

Addendum report

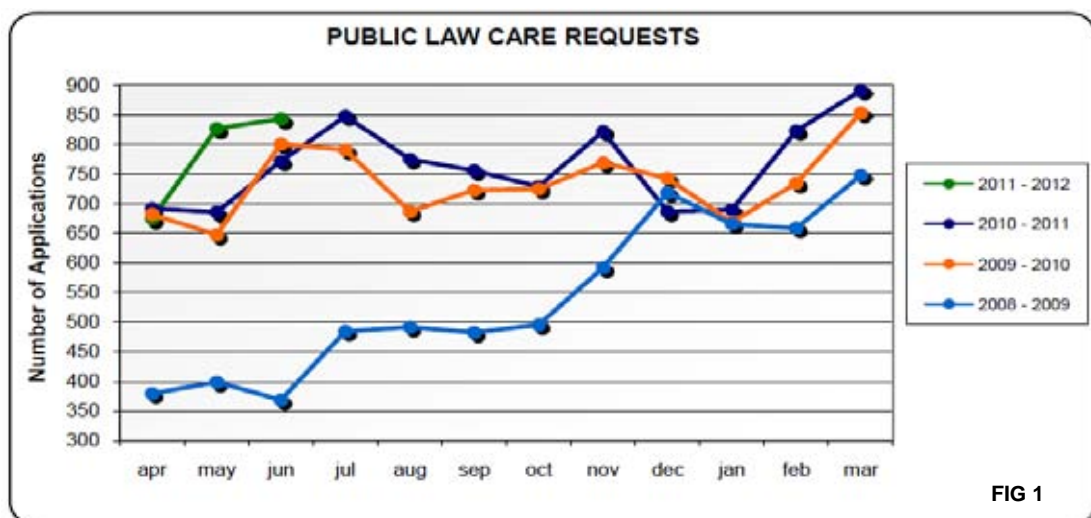
Review of local arrangements between Cafcass and Designated Family Judges

July 2011

Introduction

1. During January – March 2011 the National Performance Partnership¹ conducted a Review of local agreements between Cafcass and Designated Family Judges. Where required, these agreements were designed to foster a partnership approach between local agencies to address delays in the allocation of Children’s Guardians in Public Law Children Act proceedings.
2. The Review was a policy based assessment as to the extent to which local agreements had been successful in achieving their stated aims, using a combination of qualitative evidence, collected through a survey of front line practitioners, and statistical evidence from Cafcass and HMCTS management information sources.
3. This addendum report provides an update to the statistical sources used in Review paper, so as to provide an update to the context in which the agreements are operating and a longer term view on whether the reductions in the use of duty Guardians and the number of cases where a Guardian was unallocated have been sustained.
4. A copy of the Review paper is attached at Appendix i and contains full details of the background, methodology and conclusions of the NPP Review.

Update to contextual data



¹ The National Performance Partnership has a membership drawn from senior representatives of MoJ, DfE, Cafcass, HMCTS, local authorities and the judiciary.

5. **Fig 1** above shows that the demand for Children’s Guardians in England has remained at a very high level since the NPP review was conducted. Between April and June 2011, Cafcass received 2,345 new applications. This figure is 9.1% higher when compared to the same period in 2010.² The May and June 2011 application numbers were the highest ever recorded by Cafcass for these individual months.

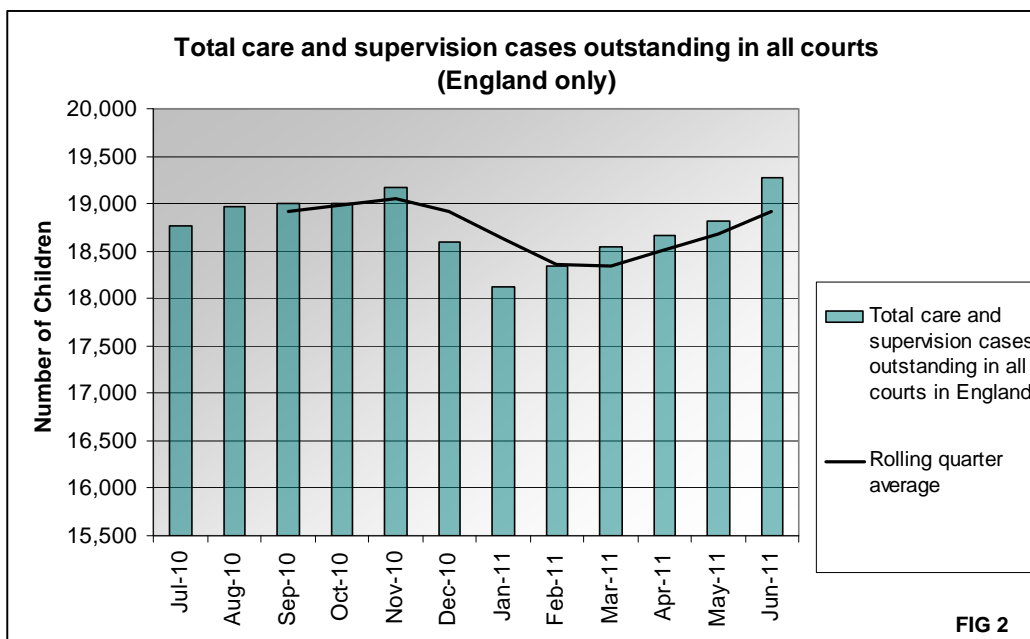


FIG 2

6. **Fig 2** shows that since the NPP review was conducted, there has been an upward trend in the number of Public Law Children Act cases outstanding in England, when looking across all tiers of courts.³ These volumes translate into higher caseloads for the courts but also for Children’s Guardians, who remain appointed to a case until final resolution.

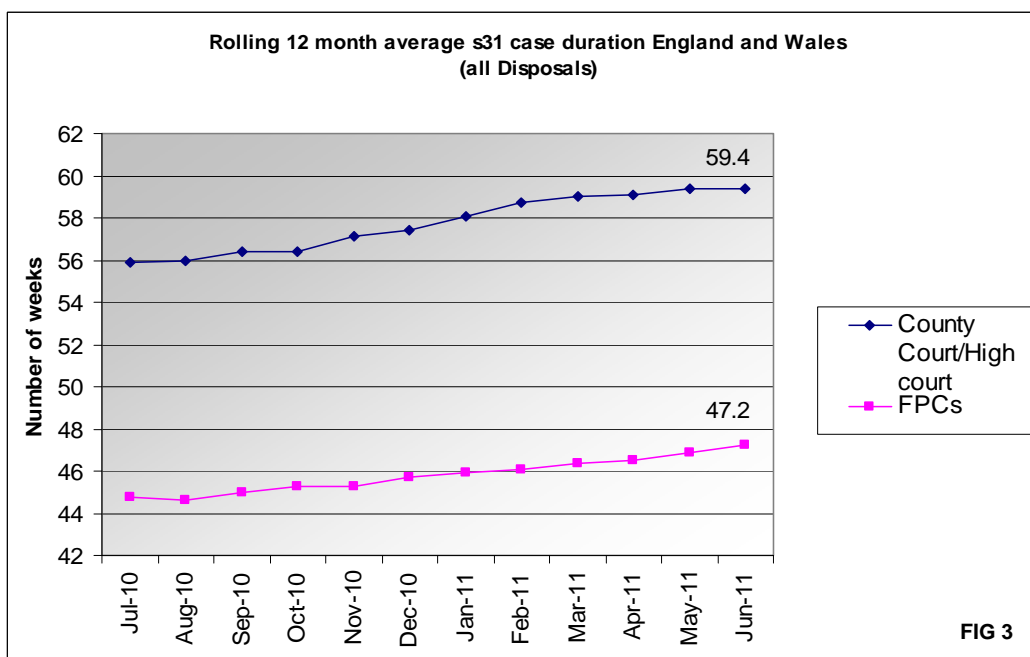


FIG 3

² Cafcass care statistics June 2011
http://www.cafcass.gov.uk/news/2011/june_care_statistics.aspx

³ Source: HMCTS Performance database 22 July 2011 (excludes data for HMCS Wales) (counted by child).

7. **Fig 3** illustrates an increasing trend in the average time it takes to complete Public Law Children Act cases.⁴ This is a measure that has been increasing over a long period and relates to a complex set of drivers, which are beyond the scope of the NPP Review. It is included as background to show that an additional pressure on Guardian’s caseloads, is that on average cases are taking longer to complete.

