

Child Abuse Substantiation Practice Guidance and Review Procedure (CASP)

Draft April 2021 Version 1.2

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Note: This draft document is for the purpose of stakeholder consultation between April and June 2021 only.

We are committed to ensuring that all of our work is open to review and in line with any legislative changes and/or best practice, the policy will be reviewed, one year post implementation.

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Glossary of terms

Balance of probabilities: The civil standard of proof is that something is determined to have occurred based on 'the balance of probabilities'. This is not the higher standard of proof for criminal prosecution, which is 'beyond a reasonable doubt'. Saying something is proven on the balance of probabilities means it has been determined that it is more likely than not to have occurred. On balance, the probability that some event has occurred is more than 50 per cent, i.e. 51 per cent or higher.

Bona Fide: This is the threshold used in Section 19 (1) and (2) of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 for a specified information notification to be sent to the NVB. "Specified information" means information concerning a finding or allegation of harm to a child. "Bona Fide" is interpreted as meaning; that having established that a reported concern to Tusla is 'ostensibly credible' the decision to make a specified information report to the NVB is made in good faith and is:

- Honest
- Accurate (based on the information available to you)
- Undertaken without deliberate intent to damage the good name of the subject of the specified information notification (SSIN)

Reaching a decision that a 'bona fide' concern exists should involve the gathering of sufficient, relevant, reliable information.

Child abuse categories: Neglect, emotional abuse, physical abuse, sexual abuse – see *Children First: National Guidance for the Protection and Welfare of Children* (2017).

Children First: For the purpose of CASP and its accompanying guidance, Children First refers to the *Children First Act 2015* and *Children First: National Guidance for the Protection and Welfare of Children* (2017).

Complainant: In the context of this CASP and its accompanying guidance, a complainant is a child or adult who has made allegations of child abuse.

Complainant safety plan: A plan developed between Tusla and An Garda Síochána in relation to the safety of a complainant.

Extrafamilial abuse: Abuse occurring or alleged to have occurred to a child by a person outside of the immediate family or caregivers, i.e. the nuclear family unit.

Founded: The concluding position of an investigation where it is established on the balance of probabilities that child abuse has occurred.

Immediate serious risk: For the purpose of CASP and its accompanying guidance (Please see master copy), immediate serious risk refers to situations where there is an immediate or impending risk of significant harm being inflicted on a child.

Immediate refers to what is happening now or in the very near future; serious refers to the degree of harm that reaches the threshold of significant harm for child abuse or neglect.

Harm may be caused by one or a combination of factors, including neglect and/or emotional, physical or sexual abuse, as defined in *Children First: National Guidance for the Protection and Welfare of Children* (2017, page 7).

A child might be considered 'safe' when there are no immediate threats of serious harm present and the exposure to future danger/harm to the child can be managed.

Garda National Vetting Bureau (GNVB): The GNVB is established under the National Vetting Bureau (Children and Vulnerable Persons) Act 2012.

Ostensibly credible: Where, given the level of information available at this point in time, the allegation could reasonably be true, in contrast to a hoax or a clearly vexatious allegation.

Person subject of abuse allegations (PSAA): A person who has had allegations of child abuse made against them **that has reached the threshold of reasonable grounds for concern as per Children First: National Guidance for the Protection and Welfare of Children (2017).**

Relevant third parties:

1. Any person who is in a position of responsibility for a child's or children's safety and wellbeing. This would include parents or, in a case where **the PSAA** is a parent, his or her wife/husband/partner. (It excludes parents who live together with the child where they or their partner's parenting is the focus of concern of a recent child abuse report.) It would also include someone who is in a position of direct authority over **a PSAA**, if this person is employed or if they volunteer in an organisation where they may have contact with children through their work. For example, the principal of a school who has authority over a teacher; the CEO of a nongovernmental organisation (NGO) who has authority over an employee; the leader of a scout group with authority over a volunteer, etc. (See 'relevant organisation' in Section 2 of the National Vetting Bureau (Children and
2. Vulnerable Persons) Act 2012.)
3. Any registration and/or regulatory body, e.g. CORU, Medical Council, Teaching Council, etc.

Retrospective abuse: Child abuse that an adult discloses that took place during their childhood.

Stress test: The thorough examination and testing of the credibility, plausibility and consistency of a complainant's account. This may involve exploring the extent to which the complainant's account is consistent with any available evidence and may involve at a later date ascertaining the complainant's response to any denials made or other issues raised by the PSAA.

Substantiation: Tusla's official process of decision-making about the validity of abuse allegations, i.e. founded or unfounded. The standard of proof required is the civil law standard of the balance of probabilities

Unfounded: The concluding position of an investigation where it is not established on the balance of probabilities that child abuse has occurred

NCCIS: National Child Care Information System: The National Child Care Information System (NCCIS) is a computerised recording system detailing professional actions in response to referrals of child protection and welfare.

Signs of Safety is the national approach to practice for child protection social work in Ireland. It is a safety-focused approach where social workers work with families and their networks to create safety for children where there is danger present. The safety plan for the children is tried and tested over time.

TCMS: Tusla Case Management System is a case management system which allows users to digitally manage and record their activities relating to a CASP substantiation investigation.

List of Acronyms

CASP Child Abuse Substantiation Procedure

CEO Chief Executive Officer

CORU Health and Social Care Professionals Council

DCP Dedicated Contact Point

DPP Director of Public Prosecutions

GP General Practitioner

HSE Health Service Executive

ISS International Social Service
NCCIS National Childcare Information System
NGO Non-Governmental Organisation
PSAA Person Subject of Abuse Allegations
RARF Retrospective Abuse Report Form
RM Risk Matrix
SOP Standard Operating Procedure
SORAM Sex Offender Risk Assessment and Management
TCMS Tusla Case Management System

Part A: General Principles

1. Introduction

This *Practice Guidance* has been prepared to assist social work practitioners and their managers with the implementation of Tusla – Child and Family Agency's *National Child Abuse Substantiation Procedure* (CASP). The *Practice Guidance* should be read in conjunction with CASP – also referred to as the *National Procedure* in this document – and used to assist interpretation and decision-making. Although practice guidance is given, managers and practitioners are required to use their judgement and professional knowledge in situations where neither the *National Procedure* nor the *Practice Guidance* wholly steer or inform on steps that might be taken in a given situation.

2. When to use the National Procedure and accompanying Practice Guidance

CASP is designed to provide a framework for social workers in investigating allegations of abuse made against an individual which give rise to a concern that the individual may pose a potential child abuse risk to identified or yet to be identified children. The procedure sets out the principles that social workers are expected to apply to ensure fair procedures when they are substantiating allegations of child abuse. CASP provides a standard operating procedure (SOP) for the substantiation investigation of child abuse allegations where a relevant third party may need to be formally informed of the allegations at the eventual outcome of a substantiation investigation. The scope of the procedure includes the following:

Scope

All extrafamilial and retrospective allegations which meet the Children First threshold of reasonable grounds for concern and definition of child abuse and which pass a screening standard of ostensibly credible will be investigated by Tusla under CASP. Allegations made against foster carers and members of care staff are to be regarded as extrafamilial allegations within the scope of CASP.

All intrafamilial allegations **and all allegations made by a child against another child** which meet the Children First threshold of reasonable grounds for concern and definition of child abuse and which pass a screening standard of ostensibly credible **will be investigated by Tusla under CASP where the criteria set out below are not satisfied**

National Approach to Practice underpinned by Signs of Safety: Intrafamilial Allegations

An allegation will be **responded to** under Signs of Safety where **the allegation is made by a child complainant against a PSAA, who is their parent or adult family member and who lives in the same household as the complainant, provided the following criteria are satisfied:**

- a) **The parents and adult family member, where appropriate, are constructively engaging with Tusla under Signs of Safety; and**

- b) The social worker is satisfied that the PSAA, who is the parent or adult family member of the child complainant and who lives in the same household as the complainant, is fully cooperating and is not engaged in any activities outside the home which would allow him or her to have access to children, for example any employment, self-employment, voluntary work or other activity which consists of care or supervision of children
- c) The facts are such that it is reasonable to anticipate that any child protection risk in relation to a child or children will be dealt with in court childcare proceedings

National Approach to Practice underpinned by Signs of Safety: Allegations Against a Child

An allegation will be responded to under Signs of Safety where the allegation is made by a child complainant against another child provided the following criteria are satisfied:

- (a) The family of the child PSAA are constructively engaging with Tusla under Signs of Safety; and
- (b) The facts are such that it is reasonable to anticipate that any child protection risk in relation to a child or children will be dealt with in court childcare proceedings

Where the above criteria are not satisfied, CASP must be applied

Note: The decision and the reasons for using the National Approach to Practice underpinned by Signs of Safety and not applying CASP should be fully recorded on the social work record. Also, social workers should ensure that CASP is applied in circumstances where the relevant family members withdraw their constructive engagement with Signs of Safety and a decision is made that presenting child protection concerns may require information to be shared with a relevant third party. CASP and this accompanying Practice Guidance emphasise:

- The requirements of *Children First: National Guidance for the Protection and Welfare of Children* (2017) – referred to as *Children First National Guidance* in this document – must be met at all times.
- If a child is believed to be at immediate serious risk (see glossary), the child's immediate safety must take priority over consideration of the PSAA's right to be informed of the allegations against them before necessary protective action is taken to ensure the safety and welfare of the child.
- If Tusla concludes that there is an immediate serious risk to a child, it is obliged to communicate this to an appropriate relevant third party, if such a measure is necessary to enable Tusla to take whatever protective action to ensure the child's immediate safety needs may be necessary.
- From a child abuse substantiation perspective, social work professionals, following a substantiation investigation, must make a determination of founded or unfounded on the balance of probabilities and the social work professional must consider a determination in respect of the level of potential risk that a PSAA may pose towards children.

This Practice Guidance assists social workers with decision-making with regard to disclosing information about reported allegations against an individual to a relevant third party.

Separate guidance in respect of data protection obligations is found in the *Tusla Privacy Policy and CASP Data Protection Guidance*. The policy should also be accessed by social workers for decisions in respect of data/information sharing with a data subject (complainant and PSAA).

The standard operating procedure must be applied in respect of responding to reports of abuse, as per the requirements of Children First.

Routine contacts made with professionals or key individuals connected with a child as part of a screening and preliminary enquiry phase are an essential part of best practice in investigating concerns. Nonetheless, social workers must always be aware of the requirement to demonstrate fairness in their interactions with children and adults by providing them with clear information on process and timely written confirmation of any conclusions and decisions.

Providing a PSAA with access to fair procedures is not a matter of choice; it is their fundamental right under natural justice and constitutional law (see also *Children First National Guidance* (2017, page 47)). As social workers manage situations every day that have the potential to compromise someone's right to fair

procedures, it is important for social workers to understand the principles of fair procedures and to always apply them.

The principal focus of social workers carrying out substantiation investigations is the protection of children. Social workers should not stray into attempting “to vindicate the complainant” or “to sanction the PSAA.”

Sometimes, a child may make allegations against individuals who do not have direct care and control over them. In such situations, following screening and the preliminary enquiry, a social work substantiation investigation determination has to be made about the reliability and accuracy of the allegations and the potential of there being any ongoing threat to the child or any other children in contact with the PSAA. Parents/carers must be kept fully informed throughout.

The response to an allegation by an adult of abuse that he or she experienced as a child must be of as high a standard as that provided to children who make allegations of abuse because:

- There is sufficient possibility that a person who abused a child in the past is likely to have continued abusing children and may still be doing so (Calder et al. 2000; Pritchard 2004; Corby 2006; Crosson-Tower 2013).
- The prospect of criminal prosecution remains open to An Garda Síochána.

3. Balancing the child’s right to protection with the rights of a PSAA

CASP directs that the right of a child to be safe from harm takes precedence over a PSAA’s right to be informed of and reply to any allegations against them where a child is judged to be at immediate serious risk. This position is supported by Tusla’s obligation to support and promote the protection of children under Section 3 of the Child Care Act 1991 and under Section 8 (1)(b) of the Child and Family Agency Act 2013.

Social workers need to be clear in their decision making with regard to when the threshold for immediate serious risk is met, and they should be confident in their actions to prioritise the protection of children in such situations (see discussion box below).

There is no justification for a child’s safety being compromised because undue consideration has been given to the rights of a PSAA over the priority that should be given to protect a child who is at immediate serious risk.

The potential vulnerability and support requirements of adult complainants should always be borne in mind. Affording the PSAA access to their constitutional right to fair process is essential. Sensitivity to the position of the complainant should also feature throughout the process of investigating their allegations and informing them of the outcome of the substantiation investigation.

Where the child’s interests take priority over consideration of the PSAA’s right to be informed of the allegations

1. The glossary of terms at the start of this document provides definitions of ‘immediate serious risk’ and of ‘child abuse’, which should be referenced together. Social workers, when considering a report, have to determine whether the threshold for immediate serious risk to a child is satisfied. In so doing, they also decide what urgent actions may be required to ensure safe care for the child.

‘A child might be considered “safe” when there are no immediate threats of serious harm present and the exposure to future danger/harm to the child can be managed.’ (See definition of ‘child abuse’ in the glossary.)

In cases of physical neglect, emotional abuse and actual or potential physical harm, a social worker has to make a determination on the degree of risk that may be present when a report is received. While the risk of physical abuse may pose a serious and immediate risk to a child, social workers will, depending on the nature of the physical abuse allegations, make a judgement on the extent to which an allegation requires an urgent response.

However, any form of sexual abuse or exploitation meets the threshold for significant harm. Social workers are therefore obliged to ensure that, where someone **who is alleged to have** sexually **abused** a child is in regular contact with children (this may be family, occupational or voluntary/community contacts with children), there are no immediate **risks** of serious harm present and that the identified or reasonably suspected **risks** to the child can be managed.

Where immediate serious risks are identified, this may require contact with a relevant third party to inform them of the allegations prior to the PSAA themselves being told of the allegations. It may also require contact with a relevant third party soon after a PSAA has been informed of the allegations where the social worker determines that, despite the objections of the PSAA with regard to a relevant third party being informed, the known or suspected risk can only be adequately managed by informing a relevant third party. The reasons for any decision to inform a third party should be carefully recorded.

In those instances, where an immediate serious risk to an identified child is determined by the CASP Social Worker during a substantiation investigation, it is the responsibility of the CASP Social Worker to advise any relevant third party. In order to ensure the ongoing safety of the identified child the advising of any relevant third party by the CASP Social Worker should be undertaken with the either relevant Child Protection & Welfare allocated Social Worker on existing cases or the Duty /Intake Social Worker for new cases.

4. Allegations against a foster carer/supported lodgings provider

The right of a child to be safe from harm takes precedence over a foster carer's or a supported lodgings provider's right to be informed of and reply to any allegations against them, before protective actions are taken by Tusla, where a child is judged to be at immediate serious risk. There is no justification for a child's safety being compromised because undue consideration has been given to the rights of a foster carer/supported lodgings provider over the priority that should be given to protect a child in care who is at immediate serious risk. Social workers need to be clear in their decision-making with regard to when the threshold for immediate serious risk is met, and they should be confident in their actions to prioritise the protection of children in care in such situations. Decisions and actions **with** regard to a child in care will include:

1. An assessment of immediate serious risk to the child, i.e. does the child need to be moved to another placement?
2. An obligation that allegations are reported to An Garda Síochána and that protective actions are jointly agreed
3. An assessment of immediate serious risk to other children in placement
4. An assessment of the protection needs of the foster carer's/supported lodgings provider's own children
5. An obligation to inform the birth parents of the allegations and safety planning, which should be confirmed to them in writing
6. An obligation to inform the foster carer/ supported lodgings provider of the allegations made against them as per CASP
7. An obligation to arrange any necessary medical assessment of the child
8. An obligation to inform the social worker for any other children in the placement.

