BACKGROUND PAPER TO PRESENTATION
"CHALLENGES IN FAMILY LAW PROCEEDINGS"
Mr Justice Michael White The High Court.

The Developments in Irish family law, have mirrored the substantial change in the cultural values and social mores of our society, and much more than other areas of law, changing political and sociological values have shaped it.

The problems which Irish family law judges face in their daily work are common to all developed societies, child custody, access, and relocation, allegations of domestic violence, the settlement of property and maintenance disputes. In public family law adjudication on care orders and supervising adoption legislation. In its international dimension, implementing international conventions, by adjudicating on child abduction across national boundaries, and the recognition and enforcement of foreign court orders.

Historically Children's law was neglected in the state, which.together with the collective failure of our institutions to prioritise child protection, led to a difficult place for vunerable children.

The Guardianship of Infants Act 1964 was the first reforming statute on child law since independence. The Status of Children Act 1987 abolished the concept of illegitimacy. The Child Care Act 1991 reformed public child law. The Children Act 2001 reformed the juvenile justice system.

The Constitution distinguishes between the marital and non-marital family. The latter are not recognized as a family under Irish law. The Irish constitution regards the family based on marriage as the most important unit in society. It is deemed a "moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law." Furthermore, parents are endowed with an "inalienable right and duty" "to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children." The State may only intervene with the choices of parents "in exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children."

The Guardianship of Infants Act 1964 declares that all matters concerning guardianship and custody of children are subject to the "welfare of the infant as the first and paramount consideration."thus, in determining guardianship, custody and access, the court must balance parental rights with the welfare of the child.

Ireland ratified the United Nation's Convention on the Rights of the Child 1989 in 1992. It mandates that the child's interests must be *a* primary consideration, although not *the* primary consideration in decisions concerning the child. Furthermore, due weight must be given to their views in accordance with age and maturity.

Under Article 42.5 of the Constitution, the State has a duty to intervene where the parents have failed in their duty towards their children.

JURISDICTION OF THE COURTS IN FAMILY LAW.

There are four levels of courts or benches in Ireland.

1. The District Court is a national court which sits locally in designated district court areas. It is a court of limited jurisdiction, which in family law matters has the jurisdiction to grant individual orders in respect of custody, access, domestic violence and maintenance limited to €500 for a spouse and € 150 per child weekly. It is the court of first instance in child care proceedings.

2. The Circuit Court is also a national court which sits locally on circuits. Although a court of limited jurisdiction in other areas, it has a concurrent jurisdiction with the High Court in family law, and deals with applications for divorce separation, and nullity. It has jurisdiction to grant all relevant ancillary orders without any financial limit. It is also the court of appeal for District Court family law orders.

3. The High Court has concurrent jurisdiction with the Circuit Court in divorce judicial separation and nullity cases. It is the appeal court for the Circuit Court. It is the designated court in child abduction cases, and exercises a supervisory jurisdiction in adoption cases. It has sole jurisdiction at first instance to hear cases challenging the constitutionality of statutes, and in judicial review.

4. The Supreme Court is the appellate court for the High Court.

In private family law proceedings Section 3 of the Guardianship of Infants Act 1964 sets out the basic principle.

It states:-

> "Where in any proceedings before any court the custody, guardianship or upbringing of a child is in question, the court in deciding that question shall regard the welfare of the child as the first and paramount consideration".

Different provisions apply for married and unmarried parents. Married parents are automatically the guardians of their child. If the couple are unmarried the mother is an automatic guardian, but the father has to apply to become a guardian. This can be achieved by consent between the parties when there is no need for court application. In the absence of consent an application must be made by the father to the District Court to be appointed a guardian.

Pursuant to Section 11 of the Act

> "Any person being a guardian of a child may apply to the Court for its direction on any question affecting the welfare of the child and the Court may make such orders it thinks proper".

THE CUSTODY AND ACCESS RIGHTS OF FATHERS.

