When Safeguarding Fails

The Unlawful Consequences of Cafcass Policy

By Brian Hudson, Family Court Guide (2025)

Introduction: When Policy Replaces Judgement

There is a line that should never be crossed in family justice - the moment when *policy* replaces *judgement*. Yet, across England and Wales, this line is being crossed every day.

Parents are being separated from their children not by court order after a fair hearing, but by the mechanical application of the **Cafcass Domestic Abuse Practice Policy** that presumes risk the instant an allegation is made - and then keeps that presumption alive long after the allegation has crumbled under scrutiny.

This policy, purported to protect, is in fact creating harm. It is systematically excluding children from one parent's life, often for months but most likely (given the backlogs in the system) for more than a year, on the basis of unsubstantiated allegations. The tragedy is not only the loss of parental bonds, but the erosion of basic legal principle: that a person is innocent until proven guilty, and that safeguarding must always be grounded in evidence.

When the machinery of safeguarding becomes untethered from law, it becomes something else entirely.

A Case That Should Never Have Happened

To understand how deeply this problem runs, it helps to look at a pattern that has appeared again and again in different family courts across England and Wales.
The details vary, but the sequence is disturbingly familiar.

In the cases I've examined, a parent - most often a father - finds his children suddenly removed from his care after allegations of domestic abuse are made. Police are notified, arrests follow, and bail conditions are imposed. Weeks or months later, the investigations conclude with no further action. There is no evidence to support prosecution, yet the suspension of contact remains.

Then, sometimes after a period of quiet, new allegations surface - different in wording, but identical in purpose. Each time, the process resets: investigation, no further action, and continued separation. In several instances, it later emerged that similar allegations had been made years earlier during a temporary separation, only to be quietly withdrawn when the parents reconciled.

Throughout this, Cafcass continues to recommend that contact remain suspended "pending resolution" of the allegations - even when police investigations have already been closed. The justification is always the same: this is "*in accordance with Cafcass policy.*"

In one anonymised case, supervised contact was eventually permitted after many months. Observers documented warm and affectionate interactions between the parent and the

children - yet also clear signs that the children had been exposed to adult narratives about the case. They spoke with detailed knowledge of "*court hearings*" and "*evidence*," and repeated accusations far beyond their years of understanding.

In another, the accusing parent sought to alter aspects of the children's schooling and identity, in defiance of existing court directions, while continuing to commission professional reports supportive of their own claims – each time without the knowledge or consent of the other parent.

All of these details are drawn from multiple cases, combined here to illustrate the pattern rather than any single story. But the outcome is the same in each: months, even years, of lost contact, confusion, and emotional harm - not because a court found evidence of risk, but because Cafcass policy dictated that contact could not safely continue until allegations were "*resolved*," even when all available evidence showed otherwise.

This is what happens when professional discretion is replaced by administrative orthodoxy. When a social worker believes that following policy is safer than following evidence, children are not being safeguarded - they are being failed.

[*This account is a composite drawn from several anonymised cases reviewed by Family Court Guide. All identifying details have been removed or altered to preserve confidentiality. The procedural pattern described is representative of a wider systemic issue, not any single family or individual case.*]

Let me give a real example - anonymised, but painfully familiar.

A father's life changed overnight when his partner suddenly left the family home, taking the children without warning. Within hours, she had made allegations of domestic abuse. The father was arrested, questioned, and released on police bail. Weeks later, police investigations concluded with a familiar phrase: *no further action*.

But barely a fortnight passed before another report was made. Another arrest. Another cycle of bail and release. Each time, the police found no evidence. Each time, Cafcass - citing its Domestic Abuse Policy - advised that contact between the father and his children should remain suspended pending "*further safeguarding clarification."*

What "*clarification*" meant, in practice, was nothing short of a prolonged severing of the parent–child relationship. It continued even after police confirmed that all allegations had been investigated and closed.

As evidence mounted, it emerged that the mother had previously made identical allegations years earlier during a brief separation - only to later withdraw them entirely with the father unaware of either the allegations or the retraction. When this fact was disclosed, new allegations suddenly surfaced: this time historic, serious, and again unsubstantiated. The cycle repeated.

Contact finally resumed under supervision, nearly a year after the children were removed. By then, reports from the supervisor documented what any trained professional should have found alarming: the children - both very young - were using adult phrases to describe the father's supposed "*abuse*"; they referred to ongoing "*court cases*" and "*Mummy's evidence*"; they repeated accusations they could not possibly have understood.

