authority in accordance with human rights principles**

Family court social workers should use the authority of their role in a responsible, accountable and respectful manner. They should exercise authority appropriately to safeguard people with whom they work and to ensure people have as much control over their lives as is consistent with the rights of others.

## **7 Empowering people**

Family court social workers should promote and contribute to the development of positive policies, procedures and practices which are anti-oppressive and empowering. They should respect people's beliefs, values, culture, goals, needs, preferences, relationships and affiliations. Family court social workers should recognise their own prejudices to ensure they do not discriminate against any person or group. They should ensure that services are offered and delivered in a culturally appropriate manner. They should challenge and seek to address any actions of colleagues who demonstrate negative discrimination or prejudice.

## **8 Challenging the abuse of human rights**

Family court social workers should be prepared to challenge discriminatory, ineffective and unjust policies, procedures and practice. They should challenge the abuse of power and the exclusion of people from decisions that affect them. Family court social workers should not collude with the erosion of human rights or allow their skills

to be used for inhumane purposes such as systematic abuse, detention of child asylum seekers and threats to family life of those in vulnerable positions.

## **9 Being prepared to whistleblow**

Family court social workers should be prepared to report bad practice using all available channels including complaints procedures and if necessary use public interest disclosure legislation and whistleblowing guidelines. Family court social workers should be prepared to identify and expose maladministration whatever its source.

## **10 Maintaining confidentiality**

Family court social workers should respect the principles of confidentiality that apply to their relationships and ensure that confidential information is only divulged with the consent of the person using social work services or the informant. Exceptions to this may only be justified on the basis of a greater ethical requirement such as evidence of serious risk or the preservation of life or the protection of children. Family court social workers need to explain the nature of that confidentiality to people with whom they work and any circumstances where confidentiality must be waived should be made explicit. Family court social workers should identify dilemmas about confidentiality and seek support to address these issues.

Family court social workers should be conversant with the Rules of the Court

applying to disclosure and particularly Practice Direction 12G of the Family Procedure Rules 2010 : Communication Of Information.

### **11 Maintaining clear and accurate records**

Family court social workers should maintain clear, impartial and accurate records and provision of evidence to support professional judgements. They should record only relevant matters and specify the source of information.

### **12 Striving for objectivity and self-awareness in professional practice**

Family court social workers should reflect and critically evaluate their practice and be aware of their impact on others. Family court social workers should recognise the limits of their practice and seek advice or refer to another professional if necessary to ensure they work in a safe and effective manner.

### **13 Using professional supervision and peer support to reflect on and improve practice**

Family court social workers should take responsibility for ensuring they have access to professional supervision and discussion which supports them to reflect and make sound professional judgements based on good practice. Napo expects Cafcass to provide appropriate professional supervision for family court social workers and promote effective team work and communication, and will continue in its endeavours to secure these.

### **14 Taking responsibility for their own practice and continuing professional development**

Family court social workers should develop and maintain the attitudes, knowledge, understanding and skills to provide quality services and accountable practice. They need to keep up to date with relevant research, learning from other professionals and service users. Napo expects Cafcass to ensure family court social workers' learning and development needs are met and seek adequate resources to do so.

### **15 Contributing to the continuous improvement of professional practice**

Family court social workers should strive to create conditions in Cafcass in which they can engage in ethical debate with their colleagues and employers to share knowledge and take responsibility for making ethically informed decisions. Napo believes that family court social workers should be free to seek changes in policies, procedures, improvements to services or working conditions as guided by the ethics of the profession, and will continue to support members in this endeavour.

### **16 Taking responsibility for the professional development of others**

Family court social workers should contribute to the education and training of colleagues and students by sharing knowledge and practice wisdom. They should identify, develop, use and disseminate knowledge, theory and practice.

They should contribute to social work education, including the provision of good quality placements, and ensure students are informed of their ethical responsibilities to use the code in their practice.

### **17 Facilitating and contributing to evaluation and research**

Family court social workers should use professional knowledge and experience to engage in research and to contribute to the development of ethically based policy and programmes. They should analyse and evaluate the quality and outcomes of their practice with people who use social work services.

### **18 Campaigning**

Family court social workers should be able to contribute their expertise and knowledge to support campaigns run by their professional association consistent with the practice directives and the Rules of the Court.

# SPECIFIC GUIDANCE

## Family court social work and the law

Napo's family court members work in a forensic setting and much of their activity is governed by relevant legislation (Family Proceedings Rules 2010). Consequently Napo advises that members need to be familiar with that law which governs the conduct of proceedings, their part in these proceedings and the various protocols that are issued from time to time.

