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# CHILDCARE LAW IN THE DISTRICT COURT

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DISTRICT COURT APPLICATIONS



## **TERMS OF ENGAGEMENT**

### **Childcare Law in the District Court**

**THE PURPOSE OF THIS LEAFLET** is to you to explain the procedures involved in the progress of a District Court Family Law Matter and how I will work on your behalf and also to advise you in connection with the charging basis.

I will also take this opportunity to thank you for your instructions in relation to the above matter. I am pleased to act for you.

As discussed, I am obliged at the outset of any family law matter to advise you of your options in relating to same, in particular to reconciliation, mediation, negotiation of consent terms between Solicitors, or by way of a last resort a court order.

With regard to Childcare proceedings the primary legislation regulating child care policy is the Child Care Act 1991 which brought in considerable changes in relation to children in care. Until the main part of the Act was implemented in 1995, child care policy had been regulated by the 1908 Children Act.

#### **Duty of Tusla - the Child and Family Agency**

Under the Child Care Act 1991 Act, as amended by the Child and Family Agency Act 2013, Tusla - the Child and Family Agency has a statutory duty to promote the welfare of children who are not receiving adequate care and protection. The definition of a child is a person under 18 years of age.

When carrying out its statutory duty, Tusla must have regard to the following:

It is generally in the best interests of the child to be brought up in their own family Having regard to the rights and duties of the parents, the welfare of the child is the first and paramount consideration and, as far as is practicable, the wishes of the child should be considered among other things, Tusla is required to:

1. Identify children who are not receiving adequate care and protection and co-ordinate information on children from all relevant sources
2. Provide child care and family support services with the aim of helping parents to care for their children and to avoid the need for such children to be taken into care,
3. Prepare an annual report each year in relation to the performance of Tusla's functions the previous year.

#### **Voluntary care**

If a child is in need of care and protection and is unlikely to receive it at home, then Tusla must take them into care. This may happen, for example, in the case of an orphan or an abandoned child.

In other cases where parents are unable to cope due to illness or other problems, they may agree to their children being taken into the care of Tusla. This is known as voluntary care. In these cases, while Tusla has care of the children it must consider the parents' wishes as to how the care is provided. Tusla is obliged to maintain these children for as long as their welfare requires it.

## **Care orders**

There are a number of procedures which Tusla can use for children who are at risk or who are in need of care. Tusla may apply to the courts for a number of different orders. These orders give the courts a range of powers (including decision-making), about the type of care necessary and about access to the child or children for parents and other relatives. The following is a summary of these orders:

Emergency care order - maximum of 8 days in care

Interim care order - maximum of 28 days in care but may be extended

Care order - permanent or temporary and can continue up to age 18

Supervision order - maximum of 12 months but may be renewed

Interim special care order - maximum of 28 days but may be extended

Special care order - a period of between 3 and 6 months but may be extended.

In general, the various orders involve the child being taken into care by Tusla. A supervision order however, involves the child being visited and monitored in their own home by Tusla.

## **Separate representation for the child**

The court must make all decisions on the basis that the welfare of the child is paramount. With this consideration in mind, the court may order that the child be joined as a party to the care proceedings. This means that the child has separate legal representation, paid for by Tusla. If the child is not a party to the proceedings, the court may appoint a *guardian ad litem* to speak for the child. (A guardian ad litem is an independent person appointed by the court to represent the wishes and interests of a child in specified court proceedings.)

## **Assistance for parents of limited capacity**

Parents whose children are the subject of child care proceedings may be entitled to legal aid. In certain circumstances, where the parent's ability to understand the child care proceedings is significantly impaired due to an intellectual disability or a psychological condition, the legal aid solicitor can apply for the appointment of another person, sometimes known as an "advocate".

