

MCSI Inspection of Court Services

*Children and Family Court Advisory
and Support Service*

CAFCASS Legal

Report of a baseline inspection carried out during

April 2003

MCSI Inspection of Court Services

MCSI has a remit to inspect and report to the Lord Chancellor on CAF/CASS. The legal powers and duties covering inspection of CAF/CASS are set out in section 17 of the Criminal Justice and Court Services Act 2000.

In March 2000, Ministers agreed the general approach to be taken by MCSI with regard to inspection of CAF/CASS. The first phase, from June to December 2001, comprised 13 'structured visits' to all CAF/CASS Regions across England and Wales and culminated in a published Overview Report *Setting Up* in March 2002. Given that both CAF/CASS and MCSI's role in inspecting it were new, this initial phase also allowed MCSI to develop and test certain inspection methodologies.

The baseline inspection of CAF/CASS Legal is the ninth of MCSI's 11 such inspections of CAF/CASS planned for 2002/03 and the term 'baseline' is explained:

"MCSI's baseline inspections of CAF/CASS are its first formal inspections of CAF/CASS as a newly established organisation. As such, they examine selected key functions, collect available information and evidence and reach judgements about overall performance and service delivery. Baseline inspections are reported publicly. MCSI reports include both Inspectorate recommendations and CAF/CASS's action plans for implementing them."

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Contents

Chief Inspector's Foreword

<i>Context</i>	<i>1</i>
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Inspection findings

<i>Practice and Practice Management</i>	<i>3</i>
<i>Leadership and Organisational Management</i>	<i>6</i>
<i>Human Resource Management</i>	<i>11</i>
<i>Financial Management</i>	<i>13</i>
<i>Recommendation</i>	<i>14</i>

Annexes

<i>A Methodology</i>	<i>15</i>
<i>B Key facts about CAF/CASS Legal</i>	<i>16</i>
<i>C Background to CAF/CASS</i>	<i>18</i>

<i>CAF/CASS Legal agreed action plan to address the MCSI recommendation</i>	<i>20</i>
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Chief Inspector's Foreword

Our inspection of CAF/CASS Legal focused on four key functions:

- **Welfare of Children** (how well CAF/CASS safeguards and promotes the welfare of children who may be the subject of family proceedings or who are in receipt of other CAF/CASS services)
- **Care of Service Users** (the quality of services offered to people who use CAF/CASS – including the way people are treated, the information given to them and what is provided for them at CAF/CASS premises)
- **Strategy and Performance Management** (how well CAF/CASS plans its services for the future and checks that the plans are followed)
- **Management of Human Resources** (how well CAF/CASS, as an employer, carries out its duties and obligations to ensure that the provision and deployment of staff meets the needs of the service).

Throughout, we examined issues around **Diversity**, which underpins all MCSI inspection activity.

This report does not follow the pattern of other MCSI reports in that it does not report against the usual key functions. Given the size of CAF/CASS Legal compared with Wales and the Regions, we have taken this opportunity to trial a different approach to reporting. Instead, the report is structured under the following headings:

1. Practice and Practice Management
2. Leadership and Organisational Management
3. Human Resource Management
4. Financial Management

We make only one recommendation: that CAF/CASS Legal should establish an effective performance management system. This will involve the managers and staff of CAF/CASS Legal in a considerable amount of work and, for that reason, we have decided to comment on other issues within the text of the report. The recommendation is designed to assist CAF/CASS Legal to deliver improvements in its services in the short term – that is, in the next 12 to 18 months. It is intended to be consistent with the priorities set out by CAF/CASS in its Corporate Plan 2003/06, published in March 2003, which reflect the Government's six key objectives for the Service.

This report does not cover all the activities undertaken by CAF/CASS Legal. For example, we have not, on this occasion, examined financial matters in great detail because CAF/CASS has a programme of external audit activities, to which we refer. I believe it would be unhelpful for MCSI to duplicate aspects of this work.

I am grateful to staff in CAF/CASS Legal for their co-operation throughout the inspection process. I am also pleased that the judiciary agreed to discuss with Inspectors their views about the work of CAF/CASS Legal.

A handwritten signature in black ink, reading "Stella Dixon". The signature is written in a cursive style with a large, stylized 'S' and 'D'.

Dr. Stella Dixon

**HM Chief Inspector
MCSI Inspection of Court Services**

October 2003

Context

Baseline inspection of CAF/CASS Legal

The baseline inspection of CAF/CASS Legal took place in April 2003, two years after CAF/CASS was established as a new organisation.

The background to establishing CAF/CASS is summarised at Annex C.

CAF/CASS's main functions

The principal functions of CAF/CASS are set out at section 12 of the Criminal Justice and Court Services Act 2000. These are, in respect of family proceedings in which the welfare of children is or may be in question, to:

- (a) safeguard and promote the welfare of children,*
- (b) give advice to any court about any application made to it in such proceedings,*
- (c) make provision for children to be represented in such proceedings,*
- (d) provide information, advice and other support for children and their families.*

Key objectives for CAF/CASS

Within the framework of the Criminal Justice and Court Services Act 2000 and the Public Service Agreement, the Lord Chancellor approved the following six key objectives for CAF/CASS:

- to represent, safeguard and promote the welfare of children involved in Family Court Proceedings
- to improve the services offered to the Family Courts
- to improve the efficiency and effectiveness of the services offered through increased value for money (VFM)
- to improve the services offered to families and other key stakeholders
- to develop the skills of staff
- that CAF/CASS should play a full role in delivering the wider Government agenda of improvements in service.