When an allegation has been made against a foster carer/supported lodgings provider the following must also be ensured:

1. That there is a support process for the foster carer/supported lodgings provider provided by the allocated fostering link worker. The foster carer should be informed by their fostering link worker of the role of the Irish Foster Care Association.
2. That the foster carer/supported lodgings provider are afforded fair procedures as per CASP.
3. That the principal social worker for fostering **and the area manager are** informed of the allegation.

5. Duty of Tusla to act if a child is at risk

Tusla has an obligation to take immediate steps necessary for the protection of any child who is or may be at immediate serious risk of abuse or otherwise in need of urgent care and protection.

Section 3 of the Child Care Act 1991 requires that Tusla identify children at risk and seek out children who may be at risk, including in situations where no allegations have been made.

Steps taken under the Child Care Act 1991 to protect a child may require dual tracking of an assessment of the child's needs alongside the substantiation investigation process in this *Practice Guidance*, which is to investigate the reliability and accuracy of the allegations made. In such circumstances, the ongoing safety of any identified children must take priority.

Depending on the nature of the allegations and the circumstances of the child and the PSAA, a balance will often have to be struck between ensuring the child's safety and maintaining the stability and wellbeing of a child in their family home. Allegations against parents, carers and other family members may often require the social worker to exercise their professional judgement in respect of the seriousness of the allegation and the and the degree of potential ongoing risk set against what is in the best interests of the child.

Specified Information Notifications to the NVB

A social worker may be obliged at any point in a child abuse substantiation investigation to initiate a specified information notification to the NVB where they have a *bona fide* concern that a person may harm a child or put a child at risk of harm [Sections 19, (1) & (2) National Vetting Bureau (Children and Vulnerable Persons) Act 2012]. The threshold for a *bona fide* concern is lower than the threshold used to determine a balance of probabilities finding. **The specified information notice contains information concerning an allegation of harm to a child or a finding of harm to a child.**

Specified information notifications to the NVB are statutorily required and do not compromise a person's access to fair procedure because:

1. Specified information notifications are made to the NVB under legislation for information gathering purposes
2. The Chief Bureau Officer provides a person with access to fair procedure before any information is released by the NVB to a third party
3. A social worker can inform the NVB of the need for correction or amendment of information contained in a specified information report at any point **during the investigation or on its conclusion**
4. **If a specified information notification is being made prior to the final conclusion being reached, the NVB will be notified that the investigation is ongoing and no determination on the allegation has been made.**

Prior to a specified information notification being made, the PSAA must be informed of the fact of that concern and of Tusla's intention to notify the Bureau of it. The PSAA should also be provided with a copy of the notification that was sent to the National Vetting Bureau.

See Tusla Policy and Procedure for Specified Information Reports to the National Vetting Bureau.

6. Interagency cooperation with An Garda Síochána

Practice must always be child-centred, which applies equally to Tusla and An Garda Síochána. The safety and wellbeing of the child always takes priority.

The two agencies have shared objectives and separate but complementary roles, i.e. to ensure the safety and protection of children from abuse. **In conducting a substantiation investigation, Tusla's role is quite distinct from that of An Garda Síochána. Tusla's role is the protection of children. An Garda Síochána's role is the investigation and detection of crime.**

The *Joint Working Protocol for An Garda Síochána/Tusla – Child and Family Agency Liaison* sets out the joint working arrangements between An Garda Síochána and Tusla.

Part B: Responsibilities

7. Importance of the quality of the substantiation investigation

Social workers must take every care in checking the reliability and accuracy of allegations in their substantiation investigations.

If, in the process of the substantiation investigation, it is determined that children are or may be at immediate serious risk from a PSAA and urgent protective action is required, including making contact with relevant third parties prior to or in conjunction with informing the PSAA of the allegations, the social worker must clearly identify the specific risk or potential hazard.

Concerns should be precise rather than general, and information to be shared with a third party must be accurate. **The social worker should supply the relevant third party with an appropriate level of information that allows the third party to take appropriate steps to ensure the protection and well-being of children in their care. The exact nature of the information to be provided to the relevant third party should be agreed in advance with the social worker's line manager.** The social worker should accurately record the substantiation investigation and decision-making process.

Occasionally, a PSAA admits responsibility and agrees to cooperate with the substantiation investigation. If there are no immediate serious risks present and the identified threats to the child are being effectively managed and monitored, it is important for the social worker to still ensure that the PSAA is afforded fair procedures, as outlined in CASP and this *Practice Guidance*. Details of any agreements and decisions with regard to the substantiation investigation should be carefully recorded in the complainant's record. These should also be confirmed in writing by registered post to the PSAA marked 'Strictly Private and Confidential; Strictly Addressee Only', unless some other equally verifiable safe and secure form of notification is agreed with the PSAA as more appropriate in the circumstances (e.g. personal delivery).

8. Geographical considerations

Where a complainant makes a disclosure of abuse, it is common for the complainant and the PSAA to live in different areas of the country or even in different jurisdictions.

It is the responsibility of the social work office in the area where the PSAA lives to undertake the substantiation investigation of a complainant's allegations and to take any required protective action in respect of children deemed at risk

In situations where the PSAA poses a known or suspected risk to children in another social work area, it remains the responsibility of the social work office where the PSAA lives to complete the substantiation investigation. This may require cooperation between social work offices in respect of protective actions for identified children.

For reasons of fair procedures, it is best practice that the same social worker who investigates a complainant's disclosure also undertakes the substantiation investigation of the PSAA's response to the allegations.

In the case of a child complainant, it is the responsibility of the social work office in the Area where the child lives to deliver child protection and welfare services to the child complainant. The CASP Social Work Team role is to deliver upon the substantiation investigation

Social work offices contacted by an adult complainant of retrospective abuse should, without delay, try to establish whether the complainant knows the current whereabouts of the PSAA. If it is determined that the PSAA lives in another social work area, the complainant should be informed of Tusla's requirement for the social work service where the PSAA resides to undertake the substantiation investigation of the allegations.

Arrangements should then be made for the adult complainant to be contacted by the responsible social work service. Social workers should ensure that reports of allegations are passed to other social work offices without delay. At no time should a complainant be advised to contact another social work office to give their report; social workers must facilitate a complainant's intention to make their report by arranging for a social

worker from the responsible social work office to contact the complainant. Written confirmation of the social worker's actions in this regard should be provided to the complainant and copied to the responsible social work office.

The exception to position stated in the second paragraph above arises in situations where the location of the PSAA cannot be established. In these circumstances the social work office receiving the report from the complainant should complete the substantiation investigation of the complainant's allegations. If and when the PSAA is located, the social worker completing the substantiation investigation of the complainant's allegations should then be available to complete the substantiation investigation of the PSAA's response to the allegations. The social work office should take all reasonable steps open to it to locate the PSAA, i.e. checks with An Garda Síochána, Department of Employment Affairs and Social Protection, and the Health Service Executive (HSE).

The social work office where the PSAA lives remains responsible in situations where the PSAA works in a different social work area and their employer is a relevant third party (e.g. a school, sporting organisation, NGO, etc.) who will likely need to be informed of the allegations. The social work office must ensure that the social work area where the relevant third party is located is fully informed of the allegations and involved in any child protection planning.

Part C: Procedure for Responding to Allegations

9. Receiving a report

Reports of allegations against a PSAA will be progressed in accordance with the requirements of the Children First Act 2015, *Children First National Guidance* and Tusla's CASP.

If, on the basis of the reported concern and/ or any existing information, there is reason to believe that a child is at immediate serious risk, the concern must be followed up immediately and any necessary interventions made (see section 11 below).

The process of affording a PSAA an opportunity to respond to allegations made against them should not prevent Tusla from taking the steps deemed necessary in respect of ensuring the safety of a child from immediate serious risk.

The *Tusla Privacy Policy* and *CASP Data Protection Guidance* provides guidance on the data protection obligations and rights of data subjects. The privacy policy should be referenced to assist decision-making on informing data subjects of their rights. This policy also outlines Tusla's position in with regard to obtaining agreement and informing a data subject of information held on them, while balancing its child protection obligations with the requirements of data protection.

The process should provide for the PSAA to be informed of the allegations at the earliest possible stage and supplied with copies of all relevant material assembled by the social work team in the substantiation investigation that the social work team will carry out. The PSAA has the right to receive copies of all relevant material assembled by the social work team in the substantiation investigation process. These materials should be provided as a matter of routine procedure, even if not expressly requested by the PSAA. If there is information in the relevant material assembled by the social worker which relates to third parties, that information may be redacted on the grounds of data protection. See separate *Data Protection Guidance for information about redaction of relevant materials*.

Relevant third party reports will have to be shared with the PSAA where they have been assembled by the social work team in the substantiation investigation process. Therefore, it is important that the authors of such reports are informed and provided the opportunity to raise any objections or detail any data restrictions prior to the reports being provided to the social work team for consideration as part of the substantiation investigation.

Any steps taken to ensure the safety of a child from immediate serious risk should be undertaken in consultation with An Garda Síochána.

10. Screening and preliminary enquiries

All reports received will be subject to a screening and preliminary enquiry process to determine if there is a basis for a substantiation investigation or protective action (see section 5 CASP).

Duty/Intake Teams will conduct screening on Extra-familial, Intra-familial & Retrospective referrals to answer the questions:

1. Does the report fall within the category of cases outlined as in the scope?
2. Do the allegations meet the Children First threshold of reasonable grounds for concern and definition of child abuse? and
3. Is the report is ostensibly credible?

If the answer is yes to the above, and the referral is not immediately unsupportable it will be referred to CASP Teams who will conduct a preliminary enquiry.

In relation to retrospective reports, the Retrospective Abuse Report Form (RARF) should be sent to the dedicated contact point (DCP) in the local social work area for screening for eligibility (as per above) and an acknowledgement letter should be issued within 24 hours.

The screening and preliminary enquiry stage is used to establish whether allegations indicate that there are reasonable grounds for concern and further investigation is required as well as to make decisions on any immediate protective action that may be required and the necessity for Stage 1 of the substantiation investigation. The initial contact with the child or adult complainant will usually take place during the preliminary enquiry stage to establish the main facts of what is being alleged. It is important to distinguish this initial contact with a child or adult complainant from the substantiation investigation process of any allegations that will be undertaken in the Stage 1 substantiation investigation. The point of moving from screening and preliminary enquiry to Stage 1 substantiation investigation should be clearly identified on the case record.

Children First National Guidance (2017, pages 7–13) provides definitions of child abuse which are used to conclude as to whether a child is at risk of abuse or has already suffered abuse. Where allegations of child abuse are made against an individual, the social worker will make a judgement as to whether:

1. The report falls within the category of cases outlined as in scope.
2. The allegations meet the Children First threshold of reasonable grounds for concern and definition of child abuse.
3. The report is ostensibly credible.

If the social worker is satisfied on these points, they then have a statutory obligation to further investigate the allegations.

Hoax/fake allegations

Part of the screening process is to rule out allegations which are readily apparent as hoax/ fake allegations. Unless an allegation can be readily deemed to be a hoax allegation, it must then be investigated in accordance with the eligibility criteria.

Ensuring that the case record is clear on the point at which the preliminary enquiry ends, and Stage 1 investigation begins is important.

The social worker will also have to make a determination about whether the allegations will be dealt with under Signs of Safety. As set out in section 2 above, this will arise where the allegation is made by a child complainant against a PSAA who is their parent or adult family member who lives in the same household as the complainant, and the PSAA is not engaged in any activities, for example, voluntary activities, self-employment and/or employment, which would allow them to have access to children. In all other situations, the allegations should be dealt with under CASP. Where Signs of Safety is being used and a PSAA withdraws their cooperation then CASP should be followed. The presenting child protection concerns may have to be shared with a relevant third party by the social worker.

The decision and the reasons for using Signs of Safety and not applying CASP should be fully recorded for future reference on the social work record.

Fair procedures oblige Tusla to inform a PSAA of allegations made against them where the substantiation investigation is moving from Stage 1 into Stage 2 of the investigation. In such circumstances, the social worker should make contact with the PSAA in writing, informing them that information has been received and inviting them to make contact with the social worker (see *Tusla Privacy Policy*, *CASP Data Protection Guidance*, and section 26 below). The PSAA should be informed that the information on them is held on record by Tusla and of their rights in respect of data retention. Social workers should refer to the *Tusla Privacy Policy* and *CASP Data Protection Guidance*.

In circumstances where An Garda Síochána are conducting criminal investigations, any decision to inform a PSAA of information held on them should be done in consultation with An Garda Síochána.

11. Immediate protective action

At any point in the process, the social worker may determine that there is or may be an immediate serious risk to a child. In such situations, urgent action must be taken to protect any children who may be in danger.

If such urgent action is being taken prior to informing the PSAA of the allegations, it must be on the basis that there is:

- A reasonable concern that contacting the PSAA first may place specific or identifiable children at further risk, or
- A reasonable concern that, because of ongoing contact between the PSAA and identifiable children, it is necessary for Tusla to take steps to immediately protect children (such as the notification of a relevant third party).

This should be considered together with sections 24 and 25 of this *Practice Guidance*. Where a child is at risk in their home from family members and unless it is judged that it would put a child at further risk, parents of the child should always be informed of and consulted on any protective actions. If the child's safety cannot be secured with family members, then the social worker must consider if emergency court action is necessary.

Once the safety of the child has been secured through urgent steps and an agreed complainant safety plan is in place, Tusla should then proceed with the substantiation investigation process, whereby fair procedures are afforded to the PSAA. Steps taken under the Child Care Act 1991 to protect a child may require dual tracking of the assessment of the child's needs alongside the evaluation of the weight of concern to be given to the allegations.

12. Notifying An Garda Síochána

Children First National Guidance provides that where Tusla suspects that a crime has been committed and a child has been wilfully neglected or physically or sexually abused, it will formally notify An Garda Síochána without delay (2017, page 42).

To notify An Garda Síochána, the social worker should follow the procedure set out in the *Joint Working Protocol for An Garda Síochána/Tusla – Child and Family Agency Liaison* and complete the required notification form. There is a separate notification process set out in the Joint Working Protocol for An Garda Síochána to notify Tusla of a suspected case of abuse.

Where an individual is making a retrospective child abuse allegation, contact should also be made with An Garda Síochána to enquire as to whether the person alleging the abuse is known to An Garda Síochána and to ascertain whether a statement has already been made. Where the report to Tusla indicates that a statement has been made to An Garda Síochána, the social worker should confirm with An Garda Síochána that this is the case.

Details of the PSAA should also be shared with An Garda Síochána, who should be asked to confirm whether any similar reports or convictions in respect of sexual assault against children are held on record.

An Garda Síochána should be consulted throughout the substantiation investigation process. It will be necessary to hold a strategy meeting between Tusla and An Garda Síochána (see section 9.2, *Joint Working Protocol for An Garda Síochána/Tusla – Child and Family Agency Liaison*) to jointly plan any direct actions that are to be taken where a criminal investigation and a social work substantiation investigation are to be undertaken simultaneously (see discussion box below). Both An Garda Síochána and Tusla maintain policy positions that while the requirements of a criminal investigation have to be fully considered by both agencies in any joint planning, the protection of a child is paramount and in this regard their safety and welfare takes priority at all times (see page 47, *Children First National Guidance*).

