

COURT: BEST PRACTICE GUIDANCE

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Disclaimer

This Best Practice Guidance is a 'quick reference' document to support skilled practice both within the HSE and between it and partner agencies. It is not a complete or authoritative statement of the law and is not a legal interpretation. Professionals will need to be familiar with *Children First: National Guidance for the Protection and Welfare of Children* (OMCYA, 2011), together with other relevant law, policy, procedures and guidelines that govern their practice.

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Introduction

As professionals working to support children and families, we are all aware that the courtroom environment is far from the optimum setting for resolving a family dispute. It is important that we make every effort to assist families to address problems outside the legal system and as we develop the Child and Family Agency, we shall continue to work with others to establish mediation processes and support the Government's ambition to establish Family Courts.

In the meantime, it is important that to ensure that we, as staff who work in Children and Family Services, contribute to the efficiency and effectiveness of legal proceedings. Our purpose in Court attendance is to provide the Courts with family background information, which is clearly presented and professionally analysed so that the best decision can be made in the interests of children and families.

Outlined in this document are the key components for successful engagement with family legal proceedings. The document is intended as a reference for those working in Children and Family Services.

This guidance document forms part of an overall project to provide you with the tools necessary to perform your duties in legal proceedings. Each family experience is different and courtroom attendance can be challenging and at times intimidating for staff members. By developing staff training, standardising templates for Court reports and providing the guidance in this document, we seek to reinforce your professional training.

This document and other initiatives have resulted from discussions I have had with front-line staff. I would like to thank you for your continued dedication and professionalism, and assure you that I shall continue to engage with and support you in the delivery of good quality services to children and families.

Finally, as Chair of the **Court Working Group**, I would like to thank the following members for their expertise and contribution to this group and to this Best Practice Guidance document:

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Who is the Guidance for?

The guidelines set out in this *Court: Best Practice Guidance* (hereafter called the 'guidelines') are not prescriptive rules; rather, they should be considered as important guidelines that may require to be altered to individual circumstances and particular cases. It is hoped that the guidelines will evolve and develop over time. Interim reviews of the guidelines will take place to inform best practice and to utilise the benefit of experience and hindsight.

The guidelines are primarily, but not exclusively, of relevance to all social workers who are working on a regular basis in the Courts. However, the contents of this document are designed to assist all front-line staff involved with families engaged in legal proceedings.

The guidelines are arranged in three Parts:

- Part 1: Before a Court application
- Part 2: Applications to Court
- Part 3: Frequent issues arising

Within each Part, the text is arranged under Sections, followed by numbered Paragraphs for ease of reference.

PART 1: Before a Court application

1. Voice of the child

- 1.1 Hearing the voice of a child or young person means hearing something beyond the child's wishes and it also means hearing their concerns and fears. There may be a conflict between their views and their interests. It is important that the following steps are taken by the social worker involved:
- (i) Where appropriate, an early indication of the wishes and feelings of each child, **having regard to their age and understanding**, should be obtained by the social worker and the Guardian ad Litem (if involved). The Court will wish to know whether the child is aware of the application/hearing, his or her views, and what attempts the social worker has made to discuss the matter with them.
 - (ii) Children should be given information in a manner and language that they understand so that they know the decisions that are to be made. They should also be given the right to participate when decisions are made that involve them and they should be involved in the formation of their care plan.
 - (iii) Children should be given an opportunity to respond to a decision.
 - (iv) Children should be given assistance to express their views.
 - (v) Children should be given information on the outcome of any application or hearing. Careful consideration should be given as to how the decision of the Court is communicated to them. In some cases, particularly where the Court's decision is contrary to the reported wishes of the child, it may be appropriate for the Guardian ad Litem to meet with the child to explain what has happened. Informing children of the outcome of hearings in relevant cases must not be overlooked. It should be agreed, once the judgment is given, when and by whom the child is to be told of the decision.
 - (vi) It should also be noted that there may be circumstances where it is not in the interest of the child to have the full nature of the issues revealed, for example, their age or emotional capacity. It is the responsibility of the professionals to consider this and explain it to the Court. The Court may take this into account in making directions.

2. Consent

- 2.1 Social workers should keep in mind the issue of consent since it can arise in many contexts. For example, you may need the consent of a parent(s) or guardian(s) to take certain actions in relation to a child (*see Section 26, 'Who can give consent to medical treatment for children in care?'*) or you might be looking for the consent of a parent(s) or guardian(s) in relation to applications being made in Court.
- 2.2 A social worker must make sure that any consent they receive is valid. For example, if a social worker considers that voluntary care is an appropriate option, he or she must ensure that the consent for reception into voluntary care obtained from a parent(s) or guardian(s) is valid. This is equally the case where an application is made on consent for a Court Order.
- 2.3 For consent to be valid, it must be informed consent. In general, this means that the person giving consent must understand what they are being asked to consent to, be provided with information as to what their options are, the risks and benefits of each option, the likely outcome and the consequences of the decision they make. Consent must be given freely. The person should be told that they can obtain legal assistance if they wish.
- 2.4 A person must have the capacity to consent in order for the consent to be valid. For example, a person who is suffering from a mental illness or who is under the influence of drugs may not have the capacity to consent.

- 2.5 Social workers should bear in mind that consent does not last indefinitely. For example, if a parent consents to voluntary care for their child, a definite start and end date should apply to this consent. It is the role of the social worker to monitor this and make sure that steps are taken before the end date has been reached to ensure that the child is not in care without valid consent.
- 2.6 The issue of consent can be complex. You should consult your HSE solicitor if you have any doubts about whether consent is valid.

KEY MESSAGE

If a child's parent or guardian is consenting to voluntary care for the child, or to any Order(s) being made in relation to the child, you must provide the parent/guardian with all relevant information about the options open to him or her (which must include start and end dates for the voluntary care) and you should consider whether that person has the capacity to consent.

3. Fair procedures

- 3.1 The legal doctrine of natural justice and fair procedures aims to guarantee protection, transparency and efficiency for people whose rights and interests are affected by the outcome of a process or decisions.
- 3.2 The rules of fair procedures should be applied when carrying out any process that may have an impact on the rights or interests of a person affected by the decision to be reached. Such processes include tribunals, disciplinary hearings, investigations, writing reports and making determinations, decisions or reaching conclusions.

The requirement to apply fair procedures gives rise to various obligations on the part of decisions-makers, including:

- a duty to ensure that no perception of bias arises;
- a duty to give people an opportunity to answer any case or allegations against them;
- a duty to give reasons;
- a duty to act in a fair and reasonable manner;
- a duty to give notice to an individual of any case against them;
- a duty to take relevant facts into account and to ignore irrelevant facts when making a decision;
- a duty to avoid delay;
- a duty to permit representation, including legal representation, depending on the seriousness of the allegations involved.

- 3.3 There is no rigid or strict way to apply fair procedures and they may vary from case to case. A particular case may call for a stringent application of the doctrine if it is likely that the outcome of the process will have a serious impact on those affected, for example, where the good name of an individual or an individual's right to earn a livelihood is threatened.

EXAMPLE

If an allegation has been made against someone, the HSE has a duty to inform the person of the allegation and to allow them an opportunity to answer the allegation. Any investigation/assessment that takes place must be carried out with regard to fair procedures and should be done expeditiously and fairly.

- 3.4 It is vital that fair procedures are adhered to. In a recent case, the High Court granted significant damages to an individual as a result of a failure to provide him with fair procedures during a social work investigation. Social workers should be aware of the cases *MQ v Robert Gleeson & Ors* (1997) (the 'Barr Judgment') and *P v A Secondary School* (2010 and 2012).

4. Parents

- 4.1 It is very important that parents are involved in decisions about their children, with the support of the social worker. Intervention in a family must be proportionate and the aim should be to re-unite the family when the circumstances are appropriate and it is possible to achieve.
- 4.2 Parents should be provided with details of the Legal Aid Board so that they may seek representation in the proceedings.
- 4.3 The HSE should apply fair procedures (*see Section 3*) to all parents and they should be provided with copies of all documents that the HSE is going to rely upon in the proceedings.

If a parent is making an application for representation, even at a late stage, their involvement should be facilitated by the HSE, unless to do so would not be in the best interests of the child. Your HSE solicitor will guide you in this regard.

5. Legal aid

- 5.1 All parents are entitled to and should have legal representation before all Courts.
- 5.2 The Legal Aid Board is operated by the State to provide legal representation to parties of limited means. Many of the parents that appear before the District Court are entitled to the legal aid scheme.
- 5.3 When a decision is made by the HSE that an application will be made to the District Court for an Order under the Child Care Act (unless this Order is to be made without notice to the parents as a result of legal advice received), the parents should be told of their right to the services of a solicitor and/or counsel and given contact details for the nearest Legal Aid Law Centre. Your HSE solicitor will give you a list of law centres in your area.
- 5.4 When the case appears before the Court, a Judge may, if the parents are not legally represented, adjourn the case until such time as solicitors come on record or the Judge may direct that a private solicitor act for the parents pending the appointment of a Legal Aid solicitor.
- 5.5 Any adjournments sought or consented to by the HSE must be in keeping with social work best practice, in the best interests of the child and in line with the child protection plan.

6. Vetting

- 6.1 The Garda Central Vetting Unit (GCVU) provides vetting services on behalf of organisations employing personnel to work in a full-time, part-time and voluntary or student capacity in a registered organisation, in which they have unsupervised access to children and/or vulnerable adults. Garda vetting is only conducted on behalf of registered organisations and is not conducted for individuals on a personal basis. The GCVU will, on receipt of a vetting request from a registered organisation, carry out an internal check on the PULSE system for a conviction or pending prosecution.
- 6.2 The National Vetting Bureau (Children and Vulnerable Persons) Act 2012 is expected to commence in 2013. This Act changes the name of the Garda Central Vetting Unit to the National Vetting Bureau and sets out detailed requirements in relation to the vetting process. This is a complex area of law and if you have any queries in relation to the obligations of the HSE in relation to vetting, it is recommended that you contact your HSE solicitor.

7. Engaging a HSE solicitor

- 7.1 HSE solicitors may only be engaged by a HSE Legal Service User (LSU). If you are a LSU, you should refer to the *LSU Handbook*, which sets out how to engage a solicitor. If you are not a LSU and you need legal advice, you should identify who is the LSU in your area and advise them that you need to contact a HSE solicitor. Note that the LSU will receive an automated e-mail when a file is opened in their name.
- 7.2 In certain situations, involvement of a HSE solicitor may not be necessary; for example, when a Section 20 Report is requested, a social worker can attend at Court to hand in the report. There is usually no need for a solicitor to attend for this.
- 7.3 When you are making contact with the HSE solicitor, you should bear in mind the following points so that you can obtain the best legal advice and representation possible:
- (i) Be clear as to why you need legal advice.
 - (ii) Set out in writing to the HSE solicitor what advice you are requesting and/or what outcome you want from the case.
 - (iii) Whatever Order you seek or application you wish to have made to the Court must be within the law. If you are not sure what the legal position is in relation to something you wish to apply for, you should ask your solicitor.
 - (iv) If you provide information/documentation without specifying the advice you need, it may result in legal work being carried out that you did not want or need, which could lead to unnecessary costs.
 - (v) Make sure that your solicitor has all the relevant information/documentation in relation to a case. If the solicitor does not have all the information/documentation that they should consider, the legal advice provided may not be correct. If you are not sure what information/documentation your solicitor needs, ask him or her. Your solicitor needs all of the facts, even if you do not think they will assist your case.
 - (vi) Your solicitor should advise you about the law as it applies to your circumstances, the legal options open to you, the likely outcome of each possibility, how that can be accomplished, and the potential cost of attempting to do it – all before asking for your further instructions as to the next steps. Your solicitor should give you advice on the options available to you, not simply advance your case forward.
 - (vii) Once you receive advice setting out your options, you can then decide what next steps to take. Sometimes, it will be clear what the appropriate/necessary next step is. Other times, you may need to ask your solicitor more questions and consider the options further.
 - (viii) You should then instruct your solicitor about the next steps you wish to have taken. For example, you may decide, on the basis of the advice, not to proceed with the matter or you may instruct the solicitor to make a Court application.