Update to data on the provision of Children’s Guardians

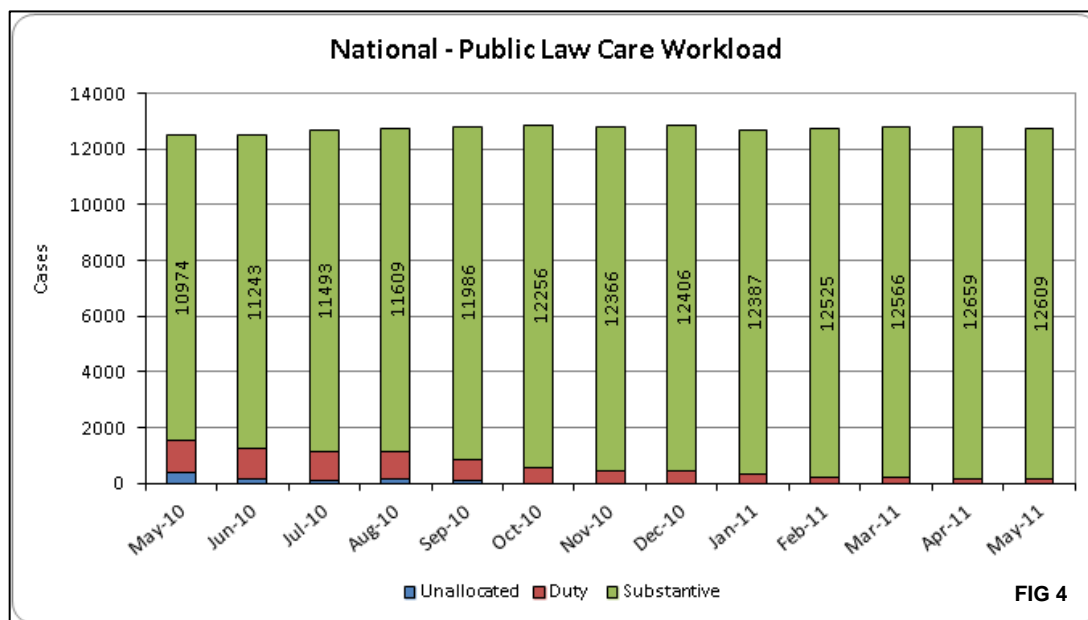


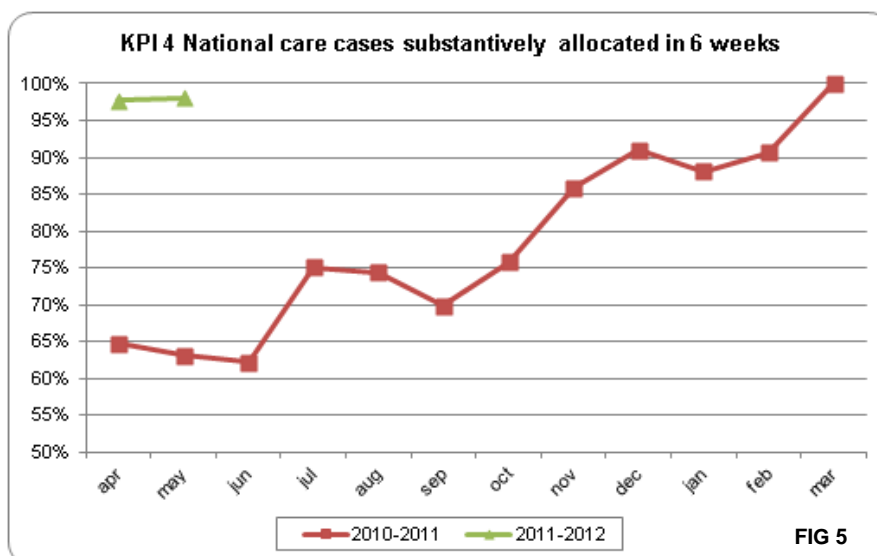
FIG 4

	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11
Substantive	10974	11243	11493	11609	11986	12256	12366	12406	12387	12525	12566	12659	12609
Duty	1121	1049	1049	1017	727	568	435	431	316	215	223	160	157
Unallocated	422	210	143	159	130	45	18	39	15	9	3	12	13
Total workload	12517	12502	12685	12785	12843	12869	12819	12876	12718	12749	12792	12831	12779

	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11
Substantive	87.7%	89.9%	90.6%	90.8%	93.3%	95.2%	96.5%	96.3%	97.4%	98.2%	98.2%	98.7%	98.7%
Duty	9.0%	8.4%	8.3%	8.0%	5.7%	4.4%	3.4%	3.3%	2.5%	1.7%	1.7%	1.2%	1.2%
Unallocated	3.4%	1.7%	1.1%	1.2%	1.0%	0.3%	0.1%	0.3%	0.1%	0.1%	0.0%	0.1%	0.1%

8. Despite the continued growth in demand for Children’s Guardians illustrated in fig 1, the graph above shows that Cafcass have continued the trend of reducing the number of duty guardians and cases where a guardian is unallocated to a case since the NPP Review was conducted. Unallocated cases have been reduced from 422 in May 2010 to just 13 in May 2011, and the number of cases allocated on a duty basis has decreased from 1121 in May 2010 to 157 in May 2011.
9. On the whole, Cafcass is now dealing, on a substantively allocated basis (Children’s Guardian appointed), with around 15% (or 1,600) more care cases in May 2011 compared to May 2010. The number of cases where a Children’s Guardian has not been appointed represented just 0.1% of total workload in May 2011.

⁴ Source: HMCTS Performance database.



10. **Fig 5** provides further evidence that progress is being made on reducing the need for duty advisers in care cases. The Public Law Outline sets out an expectation that the Case Management Conference should take place no later than 45 calendar days (6 weeks) from the application issue date. Using this date in proceedings as a yardstick, we can see that on a financial year to date basis, Cafcass were substantively allocating guardians to 97.9% of cases by CMC stage. This represents over a 35% increase on the same period in 2010.

Conclusion

11. The statistical sources demonstrate that the environment in which agreements between DFJs and Cafcass are operating remains challenging. The statistics show that the number of cases coming into the system continues at a high level, cases on average are taking longer to complete and caseloads are increasing.
12. Despite this background, the statistical evidence suggests that progress continues to be made in reducing the need for duty advisers and the number of cases where no Guardian has been allocated at month end has been reduced to 0.1% of total workload. Cafcass sources report that the average duration to substantively allocate a Guardian to a care case has reduced from a peak of 39.3 working days (around 8 weeks) in June 2010 to 4.5 working days in May 2011.⁵
13. The updated statistical evidence provides further support to the conclusions made in the NPP review that much progress has been made over the past 12 months and that local agreements between DFJs and Cafcass have been an important feature of this progress.

National Performance Partnership

July 2011

⁵ Cafcass Board – Performance report: April to May 2011.



Review of local arrangements between Cafcass and Designated Family Judges

April 2011

Introduction

14. On 1st October 2010 the President of the Family Division and the Chief Executive of Cafcass signed a joint agreement (“The Agreement”) to build on the successes of the President’s Interim Guidance⁶ in developing and operating a partnership approach to address delays in the allocation of Children’s Guardians in Public Law proceedings. A copy of the Agreement is attached at **Annex A** of this paper.
15. The Ministry of Justice and the Department of Education supported the Agreement and gave a commitment to monitor its effect with a view to making an assessment as to whether it had been successful in achieving its four stated aims:
 - To build on the inter-agency working which the President’s interim guidance had recommended;
 - To reduce the number of cases where a children’s guardian had not been allocated to a case;
 - To assist guardians make the best use of their time;
 - To minimise the use of Cafcass nominated ‘duty advisers’.
16. Due to the collaborative nature of the Agreement it was jointly agreed with the President’s office that responsibility for monitoring would benefit from the oversight of the inter-agency National Performance Partnership (NPP), which includes senior representatives from MoJ, DfE, Cafcass, HMCS and the judiciary.
17. This paper is therefore a policy based assessment of the effect of the Agreement on meeting those four stated aims.

Background

18. The context into which the need for the Agreement has arisen is an increase in applications for care and supervision proceedings, which has been sustained since the end of 2008, with recent forecasts from both MoJ and Cafcass suggesting that these high levels of applications will remain for the foreseeable future.

⁶ The President’s interim guidance for England, 30 July 2009 (extended on 1 April 2010)
[http://www.cafcass.gov.uk/pdf/Presidents_Interim_Guidance_30_July_09\[4\].pdf](http://www.cafcass.gov.uk/pdf/Presidents_Interim_Guidance_30_July_09[4].pdf)

19. To illustrate how these increased applications are manifesting in the continued high demand for Cafcass services, the chart below details the number of requests for children's guardians in Public Law cases⁷ over the last five years. Notably in the current financial year to January 2011, monthly requests for guardians exceeded record levels in seven out of a possible ten months.

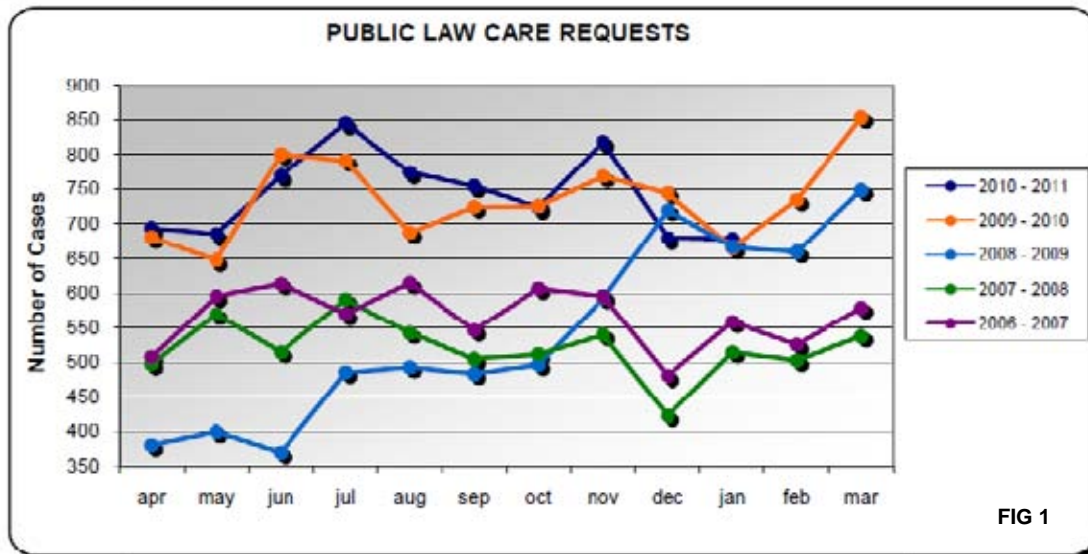


FIG 1

20. To illustrate how these increased volume of applications are impacting on the current workload of the courts, the graph below shows the growth over the last 12 months in the number of care and supervision cases⁸ currently before the courts awaiting a determination.