Enquiring of An Garda Síochána as to whether a complainant is known to them
Tusla and An Garda Síochána will often investigate allegations simultaneously. In situations where a complainant has made a statement to An Garda Síochána, the social work team should seek a written summary from An Garda Síochána to ascertain whether the allegations made in the Garda statement are consistent with the complainant's account of the allegations provided to Tusla. The social work team should send a formal written request to the relevant Superintendent providing an outline of the allegations and request An Garda Síochána to provide a written summary of the evidence in the Garda statement. Written confirmation provided by An Garda Síochána of allegations made in Garda interviews will have to be shared

with the PSAA where these documents have been assembled by the social work team **and are relevant to** the substantiation investigation process. Therefore, it is important that An Garda Síochána is informed and provided the opportunity to raise any objections or detail any data restrictions prior to any documents being provided to the social work team for consideration as part of the substantiation investigation. Unless there is an identified immediate serious risk to a child An Garda Síochána will not normally agree to the disclosure of information to a PSAA before the submission of the book of criminal evidence to the DPP. If An Garda Síochána is conducting a criminal investigation, it is essential for both agencies to coordinate their actions. If a social worker believes that a child is at immediate serious risk, steps to protect the child must, wherever possible, be agreed on by both agencies.

In certain circumstance it may be necessary to obtain a full copy of the Garda Statement or transcript of a recorded interview. For example, this will be necessary where a complainant withdraws from the investigation but Tusla are still required to investigate because of the potential for existing child protection concerns, or where the complainant is a child and re-interviewing of the child is not in their best interest. Any statements or transcripts obtained from An Garda Síochána will have to be shared with the PSAA where these documents have been assembled by the social work team **and are relevant to** the substantiation investigation process. Therefore, it is important that An Garda Síochána is informed and provided the opportunity to raise any objections prior to the documents being provided to the social work team for consideration as part of the substantiation investigation.

Social workers should not compromise their statutory obligations to protect children if they believe that the position taken by An Garda Síochána is not in the best interests of the child. Decision-making in this regard must always be sanctioned by a Tusla senior manager (Area Manager and above) and the relevant An Garda Síochána Superintendent must be informed and given the opportunity to respond in advance of any planned independent Tusla actions.

13. Investigation of child abuse where substantiation is required

Where a child makes allegations against an individual, CASP must be followed.

An Garda Síochána, if not already involved, must always be notified without delay by Tusla of recent child abuse allegations where the social worker suspects that a crime may have taken place (*Children First National Guidance* (2017, page 42)). Where allegations are being investigated by An Garda Síochána, it is likely that the child will be interviewed by An Garda Síochána and Tusla specialist interviewers under Section 16 (1) (b) of the Criminal Evidence Act 1992. If such an interview has occurred, social workers should avoid re-interviewing the child and request **access to the recording or a copy of the transcript** of the interview to assist their investigation.

In circumstances where it is deemed necessary for a recording of the Section 16 (1) (b) interview to be viewed by Tusla it should be done so by a Professionally Qualified and suitably experienced Social Worker who is independent of the Substantiation Investigation. This Social Worker will provide a report of the details of the allegation presented in the recording to the Social Worker who is undertaking the Substantiation Investigation.

The needs of a child victim of alleged abuse are paramount. Where possible, social workers should seek to discuss any areas of information connected with the allegation that require clarification with parents/carers or with the specialist interviewers, if such an interview has been undertaken, before considering re-interviewing a child (see discussion box below).

Older children may have given written statements to An Garda Síochána. Again, these statements should be accessed by the social worker and their contents considered before any decision is taken to re-interview the child.

Re-interviewing children who have been interviewed by specialist interviewers or who have given a written statement

Re-interviewing children should be avoided wherever possible. The interview process can be traumatic for children and re-interviewing is likely to add to the child's distress. If a child's interview has been recorded as part of a specialist interview and they have disclosed abuse, a **Professionally Qualified and suitably**

experienced Social Worker who is independent of the Substantiation Investigation should access the recording to clarify the details of the allegations. This Social Worker will provide a report of the details of the allegation presented in the recording to the Social Worker who is undertaking the Substantiation Investigation.

Access to the recording will be provided by An Garda Síochána on request. Older children may have provided a written statement; again, to avoid further distress to a child, the statement should be used to gather details of allegations required for a substantiation investigation.

A specialist interview of a child includes a 'truth and lies' stress test section, where the child is asked to show their understanding of what is truthful and to confirm they are telling the truth. A social worker should refer in their report to the child's evidence to this evidential stress test.

In circumstances where further clarification is needed, the social worker carrying out the Substantiation Investigation should initially explore whether the parents or carers of a child are able to assist. In exceptional circumstances, it may be deemed necessary to meet directly with a child to clarify outstanding areas connected with their allegations. If this is the case, it is essential that An Garda Síochána are fully consulted and that senior management (principal social worker or above) has sanctioned the re-interviewing of a child.

Social workers should avoid requesting copies of video recordings and statements held by An Garda Síochána and, where possible, should access these on Garda premises. Copies of recordings of specialist interviews and Garda statements remain the property of An Garda Síochána and holding such records in a social work record creates security and data protection complications that should where possible be avoided. Notes from relevant parts of a recording or a statement should be recorded verbatim to ensure accuracy, and a copy of the note should be provided to An Garda Síochána for their records. A copy of the note should also be provided to the PSAA along with all other relevant material assembled by the social work team as part of the substantiation investigation. Transcripts of video interviews will be made available by An Garda Síochána on request. Any statements or transcripts obtained from An Garda Síochána will have to be shared with the PSAA where these documents have been assembled by the social work team and are relevant to the substantiation investigation process. Therefore, it is important that An Garda Síochána is informed and provided the opportunity to raise any objections prior to the documents being provided to the social work team for consideration as part of the substantiation investigation.

The Child and Family Agency Request for Confirmation of Statement Evidence can be used to formally obtain confirmation from An Garda Síochána of the detail of the allegations subject of criminal investigation if this is required.

The decision to re-interview or not re-interview a child complainant should be fair, reasonable and proportionate, and based on the individual circumstances of each case. The reasons for such a decision should be carefully recorded.

It is important that An Garda Síochána is fully consulted throughout the substantiation investigation of recent abuse allegations and consulted on any information-sharing decisions.

Refer to CASP Data Protection Guidance Document.

14. Investigation of child abuse where substantiation may not be required

It may not be necessary for the Child and family to undertake substantiation investigations into allegations of child abuse in the following circumstances:

1. Where a person has been convicted of a criminal offence against a child that entails abuse as defined by Children First, and following completion of the preliminary enquiry stage, the CASP worker is of the view that the detail of the allegation does not alter the Child and Family Agency's appreciation of any risk that the PSAA may pose.
2. Where a previous substantiation investigation, including following any review, in respect of a person has arrived at a founded outcome and, following completion of the preliminary enquiry stage, the

CASP worker is of the view that the detail of the allegation does not alter the Child and Family Agency's appreciation of any risk that the PSAA may pose.

In circumstances where a person has been convicted of a criminal offence against a child but Tusla does not have an appreciation of the risk they pose to children, an assessment must be obtained that allows such an appreciation to be made. Where such an assessment cannot be obtained a new substantiation investigation must be undertaken. (See Section 17. PSAA with a criminal conviction for sexual or physical assault or wilful neglect of a child.)

Whilst conducting the Screening Process, the Duty/Intake Social Worker should be mindful that the new complainant may have information that the Child and Family Agency is not aware of that may require the PSAA to be met with, in particular for the purpose of safety planning.

It is vital that the Social Worker making the decision in 1&2 records the rationale for the decision being made not to proceed with a substantiation investigation.

If the CASP Worker is not in a position upon completion of the preliminary enquiry stage to be sure that the new complaint will not change the risk, then a new substantiation investigation must be undertaken.

An Garda Síochána, if not already involved, must always be notified without delay by Tusla of child abuse allegations even if the Child and Family Agency is not pursuing a substantiation investigation.

In circumstances where a substantiation investigation does not proceed, the new complainant must be advised of the fact in writing.

Even in circumstances where a substantiation investigation does not proceed, the fact of the referral having been made places the normal data protection obligations on the Child and Family Agency – see CASP Data Protection Guidance.

15. Direct complaints from children

In situations where a child presents themselves without the knowledge or presence of their parents, social workers are required to make a judgement as to the maturity of the child and the extent to which they can facilitate the child's interview without the agreement of the parents/ carers (*Children First National Guidance* (2017, page 48)).

Every possible effort should be made to keep the child's parents/carers engaged and informed of developments, with the exception of situations where doing so might place the child at further risk or impede the criminal investigation.

Informing and consulting with parents on protective actions

Tusla has a responsibility to consult with and keep parents informed of any planned actions that may be deemed necessary to protect a child (*Children First National Guidance* (2017), page 47). Where there is an immediate serious risk, urgent action must be taken to protect any children who may be at risk. This may be achieved through securing the cooperation of a protective carer, family member or other responsible adult in the child's home whose capacity to protect the child can be defined and agreed. Under no circumstances should a child be left in a situation that exposes them to harm or risk of harm pending social work intervention. In cases of emergency, where a child appears to be at immediate serious risk and urgent protection is required, An Garda Síochána should be contacted.

16. Where the PSAA is under 18 years of age and a substantiation of the allegation(s) is required.

Research shows that 37 per cent of child sexual violence reported by children to specialist sexual violence services in Ireland in 2012 related to allegations against people under the age of 18 years (RCNI 2014).

When responding to peer-to-peer abuse, Tusla's key considerations include:

- Issues of care and protection for both the child complainant and the young person alleged to have committed the abuse

- The undertaking of child protection procedure and protection planning for the young person alleged to have committed the abuse
- The prioritising of the complainant's welfare if there is a conflict of interest between the welfare of the child complainant and the welfare of the young person alleged to have committed the abuse
- Early therapeutic intervention with children and young people who abuse other children, which is known to be essential in assisting a child or young person's healthy sexual development.

A child or young person **alleged to have abused a child** may require extensive help and support from their parents and therapeutic services. In this regard, parents and carers should be fully supported, properly advised and offered therapeutic support themselves.

A child or young person **alleged to have abused a child** should be afforded fair procedures in the same way as any other person. Parents/carers should be fully informed and involved, as appropriate, so that they can properly support their child through the substantiation investigation process.

17. PSAA with a criminal conviction for sexual or physical assault or wilful neglect of a child

Allegations **which pass the screening stage which involve** persons who have been convicted of a sexual, physical or wilful neglect crime against a child may represent a serious child protection concern and as such should be acted on immediately.

Where a PSAA has a previous conviction for sexual assault of a child, Tusla's Sex Offender Risk Assessment and Management (SORAM) coordinator should be contacted and informed of the allegations. The SORAM coordinator should be asked about the potential level of risk posed by the PSAA and about details of any monitoring and management arrangements in place for the PSAA.

The social worker and the SORAM coordinator/ designated Garda should reach an agreement in respect of the actions to be taken with regard to:

- Identifying children at risk
- Visiting the PSAA
- Informing any relevant third parties. (Please see section **11 and 24** for steps in relation to notifying third parties.)

18. Contacting an adult complainant as part of the preliminary enquiry

When a retrospective child abuse report is received, the social worker will:

- Acknowledge the report to the complainant
- Notify An Garda Síochána
- Make contact with the complainant
- Provide the complainant with a copy of the information leaflet relating to Tusla's substantiation investigation of retrospective abuse allegations, and
- Inform the complainant of their rights under data protection.

In contacting the complainant, before setting up a formal interview, the social worker should:

- Explain that they, the complainant, will need to be interviewed face to face and a full account of their allegations taken, and that the PSAA is entitled to know the complainant's identity and receive copies of all relevant material assembled by the social work team as part of the substantiation investigation.
- Inform the complainant that this interview is the first stage of the substantiation investigation process, and that it is particularly important as it will be used as the reference point for the next substantiation investigation stage to be undertaken with the PSAA to determine if any children are currently at risk or whether there is a future risk to children yet to be identified.
- Confirm the identity of the complainant with an official State photographic identification.

- Be clear with the complainant that the social worker's task is to investigate the allegations and explain that no further action can be taken until such time as a professional determination on the reliability of the allegations has been made.
- Inform the complainant that the allegations will be stress tested and, if the PSAA denies the allegations or raises other issues in relation to the allegations, the PSAA's account may need to be put to the complainant for comment.
- Inform the complainant that, as per the requirements of Children First, An Garda Síochána has been notified of the report and that the complainant can, if they have not already done so, make a statement to An Garda Síochána at any point.
- Ensure that, where required, the complainant will have access to family or intermediary support through the substantiation investigation process.

Following this, the social worker should finalise the arrangement with the complainant to undertake the first stage of the substantiation investigation. The social worker must then confirm to the complainant in writing that the first stage of the substantiation investigation will be carried out, along with the details of where and when it will take place.

19. Decision not to engage in Stage 1 of the substantiation investigation

Where the adult complainant decides not to participate in the first stage of the substantiation investigation, the social worker should explain that work on progressing the substantiation investigation of risk posed by the PSAA will be compromised, as the social work office will be limited in the actions it can take with regard to the PSAA.

Parents may choose to refuse for their child, who has made a complaint against someone outside of their family, to be interviewed by a social worker or a member of An Garda Síochána. In this circumstance, parents should be informed that not being able to discuss the allegations with the child will limit the actions that can be taken by Tusla with regard to the PSAA.

If the complainant still decides not to engage in the first stage of the substantiation investigation, the social worker should explain that the complainant can make contact in the future should they change their mind. It should be explained to them that if they do decide to make the complaint at a later stage, the PSAA may raise arguments in relation to the effect of the delay on the substantiation investigation. This should be followed up with a letter to the complainant acknowledging that the report has been made and explaining the restrictions on actions that can be taken without Tusla being able to meet with the complainant.

There may be other information which will need to be followed up and investigated. For example, if the complainant is alleging that other named parties were abused, these allegations will require a follow-up, even if the complainant does not wish to cooperate or engage in the process.

Where details of the allegations are supplied by a third party on behalf of the complainant, the allegations should always be examined in detail to determine whether there is an existing potential risk to either identified or yet to be identified children. Where there is potential risk, the social worker will need to be satisfied that children are not at risk from a named PSAA, even though the complainant has chosen not to participate in the substantiation investigation.

A complainant's decision not to engage in a substantiation investigation of their allegations should not prevent the social worker from exploring the details of the allegations with any person identified by the complainant as having historical knowledge of their contacts with, or allegations against, the PSAA.

If an adult complainant decides not to cooperate with a substantiation investigation, they should be advised that Tusla has an obligation to report suspected criminal offences to An Garda Síochána. They should also be advised that in the process of any criminal investigation undertaken by An Garda Síochána, a complainant's decision not to provide details of concerns that indicate that they know or suspect a child is being abused by a PSAA may be viewed as impeding a criminal investigation into suspected criminal violence being perpetrated against a child. Social workers should take into account the complainant's specific circumstances and any specific vulnerabilities or sensitivities, when advising them of this legislation.

Decision not to engage in Stage 1 of the substantiation investigation

A complainant's decision not to participate in a substantiation investigation where the PSAA is named does not abdicate Tusla from its responsibility to satisfy itself as to whether any children, who may yet be identified, are at risk (see the hierarchy of risk in section 5 above). In these circumstances, the complainant should be informed that a decision not to participate will limit the actions that can be taken by Tusla with regard to the PSAA.

20. Anonymous Reports

Where an anonymous report alleging abuse against an identified person is received, the social work office should investigate whether there are any children who may be at risk from the PSAA.

Not being able to enquire into the information supplied by the reporter inevitably places certain restrictions on the scope of any substantiation investigation. However, it is important for the social worker to take steps to establish as far as possible the facts of the report.

