

## General Guidance

### in exercising private law case management powers involving CAFCASS/local authorities

#### **S.7 reports**

##### Direction for a s.7 report

1. Section 7 reports are often of vital assistance in ensuring that a full and proper welfare analysis can be undertaken. However, their preparation involves considerable expense in terms of time and resources.
2. The Court should ask itself whether directing a section 7 report is necessary and proportionate to the determination of the issues in the case. There are many cases where a section 7 is not required and the Court can simply list the matter through to a final hearing expeditiously. Just because the welfare of the child is of paramount consideration, does not mean that a welfare report is necessary. The Court often has the necessary tools contained within s.1 Children Act to determine cases without the need for a separate welfare report.
3. The Court must consider the recommendations of the Safeguarding letter as to whether a section 7 report is necessary on the particular circumstances of the case. The safeguarding letter is a very useful document to assist the Court in considering when a s.7 ought to be directed.
4. Ultimately, the decision to direct a s.7 report is a judicial case management decision. It is for the Court alone to decide whether a report is required.
5. If the Court is directing a s.7 report contrary to the recommendations of CAFCASS/the safeguarding letter/a local authority:
  - a) reasons should be provided by the Court as to why the Court has deviated from those recommendations.
  - b) If the decision is being made in the absence of a family Court advisor and/or local authority, the Court should include a direction as set out at paragraph 23 below

##### Identity of the author of the s.7 report

6. In determining whether the s.7 report is prepared by CAFCASS or a relevant local authority, the Court must consider the joint Local Authority/CAFCASS policy as annexed (“the Guidance”). That document is attached. Significant weight ought to be attached to that agreed position between CAFCASS and local authorities.
7. However, as the policy itself makes clear, the decision as to the identity of the organisation to author the s.7 report is ultimately a judicial case management decision.

### Contents of s.7 report

8. When directing a s.7 report, there is no set template. The Court must consider, on the particular facts of the case, the information it requires to be able to determine the issues in the case in a fair, expedient and proportionate way. The order directing the preparation of the s.7 report should set out clearly what the s.7 report ought to include to assist the Court in its final welfare analysis. Care must be taken to ensure that even if the s.7 direction is agreed between the parties, that the Court also ensures that only those matters relevant to a fair and just determination of the welfare issues, are included.

### Directions given

9. If the Court is making a decision in respect of the preparation of a s.7 report:
  - a) Reasons should be given in respect of any deviation from “the guidance”.
  - b) If the decision is being made in the absence of a Family Court advisor and/or a relevant local authority, the Court should include a direction as set out at paragraph 23 below.

### **Addendum s.7 reports**

#### General

10. The Court should work on the basis that the information it requires to undertake its final welfare analysis is that which was originally directed for the preparation of the s.7 report.
11. Having received the s.7 report, if the Court is considering directing an addendum to that report, either of its own volition or because it is being invited to do so by CAFCASS/a relevant local authority or any party, the Court must satisfy itself that it is both necessary and proportionate to enable an informed and fair determination of the issues in the case. The Court must bear in mind, when applying the principle of proportionality, whether any additional material/information sought, is proportionate to any delay and/or use of CAFCASS resources.
12. Ultimately, the decision to direct a s.7 addendum report is a judicial case management decision.

### Directions given

13. In directing a s.7 addendum report:
  - a) Reasons should be given in respect of any deviation from the views of CAFCASS and/or relevant local authority.
  - b) If the decision is being made in the absence of a Family Court advisor and/or relevant local authority, the Court should include a direction as set out at paragraph 23 below.

### **Correspondence**

14. It is important that the family Court operates a transparent family justice system. It is contrary to principles of transparency that private communication takes place between those making judicial decisions and those involved in the proceedings.
15. To that end, Family Procedure Rule 5.7 (qualified by exceptions contained within Practice Direction 5C), specifies that any correspondence between a party and the Court on a matter of substance and procedure (beyond the purely routine, uncontentious and administrative) must be disclosed to other parties in the proceedings, unless:

*“there is a compelling reason for not doing so, and provided that any reason is clearly stated in the communication”*
16. CAFCASS/local authorities are not usually a party to private law proceedings. If a child were made a party to the proceedings under FPR 16.2, and a Children’s Guardian appointed under 16.4, then correspondence on behalf of the child to the Court would be caught by Rule 5.7.
17. However, it seems contrary to the principles of transparency underpinning Rule 5.7 that the same rule should not apply to CAFCASS, as an organisation that exists to advise the Court, or to local authorities.
18. To that end, any correspondence between CAFCASS/local authorities and the Court, on a matter of substance and procedure (beyond the purely routine, uncontentious and administrative) and which does not fall within the ambit of section 16A Children Act 1989, should be disclosed to the parties in the proceedings, unless there is a compelling reason for not doing so, and provided that any such reason is clearly stated in the communication. For the avoidance of doubt, the correspondence referred to in this paragraph includes any challenge to either the directing of a s.7 report (or addendum) or as to the allocation of the author of any such report
19. CAFCASS/local authorities must work on the basis that any correspondence falling within paragraph 18 above, whether sent by a Family Court Advisor, CAFCASS management or on behalf of local authorities, will be disclosed to the parties in the proceedings unless the court is satisfied that there is a compelling reason not to do so.

### **Generally**

20. It is important that there is a mechanism for the Designated Family Judge to be aware of any issues arising in respect of the administration of local family justice.
21. The Designated Family Judge will regularly liaise with CAFCASS/local authority management, as part of that oversight. Those meetings will provide an opportunity for management to raise any general concerns or issues with local practice. The Designated family Judge can then, if appropriate, provide further support, assistance and guidance to their local family tribunals.
22. However, it is anticipated that it will only be in exceptional circumstances that a specific case will be referred directly to the Designated Family Judge by CAFCASS for their attention (either by an FCA or CAFCASS management) or by a local authority. It will be unusual and exceptional

for the Designated Family Judge to interfere with a properly reasoned legitimate exercise of a magistrates', district judge's or circuit judge's case management powers.

23. In circumstances where paragraphs 5(b), 9(b) and 13(b) above apply, the Court should consider making the following direction:

*CAFCASS/Local Authority have liberty to apply by 4pm [7 days], to vary or discharge paragraph [X] above. Upon any such application the matter will be listed administratively for an inter parties hearing, time estimate 1 hour, with a representative from CAFCASS/Local Authority to attend. Any such application shall be made by way of Urgent Application (non-C2) to the Family inbox, identifying the Judge who made the relevant direction and copying in any parties legal representative or, if not legally represented, the litigant in person. The Court office must then forward the application to the relevant Judge, for the application to be case managed/listed.*

**4<sup>th</sup> December 2024**

**HHJ Murray**

Designated Family Judge for Cleveland and South Durham

**HHJ Scully**

Acting Designated Judge for Northumbria and North Durham

## **Policy on whether Cafcass or a local authority should prepare a section 7 report**

1. The primary aim of this policy is to promote continuity for children and families, preventing duplication and reducing the need for them to repeat their stories.
2. Under section 7 of the Children Act 1989, in private law proceedings courts can direct either Cafcass or a local authority to report on the welfare of a child. This is a decision of the court, and while representations can be made to the court about which agency is best placed to advise on the child's circumstances, views and wishes, the direction can only be amended by the court. Until the court has confirmed that an amendment has been made, the original order stands.
3. The filing date for a report is set by the court, ideally following consultation with the relevant agency (either Cafcass or the local authority). It is important to provide the court with a realistic timetable of when a case can be allocated and a report can be filed, and then to ensure that the timescale is met.
4. The court should be advised to order the local authority to complete the section 7 report if:
  - a) a child is the subject of an open and active statutory social work case with a local authority or
  - b) in the last 12 weeks, before the section 7 is ordered, there has been a statutory social work assessment of a child's welfare in accordance with the Children Act 1989 (sections 17 or 47) or
  - c) in the last 12 weeks, before the section 7 is ordered, the child has been the subject of a child in need or child protection plan.
5. If none of the above apply, then the court should be advised to order Cafcass to complete the section 7 report. It is important for the court to note that once the local authority completes and files the section 7 report and is awaiting a court date, it will not hold the case open and active.
6. Whether Cafcass or a local authority are directed to prepare the report, each agency is able, pursuant to Rule 12.75 of the Family Procedures Rules 2010, to provide the other agency with all the relevant information they hold to ensure that the court has a complete picture.
7. Where Cafcass is recommending that a local authority prepares a section 7 report, Cafcass should first discuss this with the allocated local authority social worker and/or the first line manager.

<b>Owner</b>	Cafcass and ADCS
<b>Approved for Cafcass by</b>	Jacky Tiotto, Chief Executive Cafcass
<b>Approved for ADCS by</b>	Steve Crocker, President ADCS

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