In other words, the children were being coached.

Meanwhile, the mother had been taking the children to therapy sessions arranged privately, commissioning reports aligned with her narrative - without the father's consent or knowledge. Evidence later emerged that she was attempting to change the children's surnames, hoping to circumnavigate the courts order prohibiting her from changing the children's schools.

All this information was available to Cafcass. It was presented to them by police, by the father's solicitor, and in the contact supervisor's detailed notes. Yet when the judge asked Cafcass to review its recommendation in light of these developments, the response (in the judge's words) was "*extraordinary*":

"*Cafcass policy requires that contact be suspended while allegations of domestic abuse remain unresolved*."

Even though they had, in fact, been resolved.

This is what happens when professional discretion is replaced by administrative orthodoxy. When a social worker or guardian believes that following policy is safer than following evidence, children are not being safeguarded - they are being failed and left in harms way.

The Policy Problem

Cafcass's **Domestic Abuse Practice Policy** may have been introduced with good intentions (although I have my doubts and believe the motivations should be scrutinised): to ensure that the voices of victims are heard and that risk is taken seriously. But like many well-intentioned instruments of bureaucracy, it has morphed into something rigid, risk-averse, legally dangerous and wide open to abuse…leading to clear, active and prolonged harm.

The policy appears to treat *any* allegation of domestic abuse - regardless of evidence, outcome, or context - as a sufficient ground to halt contact. Once triggered, the suspension can persist indefinitely, long after police or local authorities have concluded that no offence occurred.

In practice, this means that an untested allegation alone is all it takes to sever a child's relationship with a parent for one or maybe two years - after this length of time, will it even be possible to restore emotional stability and attachment?

This is not a theoretical issue. It cuts to the heart of both **children's rights** and **public law accountability**. The state, through Cafcass, is a public authority bound by the **Children Act 1989**, the **Human Rights Act 1998**, and the fundamental administrative-law duty to act fairly and proportionately.

When Cafcass applies policy in a way that automatically deprives a child of one parent's connection, love and care, it is exercising a public function. That function must be lawful, rational, and evidence-based. Yet now at a policy level, it is none of those things.

When Safeguarding Becomes Systemic Harm

In the case I described - and in many others - the real harm was not the allegations, but the response to them, the medicine is literally more harmful than the illness or injury.

Children lost consistent contact with a loving parent for nearly a year, but for the intervention of a judge sufficiently alarmed to disregard Cafcass advice, it was nearly severed once again in the face of compelling evidence that maintenance of that contact was essential to preserving the children's paternal relationship bonds. They were exposed to one parent's hostility, manipulation, and adult narratives they could not understand. The system, rather than protecting them from emotional harm, *enabled it and reinforced it*.

The law is clear. Section 1(1) of the Children Act states that the child's welfare is *the paramount consideration*. Section 1(2A) adds that there is a presumption of parental involvement unless such involvement would put the child at risk of harm. That presumption is not optional; it is statutory, although it is understood now that the government seeks to repeal from law that presumption, bowing to the extensive lobbying which appears to also be responsible for the Cafcass Domestic Abuse Practice Policy.

A policy that treats every allegation as presumptive risk reverses the burden of proof, undermines the welfare principle, and breaches the rights of both child and parent under Article 8 of the European Convention on Human Rights - the right to family life.

Cafcass, in applying its policy this way, is effectively engaging in *state interference* with family life without lawful justification.

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The Law They Forgot to Read

When I began investigating this pattern, one thing became immediately obvious:
many of the professionals enforcing these restrictions had never truly read the law they were supposed to uphold.

The *Children Act 1989* could not be clearer.
It requires every decision about a child's upbringing to start from a single premise: **the child's welfare is paramount**.
It does not say "*the policy is paramount*."
It does not permit decisions to be made on automatic assumptions of risk.

Then there is section 1(2A): the *presumption of parental involvement*.
Parliament intended this as a guardrail - a reminder that maintaining relationships with both parents is normally in a child's best interests.
It can be displaced only where real evidence shows that such involvement would cause harm.
The Cafcass policy, as currently applied, inverts that logic.
It presumes harm unless the accused parent can prove a negative yet places months of delay for the opportunity to present the negative in court, and ignores the evidence presented to them when they are tasked with drafting recommendations to court for interim contact arrangements.