Where the report is made by a person mediating on the complainant's behalf, the social worker should try to establish the reason why the complainant wishes to remain anonymous and ask the mediator to facilitate a meeting between the complainant and the social worker. Where such a meeting cannot be organised, the social worker must still fully investigate the allegations and establish whether there is a likelihood that children are at risk or may be placed at risk. The social worker should advise the mediator of the limitations to a substantiation investigation where a complainant decides to remain anonymous and should request that the mediator in turn inform the person who has made the allegations of these limitations.

Discussion of non-investigated allegations against a PSAA with a relevant third party involved with a child should only take place where Tusla has established that there is or may be an immediate serious risk to identified children. In such circumstances, because of ongoing contact between the PSAA and the specific or identifiable children, Tusla would be negligent in its duty to protect children if a relevant third party was not made immediately aware of the allegations made against an individual (see section 11 and 24).

The fact that a report is received anonymously does not in any way obviate Tusla's duty to ensure that any action taken in relation to a PSAA is carried out in accordance with natural justice and fair procedures, including informing the PSAA of the allegations against them and giving them a reasonable opportunity to respond.

21. Where a complainant requests anonymity

In situations where it is established that a Complainant is afraid to come forward because of fear of reprisal from the PSAA, agreement should be sought from the complainant to contact An Garda Síochána with a view to establishing a complainant safety plan (see glossary).

Where a person then decides that they want to come forward and participate in Stage 1 of the substantiation investigation, it will be important – even in situations where there is an identified risk to the complainant from the PSAA – the social worker ensures the complainant is made aware that no guarantee can be given in respect of maintaining their anonymity. The social worker should explain that the substantiation investigation process involves disclosing details of the allegations to the PSAA.

Anonymity cannot be guaranteed to a complainant making allegations of abuse against a named person where the complainant's identity is known to Tusla (*Children First National Guidance* (2017, page 14)). It is the right of the PSAA to know who has made allegations against them so as to be able to make representations in the substantiation investigation process; Tusla cannot carry out a substantiation investigation which affords fair procedures to the PSAA unless this information is disclosed.

In situations where it is determined that there is or may be an immediate serious risk to specific or identified children, procedure as outlined in respect of immediate protective action should be followed (see section 11 above).

Where a complainant has identified themselves but has not provided the identity of the PSAA, the social worker is to advise the complainant, in writing, that no action can be taken by Tusla in the absence of an identified PSAA. The complainant should be informed of Tusla's responsibility to protect children who may be at risk and told what supports are available to them now and in the future in the event that they choose to identify the PSAA.

A new social work record should be opened in relation to each complaint or allegation.

22. Management of records, including where a complainant decides not to engage in Stage 1 of the substantiation investigation

Details of a complaint and the actions taken must be carefully recorded and kept on the case record, regardless of whether the complainant participates in the first stage of the substantiation investigation or not.

A record in the complainant's name and the PSAA's name is to be opened at the point of the receipt of the referral. The above records are used to record the details of the allegations, the name and circumstances of the complainant and the PSAA and the decisions made during the first stage of the substantiation investigation.

A case record should also be created in the name of each identified child who is believed to be at risk, including any child for whom the PSAA has direct care and control.

In circumstances where information and details of a complaint do not reach the threshold for a first-stage substantiation investigation, an account of the complaint should be kept on the complainant's record.

Where a report has reached the threshold for substantiation investigation, the PSAA's record should detail their family circumstance and the names and dates of birth of known direct family members. The name of the complainant (except where a complainant safety plan is in place, see section 21 above) together with details of the allegations and actions and decisions agreed in respect of the substantiation investigation of the allegations should also be recorded.

In circumstances where a complaint has reached the threshold for a stage 1 substantiation investigation but the complainant decides not to participate in a substantiation investigation into their allegations and where no other information is available, or where circumstances of concern exist relevant to a wider investigation of the allegations, the social worker, in consultation with their line manager, must judge whether there are continuing grounds for concern and further investigation is required to proceed to stage 2. A complaint is unsubstantiated until a founded or unfounded conclusion is reached.

Any decision to inform a PSAA of details of a complaint where the complainant is not participating should be guided by the principles set out in the *Tusla Privacy Policy* and *CASP Data Protection Guidance*.

After full consideration of the allegations and following any actions to inform the PSAA of unsubstantiated allegations, and where there are to be no further actions, the case should be closed. The complainant (and the PSAA if they are aware of the allegations) should be informed in writing of the case closure decision and their rights under data protection, which should be recorded on both the complainant and PSAA records.

A past complainant who did not previously engage in stage 1 could, where there are new allegations from another party against the PSAA, be asked if they are now willing to come forward to have their original complaint investigated under the new CASP investigation. In such circumstances, it must be ensured that the past complainant is not provided with details of any new allegations, but only informed that another report from a different complainant has been made to Tusla.

Record of allegations

New information may change the position on whether someone is in fact responsible for something they have previously been alleged to have done. In such circumstances, the original concerns have to be reinvestigated to determine whether the new information changes the original facts of the case or not. In these types of situations, past complainants may choose to come forward to assist the social worker to substantiate previously unsubstantiated allegations.

These types of situations should always be discussed with a legal advisor. Where an allegation by a complainant is not going to be investigated or where an initial to provide further detail investigation indicates that further investigation is not appropriate, the PSAA is nonetheless entitled to know that **Tusla is processing information in relation to them. See CASP Data Protection Guidance and Tusla Privacy Policy.**

23. Stage 1 of the substantiation investigation: meeting the complainant
The first stage in the substantiation investigation process is taking appropriate steps to stress test the allegations made. This would usually be done by an interview and putting specific questions to the complainant in order to explore and test the potential veracity of same.

Stress testing a complainant's allegations

Stress testing a complainant's allegations should form an essential part of the interview process to demonstrate as fully as possible that a person's allegations are not just accepted on face value. Taking this approach allows the social worker to **ensure** that the approach to investigating the allegations has been robust and fair from the beginning of the process. **The social worker should always keep in mind that their role is not to adjudicate on a dispute but to inquire into the allegation. While a conclusion is to be reached on whether the allegation is founded or unfounded, the purpose of the investigation is not the administration of justice but the protection of children.**

In stress testing, the social worker should:

- Clarify the details of the allegation, i.e. repeat back to the complainant their understanding of what they have said to ensure the details are correct and record the complainant's confirmation of those details (see below).
- Ensure that they ask the complainant to confirm that they are telling the truth and record this on the record that will be signed by the complainant.
- Ask the complainant specifically about how they will respond if the PSAA denies all or any part of their allegations and record their response.
- **Identify any inconsistencies in the Complainant's account and seek an explanation from the complainant in response to same.**

This approach to stress testing a complainant's allegations helps to ensure that the interview with the complainant was robust and fair and **will assist the social worker where further questioning of the Complainant may not be appropriate.**

Following the interview (see section 13 above for children who have been interviewed under Section 16 (1)(b) of the Criminal Evidence Act 1992) or information-gathering process with the complainant in respect of their allegations, the social worker will determine whether they need to interview anyone else who may be of relevance. For example, if the complainant disclosed that they told a friend or parent shortly after the abuse took place, talking to these people may assist in the substantiation investigation of the complainant's account. **Either during or following the interview with the complainant the social worker may wish to seek information or documentation from the complainant which the social worker believes may be relevant to the investigation. There must be reasonable grounds for requesting such information based on the social worker's interactions with the complainant or witness.**

Where the complainant has been working with a therapist or counsellor, meeting with the therapist or counsellor **can** form part of the first stage of the substantiation investigation **where there are reasonable grounds to seek such information.** The social worker should explain to the complainant the reason why other identified people have to be spoken to and should seek the complainant's support in facilitating these interviews. **Care must be taken when seeking details about the complainant's past emotional or behavioural difficulties. It may not always be necessary or appropriate to seek detail of a complainant's mental health, addiction issues. Such issues may be of limited relevance to the investigation as they may only go so far as to confirm that a complainant has faced personal challenges which could be consistent with them having suffered**

past abuse. This in itself, in the absence of other supporting details, should not be assumed as confirmation that they were abused by the PSAA.

On occasion, a complainant (or parents of a child complainant) may state categorically that they do not want a certain third party to be approached. The social worker must explain that they are under an obligation to make contact with persons identified by the complainant who may be in a position to assist in the substantiation investigation process, and therefore that no commitment can be given that a certain person will not be contacted. It is in the complainant's best interest that the social worker gains their support in contacting such third parties relevant to the substantiation investigation.

The social worker should explain that following the substantiation investigation of the complainant's allegations, the social worker – in consultation with their Line Manager – will conclude whether there continues to be reasonable grounds for concern as per *Children First: National Guidance for the Protection and Welfare of Children* (2017) and that further investigation is required.

The social worker should explain that no predetermined position on whether the allegations have been substantiated has been reached and that a determination can only be made once the PSAA has been given an opportunity to respond to the allegations. The social worker should also explain to the complainant that any determination is made on the basis of the balance of probabilities as to whether something did or did not occur and that a founded or unfounded conclusion will eventually be reached.

The record of allegations the social worker takes from the complainant should be read back to them to provide a final opportunity to correct any inaccurate details. On completion, the complainant should be asked to sign the record to confirm that it represents a true and accurate account of their complaint.

Once the first stage of the substantiation investigation is complete, the social worker should discuss the substantiation investigation with their Line Manager. If a member of An Garda Síochána is involved in the case, they should also be consulted. The test for moving to Stage 2 of the substantiation investigation is that there continues to be reasonable grounds for concern as per *Children First: National Guidance for the Protection and Welfare of Children* (2017) and further investigation is required.

Following these consultations and discussions, the social worker must decide the next step(s) to be taken in the substantiation investigation.

Details of the decision made and the process of decision-making, including the reasons for the decisions, must be recorded on the complainant's record by the social worker.

The complainant (or parents of a child complainant) should be informed of the decision made by the social worker following the first stage of the substantiation investigation. If the decision is that the substantiation investigation is to continue, the complainant should be formally told that the substantiation investigation is not complete until such time as the PSAA has had an opportunity to respond to the allegations. The complainant should receive confirmation of this in writing.

If the investigation is moving to Stage 2, the PSAA is entitled to receive all relevant material assembled up to that point. Material (a document / piece of information) is said to be relevant if it discloses a fact or facts which, on their own or in conjunction with other facts, tends to prove or disprove a live issue in the investigation. The key question for a social worker to consider is whether a particular item of evidence is logically probative or disprobative of a fact at issue. An item of evidence is relevant if it renders the fact it seeks to establish slightly more or less probable than the fact would be without the evidence, through the application of everyday experience and common sense. If material is considered not to be relevant at Stage 1 of the process, there is no fair procedure obligation to disclose it to the PSAA.

The complainant (or parents of a child complainant) should be kept informed as to how their data is planned to be shared with a PSAA and provided with copies of the specific data relating to them before it is shared with the PSAA. This allows the complainant opportunity to raise objections to the sharing of their data which the social worker will need to consider in their decision about the detail of the complainant's data that will be shared with the PSAA.

Tusla should decline to release relevant material to the PSAA only in very exceptional circumstances where there is a clear and continuing risk of harm to an identified person. Given the nature of issues involved, such a withholding could only be justified in the most extreme of cases and where the information is withheld to the least extent possible. In such circumstances, Tusla should explore alternatives such as anonymisation of information or disclosing independently drafted summaries. Any decision to withhold relevant information would have to be kept constantly under review and be reactive to any information that suggests that any initial perception of harm is no longer accurate.

Where there is a decision not to proceed further with the substantiation investigation, the social worker should inform the complainant (or the parents of a child complainant) of this decision and the reason for it. The complainant should be told that no further action will be taken. The complainant should receive confirmation of this in writing.

24. Informing relevant third parties prior to the second stage of the substantiation investigation

Where the social worker considers that there is or may be an immediate serious risk to specific and identifiable children and that a relevant third party must be informed, the safety and wellbeing of the child must take priority over the need to inform the PSAA of the allegations prior to certain steps being taken (*Children First National Guidance* (2017, page 47)).

However, careful consideration should always be given as to whether a situation allows for the PSAA to be informed of the allegations which have given rise to a child protection concern before any action is taken to inform a relevant third party. Where possible, a PSAA should be provided with the opportunity to inform the relevant third party themselves prior to the social worker contacting the relevant third party. The social worker should inform the PSAA as to when the social worker will be contacting the third party and what information will be given to the third party. The social worker should inform the third party that serious allegations have been received which give rise to child protection concerns. They should also be made aware that the allegations have not yet been investigated. The social worker should supply the relevant third party with an appropriate level of information that allows the third party to take appropriate steps to ensure the protection and well-being of children in their care. The exact nature of the information to be provided to the relevant third party should be agreed in advance with the social worker's line manager.

Given that an immediate serious risk has been established, the social worker should consider what timeframe would be feasible, having regard at all times to the paramount importance of child protection. The social worker should allow the PSAA the opportunity to inform the relevant third party but should not add any degree of potential further risk to a child.

Where a relevant third party is informed of allegations before the PSAA is informed of such allegations, the social worker should immediately make contact with the PSAA to advise them the above steps have been taken.

In circumstances where a relevant third party is informed of allegations against a PSAA prior to the completion of the substantiation investigation, the social worker should explain and make clear to the third party that no conclusion in respect of the validity of the allegations has been made. The social worker should also tell the third party that it is only on completion of the full substantiation investigation that a determination will be reached, but that a decision to inform the relevant third party of the allegations prior to the completion of this substantiation investigation has been made on the basis that it is considered necessary from a child protection point of view.

The Child and Family Agency must be satisfied that the actions taken, or to be taken by the relevant third party will ensure the ongoing safety of any child under the care and control of the relevant third party for the duration of Tusla's substantiation investigation of the allegations. Tusla cannot advise the third party on what particular steps should be taken; social workers should be clear that their function is to indicate whether a child protection plan is adequate. Where there are any issues relating to a PSAA's employment, the third party must seek their own advice on such issues.

If there is no evidence to suggest that there is an immediate serious risk, the PSAA should always be informed of the allegations and should be invited to remove themselves voluntarily from any circumstance where they might have contact with children for the duration of the substantiation investigation.

The social worker must carefully and fully document the decisions taken and the reasoning behind them, following consultation with the social worker's supervisor.

An Garda Síochána should be informed of any plan to contact a third party. Where the social worker thinks that the child protection action should take priority over action in relation to the criminal investigation, An Garda Síochána should be informed of the reasons for this and should be provided with an opportunity to comment. An Garda Síochána should also be informed of any safety arrangements agreed with a relevant third party for the duration of the substantiation investigation. Consideration should be given as to whether a strategy meeting between Tusla and An Garda Síochána is required to agree on joint actions.

As set out in paragraph 9.2 of the Joint Working Protocol for An Garda Síochána/Tusla – Child and Family Agency Liaison, there may be a need for a face-to-face strategy meeting involving the liaison management team as well as the social worker and the investigating Gardaí. Decisions made at such a meeting should be clearly recorded.