Member's conduct in court is informed by a number of factors:-

### i. Primary Legislation

The following list of primary legislation that is relevant to the task of the family court social worker is not intended to be exhaustive, and neither is it suggested that a member should have a comprehensive knowledge of each of these acts. It is advised that members should know of the existence of this legislation, understand the overall purpose and philosophy of the various Acts and how they impact upon their practice. Members need to be aware of:-

*Matrimonial Causes Act 1973*  
*Domestic Proceedings and Magistrates' Courts Act 1978*  
*The 1996 Hague Convention*  
*Matrimonial and Family Proceedings Act 1984*  
*Family Law Act 1986*  
*Children Act 1989*  
*Family Law Act 1996;*  
*Family Procedure Rules 2010*

*Care Planning, Placement and Case Review (England) Regulations 2010*  
*Adoption and Children Act 2002*  
*Civil Partnership Act 2004*  
*Mental Capacity Act 2005*  
*Human Fertilisation and Embryology Act 2008*

### ii. Case Law

Members need to be aware of developments in law as it is applied by the courts. From time to time judgement will be given in a case that offers guidance in other proceedings as to how the law might be interpreted. An example is the judgment by Dame E Butler-Schloss in *Re: L, M, V & H* [2000] 2 FLR 334 which gave guidance on fitness of a perpetrator of domestic violence for direct contact. Another more recent example was Rt Hon Sir Nicholas Wall's judgment in *Re:K* in July 2011 (*A County Council v K & Ors (By the Child's Guardian HT)* [2011] EWHC 1672 (Fam)) which ruled that if Cafcass management wished to contradict the advice of a Guardian, or replace the Guardian in a case, Cafcass would need to join the proceedings as an intervener and make their case to the court.

Members need to be aware that courts are guided but by no means tied by case law, their overriding duty being to interpret the law as it applies to the next case. There are examples (*Payne v Payne* – permission to leave the jurisdiction) where long standing



practice has been revised by a more recent judgment.

Cafcass Legal has provided an impressive service to family court social workers with regular legal alerts, drawing attention to such cases and outlining the practice implications. Napo advises that, good though this service is, members should be proactive in updating their knowledge, for example Family Law Week provides an invaluable service at <http://www.familylawweek.co.uk>, which includes a free email update.

### iii. Practice Directives and Guidance

From time to time the President of The Family Division will offer for the sake of consistency guidance on how various issues should be handled in court. The expectation is that all court users will apply these. There are directives made some time ago that are still applied. An example is the notice that appears at the foot of court reports 'This report has been prepared for the court and should be treated as confidential. Etc.' is the result of a practice directive on 24<sup>th</sup> February 1984[1984] FLR 356. Another example is the practice directive 16<sup>th</sup> July[1981] 2 ALL ER 1056 which directs the terms by which an officer of the service is brought to court to offer evidence, and that such evidence is heard first in order that the officer can be released.

There are examples of practice directives that members must be familiar with not only so that they can avoid error but also so they can assert themselves when given conflicting instructions by Cafcass management.

Napo advise that members should be familiar with the following directions:-  
*Practice Direction 12J FPR 2010: Residence & Contact Orders: Domestic Violence & Harm*  
*Practice Guidance: McKenzie Friends (Civil and Family Courts) (2010)*  
*Practice Direction 12N FPR 2010: Enforcement Of Children Act 1989 Contact Orders: Disclosure Of Information To Officers Of The National Probation Service*  
*Practice Direction 12L FPR 2010: Children Act 1989: Risk Assessments under Section 16A*  
*Practice Direction 12M FPR 2010: Family Assistance Orders: Consultation*  
*Practice Direction: Section 11 A – P (Children Act 1989) Guidance (for CAF/CASS Practitioners) (unsure what this is)*  
*Practice Direction 12G FPR 2010: Communication of Information*  
*Practice Direction 14E FPR 2010: Communication of Information Relating to Proceedings?*  
*Practice Direction 3A - Pre-Application Protocol for Mediation Information and Assessment*  
*Practice Direction 16A FPR 2010: Representation of Children?*

#### **iv. Agreed Protocols**

From time to time the President of The Family Court after discussion with Cafcass agrees to certain practice protocols and issues this agreement in the form of a protocol. It is important that members read the protocols in their original form so there is absolute clarity about what the courts require of them.

There have been occasions when in enthusiasm to apply the protocol Cafcass managers have misinterpreted the protocols and given instructions that go beyond the agreement. In such instances members can take defensible actions so long as they are within both the letter and the spirit of the protocol. It is also important to check whether a protocol is indefinite, or for a specified time. In other cases protocols have been significantly revised or have subsequently been withdrawn.