8. Negotiations

- 8.1 Prior to a Court hearing, it is good practice in all cases to set aside a period for negotiations, at which all parties and their representatives, together with a Guardian ad Litem, may attend. Early negotiations can often resolve cases, leading to an agreed settlement and saving of costs and Court time. A written agreement should be kept by all parties of what has transpired at the negotiations meeting.
- 8.2 Separately, there may often be discussions between the social workers and the family. This could be in the format of a case conference or simply a negotiation meeting chaired by the Principal Social Worker or, in difficult circumstances, by the Area Manager. Discussions about the case itself should take place in the presence of legal representatives.

PART 2: Applications to Court

9. Social workers and the Courts

- 9.1 In Court, social workers have a dual role – as witnesses of fact and providers of informed opinion.
- 9.2 The Courts can expect HSE social workers to have expertise in the following areas:
- (i) knowledge of child development;
 - (ii) theories and concepts of child abuse and neglect;
 - (iii) theories and concepts of family dynamics;
 - (iv) theories and concepts of attachment and loss;
 - (v) the diversity of family systems and the impact of social, cultural and religious differences on family relationships;
 - (vi) theories of motivation to change;
 - (vii) methods and techniques for observation and interviewing in different settings;
 - (viii) methods and techniques for conciliation and dispute resolution;
 - (ix) relevant legislation, guidance and practice standards.
- 9.3 Through their academic knowledge, practical experience and personal skills, social workers can display their expertise in the above areas to the Court.

10. Court Orders

- 10.1 All child care cases are different and so there is no specific course of Orders that are sought in any given case. For example, in one case, an Emergency Care Order might be obtained, which may lead to an Interim Care Order, followed by a series of extensions to the Interim Care Order until a Care Order is granted. In another case, a Supervision Order might be granted following an Interim Care Order and no further Order might be necessary.
- 10.2 **Power of An Garda Síochána to take a child into safety – Section 12 of the Child Care Act 1991**
- (i) A member of An Garda Síochána may remove a child and deliver them into the custody of the HSE where there are reasonable grounds for believing that:
 - (a) there is an immediate and serious risk to the health or welfare of the child;
and
 - (b) it would not be sufficient for the protection of the child from such immediate and serious risk to await the making of an application for an Emergency Care Order.
 - (ii) Where a child (or children) is delivered into the custody of the HSE under Section 12, the HSE must, unless it returns the child to the parent having custody of him or her, or to person acting *in loco parentis*, then apply for an Emergency Care Order at the next sitting of the District Court. The date of the next sitting may vary in different parts of the country and should be clarified with your HSE solicitor. If the next sitting is not within 72 hours of the date on which the child was delivered into the custody of the HSE, a specially arranged sitting of the District Court must be held. The Gardaí who removed the child from the care of his or her parents should always be informed of the necessity to attend Court in order to give direct evidence of the immediate and serious risk to the child.

10.3 Emergency Care Order – Section 13 of the Child Care Act 1991

- (i) A social worker must be satisfied and be able to give evidence to the Court that there is reasonable cause to believe that:
 - (a) there is an immediate and serious risk to the health and welfare of a child which necessitates his or her being placed in the care of the HSE; or
 - (b) there is likely to be such a risk if the child is removed from the place where he or she is for the time being.
- (ii) An Emergency Care Order places the child into the care of the HSE for a period of 8 days (or less if specified in the Order).

10.4 Interim Care Order – Section 17 of the Child Care Act 1991

- (i) A social worker must be satisfied and be able to give evidence to the Court that there is reasonable cause to believe that:
 - (a) the child has been or is being assaulted, ill-treated, neglected or sexually abused;
 - (b) the child's health, development or welfare has been or is being avoidably impaired or neglected; or
 - (c) the child's health, development or welfare is likely to be avoidably impaired or neglected;and that it is necessary for the protection of the child's health and welfare that he or she be placed in the care of the HSE.
- (ii) An Interim Care Order places a child into the care of the HSE for a period of no longer than 29 days, if the HSE and the parents (or guardians) do not consent to a longer period. If there is consent, the length of the Interim Care Order can exceed 29 days. An Interim Care Order can be extended if the Court is satisfied that the grounds for making the Order continue to exist; this extended Interim Care Order may be for a period of 29 days (or longer if the HSE and parents consent).

10.5 Care Order – Section 18 of the Child Care Act 1991

- (i) The Court must be satisfied that:
 - (a) the child has been or is being assaulted, ill-treated, neglected or sexually abused;
 - (b) the child's health, development or welfare has been or is being avoidably impaired or neglected; or
 - (c) the child's health, development or welfare is likely to be avoidably impaired or neglected;and that the child requires care and protection, which he or she is unlikely to receive unless the Court makes the Care Order.

10.6 Supervision Order – Section 19 of the Child Care Act 1991

- (i) A social worker must be satisfied and be able to give evidence to a District Court Judge that:
 - (a) the child has been or is being assaulted, ill-treated, neglected or sexually abused;
 - (b) the child's health, development or welfare has been or is being avoidably impaired or neglected; or
 - (c) the child's health, development or welfare is likely to be avoidably impaired or neglected;and it is desirable that the child/children be visited periodically by or on behalf of the HSE.
- (ii) A Supervision Order is sometimes the first step in proceedings. It is a step that the HSE can take where it believes that steps are required, but that it is not necessary at this stage to apply for an Interim Care Order. A Supervision Order represents a less invasive approach. It may also be made at the end of proceedings, when a child is returned to his or her family.

10.7 Grounds to apply for an Order

- (i) In assessing whether there are sufficient grounds to apply for an Order, you should have regard to Sections 3, 16 and 24 of the Child Care Act 1991.
- (ii) Section 3 of the Act states that it is a function of the HSE to promote the welfare of children in its area who are not receiving adequate care and protection. It provides that the HSE shall, having regard to the rights and duties of parents, regard the welfare of the child as the first and paramount consideration and, in so far as is practicable, give due considerations to the wishes of the child, having regard to his or her age and understanding. Section 3 also states that the HSE must have regard to the principle that it is generally in the best interests of a child to be brought up in his or her own family.
- (iii) Section 16 of the Act provides that it is the duty of the HSE to apply to the District Court for an appropriate Order where it appears that a child requires care or protection, which he or she is unlikely to receive unless an Order is granted.
- (iv) Section 24 reiterates the provisions set out in Section 3: it states that in any Court proceedings, the HSE must, having regard to the rights and duties of parents, regard the welfare of the child as the first and paramount consideration, and must, in so far as is practicable, give due consideration to the wishes of the child, having regard to his or her age and understanding.
- (v) The child's welfare is wider than simply the child's physical well-being. It includes the child's physical, emotional, social, moral and religious welfare.

10.8 Court Orders in practice

Example 1



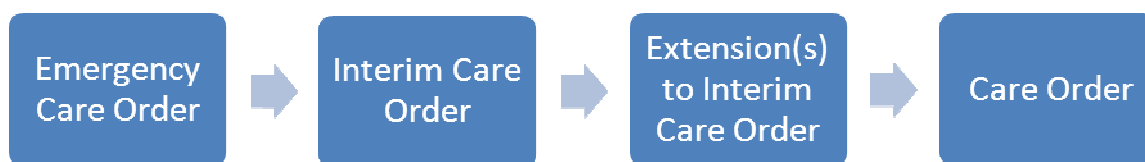
In Example 1, a child is removed from his or her parents' care by An Garda Síochána and an Emergency Care Order is granted. Following investigations, the Social Work Department then considers the child may return home, subject to a Supervision Order. In this example, no further Order is required after the Supervision Order.

Example 2



In Example 2, a child is removed from his or her parents' care by An Garda Síochána and an Emergency Care Order is granted. This example is similar to Example 1, but rather than the Supervision Order being the last step, the Social Work Department considers that an Interim Care Order is required. Following this, it is considered appropriate to return the child to his or her parents subject to a Supervision Order.

Example 3



In Example 3, the Interim Care Order is followed by a series of extensions to the Interim Care Order until a Care Order is obtained.

PRACTICAL GUIDANCE

on how to decide if you have grounds to apply for one of the above Orders

1. You should assess any situation in accordance with your own professional guidelines and expertise. For example, you should have regard to the *Children First* national guidance.
2. Ideally, you should make your decision in conjunction with all other relevant professionals – for example, a Public Health Nurse, a Family Support Worker, Gardaí, a doctor, etc. Any decision taken should not be made in isolation. You should consult your colleagues and/or your Team Leader. If necessary, consult your Principal Social Worker.
3. Case law has made it clear that an Order should not be granted unless all other avenues are exhausted. It is important for you to establish cause or connection between the behaviour of the care providers and the neglect suffered by a child. You must demonstrate in the Social Work Court Report evidence of supports put in place for the family and how these have not succeeded.
4. Bearing in mind all of the above factors, the HSE has an overriding duty under the Child Care Act 1991 to bring an application to Court if it is believed that the child requires care or protection which he or she is unlikely to receive. Essentially, this is a social work decision. When the application comes before the District Court, it is then a matter for the Judge to decide as to whether or not the threshold conditions as detailed above are met. The decision is made by the Court. If you do not agree with an Order made by the District Court Judge, you should discuss this with your Team Leader and/or HSE solicitor, and any such appeal must be discussed in advance with Senior Management in the area.
5. There should be agreement as soon as possible in the case planning in order to apply for a date for a Care Order hearing. Where possible, the continuation of Interim Care Orders over a long period should be avoided. A hearing date for a Care Order should not be sought until the HSE has completed all assessments and has reached a conclusion that the grounds under Section 18 of the Child Care Act apply.

11. Social Work Court Report – Template

- 11.1 A Court should always be furnished with a Social Work Court Report since this will form the basis of the HSE evidence in any application.
- 11.2 The template for the Social Work Court Report is reproduced in Appendix 1, with explanatory notes on how to complete it given in Appendix 2.

12. Care Plan (as per national policy)

- 12.1 A care plan to be presented to the Court by the social worker should be carefully considered and the following guidelines for content should be followed:
- (i) the child's identified needs;
 - (ii) how those needs might be met;
 - (iii) the aim of the care plan and timescale involved;
 - (iv) the proposed placement;
 - (v) other services, including family support, to be provided to the child and family;
 - (vi) arrangements for contact and re-unification;
 - (vii) support in any placement;
 - (viii) likely duration of placement in the accommodation;
 - (ix) contingency plan if placement breaks down;
 - (x) arrangements for ending placement (if made under voluntary arrangements);
 - (xi) who is to be responsible for implementing the plan (specific tasks and overall plan);
 - (xii) the extent to which the wishes of the child, his or her parents and anyone else with sufficient interest in the child has been obtained and acted upon or discounted, with reasons given;
 - (xiii) arrangements for input by parents, the child and others into the ongoing decision-making process (e.g. review case conference);
 - (xiv) arrangements for healthcare and education;
 - (xv) date of review of care plan.

13. Attending Court

- 13.1 **Preparation before attending Court to give evidence**
- (i) Preparation for giving evidence in Court begins long before a case comes before the Courts. It begins from the moment a social worker starts to work with a family. Therefore, it is essential to maintain best practice in your day-to-day work.
 - (ii) Keeping accurate notes on each individual case will assist you greatly when it comes to giving evidence in Court. Having an accurate record of the case will improve your confidence and ensure that your testimony can withstand scrutiny.
 - (iii) It is essential that you review your case file and notes prior to attending Court. The more familiar you are with the facts of the case, the more confident you will be. You will be permitted to refer to both your notes and any report you have prepared in relation to the case while giving evidence in Court. You might find it helpful to tab relevant parts of your file or notes so that you can find documents easily when you are giving evidence.
- 13.2 **Practical advice on giving evidence in Court**
- (i) Evidence is given under oath or affirmation. Once you have taken the oath, you should identify yourself to the Court, stating your name, qualifications and the reason for your presence.