25. Procedure in respect of a relevant third party following immediate protective action

Once the relevant third party has been met and informed of the concerns, the social worker should follow up with them to:

- Stipulate in writing that no conclusion in respect of the validity of the allegations **has been reached and that it is only on completion of the full substantiation investigation that a determination will be reached, but that a decision to inform the relevant third party of the allegations prior to the completion of this substantiation investigation has been made on the basis that it is considered necessary from a child protection point of view.**
- Confirm in writing the child protection action/cooperation sought for the duration of the substantiation investigation.
- Consider whether Tusla is satisfied with the response and actions taken by the relevant third party, or whether it needs to take action itself to protect specific or identifiable children.
- Consultation should take place with Tusla Office of Legal Services on the content of written statement to a relevant third party.
- **Where a third party has been informed of allegations prior to the conclusion of the investigation, the investigation must continue until an outcome has been reached and the third party should be informed of that outcome without delay.**

Agreement with a relevant third party where they have been informed of potential immediate serious risk from a PSAA prior to the completion of the substantiation investigation

Tusla's responsibility is one of ensuring that steps being taken by a relevant third party to keep children safe during a substantiation investigation are adequate. This is achieved when the social worker is satisfied that the actions being taken by a relevant third party adequately provide for the ongoing safety of any children in their care. Where the PSAA is employed and their employer is making decisions in relation to the employee's working arrangements or employment status, it is important that the social worker makes clear to the employer that any decisions in this regard are the employer's alone; the social worker's role is to indicate whether a child protection plan is adequate.

While the social worker is unlikely to be able to confirm in writing that Tusla is investigating allegations in relation to child protection concerns to the relevant third party until its conclusion, this does not mean that contact with a relevant third party has to be avoided. The social worker should keep in contact with the

relevant third party during the period of the substantiation investigation to reinforce the importance of the safety arrangements.

If the relevant third party is unable or unwilling to take steps that keep children safe, then the social worker, to meet statutory obligations, will need to decide on actions that may need to be taken to keep children safe from harm, independent of cooperation from the relevant third party. This might require applications for court orders, contact with parents or with children or young people themselves, and any other steps that are deemed necessary to keep children safe.

26. Stage 2 of the substantiation investigation: engaging with the PSAA

The constitutional rights of the PSAA take precedence over contact with a third party unless it is deemed there is an immediate serious risk to a child that requires action prior to informing the PSAA of the allegations against them (the procedure in these circumstances is set out in section 24 above). The data protection rights of the PSAA should be taken into full account as per the *Tusla Privacy Policy* and *CASP Data Protection Guidance*.

Engagement with the PSAA in Stage 2 is a crucial part of the substantiation investigation process.

At the beginning of Stage 2 of the substantiation investigation, the PSAA should be provided with copies of all relevant material assembled by the social worker in the substantiation investigation process. In circumstances, where the social work substantiation investigation of the allegations has been delayed, the PSAA will have been informed prior to stage 2 of the allegations and of the data processing.

It is important that the social worker has not reached any conclusions in advance of the PSAA being given an opportunity to respond to the allegations.

- After the social worker completes the first stage of the substantiation investigation, they should consult with An Garda Síochána prior to contacting the PSAA. The need for a further strategy meeting should be considered. A decision may be made to defer contact with the PSAA and the any relevant third party until after any criminal investigation or other action has been concluded (as long as no specific or identified child is deemed at immediate serious risk). It is not always necessary or appropriate to defer taking steps when a criminal investigation is ongoing. The social worker should discuss with their line manager any request from An Garda Síochána to delay action (see discussion box in section 12 above).
- Wherever possible, agreement should be reached with An Garda Síochána on next steps. Unnecessary delays to the substantiation investigation process must be avoided at all times, as a delay could be considered a breach of the PSAA's fair procedures rights.
- Where delays to a substantiation investigation occur then the complainant and the PSAA should be communicated with on a monthly basis and provided with an update.

When a decision is made to move to Stage 2 of the substantiation investigation of the allegations, Tusla must ensure fair procedures are afforded to the PSAA by taking the following steps:

1. Write to the PSAA at the earliest stage. The letter should invite them to an initial office appointment to be informed of the concerns that have been brought to Tusla's attention and investigated by the social worker thus far. In this initial letter, the PSAA should be informed that when they attend the office appointment, they will be asked for official State photographic identification and asked to sign for any documentation provided to them.
2. Give the PSAA the option of bringing a support person with them to this initial office appointment, but inform them that it is not a requirement.
3. Confirm the identity of the PSAA with an official State photographic identification on attendance at the office appointment
4. Advise the PSAA about the *Tusla Privacy Policy* and *CASP Data Protection Guidance*.
5. Conduct this initial office appointment jointly with a social worker colleague or other professionally qualified member of Tusla staff. Provide the PSAA with full written details of the allegations (including

the identity of the complainant) together with details of the procedural process which will be followed.

6. Provide the PSAA with a copy of all relevant material assembled by the social worker as part of the substantiation investigation. This will include a copy of written information, including any reports about the allegations made against the PSAA. If there is information in the relevant documents which relates to third parties, it may be redacted on the grounds of data protection. (See CASP Data Protection Guidance)
7. Do not ask the PSAA to account for the allegations at this initial office appointment but advise them to read the reports and correspondence provided before they respond. Offer the PSAA an early opportunity to meet with the PSAA to discuss the allegations and give him /her an opportunity to respond. The PSAA is not obliged to meet with the Social Workers and if he / she does not wish to meet state that you will consider any written submission.
8. Inform the PSAA where contact with an identified relevant third party is being considered.
9. Inform the PSAA that in the absence of their agreement to meet or provide a written response to the allegations a decision to proceed will be made without the benefit of their response.
10. Explain that any written response from the PSAA and/or any face-to-face meeting will be used as part of the substantiation investigation process being undertaken to determine whether there is any current or potential future risk posed towards specific, identifiable or yet to be identified children.
11. Inform the PSAA that if they choose to cooperate with the substantiation investigation and meet with Tusla, they have the opportunity to bring a support person with them.
12. Inform the PSAA that they have a right to:
 - a. Seek legal advice.
 - b. See all relevant material assembled by the social worker in the substantiation investigation process, **subject to any restrictions on disclosure made in exceptional** circumstances, in order to inform their response to the allegations.
 - c. Submit any documentation that the PSAA believes is relevant and/or that the PSAA seeks to rely on.
 - d. Make any oral or written submissions the PSAA wishes to rely on and be considered by Tusla during the substantiation investigation process.
 - e. Identify any third parties whom the PSAA believes have relevant information to the substantiation investigation process and whom the PSAA believes should therefore be interviewed by Tusla.
13. Provide the PSAA with a copy of CASP, this *Practice Guidance* and the **relevant** information leaflet **for Persons Subject to Allegations of Abuse** relating to Tusla's substantiation investigation of child abuse allegations.
14. Where the PSAA declines an initial office appointment, **a letter should be sent** containing full written details of the allegations (including the identity of the complainant) together with details of the procedural process which will be followed, and steps (a) through (e) above should be followed.
15. **Steps may need to be taken to verify the identity of the PSAA prior to posting the above letters. These steps may include paying a home visit to the intended address for the letters and verifying the PSAA is present at that address.**
16. Allow 28 days for the PSAA's response to correspondence. If no response is received, a second letter should be sent allowing a further 14 days for response.

All correspondence to the PSAA should be sent by registered post and marked 'Strictly Private and Confidential; Strictly Addressee Only', unless some other equally verifiable safe and secure form of notification is agreed with the PSAA as more appropriate in the circumstances (e.g. personal delivery). It is essential to ensure the PSAA's contact details are correct. Check with An Post that letters have been delivered and signed for before proceeding to inform a relevant third party, without a prior meeting with the PSAA.

An initial visit to the PSAA's residence may be required. The social worker should request the PSAA to facilitate such a visit. In the process of making contact with the PSAA, the social worker should seek to ascertain the level of contact between the PSAA and any specific or identified children. However, the social worker must be

aware, in circumstances where there is no immediate serious risk of significant harm to any identified child, of the PSAA's right to fair procedures, which would allow for them to respond to the allegations before any third party is informed.

As detailed above, where an immediate serious risk is identified, consideration should always be given, prior to any action being taken to inform a relevant third party, as to whether a situation allows for the PSAA to be invited to remove themselves voluntarily from any circumstance where they have ongoing contact with any specific and identified children for the duration of the substantiation investigation. In situations where the PSAA is provided an opportunity to voluntarily remove themselves from contact with children, they should be informed that their actions in this regard will be verified with the relevant third party concerned.

27. Where the PSAA declines to engage

Where the PSAA has not engaged and a decision is taken to inform a relevant third party of an immediate serious risk, the PSAA should be informed of this decision in writing, which should confirm the date on which the relevant third party will be informed. Any data protection restrictions and exceptions as detailed in the *Tusla Privacy Policy* and *CASP Data Protection Guidance* should be taken into account.

The timing should allow the PSAA sufficient time, i.e. a minimum of 14 days, to respond if they choose. This is subject to child protection considerations, as set out in Sections 3 and 5.

28. Stage 2 substantiation investigation: meeting with the PSAA to investigate their response to the allegations made against them

Purpose of Stage 2 substantiation investigation interview

1. Ensure the PSAA is supplied with appropriate information prior to the meeting, including all relevant material assembled by the social worker in the substantiation investigation process.
2. Confirm the details of the allegations with the PSAA.
3. Explore the details of the allegations and the PSAA's response. Provide an opportunity for them to discuss their own history and any details of their life which they may think relevant to the situation.
4. Investigate if there are child protection concerns in relation to specific and identifiable, or yet to be identified children.
5. Where appropriate, advise and discuss risk management and therapeutic options available.
6. Enquire if there are any persons the PSAA wishes to be interviewed who could provide relevant information to assist the investigation.

Initial interview with PSAA

The initial interview and any subsequent interviews should be conducted by the social worker in the company of another social work staff member or suitably qualified professional of Tusla.

1. Arrange the interview in a timely manner following receipt of confirmation from the PSAA that they are willing to participate in the social work substantiation investigation process.
2. Explain the limits of confidentiality in case any admission or disclosure is given by the PSAA in the course of the interview. Explain that the social worker may be required to notify An Garda Síochána about information provided in the interview.
3. Explain the purpose of the interview to the PSAA.
4. Explain the first stage of the substantiation investigation (all documents should have been provided already).
5. Give the PSAA an opportunity to respond to the allegations against them, which they should have received in writing prior to the interview, together with all relevant material assembled by the

social worker in the substantiation investigation process and the identity of the person or persons making the allegations.

6. Explain that the interview with the PSAA is part of the process of investigating the allegations against them and that, following the interview and any other necessary enquiries, Tusla will reach a provisional conclusion as to whether the allegations against the PSAA are substantiated and whether the PSAA poses a risk to children, followed by a final conclusion.
7. Make it clear to the PSAA that no predetermined position on whether the allegations have been substantiated has been reached and that a determination can only be made once they have been given an opportunity to respond to the allegations.
8. In the interview process, attempt to explore the allegations with the PSAA and provide an opportunity for them to respond to each allegation. As part of the process, explore the PSAA's own history and allow them to provide any details of their life which they think are important.
9. Try to build a picture of the PSAA as an individual and of their relationship with the complainant, as the purpose of the interview is not only to hear the PSAA's response to the allegations. This allows the interviewers to set the allegations against the PSAA's history, life experience and knowledge of the complainant, which will help to inform the conclusion.
10. Where the PSAA admits to the allegations, immediately explore with the PSAA whether there are other incidents of child abuse that they may wish to speak about. It should be made clear that any such disclosures will be reported to An Garda Síochána and to Tusla social work services where the child lives.
11. Give the PSAA opportunity to identify any third parties whom the PSAA believes have relevant information to the substantiation investigation process and whom the PSAA believes should therefore be interviewed by Tusla. If it is decided not to interview the witness or witnesses proposed by PSAA, the PSAA should be informed of this and given reasons for same.
12. Inform the PSAA that they may request an opportunity to put questions to a person (e.g. a complainant or a witness) about the allegations. (See discussion box below 'Where a PSAA asks for a complainant or witness to be questioned'.) A balance should be struck between the rights of the complainant, the legal obligations of Tusla under Section 3 of the Child Care Act 1991 and the need to afford fair procedures to the PSAA. If such a request is made, discuss it with the line manager, and the particular circumstances of each individual case should be taken into account. The decision to allow a PSAA to stress test the allegations made by putting questions to a complainant or witness in an appropriate manner should be fair, reasonable and proportionate, based on the individual circumstances of each case. The reasons for any decision in this regard should be carefully recorded.
13. If relevant in a particular case, interview the PSAA's wife, husband or partner as part of the substantiation investigation process. This may assist the social worker in building a picture of the PSAA as an individual and may also help to corroborate details and information. In an ideal situation, obtain the PSAA's agreement. If they do not agree, discuss this with the line manager.
14. Once the interview is finished, inform the PSAA that they will be provided with a copy of the typed notes from the interview as well as any other relevant information. (The PSAA will already have been furnished with all relevant material assembled by the social worker to date in the substantiation investigation process.)
15. Retain all handwritten notes on record and give the PSAA the opportunity to notify the social worker of any clarifications or inaccuracies within 10 days of the typed notes being sent to them.
16. Record any areas of dispute raised by the PSAA regarding the accuracy or content of the interview notes and retain these together with the interview notes on record.
17. Advise the PSAA that they will be provided with any further relevant material assembled during Stage 2.

18. Tell the PSAA that they will be informed of the social work office's provisional conclusion about the allegations when this is reached.

Support or legal representation for the PSAA at initial interview

1. If the PSAA brings a legal representative or support person, the process set out above remains the same.
2. The presence of a legal representative or support person does not change the nature of the interview, and the interviewers' questions should be directed to the PSAA. If issues arise that the social worker believes require legal advice, the meeting can be adjourned, if necessary, so that advice can be obtained.
3. If the PSAA or their legal representative or support person has any questions about the process, refer them to where this has already been set out. The PSAA can also be referred to this *Practice Guidance*. If the support person has questions, these can be addressed in the same way as questions from the PSAA.

29. Where a complainant has refused to participate in a substantiation investigation, but a decision is made to meet with the PSAA

In circumstances where, following examination of allegations made by a complainant who decides not to participate in the first-stage substantiation investigation, the social worker remains concerned about potential risk to children, it will be necessary to meet with the PSAA to obtain their response to the allegations. The PSAA is still entitled to fair procedures as detailed in CASP and this *Practice Guidance*.

30. Post-initial interview with PSAA

The social worker should:

1. Provide written confirmation to the PSAA of any agreement reached in respect of future action.
2. Carry out any further investigation that may be appropriate in light of the information and response given by the PSAA, including interviewing other persons identified as relevant to the substantiation investigation.
3. If a decision is made not to interview a third party suggested by the PSAA, the social worker should record reason for same. The PSAA should be informed of this and given reasons for same.
4. If a third party declines a request to be interviewed, advise the PSAA of this as soon as is practicable.
5. Meet with or contact the PSAA again if required.
6. Where a PSAA has denied the allegations, consider whether it is necessary and/or appropriate to re-interview the complainant and/or otherwise stress test the allegations in light of the PSAA's denials and any information or evidence provided by the PSAA or otherwise gathered during the substantiation investigation process. That decision should be fair, reasonable and proportionate, based on the individual circumstances of the individual case. The reasons for the decision should be carefully recorded. The particular circumstances and sensitivities of complainants should be taken into account prior to reinterviewing them or otherwise stress testing the allegations.
7. Where the complainant is a child, the social worker should initially explore whether the parents of the child or carers of the child are able to assist. In deciding whether the social worker should meet with the child in order to put the PSAA's version of events to them, factors such as the following should be considered:
 - The age and stage of development of the child:

- The passage of time elapsed between the alleged event and the proposed re-interview, long delays between repeated interviews are found to reduce the accuracy of new information yielded from children; however, short delays between interviews do not (Hershkowitz & Turner, 2007)
 - The possibility of re-traumatising the child, particularly in respect of serious allegations,
 - The particular vulnerabilities of the child.
 - The number of times that the child has been interviewed - Re-interviewing a child about information already obtained within another interview format is widely discouraged. (APSAC, 2012; Merchant & Toth, 2006; NCA, 2016; Saywitz & Comparo, 2009).
8. If there is not an adequate opportunity to stress test the Complainant's allegation in light of a PSAA's denials or any information or evidence provided by the PSAA or otherwise gathered during the substantiation investigation process, the social worker should be aware that consistent and cogent evidence will be necessary to ground a "founded" conclusion.
 9. Where a decision is made to re-interview or otherwise stress test the allegations by the social worker, consideration should be given to clarifying with the PSAA or their legal representatives if there are any particular issues they would like to be explored with the complainant.
 10. Consider the potential consequences of a founded conclusion on the PSAA. This might include the potential that a relevant third party may be informed; any impact on the PSAA's employment or employment prospects; impact on family; or potential childcare proceedings.
 11. Send all correspondence to the PSAA by registered post, marked 'Strictly Private and Confidential; Strictly Addressee Only', unless some other equally verifiable safe and secure form of notification is agreed with the PSAA as more appropriate in the circumstances (e.g. personal delivery). It is essential to make sure the PSAA's contact details are correct.
 12. If it is decided at any stage that there is an immediate significant risk to a child, action must be taken to protect any children who are deemed to be at risk.
 13. After the interview, prepare the record of the interview and send it to the PSAA. Identify action points arising out of the interview and ensure they are followed up by the relevant personnel.
 14. In accordance with Children First, where the PSAA alleges that they were abused and has identified the alleged PSAA, undertake a substantiation investigation of those allegations as set out in the *National Procedure* and this *Practice Guidance*.

