

## Practice guidance for local authorities and Cafcass in public law proceedings when the independent advice of the child's guardian and the assessment by the local authority about the safety and best interests of the child are fundamentally different<sup>1</sup>

### What is this guidance for?

1. This guidance sets out the process that should be followed at any stage and before making final recommendations to court, when the views of the children's guardian (and therefore their independent advice to the court) and the local authority (LA) social worker and/or the independent reviewing officer (IRO) are fundamentally different on the final care plan or interim arrangements for a child. It applies to all children in section 31 care and supervision order applications, and in applications for deprivation of liberty orders. It should be followed at any point during proceedings where views fundamentally diverge and be completed **before** final recommendations are submitted to court.
2. Professionals will, from time to time, come to a fundamentally different view about the child's safety and best interests, based on the evidence and information they have about the child and family with whom they are working. This guidance is **not intended to be used to agree a joint position, rather to make sure that recommendations to court include a clear explanation about why the children's guardian, the LA social worker, and/or the IRO have reached fundamentally different positions**. Specifically, the explanation must set out what the points of difference are so that the judge in the case can better understand these. It remains for the court to decide what is safe and in the best interests of the child.
3. Although parents are not involved in the discussions between the children's guardian and the LA social worker and/or the IRO, families should be made aware of any meetings and the minutes be made available to them. Working in an open and transparent way with families is fundamental to social work practice in both LAs and Cafcass.

### Why is this important for children?

4. This guidance is derived from learning from child safeguarding practice reviews, and its purpose is to improve work with children and their families. A review commissioned following the death of a 2-year-old in public law proceedings in 2021, highlighted a very fundamental difference between the LA and the child's guardian in respect of the care plan for him. Here the fundamental difference was whether he should be adopted or return to his family.
5. The review concluded that there should be more discussion in such cases where there is fundamental opposition about the care plan between the LA social worker and the child's guardian. The formal recommendation from the review was that a process be developed to enable fundamental differences in care plans for children to be explained to the court at the start of proceedings so that rationales are understood and the implications for children are made clear in respect of their welfare and safety. This practice guidance sets out that process and is a direct consequence of the learning from the tragic death of this young child involved in family court proceedings.

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<sup>1</sup> Fundamental in this context should be taken to mean in respect of where the child is to live, with whom they are to live, whether this is removal from or return to the care of their parents and the timetable for making these decisions.

## Pre-final hearing meeting

6. It is good and expected practice for the children's guardian and the LA social worker to have a conversation about their assessments and likely recommendations throughout the proceedings and prior to the filing of final analysis/evidence. If the child is supported by an IRO, the children's guardian is required to seek their views. If, during these conversations, it becomes apparent that there are fundamental differences in views about the care plan for the child/ren - note at this stage it is about likely position not definitive recommendations - the children's guardian and the LA social worker should agree that a meeting is required, the timescale for this, how to set down the points of difference in the care plan and who is going to arrange the meeting.
7. The meeting needs to focus on identifying and explaining points of difference to the court rather than collaboration on a position. This is not a decision or direction making meeting nor is it a pre-court hearing for questioning, prejudging or positioning. This conversation must take place early enough to enable the meeting, if needed, to be held before final recommendations are submitted to court.
8. When a children's guardian or LA social worker becomes aware that there is likely to be significant disagreement about the child's care plan, each practitioner should first seek supervision in accordance with their own organisation's policies to reflect on their respective rationales.<sup>2</sup> This guidance does not seek to replace existing arrangements in place for escalation and reflection.
9. A meeting should then be convened. It is important that this meeting agenda is set up to exchange information, to establish the points of difference and the reasons for the points of difference between the children's guardian, the LA social worker and/or the IRO (if appointed) regarding future arrangements for the child/ren. This is not a decision or direction making meeting or a pre-court hearing for questioning, prejudging, or positioning. The independent role of the children's guardian also remains, to make enquiries and scrutinise the LA's care plan to ensure that it protects children, promotes their welfare and is in their best interests.
10. The chairing of the meeting needs to be facilitative so that no party feels criticised, and so that it can help inform the court hearing. The explicit purpose is to enable the lead judge in the case to read in summary form, the key points of difference before them in respect of the care plan. This will enable parties to consider these points in detail as decisions are made, save the court time and will improve timeliness for children.
11. The meeting should be attended by the children's guardian, the LA social worker and their team manager plus the IRO (if appointed). Minutes of the meeting should be taken, and these should be shared and agreed with all present. The LA social worker and children's guardian will include, in their final reports to the court, an agreed note clearly setting out the differing views. It is recommended that the template at Appendix A (see page 4) should be used. The views of the IRO (if appointed) should also be included in the reports.
12. Guidance for structuring the pre-final hearing meeting is attached at Appendix A.