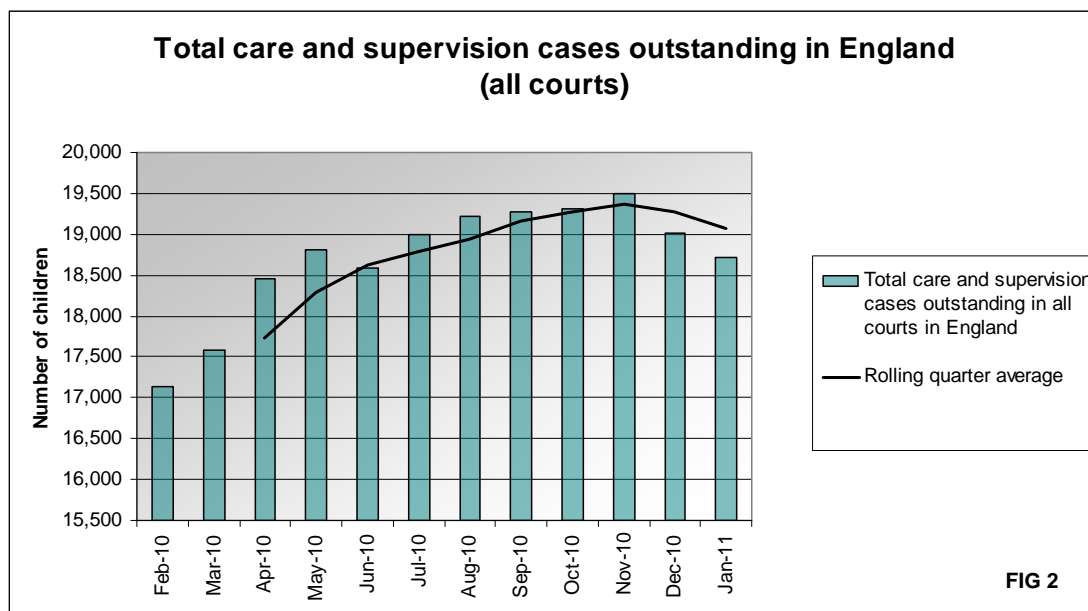


FIG 2

21. The increase in cases coming into the system is coinciding with an increase in the length of time taken to deal with care cases. Detailed below is the average case duration of care and supervision proceedings,

⁷ Cafcass count 'per care application'. An application may pertain to multiple children. Source: www.cafcass.gov.uk/news/2011/january_care_stats.aspx

⁸ Total care and supervision applications outstanding in all family courts (counted by child). Source: HMCS Performance database 9 March 2011 (excludes data for HMCS Wales).

shown as a moving 12 month average. This shows a long term trend of increase in the average length of proceedings in both the county court and FPC jurisdictions.

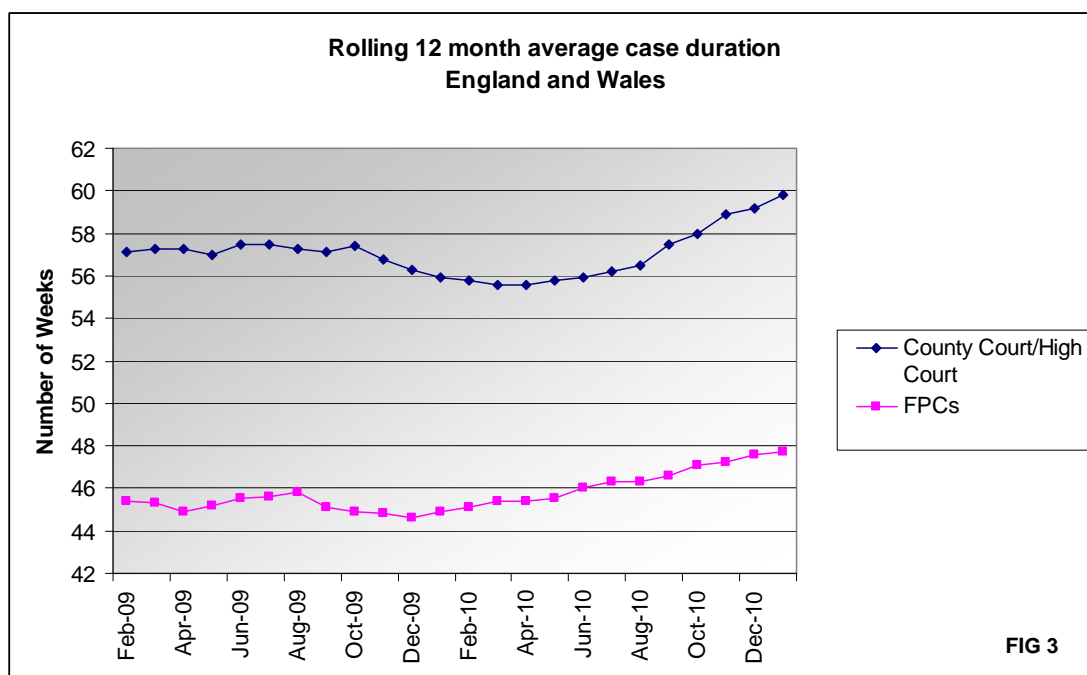


FIG 3

22. In short, more cases are coming into the system, they are taking longer to deal with, and all agencies including HMCS, Cafcass and local authorities are having to manage these increased workloads within existing resource constraints.

Methodology

23. To make an informed assessment of how the four aims of the agreement had worked in practice it was necessary to draw from a range of sources. The National Performance Partnership agreed that evidence to monitor the use of 'duty advisers' and to monitor the number of cases with no guardian allocated would be available from exiting Cafcass datasets. This would be supplemented by relevant contextual datasets from HMCS.
24. As no statistical data existed on whether guardians were able to "make the best use of their time" nor was there statistical information on how many local agreements had been established, it was decided that the quantitative data would need to be supplemented by qualitative evidence on how the local agreements had worked in practice.
25. In conjunction with the President's office, the MoJ policy team designed a short online survey to collect a range of qualitative evidence relating to the four aims of the Agreement. In addition, information was also collected on the key underpinning features of the Agreement such as the operation of the Public Law Outline and judicial continuity. The survey was open for four weeks between 14 January and 11 February 2011 and responses were accepted in hard copy or by email.
26. MoJ sent copies of the survey to chairpersons of the recently established Local Performance Improvement Groups (LPIGs). The multi-agency nature of LPIGs was thought useful in ensuring that feedback on the

effect of the local agreements was assessed, taking into account the views of all agencies. As the judiciary were not necessarily represented on LPIGs, it was agreed with the President’s office that the survey would also be sent to each of the Designated Family Judges in England. A list of DFJs and their respective Cafcass service areas are detailed at **Annex B** and **Annex C**.

27. The Table below details the responses received.

Total number of LPIG areas:	45
Number of LPIG areas where a response was received from either the DFJ, the LPIG or both:	36 ⁹
Response rate:	80.0%

28. Where a response was received from both the DFJ and the LPIG chair for an area, information was combined and considered as a joint response.
29. Questions posed in the survey were broad in nature and many of the responses elicited a very detailed and thorough reply. For the purposes of analysis and presentation, responses have been grouped into general themes, with a sample of specific quotes or particular examples of good practice extracted and highlighted in this paper.
30. A separate agreement exists between Cafcass Cymru and the Judiciary in Wales. As the National Performance Partnership does not have oversight for Wales, analysis in relation to Cafcass Cymru is not included in this policy assessment.¹⁰

Results

Inter-agency working

31. The Agreement placed emphasis on the need for all agencies involved in the care proceedings system to work co-operatively and to build on the successful arrangements established under the interim guidance. Specifically, paragraph 4 of the Agreement gives encouragement for regular meetings between local agencies and the judiciary to share information and to co-ordinate efforts to improve the system locally. Results from the survey showed that without exception, areas had in place a discussion forum to discuss family business issues and that group was regarded as being effective in achieving the types of co-operation envisaged by paragraph 4 of the Agreement.
32. One of the key successes of the Agreement, highlighted in many of the responses from DFJs, was the increased communication that had resulted between the judiciary and Cafcass. Whilst many observed that inter-agency working had always been strong, there was an