Before CAF/CASS was established in April 2001, support services in family proceedings were provided by entirely separate sources, namely:

- the Family Court Welfare Services, which was part of the Probation Service
- the Guardian ad Litem and Reporting Officer Service, which was a responsibility of local authorities
- the Children's Division of the Official Solicitor's Department, which was an Associated Office of the Lord Chancellor's Department. It was this division that became CAF/CASS Legal.

CAFCASS Legal's roles and responsibilities are laid out more fully in Annex B. From its creation, it has differed from the other operational elements of CAFCASS. There are a number of key differences that are relevant to this report and should be taken into consideration when reading its findings. They are that CAFCASS Legal:

- does not fall under the Operations Directorate
- has its own Director who is a member of the CAFCASS executive team
- provides legal services to staff in England and Wales
- undertakes public and private Children Act cases throughout England and Wales
- manages a number of national budgets
- has a high number of staff on secondment.

Since his appointment, the Director, CAFCASS Legal has in effect held a number of roles.

- Head of CAFCASS Legal, responsible for the delivery of its specific services
- Member of the executive Management Team of CAFCASS
- Head of Corporate Legal affairs: As the senior legal member of the executive team, he has a responsibility for the corporate legal affairs of CAFCASS. This has placed him at the forefront in dealing with a number of important corporate legal issues, including two judicial reviews.

CAFCASS Legal (CL) inherited a number of vacancies for children's casework lawyers and has seen the number of its caseworkers fall as staff on secondment have decided to return to their home department. In addition, it was not resourced to provide corporate legal services to CAFCASS. These staffing shortfalls and the extent of the corporate legal work have affected CL's ability to deal with the cases referred to it. Despite this, CL has continued to provide legal services corporately and to CAFCASS practitioners, has undertaken casework across the country and has provided telephone help lines to staff on both legal and practice issues.

Inspection Findings 1: Practice and Practice Management

- 1.1 CAFCASS Legal undertakes a number of casework functions. In addition to carrying its own caseload, it provides advice and support to practitioners in the Regions and Wales. In interview, CL staff placed considerable emphasis on the service they provide to the Regions and Wales and were proud of it, seeing it as a positive contribution to the welfare of children. Inspectors have sought and received feedback from the Regions and Wales about the input of CL as part of the baseline inspection programme and found that the help and advice given by CL officers¹ is highly valued by regional staff and a source of real support to them. Inspectors view this aspect of CL's work as good practice and valuable to the wider organisation in sharing expertise and knowledge. CL has done a considerable amount of work in providing information and guidance via the CAFCASS Intranet site. This may be a suitable vehicle for capturing the guidance given in individual cases through the use of a Frequently Asked Questions (FAQ) section.
- 1.2 Inspectors were pleased to note the clear understanding that existed within CL regarding the need to see children. All managers and practice staff interviewed expressed the view that children should always be seen other than in the most exceptional of circumstances. This is an area where policy and individual practice have been shown in MCSI inspections to differ around the country, and Inspectors were encouraged to find managers and staff of one mind.
- 1.3 Managers and practitioners within CL have carried forward the general practice and practice management methods of the Children's Division of the Official Solicitor's Department. For example, the way that practitioners, team leaders and lawyers interact in achieving the end product is based on close working between them on individual cases. There is also an established gate-keeping process and agreed ways of working, such as the use of a standard casework report format and the practice of attaching attendance notes to reports.
- 1.4 The gate-keeping process is very intensive and involves team leaders monitoring all mail in and out, having frequent discussions with practitioners about cases, and generally being very involved in the way the case is conducted on a day-to-day basis. Views were expressed that the open-plan layout of the office and the close proximity of the team leaders to the practitioners add to the intensity of these close-working arrangements. In addition, the team leader and the linked lawyer see all the reports before they are sent to the court and the parties.
- 1.5 Inspectors and caseworkers reviewed a number of reports selected by CL staff. Within the reports read, the wishes and feelings of the children were reported consistently well. There were examples of good quality work by individual caseworkers characterised by clear, succinct presentation of information, a structured approach to assessment and evaluation using appropriate assessment tools, and a clear link between evaluation and recommendation. However, there were also cases where some or all of these elements were missing. For example, there were reports where greater emphasis was placed on providing information than on evaluating and drawing conclusions.

¹ For the purposes of this report, the term "lawyer" refers to a solicitor or barrister employed by, or on secondment to, CAFCASS Legal. The term "practitioner" relates to casework officers.

