Neutral Citation Number: [2007] IEHC 488

THE HIGH COURT

RECORD NO. 2006 1974 P

IN THE MATTER OF D.K., A CHILD
AND IN THE MATTER OF ARTICLE 40.3 AND ARTICLE 41
AND ARTICLE 42 OF THE CONSTITUTION
AND IN THE MATTER OF THE GUARDIANSHIP OF
INFANTS ACT, 1964 AS AMENDED
AND IN THE MATTER OF THE CHILD CARE ACT, 1991

BETWEEN

THE HEALTH SERVICE EXECUTIVE

PLAINTIFF

AND
D.K., A MINOR REPRESENTED BY HIS SOLICITOR AND NEXT FRIEND
ROSEMARY GANTLY AND O.K.-D.

Judgment of Mr. Justice John MacMenamin dated 18th July, 2007.

1. This inquiry was carried out on the application of the family of D.K., a fourteen year old boy who died tragically on the night of the 4th/5th of December, 2006. The court was asked to inquire into events which occurred after an order was made on 1st December, 2006 that D.K. be immediately taken into care. The account which follows is based on affidavit evidence and reports. It does not purport to ascribe fault, if any, for what occurred. This Court has no such jurisdiction. That statutory duty lies elsewhere. The inquiry was carried out with the prior consent and total co-operation of the parties so as to ensure that the procedure for implementation of detention orders of young persons at risk works in the most effective way for the protection of these young persons. It is a fundamental tenet of the rule of law and the administration of justice that courts, established under the Constitution, should supervise their own procedure and the manner in which orders, once made, are implemented. This is exemplified on the facts of this case. But this inquiry proceeded within very limited parameters and having regard to the roles of the judiciary and Executive outlined in the case of *H.S.E. v. W.R.* delivered on the same day as this judgment. It is important to record that the evidence was adduced only in affidavit form. Not all the parties involved in the events described testified or were represented. Accordingly, the narrative of events should not be interpreted as findings of fact.

2. It is the hope of D.K.'s parents that the results of this inquiry will reduce the risk that the tragic events described will occur in the future.

3. On 1st December, 2006 counsel on behalf of the plaintiff in the above entitled proceedings made application to this Court for the detention and care of D.K., a minor born on 26th March, 1992. D.K. lived in an area close to a large city. He had a troubled family background. His father and mother were separated. His mother commenced living with another man, M.D., with whom she enjoys a stable relationship. L.D., D.K.'s half brother, was born on 15th September, 2005.

4. In the two years prior to December, 2006 D.K. engaged in extremely challenging behaviour. His mother and stepfather were unable to manage him. He frequently left home without permission, did not return, slept rough, drank alcohol, smoked hashish. He stole his stepfather's car and crashed it. D.K. frequently put his own life at risk. He was effectively homeless for a period of months, during which time he slept rough or in friends' homes.

5. From time to time D. would return to his family home. But as a vulnerable 14 year old D. was in a position where he was essentially free to do whatever he wished. He was unmanageable. He had little capacity to make choices in his own life which would be to his long-term benefit.

6. D.K. had been first placed in Ballydowd on 10th May, 2006. He remained there for a period of three months approximately, until 23rd August of that year. During this period he absconded for a period of five days.

7. D. again absconded on 23rd August, 2006, the day of his discharge. On the following day he returned and was placed in a step-down facility. Thereafter he returned to his home on a visit. He was due to return to a unit, C.H., at the request of his mother, his stepfather and the social work department. Leading up to that time he had agreed to go back to that unit. However, on the day, he refused to return and left home. During that period he wandered around his home area, either sleeping rough or staying with friends or acquaintances.

8. On 22nd November, 2006 an incident took place in the house in which D. was living. A friend of D.'s became involved in a physical altercation with a member of the family. Consequently, D. felt he was no longer in a position to sleep at that house. On the same day, D. was interrupted endeavouring to steal alcohol from a shop locally. He had been spoken to by the Gardaí in relation to underage drinking. The following day he did not make contact with anyone. His phone was powered off. He did not make contact with any person until 24th November, 2006. The Gardaí were notified of this situation. D. returned to his grandmother's house on that Friday night and due to his condition his mother and grandmother believed that he had taken drugs. D.'s grandmother, who from time to time had provided him with accommodation and a safe place to stay, no longer felt in a position to provide him with the level of care he required. However, she agreed to allow D. to remain in her house for a few days provided a placement was found for him. D. refused to go to any residential unit or foster care. Placement in secure care was the only viable care option for him because of the risks to his own life and welfare and that of others.

