

## Knowledge Bite

### Wasted Costs

This knowledge bite is aimed at all staff to highlight the impact of wasted costs, consider how they can be avoided, and to outline what action needs to be taken if an order is made.



#### What are wasted costs?

Wasted Costs, also known as Costs Orders, cost Cafcass thousands of pounds each year; between April 2018 to November 2021 the total was £291,101. The costs are determined by the court and are usually the legal fees of the family's legal representatives. If there is no wrongdoing by Cafcass, Cafcass Legal can try to contest the claim or settle the claim by paying a reduced amount.

#### The most common causes of wasted costs

- Filing a report late or not at all, and not informing the court and parties in advance
- A report failing to address the issues it was directed to deal with
- Additional hearings being needed because Cafcass failed to do things right and on time
- Failure to attend a hearing

For the children and families we work with, wasted costs often lead to delay in proceedings and there is also a financial impact for children and families as valuable public money is wasted which is needed for frontline services.



'What do wasted costs mean for me and my family?'

Delay in decisions being made for me

Continued uncertainty about my arrangements

Additional stress/distress for me and my family

A waste of public money which could be used on key frontline services i.e., employing additional Family Court Advisers, to help us, and other families

A negative impact on my family's relationship with Cafcass and professionals



## Wasted costs examples

### Example 1

The Family Court Adviser, author of the section 7 report, was directed to attend the final hearing to give evidence. The FCA left Cafcass, and it was agreed that the Practice Supervisor would attend in the FCA's absence; however, this was not communicated to the court or parents.

The Practice Supervisor attended the hearing but could not assist the court in respect of the Family Court Adviser's evidence as it was not the Practice Supervisor's evidence, and the court needed to hear from the report author.

The Family Court Adviser was subsequently able to attend court to give evidence but this resulted in the hearing overrunning and the child's proceedings being delayed.

#### **Total costs sought:**

Approximately £900 for the mother's costs, and a risk that the father may also seek costs.

#### **Key learning:**

- Where an Family Court Adviser is unable to attend a hearing as ordered, this needs to be communicated to the court promptly
- If Cafcass propose that a different Family Court Adviser/Practice Supervisor/Service Manager attend, which may sometimes be unavoidable due to sickness or staff leaving the organisation, permission of the court needs to be obtained
- Substituting attendance of a Practice Supervisor when a Section 7 author is unavailable generally will not assist a court as it is the author who will usually need to be subject to cross examination.

## Example 2

The FCA attended the final hearing, but this was adjourned due to the father testing positive for Covid-19. The FCA was ordered to attend the adjourned hearing which at that time had not been listed.

The FCA contacted the solicitor and confirmed the date of the adjourned hearing but did not add this to his electronic calendar and subsequently made appointments for the same date.

The solicitor contacted the FCA the day prior to the adjourned hearing and the FCA apologised and advised that he could only be available between 10 – 11am and 2.30 – 4.30pm due to his other commitments.

The FCA spoke to the legal advisor on the date of the adjourned hearing who advised that the hearing had been adjourned again due to the FCA not being available and advised that the parents may make applications for costs.

**Total costs sought – Approximately £6,000**

### Key Learning

- Hearing dates need to be recorded on the system immediately and added to outlook calendars
- Management advice needs to be sought at the earliest opportunity when an FCA is unable to attend a hearing.

# How to avoid wasted costs

ChildFirst needs to be kept up to date with all hearing and filing dates

If you are at the hearing, don't wait for the order, record the outcome, including details of any hearing/filing dates, immediately

All orders need to be screened immediately and information uploaded to the system, so we are aware of which hearings we need to attend

If an FCA is on sickness leave, the court and parents/parties must be informed of non-attendance as early as possible

Use your Outlook calendar, including the reminder function to remind you when your report is due

If you are unable to comply with a direction you must discuss this with your SM and write to the court and parties at the earliest opportunity; this includes any extension requests. It should not be assumed that the court will grant your request and all correspondence must be copied to the parties

EIT FCAs should not agree that an FCA will attend a DRA at the FHDRA hearing, unless there is a clear reason for doing so. If attendance is directed, this should be recorded on ChildFirst, including in the child's plan, and the receiving team notified



# What to do if a wasted costs order is made

- We need to apologise to the family when errors have been made
- Notify Cafcass Legal immediately even if the hearing is months away as there are strict time limits for appeals
- If an application for costs is made while you are at court, ask for Cafcass to be joined as party before any decision is made so that we can make representations to the court in response. It is not the responsibility of the FCA to make legal submissions on costs
- Ask the court to give Cafcass as much time as possible to take legal advice and explain that there is a need for Cafcass Legal to become familiar with the case (a few days aren't enough)
- Give Cafcass Legal relevant information; they can only advise you when they know the specific circumstances
- If the cost is deemed to be more than £1000, a Significant Incident Response (SIR) needs to be initiated (the FCA must notify the service manager who will complete the SIR).



## What information should be sent to Cafcass Legal?

1. All relevant court orders
2. All correspondence from solicitors/parties either raising the issue of costs or containing criticisms of Cafcass which are relevant to the costs order being sought
3. If time allows, a brief written summary of the reason why costs are being sought/have been ordered
4. A summary of why you think that a costs order is not warranted (This may not be a legal defence but provides essential background information)
5. Any correspondence from Cafcass to the court or parties about the relevant issue/alleged failings
6. Steps that Cafcass has taken to try to avoid costs being incurred by the parties (e.g. if the report wasn't ready by the hearing, did we write to the court and/or parties suggesting that the hearing was adjourned?)
7. If there is criticism of the analysis in any report, copies of all Cafcass reports in the case
8. Any other documents which relate to costs

# TOP TIPS

for FCAs



Early recording of hearings/filing dates

Consider colour coding your outlook calendar to help identify which hearings you need to attend

As soon as anything in relation to costs is raised, discuss with your Service Manager


Read and scrutinise all orders carefully

Ensure that the court and parties are aware if part of an order cannot be complied with as soon as possible, and do so in writing

If in doubt, speak to your SM and Cafcass Legal

# Top Tips

for service managers and  
practice supervisors



Facilitate discussions about wasted costs in team meetings/group supervisions to raise awareness in your team

Ensure that the court is informed immediately if an FCA is unable to attend a hearing/file a report due to sickness

If an FCA leaves Cafcass but agrees to return to attend a hearing, confirm arrangements with the FCA and consider sending a reminder

Ensure that any difficulties in complying with any aspects of a court order is communicated to the court and the parties promptly

If there is any suggestion of costs being sought, notify Cafcass Legal immediately

If in doubt, speak to your HoP and Cafcass Legal



# Reflective Question for Group Supervision/Team Meetings

- What can you do as an individual to avoid wasted costs?
- What can you do as a team to avoid wasted costs?



## Coming soon...

**To assist service managers** - additional information is being added to the dashboard to help identify upcoming hearings where the FCA is recorded as being absent (sickness/annual leave). Further details will be provided in due course.