- 1.6 In addition, Inspectors found comments in reports that may have indicated old-fashioned, and no longer appropriate, practitioner views in respect of diversity issues. Inspectors have raised these issues with CL senior management but, for the sake of child confidentiality, they will not be detailed in this published report. However, Inspectors are of the view that further diversity training may be appropriate.
- 1.7 As part of the inspection process, Inspectors carried out an audit of judicial views across England and Wales and received feedback from the High Court, County Court and Principal Registry. CL staff were seen as knowledgeable and helpful and the input by CL lawyers was generally regarded as being of considerable value. In this regard, the name of the Head of Children’s Legal Casework was mentioned a number of times in a very positive light. However, comments received about the maintenance of standards since CAF/CASS was established in 2001 were mixed. Some of the feedback gave high praise, with comments such as:

“The CL officer was superb”

Equally, there were comments that the quality of the service was deteriorating: e.g.

“the CL officer was unhelpful to the child, fell out with the father [which] didn’t help [the caseworker]”

- 1.8 The gate-keeping process consumes a large proportion of team leaders’ time and the extent of team leader involvement in cases seems to be consistent regardless of the seniority and experience of practitioners. Yet the evidence arising from a review of reports and comments from the judiciary lead Inspectors to question the appropriateness and effectiveness of the gate-keeping process in its present form as a quality management tool.
- 1.9 Practice and practice management procedures are generally those inherited from the Children’s Division of the Official Solicitor. The effect of these procedures is to give a greater emphasis to maintaining a particular style of working than to the quality of assessment and the advice to courts. Given the complexity of many of the cases undertaken, the CL Management Team will wish to review the appropriateness and effectiveness of the gate-keeping processes to ensure they give appropriate emphasis to quality assurance issues.
- 1.10 Inspectors are of the view that there are critical practice tools missing that also impact on quality assurance and in reviewing the gate-keeping procedures. CL will also wish to consider these further aspects of practice and practice management and three particular issues are summarised below.

- There was an inconsistent approach to assessment and evaluation. It was apparent from discussions with staff that there were differences in the way people approached assessment tools such as the Welfare Checklist and the Framework for the Assessment of Children in Need and their Families (Assessment Framework). There was little recognition of the framework as a useful assessment tool. Reports included comments such as “*I have considered the welfare checklist*” but did not indicate the outcome of that consideration or whether it formed a basis for any evaluation or recommendation.
- There was a lack of guidance on safe working practices to protect both practitioners and children. The approach seems to rest on people demonstrating common sense or relying on partners to be aware of their whereabouts. Yet, for example, Inspectors saw one file where a female practitioner made a solo visit to a man about whom there were serious allegations of sexual assault. Whilst many of the cases being dealt with by CL may have been subject to previous CAFCASS involvement, there remains a need for safe working practices to be continually reviewed in respect of each case. Elsewhere in CAFCASS, the Regions and Wales have developed safe working practice guidance that CL managers ought to consider.
- There is a need for a system of supervision that focuses on and encourages practice improvement, including assessment techniques. This is addressed more fully at paragraph 3.4.

Inspection Findings 2: Leadership and Organisational Management

Leadership

- 2.1 CAFCASS Legal acknowledges the experience and commitment of the staff as its key strength. Inspectors found a broad commitment among all staff – permanent, secondees, and those on temporary or casual contracts – to the work they do.
- 2.2 The commitment of CL’s staff has been a core factor in the continuing delivery of its services despite the difficulties it has faced. Since April 2001, the biggest of these difficulties has been the substantial amount of time the Director of CL has had to commit to the management of corporate legal issues in his other role as legal director of CAFCASS, effectively the Head of Corporate Legal Services. In this role, he has had to deal with two Judicial Reviews, detailed discussions about new contractual arrangements for the self-employed and matters related to the dismissal of CAFCASS’s first Chief Executive. This broad range of responsibilities has resulted in the needs of the wider organisation being given priority over the needs of CL and the Director giving less time to the management of CL than it required at a critical stage in its development.
- 2.3 The situation was exacerbated by the decision not to appoint a formal deputy to the Director with full powers to act in the Director’s absence. This contributed to a lack of strategic direction and overall organisational management within CL during the important setting-up period of the service, with key decisions regarding CL being significantly delayed, to the detriment of its development. More positively, Inspectors considered that the situation had changed in the last six months as the Director has been able to commit a greater proportion of his time to the management of CL. As a result, Inspectors found that senior managers of CL were clearer about the strategic issues that need to be addressed in order to provide appropriate direction and guidance to CL and the wider Service.
- 2.4 The competing priorities also appear to have affected one aspect of the working relationship between the Director and the Chief Executive of CAFCASS, who is the Director’s line manager. It appeared that the Director had been reluctant to raise issues such as HR concerns with the Chief Executive because of his awareness of the wider workload and priorities being carried by the Chief Executive. Inspectors conclude that if the dual role of the Director of Legal Services is to continue, there is a need for him and the Chief Executive to ensure that there are regular opportunities to discuss CAFCASS Legal issues.

Organisational management

- 2.5 The most urgent need facing CL is for an effective performance management system to be put in place: that is, a management system that links together strategic and operational planning processes, organisational structure development and human and financial resource management into a coherent whole. Inspectors consider this to be of such importance that it is the subject of the single recommendation made at page 14.