9. Various carers sought to engage D.K. in programmes. In particular in November, 2006, an unsuccessful effort was made to engage him in a programme called Youth Reach. This hit him badly.

10. It came to the attention of social workers that apparently, a woman in her thirties who had previously lived near one of the houses where D.K. had lived had had an abusive sexual relationship with D.K. then aged 14 years. This person did not testify and no finding should be made on this issue by this Court.

11. The immediate history of D.K.'s life in the three months prior to his detention was deeply troubling. Efforts had been made earlier to place him in a suitable school. This had failed. Care workers had sought to engage him in therapeutic work with his mother and stepfather. He would not live at home. He had absconded from units in which he was placed. He occasionally contacted his parents but failed frequently to return their calls. Matters became particularly acute in September, 2006 when D.K.'s mother and stepfather went on a long-arranged visit to the United States. During this time they took steps, insofar as they could, to provide for D.K.'s welfare. While they were away he took his stepfather's jeep in the company of a friend and damaged it.

12. Sometimes D. stayed with another family but it appears the mother of this family, who felt sorry for him, did not think it appropriate to inform the Gardaí, social workers or D's mother where he was. The times when he spoke to his parents he was angry, crying and morose. His clothes were filthy. He spoke of thoughts of self-harm. He was deeply psychologically disturbed and spoke of his head being "wrecked". He wanted his mother to leave his stepfather and set up home with himself and his stepbrother.

13. In November, 2006 also, D. was involved in the fracas outside a fish and chip shop. He was asked to leave as he was threatening to damage their premises. He got in a fight with his stepfather. His conduct was becoming ever more aggressive and challenging. His family was described as disintegrating under the pressure. It is not improbable that the many factors which allegedly took place must have had a significant psychological effect upon him. While the court has been furnished with additional material it is appropriate that such matters be dealt with elsewhere.

14. D.'s aggressive and agitated behaviour may also have been partly explicable by solvent abuse. When he was in his mother's house for a shower on 25th November, 2006 she found an aerosol spray paint can. D. denied using solvents but it would appear that his conduct was consistent with somebody who sometimes inhaled from aerosols.

15. Subsequent to his discharge from Ballydowd on 23rd August, 2006, his case had been adjourned for review to 16th November, 2006. The matter was actually re-entered at the instance of his guardian *ad litem* on 2nd November, 2006. She outlined the serious concerns which he had in relation to the risk-taking behaviour of D. since he had absconded from C.H. Between November and December it was necessary to ascertain that were an order made, a place could be found for D.K. in Ballydowd.

This is an issue which has been subsequently addressed in the judgment in *W.R.*, delivered concurrently with this decision.

Ballydowd Special Care Unit

16. The regime of specialised care at the Ballydowd unit is available to young persons who satisfy the following criteria:

> (a) the child/young person being referred must reside within the State and be aged between 11 and 17 years;
>
> (b) may have a history of absconding from other care settings and be likely to continue with a pattern of absconding and is likely to harm him/herself or others; or
>
> (c) the behaviour of the child/young person is such that it poses a real and substantial risk to his/her health, safety, development or welfare unless he/she is placed in such unit;
>
> (d) the Health Service Executive has been advised by a child psychologist / psychiatrist that the child should be admitted;
>
> (e) the Health Service Executive is satisfied having regard to the relevant circumstances of the child, that it is in the best interests of the child to be so admitted; and
>
> (f) the Health Service Executive is satisfied that the promotion and protection of the welfare of the child requires that he or she be detained in the unit until further order of the court.

These criteria are applicable in applications which are brought by the H.S.E. for the placement of a young person at risk.

17. Additionally, the court has a jurisdiction in proceedings brought by way of judicial review for the placement of young persons at risk in Ballydowd. These applications are normally brought by a guardian *ad litem*.