Where a PSAA asks to question a complainant or witness

Where a PSAA asks to put questions to a complainant or a witness this request must be considered by the social worker in a fair and proportionate manner. The social worker must take account of all the circumstances and seek to balance the rights of all concerned before a decision is made.

In particular, in considering a PSAA's request to put questions to the complainant or a witness, consideration should be given as to whether the request is to put questions to an adult on the one hand or a child on the other.

Where a PSAA wishes to put questions to a complainant or witness, consideration will need to be given to the means through which this might be achieved. Ideally, the social worker should seek to agree a form of stress testing that both the PSAA and the complainant / witness are satisfied with. The social worker should provide the complainant with information about the ways in which their allegations can be stress tested and should seek their agreement before any questioning or alternative forms of stress testing can take. The social worker should explain that a refusal to have the allegations stress tested may have a substantial impact on the substantiation investigation.

The starting point for agreeing a form of stress testing should be to seek agreement with the PSAA and the complainant / witness to put an agreed set of questions or issues to be explored with the complainant or

witness by the social worker. Prior to the complainant or witness being questioned by the social worker on these matters the appropriateness and relevance of each question should be considered by the social worker.

If the PSAA does not agree to this option, the social worker should consider the reasons why this option has been rejected and consider instead providing the PSAA with a recording of the questions being put to the complainant/witness by the social worker, or, alternatively, permitting the PSAA's solicitor or other suitable person to observe the social worker putting questions to the complainant / witness.

If the PSAA does not agree to this but wishes for their solicitor or other suitable person to put questions to the complainant or witness on their behalf, then the social worker should consider the reasons why the previous option has been rejected and consider the request for the PSAA's solicitor or other suitable person to put questions to the complainant or witness. The age and vulnerability of the complainant / witness must be considered as part of this.

Direct questioning of a complainant or a witness by a PSAA should generally be avoided. In particular, it is generally inappropriate for a child or vulnerable adult to be directly questioned by a PSAA. A complainant or witness always has the right to refuse to be directly questioned by a PSAA or other party. It should not be assumed though that an adult complainant, the parents of a child complainant or a witness will necessarily be resistant to the PSAA or their solicitor or other suitable person putting questions directly to them, so their view of how this might be managed ought to be obtained. In the case of a child complainant, where the child's parents are agreeable to direct questioning of the child, the social worker should still consider if the putting of questions by a PSAA themselves is appropriate even though there is agreement to this. Social workers should consider alternative forms of stress testing (see below).

The following alternative forms of stress testing are options to consider where a PSAA asks to question a complainant or witness

1. Invite the PSAA to write out questions to be put to the complainant or witness by the social worker, or to suggest issues to be explored with the complainant or witness by the social worker. Prior to the complainant or witness being questioned on these matters the appropriateness and relevance of each question should be considered by the social worker.
2. Consider making an audio or video recording of the social worker putting the PSAA's questions to the complainant or witness and the complainant's or witness's responses. This audio or video recording would then be made available for the PSAA to view / hear.
3. Consider permitting the PSAA's solicitor or other suitable person to observe the social worker putting questions to the complainant.
4. Where a complainant or a witness agrees that the PSAA's solicitor or other suitable person can be present during the questioning and the social worker considers this appropriate, consider permitting the PSAA's solicitor or other suitable person to put questions to the complainant or witness either in person or through a live video link.
5. Where a complainant or a witness agrees that the PSAA can be present during the questioning and the social worker considers this appropriate, consider permitting the PSAA's solicitor or other suitable person to put questions to the complainant or witness with the PSAA being physically present themselves or being permitted to observe through a live video link. If the PSAA is physically present, consideration could be given to using a screen to separate the complainant or witness who is being questioned.

The social worker should not make any arrangements for a PSAA, their solicitor or other suitable person to question a complainant or witness without discussing this with their line manager and reaching agreement from the complainant / witness. It may also be necessary for the line manager to seek legal advice before any arrangement for the PSAA, their solicitor or other suitable person to question the complainant or any other witness is put in place.

If, following the use of an alternative means of stress testing as outlined above, the PSAA is not satisfied that they have had a reasonable opportunity to stress test the allegations, then the question of whether further questioning or other stress testing should be permitted will be reconsidered by the social worker.

In the event that this arises, a fresh determination should be made as to whether to permit further questioning or other stress testing. This further decision should be fair, reasonable and proportionate, based on the individual circumstances of each case and the reasons therefore carefully recorded.

Working with the cooperation of both the complainant or witness and the PSAA / their solicitor in these situations is important. However, if the complainant or witness refuses to be directly questioned by the PSAA or their solicitor or other suitable person, and the social worker is satisfied that the PSAA has been offered a range of alternative stress testing options, as outlined above, then the social worker should aim to progress the substantiation investigation using the options offered to the PSAA. If the PSAA remains adamant in their determination to question the complainant face to face and declines to cooperate further with the substantiation investigation, they should be advised that the social work office is satisfied with the stress testing options offered and will proceed to reach a conclusion utilising the information so far gathered as part of the substantiation investigation.

The PSAA may provide information that requires additional investigation, i.e. the identification of people who may hold relevant information, or key details that have to be explored with the complainant or any other persons involved in the substantiation investigation. The additional investigation work should be completed before any provisional conclusion is reached by the social worker. This may also involve further interviews and investigation work with the PSAA.

In accordance with fair procedures, the social worker should ensure that all relevant material assembled during this process is provided to the PSAA.

The PSAA continues to be entitled to fair procedures throughout this process.

31. Provisional conclusion

The social worker can reach either of the following provisional conclusions:

- Founded
- Unfounded.

Outcomes

1. Founded: The concluding position of an investigation where it is established on the balance of probabilities that child abuse has occurred.
2. Unfounded: The concluding position of an investigation where it is not established on the balance of probabilities that child abuse has occurred.

Having provided an opportunity for the PSAA to respond to the allegations against them and having undertaken any follow-up enquiries, the social worker should make a provisional conclusion of founded or unfounded in relation to the relevant allegation. Immediate protective action must be taken by the social worker where a child is **determined** to be at immediate serious risk.

It is important that no final determination is reached as to the likelihood of the allegations being **founded** until all information is carefully investigated and the process with the PSAA has been completed. **If there has not been an adequate opportunity to stress test the Complainant's allegation in light of a PSAA's denials or any information or evidence assembled during the substantiation investigation process, the social worker should be aware that consistent and cogent evidence will be necessary to ground a "founded" conclusion.**

Balance of probabilities

The balance of probabilities is interpreted as the degree to which something is more likely to have occurred than not. The legal balance of probabilities used in civil proceedings is anything greater than 50 per cent; in

other words, finding a 51 per cent or greater probability is generally accepted as ‘tipping the balance of the scales’ in favour of concluding that something has occurred. In deciding whether something has happened or not, account needs to be taken of any oral evidence, especially from people who witnessed the alleged events; any contemporaneous documentation or records; any circumstantial evidence tending to support one account rather than the other; and the overall impression of the characters and motivations of the witnesses. When assessing the probabilities, the decision maker will have in mind as a factor, that the more serious the allegation the less likely it is that the event occurred and the stronger should be the evidence before a decision is made that the allegation is established on the balance of probabilities. This does not mean that when investigating more serious allegations the standard of proof required is higher, simply that the inherent probability or improbability of the event is a matter that is to be taken into account. Where there are competing versions of events, a “founded” conclusion should only be reached where a specific version of events amounting to abuse has more than likely than not occurred on the evidence available and not where abuse is simply more likely than any of the alternatives considered.) (See the discussion box in section 33 below, titled ‘Substantiation’, for further clarification.)

High Court Judgment (TR v. Tusla. Mr Justice McDermott 27/07/2017) stipulated, ‘in order to establish a complaint as “founded” that the allegations be established on the balance of probabilities, the civil standard of proof’. Emphasis is made in the judgment that the more serious the allegation the more cogent the evidence to support it should be. Therefore, there is an essential requirement for a social worker to be very clear in detailing the evidence and justification for decisions.

Best practice requires that the social worker discuss their provisional finding of the substantiation investigation with their line manager.

The social worker should inform the PSAA of the provisional conclusion and advise them that they may respond by a specified date. The PSAA should be informed that if they put forward any observations or new information, these will be considered, and that if there is none forthcoming, the provisional conclusion will be deemed to be the final conclusion by a specified date (allow a maximum of 21 days). The PSAA should be informed of any protective actions that are to be taken on the basis of the provisional conclusion. Urgent protective actions will be required if there is an immediate serious risk to a child.

All correspondence with the PSAA should be sent by registered post and marked ‘Strictly Private and Confidential; Strictly Addressee Only’, unless some other equally verifiable safe and secure form of notification is agreed with the PSAA as more appropriate in the circumstances (e.g. personal delivery). It is essential to make sure the PSAA’s contact details are correct.

32. Factors to consider in making a founded or unfounded finding

Some of the issues that are specific to sexual abuse allegations (whether made by a child or retrospectively by an adult in both intrafamilial and extrafamilial circumstances) may need extra consideration.

Complainant’s statements and/or behaviours that indicate abuse may have occurred. It may support a complainant’s account of abuse if their description of the alleged abuse or sexual knowledge is not appropriate to their developmental stage or is inconsistent with a child’s perspective.

The complainant’s ability to describe or demonstrate the specific abusive acts in the context of the abuse should be considered.

Context

It is also important to consider the context in which the alleged abuse took place and not just the specific allegations of the abuse.

Peripheral details

How are the complainant and PSAA known to each other? Did they know each other through family or friends? Can this be established (through a genogram or timelines)? How did they interact with each other? Can this information be verified through other means, such as third parties? Did this connection contribute to accessibility?

Environmental details

This should include proximity and each party's social activities, employment and education. How did they interact and how did their separate environments overlap? Were there occasions where the paths of both parties crossed? Were these coincidences planned or were they occasions such as celebrations? Did this contribute to accessibility?

Contextual details

Factors such as substance abuse or mental health problems may be considered in the context of a complainant's credibility as they may affect the accuracy of a complainant's account in large or small measure. Family disharmony may potentially present a motivation for a false allegation to be made. Keep in mind contextual information which should be sourced based on reasonable grounds and in consideration of Children First.

Event details

This should include details of where and when the alleged abuse took place; the nature, frequency and duration; and, if relevant, any details of how the PSAA maintained the complainant's compliance and/or secrecy (i.e. through coercion, threats, bribes, etc.).

Reconstructed accounts could include information gained from the questions listed above. The abuse details and the event details required should include perception; verbal reconstruction; details of the environment; details of actions; unusual details; the identification of paraphernalia; and sense-provoking details, such as tastes, smells, sights and sounds.

Emotional reaction consistent with the abuse being described

Care needs to be taken when interpreting emotional reactions. There will be a variety of emotional responses depending on a number of factors, including the complainant's relationship with the PSAA, the nature and context of the abuse, the complainant's gender and age (whether they are a child/adolescent or an adult), etc. Factors such as disassociating from the experience or the possibility that the complainant may have recounted their experiences a number of times should be taken into consideration.

Witness statements consistent with the complainant's statement and/or behaviour

Care must be used if and when seeking or referring to factors such as past behaviours of self-harm substance abuse, sexual history, promiscuity, 'absconding' 'acting out'. Social workers should be aware of the potentially limited relevance of these issues. Evidence of past behavioural issues may only go so far as to evidence that a complainant has faced difficulties or has been abused but not necessarily abused by the PSAA.

Contemporaneous documentation that supports the complainant's testimony

The complainant may be able to produce diaries, letters, etc. that corroborate their description of the abuse, including, for example, details of what happened.

Strong circumstantial evidence that supports the complainant's testimony

Physical evidence may be present, including images, text messages, notes, etc., which could confirm circumstantial factual details. Personal details in relation to the PSAA that may or may not be generally known but can be verified include past injuries, scars, tattoos, etc.

Medical/psychological evidence of abuse/ trauma as determined by an expert

This includes medical evidence such as documentation, correspondence and/or reports detailing pregnancy, sexually transmitted diseases (STDs), medical evidence, X-rays, hospital visits, mental health issues, GP visits and psychological and counselling support. Care must be used if and when a social worker is seeking or referring to these factors/materials when reaching his or her conclusion. Some of the material may indicate that a complainant has been abused but not necessarily abused by the PSAA, such as medical evidence or therapeutic supports being received by a complainant.

In the context of allegations of sexual abuse, the absence of medical findings – which occurs in the vast majority of cases – does not rule out that abuse has occurred. Heger et al. (2002) conducted a study of 2,384 children referred for a sexual abuse examination and found that only 4 per cent had abnormal examinations.

A 'confession' on the part of the PSAA

Sometimes there can be an acknowledgement of abusive behaviour by the PSAA. This would, under normal circumstances, substantiate that abuse has taken place. However, there are a range of responses to allegations of abuse with elements of acceptance and denial that can change over time. These may include the PSAA:

1. Admitting the behaviour but not considering it to be abusive
2. Admitting the behaviour but saying it was 'therapy' or 'education'
3. Admitting 'innocuous' behaviour but denying abuse
4. Admitting the behaviour but thinking it didn't hurt the child
5. Admitting the behaviour but minimising the extent or frequency
6. Admitting the abusive acts but blaming the child
7. Admitting the abusive acts but blaming others
8. Blaming other factors (medication, 'blackouts', alcohol, etc.)
9. Saying that if improper touching happened it was by accident
10. Completely denying the abusive acts.

(Underwager and Wakefield 1999)

The **response** offered by the PSAA lacks foundation and credibility

The investigating Social worker, after considering the information available to them, be that in the form of direct meetings with the PSAA and /or documentation provided by the PSAA, is of the view that their response to the allegations lacks a basis in fact or is not credible.

A conviction of a crime with respect to the allegations

See section 16, 'PSAA with a criminal conviction for sexual or physical assault or wilful neglect of a child', of this *Practice Guidance*.

Decision made by Director of Public Prosecutions to proceed with the complaint

This is an indication that the Director of Public Prosecutions (DPP) believes there is a case that can be proven beyond a reasonable doubt, which is a higher burden of proof than the balance of probabilities determination. It is important to note that there may be a 'not guilty' verdict at the outcome of a case, or the DPP may choose not to proceed with a case. However, neither of these outcomes necessarily means that the balance of probabilities threshold is not reached.

