

4 March 2020

Dear ,

### **Request for Information – ATISN 13774**

Thank you for your information request, you asked for the following information:

1. *How long a named Cafcass Cymru officer has worked for Cafcass Cymru*
2. *The qualifications of the named officer.*
3. *The criteria for recommending no contact.*
4. *The number of cases where “no contact” is the recommended outcome*
  - a. *As an absolute number*
  - b. *As a percentage of overall cases*
5. *The number of cases where “no contact” is the recommended outcome by officers at Cafcass Cymru Newtown*
  - a. *As an absolute number*
  - b. *As a percentage of cases at Newtown*
6. *The number of cases where “no contact” is the recommended outcome by the named officer.*
  - a. *As an absolute number*
  - b. *As a percentage of cases handled by the named officer.*
7. *The number of complaints made against Cafcass Cymru and of those what number or proportion are upheld.*
8. *The number of complaints made against Cafcass Cymru Newtown Officers*
  - a. *Of those, what number or proportion are upheld?*
9. *The number of complaints made against the named officer*
  - a. *Of those, what number or proportion are upheld*

The response to your request is set out below.

We have concluded the information requested in parts of your request (points 1, 2, 6 and 9) amounts to third party personal data and is exempt from disclosure under section 40(2) of the Freedom of Information Act, 2000 (FOIA), as set out below.

When considering whether or not the exemption applies, I have to consider the effect of disclosure in response to a FOIA request. That is, the information is released to the world not just the person making the request. As such, it is the effects of that wider disclosure which needs to be considered.

### **Freedom of Information Act 2000: Section 40(2)**

Section 40(2), of the FOIA, together with the conditions in section 40(3)(a)(i) or 40(3)(b) provides an absolute exemption if disclosure of the personal data would breach any of the data protection principles.

'Personal data' is defined in sections 3(2) and (3) of the Data Protection Act 2018 ('the DPA 2018') and means any information relating to an identified or identifiable living individual. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

We have concluded that, in this instance, the information requested contains third party personal data.

Under Section 40(2) of the FOIA, personal data is exempt from release if disclosure would breach one of the data protection principles set out in Article 5 of the GDPR. We consider the principle being most relevant in this instance as being the first. This states that personal data must be:

*“processed lawfully, fairly and in a transparent manner in relation to the data subject”*

The lawful basis that is most relevant in relation to a request for information under the FOIA is Article 6(1)(f). This states:

*“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”.*

In considering the application of Article 6(1)(f) in the context of a request for information under FOIA it is necessary to consider the following three-part test:

- **The Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- **The Necessity test:** Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
- **The Balancing test:** Whether the above interests override the interests, fundamental rights and freedoms of the data subject.

Our consideration of these tests is set out below:

## 1. Legitimate interests





The Welsh Government recognises there is a legitimate interest in members of the public being assured that an individual employed as a Cafcass Cymru FCA is qualified, experienced and competent to do that job. We also believe there is a legitimate interest in members of the public knowing information at an organisational level with regards to case information and the number of complaints received. However, we do not believe this is so at an individual case/officer level as this could have wider repercussions regarding the work undertaken on other cases by those officers.

## **2. Is disclosure necessary?**

The information provided below sets out the qualifications and experience necessary to be employed as a FCA. This information is in the public domain and applies to all FCAs. We are satisfied access to this information demonstrates to the public that all FCAs are suitably qualified to undertake their role and we do not therefore consider it necessary to disclose information relating to specific individuals.

We ensure that all FCAs are suitably qualified and competent to undertake their role. To take up appointment, FCAs need to hold a Diploma in Social Work (or Social Care Wales recognised equivalent) and a minimum of 3 years post qualifying experience of working with children and their families. They also need to demonstrate that they are registered with Social Care Wales.

## **3. The balance between legitimate interests and the data subject's interests or fundamental rights and freedoms**

We recognise there is a wider public interest in knowing individuals are suitably qualified and experienced to carry out their roles. We believe the information as set out above provides this assurance.

We believe that the legitimate interest in understanding the relevant qualifications and length of service of FCAs is therefore satisfied and there is no reason for disclosing detailed information on any particular individual FCA that would override the interests, fundamental rights and freedoms of the data subject provided by the DPA 2018. Consequentially we believe the rights of the FCA outweigh any wider public interest and disclosure would breach the DPA 2018 and thus the information is exempt from disclosure.

Further, even if release of the information were considered to be lawful, we believe that the 'fair' requirement of the above principle would not be satisfied. This is because the data subject (Family Court Advisor) is not a senior civil servant and she would have no reasonable expectation that her personal information would be put into the public domain. Thus, we believe release of this information into the public domain would be unfair and incompatible with the purpose for which the data was originally obtained.