18. It may be re-emphasised that this is an exceptional jurisdiction and should be placed within a statutory framework.

19. In deciding whether to admit a child to the unit the H.S.E. generally has regard to the following considerations:

> (a) to treat the welfare of the child as the first paramount consideration;
>
> (b) so far as is practicable to give due consideration to the wishes of the child, having regard to age and understanding;
>
> (c) to take account of the views of the parents of the child; and
>
> (d) to have regard to the principle that it is generally in the best interests of a child to be brought up in his or her own family.

The unit has a limited capacity and that unit is not appropriate as a general residential care facility for children.

20. D.'s whereabouts were unclear at the time when the court order was made. A critical issue then was as to how, when and in what circumstances he was to be informed that the order had actually been made for his detention. Clearly it was fundamental that the order once made, be implemented urgently and in a way which ensured the minimising of risk to D.K. Tragically, this did not occur, owing to not one but a series of events.

21. The issue as to how D.K. became aware that an order for his detention had been made is not a matter on which there has been admissible evidence.

22. Apparently, D.K. was adamant that he was not going to Ballydowd at all, despite his critical psychological state into which, clearly, he had little or no insight.

23. One must be slow to ascribe fault in an extremely difficult area where decisions made in good faith, and apparently in many circumstances, can have long-term consequences which may not be foreseen.

24. D.'s mother was extremely distressed. He was not responding to her phone calls. She was texting him messages of support if he was in Ballydowd.

25. On 2nd December, 2006, the day after the order was made, D.'s mother sent him a long text message assuring him of her support and that she and his baby brother L. would visit him, if and when he was placed in Ballydowd. Staff in Ballydowd phoned the Gardaí

over the weekend. On Monday, 4th December the guardian *ad litem* phoned D. twice. He did not answer. The guardian *ad litem* texted "O.K.-D.", and rang his mother, and spoke with her.

26. On Tuesday, 5th December, 2006 the guardian *ad litem* was informed on her way into the District Court that D.K. had tragically taken his own life.

27. The court has been informed that the previous evening D. had come to the family home in an upset and agitated state. His mother had advised him to go to Ballydowd and said she would accompany him. He left her to go to her car to smoke and phone Ballydowd. He spoke with staff there who discussed his admission, Christmas, and the young people currently in the unit. His mother begged him not to do anything rash and to stay in the house. He was extremely agitated. When she went out to the car he drove away.

28. The following morning, 5th December, the Gardaí found the car and then found D.K.'s body some distance away in front of a row of cottages, some miles from his family home. It appears very probable that he took his own life.

29. The court notes and records that the following steps were taken by the Gardaí pursuant to the order made on 1st December, 2006.

> (a) At 12.31 p.m. on 1st December, 2006 the solicitor acting on behalf of the applicant faxed a letter to the Inspector in Charge of Communications, An Garda Síochána, Harcourt Street, informing An Garda Síochána that the court had made an order directing the detention of D.K. in Ballydowd Special Care Unit. The letter further detailed the identity of the social worker dealing with the case and that she would liaise with the Gardaí regarding the transportation of D.K. to Ballydowd.
>
> (b) Garda Communications Command and Control Centre were informed by the solicitor that it was believed that D.K. was in the ---- area at that time.
>
> (c) At 14.40 p.m. Sergeant --- of Garda Communications Command and Control Centre at Harcourt Square faxed a copy of the letter of the applicant's solicitors to the superintendent of the district in question and to the sergeant of the relevant garda station. A further copy of this letter was sent to the superintendent at Lucan Garda Station, being the district in which Ballydowd Young People's Centre is located.
>
> (d) At 17.09 p.m. the solicitors for the applicant faxed a copy of the High Court order to Garda Communications Command and Control Centre. Once received, the order was forwarded by fax to Lucan Garda Station in compliance with the aforementioned Directive.

30. Subsequent to the making of the order the sergeant in the local area spoke on a number of occasions with the social worker. Following these communications the sergeant carried out enquiries around the village in question but did not locate D.K. Before finishing duty for the weekend at 5 p.m., the sergeant prepared a briefing file for a garda who was working that weekend. A copy of the briefing file was also brought to Carlow Garda Station. Over the course of the weekend of 2nd and 3rd December, the garda in question made enquiries with local businesses and checked with local youths in an attempt to locate D.K. but again was unsuccessful. It came to the attention of the Gardaí that on the night of Monday, 4th December, 2004 at 10.50 p.m. D.K. returned to the family home for five to ten minutes. At 11.10 p.m. on the same night D.K.'s mother reported to a garda that D.K. had taken the motor vehicle. This was then entered in the PULSE system as a missing person and an unauthorised taking of a motor vehicle and circulated by radio to garda patrols. Two gardaí carried out a search of the area and its environs.