Napo advise that members should be familiar with the following protocols:-

Practice Direction 12B FPR 2010: *The Revised Private Law Programme*

Practice Direction 12A FPR 2010:

*Public Law Proceedings Guide to Case Management (Revision of the Public Law Outline)*

#### **v. Cafcass Policy Directives**

Cafcass is the service identified to supply the courts with Family Court Workers. As such it has a duty to ensure

that standards it has set are maintained. It also has a duty ensure that Key Performance Indicators set by its sponsoring department are met.

From time to time Cafcass has issued policy directives, some in consultation with the courts, and others in partnership with other agencies. Napo recognises Cafcass's authority to achieve its overall aims and objectives by issuing instructions to employed staff, many of whom are Napo members.

Napo would hope that in all cases the policies and procedures Cafcass apply to its workforce have been the subject of a genuine consultation with unions and that Napo, having agreed policy, would be able to endorse the steps Cafcass adopts to achieve its goals.

Napo recognises that from time to time individual managers and Cafcass as an agency have attempted to act outside any agreed practice and in such cases Napo have represented members in grievance, industrial disputes and industrial action.

Napo advises members to comply with all reasonable instructions. On those occasions where the instructions are in conflict with the expectations placed on members by the courts, Napo advise that members need to be aware of their duty to the court and raise the issue of such a conflict through the line management structure.

In the event that a member's duty to the court is conflicted by a management directive, then Napo advises that the member discusses the conflict with the child's solicitor with a view to applying to the managing judge for further directions. This advice is offered with Re.K (2011) in mind.

### **Disclosure of Information:**

#### **Moral Support for Parties at Meetings**

There are occasions when a party will ask for a relative or a friend to attend a meeting with a family court social worker. If the worker is acting in their capacity as a Children's Guardian either as a party, or by preparing a report, then the legal position of disclosing confidential information to any party not involved in the proceedings is clear and uncomplicated (Practice Direction: Communication of Information – 12G). With only those specific exceptions outlined in the Practice Direction confidential information is only disclosed to the parties and the Court.

It is important when initiating any dialogue with a party to be clear on privilege. A consultation with a lawyer is a privileged conversation, i.e. it is a matter for the client and the lawyer what information is shared with the other parties and the Court. A conversation with a party and a family court social worker is not privileged (although it remains confidential within proceedings), and any information shared with a family court social worker is shared on the

understanding that it is there to be discussed with the other parties.

However, as social workers, family court social workers are obliged to create an environment of trust and confidence, and this will be compromised by an insensitive assertion of this directive. Family court social workers understand the impact of the experience of domestic violence, the corrosive effect of harassment, molestation and stalking and the consequences such behaviour has on a party's self-esteem. In such situations it is wholly reasonable when being asked to discuss distressing history with a stranger that they have the comfort and support of somebody they know and trust.

It may be helpful to consider the nature of confidential information within the proceedings. If a party wishes for support then it might be appropriate to interview that party first. If the agenda of this interview is that of outlining the family court social worker's role and eliciting from the party their perspective of the facts as they see it, then the family court social worker has disclosed nothing during the course of this interview that cannot be heard or witnessed by a third party. At this stage the only information that has been discussed has been that which is offered by the party, which the party is entirely at liberty to share with anybody he or she chooses to. There is no confidential information shared by the family court social worker within that setting. In some cases it might be essential

for the party's supporter to be present at that first meeting to enable the party to disclose at all. It also offers the family court social worker the opportunity to reassure and explain the position with respect to how confidential information is handled and discuss the basis on which future meetings are held.

If, as is likely, future meetings will involve the consideration of the other party's perspective then the agenda of the meeting is dealing with confidential information shared by the family court social worker, and such information can only be shared with a third party with clear permissions. In the event that a party is unwilling or unable to meet without the presence of a supporter then implications of this, need to be shared with the other party/ies and the managing judge.

There is scope for a supporter to attend further meetings if the arrangement has the consent of all parties and the sanction of the managing judge. However, in litigious cases such consent being given is unlikely or only offered conditionally, e.g. the one party can have a supporter present if both parties can enjoy this arrangement. Napo advises that in such cases where the matter cannot proceed by reasonable consent, it is a matter for the court to make a ruling.

Napo is aware that in such instances family court social workers have been directed to allow the attendance of a supporter at a meeting in which confidential information is shared in the presence of a third party. Napo

advises that such an instruction is not reasonable as it is instructing the family court social worker to disregard clear legal guidelines and rules. Cafcass does not have the authority to override Court Rules. In such an event the best course is seek advice from Cafcass Legal and if necessary apply to the court for further directions.