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<sup>2</sup> Cafcass' management, supervision, support and oversight policy is published [here](#). Individual LAs will have their own supervision policies.

## Appendix A:

### Guidance for structuring the pre-final hearing meeting

**Timing of meeting:** The meeting will take place before final evidence is filed, before the Agency Decision Maker (ADM) agrees the care plan or at any point in the case where it becomes apparent that there is likely to be a fundamental difference of opinion between professionals in relation to the plan for the child.

**Chair:** Arrangements are at the discretion of the LA. The role of the chair includes to outline the format of the meeting, keeping time and ensuring that actions and outcomes are clear, understood and recorded.

**Organiser and host:** LA to host and to take a note of the meeting.

**Attendees:** Chair, social worker/s (SW) and relevant team service manager, child's guardian (CG), IRO (if appointed).

Legal representatives will not take part in this meeting and will instead attend the advocates' meeting.

While the child and family will not be present at the meeting, the LA social worker will be required to present the views of the child and family. The LA social worker will outline what and how information has been presented to the child and family about the plan. They should ensure throughout the meeting that it is clear what is and is not known to the child and family.

**Date:** The meeting should take place, where possible before final evidence is filed, and no later than three days before the start of a final hearing.

**Duration:** The aim is for the meeting to last between 30 - 60 minutes; however, this can be varied as and when needed. The length of the meeting will be dependent on the number of children involved, the complexity of their circumstances and the nature of any professional differences identified during the meeting.

**Location/s:** Due to timing the meeting is likely to take remotely.

#### **Meeting aims:**

1. Understand the points of agreement and difference and the evidence base being relied upon
2. Identify any gaps in information
3. Agree a shared explanation for the differing views that will be shared with the court in the LA's final evidence and the children's guardian's final analysis report
4. Agree how the points of difference will be explained to the family and the child/ren.

To reiterate, this is not a decision or direction making meeting nor is it a pre-court hearing for questioning, prejudging or positioning.

**Outputs/outcomes:** There will be a note taken of the meeting that should be agreed with those attending before being shared with relevant parties, including the LA ADM and parents. The LA social worker is responsible for sharing a child-friendly note with the child.

### Suggested template agenda

Below is a **suggested** draft template agenda for the meeting. The use of this agenda is not mandatory and can and should be varied where required to suit local needs or the specific circumstances. This is designed to be a helpful guideline so that professionals can visualise what the meeting should cover.

There are specific circumstances where this template would not be appropriate, for example where there are multiple siblings to ensure sufficient consideration is given to the needs and wishes of each individual child.

No	Description	Lead
1	Introductions and purpose of the meeting	Chair
2	Children's guardian shares their current thinking regarding where there are fundamental points of difference in respect of the care plan for the child	
3	LA social worker shares their current thinking regarding where there are fundamental points of difference in respect of the care plan for the child	
4	IRO (if appointed) shares their current thinking regarding the care plan for the child	
4	Discussion about the evidence base for respective positions	
5	Points of difference set out in an agreed explanation for the court, this will be shared with parents / children and written into the LA and the CG's final evidence.	

### **Suggested template for sharing the agreed rationale with the court**

*The template should be included in both the local authority (LA) and children's guardian's final evidence to court. Guidance notes in italics are to be overwritten before submission.*

#### **Formal explanation setting out the fundamental difference of professional views on the safety and best interests of the child**

Both the LA social worker *[insert name]* and the children's guardian *[insert name]* are committed to providing the court with a care plan that promotes the safety, welfare and best interests of *[insert child's name]*. While professional views fundamentally differ in some aspects of the plan, each perspective is based on thorough assessment and analysis and a deep understanding of *[insert child's name]*'s needs. The court is requested to consider the fundamental differences as the proceedings progress and when a final decision is made for *[insert child's name]*.

#### **Areas of agreement:**

- *This is an opportunity to summarise the salient points on which the LA and children's guardian agree, either via a short paragraph or a bullet point list.*

#### **Areas of fundamental difference:**

- *This is an opportunity to summarise the significant and fundamental differences between the LA and children's guardian, either via a short paragraph or a bullet point list.*

#### **Independent Reviewing Officer's perspective (if appointed):**

- *Provide a short summary of the IRO's perspective on the divergent points.*

#### **Summary of positions:**

*Explain the rationale for the fundamental differences in professional perspectives. The wording for this should be agreed between the LA, children's guardian and IRO (if appointed).*

**NOTE:** If either the LA position or the children's guardian position, change from that which is set out here prior to the final hearing, the court must be made aware and provided with relevant rationales in submissions and final evidence.

Date of note:

Signed by:

**ENDS**