

Reporting to Court Guidance

Please see the Cafcass Case Recording Policy and Reporting to Court Policy, available via intranet, before using this guidance.

Using report templates

Templates have been created for use in private and public law cases, including adoption, and have been designed for the most frequent case types. When reports are requested in more infrequent case types, take the closest suitable template as a basis and amend the headings in light of the circumstances of the case and the nature of the court's request.

The Cafcass logo should be used on all written reports. All report templates are formatted to include page numbers and numbered paragraphs, which make it easier for reports to be cross-referenced and referred to in court.

Changes to report templates are communicated via the Intranet and Channel C, but the most recent versions will always be accessible using the ECF, unless otherwise specified.

Pasting from other documents

Sometimes it can be helpful to copy and paste content into a report template from another document. When doing this, it is always advisable to use **Paste Special**, as this ensures that existing formatting is not changed.

1. Copy the text you wish to transfer from another document.
2. Select the **Home** menu of the report template.
3. Click on the arrow underneath the **Paste** button and select **Paste Special**.
4. In the window of the Past Special box, select **Paste Unformatted Text** and click **OK**.

Attending court

When attending court, practitioners should present themselves professionally. Punctuality is important, and it is preferable for practitioners to arrive prior to the schedule starting. Practitioners should be dressed appropriately for the formality of the court, and should have access to the case plan and other relevant information.

When speaking in court, practitioners should face and address the judge at all times, and should speak clearly with appropriate pauses.

Referring to parties

It is generally good practice to refer to adults by their surname and title (e.g. Mr, Ms) in written court reports and when speaking in court.

In written reports, it is useful to make clear the relationship of each adult, referred to in the report, to the subject child/ren, on the first occasion that the adult is mentioned in the report.

Addressing judges in court

| Type of court | Type of judge | In court | In letter |
|--|-------------------|----------------------------------|--|
| Court of appeal | Lord Justices | My Lord My Lady | Lord / Lady Justice X |
| High Court (family division) | High Court judges | My Lord My Lady | The Honourable Mr / Mrs Justice X Dear Mr / Mrs Justice X |
| County court (care centre) | Circuit judges | Your honour | His / her Honour Judge X Dear Judge X |
| | District judges | Sir / Ma'am | Dear District Judge X |
| Family proceedings court (magistrates court) | District judges | Sir / Ma'am | Dear District Judge X |
| | Lay Magistrates | Your Worships / Sir, Ma'am | Dear Sir / Madam |

Outside court, all judges can be addressed as Judge, except for the President of the Family Division who should be addressed as 'President'.

Order of appearance

For giving oral evidence in court, the order of appearance is generally as follows (unless directed otherwise by the court):

Public law

- Applicant (usually local authority)
- Respondents with parental responsibility (usually parents)
- Other respondents (usually parents without PR)
- **Children's Guardian**
- Child (though evidence-giving by children is rare)

Closing speeches: Respondents; Applicant; **Children's Guardian**

Private law

- Applicant opens case
- **Cafcass**
- Applicant
- Respondents with PR
- Any other respondent
- Child (though evidence-giving by children is rare)

Closing speeches: Respondent(s); Applicant

While the Cafcass report has the status of being the main evidence, the fact that family proceedings are inquisitorial in nature will make it quite possible that the bench (magistrates or judges) will wish to ask further questions, in addition to any cross-examination that may take place, conducted by the parties or (more usually) their legal representatives. Therefore, it is helpful if practitioners are familiar not only with the content of their written reports, but also with the materials on which they are based, including those that might have been provided by colleagues (e.g. Cafcass duty officers).

The Welfare Checklist

There is a statutory requirement that the Welfare Checklist, set out in the Children Act, 1989 has to be the paramount consideration in determining a child's upbringing.

The Cafcass templates do not set out the welfare checklist in full, but require the practitioner to include the relevant sections in their analysis. The full checklist is provided at the end of this guidance.

In public law, **for final hearings where matters are fully contested, or for other contested hearings, you will always need to set out the checklist in full.** The court wants Cafcass to focus on relevant analysis not description; to emphasize 'sorting' not 'reporting'; and to be brief and specific in style not discursive. Practitioners are expected to use their professional judgement in deciding which elements of the checklist should be addressed in every court report, bearing in mind the purpose of the particular report, the issue it is addressing, what the court has asked Cafcass to do, and the nature of the hearing it is for. This approach is far more effective and appropriate as opposed to a formulaic approach in which the welfare checklist headings are listed yet not relevant to the issues the court has ordered to be addressed for that particular report.

In reporting to court in private law, the checklist comes into force because of the requests that the court makes of Cafcass and because of the effect of the court rules in empowering the court to, in effect, in part to 'sub contract' its responsibilities onto Cafcass. These responsibilities are not subcontracted in full in all cases, regardless of the extent to which the court has asked Cafcass to assist in the circumstances of each specific case. This is why the questions set out in the Schedule 2 letter are narrowly drawn, being focused on the provision of information that Cafcass has uncovered as part of its screening checks. It is only at the first hearing that the court can exercise the judgement that it is required to make under section 1(4) of the Children Act 1989, which may result in the court having then to meet its section 1(3) responsibilities. When reporting following first hearing it is helpful to the court to make specific reference to the items of the welfare checklist that are addressed in

the report to the court, but in the context of what it is that the court has asked Cafcass to do.