**Disclosure of Information:  
Collating Research and Campaigning  
Information.**

Napo is both a trades union and a professional association. In both capacities it has routinely turned to its membership for information and data to support its campaigns and policies. Napo considers that there is a balance that can be achieved while asking for members who are family court social workers to share information about their work.

In offering advice Napo is aware of the following practice directive, Communication of Information – 12G. This specifically identifies that information an officer of the service can share, with whom, and in what circumstances. With respect to case information there is leave to allow the sharing of such:-

“A party, any person lawfully in receipt of information or a proper officer can communicate to a person or body conducting an approved research project for the purpose of an approved research project”

Care has to be exercised when disclosing practice to Napo officials that it specifically excludes case material.

**Example of Data that can be disclosed:-**

*“Napo asks members to identify the incidence of cases in which one or more parties are represented in person”;*

*“Napo asks members to compare such cases with those where parties are represented by a legal representative with respect to (1) the number of directions hearings (2) the duration of proceedings”;*

In this instance a family court social worker can pass useful information to Napo that is not confidential to proceedings.

**Example of Data that cannot be disclosed:-**

*“Napo is looking for an example where a party is abusing process as a vexatious litigant.”*

Although the case might be anonymised (possible by using the normal convention of using the initial letter of the child’s forename), there is the real risk that a party concerned might recognise anything published by the description of the case features. In this event it opens the scope for applications to court by a party that the family court social worker has :-

- (1) indicated a bias and
- (2) inappropriately disclosed case material and consequently is in contempt of court.

Although the scope for evidenced based research is inevitably constrained by this advice Napo considers that there remains scope for identifying broad issues for practice and that with such information Napo can press for closer examination of these issues either by Cafcass or by independent bodies such as individuals or academic institutions engaged in ‘approved research.’

#### 4. McKenzie Friends

See:-

Practice Directive: McKenzie Friends (Civil and Family Courts )(2010)

Practice Direction 12G: Communication of Information

Practice Direction 14E: Communication of Information Relating to Proceedings

A McKenzie friend assists a litigant in person in a common law court. The person does not need to be legally qualified. The crucial point is that litigants in person are entitled to have assistance, lay or professional, unless there are exceptional circumstances. It is likely with the withdrawal of legal aid in most cases that parties seeking to represent themselves in person will seek the support of a McKenzie friend.

Napo acknowledges the role and legal status of a McKenzie friend as it is defined in case law and practice direction. The Guidance itself is unequivocal<sup>ix</sup>:-

***“What McKenzie Friends may do***

- 3) *McKenzie Friends may:*
- i) *provide moral support for litigants;*
  - ii) *take notes;*
  - iii) *help with case papers;*
  - iv) *quietly give advice on any aspect of the conduct of the case.*

***What McKenzie Friends may not do***

- 4) *McKenzie Friends may not:*

- i) *act as the litigants’ agent in relation to the proceedings;*
- ii) *manage litigants’ cases outside court, for example by signing court documents; or*
- iii) *address the court, make oral submissions or examine witnesses. “*

and in the practice direction:

Communication of Information – 12G only the party in question has licence to communicate information concerning the proceedings to a McKenzie friend.

Although McKenzie friends are an important source of support for parties who represent themselves in proceedings, Napo is aware that some McKenzie friends come to the task with an agenda wider than that of the specific proceedings. In some cases they overtly seek to advance the cause of a pressure group or special interest group as part of the support they offer.

However, in an environment in which there is an increasing number of litigants in person McKenzie friends are likely to become more prominent and in all probability this will be reflected in new Guidance directives.

Napo advises that all McKenzie friends should be treated courteously and consistently. Their role does not extend to a right to be present at meetings between a party and the family court social worker or to receive confidential information from the family court social worker. However, it may

be useful and instructive for both the party and his/her McKenzie friend if he or she could attend an introductory meeting (see *Moral Support for Parties at Meetings*).

Members might consider it good practice to write to McKenzie friends outlining the Rules of the Court as it applies to the disclosure of confidential information. This might be extended to explain in general terms the role of the children's guardian, the paramountcy principle and the expectation the court has that parties will exercise parental responsibility appropriately by working towards consensus.

Napo is aware that some Cafcass managers have in the past instructed that McKenzie friends should attend meetings between the party and the family court social worker. Napo advises that this not only overrides the professional discretion of the family court social worker but also contradicts legal guidance.

Napo's advice is that Cafcass does not have the authority to override Court Rules. If after such an instruction has been discussed with a manager (possibly after further guidance has been sought from Cafcass Legal) the instruction remains, then it is a matter the family court social worker needs to discuss with all parties and the court with a view to seeking further directions.