- (ii) Try to address your answers directly to the Judge, even though someone else is questioning you, since it is the Judge who will be making the decision and needs all the information. Address the Judge as 'Judge'.
- (iii) If you do not hear or understand the question being asked, ask for it to be repeated. If someone objects to the question being asked, do not answer until you are instructed to do so by the Judge.
- (iv) Your demeanour and appearance should be professional.
- (v) It is essential to treat all parties with respect. This is important when giving evidence and in particular when being cross-examined. It is understandable that you may feel under pressure, but you should try not to allow yourself to become angry or upset when being questioned by the solicitors.
- (vi) It is important that you stick to the facts of the case. Your opinion should be supported by facts. If you do not know the answer or cannot remember certain information about the case, you should state this because you cannot knowingly give inaccurate information to the Court when under oath. You may ask to refer to your report or file to check.
- (vii) Try to avoid using jargon and acronyms since it is important that the Court understands your testimony. If it is necessary to use such terms, explain their meaning to the Court.
- (viii) Once you have finished giving evidence, wait until the Judge indicates that you can stand down.

13.3 **Format of hearing**

- (i) In child care proceedings, the HSE will generally be 'the applicant' since it is making the application. The solicitor for the HSE will open the case by giving a brief summary of the nature of the application. Witnesses for the HSE will generally give their evidence first.
- (ii) Once the witness has been questioned by the solicitor or barrister for the HSE, they may then be cross-examined by the solicitor for the other parties. Following this, the solicitor or barrister for the HSE may wish to re-examine the witness. The Judge may also ask questions at any time during the witness's testimony.
- (iii) The same procedure is then followed for the other parties.
- (iv) Once all witnesses have been heard, the solicitors for all parties may make submissions to the Court.
- (v) The decision is usually made by the Court after evidence is given.
- (vi) The format of a hearing will differ depending on the type of application being made. For example, an application for a Care Order will generally be longer than that for a Supervision Order. Also, the length and format of a case will depend on whether the parent (or parents) is consenting to the application or if it is contested.

13.4 **Layout of courtroom**

- (i) The Judge sits at the top of the courtroom facing the parties. In front of the Judge will be the Registrar or Court Clerk. To the right of the Judge's box may be a jury box or, alternatively, additional benches for members of the public.
- (ii) Beside the Registrar is the witness box. This is where you will be seated when giving evidence. While you are waiting to give evidence, you may take a seat at the back of the courtroom.

13.5 **Barristers/Counsel**

- (i) When cases are heard in the High Court, it is usual for solicitors on both sides to engage the services of a barrister (also known as counsel). The barrister's role is to present the case to the Court and to examine witnesses on the evidence they give in Court. When a case is taking place in a lower court, it is more likely that there will not be barristers involved. Barristers will only be involved in District Court cases if there are complex legal issues involved or if there is a particular need for them. Each side will have their own witnesses and, if necessary, expert witnesses.

- (ii) The use of a barrister for the HSE can only be approved by the HSE Office of Legal Services or by a member of the HSE Senior Management Team. Your HSE solicitor should contact the Office of Legal Services and set out the reasons that counsel is needed in a case and seek a nomination.

13.6 **On the day of the hearing**

- (i) You should meet with the HSE solicitor early to discuss the approach for the hearing and to ensure that any plans you may have for the child are capable of being legally implemented.
- (ii) The day before the hearing, it is advisable to check in which Court the case will be heard and its location. This information can be provided by your solicitor. If they do not have this information yet, you should arrange to meet them at a designated point. If you are not sure where a Court is located, the Courts Service website has maps (www.courts.ie).
- (iii) Ensure your mobile phone is turned off or switched to silent before entering the courtroom.

14. Evidence in Court

14.1 The purpose of evidence is to put information before the Court to support the application or position of a party in proceedings.

14.2 **Expert witnesses**

- (i) In general, a witness can only give evidence on the facts they have observed. An exception to this rule is made in relation to expert witnesses. An expert witness may draw conclusions or express opinions concerning facts found by them or by other witnesses.
- (ii) In order to reduce costs, it may be possible to admit the expert witness's report into evidence without requiring them to attend Court and give oral evidence. It would be necessary to seek agreement from all the parties on this point. Even if you get this agreement, you should be aware that a Court may still wish to hear from the expert. It is more cost-effective to have an expert witness on stand-by rather than having them in attendance for the entirety of the Court hearing.

14.3 **Witnesses as to Fact**

- (i) The evidence of a factual witness is usually given orally in Court.
- (ii) Factual witnesses provide the Court with factual information on what they personally saw or did, and are precluded from expressing an opinion or drawing inferences on the facts provided.

14.4 **Witness summons/subpoena**

- (i) A witness summons is an order of the District or Circuit Court to attend Court and give evidence. A subpoena is an order of the High Court to attend Court and give evidence and/or to produce certain specified documents.
- (ii) Failure to attend Court on foot of a witness summons or subpoena constitutes a breach of a Court order and accordingly, the individual named on the summons or subpoena is in contempt and may be committed to prison for such contempt.
- (iii) **Note: It is not always necessary to subpoena everyone** – it may only be necessary when there is reluctance or individuals are not free to attend.
- (iv) If you receive a witness summons or subpoena, you are required to attend Court. You may wish to discuss this with HSE solicitors to ascertain what will be expected of you; however, it is very unlikely that you will need legal representation for this.

14.5 Hearsay

- (i) Hearsay is a statement made outside of Court that is offered in Court as evidence to prove the truth of a matter. Hearsay evidence is not generally admissible. Sometimes parties challenge the admissibility of the evidence of children, such as disclosures to foster carers or social workers.
- (ii) The admissibility of the evidence of children is managed by Section 23 of the Children Act 1997. This allows a statement made by a child to be admissible as evidence where the Court considers that:
 - (a) the child is unable to give evidence by reason of age; or
 - (b) the giving of oral evidence by the child would not be in the interest of the welfare of the child.

15. Adjournments

- 15.1 Applications to Court or hearing dates may on occasion be adjourned for a variety of reasons.
- 15.2 The Court will carefully review reasons put forward for any application for an adjournment. Adjournments are within the discretion of the Court and cannot simply be agreed in advance by the parties or their representatives. The Court will make the final decision on any adjournment to be made in a case.

If you think that an adjournment might be necessary (for example, if one of the witnesses for the HSE is unavailable on the date of the application or hearing), you should discuss this with your HSE solicitor as early as possible so that he or she can advise you.

- 15.3 Any adjournments sought or consented to by the HSE must be in keeping with social work best practice, in the best interests of the child and in line with the child protection plan.

16. Court Directions

- 16.1 From time to time, the Courts issue Practice Directions which complement the Rules of Court and the relevant legislation and are intended to inform parties what the Court expects of them in terms of the practice and procedure of the Courts.
- 16.2 A draft Practice Direction is currently in place in the Dublin Metropolitan District Court (see *Appendix 3*). If you have queries about what parts of the draft Practice Direction have been or are being implemented, or if you have any queries about the application of a Practice Direction, your HSE solicitor should be able to assist you.

17. Guardian ad Litem

- 17.1 A Guardian ad Litem (GAL) is an independent representative appointed by the Court under Section 26 of the Child Care Act 1991 to represent the views and promote the best interests of the child in any proceedings under Part IV or VI of the Act. The Court may appoint a GAL if it is satisfied that it is necessary in the interests of the child and in the interests of justice. The Child Care Act also stipulates that the HSE shall discharge the costs and expenses of the GAL.
- 17.2 It is very important that the GAL is kept fully informed of all developments throughout a case.
- 17.3 The Child Care Act 1991 does not prescribe any role, function or qualification for the GAL. The role of the GAL was examined by Judge MacMenamin in a 2007 case (*HSE v DK*) in the context of special care and the following is a summary of his findings:

- (i) Unless there are exceptional circumstances, only suitably qualified GALs will be used in High Court proceedings in the Minors' List.
- (ii) The function of the GAL should be twofold: first, to place the views of the child before the Court, and, second, to give the GAL's views as to what is in the best interests of the child.
- (iii) A GAL should bring to the attention of the Health Service Executive (HSE) any risks which he or she believes may adversely affect the best interests of the child, and if not satisfied with the response may bring the matter to the attention of the Court. The GAL should take steps where necessary to cooperate with, and where possible share relevant information with, other care professionals engaged with the minor.
- (iv) A duty of a GAL is to ensure compliance with the constitutional rights of a minor. For this purpose, the GAL should ensure that there is provided to the minor a means of making his or her views known.
- (v) A GAL may fulfil the dual function of reporting to the Court regarding the child's care and also by acting as the child's representative in any Court proceedings, and thereby communicating to the Court the child's views.
- (vi) On an application for detention, and for the appointment of a GAL, the Court should be afforded such basic information as would suffice to satisfy it that the said person was an appropriate candidate to act as a GAL. In particular, the Court should be furnished with the qualifications of the GAL and also details of any vetting of such person by An Garda Síochána.
- (vii) The GAL should meet the minor as often as necessary in order to be satisfied that the minor's wishes and views are adequately represented regarding his or her detention and care.
- (viii) The GAL should meet with the minor's family or carers in the community and be familiar with their views and desires regarding the minor's detention and care.
- (ix) The GAL should make him or herself aware of the minor's history and the minor's interaction with the various social service agencies.
- (x) The GAL should seek to interact in a positive way with the staff of the HSE charged with the minor's care while in detention. The GAL should ensure that their views concerning the minor's welfare are expressed at each case conference meeting held by the HSE to discuss the minor's care and should be familiar with the outcome of decisions reached at such meetings.
- (xi) When proceedings are listed before the Court, the GAL should, where necessary, prepare a report specifically addressing the issues.
- (xii) In addition, where an issue arises from the contents of any other reports prepared for the Court by other parties to the proceedings, the GAL should, where necessary, address those issues in their own report. This can only be done where such reports are available to the GAL in sufficient time.
- (xiii) When the HSE moves to have a minor discharged from special care, the GAL should appraise the Court of the child's view regarding his or her onward placement. In addition, the GAL should inform the Court of their professional opinion on such a move and the proposed onward placement.
- (xiv) Where a divergence of opinion as to the care of the minor exists between the HSE and the GAL, the GAL should first attempt to resolve this issue with the HSE. However, where this is not possible, the GAL should inform the Court as soon as practicable of their concerns.
- (xv) Where a minor has absconded from special care and the GAL is aware of this, the GAL should be satisfied that steps are being taken to address the problem. If the issue persists, then the GAL should take steps to inform the Court of the minor's absence, having first informed the HSE that they are about to do so.
- (xvi) The GAL should express a view to the Court as to how a case is best kept under review after a minor is discharged from special care. When a minor is discharged from such care, the GAL should confirm with the Court whether they are to continue to remain involved in the proceedings.

18. Family Law Proceedings/Section 20 Reports

- 18.1 On occasion, a Social Work Court Report (*see Appendix 1*) may be requested by a Judge in family law proceedings.
- 18.2 Section 20 of the Child Care Act 1991 provides that a Court can ask the HSE to carry out an investigation of the child's circumstances and report back to the Court. The report should set out:
- (i) whether the HSE is making any applications in respect of the child and its reasons for so deciding;
 - (ii) any service or assistance it has provided, or it intends to provide, for the child and his or her family;
 - (iii) any other action that it has taken, or proposes to take, with respect to the child.
- 18.3 As set out above, in certain situations, involvement of a HSE solicitor may not be necessary (*see Paragraph 7.2*). For example, when a Section 20 Report is requested, a social worker can attend Court and hand in the report; there is usually no need for a solicitor to attend for this.