If appointed, the advocate's main functions will include:

1. Helping the parent to understand and participate in the child care proceedings
2. Attending consultations between the parent and the legal team and other relevant meetings
3. Helping the parent to understand the relevant documents and any legal advice provided
4. Communicating the parent's views to their legal team

## **Types of orders**

Under the 1991 Act there are a number of procedures which Tusla can use for children who are at risk or who are in need of care. Tusla may apply to the courts for a number of different orders which give the courts a range of powers including decisions about the kind of care, and the access to the child or children for parents and other relatives:

## **Emergency care orders**

If the gardaí have reason to believe that there is an immediate and serious risk to the health or welfare of a child which cannot wait until an emergency care order is made, they have the power to enter the home and remove a child, by force if necessary, to safety. The child must be given into the care of Tusla as soon as possible. Tusla may either return the child to the parents/guardians or may apply to the District Court for an emergency care order. If the court is not due to sit within 3 days a special sitting must be arranged.

Tusla can apply for an emergency care order for a child who is still at home or for one who has been removed by the gardaí. This may be made without notice being given to the parents or guardians of the child. The order will be made if the judge considers that there is an immediate and serious risk to the health or welfare of the child requiring them to be placed, or to remain in, the care of Tusla. The child must remain in the care of Tusla for 8 days or a shorter period if specified in the order.

### **Care orders**

Tusla must apply for a care order or a supervision order (see below) if a child needs care and protection which he/she is unlikely to receive without an order. The District Court judge may make an interim care order while the decision on a full care order is pending. This means that the child is placed in the care of Tusla for 28 days. It may be extended if Tusla and the parents agree. Generally the parents/guardians must be given notice of an interim care order application.

A care order may be made when the court is satisfied that:

1. The child has been or is being assaulted, ill-treated, neglected or sexually abused or that the child's health, development or welfare has been or is likely to be impaired or neglected,
2. The child needs care and protection which they are unlikely to receive without a care order,
3. When a care order is made the child remains in the care of Tusla for the length of time specified by the order or until the age of 18 when they are no longer a child. Tusla has the rights and duties of a parent during this time.

### **Supervision orders**

A supervision order is an alternative to children being taken into the care of Tusla. During the application for a care order the court may decide that a care order is not necessary or appropriate, but that the child should be visited regularly by Tusla, and a supervision order may be made. It may be made instead of a care order or while waiting for a decision on a care order. Alternatively Tusla may apply to the court for a supervision order instead of a care order.

A supervision order gives Tusla the authority to visit and monitor the health and welfare of the child and to give the parents any necessary advice. The order is for a fixed period of time up to a maximum of 12 months but may be renewed.

### **Special care orders**

Tusla must apply for a special care order or an interim special care order where a child needs special care and protection and is unlikely to get it unless such an order is made. Tusla must convene a family welfare conference before applying for the order.

The court may make a special care order if it is satisfied that:

1. The child's behaviour poses a real and substantial risk to his/her health, safety, development or welfare and
2. The child needs special care and protection which he/she is unlikely to get without such an order

A special care order means that the child is committed to Tusla's care for as long as it remains in force. It authorises Tusla to provide appropriate care, education and treatment and, for that purpose, to detain the child in a special care unit. The order will initially be for a period between 3 and 6 months and may be extended.

Special care orders may be varied by the court on its own initiative or by request of Tusla. The court may make a supervision or care order in respect of the child if appropriate. Interim special care orders may be made before the normal procedure for a special care order is complete. Such orders will mean that the child may be detained in a special care unit for up to 28 days.

### **Children in Tusla care**

When a child is in the care of Tusla, there are a number of different ways in which care can be provided. Whatever kind of care is chosen, Tusla must facilitate reasonable access for the parents or other relatives of the children in its care.

### **Foster care**

Where possible Tusla places the child with foster parents. The Child Care (Placement of Children in Foster Care) Regulations 1995 require that a care plan for the child be drawn up which sets out, among other things, the support to be provided to the child and the foster parents, and the arrangements for access to the child in foster care by parents or relatives.