## 5. Wishes And Feelings

Section 1(3) Children Act 1989:-

*“In the circumstances mentioned in subsection (4), a court shall have regard in particular to—  
(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);”*

UN Convention On the Rights Of The Child, (UNCRC)Article 12:-

- *“Every child and young person has the right to express his or her views freely – about everything that affects him or her.*
- *The child’s or young person’s views must be given ‘due weight’ depending on his or her age and maturity.*
- *The child or young person has the right to be heard in all decision-making processes, including in court hearings. The child or young person can speak for him or herself, or someone else can speak for him or her.”*

Consultation response by The Children’s Commissioner to The Family Justice Review undertaken for the Family Justice Council’s Voice of The Child Sub Group, “Do More Than Listen”<sup>x</sup>.

*“Children want adults to listen, hear them, understand them and act on that understanding if they are to have the support they need and have a say in decisions. Adults need to understand all the pressures upon them - from what is*

*happening in their family and from the court process.”*

Napo considers the importance of the child’s voice in proceedings in that it is central to the children’s fundamental rights, and as such is crucial to the safeguarding of the child. Moreover, as the primary channel for receiving the children’s voice and presenting it in proceedings, Napo suggests that family court social workers have a particular responsibility in this aspect of safeguarding. Napo is critical of the guidance offered in the Cafcass Operating Framework with respect to “proportionate working”:-

*“Identifying at the outset, as part of the triage process, the team around the child, and being more actively involved if the child has no other professionals or safe carers safeguarding and speaking up for her / him.”*

Napo advises that the duty the children’s guardian has to the child and the court cannot be delegated to others and the practice of relying on third party accounts of the child’s wishes and feelings is both unsound and unsafe. Moreover, Napo fails to understand how a guardian can fully understand the child’s world without meeting with the child and listening to what the child has to say about it.

Napo advises that whatever the pressures regarding scarce resources, and whatever emphasis may be placed on “proportionate working”, the family court social worker’s



overriding priority must be to meet with the child at the current placement at the earliest opportunity in order to establish a working relationship with the child.

In private law children's wishes and feelings can be subject to the pressures of litigation, and in such circumstances a child might require more rather than less support from a family court social work in order to successfully convey their views in court. This is reflected in a point made in "Do More Than Listen":-

*"Many of the same messages came from the children and young people who had been through different kinds of court proceedings. This showed that even when children were looked after and had the right to be heard in their care plans, many still did not understand what was happening. The differences need looking at too: those children whose parents are separating may get less support and have even greater worries about telling someone their views."*

In private law substantial weight is placed upon parental responsibility and the no order principle, and much of the policy development in recent years has been in identifying and developing alternative models of dispute resolution. While Napo takes no issue over the effort to secure alternative routes to resolution, we remain critical of the overall strategy Cafcass has adopted. It would appear that Cafcass

views its single most important role in private law as safeguarding, and as a general principle Napo would not argue with this. However, Napo suggest that the safeguarding should be a holistic notion, very much on the 'Every Child Matters' model, that looks beyond immediate issues of neglect, of physical, emotional and sexual abuse and incorporates others essential needs and rights of the child. Napo has been concerned that Cafcass's approach to those intractable private law cases that defy alternative resolution is informed by frustration and irritation at the resources such cases use, rather than any concern for the plight of the children caught in such families.

Napo observes the considerable and laudable efforts put into developing work to first hearing. Napo is critical that the model that appears to have taken root is one that suggests that once safeguarding has been assessed there is no further role for Cafcass. The consequence of this is that the function which had been traditionally provided by the family court welfare officer, that of providing in court conciliation where agreement is possible and informative reports and recommendations where agreement is not possible, is disappearing from the court.

In the meantime the courts are left with the task of finding optimum outcomes for children in fractious and potentially damaging proceedings the very nature of

which will deny the quick fixes both Cafcass and the courts would wish to apply.

The court is asked to give specific instructions when commissioning reports.

Reports may take the following forms:-

- i. A wishes and feelings report
- ii. A single issue report (the issue needs to be specified) Section 7;
- iii. A multiple issue report Section 7;
- iv. A report by the Local Authority investigating the care of the child Section 37;

The practice has been to allocate wishes and feelings reports to family support workers albeit under the nominal supervision of appropriately qualified staff. Napo has concerns that clear safeguards should be applied before exposing children to potential significant harm in their parents' dispute. Napo suggests the following factors need to be considered before 'A wishes and feelings report' is recommended:-

- i. The age and understanding of the child in question. It is important that the children are old enough to understand the changes in their life and to express a coherent account of how these changes have affected them, how they feel about their family, and how they would like to see things settled.
- ii. The degree of hostility between the parents and the child's exposure to this hostility. If at any time a family court social worker considers that a child is

either influenced or inhibited because of the child's exposure to parental acrimony or hostility the family court social worker should return to court to advise the commissioning of a Section 7 report in order that the child's wishes and feelings can be presented within the context of the rest of the welfare checklist.