31. At 12.55 on Tuesday, 6th December, 2006 a man contacted one of the garda stations involved. This call was directed on to another garda station. The man informed the Gardaí that D.K. had called to his door having informed him that he had been involved in a car crash and used his telephone to phone his mother. Following these phone calls and others, a garda patrol car was made aware of both calls and was despatched to search for D.K. The location was given. This search of the area proved unsuccessful. The Gardaí were not in a position to locate any signs of a crashed car or any signs of a crash.

32. On the morning of 5th December, 2006 a man reported the finding of D.K.'s body. This man, along with his father, completed statements to the Gardaí and steps were thereafter taken for the identification of D.K.

33. There is every indication that D.K. had undergone a series of events which he found deeply destabilising. He had difficulty in adjusting to a new family situation. He was impulsive and impetuous. He had apparently undergone sexual abuse. He had not had any time in a step-down facility after he was in Ballydowd. He did not want to be detained even for his own protection.

34. His psychological problems were deep-rooted. They required significant intervention in his own interest and it would appear could only be dealt with in secure care.

35. In total, he had attended three day secondary schools since he left primary school in June, 2005. He was getting into the company of older young men, which may have had the effect of leading him into criminality. It is fair to say that D. did not have the capacity to make mature informed choices as to his own future or his daily living.

36. His death was a devastating blow to his mother, his family, and all those who cared for him.

37. It is customary in cases of this type to look for some "cause" or origin of D.K.'s behaviour. Whatever may have been its origin, this Court is satisfied that D.'s mother and stepfather took every step they could for his welfare. They acted responsibly. They were prepared to, and withstood many events which no parents could normally deal with. They showed D. all the love and affection that parents could.

38. The circumstances of D.'s death gave rise to a number of concerns. It was decided that the court should review the procedures applicable in regard to the grant of detention orders in the light of what occurred in this tragic case. This inquiry took place on consent of the parties. The only purpose of such review was to ascertain whether any steps could be taken in the procedure and implementation of court orders which would reduce the risks to children arising from the grant of such an order and its implementation. It was agreed that the review should proceed upon the basis that:

> (a) Evidence in regard to the grant of the detention order in relation to D.K. was to be by way of the affidavit sworn by or on behalf of his mother, the H.S.E. and the garda authorities. In this regard the Commissioner of An Garda Síochána would necessarily be made a notice party.

(b) The review should be conducted upon the basis that the court would not attribute any negligence or blame to any person or organisation in relation to what occurred in D.'s case, even assuming fault existed, nor would the court carry out a fact finding exercise. Furthermore, the review would not attempt to deal with matters which would be decided in a Coroner's Court.

(c) The court would hear submissions from counsel in relation to the issues set out below.

(d) The court would, if it felt it was necessary, issue a judgment simply setting out any changes in procedures which it considered were necessary or required.

39. The issues to be addressed in the review are:

(1) The nature and amount of information which should be given to a court at the time of the making of a detention order, in particular in regard to risk factors applicable in the case and the steps which could be taken to ameliorate such risks.

(2) The format and content of an order for detention granted by the High Court and the adequacy or otherwise of such contents and format.

(3) The implementation of such orders and whether any specific directions should be given in regard to such implementation.

(4) The persons who should be on notice of an application for the grant of a detention order.

(5) The procedures which should apply where a child whose case is listed in the Minors List fails to reside, or continue to reside at the location where the court was told that he or she would be staying. In particular, what steps should be taken if such a child in a step-down facility leaves that facility and refuses to reside there.

40. Many, if not all, of the issues which arise in this ruling should more appropriately come within the ambit of a practice direction. However, having heard and considered the oral and written submissions, the court will simply record submissions which might appropriately be addressed in such applications by plenary summons when brought by the Health Service Executive.

41. These considerations may also be addressed appropriately in an application brought by a guardian *ad litem* by way of judicial review.

Summary of submissions
42. These points are a record or summary of the submissions made by the parties. They are not directions. They are identified and summarised here for the assistance of other practitioners so as to address the issues as they arose and here narrated.