19. Criminal proceedings involving children

- 19.1 When a child is before a Court on criminal charges, his or her parents or guardian are obliged by law to attend at all stages. The HSE is not deemed to be a guardian in these circumstances.
- 19.2 When the young person who comes before the Court is in the care of the HSE, either under a Court Order or by way of voluntary arrangements, the HSE has a duty to attend and there is an obligation on the social worker to attend Court on each occasion.
- 19.3 Section 76B of the Children Act 2001 provides, where it appears to the Judge of the Children's Criminal Court that the HSE may be of assistance to it in dealing with the case of a child who is charged with an offence and is remanded either on bail or in custody, the Court may request that the HSE is represented in the proceedings. The social worker must then attend Court.
- 19.4 Section 77 of the Children Act 2001 also allows the Court to direct that the HSE convene a Family Welfare Conference and pending the outcome of that conference, make an Emergency Care Order or Supervision Order. Once that conference has been held, the HSE shall inform the Court of the outcome of the conference. The Social Work Court Report should include:
- (i) whether any application for any Order is to be made in relation to the child and the reasons for deciding this;
 - (ii) any services provided, or to be provided, to the child;
 - (iii) any other action that the HSE has taken, or intends to take, in relation to the child.
- 19.5 You should also be able to indicate to the Court, after liaising with the Family Welfare Conference Service, how long the Family Welfare Conference will take to convene when the Direction is made.
- 19.6 The role of the social worker is not to play any active part in criminal proceedings. The child will have a criminal law solicitor to represent them.
- 19.7 It is very important to remember that the cases before the Children's Court are between the State (represented by the Director of Public Prosecutions (DPP) or by a named Garda) and the accused child. The HSE is never a party to the proceedings. You may be asked by the Judge to compile a report for the Court to assist it in deciding on an issue. It is not the role of the HSE to recommend to the Court what should happen to the child.

- 19.8 For example, your report should not contain any suggested sentence or place of detention. This is purely a matter for the Court to decide. This is a complex area and so legal advice should be sought in each case at each stage and before a report is compiled.
- 19.9 If you are requested to attend Court in a criminal matter relating to a child, it may not always be necessary for you to have a solicitor with you. If you attend without a solicitor and find that the Judge is asking difficult questions (e.g. about provision of services, special care, etc), you may ask the Judge to allow you to telephone a HSE solicitor for legal advice or request a solicitor to attend.

20. Disclosure in criminal prosecutions

- 20.1 Frequently, the HSE is requested by the Gardaí to disclose any records, files or reports it may hold to the Defence in criminal prosecutions. Disclosure arises from the constitutional right of an accused to receive a fair trial.
- 20.2 The Prosecution has a duty in law to disclose to the accused, where possible, any relevant material in its possession or procurement. Relevant material includes any document that could assist the accused in establishing a defence or in damaging the Prosecution's case.
- 20.3 Relevant material may be in the possession of parties who are not involved in any way in the criminal prosecution (i.e. third parties), such as the HSE. When this situation arises, the DPP/Gardaí will contact the third party to ascertain whether they are in a position to disclose the material sought. If an agreement cannot be reached, the issue will be determined by the Court.
- 20.4 At present, there are no statutory provisions or regulations governing the practice of disclosure, which can be a complex issue. The HSE will often hold highly sensitive, personal, confidential information on its files and it is imperative to seek the consent of the person whose information is sought to be disclosed upon receipt of a request from the Gardaí/DPP. If you receive a request for disclosure, you should contact the HSE Office of Legal Services. You should not hand over any files until you have obtained legal advice. There is a Memorandum of Understanding in place between the DPP and the HSE in relation to such requests and your HSE solicitor will be able to advise you about this.

21. Special Care – Application to the High Court

- 21.1 At present, children are detained in one of three Special Care Units on the application of the HSE by the High Court using its inherent jurisdiction. This application can only be made when a child has been approved for admission to special care by the National Special Care Admissions and Discharge Committee (referred to as 'the Committee' below).
- 21.2 Once a decision has been made by the Committee to approve a child, the Committee notifies the HSE solicitors of the decision and provides to the HSE solicitors the information used by the social work department in making its application to the Committee. The HSE solicitor will then liaise with the social workers in relation to the timing of the application to the High Court. Applications to the High Court are generally made within 24 hours of a child being approved for placement in a Special Care Unit.
- 21.3 In practice, Counsel will apply to the High Court for an order authorising the detention of the child in one of the three units and if granted, the order will be made until the next sitting of the Minors' List. The Minors' List takes place at 10am each Thursday morning.
- 21.4 In all cases involving the civil detention of minors, a Guardian ad Litem (GAL) is appointed by the Court to place the views of the child before the Court and to give the GAL's views on what is in the best interests of the child.

- 21.5 The case will be reviewed by the High Court every four weeks – and often more regularly, if issues arise – until such time as the child’s period of detention in special care has concluded and the child is settled in their onward placement. At each hearing before the High Court, a Social Work Court Report is required, which should be sent to the solicitors representing the HSE on the Monday preceding Thursday’s hearing.
- 21.6 The High Court encourages the full participation of parents in these proceedings and this includes the funding, if necessary, by the HSE of their legal representation.
- 21.7 It is best practice to regularise the status of a minor before admission to special care. Therefore, applications should generally not be made for children who are in voluntary care or not in the care of the HSE. If you are considering making an application to the Committee, you should discuss this with your Social Work Team Leader.

22. After a Court application/hearing

- 22.1 Once a Court hearing/application has concluded, your HSE solicitor will provide you with a copy of the Order made and details as to any Directions that the Court has made.
- 22.2 Once the Order has been made, you may begin taking the necessary steps to implement it. You should liaise with your HSE solicitor if you have questions about this.

PART 3: Frequent issues arising

23. What is the basis of a voluntary care arrangement? When is it terminated?

- 23.1 The power of the HSE to take a child into voluntary care is provided for by Section 4 of the Child Care Act 1991.
- 23.2 Section 4 states: 'Where it appears to the HSE that a child who resides or is found in its area requires care or protection that he or she is unlikely to receive unless he or she is taken into care, it shall be the duty of HSE to take him/her into its care under this section.'
- 23.3 Importantly, Section 4 makes it clear that the HSE is not authorised to take a child into its care against the wishes of a parent having custody of the child or any person acting *in loco parentis* of the child. The HSE cannot maintain the child in voluntary care if the parent or person acting *in loco parentis* wishes to resume care of the child.
- 23.4 Generally speaking, the placement of a child in voluntary care is effected by the signing of a Reception into Care Form and the child's status is then 'in care' with the consent of the parent or person acting *in loco parentis*. It is important to note that this is not an Order. There is no such thing as a 'voluntary care order'. A child is either in voluntary care or not.
- 23.5 Voluntary care ceases when a parent requests the return of a child. This may be done verbally or in writing. As set out in Section 2, social workers should bear in mind that consent does not last indefinitely. For example, if a parent consents to voluntary care for their child, a definite start and end date should apply to this consent. It is the role of the social worker to monitor this and ensure that steps are taken before the end date has been reached to make sure that the child is not in care without valid consent.

24. Who is a child's guardian? How does someone become guardian of a child?

- 24.1 The concept of guardianship relates to a child's overall welfare and upbringing. Guardianship concerns matters such as how a child will be educated, in which faith, if any, the child will be brought up and whether the child should undergo serious medical treatment.
- 24.2 Guardians have duties as well as rights. Guardians must ensure that the child is properly cared for and that their emotional, physical and educational needs are catered for.
- 24.3 Importantly, not every guardian is the day-to-day carer of a child. In many situations, the mother of a child is the day-to-day carer and the father enjoys access at a particular time. If the father is a guardian, he is entitled to be consulted and have input into the important decisions in a child's life, even though he does not have day-to-day custody of the child.
- 24.4 A child's mother is automatically a guardian. If the parents are married, then the father is also automatically a guardian. Section 6 of the Guardianship of Infants Act 1964 confers joint legal rights of guardianship on both the marital father and mother.
- 24.5 The 1964 Act makes it clear that the non-marital father of a child is not automatically a guardian of a child. The non-marital father of a child can become a guardian in a number of ways:
- (i) He can marry the mother after the birth of the child.
 - (ii) He can apply to the District Court to be appointed as a guardian.
 - (iii) With the consent of the mother, a Statutory Declaration can be sworn granting the father guardianship. In this case, there is no need to apply for a Court Order.

24.6 There are also a number of important miscellaneous points to note. A parent who is the guardian of a child may, by Will, appoint any other person to take their place as guardian in the case of the death of that parent. Accordingly, it is possible that a non-relative of a child may be guardian. Where an infant has no guardian, any person may apply to the Court to be appointed as guardian.

25. Travel outside the jurisdiction: Who can consent to the issue of a passport for a child in care?

25.1 To answer this question, it is necessary to differentiate between the three categories of children in care.

25.2 **Children in voluntary care of the HSE:** The HSE must obtain the consent of the parent or guardian in order to obtain a passport. If there is only one guardian, then that person will have to swear an affidavit confirming that they are the sole guardian. Most social workers will have experience of assisting a parent in swearing this affidavit and attending at the Passport Office to fill out the relevant forms.

25.3 If there is no parent or guardian, if consent is not forthcoming or if that person cannot be located, then it will be necessary to make an application to the District Court under Section 47 of the Child Care Act 1991. This application will be for an Order authorising a social worker to complete the necessary forms and authorising the Passport Office to issue a passport for a certain amount of time. Once this Order is granted, the social worker then has the authority to give the necessary consent for a passport to issue. In such cases, it may also be necessary to apply for an Order of the Court to dispense with the requirements for parents to consent and to obtain the Court's authorisation for the child to leave the jurisdiction. It is increasingly common that one of the proofs required by the Court for a child to travel is a copy of the travel insurance documentation in place while the child is abroad.

25.4 **Children who are subject to Emergency or Interim Care Orders:** The position is similar to that set out above for children in voluntary care. It will be necessary to obtain the consent of the parent or guardian to obtain a passport. That person may then give the necessary consent and fill out the necessary forms. In such a scenario, there is no need to seek a specific Court Order, but the Court should be informed when the child is leaving the country. The Court should also be informed as to how long the child will be outside the country.

25.5 If the parent or guardian does not consent, then an Order under Section 47 of the Child Care Act 1991 will need to be sought (as set out in Paragraph 25.3 in relation to children in voluntary care.)

25.6 The Court cannot authorise travel outside the country for longer than the Order will be in place. It can sometimes be difficult to get a Court to authorise travel where the Court is dealing with the child on a series of Interim Care Orders.

25.7 **Children who are subject to Care Orders:** There is no obligation on the HSE to obtain the consent of the parent in advance. However, in accordance with best practice, the view of the parent should be sought prior to the child going abroad. It is always preferable to make such decisions in agreement with the parent. If the parent does not consent, it is not necessary to obtain a Court Order. Section 18 of the Child Care Act 1991 allows the HSE to give the necessary consent.

25.8 As an aside, there should be a distinction made between allowing a child to go abroad for a holiday for a limited period of time and placing a child abroad on a more long-term basis. If it is intended to place a child in care in another country for a longer period of time, then an application must be made to the District Court under Section 47 of the Child Care Act 1991. If this is contemplated, your HSE solicitor will need to bear in mind the specific requirements necessary for placing a child abroad under the Brussels II *bis* Regulation; for example, permission must be obtained from the Central Authority in the country where the child is to be placed. Your HSE solicitor should liaise with the HSE Office of Legal Services to ensure that this is carried out in a centralised and consistent manner.