- iii. The number of times the child has been seen as part of wishes and feelings reports. Napo suggests that repeating a wishes and feelings exercise with a child runs the risk of abusing the child. It unhelpfully reinforces the notion that the child should adjudicate in the absence of a parental agreement, and in those cases where the exercise proves unfruitful it will burden the child with the responsibility of its failure.

Napo suggests that wishes and feelings reports are primarily to inform parents in the expectation that such information will assist both parties in reaching a consensus. If after this exercise, the parents remain in dispute then Napo suggest that the court cannot safely rely on wishes and feelings reports alone as:-

- i. In a continuing dispute the position of the child becomes untenable, with one if not both parents suggesting the child is influenced, and one or both parents denying the validity of the child's position.

- ii. The necessary safeguards to protect the children from the parents' acrimony have not been applied. By acting on wishes and feelings alone the child effectively becomes the arbitrator in the parents' dispute at the risk of causing havoc to the family dynamics.
  
- iii. The child's wishes and feelings are considered outside the context of the rest of the welfare checklist. The ability of a child to give a direct and accurate account of their wishes and feelings will depend on the degree to which they feel free so to do, and this will directly related to the quality of parenting they receive.

There is some useful reading available in this area that Napo advises members to consult.

**Ann Buchana:**, *Families in Conflict : Perspectives of Children and Parents on the Family Court Welfare Service.*

**Brian Cantwell & Sue Scott:** *Children's Wishes, Children's Burdens - Journal of Social Welfare and Family Law, 17(3), 1995, pp.337-354.*

**Brian Cantwell:** *Listening to Children in Contested Private Law Cases - Representing Children, 8(3), 1995, pp.18-19*

**Kirk Weir:** *Intractable Contact Disputes – the Extreme Unreliability of Children's Ascertainable Wishes and Feelings – Family Court Journal Vol 2 No 1 Summer 2011*

## Key Performance Indicators

Key Performance Indicators are the targets set by a commissioning Government Department to establish the effectiveness of the agency.

Napo’s critique of performance indicators in general is that in seeking evidence of attainment they concentrate only on those factors that can be measured. In doing so it reduces the agency’s achievements not so much on the quality of the intervention but solely on the throughput. KPIs measure outputs rather than outcomes, leaving the uncomfortable speculation that Cafcass could achieve all its KPIs 100% but still

produce work that fails to achieve positive outcomes for children.

The stress Cafcass has placed on meeting arbitrary time targets mirrors the spirit of the legislation about avoiding delay. Napo agrees that in care proceedings it is important to move with all convenient haste to a point where the child whose life is disrupted can enjoy stability, security and continuity.

However, in private law it is often the case that fractious parents require time to change. In these circumstances there is a justification for delay if something purposeful is being

The most recent Key Performance Indicators for Cafcass

<b>KP1 Public Law</b>	Public law care cases should be allocated.
<b>KP2 Private Law</b>	Private law cases should be allocated
<b>KP3 Safeguarding</b>	Quality of practice of safeguarding rated as satisfactory or above for all eligible practitioners.
<b>KP4</b>	TBC
<b>KP5</b>	TBC
<b>KP6 Public Law</b>	Cafcass will allocate (on an ongoing, not a duty basis) all care cases by CMC (Case Management Conference), measured as 45 calendar days from application date.
<b>KP7 Private Law</b>	Cafcass will measure the percentage of section 7 reports that meet their agreed filing times, for each of the four types of reports: a) Multiple Issues

achieved, and it is rare in proceedings for the court to object to delay in such circumstances.

In Private Law Napo rejects the ‘Get stuck in, and get out’ approach Cafcass wishes to impress on staff, cautioning that a speedy resolution is not always a sound resolution, and unsound resolutions have a habit of coming back to court.

The emphasis on quick resolutions rather than sound resolutions runs a considerable risk of alienating one if not both parties and aggravating the acrimony the child experiences. Napo suggests that members should not discount the usefulness of addendum reports to check and report on developments, or the use of Family Assistance Orders to help parents towards meaningful change.

Napo would also want to see a Key Performance Indicator which sets a timescale between the allocation of a case and the first face to face contact between the family court social worker and the child.