- 2.6 A crucial element in establishing such a system is the development of a strategic plan for CL. At the time of the inspection, some work had been done on identifying strategic priorities for CL and this should be completed as a matter of priority. In so doing, there are a number of key issues that will affect the strategic direction of the service in the shorter term that the Management Team will need to consider, including:
- possible increases in rule 9.5 appointments² and the implications arising from the implementation of Sections 118 and 122 of the Adoption and Children Act 2002 for CAFCASS as a whole and CL in particular
 - the practice of recruiting practitioners to work in CL with social work training and experience but little experience of the legal aspects of the work
 - the reduction in its running costs budget and the implications for its ability to continue with its current working practices.
- 2.7 The Director of CAFCASS Legal has indicated that, in looking to the future, there is a need for CL to consider whether the complex matrix of current working methods is appropriate; Inspectors agree that such a review is necessary. The current shortage of practitioner staff, compared with the number of established posts, provides a further important opportunity to consider how the practitioner role at CL should develop in future.
- 2.8 In thinking these issues through, the Management Team, together with practitioners and lawyers, needs to consider how they can optimise sensible arrangements for their contribution to cases across a very complex grid of inter-relationships. The pattern of working to date has involved:
- case officers working in close conjunction with their team leader and with a lawyer attached to that team
 - the instruction of leading experts and/or counsel
 - case officers carrying out specifically legal functions, including drafting letters of instruction to experts and briefs to counsel and, in limited circumstances, representing themselves at court hearings
 - case officers being involved in cases arising in all parts of England and Wales
 - some cases being devolved to the Regions and Wales.
- 2.9 However, any review of workload patterns within CL will need to be undertaken in conjunction with the Operations Directorate as the outcome of such a review may well directly affect to some limited degree the workload of the Regions and Wales. CL is hopeful that its recruitment of additional case officers to fill existing vacancies may also have a positive effect on workloads. There is a need for greater co-operation between CL and the Operations Directorate to enhance the overall capacity and ability of CAFCASS to address the needs of children in what are some of the most difficult and protracted court cases dealt with by CAFCASS.
- 2.10 In the longer term, Inspectors are of the opinion that the Board should keep under review the decision it made last year (2002) that CL should continue to do children's legal casework. The key issue for Inspectors is whether the core of the casework undertaken by CL is so substantially different as to justify a separate service within CAFCASS, taking into account issues of efficiency and effectiveness.

² Family Proceedings Rules 1991 (SI 1991/1247) (FPR). Rule 9.5 grants courts power to make children parties to private law Children Act 1989 proceedings and to appoint a guardian ad litem for them.

Organisational planning

- 2.11 CL has yet to adopt the planning structures and processes used elsewhere in CAFCASS. Inspectors are of the view that it is important that delivery and HR plans for this and future years are developed and communicated widely within CL, both for reasons of organisational consistency and to provide managers with the necessary tools to manage the delivery of the service. Such plans will assist in addressing the unhelpful lack of certainty about the future within CL. There will also be benefits in CL circulating its strategic plan within CAFCASS generally, and among its key stakeholders, to encourage a wider understanding of its priorities and future direction.
- 2.12 Inspectors found stakeholders unclear about the level of resources given to CL. A number of those providing external feedback expressed real concerns about the capacity of CL to cope with its current workload. This reflected their understanding of current staffing levels as well as a belief that staffing levels had been reduced for financial reasons. Furthermore, the judiciary also expressed concerns that the reduction in resources had resulted in significant delays in CL processing applications and deciding whether or not it would accept a case.
- 2.13 Whilst it is the case that CL had fewer lawyers and caseworkers than it needed, this was not due to a reduction in its financial resources but rather was the result of a number of factors, including the loss of seconded staff arising from uncertainties over contracts, delays in recruiting new staff, and recruitment numbers being insufficient to fill all the vacancies. That stakeholders did not understand the situation is indicative of the lack of effective communication between the parties and the need for a comprehensive communications policy that covers external and internal communications.
- 2.14 There is a need for CL to adopt a target response time so that decisions are made and communicated to the courts promptly. Inspectors were pleased to note that CL was planning improved internal arrangements for the receipt of court referrals, with the aim of ensuring a rapid response.

Workload management

- 2.15 Given its current staffing levels, it is understandable that CL has had to introduce a case selection process. However, senior managers need to be aware that CL's efforts to balance need against available resources have been a source of stress and frustration for CL staff and some courts.
- 2.16 Some judges expressed concern that decisions by CL not to accept a case were wrong in principle. Although the published guidance³ helped in identifying appropriate cases for referral when CL was first established, it has been seen as increasingly out of date, particularly as CL's practitioner resources have reduced and arrangements for CAFCASS regions and Wales to take on some work become more developed. Inspectors are aware that the Director, CL, has been concerned about the difficulties from the beginning and that the practice note is the subject of current discussions within CAFCASS as well as with senior judiciary. Updated guidance addressing a range of current issues such as the Adoption and Children Act 2002, and the balance of delivery in Rule 9.5 cases between CL and the Regions and Wales, will be helpful for all concerned.