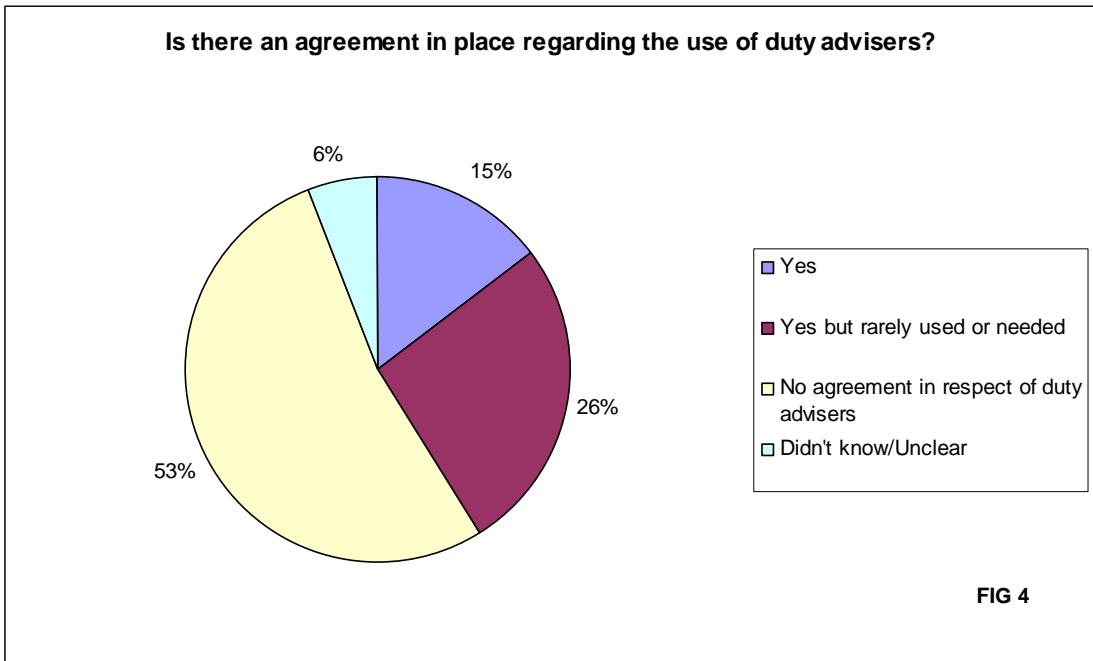
⁹ Two separate performance improvement groups exist in London and Kent. The one response received from the DFJ in each of these areas was considered to cover both LPIG areas, therefore statistical data in relation to the survey relate to 34 responses.

¹⁰ Some anecdotal evidence was received from DFJs in Wales, through the online survey. These have been excluded from this paper and have been forwarded to the Welsh Assembly Government for consideration.

acknowledgement that the current increased workloads had required a greater degree of co-operation and sharing of information to ensure cases could be dealt with without undue delay. Illustrative examples are listed below

- “What has been particularly successful is the extent to which the various agencies have been prepared to work together to make local arrangements work. With increased awareness that effective communications are vital, the landscape has changed dramatically”
- “There has been a new era of co-operation! – communications with Cafcass have improved, and a new willingness and energy to respond to the PLO requirements has resulted in the disappearance of most of the old problems”
- “Following the President’s Interim Guidance we initiated very productive meetings with Cafcass which have resulted in arrangements which have eliminated the backlog. These arrangements continue under a Joint Agreement between Cafcass’ Head of Service and the DFJ. A very productive dialogue between Cafcass and the judiciary exists and regular meetings take place to deal with issues as they arise”

33. Whilst the Agreement gave a mandate for DFJs and Cafcass management to establish local arrangements (or for them to continue) it did not necessarily follow that a local agreement would *need* to be made. Therefore one of the key pieces of evidence to establish was in which areas there had been a need to establish a local agreement between Cafcass and the judiciary to assist with the timely allocation of guardians.
34. This was established by way of a question in the survey which asked respondents to state whether they were aware of any agreement being in place regarding the use of ‘duty advisers’, pending the allocation of a children’s guardian.



35. As can be seen from Fig 4 above, over half of the responses indicated that no such agreement was in place in respect of duty advisers. The most cited reason was because delays in the appointment in guardians had either been reduced or eliminated, obviating the need for duty advisers. A further 26% noted that whilst an agreement was in place, it was only invoked in exceptional circumstances because Cafcass routinely were allocating a guardian within the timescales defined in the PLO.
36. In the minority were significant areas such as Greater London, where it is reported that an agreement in respect of the use of duty advisers is invoked regularly. However, even here the DFJ reported that “Cafcass have certainly greatly improved, on average, the date on which a guardian is appointed to cases”.

Reduction in duty advisers and cases where no guardian is allocated

37. As detailed above, under the terms of the Agreement there is provision for local areas to establish arrangements with Cafcass to nominate ‘duty advisers’ to assist the court in care cases, pending the appointment of a Children’s Guardian. The purpose of these arrangements is to ensure that in times of high demand, Cafcass are able to provide advice to the courts in a timely way.
38. Cafcass currently monitor the use of duty advisers by collecting management information on the allocation status of guardians upon receipt of a care application. For each application received, Cafcass will record the case under the following allocation categories:
 - Unallocated – This category should only comprise brand new cases where no officer has been appointed to a case.
 - Duty Allocated – This category comprises where Cafcass will both react to incoming information and also take pro-active steps at appropriate points in time to review the status, needs and level of priority of the case.
 - Allocated (substantive) – cases where the named worker will both react to incoming information and take appropriate pro-active steps and, in addition, will undertake the work that is set out in the case plan, and also in accordance with the courts’ requests/directions. A substantive allocation therefore includes the production of the case plan and any required reports for the case. A substantive allocation is also an appointment of Children’s Guardian by the court in s31 care, supervision and other relevant Public Law cases.
39. The graph below shows monthly snapshots over the past year to demonstrate the success in reducing the number of cases where a children’s guardian remained unallocated – from 689 in December 2009 to 39 in December 2010. Cafcass has also decreased the number of cases allocated on a duty basis, from a high of 1121 in May 2010 to 431 in December 2010.

National - Care Workload Snapshot

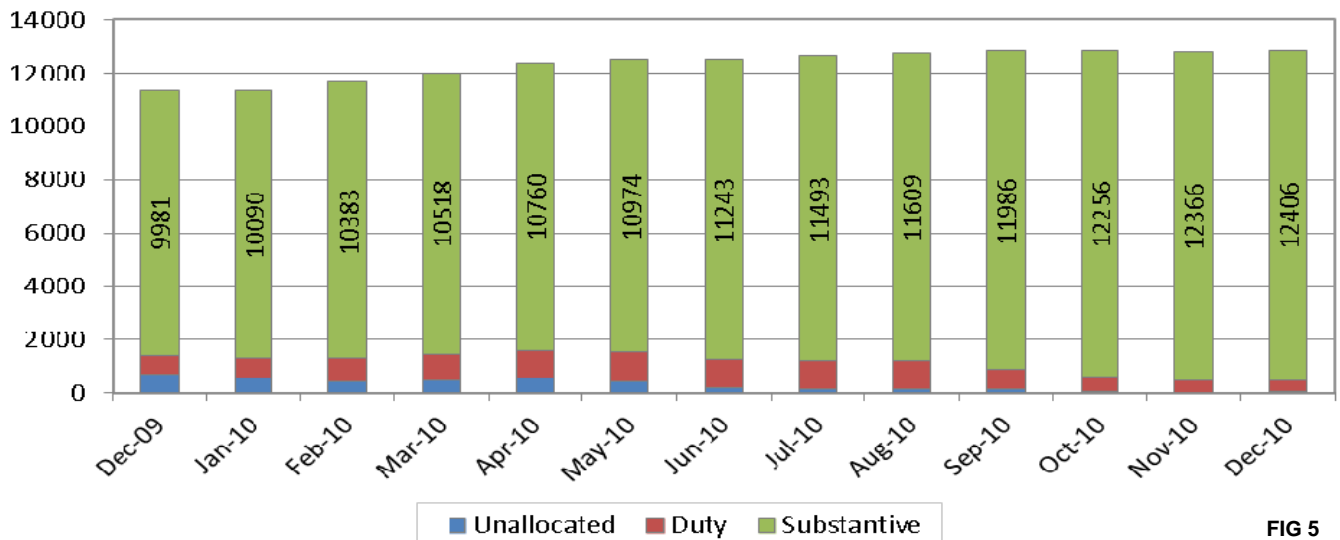


FIG 5

	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10
Substantive	9981	10090	10383	10518	10760	10974	11243	11493	11609	11986	12256	12366	12406
Duty	676	716	850	991	1061	1121	1049	1049	1017	727	568	435	431
Unallocated	689	549	430	474	551	422	210	143	159	130	45	18	39
total workload	11346	11355	11663	11983	12372	12517	12502	12685	12785	12843	12869	12819	12876

	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10
Substantive	88.0%	88.9%	89.0%	87.8%	87.0%	87.7%	89.9%	90.6%	90.8%	93.3%	95.2%	96.5%	96.3%
Duty	6.0%	6.3%	7.3%	8.3%	8.6%	9.0%	8.4%	8.3%	8.0%	5.7%	4.4%	3.4%	3.3%
Unallocated	6.1%	4.8%	3.7%	4.0%	4.5%	3.4%	1.7%	1.1%	1.2%	1.0%	0.3%	0.1%	0.3%

40. As detailed at paragraph six of this report, it is important to repeat that this improvement has been achieved in the context of record demand for Cafcass services, as a result of the continuing rise in care applications received by Cafcass since November 2008.
41. Cafcass also monitor the length of time it takes to allocate a guardian on a substantive basis by monitoring the % of substantive appointments that have been allocated by day 45 of a case. Day 45 is by when the PLO envisages that a case management conference will have been fixed. The chart below shows that progress has also been made against this measure during 2010, with Cafcass allocating 91% of care cases on a substantive basis within 45 calendar days, compared to 72.2% in December 2009.