## **Safeguarding**

Cafcass maintains that it is primarily a child protection agency. It is an error that is shared by others and one that was shared with the Family Justice Select Committee. The courts have a clearer view of this in the Rules of the Court which identifies child protection officers in terms of Local Authority social workers, NSPCC officers, the police etc., people whose primary task is to investigate child abuse and neglect, and to take appropriate action.

Cafcass is an agency with safeguarding responsibilities, as any other agency offering services to children and their families will have. These duties were highlighted, and safeguarding was codified, in Adoption and Children Act 2002, which placed a requirement on all agencies dealing with children to work consistently and in concert with each other to ensure safeguarding. The family court social worker has a duty to ensure the safeguarding of children with whom they come into contact during the course of their work. This duty means that the family court social worker will take appropriate action if and when that worker has justified cause to believe the child is in need of protection.

However, the family court social worker, must not act in any manner that might compromise a child protection investigation once he or she is aware that one is being conducted. The family court social worker should avoid attempting to elicit an account from the child, less the child's evidence

becomes tainted. The family court worker will not be allowed to disclose progress of the investigation to parents and is unlikely to have details of the investigation shared with him or her until a conclusion one way or the other has been reached.

In the event of a child protection investigation occurring concurrently with private law proceedings it may be appropriate for the family court social worker to suspend their involvement until an outcome has been reached. In this event it is vital to inform the parties and the court offering an idea of when an outcome is likely if that it is known.

In the absence of child protection concerns family court social workers have a specific duty to safeguard the children's rights and welfare during proceedings which they share with magistrates, judges, legal advisors and advocates. Napo takes the view that this must be regarded as a shared enterprise to which the family court social workers offer his or her expertise as a qualified and experienced social worker. Family court social workers should familiarise themselves with the approach judges and magistrates take towards safeguarding for which they receive appropriate training and are routinely offered judicial guidance. Family court social workers are as much bound by rulings in fact finding exercise as the parties, and do not have licence to overturn or act against a ruling on the basis that they disagree with the judgement. In the event of a disagreement over a safeguarding risk the

family court social worker needs to discuss this with the line manager and to seek advice and assistance from Cafcass Legal. There is scope to challenge a judgement which might involve Cafcass seeking to be joined in the proceedings as an intervener.

### **Guidance on Proportionate Working**

Proportionate working is the generic term Cafcass uses when asking staff to exercise economy with their time. It places an inappropriate premium on office based activities, e.g. risk assessments based solely on paperwork, relying entirely on office based interviews. The principle applied is that with scarce and diminishing resources together with an increasing demand for services then the decision of what gets done and what is left becomes a matter of individual professional discretion. In practice it is a concept that allows Cafcass to over allocate cases to frontline staff on the justification that staff are allowed the freedom to exercise choice over what is tackled and what is left.

The model that has been suggested, the triage model, is one that is applied in Accident and Emergency Units and Field Casualty stations in which patients are assessed on admission and a clinical judgement is made on the order in which treatment is offered on the needs of the individual patients.

The model fails in that there is an obvious category error. Applicants in family law cases are not equivalent in nature to patients in a casualty ward. The assessment of indicators such as pulse rate, blood pressure, respiration, loss of blood, etc. can give immediate and concrete information to a doctor about the state of the patient and how they figure in prioritising the work the unit has to cope with in the next few hours,

whereas the damage or dysfunction either in a child's life or in a family's dynamic might require patient examination over a period of time to arrive at an accurate assessment.

The model also fails because of the nature of family court social workers' accountability. Children's guardians are responsible not only to Cafcass but also the courts and they are obliged to operate to the timetables and priorities that have been set in proceedings. They do so with expectations that are set not only by their own notions of good practice, but the standards set for them in their training, by their registration body, by Rules of the Court and by the expectations of the parties and the other court users.

The call by Cafcass management for more attention to be given to proportionate working begs the question that prior to this the input of family court social workers had been disproportionate to the task, and that is not accepted.

The Cafcass Operational Framework promotes the need for proportionate working in response to scarce and diminishing resources but fails to identify how this might be realised. It is not accepted that it should fall to practitioners to realise savings by avoiding tasks on the justification of "working proportionately" when the responsibility for short falls in resources occurs at departmental if not a ministerial level.



Napo advises that when exercising professional discretion on the level of activity in any given case members should be guided by their own professional code of ethics and the expectations of the courts and other service users. If a member is directed to exercise a different more economical discretion then Napo advises the member to seek precise written instructions on how such savings are achieved.