In common with other jurisdictions, our family courts have been the subject of criticism from groups representing fathers, alleging an inbuilt bias in the system towards mothers. While historically family law courts may well have underestimated the importance of the continuance of the role of both parents post separation, our family courts now are very conscious of the need for involvement of both parents post separation, subject to the paramount consideration of the welfare of the child. It is my experience that each case turns on its own set of facts and opinions.

CHILD CARE PROCEEDINGS.

These arise when the official body responsible the Health Service Executive, applies to court to have a child removed from their parents and taken into care, or to have their welfare supervised.
The Act places a positive duty on the Health Service Executive (HSE) to "promote the welfare of children in its area who are not receiving adequate care and protection." The HSE must "regard the welfare of the child as the first and paramount consideration."

The underlying philosophy of the Act of 1991 is that children should remain in the home where possible and parents should be supported in achieving this. However, children may be removed in limited circumstances. The Act allows for voluntary care orders where the parents consent to short-term relinquishment of care. Furthermore, in emergency situations, the Gardai may remove the child or a district court judge may grant an emergency order. A reasonable belief that the health or welfare of the child is in immediate and serious risk is required to do so. The order lasts for eight days or shorter and may be increased by a further eight days by an interim care order.

The court may decide on longer-term removal of the child where

a) the child has been or is being assaulted, ill-treated, neglected or sexually abused, or

b) the child's health, development or welfare has been or is being avoidably impaired or neglected, or

c) the child's health, development or welfare is likely to be avoidably impaired or neglected,

and that the child requires care or protection which he is unlikely to receive unless the court makes a care order.

In 1999, the Department of Health and Children issued the "Children First Guidelines." They are intended to assist individuals in identifying and reporting child abuse. At present the guidelines lack a statutory footing. The government has introduced the Children First Bill 2012 which make the guidelines legally binding, and has announced its intention to establish a specialised child protection, child welfare and family support agency.

The Children Act 2001 was introduced to replace the Children Act 1908, and to make provision for the care, protection and control of children. Its provisions include the introduction of family welfare conferences centred on making decisions regarding the well-being of the child.

CHILD ABDUCTION

Ireland is a signatory to the Convention on the Civil Aspects of International Child Abduction (the Hague Convention) and is also bound by EC Council Regulation Number 2201/2003(Brussels 2) concerning the jurisdiction and the recognition and enforcement of judgements in matrimonial matters and in the matters of parental responsibility throughout the European Union. Both the Hague Convention and the Luxembourg Convention have become part of domestic law by way of the Child

Abduction and Enforcement of Custody Orders Act 1991, and Protection of Children(Hague Convention) Act 2000.

The legal principles followed in Article 13 defences, where the person who has removed the child to another jurisdiction contests the return of the child on certain grounds, are set out in two High Court Judgements:-

(1) CA. V. CA.(otherwise C McC) 2010 2 IR 162 and

(2) P V P 2012 IEHC 31.

RELOCATION

Issues of internal relocation do not cause major problems in Ireland because of the size of the country.

The issue usually arises where a separated spouse, who has primary care and control of the children, wishes to either emigrate to another country for economic reasons, or has met a new partner who lives in another country, and the court is then asked to either grant permission for that person to take up their new residence, or restrict their rights of free movement. Issues of relocation can also arise in the context of allegations of child abduction where the Hague Convention can be applied.

The relevant judgement in Ireland is a judgement of the High Court, McMenamin J in **U.V. and V.U.[2011] IEHC 519** which referred to,
KB v. LO'R [2009] IEHC 247,
E.M. v. A.M. [1990] No.587 Sp
Payne V Payne [2001] Fam 473,

The essence of his judgment is, there is no presumption in Irish law in favour of the custodial parent, but there should be a balancing exercise which must have regard to the constitutional rights of children to have issues of custody or upbringing taken in the interests of their welfare.

MEDIATION

Our Family Law Courts are still adversarial in nature. The certificates requiring parties to be advised of alternative methods of dispute resolution, which have to be signed by a solicitor prior to commencing legal proceedings and which are contained in our substantive statutes, have not been successful in diverting parties in marital disputes towards mediation or other forms of alternative dispute resolution.