³ CAFCASS Practice Note dated March 2001. Letter signed by Director, CAFCASS Legal dated 24 October 2002.

Management structures

- 2.17 Inspectors concluded that, in order to move forward purposefully, there is a need for the management structure of CL to be strengthened and for managers to work more as a corporate team than has been the case so far. Inspectors are aware of the intention to appoint a Head of Corporate Legal Services to work in conjunction with the Head of Children's Legal Casework. Inspectors understand that the latter post will carry the formal title of Deputy Director, and welcome this move towards a more robust management structure. With this restructuring, there is an important opportunity for the duties and responsibilities of the Director, Deputy Director and Head of Corporate Legal Services be set out fully in a document such as a governance paper. Inspectors consider this to be an essential step as it would help ensure that the scope and parameters of these posts are clearly defined and understood by all staff at CL, more widely within CAFCASS and by key stakeholders, such as the courts.
- 2.18 The establishment of the Management Team towards the end of last year was a positive change that will assist CL in moving forward. Despite the explanations given to staff, there are those within CL who do not understand clearly the functions of the Management Team, or the rationale for some managers being members and others not. It would be helpful for the Management Team to reiterate the explanations given to staff to ensure its structures are clearly understood.
- 2.19 Inspectors accept that the Management Team is still developing as a group and has yet to function fully as a corporate management team. Because its development is crucial to the effective running of CL, it is important that the nurture, development and training needs of Management Team members are not overlooked in any CAFCASS corporate training plan.

Complaints

- 2.20 Responsibility for complaints has recently been passed to the business manager and Inspectors are aware that new procedures are being established. Although the volume of complaints is small, CL has not approached complaints proactively in the past. As a result, opportunities for using complaints as a positive vehicle for business learning and to structure its actions accordingly have not been taken. CL currently sends out complaints leaflets only if they are requested. This is in contrast to the wider CAFCASS practice across the regions and Wales where, typically, complaint leaflets are sent to service users with initial contact letters. MCSI suggest that CL should consider adopting this kind of approach.
- 2.21 An important aspect of complaints is in the organisational learning that may arise from them. It is therefore important that complaints are seen as a whole management team issue and not simply as an administrative matter. Up to the time of the inspection, the Management Team had not been involved consistently in the evaluation of complaints, nor had it established a process to learn from them. Inspectors suggest that it may be helpful for senior managers to review regularly the number and nature of the complaints received to find out what they say about the way CL is working.

2.22 Inspectors noted that there was no clearly understood process for dealing with complaints against CL lawyers in respect of their legal practice. There was a view that any such complaints might be dealt with through the CAF/CASS complaints procedure, although it was considered that the use of the Law Society procedures might be an appropriate alternative. Inspectors consider that this is an area that needs clarifying for the benefit of staff and service users so that, should any complaints about CL lawyers be received, they can be dealt with promptly, or redirected if appropriate.

Diversity

2.23 Inspectors were pleased to note that staff within CL received diversity training in 2002. Despite this, Inspectors found that there was limited knowledge within CL of the Race Relations (Amendment) Act 2000 and the CAF/CASS Race Equality Scheme. Managers need to ensure that staff understand the implications of the Act and the Scheme for CAF/CASS in general and for CL in particular. CL may find that engaging with specialist CAF/CASS Headquarters' resources on these issues may be helpful.

Inspection Findings 3: Human Resource Management

Human resource planning

- 3.1 The reduction in the number of practice staff over the last two years appears to be directly related to a number of key human resource (HR) management issues, including the position of seconded staff. The HR Directorate has had a considerable number of important national issues to address since the establishment of CAF/CASS, which have taken much of its time. However, there was a strong view in CL that HR issues affecting this part of the organisation had not been afforded the necessary priority by the HR Directorate, and, until recently, CL senior managers had not been effective in taking up these issues.
- 3.2 CAF/CASS Legal has yet to develop a coherent HR strategy that links the various aspects of HR planning together in support of the overall strategic and in-year planning processes. Among the issues that need to be taken into consideration is the continuing uncertainty created by the unresolved secondment and harmonisation issues. Inspectors consider that these are of major concern to current staff and are adversely affecting their morale. The urgent resolution of these issues is necessary so that an HR strategy can be properly developed and to ensure that CL can deliver its particular contribution on behalf of the wider organisation.
- 3.3 A key aspect of the HR strategy is the recruitment and induction process used by CL in appointing practitioners. Inspectors are concerned that, despite the lack of practitioners, the rate of recruitment is low compared to the number of practitioner vacancies and seems to be dependent upon the extent to which team leaders feel able to induct new staff, based on their current induction practices. Inspectors found the situation critical enough for there to be a need for some radical thinking as to how new staff might be absorbed more quickly into CL. This should allow steps to be taken to increase the rate of recruitment if the aim of CL is to continue current work patterns. In this context, there may also be value in reviewing the wording of the person specification used in recruiting practitioners. As it stands, the specific inclusion of references to the legal aspect of the work may have deterred people from applying for posts. It may be helpful to prospective applicants if the specification indicated that, for example, mentoring and in-house training on the legal aspects of the job would be made available.