26. Who can give consent to medical treatment for children in care?

- 26.1 In emergency situations, the doctrine of medical necessity applies. If a child requires immediate life-saving treatment and if there is no one available to consent, then a doctor may administer the necessary treatment as he or she deems appropriate.
- 26.2 It should be noted that children over the age of 16, with capacity, can give consent to surgical, medical or dental treatment. This is provided for by Section 23 of the Non-Fatal Offences Against the Person Act 1997. It may be the case that a child over 16 with full capacity can also consent to psychiatric treatment. This should be dealt with on a case-by-case basis and you should seek legal advice in relation to this issue.
- 26.3 Similar to the previous question (*see Section 25*), to answer this question it is necessary to differentiate between the three categories of children in care.
- 26.4 **Children in the voluntary care of the HSE:** Consent must be obtained from the parent or guardian prior to administering medical treatment.
- 26.5 **Children subject to Interim Care Orders or Emergency Care Orders:** The issue of consent to medical treatment is dealt with in Section 13(7) of the Child Care Act 1991 in the context of the granting of an Emergency Care Order (ECO). Section 17 of the Act also applies this provision to Interim Care Orders (ICO). Sections 13 and 17 provide that where a District Court Judge makes an ECO or ICO, he or she may give such direction as he or she thinks proper with regard to the medical or psychiatric examination, treatment or assessment of a child.
- 26.6 Accordingly, if it is intended to administer medical treatment or carry out a medical assessment of a child, an application should be made to the District Court for a specific Order. This application may be made when the application for an ECO or ICO is being made. Generally speaking, when children are admitted to care, it is the practice of the HSE to medically assess these children. It is possible to do this with the consent of the parent. However, if the parent is not available or refuses to consent, then an Order under Section 13(7) of the Child Care Act 1991 should be sought.
- 26.7 **Children who are subject to Care Orders:** Section 18 of the Child Care Act 1991 gives the HSE the authority to give consent to any necessary medical or psychiatric examination, treatment or assessment with respect to a child. Accordingly, there is no requirement to seek the consent of a parent prior to administering medical treatment to a child. Even if the parent objects to the course of action being taken, a new Court Order is not needed in order to proceed. However, on occasion, in the case of a psychiatric intervention, it may be necessary to seek an Order under Section 25 of the Mental Health Act 2001.
- 26.8 Notwithstanding the above, it is best practice to inform a parent, if possible, prior to any medical treatment being administered to a child. You should also take full details from the relevant medical professional and be satisfied that it is in the best interests of the child to undergo the medical treatment or assessment proposed. It is vital that parents are kept up to date in writing in relation to all developments and that medical reports are copied to them.
- 26.9 Practically speaking and with regard to any Court applications made, it is important that a written report from the relevant medical professional is obtained, detailing the treatment proposed. It may also be necessary for the medical professional to attend Court to give evidence.

27. What witnesses need to be called for an Interim Care Order application?

- 27.1 A Court's inquiry into the legal threshold and the best interests of a child must be in accordance with the rules of evidence. The term 'inquiry' in the context of child care proceedings has no statutory definition. An allocated social worker should not give evidence about something they have not seen, heard or done. A person should not give expert testimony about something they are not specifically trained in.
- 27.2 As in any Court application, careful consideration needs to be given by the HSE solicitor (along with the social workers) to ensure that only the necessary witnesses attend and that there is no overlap or duplication of witnesses. Whether or not a witness is required is something that depends largely on the social worker's assessment and the grounds for the application. A report and all details about the case should be sent to the HSE solicitor as early as possible (even in draft form) so that they can advise on the witnesses who will be required and who ought to be on stand-by.
- 27.3 It may be necessary for the professionals who have contributed to the decision-making process about whether a child ought to be in care to come to Court to give formal evidence as to what they saw, heard or did, and/or what their opinion is. Where the decision is to apply for an Interim Care Order, then those involved in that decision-making process should be told that it is possible that the Court may need to hear their evidence.
- 27.4 One of the difficulties sometimes experienced by social workers and HSE solicitors is that witnesses complain that their time will be wasted at Court, that they are too busy or that they were not given enough notice. Any waste of time is to be avoided, but if the Court application is reliant on witnesses other than the allocated social worker, then those witnesses *must* be available to give evidence in Court and be prepared for cross-examination and questions from the Judge. If they are not in Court, there is a risk of a determination by the Judge that hearsay evidence is inadmissible (*see Paragraph 14.5*) and that the threshold has not been met. On occasion, a witness may attend and not be called to give evidence. While this is frustrating for the witness, it is unfortunately not possible to know in advance if the Court will wish to hear their evidence.
- 27.5 There is no guarantee as to how long the case will take in Court, but the Court may be able to accommodate witnesses at specific dates/times if necessary. It is preferable for a witness to be given some notice of the likelihood that they will be required for Court, rather than to be subpoenaed at the last minute or directed by the Judge to attend.

28. Why is it important to get reports to solicitors well in advance of the case being in Court?

- 28.1 In the context of child care proceedings under the Child Care Act 1991, parents are entitled to know in advance details of the HSE's case.
- 28.2 To comply with the principle of fair procedures, the social worker prepares a Social Work Court Report (*see Section 3*). The District Court requires that the Social Work Court Report is furnished to the parties and lodged in Court three days in advance of the hearing date. This is so that the parents have sufficient time to read the report and have the benefit of discussing it with their legal representatives. Furthermore, the contents of the Social Work Court Report may give rise to legal issues (e.g. it may offend the rule against hearsay) and therefore it should be sent to the HSE solicitor dealing with the case in sufficient time to allow him or her to read it and consider any legal implications.
- 28.3 If the Social Work Court Report is not furnished to the HSE solicitor in time and, as a result, is not lodged in Court in time, it is open to the parent's solicitor to apply for an adjournment of the HSE's application on the basis that to proceed with the hearing (which could result in the respondent's child being removed from their care or maintained in the care of the HSE, without their having had a reasonable opportunity to consider the HSE's case) would be

unfair. The late submission of a Social Work Court Report can, therefore, have serious implications, which could result in the hearing being adjourned and the welfare interests of the child being jeopardised.

29. Why is a pre-hearing consultation needed?

29.1 Pre-hearing (or pre-trial) consultations are not required in every case. However, the cases that do require them tend to be cases where there are a number of witnesses and cases with complex issues requiring the Court's consideration.

29.2 A pre-hearing consultation can take a number of different formats:

- (i) A pre-hearing consultation may be held with all witnesses present so that there can be a full and frank discussion and flow of ideas in relation to the case.
- (ii) On other occasions, it may not be appropriate to have all witnesses present. In such cases, individual pre-hearing consultations may be set up by the solicitor. These types of consultation are more usual where there is a number of different technical witnesses, such as Child Sexual Abuse (CSA) validation units or medical witnesses.
- (iii) Sometimes pre-hearing consultations are done on the morning of the hearing. But in more complex contested cases, it is always advisable to schedule consultations well in advance of the commencement of the hearing. This is preferable since it gives people an opportunity to think about their evidence and to follow-up on any issues that may arise, as well as meaning that they do not have to attend Court until just before the case is due to start.
- (iv) Witnesses such as teachers, Gardaí or voluntary agencies are not obliged to attend pre-hearing consultations, but it is recommended that HSE employees involved should attend. Some such witnesses prefer to give evidence directly to the Court and will not discuss their evidence with any individual party prior to Court. It is always best practice for the solicitor who is conducting the case to also conduct the pre-hearing consultation.

30. What if an Order is made for discovery/disclosure of social work files?

30.1 There is a provision in the District Court Rules for discovery of documents pursuant to Order 46A (SI No. 258 of 1999).

30.2 This means that the solicitor acting on behalf of any party (usually a parent) can apply to the District Court for discovery of the social work files. The files that can be discovered would include:

- (i) all case notes;
- (ii) minutes of meetings;
- (iii) reports to the case conferences;
- (iv) minutes, decisions and recommendations of case conferences;
- (v) care plans;
- (vi) reports from other professionals.

30.3 Documents that are not discoverable include:

- (i) any legal advice given to the HSE;
- (ii) confidential or sensitive information reported to the HSE by a person seeking to remain anonymous. While all reasonable efforts will be made by the HSE on grounds of public policy to preserve the confidentiality of persons reporting child abuse who wish to remain anonymous, such confidentiality can, however, never be guaranteed and case notes may later become discoverable through the Courts.
- (iii) information relating to third parties who are not subject to proceedings under the Child Care Act 1991 (e.g. if the case notes mentioned a neighbour's child).

- 30.4 To avoid the formal, costly and often protracted District Court discovery process, it may be possible in certain cases to provide the respondent parent (through their legal representative) with 'voluntary disclosure' of the social work files, thereby avoiding the cost and delay of a discovery application. In such cases, the social work files can be examined by the HSE solicitor and certain items excluded or redacted in order to protect certain sensitive categories, including:
- (i) legal advice;
 - (ii) confidential disclosures/allegations made by third parties (with the caveat stated in Paragraph 30.3(ii) above);
 - (iii) any information that might identify any third parties who are not subject to proceedings under the Child Care Act 1991.

Appendix 1: Template for Social Work Court Report

Explanatory notes on how to complete this report are given in Appendix 2.

Private and confidential

SOCIAL WORK COURT REPORT of

[Enter name of person preparing report]

Application for

[State what is being applied for (e.g. Care Order pursuant to Section 18 of Child Care Act 1991)]

In the matter of

First name(s)	Family name	Age	
			a child
			a child
			a child
			a child

Applicant

[Give details of Area (e.g. Region (DML) + Area (Dublin South Central)]

Respondents

[Enter names of respondents]

For District Court

[Enter Area and date]

Report date

[Enter date – dd/mm/yyyy]

This report should be read in conjunction with all previous reports submitted to the Courts in this matter.

Please take notice that pursuant to Section 23 of the Children Act 1997, the Health Service Executive intends to rely on all hearsay statements, together with the particulars of same, contained herein, for the purposes of all applications made and the context of the ongoing child care proceedings in this case.

Executive Summary

[Enter Executive Summary of report here under the following three headings]

Recommendations

Summary of context

Summary of analysis

1. Contents page

Section	Sub-section	Content
1.		Contents
2.	2.1	Introduction
	2.2	Author's qualifications and work experience
	2.3	Context of report
	2.4	Purpose of report
	2.5	Sources of information
	2.6	Overview of family
		Summary of current concerns – Reason for Court application or intervention
3.	3.1	Body of report
	3.2	Factual history – Family composition
	3.3	Background
	3.4	Current situation (1-3)
		Outline assessment of child's needs, parent's capacity to meet needs and wider family and community supports (1-6)
4.		Conclusion
5.		Recommendations
6.		Signatures
7.		Appendices

2. Introduction

2.1 Author's qualifications and experience

2.2 Context of report

2.3 Purpose of report

2.4 Sources of information

--

2.5 Overview of family

--

2.6 Summary of current concerns – Reason for Court application or intervention

--

3. Body of report

3.1 Factual history – Family composition

Name	Date of birth	Age	Relationship	Occupation/School	Current address

3.2 Background

[Relevant historical concerns [put chronology in an appendix], Social Work involvement and services offered]

3.3 Current situation

[1. Referral and assessment – may also include update from previous report]

[2. Current strengths and weaknesses]

[3. Risks, protective factors, needs of the child and capacity of parent(s) to meet the needs – cross-referenced with previous engagements]

3.4 Professional assessment: Outline assessment of child's needs, parent's capacity to meet needs and wider family and community supports

[1. The ascertainable wishes and feelings of the child concerned]

[2. The effect of parenting on the child by the parent, parents or carers]

[3. *The child's physical, emotional and educational needs*]

[4. *The age, gender and background of the child, or children, and any characteristics of his or her which the Court or author considers relevant*]

[5. *The likely effect on the child of any harm that he or she has suffered or is at risk of suffering*]

[6. *The likely effect on the child of any change in his or her circumstances*]

4. Conclusion

[*Professional analysis based on the assessment – give a professional opinion on the assessment and the most appropriate method of protecting the child or children*]

5. Recommendations

6. Signatures

Social Worker: _____

Date: _____

Social Work Team Leader: _____

Date: _____

7. Appendices

[*For example, copies of any other reports relied upon to inform assessment, e.g. PHN, psychologist, etc*]

Appendix 2: Explanatory notes for the completion of the Social Work Court Report (*see Appendix 1*)

Below is a **sample Heading Page** for the Social Work Court Report:

<p style="text-align: center;">SOCIAL WORK COURT REPORT of Louise Smith, B.Soc.Sc., M.S.W.</p> <p style="text-align: center;">Application for a Care Order pursuant to Section 18 of Child Care Act 1991</p> <p style="text-align: center;">in the matter of</p> <p style="text-align: center;">Mary Murphy (a child, aged XX), John Murphy (a child, aged XX) and Patrick Murphy (a child, aged XX)</p> <p style="text-align: center;">Health Service Executive South, Lacken – Applicant</p> <p style="text-align: center;">Peter and Teresa Murphy – Respondents</p> <p style="text-align: center;">for District Court – Clonmel [date]</p> <p style="text-align: center;">Report date: [dd/mm/yyyy – <i>this is the date you sign your report and send it to the instructing solicitors or submit it to the Court</i>]</p>
--

Executive Summary

This should not be a 'cut and paste' exercise, but rather a brief synopsis of the case (one page) to clarify the exact nature of the request to the Court. It should be written only when all other elements of the report have been completed. Enter your information under the following headings:

- **Recommendations:** From your professional assessment, make recommendations on the outcome of the case.
- **Summary of context:** Provide a brief background in order to contextualise the request.
- **Summary of analysis:** Outline the assessment process to support the request.