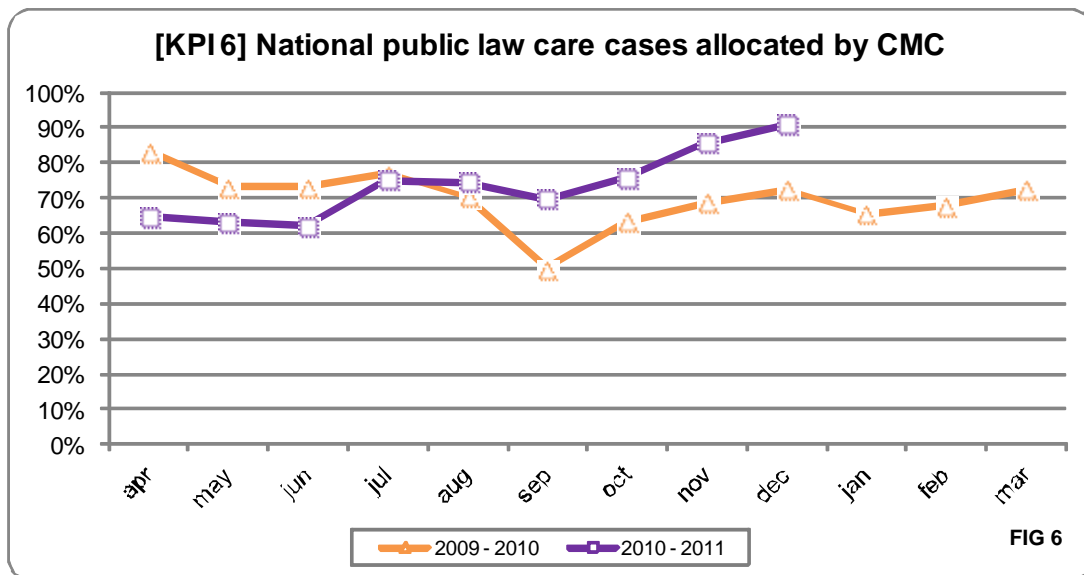
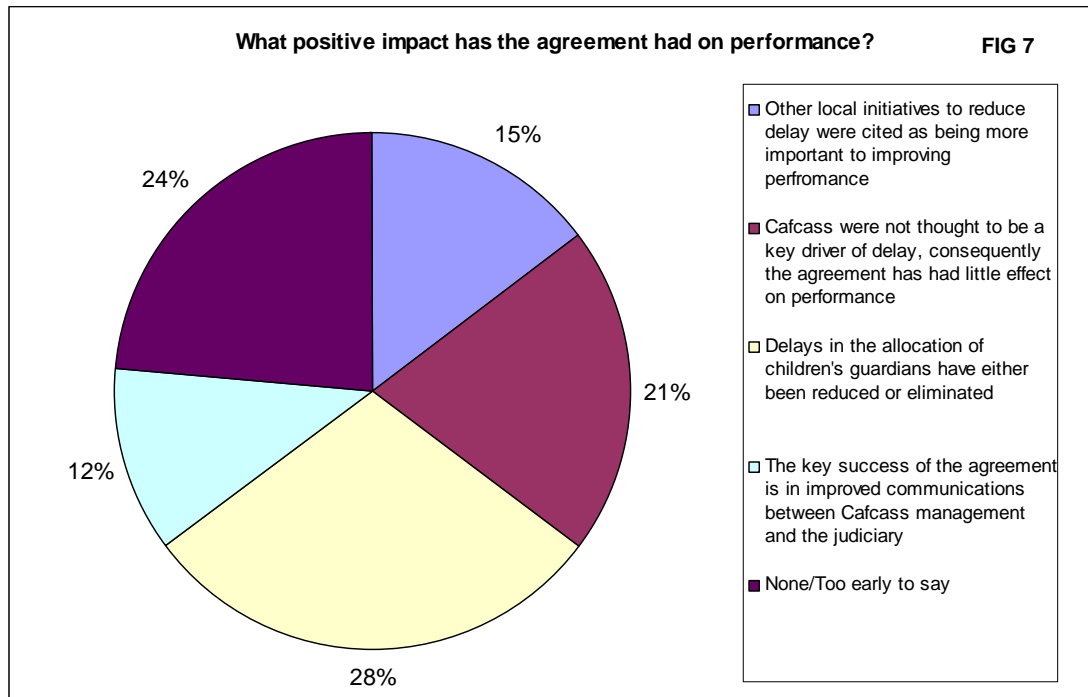


FIG 6

42. Supporting the trend seen in outstanding case data from HMCS (see Fig 2), the evidence from Cafcass data sets is of a steady increase in the size of the overall national case workload ('live' cases yet to be concluded). This shows that Cafcass are now dealing, on a substantively allocated basis, with around 24% (or 2,400) more care cases in December 2010 compared to December 2009. Several of the survey responses expressed concern about this rise in overall workload, drawing a conclusion that if there has been no increase in the number of Cafcass staff, then logically individual workers must be managing much higher caseloads.

Impact on performance

43. To supplement and to provide reassurance with respect to the quantitative data, respondents to the survey were asked to give their general views on whether they thought the agreement had made a positive impact on performance, including whether they thought delay in the appointment of guardians had been reduced and whether case lengths had been reduced.



44. This question was constructed so as to gather general views on whether the agreement had made an impact on performance and may have been framed too broadly as a variety of responses were received. Whilst most responses were positive, the reasons for the divergent nature of responses may include:

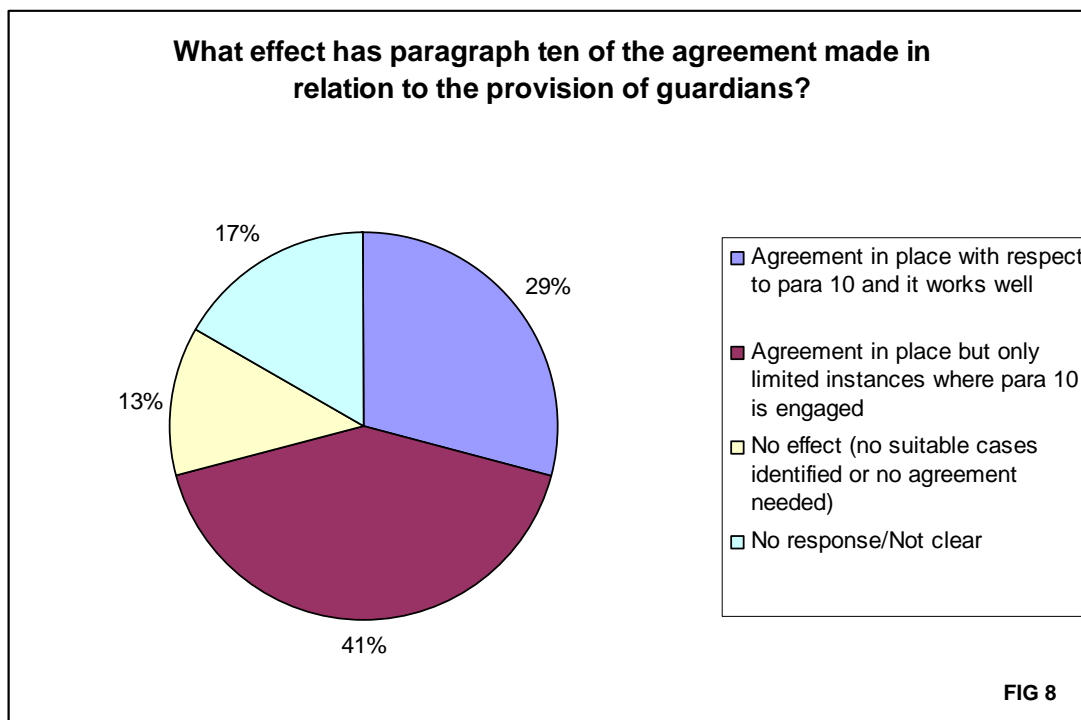
- As many areas had already indicated they did not experience delay in the allocation of guardians and did not have any Agreement in place for duty advisers it follows that there would be no impact on performance.
- The concurrent nature of the Interim guidance and the current Agreement may have made it difficult for respondents to attribute performance improvement directly to the Agreement.
- Respondents were surveyed in January 2011 which only allowed for three months since the Agreement became operative, making it difficult to draw any firm conclusions on the effect on performance.

45. For ease of analysis responses have been grouped into five broad themes. These show support for the trends in the statistical data, as the majority of responses indicated that the principle benefit of the Agreement had been the elimination of delays in the allocation of children's guardians. Also concurrent with evidence given about local agreements not being required in respect of duty advisers, Cafcass were not cited as an important reason for delay which effected performance in about 1/3 of responses to this question.

Agreements made in relation to managing guardian provision

46. To make an assessment on whether the fourth aim of the Agreement had been made, that of 'assisting guardians to make the best use of their

time', a question in the survey asked respondents for intelligence on whether the Agreement had resulted in the court identifying cases, in accordance with paragraph ten of the Agreement, where there were no tasks for the guardian to undertake for specific periods. This included an excusal of attendance at particular hearings and the court being specific about the amount of work the guardian needed to do for a set period of time.