Appraisal, supervision and training

- 3.4 Inspectors were advised that, whilst lawyers had been appraised, other staff had not. It also appeared that there has been a lack of consistent, structured supervision. Supervision for practitioners has been on a case-by-case basis rather than on the regular, structured approach used within the Regions and Wales, which focuses on the wider issues of practice and personal development as well as the management of particular cases. Whilst the approach currently used seeks to ensure that individual cases are being managed effectively, it does not allow manager and practitioner to review an individual's approach to cases in general, nor to identify developmental needs. Inspectors considered that the closeness of the relationship between team leader and practitioner regarding individual

case management might undervalue the significant experience of staff and consequently limit staff development. CL should review the way in which supervision is carried out in order to ensure that managers have sufficient time to undertake this critical role in a more structured way with both quality assurance of work and wider developmental staff needs in mind.

- 3.5 Most, though not all, staff interviewed were clear about the current line management structures in CL. The new organisational structure is still in the process of being established and this may give rise to some uncertainty among staff. It is important that managers make every effort to ensure that staff are aware of how the new structure will operate, their place within it and, in particular, who their line manager is.
- 3.6 The absence of structured and consistent appraisal and supervision also appeared to have had a detrimental effect on staff training. Whilst lawyers are supported by the nationally established solicitor continuous professional development (CPD) scheme, practitioners do not yet have such comparable arrangements in CAFCASS. At CL, there is no organisational training plan based on assessed organisational needs, nor has there been a skills audit to assist in identifying developmental needs. The senior Management Team needs to put in place a process for identifying urgent training needs and ensure value for money from the training budget.
- 3.7 The CL Library is the product of continuous investment, provides a valuable resource to CL staff and others and will assist in meeting training needs.

Culture and Communications

- 3.8 Inspectors found a considerable difference in the views of staff concerning communications. The views were based on the extent to which managers were seen as sharers of information, with some teams stating that their managers shared information openly and quickly, whilst other teams described different experiences. There is a need for the Management Team to demonstrate, encourage and facilitate good communications within CL, ensuring that all the staff receive information as quickly as possible and that the messages are presented consistently.
- 3.9 In taking these and other matters forward, there is a need for the Management Team to identify those actions that will assist in moving on aspects of the culture inherited by CL. Inspectors were made very aware that some staff still look back to the days of the Official Solicitor's Office and seem unwilling to accept the change to CAFCASS that took place in April 2001. Some staff talked about a loss of status following this change and an example that would seem to underline the reluctance to embrace the reality of CAFCASS was the continued use of the phrase "formerly the Official Solicitor" on the front sheet of court reports.
- 3.10 Inspectors were made aware in discussions with staff of a degree of antipathy towards social work trained staff now joining CL. Comments were made in interview by a number of people that questioned the value of such staff and gave Inspectors the clear impression that such staff were not welcome. Such attitudes are unfortunate and need to be addressed within CL. If unchecked, they will affect the ability of the organisation to move forward.

Inspection Findings 4: Financial Management

- 4.1 The appointment of a Financial Manager is a positive step that will give greater focus to the whole area of financial management and control. Given that CL has responsibility for certain central budgets, it is important that its financial management processes are robust and transparent.
- 4.2 Inspectors noted that appropriate action has already been taken by the Finance Manager to tighten up the financial controls on the budget for funding separate representation, which CL manages for the whole of CAFCASS.⁴ The new accounting system should assist in strengthening the controls in respect of other significant costs such as expert and counsel fees. Inspectors were concerned that one expert witness was owed a six-figure sum that had accrued over a number of years. Whilst managers had begun to address that specific case, it is indicative of the need for effective controls to be established to ensure that excessive credit balances are not allowed to accrue in future. In respect of the account mentioned above, decisive senior management action is required to bring this to a conclusion.
- 4.3 Inspectors are of the view that the management of costs arising from the use of counsel is also an area of financial vulnerability. The current scheme depends on the skill and expertise of one person in negotiating an appropriate fee. Whilst the system operates effectively at present, should that individual be unavailable there is a danger that costs may escalate. Inspectors suggest that the Management Team needs to consider the adequacy of its staffing arrangements in respect of this and its other financial responsibilities, some of which it carries out on behalf of the whole organisation, as part of its risk assessment of its processes.
- 4.4 There is a more general point about cost-consciousness that relates to practice and culture. In a number of cases, practitioners were found to be spending a considerable number of days sitting in court through long hearings. In one case outside London, the hearing lasted over 30 days. In another, a practitioner made two long-haul international flights in response to a parent's wish to apply for an established order to be changed. Both parents had left the country and were resident abroad. The practitioner conducted two short interviews with the parties in their home countries before filing a report stating that it was a jurisdictional issue for the court to decide. Inspectors considered that adequate initial enquiries might have been made satisfactorily by telephone, with a considerable saving of public expenditure.
- 4.5 Given the reduction in the overall running cost budget at CL for 2003/04 from 15% to 14% of staff costs, there is a need for financial management to be seen as a responsibility of all staff. However, in interview, the view was expressed that "*finance is the Finance Manager's job*". The introduction of the new accounting system may help in underlining the shared responsibility for financial management. Inspectors also suggest that its introduction needs to be accompanied by some strong management messages regarding general and specific responsibilities.