This is not safeguarding.
It is an underhanded rewriting of the statute by *policy memo*.

Article 8: The Right They Forgot to Respect

Every parent and every child in this country has a legal right to family life under **Article 8 of the European Convention on Human Rights**, given domestic force by the *Human Rights Act 1998*.
That right is not a sentimental ideal; **it is law.**

Any state interference with family life must be:

1. **Lawful** – grounded in clear legal authority;
2. **Necessary** – pursuing a legitimate aim; and
3. **Proportionate** – the least intrusive means available.

Blanket contact suspensions based solely on untested allegations satisfy none of those tests.
They are not lawful - because no statute authorises Cafcass to override the court's duty of individual assessment.
They are not necessary - because risk can be managed by supervised contact or fact-finding hearings.
And they are never proportionate when the evidence of harm is absent.

The European Court of Human Rights has condemned such practices repeatedly - *Kutzner v Germany (2002)*, *Strand Lobben v Norway (2019)*h - holding that the severance of family ties without compelling evidence violates Article 8.
If Norway and Germany can be held to account, so can Cafcass.

Article 6: The Right to a Fair Hearing

The right to a fair hearing does not end when family proceedings begin.
When a Cafcass officer applies a policy so rigidly that the outcome is pre-determined, the process is no longer fair. The parent is no longer being assessed; **they are being *processed***.

This breaches **Article 6** as well as the fundamental common-law duty of procedural fairness.
A recommendation that effectively decides the question of contact before the evidence is tested undermines the integrity of the court itself.

Public Law: When Discretion Becomes Dogma

Public bodies must exercise discretion.
They cannot apply policy so rigidly that they ignore the facts of the case before them.
This principle - set out in *Council of Civil Service Unions v Minister for the Civil Service (1985)* - is not optional. It is the cornerstone of administrative law.

Yet Cafcass officers frequently state that they are "*bound by policy*."
That is a textbook example of *fettering discretion*.
It renders their decisions **ultra vires -** beyond their lawful powers.

If challenged in the Administrative Court, such behaviour would likely be struck down as **irrational**, **unlawful**, and **procedurally unfair**.

Discrimination: The Hidden Dimension

Although the policy is gender-neutral on paper, its impact is not. In the majority of cases I have reviewed, the accused parent was male. Where a policy disproportionately affects one sex, and that effect cannot be objectively justified, it may constitute **indirect discrimination** under section 19 of the *Equality Act 2010*.

Cafcass should have assessed that risk before implementing the policy. To my knowledge, no such assessment was ever published. If it exists, it has not seen the light of day.

When Law Is Ignored, Harm Multiplies

The practical effect of these legal breaches is devastating. Children internalise fear that was never theirs. Parents lose critical years of bonding. Contact, once broken, rarely returns to what it was.

Professionals speak of *"erring on the side of caution."* But caution is not neutral. In this context, it has a direction - and that direction is away from fathers, away from family life, and away from the statutory presumption of involvement.

Cafcass, by substituting professional experience, insight and common sense with bureaucracy, is not merely making bad decisions; it is acting outside the law. And when a public authority acts outside the law, it is the duty of citizens - and the courts - to hold it to account.

The Route to Accountability

There are, thankfully, mechanisms for doing so.

1. **Internal Review and Complaint:**
   Parents can demand that Cafcass re-examine its recommendation, citing breaches of statutory and human-rights duties.

2. **Judicial Review:**
   If Cafcass refuses, the next step is the Administrative Court, seeking a declaration that the policy, as applied, is unlawful and disproportionate.

3. **Declaratory Relief:**
   While a formal "*declaration of incompatibility*" under section 4 HRA 1998 applies only to primary legislation, the court can still issue a declaration that the *policy* is inconsistent with Articles 6 and 8 and with the Children Act.

4. **Collective Action:**
   Where many parents are affected, a representative or multi-claimant judicial review can challenge the policy systemically, forcing Cafcass to rewrite it.

5. **Ombudsman and Parliamentary Oversight:**
   The Parliamentary and Health Service Ombudsman can investigate maladministration once internal procedures are exhausted. The Justice Select Committee and Children's Commissioner can be petitioned to examine the systemic harm.

These remedies are not theoretical. They exist precisely for moments like this - when an organisation forgets that its purpose is to serve the law, not replace it.