43. 1. Nature and amount of information to be given to the court, in particular in regard to risk factors applicable in the case and the steps which could be taken to ameliorate such risks

In general:

proceedings commenced where the applicant is a statutory body such as the H.S.E. should be by way of plenary summons.

Save in cases of exceptional urgency, a comprehensive grounding affidavit filed in the Central Office of the High Court at the time of the issuing of the plenary summons, should be filed setting out the following:

(a) disclosure of the circumstances giving rise to the application being made;

(b) disclosure of all court proceedings, whether civil or criminal, past or pending, concerning the minor;

(c) disclosure of the care, protection and welfare history of the minor including the minor's family structure, significant relationships and significant circumstances or events concerning that minor and his or her family;

as exhibits:

(d) a long-form birth certificate;

(e) an up-to-date medical report on the general standard of health of the minor;

(f) relevant education, health, probation, welfare or assessment reports exhibited in the grounding affidavit;

the affidavit should also contain:

(g) a list of all files and other sources of information, consulted prior to the drafting of the grounding affidavit;

(h) full disclosure of all previous interventions concerning the minor, including the date of the intervention, the duration of the intervention, and their success or otherwise;

(i) a comprehensive social work report;

(j) a comprehensive care plan in respect of the minor, including full and precise particulars of all step-down placements applicable to the welfare of the particular minor;

(k) the views of the minor, their family and all other significant individuals, clinicians, An Garda Síochána, teachers, health or other care staff on the proposed placement;

(l) details of the placement proposal in respect of which the application is being made, including the date of the availability of that placement, the anticipated duration of that placement, the initial period of detention sought, and the written consent of the admissions authority or other person authorised to consent to the proposed placement and the nature and timescale of any proposed therapeutic intervention;

(m) the steps necessary and all assistance required to execute the court order for detention if made by the court;

(n) a risk assessment, i.e. an assessment of the risks which would arise from the making of the order or from not making the order;

(o) an outline of what steps, if any, can be taken to ameliorate or reduce such risks;

(p) an identification of any particular risk foreseen in regard to the execution of the detention order and if so, why and any steps which might ameliorate or reduce such risks, and any particular or special directions are sought in regard to the execution of the order;

(q) if there is a significant passage of time between the affidavit grounding the application for a detention order and the making of such order, then an updated affidavit should be filed addressing, *inter alia*, the matters set out above.

44. The minor should not be named personally as either a plaintiff or defendant in the proceedings. If the child is the moving party they should be represented by a next friend in accordance with the Rules of the Superior Courts, 1986. If the child is a defendant in proceedings, an application should be made to appoint a suitable person as a guardian *ad litem* (e.g. a parent, member of extended family, or a person exercising a de facto welfare role in relation to that child, or such other person as the High Court considers suitable to discharge that function.

45. The full facts supporting any claim of risk to life should be set out with particularity in the grounding affidavit, together with all clinical or expert reports supporting the claim. A deponent in a grounding affidavit should ensure that a claim that the life of a minor is at risk is adequately substantiated or borne out by clear evidence to support that claim.

46. A notice of motion should be issued at the time of the filing of the plenary summons which should set out with particularity the specific order sought by way of interlocutory relief. If it is intended to seek an order for the detention of a minor by way of plenary summons, the relief sought should specify the place of detention, the period of that initial detention and the identity of the person in whose custody the minor is to be detained.

47. Pleadings, notices of motion and other court documents should not be pro forma in their content. It is not the function of the court to identify for the parties the specific parameters of the relief sought.

48. In particular, the attention of practitioners is drawn to the direction of the Supreme Court in *D.P.P. v. P.T*. [1999] 3 I.R. 254. It is impermissible that there should be hybrid form of civil/criminal proceedings in any form. Any application regarding a minor facing criminal charges before another court may be brought only on notice to the H.S.E. and the prosecuting authorities in such criminal proceeding.

Pre-hearing steps
49. It is suggested:-

Solicitors and counsel appearing in these applications should:

(a) identify and narrow the factual and legal issues in the case;

(b) reach agreement prior to the making of an application on any factual or legal issues where that is feasible and to disclose to the court the nature and extent of such agreement;

(c) identify any areas of factual or legal disagreement, the reasons for such disagreement and to suggest the action necessary to resolve any matter remaining in issue; and

(d) limit where possible the oral evidence in any application to outstanding areas of disagreement, and to ascertain when such hearing might take place.