⁴ Separate representation typically arises where the child is judged by his/her solicitor, who is funded by the Legal Services Commission, to be capable of providing direct instructions. This means that the Children's Guardian's views, which may significantly differ from the instructions given by the child, may need representing in court through another solicitor, which CL is responsible for funding.

Recommendation

It is MCSI's normal practice to make recommendations specific to the main issues that require priority action, linking them to the appropriate text within the report. However, in respect of CAF/CASS Legal, Inspectors conclude that the most urgent requirement is for an effective performance management process to be established. Achieving this will entail a considerable amount of work. For this reason, Inspectors have refrained from making other formal recommendations. However, the report highlights a number of important issues about which the Management Team and others in CAF/CASS should give serious consideration.

MCSI's single recommendation arising from the baseline inspection is that:

CAF/CASS Legal should establish an effective performance management system which:

- ***adopts current CAF/CASS planning procedures and develops a strategic plan and an in-year business delivery plan for CL***
- ***sets appropriate performance targets for CL***
- ***incorporates a risk management approach***
- ***incorporates key policies, such as risk assessment, diversity, and communications, in support of the delivery of its business and financial responsibilities.***

An action plan outlining the key stages for the delivery of the performance management system should be produced by CL and updated at regular intervals.

Methodology

- The Inspection of CAFCASS Legal (CL) was conducted by a team of four Inspectors and an Inspection Assistant. CL was given six months' notice of the start of the main fieldwork and of the topics to be inspected. The Region provided the inspection team with documentary evidence together with its own analysis of performance in the four main topic areas.
- Views of the judiciary were obtained through interviews with senior members of the judiciary and the completion of questionnaires.
- Plans were made that around 60 recently completed court reports should be inspected with the assistance of practitioners and managers. On the same day, in-depth interviews were to be conducted with practitioners about one of their recently completed proceedings. Unfortunately, only 40 reports were seen and a limited number of practitioners was available.
- The inspection team carried out a series of structured interviews with senior managers, team leaders, lawyers, frontline practitioners and support staff.
- MCSI posters were displayed in CL's reception area inviting contact from service users. Copies of the posters were also displayed in the Central Registry, and the Royal Courts of Justice.
- MCSI reports do not record the views of identifiable individuals. The normal practice is for Inspectors to adopt a convention in respect of management, administrative and practitioner views and responsibilities. However, given the small number of people in CL, it was decided to refer only to staff.
- Similarly, views of other individuals interviewed during the inspection such as the judiciary are not reproduced in this report in an identifiable form.
- CAFCASS Legal and Headquarters have seen this report in draft form. Any comments on factual inaccuracies have been taken into account in this final version.

Key Facts about CAFCASS Legal

Functions of CAFCASS Legal

CAFCASS Legal inherited the following main functions from the Children's Divisions of the Official Solicitor:

- a continuing casework role dealing mostly (but not exclusively) with private law cases in which children require representation (i.e. the role of guardian ad litem)
- an emergency duty system for the family justice system, which provides 24-hour, seven days a week access to a senior lawyer.

CAFCASS Legal has the following additional responsibilities:

- to contribute to the development of CAFCASS policy and assisting with particular problems (e.g. professional development, national standards, report format, data protection, contracts for children's guardians, CAFCASS's involvement in proposed television programmes, etc.)
- to co-ordinate the handling of the litigation in which CAFCASS becomes involved, other than those dealt with by the HR Department. This will include other litigation (e.g. actions for judicial review, damages for professional negligence, etc.)
- to provide CAFCASS officers throughout England and Wales with:
 - legal advice on any matter of children law to and on human rights issues arising within CAFCASS
 - information about important legal developments
 - advice on matters of good practice in conjunction with Operations
 - information about research and welfare issues, in conjunction with Operations
 - information about national and international experts and other contacts in conjunction with Operations
- guidance about training needs for CAFCASS staff and contributing to the delivery of that training
- responsibility for all decisions made about whether the representation of children in private law proceedings should be done centrally or locally
- responsibility for all decisions made about the separate legal representation of CAFCASS officers.

Staffing

At the time of the inspection, CAFCASS Legal had the following staff:

- one Director
- one Head of Legal Group
- three lawyers
- three team leaders and nine practitioners
- one Business Manager
- one Finance Manager
- ten support staff.

Accommodation

CAFCASS Legal operates from a single site at Newspaper House, 1st Floor, 8-16 Great New Street, London, EC4A 3BN.