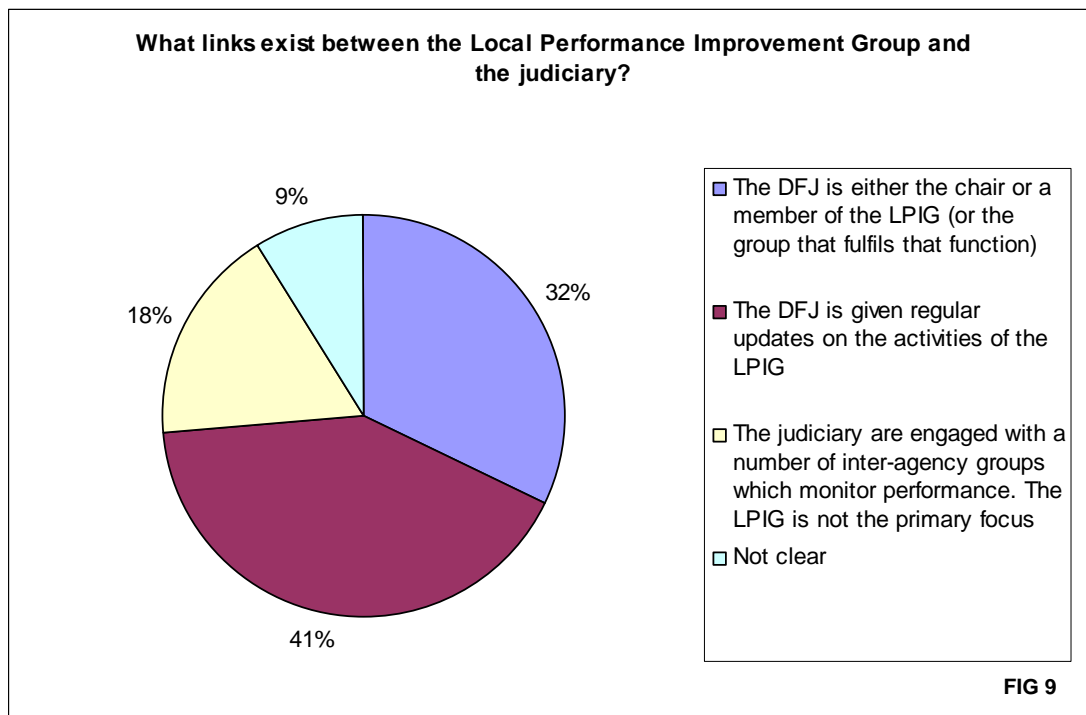


47. 70% of respondents responded to say that an agreement was in place with respect to paragraph 10, however it had limited application and on the whole was dealt with on a case by case basis, upon request by the guardian. There was a minority of respondents who had reservations about the court being too instructive to guardians, and felt that it was for individual guardians to determine what work was needed in a case.
48. Specific examples given about how consensus had been reached to ensure that Children’s Guardians are able to make the most effective use of their time include:
- “Cafcass is continuing to work closely with the judiciary and other court representatives to develop a common understanding of the need to clearly define specific tasks of the CG within individual cases. The Cafcass view is that this is fundamental to ensuring sustainability of allocation without delay, in a period of restricted resources and continued increased public law care demand.”
 - “The President’s guidance has generally been helpful in its totality. At hearings, there is an expectation that there will be an analysis of what a report should address and whether there should be periods when the Guardian has no tasks to be undertaken... Courts are also mindful as to whether Guardians should be excused attendance so that resources are saved.”

- Judges are readily inclined to excuse a Guardian’s attendance at a future hearing, provided proper instructions can be given to a Children’s advocate.”

Performance management

49. Just prior to the Agreement coming into force on 1st October 2010, The Government wrote to all HMCS areas asking for Local Performance Improvement Groups to be established, to bring together local representatives from agencies within the family justice system with the objective of identifying the principal drivers of delay in their area and to work collaboratively to address them.
50. It was not necessarily assumed that there would be judicial involvement in these groups, in view of their narrow focus on performance, however a wide discretion was afforded to local areas to convene groups according to local needs. To establish how areas had integrated the LPIG locally, the survey asked respondents to provide information on what links had been established between the judiciary and their respective local performance improvement group.



51. As would be expected all responses to this question indicated that Designated Family Judges are actively involved in performance. A variety of examples were given of the various structures and mechanisms which facilitate the judiciary’s involvement in performance improvement initiatives.
52. With respect to LPIGs it is encouraging to note that in over 70% of those areas that responded the DFJ is either actively involved in meetings or receives feedback on the work of the group.

53. Specific excerpts from the survey responses to this question include:

- “The DFJ and a DJ both sit on the LPIG. The DFJ is closely involved with all aspects of performance and receives regular updates on specific initiatives to drive up performance. With respect to Cafcass the LPIG has helped keep a close eye on the management of the backlog and the level of service but also helped to foster a more co-operative and open relationship in place of the somewhat fractured communication in recent times.”
- “The DFJ is looking at delay problems in the FPC and has arranged to observe case management hearings conducted by legal advisers and the lay bench to see if any advice is necessary to progress cases more effectively”
- “A monthly working lunch with the care ticketed judiciary, listing officer and the court manager has been effective in improving practice in relation to listing, recorder work, dealing with special arrangements for particularly difficult cases”

54. In some responses there was criticism about the quality of the management information available to enable decisions to be made about workloads. This has been noted previously in recent studies of the family justice system¹¹ and is being currently being considered by the Family Justice Review.

Public Law Outline

55. The Agreement reiterates the importance of the Public Law Outline being implemented effectively by local areas and is cited as a key dependency to its success. As such the survey sought to gather views from respondents on whether they thought that cases were being managed, listed and progressed in accordance with the PLO, and if not, what were the barriers which were frustrating this expectation.

56. Whilst all responses were confident the PLO was being operated effectively, a catalogue of reasons was cited as to why cases could not be progressed in line with the PLO’s expectations. These are listed in order of the number of incidences cited by respondents:

- Availability, instructions of, numbers of, and delay in filing of expert evidence reports
- Late emergence of family members wishing to be assessed as potential carers.
- Local authorities not completing work pre-proceedings or not to a high enough standard.

¹¹ See Care profiling study, University of Bristol, Masson et al 2008.

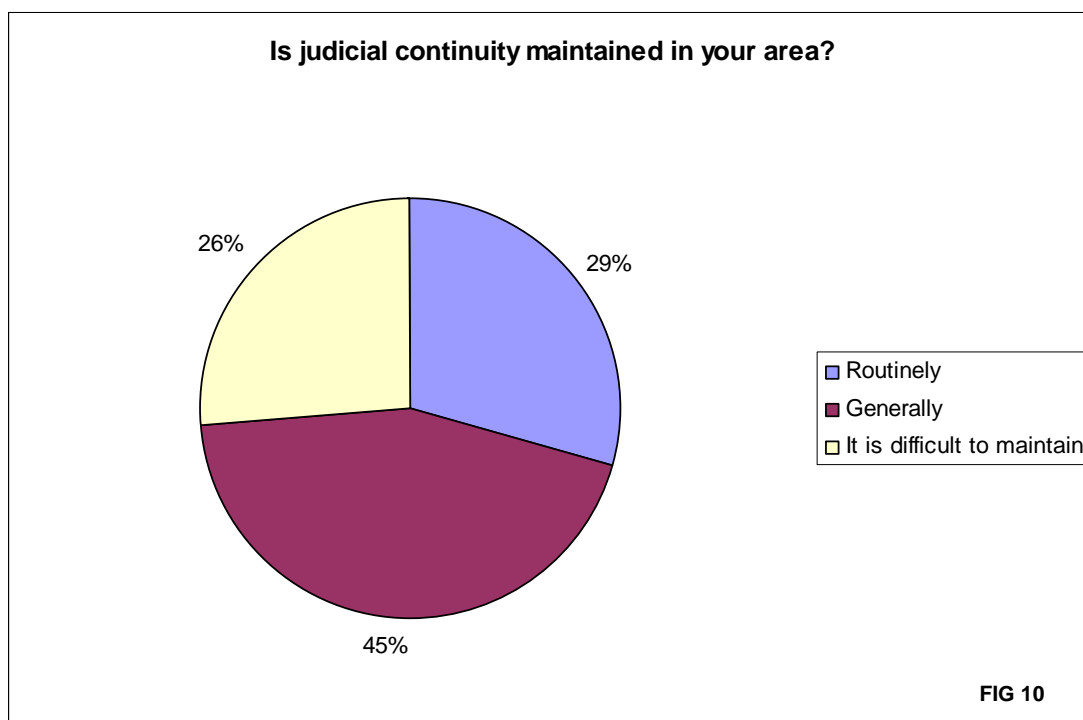
- The sustained increases in volume of workload received by the family courts throughout most of 2009 and 2010.
- Compliance with court directions particularly from local authorities and parents not keeping appointments or giving instructions to their solicitor

57. These reasons are consistent with previous studies on the care proceedings system, with the exception of the reference to workload volumes over the last two years, which is a relatively recent phenomenon. The period between CMC and IRH was identified as the primary area for PLO timetables to slip (such as in the research carried out by Judith Masson).

Judicial continuity

58. The PLO makes clear the importance of robust case management, of which judicial continuity is a key component. Therefore to assess how the PLO was being effectively implemented it was important to gather evidence on how judicial continuity was practised in local areas

59. Nearly all responses noted that judicial continuity was both desirable and to be maintained, wherever possible, in all tiers of court. However this support for judicial continuity was subject to a number of qualifications. For ease of analysis responses have been categorised into three broad groups.



60. As can be seen, the majority of respondents expressed the view that 'generally speaking' case managers were allocated to cases and that judicial continuity was maintained. This was often characterised as being within the limits of what was possible. Listed below is a selection of the barriers identified by respondents to achieving continuity:

- “The biggest challenge to achieving continuity is accommodating judicial sitting requirements across civil, criminal and family work, which often takes place across several court locations.”
- “The operation of a legal adviser rota system was problematic to achieving continuity in the FPC.”
- “A lack of family recorders, who could be utilised to free up case managers to hear care cases they are responsible for.”
- “Not fully utilising the District Bench to manage cases through to conclusion.”