1. Contents page

List of contents, giving section numbers and page number.

2. Introduction

- 2.1 **Author's qualifications and experience:** State your name and job title, and give a short summary of your qualifications and your work experience relevant to the case.
- 2.2 **Context of report:** Brief summary of how the case came to be before the Court and the outcome of your assessment.

Example 1: A Child Protection Conference held on 27th March 2008 recommended that application for Care Orders under Section 18 of the Child Care Act 1991 be made in respect of Mary, John and Patrick Murphy. This report sets out details of the social work assessment of these children's circumstances and concludes that they will require care and protection, which they are unlikely to receive unless such an Order is made by the Court.

Example 2: Proceedings at Clonmel District Court in the matter of Mary, John and Patrick Murphy under Section 11 of the Guardianship of Infants Act 1964 were adjourned under Section 20 of the Child Care Act 1991 and direction given that the Health Service Executive South undertake an investigation into the children's circumstances. This report sets out details of that investigation. The Health Service Executive South proposes to take action under Section 19 of the Child Care Act 1991 if the children are to remain in the care of their mother, Teresa Murphy. Should the Court award custody to Peter Murphy, the children's father, the Health Service Executive South will make application under Section 18 of the Child Care Act 1991.

Use legal basis: For example:

The HSE is making an application for an Interim Care Order under Section 17(1)(b) of the Child Care Act 1991 on this basis:

17.—(1) Where a justice of the District Court is satisfied on the application of a health board that—
(b) there is reasonable cause to believe that any of the circumstances mentioned at Paragraph (a), (b) or (c) of Section 18(1) exists or has existed with respect to the child and that it is necessary for the protection of the child's health or welfare that he be placed or maintained in the care of the health board pending the determination of the application for the care order, the HSE believes that the thresholds as set out are apparent:

- (a) the child has been or is being assaulted, ill-treated, neglected or sexually abused; or
- (b) the child's health, development or welfare has been or is being avoidably impaired or neglected;
or
- (c) the child's health, development or welfare is likely to be avoidably impaired or neglected.

2.3 **Purpose of report:** Outline the reasons why the report is being written and what request you wish to make of the Court.

2.4 **Sources of information**

- List times and dates of interviews with family members and other professionals.
- Mention files/reports referred to.
- Tests used and research considered.

2.5 **Overview of family:** Give a brief description of family circumstances.

2.6 **Summary of current concerns:** Indicate what the *current* concerns are regarding the safety of the child and why these specific concerns require you to make application to the Court.

3. Body of report

3.1 **Factual history – Family composition:** Insert all the details for the family concerned.

3.2 **Background:** Give a history of your Department's involvement with the family, including significant events and services provided by yourself and others. This should not be details of every contact or every time a concern is brought to the service's attention. Specific incidents may be highlighted, but only where they are necessary to provide evidence of or demonstrate significant events or issues.

Example 1 (Section 18): The Murphy family has been known to the Social Work Department since February 2006. Irene Molloy, Public Health Nurse, initially referred the family with concerns regarding neglect of the children. Following initial social work assessment, a Family Support Worker was allocated ... [etc.]

Example 2 (Section 20): In the case of a Section 20 Report, the family may not be previously known to your service. Therefore, give background as related to you by family members and other professionals interviewed by you in your assessment.

3.3 **Current situation**

1. **Referral and assessment:** This may also include update from previous report. Include precise details of family's current situation. Avoid general statements.
2. **Current strengths and weaknesses:** Give details of current strengths and weaknesses of the family. Include the Summary Care Plan as per draft Court Direction (*see Appendix 3*). List any developments since last Court appearance (e.g. health, education, placement).

3. **Risks, protective factors, needs of the child and capacity of parent(s) to meet the needs – cross-referenced with previous engagements:** Give details of all risks and protective factors, both in terms of the child's needs and parental capacity to deal with these needs. Outline all assistance already provided by Children and Family Services. Note access arrangements and any impact on the child of these arrangements.

Example 1 (Section 18): On the night of 17th March 2008, the Gardaí received an anonymous telephone call stating that the Murphy children were at home alone. The Gardaí removed the children under Section 12 of the Child Care Act 1991 and placed them in St. Joseph's Hospital, Clonmel.

Example 2 (Section 20): During the course of my investigation, details of which are set out below, concerns arose regarding Teresa Murphy's care of the children, which necessitated the convening of a Child Protection Conference on 25th March 2008. The Child Protection Conference recommended that application for Supervision Orders under Section 19 of the Child Care Act 1991 be made in respect of these children, should the Court decide to award custody of the children to their mother, Teresa Murphy. Should the Court award custody to Peter Murphy, the children's father, the Child Protection Conference recommended an application under Section 18 of the Child Care Act 1991.

3.4 **Professional assessment: Outline assessment of child's needs, parent's capacity to meet needs and wider family and community supports**

1. **Ascertainable wishes and feelings of the child concerned:** Note details of child's ascertainable wishes and feelings. Ensure that the voice of the child is represented, either through report of your own observations, interviews, etc.
2. **Effect of parenting on the child by the parent, parents or carers:** Give relevant details of information obtained during your assessment in relation to effect of parenting on the child by the parent, parents or carers, including tests used and results. Note the process of engagement with the child and family and other services (goals, wishes). Outline attempts made to meet identified gaps through support plans and outcomes of same. Areas assessed should include:
 - impact on child;
 - child's needs;
 - risk to child;
 - response of parent/carer to concerns;
 - parental ability or capacity to care for and protect child;
 - impact of lack of parental capacity and threshold of significant harm;
 - other protective factors;
 - complicating factors.

The information included in the report should be factual. State information you gained personally (e.g. through your own observations or interviews). Also state information reported to you (e.g. by other professionals), but be careful to distinguish this from your own first-hand information.

The information should be structured in such a way as to incorporate the Standard Business Processes (i.e. risk factors, protective factors, child's needs and the capacity of the parent/carer to meet the child's needs, as well as the context of the child's needs and the parent or family's capacity to meet those needs, and other influencing factors (e.g. extended family, community or situational or social factors that may impact on the child or family).

Include any risk of future harm to a child, based on the ongoing impact of failure to develop or protect the child.

3. **The child's physical, emotional and educational needs:** Outline requirements of the child for full development/protection of physical, emotional and educational needs.
4. **Age, gender and background of the child, or children, and any characteristics of his or her which the Court or author considers relevant:** Supply details of the child in terms of age, background, level of maturity and any other characteristics that may assist the Court in understanding the 'whole' child.
5. **Likely effect on the child of any harm that he or she has suffered or is at risk of suffering:** Offer a professional assessment on any long- or short-term effects on the child of identified harm. This assessment should be evidence-based.
6. **Likely effect on the child of any change in his or her circumstances:** Provide consideration of the impact of any changes on the child. You should indicate how your requested course of action should benefit the child.

4. Conclusion

Professional analysis based on the assessment: Opinion should always be clear, comprehensive, logical and evidence-based.

- State your professional opinion based on the factual information available to you.
- Clarify the evidence-informed research and other professional tools that underpin your professional assessment.

Example 1 (Section 18): In my report, I presented evidence that Mary, John and Patrick Murphy have been subjected to neglect. Despite the level of services provided by the Health Service Executive South, their parents have not shown an ability to adequately care for and protect them. Should the Court decide to make an Order under Section 18 of the Child Care Act 1991 in respect of Mary, John and Patrick Murphy, I believe that they will receive the care and protection necessary to promote their health, development and welfare, which they are unlikely to receive in the absence of such an Order.

Example 2 (Section 20): This report details my investigation of the circumstances of Mary, John and Patrick Murphy. Should the Court decide to award custody of these children to their mother, the Health Service Executive South will make application to the District Court for a Supervision Order under Section 19 of the Child Care Act 1991. Should the Court award custody to Peter Murphy, the children's father, the Health Service Executive South will make application for a Care Order under Section 18 of the Child Care Act 1991.

5. Recommendations

Recommendations should be clearly presented, based on the analysis of the information included in the report. They should be based on the professional opinion of the practitioner preparing the report and agreed with their line manager. They should clearly and respectfully set out for the Court and the parties involved the outcome which Children and Family Services is seeking in the application (e.g. a Supervision Order, Care Order, etc).

6. Signatures

Signatures of Social Worker and Social Work Team Leader, plus dates signed, are required.

7. Appendices

Appendices should only be included where necessary and should be brief. They may include, for example, a care plan, relevant reports, bibliography or references to research.

Appendix 3: Draft Practice Directions for Case Management of Child Care Proceedings in Dublin Metropolitan District Court

DMD Dolphin House Practice Direction Case Management in Child Care Proceedings

1. Overriding objective

The overriding objective of this Practice Direction is to enable the Court to deal with each case in a manner which is just, efficient and cost effective and, in particular ensuring:

- (1) that in all decisions, directions and recommendations made with respect to the conduct of the case, the safety, welfare and well-being of the child or young person, the subject of the proceedings, are paramount;
 - (2) that it is dealt with expeditiously and fairly;
 - (3) that it is dealt with in a manner which is proportionate to the nature, importance and complexity of the issues;
 - (4) that the parties are on an equal footing; and
 - (5) that it is allotted an appropriate share of the Court's resources while taking into account the need to allot resources to other cases.
2. The Court will give effect to the overriding objective when it interprets the provision of this Practice Direction however the Practice Direction does not limit or interfere in any way with the powers and discretions of the Judge under the Child Care Acts 1991-2011 and District Court Rules either generally or in a particular case.

2. Save in exceptional circumstances

- (I) The hearing of such proceedings should be completed in this Court within nine months to one year from the date of commencement or earlier in appropriate cases.
- (II) The HSE should in advance of instituting proceedings have regard to the Principals of Best Practice in Child Protection contained in paragraph 1.1.1 of the Children First National Guidance for the Protection and Management of Children (2011) and evidence of such compliance should be available as set out in Appendix 1.
- (III) The parties should have an opportunity of entering into productive discussions at the earliest possible opportunity.

