Reporting to court policy

Introduction

This policy sets out:

- The standards to be met when attending court and 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
- Expectations for sharing court reports with parties.

1. Standards for reporting

1.1 Reports assist the judiciary by providing clear accounts of work undertaken, and by setting out analyses and recommendations, identifying a clear basis for any recommendations made. Reports should contain relevant, child-focussed information that evidences the child's voice and an evidence-base for the recommendation/s made.

1.2 In private law, it must be clear in each individual report what it is the court has asked Cafcass to do and what it is that Cafcass has done in fulfilment of each specific request. For more information click here to read the Child Arrangements Programme.

1.3 In public law, the case analysis must be produced on the revised PLO Cafcass case analysis, combined placement and care or placement order analysis template.

1.4 Templates have been created for use in private and public law cases, including adoption, and are designed for the most frequent case types, and should be accessed from ChildFirst. These templates are to be adapted for more infrequent case types using the closest possible template as a basis. There is a non-section 7 template that should be used for non-section 7 reports.

1.5 As well as being required to answer questions regarding a written report at court, practitioners may need to make their report orally at court. The below applies to both written and oral reports.

1.6 Written documents for the court should be reviewed in line with the Cafcass quality assurance and impact framework.

Distinguishing fact from opinion

1.7 The information obtained by practitioners during their work includes both factual information and opinion. Practitioners may draw on training, professional experience, research and evidence-based tools to analyse this information. When a report is being filed with the court, tools are not to be attached to reports; instead the analysis should be incorporated into the content. Hearsay evidence is information given to the practitioner (or any other person) that has not been personally seen or heard by the practitioner. Hearsay evidence is permitted in family proceedings. A clear distinction should be made in court reports (as in other records) between verified facts, allegations made by the adults, hearsay evidence and the practitioner's assessment, analysis or opinion. When reporting hearsay, it should be clearly identified as such (as should the source of the evidence), as this will assist the court in determining the weight that should be attached to it.

Clarity of contents

1.8 The contents of reports should be written in plain English and be understandable both to their subjects and to the range of professionals who will read them.[1] 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 in respect of an expert's report, cross-references should be used and key points incorporated into the overall Cafcass analysis.

2. Diversity

2.1 When preparing a report for court it is important to consider the background of the relevant family members, including cultural background, language and any relevant factors such as disability or age. 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.*

2.2 Each report should consider and apply the relevant welfare checklist. Individual elements of the checklist must be covered when it is clear they are significant in the case. Click here to see the Welfare Checklist in full.

3. Significant disagreements between the reviewer/Service Manager and the Practitioner

3.1 There may occasionally be disagreements between the author of the report and the person who carries out the quality assurance and/or Service Manager (SM), in particular about recommendations. Where there is a conflict of opinion, the practitioner may be willing to include the reviewer/SM's opinion in the court report as an alternative view on what is in the best interests of the child for the court to consider. This eventuality will be extremely rare, as most such disagreements are resolved in situational supervision.

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

3.2 If this situation arises, the relevant manager must seek advice from Cafcass Legal.

3.3 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):[2]

"...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."

3.4 When[3] 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 to present alternative recommendations to the court. Where the Guardian's

[1] For more information please see the house style handbook.

[2] https://www.familylawweek.co.uk/site.aspx?i=ed84361

[3] This includes public law care proceedings, and any other instance where the court appoints an Officer of the Service (e.g.16.4 appointments).

recommendation is considered unsafe, Cafcass should also apply to the court to terminate the appointment of the court appointed Guardian. The court would then be made aware of the alternative analysis and recommendations for the child and will make the decision. Any application to the court would be on notice to all parties.

4. Sharing a copy of the report with parties

4.1 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.

4.2 Safeguarding letters are shared with parties by verified email, if possible, three days before the first hearing or by the filing date if this is different, unless to do so would present a risk to either party or the child.[4] Where sharing would present a risk 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 safeguarding letter template, there is a template for a letter to be sent to parties ahead of the first hearing. This template should be amended to set out whether the letter has been sent to the parties.

4.3 Practitioners should only share with the court (in court reports or by way of disclosure), information they assess as relevant to the court proceedings. Information about non-parties should only ever be included in safeguarding letters when directly relevant as the third party will not have the opportunity to respond to any allegation or concern. If the information is relevant it may be included in investigations if a section 7 report is ordered. Where information is shared in a report about a non-party, the report should not be shared with the non-party referred to, as they are not a party to proceedings.