Consideration of sexual abuse allegations made in custody disputes

These can be very difficult situations in which to reach a determination. Areas that are believed to be important include:

1. The number and quality of the interviews, both formal and informal
2. Any behavioural indicators observed in the child by parents or others
3. The timing of the allegations
4. The nature of the original disclosure, including the length of time between the alleged event and the disclosure
5. The characteristics of the child's statement
6. The nature of the allegations
7. The age of the child
8. The medical evidence
9. The behaviour and personality characteristics of the accusing parent
10. The behaviour of the professionals involved.

(Wakefield 2006)

Making the decision

Following any substantiation investigation, the social worker needs to ask themselves:

1. Have I sought and obtained information from the complainant, their family, and other relevant persons to adequately reach a determination about the alleged abuse or neglect?

2. Have I cross-referenced relevant information from one source with information provided by other sources?
3. Have I provided the PSAA access to fair procedures and taken full account of their response to the allegations, including all evidence or information supporting their account?
4. **Where appropriate and necessary have I put the PSAA's account to the complainant for their comment?**
5. Is my decision that the allegations are founded based on a clear understanding of Children First; the Child Care Act 1991; the Child and Family Agency Act 2013; relevant case law; and Tusla policy?

Risk assessment and safety planning

As part of the provisional and final conclusion making process the social worker is required to reach a determination about the likelihood of future potential risk the PSAA poses towards children. Any potential risk to children will need to be considered and managed.

Whether abuse is founded or not, the level of risk for a child in any circumstance must still be considered and an effective safety plan must be put in place to ensure the child's ongoing safety.

This is essential as not all cases of abuse can be substantiated, due to a lack of evidence; however, this does not mean that a child may not be at risk. Additionally, abuse might be founded in respect of a child, but the PSAA may not be identified due to a lack of convincing evidence or the presenting circumstance may indicate that there is no current risk from the PSAA.

A child should be subject to a Child Protection Conference, as per the *Children First: National Guidance for the Protection and Welfare of Children (2017)* and *Child Protection Conferences and the Child Protection Notification System National Guidelines for Tusla - Child and Family Agency Area Managers, CPC Chairpersons, CPC Administrators, Social Work Managers and Practitioners, Incorporating the National Approach to Practice (Signs of Safety) – July 2018*, where abuse is suspected and there is an ongoing risk of significant harm. Where children are not at ongoing risk of significant harm, they may require a different type of safety plan.

33. Final Conclusion

The final conclusion is reached once representation or additional information from the PSAA, on the basis of the provisional decision being communicated to them, has been considered and investigated. The social worker can reach one of two possible conclusions:

- Founded
- Unfounded.

Copies of all documentation, together with details of the allegations and the record of the substantiation investigation and decisions, must be included in the PSAA record.

The PSAA should be informed of the final conclusion of the substantiation investigation in writing. The letter should:

1. Inform the PSAA of the final conclusion, i.e. whether the outcome is founded or unfounded.
2. If the outcome is founded, inform the PSAA of the determination that the social worker has made regarding the likelihood of future risk the PSAA may pose towards children and of any actions required from the PSAA to address this risk.
3. In the case that the conclusion is founded and the PSAA is determined **not to take the actions required to address the risk** to pose a risk to children, inform the PSAA of any decision which has been taken as to next steps required regarding notifying relevant third parties.
4. Provide an opportunity for the PSAA to ask for a review of the final conclusion **of founded (see Part D below)**. The letter should note that any such review will not delay or prevent Tusla from taking any action it deems necessary to protect the welfare of any child thought to be at immediate serious risk from the PSAA.

5. Set out that the PSAA must ask for the review within 14 days of receipt of the final conclusion.
6. Set out that if the PSAA does not ask for a review, the final conclusion will stand.
7. Set out that if the final conclusion stands, actions may be taken by the social worker in respect of informing relevant third parties.
8. Afford the opportunity to the PSAA to inform any relevant third party themselves, unless their doing so may put a child at risk.
9. Make it clear that if the social worker does not hear from the PSAA by the relevant date, the relevant third party will be contacted and fully informed of the allegations both verbally and in writing by the social worker. Indicate the date by which this will happen. Any letter to a third party informing them of the allegations must also be copied to the PSAA.

All correspondence to the PSAA must be sent by registered post and marked 'Strictly Private and Confidential; Strictly Addressee Only', unless some other equally verifiable safe and secure form of notification is agreed with the PSAA as more appropriate in the circumstances (e.g. personal delivery). It is essential to make sure the PSAA's contact details are correct.

Where it is determined that no further action is to be taken, ensure that:

- The complainant (or parents of a child complainant) is offered the opportunity to meet with the social worker to be informed of the final conclusions of the substantiation investigation. Written confirmation of the decision should also be provided to the complainant.
- **Complainants should only be informed of the outcome either after the 14 day timeframe for the request of a review has elapsed or until the review has arrived at its determination**
- The complainant (or parents of a child complainant) is informed that if they are dissatisfied with the conclusion or any part of the substantiation investigation process, they are entitled to put their complaint in writing using Tusla's 'Tell Us' complaints procedure.
- An open record on the complainant is closed and the complainant (or parents of a child complainant) is informed in writing of the decision and case record closure.
- Any relevant third parties are notified of the outcome if they have already been informed of the allegations.
- The case record on the PSAA is closed and they are informed in writing of the case closure decision together with details of Tusla's **Records Management Policy (which determines the records retention schedule and policy)**.

Irrespective of the outcome arrived at against the foster carer, the social worker must inform the principal social worker for fostering, who will then make arrangements for a Foster Carer Review (National Standards for Foster Care 2003; criteria 17.13). The outcome of the Foster Carer Review will be provided to the Foster Care Committee as per the *Foster Care Committees – Policy, Procedures and Best Practice Guidance* (2017) document.

Substantiation: founded or unfounded

A founded finding is based on the following criteria:

1. **The incidents of abuse described by the Complainant meet the threshold of child abuse as per the Children First 2017: National Guidance for the Protection and Welfare of Children;**
2. **On an analysis of the information arising out of the investigation, it has been established on the balance of probabilities that the abuse has occurred.**

Purpose of a founded finding:

- **It is used to identify adults/parents who have caused harm to children so that their potential risk can be further investigated, determined and managed.**
- **It is used to identify children at ongoing risk of abuse and children potentially at risk of abuse.**
- **It can be referenced as part of foster care review process.**
- It allows the social work service to be clear with PSAAs as to the process and conclusion of the substantiation investigation of abuse allegations.

- It is used as the justification for sharing information with relevant third parties in support of child protection safety planning for children.
- It provides the child/adult complainant with a clear outcome and record of the abuse having been found to have occurred.
- It is used to inform parents and others of the outcome of the substantiation investigation.
- It is used to identify adults/parents who have caused harm to children so that their potential risk can be further investigated, determined and managed.
- It provides a clearer platform for social work responses and possible investigation into subsequent allegations.

Following the substantiation investigation, a decision may be made that a more substantial and forensic type of risk assessment of the PSAA is required. This may occur where a founded conclusion has been reached and there is a clear indication of ongoing risk to children. It may be that a further investigation is required as part of a wider assessment of the family to inform the protection/support plan that is in place for children within a family situation. It may also be required where the PSAA admits to the abuse in the course of the substantiation investigation or where there has been a conviction.

Assessing a PSAA's future risk following a founded conclusion

If a founded conclusion has been reached, the final conclusion must include a determination in respect of the level of potential risk that a PSAA may pose towards children and what, if any, actions are required to protect children who may be at risk. A competent social work assessment based on the available information should provide a thorough overview of the presenting situation and highlight any areas of concern requiring more in-depth assessment.

Forensic risk assessment

Forensic assessment is concerned with judging how likely it is that someone will participate in antisocial or criminal behaviour. These types of assessment are most commonly undertaken when an individual has been found guilty of a crime and there is a need to know the risk of them reoffending. Psychologists, psychiatrists, probation officers and police officers most commonly complete these assessments using validated assessment tools. Decisions about sentencing and treatment options for the individual are often made by courts of law on the basis of the conclusions of an assessment. Forensic assessments are best used with a person who has been convicted or has admitted to an offence. It is not appropriate to use them outside of this context. Forensic assessments are best used on a person who has been convicted or has admitted to an offence. It is not appropriate to use them outside of this context and Tusla does not carry out or commission them in these circumstances.

Forensic assessments have little value when used to predict future risk from non-convicted adults who deny having offended. Therefore, the Child and Family Agency does not undertake or commission such forensic assessments.

Forensic assessments may be used where:

- Someone has admitted to having committed the offence; or
- Where there is a conviction.

Social Work Assessments pertaining to risk:

There are three types of risk assessments used:

1. Actuarial
2. Unstructured clinical judgement
3. Structured clinical judgement.

Actuarial assessments use tools which are informed by a list of factors that have been statistically established to be related to sexual and violent offending by men.

Unstructured clinical judgement relies on an expert's ability to determine the risk of an individual based on personal experience and knowledge.

Structured clinical judgement is a combination of clinical judgement and use of a guide of empirically based items recommended for a clinician to examine in depth.

Extensive literature reviews indicate that actuarial tools outperform structured clinical judgement, which in turn outperforms unstructured clinical judgement. Unstructured clinical judgement (based on common sense) is often considered an antiquated and potentially misleading method of assessing risk that is strongly discouraged. (Shaw 2011; Shaw, Porter and ten Brinke, 2013) Actuarial assessments use tools which are lists of factors that have been statistically established to be related to sexual and violent offending by men. These are based on static factors that are fixed and cannot change. Research in the general male population of reconvicted sexual and violent offenders shows that the existence of these factors increases the risk of reconviction. The most commonly used actuarial instruments include: RM 2000 (Risk Matrix 2000); Violence Risk Appraisal Guide (VRAG); Sex Offender Risk Appraisal Guide (SORAG); and Static-99/Static-2002.

These actuarial assessment tools are validated for adult men who have been convicted for sexual or violent offences, and they can also be used where someone has admitted to having committed an offence.

Where a conclusion has been reached by a social worker after they have completed their substantiation investigation that, on the balance of probabilities, allegations against an individual have been founded, any subsequent protection plan should then take account of all factors that might be considered as indicators of potential future risk posed by that individual.

These assessments should form part of the social worker's clinical structured judgement (CSJ) and should be evidence based on theory. A determination of low, medium or high risk is of little value to Tusla in formulating a child safety plan. The purpose of a risk assessment is to prevent rather than predict violence. (Hanson 2000; Seto 2005)

34. Notifying a relevant third party

If the social worker determines that the allegations are founded, the PSAA poses a risk to children and that it is necessary to inform a relevant third party, the PSAA will have the opportunity to request a review. If they do not wish to request a review, they should be offered the opportunity to **inform** the third party themselves.

If a PSAA decides to inform a relevant third party, the social worker still has an obligation to inform the relevant third party fully. The social worker must:

- Determine what information will be conveyed to the relevant third party. **The relevant third party should be provided with an appropriate level of information that allows the third party to take appropriate steps to ensure the protection and well-being of children in their care. The exact nature of the information to be provided to the relevant third party should be agreed in advance with the social worker's line manager.**
- Determine what level of cooperation is to be sought from the PSAA in relation to any protection planning.
- Arrange to meet with the relevant third party.
- **Engage with the relevant third party to discuss the steps that they will take to ensure the ongoing safety of any child under the care and control of the relevant third party. These steps may be required on an ongoing basis, or extended only for the period of any review process.**
- Inform An Garda Síochána in writing of the final conclusion of the substantiation investigation and update them in respect of any ongoing safety plan or review brought by the PSAA.

Where not already completed, a specified information notification should be made in accord with the requirements of the Section 19 of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012. See *Tusla Policy and Procedure for Specified Information Reports to the National Vetting Bureau*.

It may be necessary to notify the outcome of a substantiation investigation to a **professional** registration body where the PSAA is employed in a registered professional capacity.

The reasons for all of these decisions should be carefully documented.

35. Where a PSAA resides in another jurisdiction

At any time during a substantiation investigation of an allegation where a determination is arrived at that children may be at **immediate serious risk**, the child protection and welfare services in the jurisdiction where the PSAA lives must be informed of the allegations without delay.

Consultation should be sought with Tusla International Social Service (ISS) and their guidance sought on the matter. Any information relating to a potential child abuse risk from a PSAA who resides in another country will then be sent through International Social Service (ISS), who will forward it to the appropriate ISS contact or relevant organisation in the jurisdiction concerned. The contact details of the Irish ISS correspondent are:

International Social Service Ireland
Child and Family Agency
Sir Patrick Dun's Hospital
Grand Canal Street Lower
Dublin
D02 P667
Tel: +353 1 647 7012 / 647 7000
Email: iss@tusla.ie

However, where **no** immediate serious risk is identified, the PSAA's right to fair procedures has to be given precedence. A PSAA's rights under data protection should be considered in accordance with the *Tusla Privacy Policy* and *CASP Data Protection Guidance*.

Other than where an immediate serious risk is identified, child protection services in other jurisdictions should only be informed of the allegations where the allegations have been investigated and a final conclusion of founded has been reached. The responsibility to inform child protection services in other jurisdictions of allegations made against a PSAA who is resident in their jurisdiction rests with the social work office in receipt of an allegation with the support of Tusla International Social Service

Where the alleged abuse is reported as having taken place in Ireland, and the complainant is resident in Ireland, the social work office will:

1. Provide the complainant with details of the procedural process to be followed.
2. Thoroughly investigate the allegations.
3. Create a complainant and separate PSAA record as per the CASP requirement.
4. Provide the complainant with details of any other bodies that have been notified by Tusla.
5. Provide the PSAA with full details of the allegations in writing (including the identity of the complainant unless a case for anonymity has been established – see sections 20 and 21 above) together with details of the procedural process. These processes may have already been followed in the case where immediate serious risk was identified, or they may remain outstanding where the decision, in respect of whether details of the allegations will be passed to the other jurisdiction, has yet to be made.
6. Enclose a copy of all relevant material assembled by the social worker in the investigation process, including any reports in respect of the allegations made against the PSAA.
7. Offer the PSAA an early opportunity to represent their position on the allegations, either in person or, where travel is prohibitive, at a meeting using a digital platform as approved by TUSLA ICT Directorate (e.g. Microsoft Teams).
8. Inform the PSAA if contact with child protection and welfare services in the jurisdiction where they are living is being considered, and that in the absence of an agreement to meet or a written response, a decision to proceed will be made without the benefit of the PSAA's response.

9. Stipulate that any written response from the PSAA and/or any face-to-face meetings will be used as part of the substantiation investigation process being undertaken to determine whether there is any current or potential future risk posed towards specific or identifiable or yet to be identified children.
10. Inform the PSAA that if they choose to meet with Tusla, they have the opportunity to bring another person with them.
11. Allow 28 days for a response. If no response is received, a second letter should be sent and a further 21 days should be allowed for a response.

Where an allegation is made against a PSAA residing in another jurisdiction and the allegation relates to an incident alleged to have occurred in another jurisdiction, the social work office receiving the allegations should:

1. Encourage the complainant to report the allegations to An Garda Síochána, if they have not already done so.
2. Investigate the allegations and, where satisfied that
 - the allegations meet the Children First threshold of reasonable grounds for concern and definition of child abuse, and
 - the report is ostensibly credible (see glossary)
 - provide the social work services in the jurisdiction where the PSAA resides with a report of the allegations. The report should indicate that in the absence of a substantiation investigation of the PSAA's response to the allegations, no conclusion has been formulated with regard to the legitimacy of the allegations. The report should also make clear that any responsibility to inform the PSAA of the details of the allegations rests with the other jurisdiction's social work services. **It should be borne in mind that the response may vary dependent on the jurisdiction in question.**

In circumstances where a PSAA is alleged to have abused a child during a short stay in Ireland and the PSAA has returned to their home country, the procedure as detailed in this section (35) should be followed. The social worker must also ensure that a report has been made to An Garda Síochána.