General observations
50. It was submitted:-

If an application is made *ex parte* to the court for an order seeking the detention of a minor under the inherent jurisdiction of the court, the moving party may be required to adduce evidence on affidavit as to why that application could not be heard on notice and to satisfy the court that it has the jurisdiction and the necessary evidence to grant such relief on an *ex parte* basis.

51. If at the time of the making of the application the minor is awaiting assessment in relation to his welfare circumstances or if an aspect of his welfare is likely to change in some material aspect, disclosure or the possibility of change in the welfare circumstances should be set out in the grounding affidavit.

52. The detention of a minor in a special care unit is a significant infringement of that child's right to liberty. The High Court may only make an order as a last resort and then only for the shortest possible period of time. It is an exceptional jurisdiction.

An order detaining a minor is not legally justified because that child has an established pattern of absconding from the family home, or other out of home placements including foster care, specialised foster care, residential care, specialised residential care or high support unit. The court may only make an order for the detention of a minor where there is clear and convincing evidence as to the underlying reasons for that pattern of absconding and a clear, clinical view as to the anticipated therapeutic value to that child of a

short period of detention in a secure care unit. Detention in this context cannot be used as a punishment for absconding, or simply a mechanism for the containment of that child. Absent an established and continuing therapeutic purpose for the detention of a particular minor there is no jurisdiction to detain that child.

53. An application for an order detaining a minor should be fully justified not only in terms of the order sought to be achieved but in terms of duration.

54. An application for an order for detention should not be made if there is a more appropriate mechanism to address the welfare needs of the minor, e.g. detention under the Mental Health Act, 2001, or an application to the President of the High Court under wardship jurisdiction.

55. 2. The format and content of an order for detention granted by the High Court and the adequacy or otherwise of such content and format

In general:-

(a) A court order should draw a distinction between the powers of An Garda Síochána to initially bring a minor to a secure unit on the one hand, and to return him to that unit should he abscond, on the other.

(b) An order for the initial bringing of a minor to a secure unit should be of a mandatory nature directing An Garda Síochána to bring the child to the unit as soon as possible and to give such other directions as may be necessary.

56. 3. The implementation of such orders and whether any specific directions should be given in regard to such implementation

It is suggested that:-

(a) In every case where a detention order has been granted by a court that court should specifically consider the question of the implementation or execution of the order. The court should seek to ascertain whether any particular risks are involved.

(b) The court should specify in the order any particular directions which it considers necessary, for example, whether the child should be informed of the making of the order, and whether a social worker should first attempt to implement the order without the assistance of the Garda Síochána.

57. 4. Persons who should be on notice of an application for the grant of a detention order

It is submitted that:-

(a) In all but the most exceptional circumstances the parent or guardians of the child should be on notice of the making of an application for a detention order.

(b) The views of the guardian or guardians should be obtained as to the desirability of making such order and as to the risks involved.

(c) As a direct discrete inquiry the views of the guardian or guardians should be obtained in relation to the method of implementation of execution of the order and as to the risks that may be involved.

58. 5. The procedure which should apply where a child whose case is listed in the High Court Minors List fails to reside, or continues to reside in the location where the court was told that he or she would be staying. In particular, steps which might be taken if a child or minor in a step-down facility leaves that facility and refuses to reside there.

It is urged:-

(a) If a child absconds from a secure unit while the subject of a detention order the court should be informed as soon as practicable and given an assessment of the level of risk and informed of the steps being taken to secure the return of the child.

(b) Where a detention order is ended and the child is placed in a step-down facility his or her case should be adjourned to a date in the Minors List for review. If during the adjourned period or subsequent adjourned periods, the child behaves in such a manner to place himself or herself at risk the court should be informed of this within a reasonable period and should be given an assessment of the level of risk together with an assessment of the action required, including whether the minor requires to be returned to a secure unit.

(c) If a minor requires to be returned to a secure unit but no place is available, the court should be informed of the level of risk applicable to him or her and the steps which may be taken to alleviate that risk.

59. 6. The role of the guardian *ad litem*

It has been pointed out:-

(a) Unless there are exceptional circumstances only suitably qualified guardians *ad litem* will be used in High Court proceedings in the Minors List.

