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Your ref: CAF 18-158
Our ref: Gov/CAF 18-158

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03 January 2019

Dear Ms Soeder,

Re: Freedom of Information Request

Thank you for your email of 16 December 2018. You made the following requests for information:

1. What is the duty of the FCA within Cafcass policies & Procedures & the Law & the 2010 Equality Act and The children's act when the FCA has been presented with evidence of mistruths/ misstatements of the other party i.e: perverted the course of Justice ?

The request in regards to the law, the Children Act and the 2010 Equality Act is not a request for information about Cafcass.

Section 2.20-2.26 of the [Operating Framework](#) sets out how Cafcass FCAs should work with adult service users.

Section 2.20 states that Family Court Advisers should make it clear that much evidence in family cases is soft and open to more than one interpretation. We conclude our enquiries in every case with a structured professional assessment and should make those we talk to aware of that. It is within the professional discretion of the Family Court Advisor to determine what evidence is relevant to their assessment. If there is any dispute about what evidence should be placed before the court the parties can refer the decision to the judge.

Ultimately it is for the court to determine the weight to be given to any evidence presented and to reach a decision. It is for the court, and not Cafcass, to determine the truth of any allegations made by the parties and to make a decision on the arrangements for the child.

Edward Timpson CBE Chair
Anthony Douglas CBE Chief Executive





More information can be seen in our [Operating Framework](#); paragraphs 2.23-2.24, part of which is below:

Operating Framework Extract

2.23 Whilst FCAs have a presumption that parents and carers reply to them in good faith, they also have to be cautious in case they are not being told the full facts, or if they are faced with ‘disguised compliance’ or if they are told a ‘false status quo’. They also have to guard against the ‘rule of optimism’, in which a parent deceives social workers about what is really going on in a household and social workers assess that an appalling situation is much better than it is. FCAs have to balance hope and a belief in change and communicate this to parents and carers, whilst protecting the child in question against future damage and being clear where standards of care are not good enough.

2.24 In private law cases especially, parents are seeking to convey their side of the story to the FCA, including facts about who did what to whom and when. Such ‘facts’ are often disputed. For the FCA, it is the impact on a child that they have to assess, particularly the emotional and psychological impact, such as the child’s static (long-lasting) and dynamic (capable of short-term change) emotions. It is for the court to determine the facts, as far as it can – many ‘facts’ are disputed and the truth of what happened often remains unclear and ambiguous. While the FCA will need to undertake various enquiries to ascertain what has been going on in a family, including social media enquiries where relevant and where the court agrees, it is important to keep the focus on the child’s daily lived experience rather than on any dramatic scenarios put forward by either parent

As stated in our [Reporting to Court Policy](#), ‘the information obtained by practitioners in the course of their work includes both factual information and opinion’. Practitioners may draw on training, professional experience, research and evidence-based tools to analyse this information. Hearsay evidence is information given to the practitioner (or any other person) that has not been personally seen or heard by the practitioner. Hearsay evidence is permitted in family proceedings. A clear distinction should be made in court reports between verified facts, allegations made by the adults, hearsay evidence and the practitioner’s assessment, analysis or opinion. When reporting hearsay, it should be clearly identified as such (as should the source of the evidence), as this will assist the court in determining the weight that should be attached to it.

Edward Timpson CBE Chair
Anthony Douglas CBE Chief Executive





The final decisions in cases are made by the court. Ultimately it is for the court to determine the weight to be given to any evidence presented and to reach a decision. If there are ongoing court proceedings, parties should raise any concerns they have in court, so that the court has all the information before coming to a decision on the case. If parties have concerns regarding a court's final decision these should be raised with the court, or legal advice sought.

2a. What is the duty of a Cafcass manager within Cafcass policies & procedures & the law & the Equality Act and The children's act when presented with evidence that an FCA has written a report based on lies/mistruths/ misstatements of one of the service users: i.e: Perverted the course of Justice

The request in regards to the law, the Children Act and the 2010 Equality Act is not a request for information about Cafcass.

Please see the answer to question one for information on reports including false information from service users.

2b. What is the policy & procedure & The law where the Judge/Court where the FCA has presented mistruthful statements/reports based upon lies, where, the FCA has had sight of evidence of lies of other party yet not reported it to the Court ? i.e: Perverted the course of Justice ?

The request in regards to the law is not a request for information about Cafcass.

Every report filed with the court includes a statement to the effect that if there are factual inaccuracies these can be rectified and if necessary reference to the inaccuracy can be referred to the court. If there is a dispute about a particular fact it will be for the court to make a determination

If a service user is unhappy with a report, they should let the court know about their concerns. This ensures the judge is able to consider the concerns when making their decision.

If a service user wishes to make a formal complaint, they can do so by contacting our Customer Feedback Team. Please see [Cafcass Complaints Policy and Procedure](#) and our [Complaints Factsheet](#) for more information on how to make a complaint.

3a. Where the FCA presents mistruths to the judge what are the repercussions for dishonesty both in law and within Cafcass policy & procedures ?

Edward Timpson CBE Chair
Anthony Douglas CBE Chief Executive





Disciplinary procedures are outlined in Cafcass' [Employee Relations Policy](#) (section 5)

3b. Is an FCA "exempt" from perverting the course of Justice with no repercussions for dishonesty ?

Perversion of the course of justice would be a matter for the court.

3c. Please provide Cafcass policy & procedure & the law clearly stating what action is taken if the FCA is perverting the course of Justice ?

The request in regards to the law is not a request for information about Cafcass. Perversion of the course of justice would be a matter for the court.

Cafcass does not have a policy or procedure on this specific issue. Disciplinary procedures are outlined in Cafcass' [Employee Relations Policy](#) (section 5).

4. Who can decide if the FCA has perverted the course of Justice ?

Perversion of the course of justice would be a matter for the court. This decision would not be made by Cafcass.

We hope that you feel your question has been answered effectively. If you are unhappy with the decisions made in relation to your request, you may ask for an internal review to be undertaken. If you are dissatisfied with the way the internal review is handled or with the final decision made at that review about the information released, you are free to contact the Information Commissioner's Office (<https://ico.org.uk/>):

Post

Information Commissioner's Office
Wycliffe House, Water Lane,
Wilmslow,
Cheshire
SK9 5AF

Fax

01625 524 510

Tel

0303 123 1113

E-mail

casework@ico.org.uk

Yours sincerely,

Governance Team
Cafcass

Edward Timpson CBE Chair
Anthony Douglas CBE Chief Executive





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Cafcass, the Children and Family Court Advisory and Support Service, is a non-departmental body of the Ministry of Justice
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