3. Legal Representation

- 3.1 The HSE shall endeavour to inform every Respondent of their entitlement to apply for civil legal aid and to furnish them with the address and telephone number of the nearest Law Centre as well as the Law Centre in Dolphin House in this regard.
- 3.2 Respondents who wish to be legally aided should be made aware of their entitlement to have their application prioritised in Law Centres. They should also be made aware of any scheme or facility for the waiver of any legal aid contribution. Supports available to overcome potential vulnerabilities with regard to issues of capacity, literacy, first language etc. should be made known to them at the earliest opportunity.
- 3.3 Without prejudice to paragraph 3.1 any Respondent who wishes to proceed without a legal representative remains entitled to do so.
- 3.4 In the event that a legal representative for a party becomes aware of any circumstance or circumstances which may warrant the provision of additional assistance to overcome barriers that impede access to the Court system by persons with physical, mental or sensory disabilities the legal representative may apply to the Court for Directions.

4. Guardian ad Litem for the Child

- 4.1 Where the Court is satisfied that it is in the interests of the child and the interests of justice to appoint a Guardian ad Litem in any proceedings under Parts IV, (care/supervision proceedings), Part VI (children already in the care of the HSE), and Part IVA as inserted by Section 16 of the Children Act 2001 (children in need of special care and protection) and where the child to whom the proceedings relate is **not a party**, the Court may appoint a Guardian ad Litem to independently establish the wishes, feelings and interests of the child and present them to the Court with recommendations.
- 4.2 The format of Guardian ad Litem Reports to Court should adhere to the template set out in Appendix A of the Children Act Advisory Board Guidelines in addition to paragraph 8.3 of this Practice Direction.

- 4.3 The Guardian ad Litem shall be provided with access to all HSE files, memoranda and notes regarding the child in respect of whom they have been appointed by the Court. The Guardian ad Litem shall also be given notice of all applications and copies of all Reports to Court.

5. Direct Participation, Party Status and Representation of Child

- 5.1 Where a request is made by a child to be present during the hearing or a particular part of the hearing of the proceedings such request may be brought to the attention of the Court in order for the request to be considered within the parameters of Section 30(2) of the Child Care Act 1991.
- 5.2 The Court may direct the procurement of a Report pursuant to Section 27(1) of the Act to assess the level of maturity of the child and their capacity to make independent autonomous decisions in respect of their care and welfare in the context of the proceedings.
- 5.3 Where the Court is satisfied that it is necessary in the interests of the child and the interests of justice to join a child as a party to the proceedings or a particular part of the proceedings it may do so having considered:
- (a) the age of the child;
 - (b) the level of understanding of the child;
 - (c) the wishes of the child; and
 - (d) the circumstances of the case including any Report as set out at paragraph 5.2.
- 5.4 The Court may appoint a solicitor to represent the child in the proceedings and give directions as to the performance of his duties (which may include, if necessary, directions in relation to the instruction of counsel).
- 5.5 The legal representative for the child is subject to the ethical requirements applicable to all solicitors and barristers, and must represent the client's instructions in the proceedings.

6. Service and Listing of certain Care Applications

- 6.1 Where proceedings are commenced by Application under Part IV of the Child Care Act 1991 proof of service of the Application as stipulated in the District Court Rules S.I. 93/1997 and District Court (Child Care) Rules S.I. 469/2008 shall be filed in Court together with any relevant letter from HSE to the Respondents preceding the litigation and accompanied by such other documents required or relied upon in connection with the Application at least 2 clear days before the date listed for hearing.
- 6.2 Service of Proceedings out of the jurisdiction pursuant to EC 2201/2003 shall be effected in compliance with the Requirements of EC 1393/2007 and S.I. 635/2005 and S.I. 367/2009 and the standard forms as set out in the Appendix to the Service Regulation shall be used.
- 6.3 Service of proceedings or notice of proceedings or a non EU country shall be preceded by an Application for leave to serve the proceedings out of the jurisdiction made *ex parte* and shall be supported by an affidavit, in accordance with the District Court Rules.
- 6.4 Service of proceedings or notice of proceedings under the Protection of Children (Hague Convention) Act 2000 shall be effected in accordance with District Court (Hague Convention 1996) Rules 2011.
- 6.5 In circumstances where the HSE have assumed the care of a child or young person under Section 12(3) of the Child Care Act 1991, it shall use its best endeavours to immediately inform the parent or parents having custody of the child or person or persons acting *in loco parentis* that the HSE has a statutory obligation to make an application to Court for an Emergency Care Order pursuant to Section 13(3) of the Child Care Act 1991, unless it decides to return the child(ren) to their care. Furthermore the HSE shall advise them that they should immediately seek legal advice and representation as set out in paragraph 3.
- 6.6 Where the HSE determines that it must apply to Court for an Emergency Care Order it shall use its best endeavours to inform the parent(s) or person acting in loco parentis as soon as practicable of the date, time and location of that intended Court application and take all steps necessary to ensure that they have been informed of the need for legal advice and representation as set out in paragraph 3 for the purposes of the said emergency Court application unless the Court is satisfied that to do so would compromise the safety of the child.
- 6.7 Where proceedings are commenced by way of Application under Part III of the Child Care Act 1991 following the removal of a child or young person under Section 12 of the Child Care Act 1991 or following assumption of a child or young person into care under Section 13(4)(c) the application under Part III or IV shall be served on the parents or person or persons with custody or care of the child as soon as practicable and evidence of service or attempted service is to be filed in the Court Office together with evidence of having notified the Respondent(s) of their rights to apply for priority in procuring legal aid and advice and the location and contact numbers of the Law Centres to which such application can be made as well as the right to apply to have the application processed on an emergency basis.
- 6.8 Where proceedings under Part III Section 13 are brought the application shall be grounded on an Affidavit sworn by the appropriate HSE personnel, or on information on oath and in writing sworn by the appropriate HSE personnel. A copy of the affidavit or information shall be served on the Respondents with the Application.
- 6.9 Where proceedings under Part III Section 13 are brought *ex parte* application pursuant to S.13(4)(c) to have the application heard *ex parte* and the application shall be grounded on Affidavit sworn by the appropriate HSE personnel, or on information on oath and in writing sworn by the appropriate HSE

personnel. A copy of the any order (including an order to dismiss), shall be served on the Respondent(s) as soon as practicable. A note of evidence given by the HSE during the said application shall be prepared as soon as practicable by the HSE or their solicitor and approved by the judge and a copy of any affidavit or information and of the note of evidence shall be available to the Respondents on application to Court.

- 6.10 The HSE shall on request provide the solicitors for the Respondents with access to all reports and documentation or records relied upon by the HSE or to which it has had regard in forming the opinion that the relevant statutory threshold under Section 13 of the Act has been met or exists so as to require them to initiate proceedings. Unrepresented parties shall be provided with access to such documentation in accordance with clause 11.4 of this Practice Direction.
- 6.11 Notice of the hearing of an Application for an Emergency Care Order under Section 13 shall be served at least **two days prior** to the date fixed for hearing the application unless in the urgency of the matter requires the matter to be heard *ex parte*.
- 6.12 An Application by the HSE for an Interim Care Order (S.17) shall be served on the Respondents in accordance with the District Court Rules Order 84 Rule 9. However where possible at least seven days notice should be given to the Respondents. In the case of a party residing out of the jurisdiction service shall be in accordance with S.I. No. 367 of 2009: District Court (Service in Member States of Judicial and Extra-judicial Documents in Civil or Commercial Matters) Rules 2009 or S.I. No. 301 of 2011: District Court (Hague Convention 1996) Rules 2011 or The district Court Rules for service outside the jurisdiction in non EU countries.
- 6.13 Any application for the extension of an Interim Care Order under S.17 should be served on the Respondents in accordance with the District Court Rules with relevant proof of service filed in Court.
- 6.14 An Application for a Care Order under Section 18 or an Application for a Supervision Order under Section 19 should be served on the Respondents at least seven days prior to the date listed for the hearing of the Application and filed in Court with relevant proof of service at least four clear days before the date listed for hearing.
- 6.15 Where a Respondent cannot attend Court by virtue of his involuntary detention in a State Institution, arrangements may be made for that Respondent to appear by way of (audio visual link) AVL or telephone.

7. Filing of Documents and Reports

- 7.1 All Applications to Court, initiating papers, Court reports and draft orders shall be filed by email within the time frames set out in the District Court Rules/this Practice Direction.
- 7.2 The title of the covering email should cite the name of the Applicant and the names of the Respondent(s) to the proceedings, the Court file record number where relevant; and the date on which the matter is returnable before the Court.
- 7.3 Reports and Applications filed by the Guardian ad Litem should in addition also cite the name of the particular child or children in respect of whom the matter is filed.
- 7.4 All attached documents including PDF documents should be titled/labelled (in the icon) in a manner which identifies the nature of the documents, the date of the document and case to which it refers.
- 7.5 All Reports should be in "Portable Document Format" (PDF). A file created with a word processor, or a paper that has been scanned, must be converted to PDF to be filed electronically with the Court.
- 7.6 All documents within an email must be correctly titled with name of particular case, and contents of the document, i.e. HSE Social Work Report or GAL report, including date which the matter will appear before the Court.
- 7.7 All proposed orders submitted for a Judge's editing, if necessary, and signature shall be filed in a format compatible with WordPerfect and not in PDF.
- 7.8 The original of all applications and Court reports (duly signed by the party or parties generating such report) shall be filed in Court on the morning of the hearing; any exhibits must be properly tabbed and all papers firmly bound ("book style"). A printed copy of the filing email must be attached to the front of the document.
- 7.9 The Court may excuse a party from electronic filing for good cause shown.
- 7.10 Personal litigations are not expected to file papers by email.

8. Standard Directions

- 8.1 On the return date when an Interim Care Order Application (ICO S.17) comes before the Court and if the Court determines that an Interim Care Order should be granted or extended the Court may further list the proceedings to a date not to exceed 28 days (or such longer period as may be agreed by the Respondents and approved by the Court in the interests of the child) after the date of the ICO with such directions (if any) as is considered to be proper to include —
- I. whether the address or location of the place at which the child is being kept is to be withheld from the parents of the child, or either of them, a person acting in *loco parentis* or any other person;
 - II. the access, if any, which is to be permitted between the child and any named person and the conditions under which the access is to take place;
 - III. the medical or psychiatric examination, treatment or assessment of the child.
- 8.2 In all cases listed for hearing under Section 18 the HSE must file in Court at least 7 days in advance of the hearing including:

- (1) a Summary of the Application;
- (2) an A4 Folder or Folders should be filed in the Court containing the following documents annexed thereto:
 - a) a copy of the child's birth certificate;
 - b) a copy of other relevant certificates;
 - c) A chronology of previous Court Orders & decisions (if any);
 - d) copies of all assessments and Reports available to the HSE in respect of the child ;
 - e) other relevant reports and records (e.g.; health and education/immigration documents);
 - f) key HSE minutes & records regarding the child (including strategy discussion record/case conference records);
 - g) a genogram of family/extended family membership chart;
 - h) the Care Plan pursuant to S.I. No. 260/1995 or Leaving Care Needs Assessment Form and Preparing for Leaving Care Plan, or After Care Plan.

8.3 Content of Social Work Reports and Guardian ad Litem Reports to Court should be:

- as short and focused as possible;
- be clearly set out using numbered paragraphs, headings and sub-headings and numbered pages;
- balance description and background chronology with evaluation, summary and assessment;
- differentiate fact from opinions;
- unsubstantiated allegations should be highlighted as such;
- only facts which will be substantiated by evidence at hearing should be contained in final reports;
- present the information with sensitivity and in a way which does not exacerbate the relations between the parties;
- be fair to the parties and demonstrate balance;
- avoid unnecessary repetition of material which is available in other or earlier documents before the Court.

