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8 October 2020

Dear

### **Request for Information – ATISN 14339**

Thank you for your information request, you asked for the following information part of which is in respect of a specific named Cafcass Cymru Family Court Advisor (FCA):

1. Is it a requirement that Cafcass Cymru officers /section 7 report authors hold a membership of a professional body such as BACP?
2. Does the named officer hold such a membership, and if so which one?
3. Has the named officer ever received a disciplinary/striking off or similar professional conduct concern action?
4. Is the named officer the same person who was removed from the BACP register after a misconduct hearing?

The response to your request is set out below.

1. *Is it a requirement that Cafcass Cymru officers /section 7 report authors hold a membership of a professional body such as BACP?*

No. Cafcass Cymru practitioners need to demonstrate they are registered with Social Care Wales.

2. *Does the named officer hold such a membership, and if so which one?*
3. *Has the named officer ever received a disciplinary/striking off or similar professional conduct concern action?*

We have concluded the information requested 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 in relation to those staff who have been subject to striking off or similar professional conduct concern action.

### **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



FCA's. We are satisfied access to this information demonstrates to the public that all FCA's are suitably qualified do undertake their role and we do not therefore consider it necessary to disclose information relating to specific individuals.

We ensure that all FCA's are suitably qualified and competent to undertake their role. To take up appointment, FCA's 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.

Disciplinary issues are an internal matter and not a matter of public record. Social Care Wales regulates the process in relation to any concerns raised with them about the professional conduct of social workers, and they publish information in relation to this, including on the SCW register

<https://socialcare.wales/dealing-with-concerns/hearings>

### **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 the legitimate interest in understanding the relevant qualifications, experience and requirement for Social Care Wales registration for all Cafcass Cymru FCA's 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 (the FCA) would have no reasonable expectation that their 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 in relation to those staff who have been subject to disciplinary action, 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 unfair so as to breach the first data protection principle. Social Care Wales publishes information relating to the professional conduct of registered social workers raised with and investigated by them, including warnings, undertakings, suspensions and removals from the SCW Register.

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.

4. *Is the named officer the same person who was removed from the BACP register after a misconduct hearing?*

No.

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:

Nigel Brown  
Chief Executive  
Cafcass Cymru  
[cafcasscymru@gov.wales](mailto:cafcasscymru@gov.wales)

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