The Welfare Checklist is set out here in full:

The Children Act 1989: Statutory Welfare Checklist

Under Section 1(3) of the Children Act 1989 the court must have regard in particular to :-

1. the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding)
2. his physical, emotional and educational needs
3. the likely effect of any change in his circumstances
4. his age, sex, background and any characteristics of his which the court considers relevant
5. any harm which he has suffered or is at risk of suffering
6. how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs
7. the range of powers available to the court under this Act in the proceedings in question.

The PLO Funnel Model

The 'funnel' model for PLO cases represents the narrowing of issues through sets of questions for the Children's Guardian to consider at each stage of the PLO.

First Appointment

- Pre-proceedings checklist – are there gaps e.g. viability / kinship assessments?
- Have any immediate concerns about safety or care of the children been acted upon?
- Has the LA established a clear picture of the individual child's needs, wishes and feelings (in non-emergency cases)?
- Has the LA made checks of Police records?
- Have the parent/s and any other parties been served notice of proceedings? Have they had access to legal advice? Have any special needs of the parents been addressed? Does appointment of the OS need to be considered?
- Relevant diversity issues e.g. Is there a need for interpreter or other assistance?
- Should anyone else be made a party, due to their involvement at this stage?
- Which key issues are clear and which remain to be addressed? How do you think they can best be addressed?
- Is there a need for expert assessment on any specific issue, taking the child's timetable and case complexity into account?
- Are the proceedings in the appropriate forum?
- What timetable, for the court, would be appropriate in best meeting the child's individual timetable?
- Is 'fast-tracking' necessary and possible?
- Are any interim orders required?

Case Management Conference

- What are the critical issues in the case remaining to be assessed, determined or resolved?
- At this stage, what is happening for the child/ren?
- What are their views, needs, wishes and feelings about e.g. schooling, placement, or other relevant welfare checklist issues?
- Is there need for separate representation?
- What are the safe and positive options for their future care or contact e.g. safe reunification programme; kinship care?
- What further assessments, including expert assessments, are outstanding?
- What are the child's needs in the court process in the context of the child's individual timetable?
- Has the LA started any necessary parallel / concurrent planning?

Issues Resolution Hearing

- Has all the evidence been filed in accordance with the previous order?
- Is any other evidence required and/or any other further reports and/or any other expert evidence?
- In the context of the evidence filed, what are the critical issues to be determined?
- In the context of the evidence filed, what is the optimum care plan for the child?
- What is happening for the child/ren? Have their views, needs, wishes and feelings changed? Has the child/ren's timetable changed?
- Any relevant issues from the welfare checklist?
- Are there outstanding issues with the LA care plan (if any) with which the CG goes not agree?
- If the CG is not in agreement with the parents' position, why?
- If the placement is with friends and family, ask: What is the support and monitoring? What is identified as not being good enough i.e. what would be the trigger for moving? Contingency? (and where going back to family) what has changed?
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Final Hearing

- Any remaining relevant issues from the welfare checklist?
- Analysis of parties' positions
- Are there any outstanding issues with the care plan?
- Have other issues been identified by the court that remain to be addressed?
- What are the child's views, needs, wishes and feelings at this stage, for the short and long term?
- Has the child been offered an opportunity to visit the court?
- Have arrangements been made to liaise with the IRO at end of case?
- How will the child be informed of the final outcome?
- Final recommendation.

Checklist for reports at First Appointment (public law)

- If you have time and sufficient knowledge (for example, where you have worked with the family before) you may be in a position to complete the written Initial Analysis and Recommendations document or short assurance statement in time for this first hearing. The decision about whether to provide an oral resumé or a written document is for you to make, based on the circumstances of the case.
- Any information or advice needs to be qualified by the statement that this is based on information received so far, and may change as the case develops.
- The list of areas to address is intended as a prompt only. It is neither a minimum standard, nor a definitive list. **It is important to clarify for the court how much of a contribution you can make at this stage.**
- Your analysis or position statement needs to be analytical, not descriptive.
- The child's own contribution needs to be promoted from the outset – whenever possible report on the child's views of all the factors below, alongside or integrated into your own analysis.

Provide a brief outline of work done so far:

- Documents seen
- Cafcass screening and risk identification – any issues raised
- Contact with child/ren
- Contact with family members
- Contact with professional network
- Pre-proceedings checklist – are there gaps?
- Are there immediate concerns about safety or care of the child/ren?
- Have the parent/s and any other parties received legal advice?
- Relevant diversity issues
- Is there a need for an interpreter or other assistance?
- Should other people be made parties?
- What are the issues at stake? Are there other issues that need addressing, not identified within the application?
- What information is there of the child/ren's wishes and feelings?
- Does the information provided seem adequate to resolve the issues at stake? What are the gaps?
- Is there need for expert assessment?
- Is there need for a finding of fact?
- Are there any issues that are no longer in dispute?
- What timetable for the court would be appropriate in best meeting the child/ren's timetable?
- Are any interim orders required?

- Is 'fast-tracking' necessary and possible?
- Potential need for separate representation? Official Solicitor involvement?
- What level of involvement is anticipated for Cafcass based on the above analysis?