Wherever possible, Tusla would consider relative foster care first to lessen the disruption to the child's life. Relative foster carers go through an assessment and approval process in a similar way to general foster carers. The Child Care (Placement of Children with Relatives) Regulations 1995 make provision for relatives to receive an allowance for caring for a child placed with them by Tusla. The regulations set out the arrangements for the placement and are broadly similar to the Foster Care Regulations.

If there is a shortage of foster parents, children may be placed in residential care instead.

### **Residential care**

Residential care can be in a home run by Tusla, a children's residential centre registered under the 1991 Act, a school or other suitable place of residence. The Child Care (Placement of Children in Residential Care) Regulations 1995 state the requirements for the placing of children in residential care and the standards for residential centres which are registered with Tusla. The centres are subject to inspection by the Health Information and Quality Authority.

### **Special Care Units**

Children taken into care under special care orders or interim special care orders are placed in special care units. Special care is short-term and provides safe care in a therapeutic environment for children between 11 and 17 years with challenging and complex behaviours. The child is not detained as a result of criminal offences but for their own safety and welfare.

Tusla may provide and maintain special care units or make arrangements with voluntary bodies to provide and operate them. All centres are subject to the approval of the Minister for Children, Equality, Disability, Integration and Youth . Children who are convicted of an offence may not be placed in special care units.

### **Family welfare conferences**

The Children Act 2001 provided for family welfare conferences for children at risk from their own behaviour and these provisions came into effect in July 2004. The family welfare conference is a mechanism for early intervention and the conference may be convened where:

1. Tusla is directed to convene it by the Children Court or
2. Tusla is of the view that a child requires special care or protection which he/she is unlikely to receive unless a special care order is made

The function of a family welfare conference is to decide whether the child is in need of special care or protection and, if so, to recommend to Tusla that it apply for a special care order. If not, the conference may make appropriate recommendations to Tusla, including, if necessary, a recommendation that Tusla apply for a care order or a supervision order. The conference decisions must be unanimous and, if it is not possible to get agreement, Tusla must make the decision.

The conference may be attended by the child; the parents or guardians; any guardian ad litem; other relatives agreed by the co-ordinator after consulting the child and the parents; Tusla officials; and any other person who could make a positive contribution because of knowledge of the child or the family or because of particular expertise. When Tusla receives the conference recommendation, it may:

1. Apply for a special care order or
2. Apply for a supervision order or a care order or
3. Provide any appropriate help or service for the child or their family

Family welfare conferences have legal privilege - this means that any information, statement or admission disclosed at such a conference will not be admissible in evidence in court.

### **Young people leaving care**

Since 1 September 2017, young people leaving care at the age of 18 are entitled to an aftercare service based on their assessed needs . The aftercare plan must be prepared and provided before the young person leaves care. It identifies the transitional supports that the young person requires, such as education, training, financial support and social network support. This assistance may include arranging accommodation or contributing towards maintenance while the young person continues at school or college. The core eligible age range for aftercare is from 18 years up to 21 years. This can be extended until the young person reaches 23 years of age to facilitate the completion of an education course or accredited training.

The aftercare provisions of the Child Care (Amendment) Act 2015 impose an obligation on Tusla:

- (i) To prepare an aftercare plan for an eligible child before they reach the age of 18
- (ii) To prepare aftercare plans, on request, for an eligible adult aged 18, 19 or 20

(iii) To review the operation of an aftercare plan for an eligible adult where there has been a change in their circumstances or additional needs have arisen  
Focus Ireland has published [Pathways \(pdf\)](#), an aftercare guide for young people who are preparing to leave care.

### **Fees, Terms & Conditions:**

As you can appreciate it is often very difficult to accurately predict the level of work that may be involved in a particular matter and in this respect an estimate is not to be construed as a commitment by the firm to render legal advice and services at a minimum or maximum cost.