61. There was also a number of success cited in overcoming those barriers:

- “Because final hearings are not listed until the IRH, this means continuity is easier to achieve as judges’ diaries are not booked months in advance.”
- “Although it is not always possible to achieve continuity of legal adviser in each case, the practice of extensive recording on court orders does make it easier should another team member have to pick up a case.”
- “The listing officer now comes to court at the end of each CMC or IRH so that dates are fixed before the case management judge in the presence of all the parties”

62. The interrelationship between delay and judicial continuity was noted by several respondents and the importance of close liaison between case managers and the listing office to ensure that cases were not delayed because of judicial or legal adviser availability was stressed.

Conclusion

63. Responses to the survey, supported by statistical evidence from Cafcass, suggest that much progress has been made over the past 12 months in meeting the stated aims of the Agreement. As the Agreement was not operational until October 2010, clearly this progress was begun under the President’s interim guidance and therefore the success of the Agreement has to be viewed as an incremental one, showing a long term trend of gradual improvement, building on the achievements already made by the interim guidance.

64. The anecdotal evidence, suggests a broad consensus that the Agreement and the previous interim guidance, have brought about improvements in the provision of children’s guardian, in line with the timelines set down in the PLO and despite continued high levels of care applications. It suggests that agencies are working together to ensure all cases have the benefit of timely advice from Cafcass.

65. This view is supported by statistical evidence which indicates that during 2010, significant progress was made in reducing the number of cases where no Cafcass officer was allocated to a case. The number of cases

66. Taken as a whole, this represents persuasive evidence that local arrangements put in place as a result of the President's interim guidance and the Agreement have been a significant factor in reducing allocation backlogs and minimising the use of duty advisers. This is a considerable achievement when viewed in the context of the continued high level of demand for Cafcass services seen throughout 2010.
67. When considering the impact on inter-agency working it was noteworthy that survey responses, particularly those from DFJs, positively record the increased co-operation and understanding that had developed between Cafcass management and the judiciary as a result of the Agreement. These working relationships were being maintained via continuing review of the arrangements between the DFJ and their respective Head of Service in Cafcass. The use of email and telephone to deal with specific issues pending regular meetings was cited as being the most satisfactory arrangement.
68. Where difficulties in providing substantive appointments still existed, there seemed to be a general understanding of the need to work proportionately on some cases, in times of high demand. Some areas had a clear timeline as to when they would be able to phase out interim arrangements and agencies were working toward this. In areas where progress was slower initiatives like 'early intervention teams' were helping.
69. The survey responses to the questions relating to the PLO and judicial continuity seem to indicate a general feeling that the causes of delay in care proceedings can inhibit the ability to operate it effectively. Most often cited was the prevalence of difficulties in obtaining expert evidence in a timely fashion. Perhaps unsurprisingly an increasing concern is the volume of cases currently being dealt with by the courts and the effect this is having on resources to deal with family work.
70. This policy assessment concludes that when viewing the evidence as a whole the Agreement, has built on the progress made by the interim guidance. It has been successful in achieving its aims, which is demonstrably clear from the statistical evidence, supported by concurring opinion from frontline practitioners collected through an online survey.
71. It is clear that local areas have used the Agreement as a mandate to formulate sustainable agreements, which have resulted in significant improvements in guardian provision. However with the continued high levels of s31 applications being forecast to be submitted to the family courts, with the consequent continuation of high demand for Cafcass services, there is strong evidence that the successful working practices

Next steps

72. The National Performance Partnership (NPP), with senior representatives from MoJ, DfE, the judiciary and Cafcass considered and endorsed this policy assessment when they met on 6th April 2011.
73. This assessment will be supplemented with a short update paper in July 2011, with the latest performance figures from Cafcass and HMCS and a brief analysis of any significant change in the current position. This will inform discussions between Ministers and the President of the Family Division on the need for any future local arrangements, upon expiration of the current agreement on 30th September 2011.

National Performance Partnership April 2011



ARRANGEMENTS TO ASSIST CAFCASS PENDING IMPLEMENTATION
OF THE FAMILY JUSTICE REVIEW

**Agreement between the President of the Family Division and the Chief
Executive of Cafcass.**

**Sir Nicholas Wall
The President of the Family Division
& Head of Family Justice**

**Anthony Douglas CBE
Chief Executive, Cafcass**

1 October 2010

This Agreement is supported by the Ministry of Justice and the Department for Education and shall remain in force *for a period of 12 months from 1st October 2010* (unless renewed within that period). The effect of the Agreement shall be monitored by the Ministry of Justice, HMCS and the Department for Education with a view to further discussions between government, Cafcass and the judiciary three months in advance of the end of that period: (that is by 30th June 2011).

The agreement has a four- fold purpose:

- 1. To build on the valuable inter-agency working which the Interim Guidance has produced.**
- 2. To continue the reduction of backlogs in the allocation of public law guardians and prevent their recurrence where they have been eliminated.**
- 3. To assist guardians to make the best use of their time and**
- 4. To minimise the use of Cafcass nominated 'duty advisers' except where the DFJ has agreed and published circumstances in which they may be used, and then to regulate such use.**

Where local arrangements have been agreed and implemented by DFJs with Cafcass under the President's Interim Guidance which have been successful and resulted in eliminating backlogs in the appointment of guardians in public law cases, such arrangements may continue to apply with the concurrence of both the DFJ and the Cafcass Head of Service in so far as those arrangements are not inconsistent with the provisions of the Public Law Outline*

*Practice Direction. Public Law Proceedings Guide to Case management: April 2010

Preamble

1. This Agreement must be read alongside the Public Law Outline (The PLO). It is of the utmost importance that the PLO is fully and effectively implemented by all judges, magistrates, legal advisers and guardians.

2. In particular;

Paragraph 3.1(2) of the PLO emphasises the need for judicial continuity. It makes clear that each case must be allocated to one and not more than two case management judges (in the case of magistrates' courts, case managers) who will be responsible for every case management stage of the proceedings through to the final hearing.

It is of the greatest importance that this provision is obeyed. Delay most often occurs when there is no case manager taking responsibility for the case. The President is content that arrangements for this have been made in the Principal Registry of the Family Division and he is setting up a similar scheme to govern cases listed in the Royal Courts of Justice. Family Division Liaison Judges, through their Designated Family Judges, and Justices' Clerks will be expected to make similar arrangements on their Circuits.

Paragraph 3.19 of the PLO requires the court to further the overriding objective by actively managing cases.

Paragraph 3.20 makes clear that active case management includes identifying all facts and matters that are in issue at the earliest stage in the proceedings and at each hearing, and that the court must decide promptly which issues need full investigation and which do not. For the avoidance of any doubt, active case management includes (1) discussion with all parties and the guardian and/or the child's legal representative about the issues in the case; and (2) directions to the guardian setting out the issues which the case management judge or case manager requires the guardian to investigate and report upon to the court.

3. While this Agreement reminds courts of their proactive role, it is not intended to diminish the role of the guardian. On the contrary, although the court will at an early stage, and throughout the proceedings indicate to the guardian and the parties the issues which the court perceives as likely to determine the outcome of the case: -

- a. nothing in this Agreement is designed to prevent or inhibit the guardian identifying and investigating other issues which the guardian perceives to be necessary for the fulfilment of the guardian's duty to safeguard and promote the welfare of the child;
- b. at all stages of the proceedings the court will revisit the issues in the case and may at any time indicate to the guardian further or other issues on which the assistance of the guardian is required; and
- c. nothing in this Agreement encourages or permits the court's interference with the guardian's duties as set out in statute and court rules.

Agreement

4. Local arrangements have been designed to reduce backlogs in the allocation of guardians and to promote inter-agency working. Arrangements set up by the Designated Family Judge (DFJ) under paragraphs 1-4 of the President's Interim Guidance shall remain in place for

- a. Coordination of matters such as hearing dates, filing and service of documents and transmission of information including resolution of urgent problems
- b. Provision of information to assist the DFJ to make decisions about management of family business in their courts
- c. Arranging meetings of appropriate representatives with the DFJ to assist in and be advised of the formulation of local agreements
- d. Publication of details of the arrangements made under this paragraph, and of the local agreements reached.

5. In accordance with the PLO, Cafcass will allocate a guardian in every case within three days of being notified by the local authority or the court that proceedings under Part IV of the Act have been instituted.

6. Only, in circumstances agreed and published by the DFJ in accordance with Paragraph 4 above may Cafcass nominate a 'duty adviser.' Any such 'duty adviser' will be fully qualified and in a position to assist the court and the parties up to and at the first appointment and at any urgent interim hearing in which a substantive decision is sought in relation to the child prior to a guardian being allocated (for example whether to make an interim care order or a residential assessment).

7. Where a 'duty adviser' is in place, Cafcass will nonetheless allocate a guardian for the purposes of the proceedings no later than 7 days before the Advocates' Meeting in preparation for the CMC.

8. To the extent that the court makes case management directions and orders in advance of the CMC, and the Cafcass representative is a 'duty adviser', the 'duty adviser' shall record these matters and convey them to the guardian within 24 hours of the guardian's allocation.