Quite a high percentage of judicial separation and divorce cases are either settled on the day of the court hearing or very close to it, and it would be beneficial if that process were advanced to a much earlier stage in the proceedings.

A new mediation bill is presently being introduced in the Oireachtas. There are also a number of pilot projects which have been commenced by our Courts Service, which provide information about mediation.

An internal committee set up by the Board of the Courts Service and chaired by the present President of the High Court Mr. Justice Kearns, who was a Supreme Court Judge at the time, proposed mandatory information meetings about mediation, but not court ordered mediation. There is certainly room to compliment our present legal remedies with mediated settlements.

PERSONAL LITIGANTS

An increasing challenge for Irish family courts, is the increase in the number of personal litigants. This poses a challenge for both court administration staff and judges.

Generally speaking the litigants can be broken down into two categories, those who find it difficult to obtain legal representation, and do not qualify for legal aid, and others who choose for their own reasons to represent themselves.

There are a small core of personal litigants who pose a very difficult challenge for court administration and judges, who engage with the court process in a potentially abusive way, by making repeated applications, and not following court procedures. Our court administration staff have prepared some very useful guidelines in interacting with personal litigants, and the challenge for the judges is to handle this problem with respect for the rule of law, but also ensure that the time and resources of courts are used to good effect.

ADMINISTRATION OF THE COURTS

Our Minister for Justice, has recently indicated that he intends to initiate reforms in the administration of family law courts. More detailed proposals have as yet been made, but the essence of the proposal is to create a stand alone family court structure with a court of first instance and a court of appeal.

There have been proposals for reform in England and Wales and a report on those reforms was published recently.

In Ireland the Courts are administered by an independent Courts Service which is within the justice family, it is accountable to the Department of Justice and Equality The service is governed by a Board with a majority of Judges, together with a CEO and Senior Management Team.

The Board has a standing Committee on family law called "The Family Law Development Committee" and the terms of reference of the committee have been recently updated and are,

1. Recommend appropriate reforms in administrative, judicial and quasi-judicial structures in the management of family law cases to ensure that as far as possible, cases involving child related issues are prioritised, cases are listed according to priority, waiting times are mitigated and that the rules for same are clear for all users.

2. The promotion of alternative dispute resolution as a means of solving family law disputes.
3. Ensure the voice of the child is heard in family law proceedings on custody and access, by reports or other means, in an appropriate manner.
4. Encourage partnerships with key stakeholders and external agencies to deliver a better service for the citizen.
5. Assist the board and other committees of the Courts Service in outlining key elements of accommodation and facilities in family law courts, where opportunities to improve same arise.
6. The dissemination of information to the public on the family law courts including an improvement of the qualitative information available
7. Encourage practices which make use of the family courts more efficient, less costly, and relieve stress on the parties.
8. Promote education and seminars on family law.
9. Foster the publication of judgements of all benches suitably redacted to ensure confidentiality.
10. In consultation with the Committee for Judicial Studies, facilitate judges in specialised training on family law matters.
11. With board approval, make recommendations, where necessary on the reform of family law.

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THE VOICE OF THE CHILD.

Existing legislation, statutory instruments and case law already allows consideration of children's views.

Part 4: Section 25 of the Guardian of Infants Act 1964 as inserted by Section 11 of the Children's Act 1997 states

> 25.—in any proceedings, to which section 3 applies, the court shall, as it thinks appropriate and practicable having regard to the age and understanding of the child, take into account the child's wishes in the matter.

The United Nations Convention on the Rights of the Child 1989 ratified by Ireland on the 21st September, 1992 at Article 12 states

1. A state party shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the view of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in a Judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Paragraph 19 of (EC) Council Regulations 2201/2203 states

"The hearing of the child plays an important role in the application of this Regulation, although this Instrument is not intended to modify national procedures applicable".