If:

- (a) matters become more complex
- (b) if your instructions or your position regarding the aforementioned change materially; or
- (c) where a matter requires urgent attention, involves substantial periods of work outside normal business hours; or
- (d) if negotiations or documentations (where applicable) become protracted or difficult.

The time spent on the matter will obviously increase and so therefore will the ultimate fee.

When commencing work of this nature it is the policy of our firm to request on account funding, which we will put against fees generated (plus Vat and outlay) by us in carrying out the initial work on the file. In the present circumstances, we would estimate that a reasonable amount for on account funding would be €3000.00.

Consultations	€150.00 - €250.00 Plus Vat
Emergency Care Order / Interim Care Order	
Supervision Order Day One	€1350.00 plus Vat
Second and Subsequent days	€350.00 plus Vat
Letters written	€150.00 plus Vat

These figures include Counsel's Fees.

We reserve our right to raise further invoices for payment on account as the matter progresses. These payments on account will then appear as deductions on your final fee note and any over payment will of course be refunded to you. Indeed some of our clients prefer to make payments on account quarterly in family law matters rather than to have one large fee note at the end of the transaction, if you wish to proceed in this manner please feel free to discuss this with us further.

When a fee is raised, normally on a monthly or interim basis, we would expect the firm to be paid within 30 days. We may charge interest on unpaid bills and we will do so at the rate payable in judgement debts (8%), from one month after delivery of our bill.

### **Instructing your solicitor**

It is important that you give us clear and accurate instructions from the very beginning and when you get any new information as the case develops. We will do our best to carry out the agreed instructions and to give you a confidential and friendly service.

When we receive your instructions, we will explain your legal options to you. If there is anything you do not understand, please tell us right away so that we can answer your questions. We will then agree with you the actions to be taken.

### **Updating your instructions**

We may need to update your instructions from time to time, for example, if:

- New issues or information arise,
- Events take an unexpected turn,
- We need more information from you, or
- Fees or expenses have not been paid.

It is important that you give us instructions when they are needed. If you fail to do this, we cannot make progress. This may affect the outcome and, in some cases, may mean we have no choice but to stop acting for you.

### **Acting on your behalf**

When you give us instructions, we assume that you are giving us permission to take various actions on your behalf. For instance, our role as your solicitor may involve:

- Making a repayment to a bank or building society for you,
- Holding information for our records, including ‘sensitive data’, such as your Personal Public Service (PPS) number or medical reports,
- Employing barristers and other experts, such as doctors and engineers, on your behalf,
- Obtaining information from third parties to help us with your case, without seeking your permission in advance, and
- Using information technology (IT), including email, to guarantee the best quality and most efficient service.

### **Important:**

- If you instruct us to repay money on your behalf, you cannot change these instructions later, if we have given a professional promise to others to do so.
- We will hold any money we receive on your behalf strictly in line with the *Solicitors’ Accounts Regulations*.
- We will only use any personal or ‘sensitive’ information to help your case.
- We will only employ experts with your permission. We will select professionals who we believe to be competent, but we are not responsible for the negligence of anyone we employ on your behalf.

### **Disclaimer**

In order to be able to advise and render legal services in relation to any particular matter, full and accurate disclosure of all facts that may be relevant to the matter or that may otherwise be requested by us is required and also appraisal of developments relating to that particular matter. Without limitation to the foregoing we will not be responsible for any advice given or services rendered in relation to documentation, information, or transactions which are not properly brought to our attention.

We disclaim to the maximum extent permitted by law any indirect, special, incidental, consequential loss or damages, of any kind including without limitations, loss or anticipated profits, goodwill or reputation.



In relation to a particular matter, either at the outset or during the course of the matter, expressions of opinion or belief is intended to be an expression of opinion or belief only, based on information available at the time of such statement, and it is not to be construed by you as a promise or guarantee of any particular result.