Counsel's Opinion and Pre-Action Leverage

Before any case reaches court, a carefully written **Counsel's Opinion** can be a powerful instrument of persuasion. A leading public-law barrister can set out, in stark legal terms, why the Cafcass policy is likely to be declared unlawful. Circulating that opinion - to Cafcass, to the Ministry of Justice, to MPs, and to the press - creates immediate pressure for review.

In pre-action correspondence, parents' representatives can demand:

- **Immediate suspension** of the policy's mechanical application;
- **Urgent review** in consultation with independent experts;
- **Confirmation** within fourteen days that Cafcass will comply with the law.

Failure to do so invites judicial scrutiny - and public exposure, including scrutiny of the motives of the individuals responsible for drafting and implementation of the policy that flies in the face of the statutory legal duties that Cafcass has to protect children from harm.

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The Collective Turning Point

The issue is not isolated. Every week, new parents come forward describing the same pattern: allegations made without evidence; contact suspended without a hearing; children used as instruments in adult disputes; and professionals citing "*policy*" as justification for inaction.

This is not a series of unfortunate individual errors - it is a structural failure. And structural failures require structural responses.

Across the country, groups of parents, lawyers, and advocates must coordinate. The goal is simple: to bring this matter before the courts not as a string of disconnected cases, but as a **systemic challenge**. A representative judicial review, properly supported, could expose the illegality of the current policy and compel Cafcass to rewrite it.

This approach mirrors the successful collective actions seen in other public-law fields - from education to housing - where individual harms revealed a national pattern of maladministration. The same is now needed here.

The Public Duty to Correct Public Error

Cafcass is a public body. It is funded by the taxpayer. Its officers exercise powers delegated by Parliament.

That means its policies must comply with the law. Not approximately. Not aspirationally. Precisely!

When Cafcass acts beyond that mandate - when it allows its policy to overrule statutory rights - it is acting unlawfully. And when that unlawfulness results in children being cut off from a parent without evidence, it becomes not just a legal failure, but a moral one.

Accountability, in such circumstances, is not optional. It is the mechanism by which public confidence is restored and children's welfare is protected from the errors of the system itself.

The Path Forward

A lawful safeguarding system would look very different. It would still protect genuine victims. But it would also protect the presumption of innocence, the right of children to know and maintain connection to both parents, and the obligation of professionals to evaluate evidence - not assumptions or stereotypes.

It would ensure that where allegations are unsubstantiated or disproved, **contact is restored immediately**, not months or years later. It would require Cafcass to document, in every case, why suspension of contact is necessary, proportionate, and evidence-based. And it would replace the current "*one-size-fits-all*" approach with a genuine welfare assessment grounded in fact, not fear, stereotype or ideology.

A Moment of Decision

Cafcass now faces a choice. It can continue to defend an indefensible policy - one that the law, logic, and conscience all reject. Or it can accept that its approach has drifted beyond its statutory purpose and begin the process of reform.

The former path leads to litigation, exposure, and public loss of trust. The latter offers restoration: an opportunity to rebuild a safeguarding framework that honours the law and truly protects children.

Reflections

In all my years analysing family court data, I have never seen a policy with consequences so instantly destructive as this one. The tragedy is not simply bureaucratic; it is deeply human.

Each case represents birthdays missed, bedtime stories untold, photographs of growing children that one parent never sees. For the children, it represents confusion, loyalty conflicts, and the gradual erosion of one half of their identity.

The family court system was designed to prevent this. But when its own instruments perpetuate the harm, silence is complicity.

The question is no longer whether the Cafcass Domestic Abuse Policy is well-intentioned (although I do not believe for a moment that it is). It is whether it is lawful, proportionate, and humane. And if it is not - then who, exactly, will safeguard the children from the '*safeguards'* themselves?

Conclusion: When Safeguarding Fails

Safeguarding should never have become a weapon. It must never be used to justify the slow, administrative dismantling of a child's relationship with a parent. A policy that enables that outcome - even if accompanied by noble language - is a policy that has lost sight of its purpose.

When a public body's procedures inflict the very harm they were created to prevent, the law has a duty to intervene. That moment, I believe, arrived when this policy was implemented on 9 October 2024. It is not parents contact that needs to be suspended pending findings of fact, it is the Cafcass **Domestic Abuse Practice Policy** that must be suspended, pending the research into the harm such an approach causes to children, the very research that should have been carried out before this policy was even drafted.