(b) The function of the guardian should be twofold; firstly to place the views of the child before the court, and secondly to give the guardian's views as to what is in the best interests of the child.

(c) A guardian *ad litem* should bring to the attention of the Health Service Executive any risks which he or she believes may adversely affect the best interests of the child, and if not satisfied with the response may bring the matter to the attention of the court. The guardian *ad litem* should take steps where necessary to co-operate with, and where possible share relevant information with, other care professionals engaged with the minor.

(d) A duty of a guardian *ad litem* is to ensure compliance with the constitutional rights of a minor. For this purpose, the guardian should ensure that there is provided to the minor a means of making his or her views known.

(e) A guardian *ad litem* may fulfil the dual function of reporting to the court regarding the child's care and also by acting as the child's representative in any court proceedings and thereby communicating to the court the child's views.

(f) On an application for detention, and for the appointment of a guardian *ad litem* the court should be afforded such basic information as would suffice to satisfy it that the said person was an appropriate candidate to act as a guardian *ad litem*. In particular, the court should be furnished with the qualifications of the guardian *ad litem* and also details of any vetting of such person by An Garda Síochána.

(g) The guardian *ad litem* should meet the minor as often as necessary in order to be satisfied that the minor's wishes and views are adequately represented regarding his or her detention and care.

(h) The guardian *ad litem* should meet with the minor's family or carers in the community and be familiar with their views and desires regarding the minor's detention and care.

(i) The guardian *ad litem* should make himself/herself aware of the minor's history and the minor's interaction with the various social service agencies.

(j) The guardian *ad litem* should seek to interact in a positive way with the staff of the Health Service Executive charged with the minor's care while in detention. The guardian should ensure that their views concerning the minor's welfare are expressed at each case conference meeting held by the H.S.E. to discuss the minor's care, and should be familiar with the outcome of decisions reached at such meeting.

(k) When proceedings are listed before the court, the guardian ad litem should, where necessary, prepare a report specifically addressing the issues set out above. Additionally, where an issue arises from the contents of any other reports are prepared for the court by other parties to the proceedings, the guardian *ad litem* should, where necessary, address those issues in the report. This can only be done where such reports are available to the guardian *ad litem* in sufficient time.

(l) When the Health Service Executive moves to have a minor discharged from secure care, the guardian *ad litem* should apprise the court of the child's view regarding his onward placement. In addition, the guardian *ad litem* should inform the court of his or her professional opinion regarding such a move and the proposed onward placement.

(m) Where a divergence of opinion as to the care of the minor exists between the Health Service Executive and the guardian *ad litem*, the guardian should first attempt to resolve this issue with the H.S.E. However, where this is not possible, the guardian *ad litem* should inform the court as soon as practicable of their concerns.

(n) Where a minor has absconded from secure care and the guardian *ad litem* is aware of this, the guardian *ad litem* should be satisfied that steps are being taken to address the problem. If the issue persists, then the guardian *ad litem* should take steps to inform the court of the minor's absence having first informed the H.S.E. that they are about to do so.

(o) The guardian *ad litem* should express a view to the court as to how a case is best kept under review after a minor is discharged from secure care. When a minor is discharged from such care the guardian *ad litem* should confirm with the court whether they are to continue to remain involved in the proceedings.

Present practice of An Garda Síochána

60. The court notes the following:-

> On 18th November, 2003, the Assistant Commissioner of An Garda Síochána circulated H.Q. Directive No. 162/03 to every officer, inspector and station throughout the State. That Directive concerned children in custody on foot of court orders. The Directive notes that in most instances a High Court order would usually contain a direction to the Commissioner of An Garda Síochána to search for, arrest, detain and return to the relevant unit, any child who absconds from a special care unit. The Directive continues as follows:
>
> > "As children detained on foot of such orders are invariably deemed to be at extreme risk, it is essential that An Garda Síochána takes immediate and effective measures to secure their return in compliance with the court order."

61. The superintendent in charge of the district containing the centre in which the abscondee was detained assumes responsibility for implementing appropriate measures for ensuring that the young person is located and returned in compliance with the command of the court.

62. In the event that the young person who is the subject of the court order has not absconded from a particular centre but the order commands that the young person be located, arrested and lodged in a named centre, then the superintendent in charge of the district where the centre is placed will have charge of the execution of the order. The superintendent at the relevant district may assume, if the young person has been sighted or located in a different district, responsibility for the execution of the order.