All correspondence to the PSAA must be sent by registered post, marked 'Strictly Private and Confidential; Strictly Addressee Only', unless some other equally verifiable safe and secure form of notification is agreed with the PSAA as more appropriate in the circumstances (e.g. personal delivery). It is essential to ensure that the PSAA's contact details are correct. If there has been no response from or meeting with the PSAA, check with An Post that any letters to them have been delivered and signed for before proceeding to inform a relevant third party.

Procedure as detailed in Part C of the *Practice Guidance* remain relevant to the procedure for informing child protection and welfare services in other jurisdictions of allegations of child abuse made against an individual.

For any assistance or clarification on *Tusla Privacy Policy* / **CASP Data Protection Guidance**/wider data protection matters, contact the data protection team at datacontroller@tusla.ie

Part D: Procedure for Conducting Reviews in Accordance with CASP

36. Introduction

Section 6 of CASP **Procedure** sets out that the option of a review of the substantiation investigation process should be offered to the PSAA **where a conclusion of founded has been reached**. Section 6 describes the review as a “review for error” procedure which does not involve a full re-investigation of the allegations. A “review for error” is an impartial examination of the work undertaken by the social work team. It provides that the Review Panel shall examine the professional decision-making leading to the final conclusion of the substantiation investigation process in order to establish whether there was a sustainable basis for the final conclusion or whether the final conclusion was clearly in error. The Review Panel shall also examine whether sufficient fair procedures were afforded to the PSAA at all stages of the substantiation investigation process. This review procedure should be read in conjunction with CASP. Its purpose is to set out the responsibilities of the area social work team and those of the members of the Review Panel.

37. Circumstances under which a review may be sought

Once a substantiation investigation has been carried out and the final conclusion reached, the PSAA may request a review to be undertaken where the final conclusion is “founded”. This applies to all cases, current or retrospective, including all forms of abuse and neglect.

It is therefore essential that all persons, who are the subject of such conclusions, are advised of their right to seek a review.

Providing a review should not in any way distract or delay Tusla from taking any steps that it needs to take in circumstances where there is a concern that there is an immediate serious risk to an identified child. **Where no immediate serious risk is identified, notification to relevant third parties will not take place until conclusion of the review process.**

38. Establishing a Review Panel

The PSAA has 14 days to request a review of the final conclusion.

When a review has been requested by the PSAA, the area manager/designate should inform Tusla Office of Legal Services within five working days.

Tusla Office of Legal Services keeps a panel of experts for assignment to such reviews. Upon notice of the request, it will assign two experts with the requisite skills and expertise who are independent and external to Tusla to carry out the review, one of whom will be assigned chairperson.

The standard terms of reference of the Review Panel are the following:

1. To examine the professional decision-making leading to the final conclusion of the substantiation investigation process **in order to establish whether there was a sustainable basis for the final conclusion or whether the final conclusion was clearly in error.**
2. To examine whether **sufficient** fair procedures were afforded to the PSAA at all stages of the substantiation investigation process.
3. To reach one of the following conclusions in relation to the substantiation investigation process:
 - a. To uphold the final conclusion of the social work substantiation investigation process, or
 - b. To set aside the final conclusion of the substantiation investigation process, or
 - c. To set aside the final conclusion of the substantiation investigation process and remit the matter to Tusla with a recommendation that the allegations be investigated by a new and separate social work team,
4. To carry out the review in accordance with **Section 39 – 41** of the Tusla – Child and Family Agency National Child Abuse Substantiation Procedure (CASP) and *Child Abuse Substantiation Practice Guidance and Review Procedure*.
5. To prepare a report **in relation to the professional decision-making and/or fair procedure issues raised** in accordance with the CASP and *Child Abuse Substantiation Practice Guidance and Review Procedure*,

to provide that report to the Tusla Office of Legal Services and to provide a copy of that report to the PSAA.

6. To ensure that the time limits set out in the CASP and *Child Abuse Substantiation Practice Guidance and Review Procedure* are complied with and that the review is completed and the report provided as soon as is practicable consistent with conducting the review thoroughly and fairly.

39. Preparing to conduct a review

Within five working days of being appointed, the chairperson of the Review Panel will write to the area manager.

The area manager will be asked to supply the following within 10 working days:

- A booklet of all relevant material assembled by the original social work team in the substantiation investigation process in relation to the conclusion drawn that abuse or neglect took place. This should include three copies of all records concerning the investigation and decision-making, including any submissions or representations submitted by the relevant PSAA. The pages of the records should be sequentially numbered for ease of reference.
- The name and contact details for a nominated person who will liaise between the social work area and members of the Review Panel. The nominated liaison person will take responsibility for the preparation of records for the Review Panel and follow up on requests for further information or other assistance.

Adherence to timelines is important in the review process. Therefore, if the information is not supplied to the Review Panel within the required 10-day timeline, the matter will be referred to Tusla Office of Legal Services, who will raise the matter with the area manager, or more senior staff as required.

The Review Panel should write to the PSAA to outline the review process. The letter should also include a copy of the documentation which the Review Panel has been provided with for the purposes of the review.

As part of its deliberations, the Review Panel will:

1. Review all the relevant material assembled as part of the substantiation investigation process.
2. Review any submissions made by or on behalf of the PSAA.
3. Arrange to meet with the PSAA, if the PSAA wishes.
4. Other than interviewing the PSAA, if the PSAA so wishes, the Review Panel shall not conduct interviews with relevant social work personnel or other third parties, other than in exceptional circumstances where the Review Panel believes this is necessary in order to establish whether there was a sustainable basis for the final conclusion or whether the final conclusion was clearly in error and/or to establish whether sufficient fair procedures were afforded to the PSAA. In exceptional circumstances, where the Review Panel decides to interview relevant social work personnel or another party the interview shall be limited to hearing evidence which the Review Panel would need to hear itself in order to be able to come to have an independent view on questions of contested fact.
5. Consider whether the required level of consideration to interview/stress test the complainant's account was carried out and properly documented by the social work team which undertook the substantiation investigation. Examine the professional decision-making of that consideration (if it took place) and consider whether sufficient fair procedures were afforded in carrying out that consideration.
6. When considering whether there was a sustainable basis for the final conclusion or whether the final conclusion was clearly in error the Review Panel shall assess whether there was a material error of fact which led to a decision being made that was clearly in error. A mistake as to one or even more facts will not necessarily vitiate a final conclusion provided the final conclusion was tenably sustained by other correct facts. The Review Panel shall not reassess questions of pure credibility for it will not, in the normal course, have the opportunity to assess oral evidence given by witnesses or the complainant.

7. The Review Panel shall have regard to the full picture that emerged from all the relevant material assembled in the substantiation investigation and other information considered by the Review Panel, taken as a whole, when rationally analysed and fairly weighed. In particular, the Review Panel shall have regard to the process of analysis or evaluation by which the final conclusion was reached.
8. The Review Panel shall provide reasons for its conclusions which must expressly demonstrate that the available evidence and information, taken as a whole, was rationally analysed and fairly weighed

40. Conducting the review for error

A review is an impartial examination of the work undertaken by the social work team which reached the final conclusion in question. It will examine the professional decision-making informing the conclusion in order to establish whether there was a sustainable basis for the final conclusion or whether the final conclusion was clearly in error. The Review shall also establish whether sufficient fair procedures were afforded to the PSAA.

The Review Panel should ensure that fair procedures are afforded to the PSAA when conducting the review. The letter sent to the PSAA at the outset of the review process should therefore provide an opportunity for the PSAA to:

1. Seek legal advice.
2. Make any written submissions or submit any documentation which they believe are relevant and necessary to allow the Review Panel to assess the professional decision-making informing the conclusion in order to establish whether there was a sustainable basis for the final conclusion or whether the final conclusion was clearly in error and to establish whether sufficient fair procedures were afforded to the PSAA. All written submissions and documentation should be provided by the PSAA to the Review Panel within 28 days of receipt of the initial letter from the Review Panel. The PSAA will be advised that they may not put forward new evidence or expert reports which were not before the original investigators. Where new evidence arises in the course of a review, which was not legitimately available to a PSAA prior to a "founded" finding, a PSAA may exceptionally be entitled to adduce same in the review and have same considered at that stage in circumstances where there is no fault on the part of the PSAA for the failure to adduce same at first instance.
3. Meet with the Review Panel, either alone or accompanied by a support person or legal representative, within a period of 35 days of their receipt of the letter. At that meeting, they shall be entitled to a reasonable opportunity to make any statement or legal submission which they believe is relevant and necessary to allow the Review Panel to assess the professional decision-making informing the conclusion and to establish whether sufficient fair procedures were afforded to the PSAA. As noted above, the PSAA may not ordinarily be permitted to put forward new evidence or expert reports which were not before the original investigators.

Where at least two attempts have been made to meet with the PSAA, and/or receive a written submission, but these are not availed of by the PSAA without them having provided a reasonable explanation as to why they require an extension of time for this, the review process will be concluded without moving to the report stage. In such circumstances, the Review Panel will write to the PSAA explaining that the PSAA's request for a review cannot be met due to their lack of participation in the process. In such circumstances the final conclusion of the substantiation investigation process will stand and Tusla may notify the relevant third parties.

The Review Panel will record in writing the details of any meeting with the PSAA. They shall then provide a copy of this record to the PSAA.

Where the Review Panel incurs difficulties with a social work area in relation to the provision of documentation, availability of staff for interview if required, or any other relevant matter, it shall advise Tusla Office of Legal Services, who will raise the matter with the area manager, or more senior staff as required.

If the Review Panel wishes to further assess the professional decision-making informing the conclusion and to assess whether **sufficient** fair procedures were afforded to the PSAA in light of the information provided by **the PSAA**, it shall:

- Communicate this in correspondence directed to, or copied to, the PSAA and the nominated person from the social work area.
- Provide the PSAA and the nominated person from the social work area with a record of any relevant meetings or responses received, so that they have an opportunity to respond.

The Review Panel may obtain its own, independent legal advice and representation in relation to a review where it considers it appropriate to do so. Details of the independent legal representative will be provided to the Review Panel by Tusla Office of Legal Services.

41. The review report

The format of the Review Report will follow a prescribed structure. In its report, the Review Panel shall reach a conclusion having considered **any** oral and written submissions and such material as has been brought to their attention in the course of the review.

In its report, the Review Panel shall reach a conclusion having considered all of the relevant submissions and relevant material that has been brought to their attention in the course of the review. The Review Panel shall reach one of the following conclusions in relation to the substantiation investigation process:

- To uphold the final conclusion of the substantiation investigation process, or
- To set aside the final conclusion of the substantiation investigation process, or
- To set aside the final conclusion of the substantiation investigation process and remit the matter to Tusla with a recommendation that the allegations be investigated by a new and separate social work team.

A decision to set aside the final conclusion but not to remit the matter to Tusla with a recommendation that the allegations be investigated by a new and separate social work team may only be made in one or more of the following circumstances:

- The Review Panel concludes that the professional decision-making of the substantiation investigation process fell into error and that the correct final conclusion would have been unfounded.
- The Review Panel decides that the matter should not have passed a particular, identified stage of the substantiation investigation process for specific reasons. For example, that the eligibility criteria for substantiation investigation had not been reached and so the matter should not have moved beyond the screening process.
- The Review Panel decides that were the matter to be remitted, it would not be possible for a new substantiation investigation process to take place in accordance with CASP and the *Practice Guidance* because of some significant intervening change of circumstances. For example, that the eligibility criteria for substantiation investigation would no longer be reached.

The Review Panel shall state the reasons for its conclusion.

Where the Review Panel sets aside the final conclusion and recommends that the substantiation investigation be remitted to the social work area for a new substantiation investigation process, a new and separate team will be assigned to undertake that process.

The Review Panel shall consider whether it is appropriate in the interests of fair procedures or good professional decision-making that the new team:

- Be provided with a copy of the Review Report and all relevant material assembled in the original process, or**

- b. Not be given the Review Panel report, or be given only an abridged version or summary of same, which removes any information that resulted from a breach of fair procedures and/ or a failure in decision-making; **and/or**
- c. Not be given certain documents which were generated as a result of **any error or** breach of fair procedures or which contain information that resulted from a breach of fair procedures and/ or a failure in decision-making (or that any such documents ought to be redacted); and/or
- d. Only be provided with documents generated by the initial team up to a certain point of time, at which point the breach of fair procedures and/ or a failure in decision-making took place.

A draft review report will be provided to the PSAA and the Area Manager on the condition that it is confidential and cannot be copied, distributed, or used for any other purpose, without the prior written consent of Tusla. Following receipt of the draft report, the PSAA and Area Manager will have 14 days within which to make any representations regarding the draft report.

The Review Panel shall complete its final report within 14 days of the receipt of any written statement or written submission from the PSAA and Area Manager in relation to the draft report, or if they do not wish to make any comment within 14 days of the expiration of time for submissions in relation to the draft report.

The Review Panel's report will detail:

- All relevant material assembled by the social worker in the substantiation investigation process **and submissions or other information considered by the Review Panel;**
- A summary of the relevant information/ evidence
- A summary of the **Review Panel's** interview **with the PSAA**
- The Review Panel's findings in relation **to whether there was a sustainable basis for the final conclusion or whether the final conclusion was clearly in error and whether sufficient fair procedures were afforded to the PSAA at all stages of the substantiation investigation process. These findings shall be made** by reference to the full picture that emerged from the available evidence and information taken as a whole,
- The reasons for the Review Panel's conclusions which must expressly demonstrate that the available evidence and information, taken as a whole, was rationally analysed and fairly weighed
- The conclusion reached by the Review Panel in relation to the substantiation investigation process, and
- The Review Panel's recommendations.

The Review Panel may extend the period for the taking of a particular step or steps in the conduct of a review, where it concludes that it is necessary to do so to ensure that the review is carried out in a thorough and fair manner.

Where the Review Panel recommends that a new substantiation investigation be undertaken by Tusla, the complainant and PSAA should be advised in writing of the undertaking of that new Substantiation Investigation prior to any communication with potential witnesses.

The decision of the Review Panel is final.

42. Oversight of cases

The chairperson of the Review Panel shall provide Tusla Office of Legal Services with a monthly update on the status of each case under review.

Part E: General

43. Communication of the National Procedure and Practice Guidance to relevant persons

Copies of the *National Procedure* and *Practice Guidance* are to be made available to all social work staff and managers, An Garda Síochána and key external agency staff, including funded and non-funded organisations involved in assisting Tusla in the substantiation investigation of child abuse and neglect. The *National Procedure* and *Practice Guidance* should also be provided to legal advisors and stakeholders working in the area of counselling and therapy with adult victims of child abuse.

Hard copies of the National Procedure and Practice Guidance should be supplied on request by a social work office to any interested parties who have reported child abuse or who are supporting an individual who has made an allegation of abuse.

A PSAA should always be provided with a copy of the *National Procedure* and *Practice Guidance* from the point where initial contact was made with them by the social work office.

44. Review of the National Procedure and Practice Guidance

CASP and the Practice Guidance will normally be reviewed every two years, or as required where case experience, learning and emerging legislation may indicate that areas of the policy and procedure require revision.