

## Reporting to Court Policy

### 1. 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.

### 2. Standards for attending court

- 2.1 When attending court, practitioners should present themselves professionally: arriving punctually; dressed appropriately and with access to all relevant information. When speaking in court, practitioners should face and address the judge at all times. 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.
- 2.2 Practitioners should ensure they address the judiciary correctly in court, information on forms of address can be found on the judiciary website at the following link: <http://www.judiciary.gov.uk/you-and-the-judiciary/going-to-court/what-do-i-call-judge>.

### 3. Standards for reporting

- 3.1 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.
- 3.2 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.
- 3.3 In public law, see the [Revised PLO guidance for Cafcass](#) which sets out the requirements for a Cafcass case analysis, including the application of the welfare checklist. The case analysis must be produced on the revised PLO Cafcass Case Analysis, Combined Placement and Care or Placement Order analysis template.
- 3.4 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 ECMS. 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.
- 3.5 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.
- 3.6 Written documents for the court should be reviewed in line with the Cafcass [quality assurance and impact framework](#).

### Distinguishing fact from opinion

- 3.7 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

- 3.8 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.<sup>1</sup> 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.

## **4. Diversity**

- 4.1 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.*
- 4.2 The emphasis set out in the Cafcass Operating Framework is on the relevance of a diversity factor to the matter before the court, and to the vulnerability of the child. Any analysis and recommendations should consider the impact of these factors on the child now and in the future.
- 4.3 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.

## **5. Significant disagreements between the reviewer/Service Manager and the Practitioner**

- 5.1 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.

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<sup>1</sup> For more information please see the [house style handbook](#).

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

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

5.3 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):<sup>2</sup>

“...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.”

5.4 In cases<sup>3</sup> 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 to present alternative recommendations to the court. Where the Guardian’s 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.

## **6. Sharing a copy of the report with parties**

6.1 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/ren. As outlined in the Operating Framework, sharing case records is an important demonstration of good customer service.

6.2 The safeguarding letter (WTFH private law) is to be 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.<sup>4</sup> 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.

6.3 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.

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<sup>2</sup> [See Cafcass Legal alert](#)

<sup>3</sup> This includes public law care cases, and any other case where the court appoints an Officer of the Service (e.g.16.4 appointments).

<sup>4</sup> See Subject Access Request Policy for further information of what is sensitive personal information.

6.4 Section 7 reports (excluding those in 6.5, below) 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.

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

6.6 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.

**7. Risk assessments undertaken under s16A**

7.1 As outlined in the 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.

Owned by	Anji Owens, Assistant Director
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