

Reporting to Court Policy

Introduction

This policy sets out:

- The standards to be met when reporting to court
- The implications of including information in a report to court
- Resolving differences of opinion about the contents of reports to the court
- The standards for sharing court reports with parties.

It is designed to complement the Cafcass Case Recording policy, which sets out the process, roles, and responsibilities for the creation, maintenance, access, storage, and destruction of case records, including court reports.

The Reporting to Court guidance provides further information to assist in effective written and oral reporting to court.

Standards for reporting

It must be clear in each individual report what it is that the court has asked Cafcass to do and what it is that Cafcass has done in fulfilment of each specific request. Reports assist judges by providing clear accounts of work undertaken, and by setting out analyses and recommendations, with a clear basis for any recommendations being identified. Reports should contain relevant, child-centred information.

See the Reporting to Court Guidance for the 'funnel' model which demonstrates how issues should be narrowed with each subsequent report to court, in cases prepared in accordance with the requirements of the Public Law Outline.

a. Distinguishing Fact from Opinion

The information obtained by practitioners in the course of their work comprises a mixture of factual information and opinions. Practitioners use a mix of research, experience and theory to analyse their own observations and those of others. Hearsay evidence is information known to the practitioner (or any other person) that has not been personally seen or heard by the practitioner. Hearsay evidence may feature in court proceedings in the form of oral or written accounts of what children have said to Cafcass practitioners or others. A clear distinction should be made in court

reports (as in other records) between verified facts, hearsay and the practitioner's assessment or opinion. When reporting hearsay evidence, it should be clearly identified as such (as should the source), as this will assist the court in determining the weight that should be attached to it.

b. Clarity of Contents

The contents of reports should be understandable both for their subjects and for the range of professionals who will read them. The language used should be unambiguous, and reports should be succinct, relevant and non-repetitive; written reports should not repeat information held elsewhere, for example within an expert's report, as cross-references should be used instead.

c. Diversity

When preparing a report for court it is important to give consideration to the background of the service users, including cultural background, language and lifestyle. Under Section 1(3) of the Children Act 1989, which sets out the 'Welfare Checklist', the court must have regard in particular to:

- [the child's] age, sex, background and any characteristics of his which the court considers relevant.

See the Welfare Checklist in full in the Reporting to Court Guidance.

Confidentiality

The general position of confidentiality is the same for all Cafcass service users, regardless of age. Practitioners cannot promise to keep information confidential because it may need to be disclosed in accordance with the practitioner's duty to the court; for the protection of a child; or as the result of a legal obligation. There are Cafcass leaflets available to explain the court process and the role of the Family Court Adviser in reporting to the court.

In exceptional cases, practitioners should ask the court to withhold information provided by a child, from one or more parties, if satisfied that the welfare of the child/ren requires it.

Quality Assurance

All written documents for the court should be reviewed in line with the Cafcass [quality assurance process](#).

Where there is a significant disagreement between the reviewer/Service Manager and the Practitioner

As a result of the report analysis and quality assurance process there may be disagreements between the practitioner and the reviewer/Service Manager (SM), in particular about options and recommendations set out in the report. There is nothing unhealthy or wrong about a disagreement between professionals in proceedings, and there is frequently no unequivocally right or wrong answer in such cases. Where there is a conflict, the practitioner's views should not be regarded as inevitably subservient to that of the reviewer/SM. However, it is most likely that the practitioner will be content to include in the court report consideration of an additional option for the child that may have emerged through this process.

a. Dealing with differences of view between a reviewer/manager and author, where the author is a Children's Guardian appointed by the court, and is not willing to include an additional option

The following position has been guided by the decision of Wall LJ in *A County Council v. K & Ors (By the Child's Guardian HT)*[2011] EWHC 1672 (Fam).¹

"...the proper course, in the event of an irreconcilable difference of view is for CAFCASS to apply to intervene, and for there to be placed transparently before the court the views of the guardian and the views of the manager, each explaining why the other is not to be preferred. The court will then decide."