9. At every hearing, the court should consider with the parties whether the guardian may be excused attendance at the next hearing in the proceedings in accordance with rule 4.11A(4) FPR 1991 or rule 11A(4) FPC(CA)R 1991

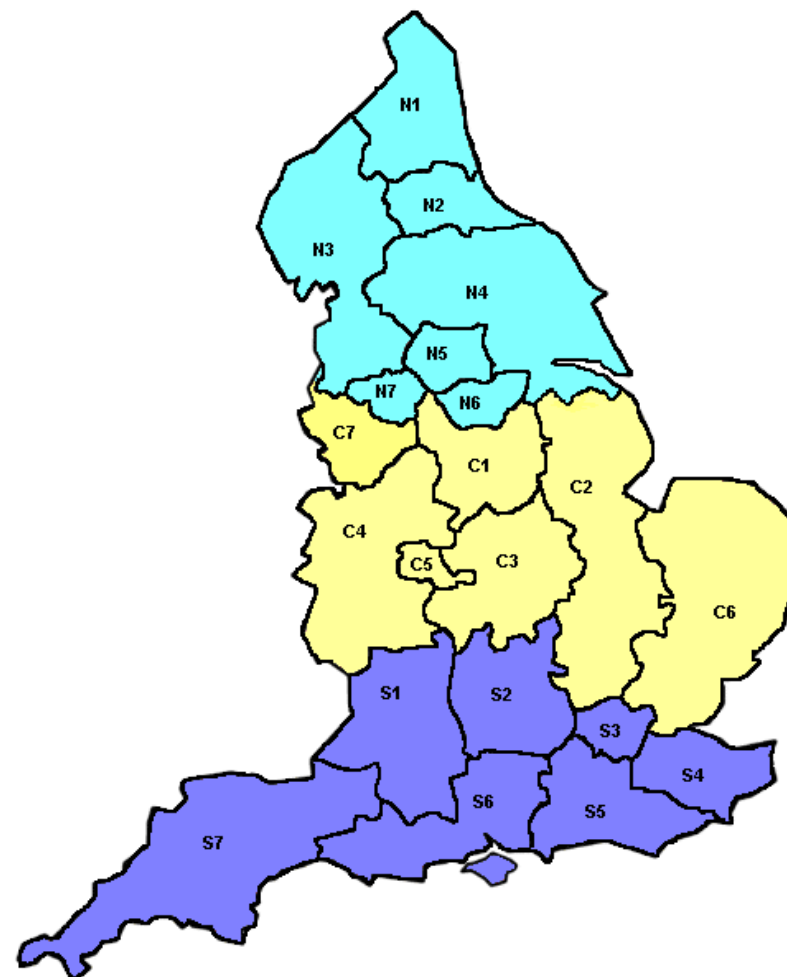
10. If the guardian is of the opinion, taking into account the directions of the court, and paragraph 3 above, that there are no identified tasks to be undertaken by the guardian for a specified period, the guardian must advise the court and the parties of this. The court will then aim to clarify the particular tasks and relevant time frames for any work which remains to be done by all parties and the guardian and make appropriate directions or recordings on the face of any order.

11. During any period when directions or recordings made under paragraph 10 above apply, indicating that there are no tasks to be undertaken by the guardian during a specified period, the guardian must have regard to the statutory duties of a guardian and monitor the progress of the case. The other parties, and in particular the children's solicitor, must bring any relevant change in circumstances or other matter which may require the investigation of the guardian to the attention of the guardian immediately. The case management judge(s) or case manager(s) must be advised by the parties and the guardian of any such change which is likely to affect the issues which need investigation or the timetable fixed by the court in accordance with the Timetable for the Child.

Cafcass service area map 2010–11

This table shows the Names and designations of Cafcass service areas

North operational area	
N1	North of Tyne & South of Tyne
N2	Durham & Tees Valley
N3	Blackburn, Cumbria, Lancaster/Blackpool & Preston
N4	Hull, South Humberside & York
N5	Batley, Bradford, Leeds & Wakefield
N6	Barnsley, Doncaster, Rotherham & Sheffield
N7	Bolton, Rochdale, Manchester & Stockport
Central operational area	
C1	Derbyshire & Nottinghamshire
C2	Bedfordshire/Hertfordshire, Lincolnshire & Cambridgeshire
C3	Coventry Leicester & Northamptonshire
C4	Shropshire, Stafford, Stoke & Worcester
C5	Birmingham & Black Country
C6	Chelmsford, Colchester, Norfolk & Suffolk
C7	Cheshire, Merseyside, Southport & St Helens
South operational area	
S1	Avon, Gloucester & Wiltshire
S2	Berkshire, Milton Keynes & Oxford
S3	Greater London (Archway, Croydon, High Court, Ilford, Kingston, PRFD, Uxbridge & Wells street)
S4	East Kent & West Kent (Chatham)
S5	Brighton and Hove, East Sussex, Surrey & West Sussex
S6	Dorset, IOW, North Hampshire, Portsmouth & Southampton
S7	Cornwall, Exeter, Plymouth & Somerset



List of Designated Family Judges and the relevant Cafcass service area to which an agreement would relate

Surname	First name	Base Court (Care Centre)	HMCS Region	Cafcass service area
Altman	John	London – PRFD	London	S3: Greater London
Hindley QC	Estella	Birmingham	M	C5: Birmingham & Black Country
Bellamy	Clifford	Coventry	M	C3: Coventry Leicester & Northamptonshire
Orrell	James	Derby	M	C1: Derbyshire & Nottinghamshire
Lea	Jeremy	Leicester	M	C3: Coventry Leicester & Northamptonshire
Swindells QC	Heather	Lincoln	M	C2: Beds/Herts, Lincolnshire & Cambridgeshire
Waine	Stephen	Northampton	M	C3: Coventry Leicester & Northamptonshire
Butler QC	Joan	Nottingham	M	C1: Derbyshire & Nottinghamshire
Duggan	Ross	Stoke-on-Trent	M	C7: Cheshire, Merseyside, Southport & St Helens
Hughes	Helen	Telford/Wolverhampton	M	C5: Birmingham & Black Country (W'hampton) C4: Shropshire, Stafford, Stoke & Worcester(Telford)
Rundell	Richard	Worcester	M	C4: Shropshire, Stafford, Stoke & Worcester
Dowse	John	Kingston-upon-Hull	NE	N4: Hull, South Humberside & York
Hunt	Peter	Leeds	NE	N5: Batley, Bradford, Leeds & Wakefield
Moir	Judith	Newcastle/Sunderland	NE	N1: North of Tyne & South of Tyne
Carr QC	Annabel	Sheffield	NE	N6: Barnsley, Doncaster, Rotherham & Sheffield
Taylor	Michael	Teesside	NE	N2: Durham & Tees Valley
Cliffe	Graham	York	NE	N4: Hull, South Humberside & York
Watson	Barbara	Blackburn/Lancaster	NW	N3: Blackburn, Cumbria, Lancaster/Blackpool & Preston
Forrester	Barbara	Carlisle	NW	N3: Blackburn, Cumbria, Lancaster/Blackpool & Preston
de Haas QC	Margaret	Liverpool/Warrington/Chester	NW	C7: Cheshire, Merseyside, Southport & St Helens
Hamilton	Iain	Manchester	NW	N7: Bolton, Rochdale, Manchester & Stockport

Surname	First name	Base Court (Care Centre)	HMCS Region	Cafcass service area
Coates	Suzanne	Brighton	SE	S5: Brighton and Hove, East Sussex, Surrey & West Sussex
Polden	Richard	Canterbury/Medway	SE	S4: East Kent & West Kent (Chatham)
Newton	Roderick	Chelmsford/Cambridge/ Peterborough	SE	C6: Chelmsford, Colchester, Norfolk & Suffolk (for Essex) C2: Beds/Herts, Lincolnshire & Cambridgeshire (for Camb's and Peterborough)
Sleeman	Stuart	Guildford	SE	S5: Brighton and Hove, East Sussex, Surrey & West Sussex
Ludlow	Caroline	Ipswich	SE	C6: Chelmsford, Colchester, Norfolk & Suffolk (for Essex)
Arthur	Gavyn	Luton	SE	C2: Beds/Herts, Lincolnshire & Cambridgeshire
Hughes	Antony	Milton Keynes/Oxford	SE	S2: Berkshire, Milton Keynes & Oxford
Richards	Jeremy	Norwich	SE	C6: Chelmsford, Colchester, Norfolk & Suffolk (for Essex)
Elly	Charles	Reading	SE	S2: Berkshire, Milton Keynes & Oxford
Wright	Peter	Watford	SE	C2: Beds/Herts, Lincolnshire & Cambridgeshire
Bond	Richard	Bournemouth	SW	S6: Dorset, IOW, North Hampshire, Portsmouth & Southampton
Barclay	Paul	Bristol	SW	S1: Avon, Gloucester & Wiltshire
Tyzack QC	David	Exeter	SW	S7: Cornwall, Exeter, Plymouth & Somerset
Robertshaw	Miranda	Plymouth	SW	S7: Cornwall, Exeter, Plymouth & Somerset
Marston	Nicholas	Portsmouth	SW	S6: Dorset, IOW, North Hampshire, Portsmouth & Southampton
Wade	Charles	Swindon	SW	S1: Avon, Gloucester & Wiltshire
Bromilow	Richard	Taunton	SW	S7: Cornwall, Exeter, Plymouth & Somerset
Vincent	Nick	Truro	SW	S7: Cornwall, Exeter, Plymouth & Somerset