

GUIDELINES RELATING TO THE APPOINTMENT OF PSYCHOLOGISTS AND LAWYER FOR CHILD IN CASES RELATED TO THE HAGUE CONVENTION

Note: All section references in these Guidelines are to the Care of Children Act 2004.

1 PROPOSED BRIEFING FOR PSYCHOLOGISTS

1.1 The primary concerns when briefing a psychologist are to ensure that:

- (a) the report has the appropriate limited focus; and
- (b) it can be completed in a short timeframe.

1.2 The appointment of a psychologist is most likely to be sought where the defence of child's objection (s 106(1)(d)) is raised. In those circumstances, a suggested brief might be:

The psychologist is to be directed to complete the report within ____ of today's date addressing the following matters.

Having regard to the child's objection to return:

- (a) *What is the basis of that objection?*
- (b) *Does it appear as if the objection is reality based and/or affected by undue influence and/or able to be addressed by explanation or intervention?*
- (c) *Does the child have sufficient maturity and understanding to recognise the implication of the objection?*
- (d) *Having regard to the child's age, cognitive ability, maturity and the options available, how might the child respond if the Court makes an order for return despite the objection?*

1.3 As the parties may wish to address matters that arise as a result of the report, I suggest a further direction.

That the parties be entitled to file affidavits addressing matters raised in the psychologist's report within 10 days of the receipt of the report.

1.4 Such a specific brief should ensure that the psychologist is able to complete this report quickly and should not need to interview any other parties other than the child(ren) involved.

1.5 If the child's objection defence has been coupled with a defence of grave risk of harm or intolerable situation (s 106(1)(c)) then the brief at (a), (b) and (c) should also address alleged physical/psychological harm or intolerable circumstances.

1.6 In circumstances where grave risk is advanced as the sole defence (without being coupled with an objection, for example, because of some kind of adverse psychological impact of the return to the country of habitual residence, depression or suicide possibility for the child) then the brief might be:

Having regard to the defence that the child might be exposed to grave risk of physical or psychological harm or would otherwise be placed in an intolerable situation (and having regard to the factual basis asserted by the parent in support of that objection):

- (a) *What, if any, would be the psychological impact on the child of an order for return to _____?*
- (b) *In what ways could the psychological effect be ameliorated?*

- 1.7 The other circumstances in which a psychologist might be appointed is where it is argued that the child is settled in the new environment. The jurisprudence in relation to this defence makes it clear that “settled” has two components: the physical element of being established in the community, and the emotional constituent denoting security and stability. The physical elements of settlement will need to be established on the facts. In each case counsel must decide whether it is necessary to have psychological evidence of the emotional stability or whether there is sufficient evidence of that stability on the facts (affidavit evidence of wider family members, reports from the school and views expressed through lawyer for child). To require the psychologist to address this issue may run the risk of substituting the psychologist’s conclusion for the Judge’s role.

2 BRIEF FOR LAWYER FOR THE CHILD

- 2.1 The Practice Note: Hague Convention cases (on the appointment of lawyer for the child/counsel to assist, specialist reports and on the views of the child) specifies that the Court must consider whether the appointment is for a specified purpose or limited period of time and whether or not the initial appointment should be reviewed following completion of the task. Therefore, any brief might need to be framed in two parts: the first part to address the initial task following the filing of the notice of defence; the second part to state what role should exist if the matter proceeds to a defended hearing. However, a very rare set of circumstances would have to exist for the appointment not to continue to the hearing.
- 2.2 In general, a suggested brief for lawyer for the child might be as follows:
- (a) *Taking into account the defences raised by the respondent, what are the child’s views¹?*
 - (b) *From the child’s perspective are there any other defences which should be pleaded?*
 - (c) *From the child’s perspective, are there any interim orders and/or directions that the Court should make pending the hearing? For example:*
 - (i) *directions in relation to contact with the left behind parent;*
 - (ii) *alternative placement if there is a flight risk or alternatively direction that child not be removed from current physical residential address pending hearing.*
 - (d) *To represent the child at the hearing.*

¹ It is likely that lawyer for the child, in addressing the issue when he or she files a memorandum, would also have considered whether or not a psychologist should be appointed so that the evidence of these views and the basis for the views are properly placed before the Court, that is, as evidence which is capable of cross-examination.