Budget 2001/02 and 2002/03

Budget Heading	2001/02 (£)	2002/03 (£)
Payroll	1,119,820	1,414,897
Accommodation costs	120,376	228,026
Other running costs	1,605,120	1,259,558
Total running costs	2,845,316	2,902,481
Consultancies		135,000
Total provision	2,845,316	3,037,481
(Income)	(500,000)	(90,500)
Total provision (net)	2,345,316	2,946,981

Background to CAFCASS

Services prior to April 2001

Before CAFCASS was established in April 2001, support services in family proceedings had been provided from entirely separate sources, namely:

- the Family Court Welfare Services as part of the Probation Service
- the Guardian ad Litem and Reporting Officer Service as a responsibility of local authorities
- the Children's Division of the Official Solicitor's Department as an Associated Office of the Lord Chancellor's Department.

Preliminary steps leading to CAFCASS

In July 1999, the Government announced its intention to establish a unified Service across England and Wales as a Non-Departmental Public Body under the responsibility of the Lord Chancellor. In March 2000, the Criminal Justice and Court Services Bill was published and received Royal Assent at the end of November 2000.

There was a short period of a few months for further preparation before CAFCASS was established as a legal entity on 1 April 2001. This work was undertaken by a Project Team under the auspices of the LCD. Responsibility for those Services designated to move to CAFCASS remained unchanged until the 31 March 2001 date of transfer.

The Framework Document

The Framework Document was prepared by the Lord Chancellor's Department⁵ in April 2001. It sets out a broad structure within which CAFCASS should operate, including:

- CAFCASS's functions, duties and powers together with the rules and guidelines within which it must operate
- the conditions under which public funds are paid to CAFCASS
- how CAFCASS is to account for its performance
- the relationship between the Lord Chancellor and his Department and CAFCASS.

The Framework Document also sets out the responsibilities of the Chair of CAFCASS, the Board members and those of the Chief Executive who is also designated by the Department as the Accounting Officer. It also outlines the main functions of the Sponsorship Unit within the Department for Education and Skills.

⁵ In June 2003, following the machinery of government changes, responsibility for CAFCASS moved from the Department of Constitutional Affairs to the Department for Education and Skills.

These include:

- to act as point of contact between the Department and CAF/CASS in support of the arrangements outlined in the Framework Document
- to monitor performance against those terms and give support and advice as necessary on day-to-day issues arising
- to communicate relevant Government policy to CAF/CASS and advise on the interpretation of that policy
- to issue specific guidance on that policy to CAF/CASS as necessary.

Under the Framework Document, the Lord Chancellor will meet the Chair and the Chief Executive of CAF/CASS formally at least twice each year. The January meeting is to agree the Corporate and Business Plans and to agree and sign the Annual Concordat. In July, after the publication of the Annual report, a further meeting aims to discuss CAF/CASS's performance, its current and future activities and any policy developments relevant to those activities. At this meeting, the Lord Chancellor will inform CAF/CASS of his strategic policy objectives.

MCSI's legal powers and duties

The legal powers and duties covering inspection of CAF/CASS are set out in section 17 of the Criminal Justice and Court Services Act 2000. MCSI Inspectors have the duty:

- to inspect and report to the Lord Chancellor⁶ on the performance of CAF/CASS, and of officers of the Service, of their functions; and
- to discharge, in connection with those functions or with related functions of any other person, such functions as the Lord Chancellor may from time to time direct.

In exercising these duties, an MCSI Inspector shall also have at all reasonable times:

- a right of entry to any premises occupied by the Service; and
- a right to inspect, and take copies of, any records kept by the Service, and any other documents containing information relating to the performance of the functions of the Service or its officers which he considers relevant to the discharge of his functions.

Guidelines for Inspection of CAF/CASS

In June 2002, MCSI published *Guidelines for Inspection of CAF/CASS*. This set out the principles and procedures to be followed by MCSI in its inspection-related activities within CAF/CASS Regions. It also set out MCSI's expectations of CAF/CASS as a well-managed and delivered Service under particular key functions. Copies may be obtained from the address at the front of this report. It may also be found on MCSI's website at <http://www.mcsi.gov.uk>

⁶ See footnote 5.

CAFCASS Legal agreed action plan to address MCSI recommendation

1. MCSI recommendation:

That CAFCASS Legal should establish an effective performance management system which:

- ***adopts current CAFCASS planning procedures and develops a strategic plan and an in-year business delivery plan for CL***
- ***sets appropriate performance targets for CL***
- ***incorporates a risk management approach***
- ***incorporates key policies, such as risk assessment, diversity, and communications, in support of the delivery of its business and financial responsibilities.***

CAFCASS response

CAFCASS Legal will establish as an effective performance management system which will:

- (a) produce a written strategic plan, incorporating a formal analysis of risk to CAFCASS Legal
- (b) produce a written business plan for the year 2004/05 developed in accordance with the CAFCASS planning cycle, incorporating the further implementation of key policies such as health and safety (including risk assessment), diversity and communications
- (c) (1) identify and (2) implement appropriate performance targets for both the Children's Legal Casework and the Corporate Legal Services divisions of CAFCASS Legal.

Improvement target: April 2004

By date:
(a) November 2003
(b) February 2004
(c1) February 2004 (c2) from April 2004