Our liability (and that of our present and former partners and employees) to you arising out of, or in connection with, our engagement (whether for breach of contract or a statutory duty, negligence or otherwise) will be limited to the higher of (a) the minimum amount of the Professional Indemnity Insurance cover from time to time required by us to be maintained by us under applicable law or (b) one million euro. Nothing in this letter shall limit our liability to you (a) for fraud or fraudulent concealment or (b) to the extent that under any applicable law liability may not be limited.

### **Conflict of Interest**

If at any stage there should be a conflict of interest we will make you aware of this immediately and provide all assistance in obtaining alternative legal advisors with the understanding that any fees incurred up to that point in relation to the matter out of which the conflict arises shall be reimbursed.

### **Legal requirements**

As solicitors, we are required under the Criminal Justice Act 1994 to obtain identification documents in relation to our client. The obligations imposed by this Legislation are designed to prevent and detect money laundering.

Under anti-money laundering regulations, we need to be sure of your identity and source of assets before we can take on your case.

- **Identity** – you will need to give us evidence of your identity, such as your driving licence or passport, even if we already know you. We will also need you to give us a document showing your permanent address, for example an ESB or telephone bill or a bank statement.
- **Source of assets** – any funds or property that you ask us to deal with must have been legally obtained. If we become aware or suspect that these assets come from an illegal source, we must notify the Gardaí and the Revenue Commissioners without telling you, except in limited circumstances. We will immediately stop acting for you if we have to report illegal assets.

Even when we are not obliged to report to the authorities, we cannot transfer any assets or property funded by the proceeds of crime. This includes funds that have not been declared for tax purposes or that have been obtained by false means. In this situation, you would have to legalise your position before we could act on your behalf.

### **Obtaining your file**

Once you pay us for our services, and provided that we have done everything we promised to do, you can take your original file. We are entitled to copy this file to comply with solicitors' regulations. Usually we keep a client's file for at least six years and then destroy it. However, we never destroy deeds and wills.

If you need your file or information from the file, we can send this to you. We will charge you a fee for this service, based on the current rates at the time of your request.

### **Making a complaint**

Good communication between us will guarantee the best possible outcome. If you wish to make a complaint about any aspect of our service, however, please send it in writing to us and we will review your file without delay. We will then send you a written reply to any requests for information, advising you of any actions that we will be taking in relation to your case.

### **Transferring to another solicitor**

We hope to reach a successful result on your behalf. But if you decide for any reason to transfer to another solicitor's firm, we will require payment for any work done up to that point.

### **Professional insurance**

We confirm that we have the appropriate level of professional insurance in place, as required by law.

### **Acceptance of the Terms**

If the above terms are acceptable to you, please indicate this by writing to us confirming acceptance of these terms. Our engagement will take effect on receipt of your acceptance.

### **Housekeeping:**

- **When appointments are made with me it may be necessary due to urgent or emergency Court Applications to re-schedule your appointment. We have no control over such circumstances and strive where at all possible to minimise the inconvenience to you.**
- **Our Office hours are 9.30am to 5.00pm Monday to Friday with lunch from 1 – 2pm daily.**
- **We ask that all calls are directed to the office number 041-9807404. We return phone calls at a scheduled time every day (except where a call is urgent and needs to be dealt with immediately). We do ask that the mobile number is not used except in absolute emergencies as it is a private mobile**
- **Where you are leaving a message for your Solicitor we do ask that you leave as detailed a message as possible or email in your message at [reception@dorothywalshsolicitors.com](mailto:reception@dorothywalshsolicitors.com)**
- **We do not accept instructions via text messages.**
- **Text messages and emails are treated the same in terms of billing.**
- **If our fees are not paid in advance of a Court Appearance we will not appear for your case.**

### **Requirements to progress your case**

In order to come on record, I will require from you the following:

1. Photo Identification (received);
2. Utility bill;
3. Original State Marriage Certificate;
4. Written marital history;
5. Returned signed authority;
6. Retainer on account.

**DOROTHY J. WALSH & COMPANY**