In **F.N and E.B v. C.O and E.K(2004) 4.IR.311** Finlay Geoghegan J stated,

"That, in exercising its discretion to make an order appointing a guardian or guardians, the court should have regard to the welfare of the child and, as appropriate and practicable having regard to the age and understanding of the child, take into account the child's wishes in the matter. The right of the child to have decisions in relation

to guardianship and custody taken in the interests of its welfare was a personal right of the child within the meaning of Article 40.3 of the Constitution".

The proposed constitutional amendment, the referendum result of which is subject to court challenge, reinforces the legislative framework rather than supercedes it.

The relative Article states

"Article 42A 4 1 Provision shall be made by law that in the resolution of all proceedings –

i. brought by the State, as guardian of the common good, for the purpose of preventing the safety and welfare of any child from being prejudicially affected, or

ii. Concerning the adoption, guardianship or custody of, or access to, any child, the best interests of the child shall be the paramount consideration.

2. Provision shall be made by law for securing, as far as practicable, that in all proceedings referred to in subsection 1 of this section in respect of any child who is capable of forming his or her own views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child".

PUBLIC LAW PROCEEDINGS

The voice of the child in public law proceedings pursuant to the Child Care Act 1991 is adequately heard by the appointment of guardian's ad litem.

Paragraph 4.47 Page 418 of Shannon on Child Law Second Edition states,

"It was in the public law sphere that the guardian *ad litem* first came to the fore in this jurisdiction. Section 26 of the Child Care Act 1991 allows the court to appoint a guardian *ad litem* in respect of a child involved in proceedings under Pt. IV (care and supervision orders), and Pt. VI (children in the case of the HSE) of that Act. Section 12 of the Child Care (Amendment) Bill 2009, when enacted, will amend s.26 of the 1991 Act by providing for the appointment of a guardian *ad litem* in special care cases. Section 25 of the 1991 Act allows the child to be added as a party to the proceedings, but where this does not occur, s 26(1) allows a guardian *ad litem* to be appointed to act on the child's behalf. This is subject to the important caveat that the

court be satisfied that such appointment is both necessary in the interests of the child, and consistent with the requirements of justice. As with all child law proceedings, s. 24 of the Act ranks the child's welfare as the first and paramount consideration in such cases, although the court is also required to have due regard to the rights and duties of the parents. It further notes that, in deciding whether to appoint a guardian *ad litem*, the court should, in so far as practicable, have regard to the wishes of the child. The practicability of so doing will, as always, depend on the latter's age and understanding."

The Children's Acts Advisory Board was established pursuant to the Child Care Amendment Act 2007. In May 2009 the Board published guidelines entitled "Giving a voice to children's wishes, feelings, guidance on the role, criteria for appointment, qualifications and training of Guardians *ad litem* appointed for children and proceedings under the Child Care Act 1991 (May 2009).

PRIVATE LAW PROCEEDINGS

Private law proceedings refer to guardianship, custody and access.

The voice of the child in these proceedings can be heard directly or indirectly.

It is heard directly by a Judge speaking to children who have the mental capacity and maturity to communicate their views to the Judge.

The jurisprudence on this has evolved.

In **AS (otherwise DB) v RB (2002) 2.IR 428** at p 456 Keane CJ urged caution stating,

"The only matter on which this court was asked to rule was as to whether it was appropriate for Ro. to be seen by the trial judge in his chambers. While I can understand the approach adopted by the trial judge to this matter in proceedings of this nature, the fact remains that, as a matter of principle, the only evidence which a trial judge, in family law proceedings as in other proceedings, can receive is evidence on oath or affirmation given in the presence of both the parties or their legal representatives.

It has long been recognised that trial judges have a discretion as to whether they will interview children who are the subject of custody or access disputes in their chambers, since to invite them to give evidence in court in the presence of the parties or their legal representative would involve them in an unacceptable manner in the marital disputes of their parents. Depending on the age of the children concerned, such interviews may be of assistance to the trial judge in ascertaining where their own

wishes lie and that would undoubtedly have been the case with Ru. in these proceeding".