In respect of the information of the number of cases where no contact is the recommended outcome by an individual officer, and the number of complaints made against an individual officer, whilst we may hold those details involving the person named in your request, there would be no reasonable expectation this information would be put into the public domain. Thus, we believe release of this information would be both unfair so as to breach the first data protection principle and also that the publishing of this information in the public domain would be incompatible with the purpose for which the data was originally obtained.

As release of the information would not be legitimate under Article 6(1)(f), and as no other condition of Article 6 is deemed to apply, release of the information would not be lawful within the meaning of the first data protection principle. It has therefore been withheld under section 40 of the Freedom of Information Act. Section 40 is an absolute exemption and not subject to the public interest test.

*Request Part 3 - The criteria for recommending no contact.*

Cafcass Cymru does not hold any information meeting the description of this part of your request.

*Request Part 4 and 5 - The number of cases where "no contact" is the recommended outcome, both for Cafcass Cymru nationally and for Cafcass Cymru officers based in Newtown.*

Whilst Cafcass Cymru holds information which falls within the description specified in the request, this can only be retrieved by examining individual case files. In order to identify and locate the information, we estimate it will cost more than the appropriate limit set out in the Freedom of Information and Data Protection (Appropriate limit and Fees) Regulations 2004 to answer your request. The appropriate limit specified for central government is £600. This represents the estimated cost of it taking over 24 hours of time to determine whether we hold the information and to thereafter locate, retrieve and extract it.

Normally, I would undertake a sample check of cases to evidence the time it would take to locate, retrieve and extract the information. However, I have undertaken similar sample checks in the past and these have averaged 5 minutes per case. I am satisfied retrieving this information would take a similar amount of time.

In the last 12 months (01/02/2019 – 31/01/2020) Cafcass Cymru had involvement in over 1500 Private Law cases. At a nominal 5 minutes per file to locate, retrieve and extract the information it would take an estimated 125 hours (1500 cases x 5 mins = 7500 minutes/60 = 125 hours). Of these, the Mid and West operational area (in which the Cafcass Cymru Newtown office is located) produced over 370 reports. At a nominal 5 minutes per file to locate, retrieve and extract the information it would take an estimated 31 hours (371 reports x 5 mins = 1855 minutes/60 = 31 hours).





*Request Part 7 and 8 - The number of complaints made against Cafcass Cymru both nationally and for Cafcass Cymru officers based in Newtown and of those what number or proportion are upheld.*

In the last 12 months (01/02/2019 – 31/01/2020) Cafcass Cymru received 96 complaints (point 7 of your request) of which 16 have been formally investigated (the remainder were resolved without the need for a formal investigation): of these, 5 were either fully upheld or had elements of the complaint upheld. We publish details of complaints received in our Annual Report. You can find our latest annual report for 2018-2019 via the link below. Information on complaints can be found at page 15 and 16:

<https://gov.wales/sites/default/files/publications/2019-11/Cafcass-cymru-annual-report-2018-2019.pdf>

With regard to point 8, in the last 12 months (01/02/2019 – 31/01/2020) 20 complaints were made involving officers based in the Mid and West operational area (in which the Cafcass Cymru Newtown office is located), of which 6 have been formally investigated (the remainder were resolved without the need for a formal investigation): of these, 3 were either fully upheld or had elements of the complaint upheld.

If you are dissatisfied with the handling of your request, you can ask for an internal review within 40 working days of the date of this response. Requests for an internal review should be addressed to:

Chief Executive  
Cafcass Cymru  
Sarn Mynach  
Llandudno Junction  
Conwy  
LL31 9RZ

Please remember to quote the ATISN reference numbers above.

You also have the right to complain to the Information Commissioner. Normally, however, you should pursue the matter through our internal procedure before you complain to the Information Commissioner.

The Information Commissioner can be contacted at:

Information Commissioner's Office



Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Yours sincerely

**Rydym yn croesawu gohebiaeth Gymraeg. Cewch ateb Cymraeg i bob gohebiaeth Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.**

**We welcome correspondence in Welsh. Correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not involve any delay.**

Cafcass Cymru  
Sarn Mynach  
Cyffordd Llandudno ▪ Llandudno Junction  
Conwy  
LL31 9RZ

Mae CAFCASS Cymru yn  
rhan o Lywodraeth Cymru

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CAFCASS Cymru is part of  
the Welsh Government



Llywodraeth Cymru  
Welsh Government