63. In this regard, each district order is required to implement the following procedures:

> (a) Identify each centre within his or her district designated for the purposes of detaining children who are deemed at risk or who exhibit severe emotional and behavioural difficulties.
>
> (b) Supply the manager of each centre with the address, telephone number and fax number of the Inspector in Charge of Communications, Command and Control Centre, Harcourt Square. The authorities at the relevant centre should be informed to notify the Inspector in Charge of Communications in the event of a child absconding.

64. In the normal course, the Health Service Executive, or solicitors acting on their behalf, will inform Garda Communications Command and Control of the making of such an order. Notice of the making of an order is then immediately transmitted by Command and Control to the relevant district officer. If such information is to be conveyed outside of office hours the member in charge of the relevant district headquarters station will also be notified.

65. Pursuant to the Directive, faxed copies of any such orders will be sufficient authority for An Garda Síochána to take immediate action without awaiting receipt of original documentation. Similarly, orders of the courts addressed to the Commissioner and members of An Garda Síochána may be executed without further endorsement.

66. Consideration should be given to the appropriateness or otherwise of using members of An Garda Síochána to execute such orders. On the one hand, the immediacy of the risk to the life and welfare of the young person may require immediate intervention and in many situations the Health Service may not be equipped to carry out what effectively amounts to search and rescue operations. The whereabouts of the young person may be unknown. They will be uncontactable and often hostile or resistant to being detained in a secure care unit. In such circumstances An Garda Síochána is the appropriate agency to execute such special care orders.

67. On the other hand, the grant of such an order is dependent on the High Court being satisfied that such an order is necessary to protect the life, health and welfare of the child that such rights are under immediate threat. The court will have the benefit of a social work report and a report of the guardian *ad litem* setting out the views of the relevant professionals as to why such order is necessary. Steps should be taken to ensure that An Garda Síochána are provided with all relevant material so as to ensure that an order directed to them has sufficient information in order to ensure that such order may be carried out with efficacy having regard to the life, health and welfare of the child. The social work team and An Garda Síochána should liaise prior to the execution of any such order. In particular, consideration should be given as to whether the apprehension of a young person should be effected by members of An Garda Síochána. In some situations it may be preferable for the social worker assigned to the young person in question to co-ordinate the execution of the High Court order. Such social worker will have an intimate knowledge of the background to the application and the order and may be aware of special circumstances or peculiar risk factors that pertain to the execution of the said order.

68. As a starting point, a social work team and/or the guardian *ad litem* should indicate whether the intervention of An Garda Síochána may be necessary to the execution of the order. Only if it is considered that such intervention is necessary will the Gardaí be asked to engage in the process.

69. Where possible, a social work team or the guardian *ad litem* should place An Garda Síochána on notice of any such application, affording them an opportunity to be represented. Such representation would be to ensure that the Gardaí have notice as to the specific reasons why there may be difficulty with the execution of the order and relation to any associated risks.

70. Consideration should be given to creating greater involvement between relevant community garda or junior liaison officers and the young person in question in advance of the execution of a special care order. Steps should be taken to ensure that local and community gardaí become involved in the monitoring of the progress of a young person while the subject of High Court orders. Social work reports might include an up-to-date report from a relevant community garda which may in certain instances indicate whether or not the young person in question has come to garda attention during the intervening period. Alternatively, such report should document the dealings with the community garda has had with the young person since the last court hearing.

Conclusion

71. The court appreciates that a portion of the background narrative material which has been placed before may be disputed. It is not the function of the court to resolve any issues or dispute, or to make any findings of fact. As said earlier, if necessary, those functions reside elsewhere. The court would, however, wish to express its thanks firstly to D.K.'s mother and stepfather for their co-operation and for the way in which they have approached this tragedy. This inquiry would not have taken place without their help and assistance and without their initiative. It is to be hoped that steps which it is hoped will be taken as a result of this inquiry will lessen the risk exposure of other young persons like D.K. The court would also wish to express its appreciation to the H.S.E. (who consented to this inquiry), the Attorney General, An Garda Síochána who co-operated and provided full and useful information regarding their procedures, the guardian *ad litem* and the various counsel who represented these individuals and bodies and were of much assistance to the court.