Recognising the jeopardy members place themselves in by dissenting, Napo would advise sharing their experience with either a member of the Family Court Section Executive or the Family Court Committee.

## GLOSSARY

### **Some working definitions of key terms**

#### *Family court social worker*

This includes any employee or agent of Cafcass who is engaged with a case being processed by the Family Court. This definition covers, Family court social workers, Family Support Workers, Service Managers, and Reporting Officers.

#### *Working definitions of ethics and professional ethics*

Broadly speaking, 'ethics' is about matters of right and wrong conduct, good and bad qualities of character and responsibilities attached to relationships. Although the subject matter of ethics is often said to be human welfare, the bigger picture also includes the flourishing of animals and the whole ecosystem. The term 'ethics' may be used in a singular sense to refer to the study of right and wrong norms of behaviour, good and bad qualities of character; or in a plural sense, to refer to the actual norms and qualities.

Professional ethics concerns matters of right and wrong conduct, good and bad qualities of character and the professional responsibilities attached to relationships in a work context.

#### *Working definitions of values and social work values*

In everyday usage, 'values' is often used to refer to one or all of religious, moral, cultural, political or ideological beliefs, principles, attitudes, opinions or preferences. In social work, 'values' can be regarded as particular types of beliefs that people hold about what is regarded as worthy or valuable. In the context of professional practice, the use of the term 'belief' reflects the status that values have as stronger than mere opinions or preferences.

The term 'social work values' refers to a range of beliefs about what is regarded as worthy or valuable in a social work context (general beliefs about the nature of the good society, general principles about how to achieve this through actions, and the desirable qualities or character traits of professional practitioners).

#### *Principles and standards (or rules)*

Principles are essential norms in a system of thought or belief, which form the basis of reasoning in that system. In codes of ethics principles are often divided into two kinds:

*Ethical principles* – general statements of ethical principles underpinning the work, relating to attitudes, rights and duties about human welfare, for example: ‘respect for the autonomy of service users’; ‘promotion of human welfare’.

*Principles of professional practice* – general statements about how to achieve what is intended for the good of the service user, for example: ‘collaboration with colleagues’. Principles have a much broader scope than rules (or ‘standards’), tending to apply to all people in all circumstances (although in the case of social work, principles often refer to ‘all service users’). So, for example, ‘Family court social workers should respect the autonomy of service users’ is an ethical principle; whereas, ‘Family court social workers should not disclose confidential information to third-party payers unless clients have authorised such disclosure’ might be regarded as an ethical standard or rule. Standards can also be divided into two kinds, although often they are not clearly distinguished in codes of ethics:

*Ethical standards or rules* – some general “do’s and don’t’s”, sometimes framed as “standards” for example: “do not permit knowledge to be used for discriminatory policies”; “protect all confidential information”.

*Professional practice standards* – very specific guidance relating to professional practice, for example: “declare a bequest in a client’s will”; “advertising should not claim superiority”.

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- <sup>iii</sup> The Children Act 1989, <http://www.legislation.gov.uk/ukpga/1989/41/contents>
- <sup>iv</sup> United Nations Convention on the Rights of the Child. <http://www.unicef.org/crc/>
- <sup>v</sup> The Universal Declaration of Human Rights, <http://www.un.org/en/documents/udhr/>
- <sup>vi</sup> European Convention on Human Rights <http://www.echr.coe.int/nr/rdonlyres/d5cc24a7-dc13-4318-b457-5c9014916d7a/0/englishanglais.pdf>
- <sup>vii</sup> Human Rights Act 1998 <http://www.legislation.gov.uk/ukpga/1998/42/contents>
- <sup>viii</sup> A County Council v K & Ors (By the Child's Guardian HT) [2011] EWHC 1672 (Fam) <http://www.familylawweek.co.uk/site.aspx?i=ed84361>
- <sup>ix</sup> **Practice Guidance: McKenzie Friends (Civil and Family Courts)** [http://www.familylaw.co.uk/system/uploads/attachments/0000/8125/McKenzie\\_Friends\\_Practice\\_Guidance\\_July\\_2010.pdf](http://www.familylaw.co.uk/system/uploads/attachments/0000/8125/McKenzie_Friends_Practice_Guidance_July_2010.pdf)
- <sup>x</sup> “Do More Than Listen”, Consultation Response by The Children’s Commissioner to The Family Justice Review undertaken for the Family Justice Council’s Voice of The Child Sub Group [Online source](#)

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This guidance is issued by the Family Court Committee of Napo, The Trade Union and Professional Association for Family Court and Probation Staff.

Napo  
4 Chivalry Road  
London  
SW11 1HT  
Tel: 020 7223 4887