In cases² where a Children's Guardian has been appointed by the Court and there are differences between a Children's Guardian and reviewer/SM which cannot be resolved on a consensual basis, Cafcass should apply to the court to be joined as an intervener, thus enabling it to put forward its perspectives about what approach would best serve the interests of the child. This will then enable the court, if the request to intervene is granted, to be aware of all of the options and recommendations for the child, and to make the appropriate determination of the case. If such issues arise, the relevant manager must seek advice from Cafcass Legal. The application would be on notice to all parties, including the child's solicitor.

¹ See Cafcass Legal alert

http://cafcassintranet/Intranet/publications/publications_results/summary.aspx?docid=308e3846-3ea0-4dff-9662-7958838bfd6f

² This includes public law care cases, and any other case where the court appoints an Officer of the Service (e.g.16.4 appointments)

b. Dealing with differences of views where the practitioner is not willing to include an additional option in all other case types

In such cases the Service Manager should consider all options for ensuring that this option is made available to the court. This may include de-allocation, but this is very much an option of last resort, to be considered only following discussion through supervision and allowing time for the practitioner to reflect on that discussion. It is advisable to contact Cafcass Legal when considering de-allocation.

Sharing a copy of the Report with Parties

When sharing the report with adult parties, information can be discussed with the party to whom it refers and with the judge concerned. It is also permitted and often necessary to discuss information relevant to the welfare of the child/ren with the other adult parties.

Private Law

The Schedule 2 letter (WTFH Private Law) is to be shared with parties before the first hearing, unless to do so would present a risk to either party or the child/ren and/or the letter contains sensitive personal information about one party, about which the other party is unaware.³ Where sharing would present a risk or would, without the consent of the party who is the subject of the information, disclose such sensitive personal information, it should be sent only to the court, with a request for the court to consider the issue of disclosure of some or all of its content to the parties and seeking directions. In addition to the schedule 2 letter there is a template for a letter to be sent to parties ahead of the first hearing. This contains optional sentences: the relevant one should be used, setting out whether or not the letter has been sent to the parties. Schedule 2 letters, if sent to the parties, should also be provided to represented parties' solicitors, where these can be emailed to them using a 'cjsm' (criminal justice secure email) address.

Section 7 reports are to be shared directly with parties ahead of the hearing, with an accompanying cover letter, unless to do so would, without consent, disclose sensitive personal information about one party about which the other party is unaware, and/or sharing would present a risk to either party or the child/ren. In such situations the non-disclosure to parties must be brought to the attention of the court, with a request that it makes appropriate directions about disclosure. The accompanying letter provides service users with information about what they should do if they are unhappy with the contents of a Cafcass report. It is not expected that children and families will always agree with the views of the practitioner as expressed in court reports. The letter advises them that disagreements about professional opinions must be raised in court, but

³ See Subject Access Request Policy for further information of what is sensitive personal information.

that factual corrections should be requested before hearings. It is therefore vital that reports are shared with parties at a point which allows time for this consideration and any necessary correction to be made.

A copy of the section 7 report should also be emailed to solicitors providing they have a 'cjsm' address. This report should only be shared with solicitors when it has been shared with parties; when the report is only being sent to the court it should not be shared with parties' solicitors.

Public Law

In public law, practitioners should inform the child/ren about the content of documents in the case and the decision made in court, providing the children have 'sufficient understanding'. All Children's Guardian reports must be sent securely to the parties. The children's solicitor is usually responsible for circulating copies of reports to the parent's legal representatives.

Reporting to Court Orally

As well as being required to answer questions regarding a written report at court, practitioners may, need to make their report orally at court. See the Reporting to Court Guidance for the pre-proceedings checklist that should be following for when a report is to be made orally in public law.

At the First Hearing in private law, the findings from the screening checks are provided to Court. Additional advice to the court following the screening may be made orally.

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