8.4 On the return date when a Supervision Order Application (S.19) comes before the Court and if the Court determines that a Supervision Order should be granted it may make such directions (if any) as is considered to be proper with respect to the care of the child and such directions may require the parents of the child or a person acting *in loco parentis* to cause him to attend for medical or psychiatric examination, treatment or assessment at a hospital, clinic or other place specified by the Court.

8.5 Any party to S.17 proceedings may apply to Court on the first hearing or at any time thereafter during the currency of the ICO for a direction or the variation or discharge of any such direction under S.17(4) on notice to the other party and the Court in accordance with the District Court rules, where possible at least 7 days notice to be given to the other party and to the Court.

9. Application for an Extension of an Interim Care Order or for a Sequential Supervision Order

9.1 The HSE must file an application for a care order under S.18 in respect of the child before the expiration of the ICO (or provide evidence of its intention to so do) before applying for an extension of the ICO.

9.2 Any party to the proceedings may apply to extend the ICO and the Court may extend the ICO if satisfied that grounds for the making of an ICO continue to exist with respect to the child.

9.3 The Applicant shall serve all reports and other documentary evidence to be relied upon for the application for extension of the said order on the legal representatives of the parties and the Court 4 days prior to the date of hearing.

9.4 The Guardian ad Litem shall serve all Reports on the legal representatives of the parties and the Court 2 days prior to the date of hearing.

10. Party seeking leave to withdraw or amend application to give notice

10.1 A party intending to apply for leave to:

- a) amend a Care Application or Supervision Application (including the grounds upon which the order is sought);
- b) amend the order or orders sought in the care application following the making of a determination that the child or y/p is in need of care and protection; or
- c) withdraw a care application

shall give at least 7 days notice to the other parties of that application, unless such requirement is dispensed with by the Court.

11. Disclosure/Discovery

11.1 All applications for Disclosure/Discovery shall comply with Order 46A District Court Rules.

11.2 Where a party to the proceedings is provided with access to a Report, document or record it shall be a condition of such access that the Report, document or record or any copy shall not be used for any purpose other than the proceedings for which the document has been produced, unless the Court otherwise directs.

- 11.3 Where a party is not represented by a legal practitioner access to documents is to be provided by HSE and such documents may not be photographed, copied or removed without leave of the Court.
- 11.4 Original documents produced which are admitted into evidence during the course of the proceedings will be returned to the producer at the conclusion of the matter and will be destroyed by the Office of the Court 42 days after the conclusion of the matter unless arrangements have been made with the Office of the Court to collect the documents.

12. First Directions Hearing

- 12.1 Immediately following the determination of the second Order extending the Interim Care Order the case shall be listed before the Court for a first Directions Hearing.
- 12.2 In advance of the first Directions Hearing date the HSE shall (where possible and appropriate) schedule a formal dispute resolution conference with the parents/guardians and the GAL (if a GAL has been appointed).
- 12.3 In advance of the first Directions Hearing date the HSE shall furnish a Summary Care Plan to the parents, the solicitors for the parents/guardians and to the GAL appointed for the child/y/p at least four days before the hearing and same shall be filed in Court at least 24 hours in advance of the hearing.
- 12.4 At the first Directions Hearing the Court shall be provided with a list of all witnesses proposed to be called in support of the application and whether factual issues (disputed allegations) are required to be determined by the Court.
- 12.5 In advance of the first Directions Hearing date notice shall be given by the Respondents to the HSE and the Court whether and to what extent it is proposed to:
- (a) dispute the relevant legislative threshold criteria for the making of the Order sought by the HSE;
 - (b) the extent of agreement/disagreement as to the content of materials disclosed;
 - (c) whether further disclosure or reports are deemed necessary and the reason for such further disclosure;
 - (d) whether witnesses are to be called by the Respondents.
- 12.6 Where appropriate and if the threshold criteria are not contested the Court may make an Order and directions under Section 47 as required or deemed necessary in relation to care of the child/y/p;
- 12.7 The solicitor and/or Counsel attending the Directions Hearing shall ensure that he or she:
- (a) is sufficiently familiar with the proceedings as to be able to apprise the Court fully of all relevant aspects of the proceedings; and
 - (b) has authority from the party he or she represents to deal with any matters that are likely to be dealt with at the directions hearing;
 - (c) where a party is represented by Solicitor and Counsel the attendance of only one of such legal advisors will be allowed on the taxation or fixing of costs (where relevant).

13. Directions Order

- 13.1 At the first hearing or at any hearing in the Directions List, the Court, having considered the representations made by the parties or of its own motion shall:
- (i) make such orders and issue such directions as seem appropriate and may note any agreement reached between the parties;
 - (ii) grant an adjournment of the hearing to enable any such orders, directions or agreements to be implemented, to facilitate the resolution of any further matters arising thereon and to enable the parties otherwise to prepare fully for the hearing of the Care Order or Supervision Order or S.47 Application. Such adjournment shall, save for substantial and compelling reason, not exceed 28 days;
 - (iii) in the absence of a request for an adjournment, deal with all relevant matters, in a manner which is best calculated to achieve the objective referred to in paragraph 1 of this Practice Direction; and
 - (iv) then or at any time thereafter, consider and recommend as it may think appropriate such forms of Alternative Dispute Resolution as may be helpful to resolve or reduce the issues in dispute between the parties. Such forms of Alternative Dispute Resolution Mechanism may, inter alia, include conciliation, mediation or arbitration in respect of some or all of the issues arising in the proceedings.

14. Listing a case for Hearing

- 14.1 Proceedings shall only be allocated a hearing date when the Court is satisfied having regard to the representations of the parties and to the extent of progress in the proceedings that the proceedings are sufficiently advanced that it is appropriate that they be allocated a date for hearing.
- 14.2 A case will not be listed for hearing unless the Court is satisfied that all directions of the Court have been complied with (including any Direction under S.47 of the 1991 Act that the parties attend an alternative dispute resolution conference).
- 14.3 The parties must advise the Court of the names of witnesses and their professional qualifications and the number and availability of witnesses required for cross examination, and the issues that are in dispute; In the event that more than one expert witness is to be called to give evidence in relation to a particular issue or issues, the parties are to outline for the Court the reason and necessity for the

- multiplicity of expert witnesses and the relevant reports to be relied upon by the expert witnesses being called.
- 14.4 Each party must inform the Court of any matter which might delay or prolong the hearing and provide the Court with a realistic schedule for the hearing of the action, based on a reasoned and informed view.
- 14.5 In advance of the date allocated for hearing the HSE shall furnish a draft, of the Order being sought from the Court, to all other parties and to the Court. Each party shall file and serve on the other party and on the Court:
- a) a List of any affidavits (and other documents) to be relied upon by that party at hearing;
 - b) any application regarding evidence of children or notice to admit hearsay evidence under S.21-23 Children Act 1997;
 - c) a detailed statement of the real issues in dispute (for example a statement that an issue in dispute is "*whether there is a realistic prospect of family reunification/restoration*" is not sufficient;
 - d) confirmation of the witnesses required for cross-examination.
- 14.6 Notwithstanding the above, the Court may for substantial and compelling reasons, at any time allocate the case a specific date for Hearing in the best interests of the child or y/p.
- 15. Pre-Hearing Call-over**
- 15.1. There shall be a pre-hearing call over on the Friday not less than one week prior to the hearing date.
- 15.2 The solicitor or Counsel for each of the parties or, where a party is not legally represented, the party himself or herself, shall be in attendance.
- 15.3 Where the Court considers it necessary or desirable, it may direct that a party attend the Call-over, notwithstanding the fact that the party may be represented by a solicitor.
- 16. Settlement/delay in proceedings**
- 16.1 There shall be a continuing obligation and duty on each party to bring to the Court's attention as soon as possible any matter which might shorten delay or prolong the hearing of the proceedings.
- 16.2 There shall be a continuing obligation and duty on each party to inform the Court Office/Court Registrar of any settlement or part settlement of any proceedings.
- 17. Prior to the Hearing Date**
- 17.1. 7 days in advance of the Hearing date all legal representatives and unrepresented parties have a collective obligation to assist the Court by ensuring that:
- a) All relevant applications, affidavits and reports have been filed.
 - b) The applications, affidavits and reports have been reviewed and there is no need to amend the application or file further evidence.
 - c) All relevant interlocutory matters have been attended to and the case is ready for hearing.
 - d) The possibility of reaching agreement has been fully explored.
 - e) The issues to be addressed at the final hearing are clearly identified.
 - f) Evidence addressing those issues is filed or otherwise available.
 - g) All expert witnesses, including Medical Clinicians who are required for cross-examination are available to attend the hearing and that the witness has been provided with all relevant material. Where an expert has been jointly instructed any further agreed additional material is to be provided to witnesses before the witness is required to give evidence.
 - h) All other parties have been notified of which witnesses are required for cross examination.
 - i) The length of time required for examination in chief and cross examination of each witness has to be estimated.
 - j) All witnesses have been time-tabled and are available.
 - k) Expert witnesses in particular have been allocated specific dates and times for their evidence, the length of time allocated for their evidence must be carefully assessed to ensure that it can be given without the expert witness being required to give evidence on a further occasion.
 - l) All documents the production of which have been sought by witness summons have been produced.
 - m) All documents procured through witness summons and upon which a party proposes to rely upon at hearing (including by way of cross examination) have been annexed to an affidavit which has been filed in Court by that party.
 - n) A chronology of relevant events will be filed a week before the hearing.
 - o) Care Plans/Leaving Care Plans/After Care Plans have been filed and served on the parties.
 - p) All clinical assessments have been completed.
 - q) Arrangements have been made for interpreters (where necessary) and the attendance of any party at the hearing by AVL and where required a remote witness room is available.
 - r) Where relevant arrangements have been made for the child to express wishes to the Judge.
- 18. Applications for interim Orders, Directions, access matters, urgent matters and consent orders or orders subject to approval** shall, subject to any contrary direction, be dealt with in accordance with this Practice Direction.

Appendix I

A PRE PRECEEDING LETTER TO PARENT/GUARDIAN

[Steps taken by the HSE pursuant to paragraph 5.6.5 of Children First]

LETTER PRE PRECEEDING APPLICATION UNDER CHILD CARE ACT 1991

SENT BY [RECORDED DELIVERY/BY HAND]

HSE Office Address/Contact Direct line

My ref. Fax E-mail Date

Re: [insert name of HSE AREA] CONCERNS ABOUT [insert name(s) of child]

Dear [parent and/or full name(s) of guardian or party *in loco parentis* of child or y/p],

I am the Team Leader in the HSE area and I am writing to set out the HSE concerns regarding your care of [name(s) of child/ren].

[SET OUT CONCERNS]

When you spoke to [name of social worker] on [insert date of last interaction] you were made aware of our main concerns.

You were also informed of these concerns in [reference to the Letter before Proceedings/child protection case conference/any social work meetings].

We have tried to work with you to help you address these concerns, but unfortunately these concerns remain.

We are writing to tell you again that we will be going to Court to apply for a [care order][interim care order][supervision order][emergency care order]. You will soon receive a copy of our application to the Court.

We would urge you, if you have not done so already, to get advice from a solicitor. You should immediately contact your nearest Law Centre if you cannot afford to get private legal representation.

Yours sincerely

[Name] Team Leader SW Department

cc. Social Worker [name]
HSE Legal Team Centres and contact details

Appendix II

The summary Care Plan for the child or y/p should briefly and succinctly set out the following:

- the alleged risk and safety concern(s) for the child or y/p;
- the extent of the efforts made for family reunification;
- tasks and demonstrated changes the parents/guardians need to undertake to achieve reunification safely and the relevant timeframes for the tasks changes to occur;
- the nature of the placement currently proposed for the child (both interim and long term and whether S.36 Relative Foster Placements have been investigated and to what extent);
- the kind of parent/child/sibling access currently proposed (including frequency and duration of proposed access and whether it is proposed to be open or supervised) both on an interim and long-term basis;
- the child's health, education, emotional and identity needs and how these will be met.