4.4 Section 7 reports are to be shared directly with parties on or before the filing date, with an accompanying cover letter containing information about what they should do if they are unhappy with the contents of a Cafcass report. For a section 7 report to be withheld from parties the court must make an order which will only be made in the most serious circumstances. It is not expected that children and families will always agree with the views of the practitioner as expressed in court reports. The report advises them that disagreements about professional opinions must be raised in court and 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 them to consider the report and, where applicable, to notify the author of any factual errors and for these to be corrected.

4.5 A copy of the section 7 report should also be emailed to the parties' solicitors, if they have them, using secure email.

4.6 Cafcass files reports to court in both public and private law cases. Reports prepared by the children's guardian will be served by the child's solicitor on the parties' solicitors or on the parties themselves if they are acting in person.

[4] See Subject Access Request Policy for further information of what is sensitive personal information.

5. Risk assessments undertaken under s16A

5.1 As outlined in the safeguarding and child protection policy and S16A guidance, a S16A risk assessment report should not be incorporated into a section 7 report due to the different rules on disclosing the reports to parties. The practitioner should state that the risk assessment has been undertaken in accordance with the requirements of section 16A Children Act 1989, clearly setting out what type of harm the child is at risk of suffering. The s16A risk assessment report should not be shared by Cafcass with the parties. The court will make such directions as it considers appropriate about the service of the report on the parties. The provision of the s16A report only to the court enables the practitioner to alert the court to any serious concerns, whilst ensuring the distribution of sensitive material does not place a child or vulnerable adult at risk.

6. Attending court

6.1 All courts have some safety measures in place to reduce the risk of COVID-19 spreading, in line with government and public health guidance on living with COVID-19, and have risk assessments completed by HMCTS that staff can access.

6.2 The Family Procedure Rules require the children's guardian to attend final hearings and the authors of section 7 reports should attend if directed to do so. The court can direct that attendance may be by telephone or video link including the use of the Cloud Video Platform (or any other remote facility).

6.3 Since the start of the pandemic, a significant number of hearings have been held entirely remotely or as 'hybrid' hearings, where the parents or other family members attend in person together with their advocates, while the guardian, social workers and other experts attend remotely. This has helped make effective use of professional time in circumstances where the family justice system is dealing with more open cases than ever before. The decision whether to hold a hearing in person, remotely or as a hybrid hearing is one for the judge in each circumstance. The needs of the children Cafcass is working with may require that a hearing in person takes place. If not ordered to attend in person, and when the needs of the children allow, and as is the case for other experts, colleagues may request attendance of hearings remotely as this makes best use of professional time, especially in the context of persistently high caseloads and the cost of travel.

6.4 Cafcass can assist this decision in private law cases by including in the safeguarding letter any relevant information emerging during safeguarding enquiries about the likely ability of the parties to be able to engage remotely, and the prospect of meaningful dispute resolution. Although this information will typically reach the court after the decision about the type of hearing has already been taken, it may assist the court where there is a second gatekeeping meeting.

6.5 It should be a matter of discussion between the FCA and the court on the most effective way for an FCA to participate with an agreement reached in advance of a hearing. The default remains that Cafcass attendance will be remote on the basis that our evidence is akin to that of other experts which can be heard remotely. However, there will be cases and hearings where it may be necessary for the FCA or children's guardian to be present in court, **for example**:

- At FHDRAs where the safeguarding letter identifies realistic prospect of resolution at a first hearing, which could be facilitated by the Cafcass duty officer attending at

court. This is only realistic at courts where the FHDRA lists are small enough to allow for dispute resolution, and where it has been agreed in advance that the duty officer will attend the list in person.

- Contested interim and final hearings when the other parties are not represented
- Final hearings where the court has determined that the evidence of the guardian should be heard in person, although it may also be possible to agree to attend remotely during the other evidence

6.6 If an FCA is only available to attend court remotely then they, or their manager, must raise this with the court as soon as possible and in advance of the court hearing date.

6.7 If for any reason the FCA is not able to attend despite being directed to attend, then a formal approach needs to be made to the court and the parties informed. The risk of wasted costs and avoidance of these is a primary consideration.

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