In **OD v OD (2008) 1 EHC 468,** Abbot J stated at paragraph 10,

10. Talking with the Children

10.1 It is important to explain the approach of the court as regards talking with children in these cases. The Brussels II bis Regulation requires that judges are trained in the work of hearing cases regarding parental control, and I am fortunate that since my appointment as judge, I have had the opportunity of training relating to this area through networking and conferencing with judicial peers, lawyers, academics and professional experts, both nationally and internationally. I have taken a number of guidelines from such training when speaking with children, which are as follows:-

> 1. The judge shall be clear about the legislative or forensic framework in which he is embarking on the role of talking to the children as different codes may require or only permit different approaches.
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> 2. The judge should never seek to act as an expert and should reach such conclusions from the process as may be justified by common sense only, and the judges own experience.
>
> 3. The principles of a fair trial and natural justice should be observed by agreeing terms of reference with the parties prior to relying on the record of the meeting with children.
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> 4. The judge should explain to the children the fact that the judge is charged with resolving issues between the parents of the child and should reassure the child that in speaking to the judge the child is not taking on the onus of judging the case itself and should assure the child that while the wishes of children may be taken into consideration by the court, their wishes will not be solely (or necessarily at all,) determinative of the ultimate decision of the court.
>
> 5. The judge should explain the development of the convention and legislative background relating to the courts in more recent times actively seeking out the voice of the child in such simple terms as the child may understand.
>
> 6. The court should, at an early stage ascertain whether the age and maturity of the child is such as to necessitate hearing the voice of the child. In most cases the parents in dispute in the litigation are likely to

> assist and agree on this aspect. In the absence of such agreement then it is advisable for the court to seek expert advice from the s. 47 procedure, unless of course such qualification is patently obvious.
>
> 7. The court should avoid a situation where the children speak in confidence to the court unless of course the parents agree. In this case the children sought such confidence and I agreed to give it them subject to the stenographer and registrar recording same. Such a course, while very desirable from the child's point of view is generally not consistent with the proper forensic progression of a case unless the parents in the litigation are informed and do not object, as was the situation in this case.

There are guidelines in England and Wales produced by the Family Justice Council and approved by the President of the Family Division April 2010.

There is no formal training programme in place to enable judges to fulfil the task of interviewing children, although proposals are being considered by the committee for judicial studies.

HEARING CHILDREN INDIRECTLY.

Section 47 of the Family Law Act 1995 makes provision for the High Court and Circuit Court to procure a report on any question affecting the welfare of a party to the proceedings, including children. In accordance with Section 47 (4) fees and expenses incurred in the preparation of a report shall be paid by the parties to the proceedings in such portions as the court may determine.

The cost of preparing a Section 47 Report by a psychiatrist or psychologist varies but can be expensive. The difficulty with this model is that the dispute generally is not about the psychological or the psychiatric health of the child but a protracted custody dispute between the parents. The report is usually very wide ranging concentrating on the wider family and not just the children.

At present Section 47 does not apply to the District Court. Section 26 of the Guardianship of Infants Act as inserted by Section 11 of the Children Act 1996 extends the section to proceedings in the District Court; however this section has not been commenced.

Where the District Court has concerns about the welfare of a child or wishes to have the views of a child heard indirectly, the only provision open to the court at present is Section 20 of the Child Care Act 1991, where a report can be ordered if it appears to the court that it may be appropriate for a care order or a supervision order to be made with respect to the child concerned in the proceedings. The court may then direct the HSE to carry out an investigation and to prepare a report. This section is regarded by judges generally as unsuitable in private family law proceedings.

Historically the Probation Service provided social reports to the family law courts, but this service was discontinued in 1996.

Over a number of years the Courts Service after detailed discussions with the Probation Service and other interested agencies set up a pilot project, where social inquiry reports primary relating to children were prepared by retired social workers

and the Courts Service bore the cost. This was discontinued in 2011 because of the cost to the Court Service and also because it was considered to be outside the remit of the service.

In Northern Ireland, Scotland, England and Wales, the family law courts have the facilities of a dedicated service, where social reports and reports seeking out the voice of the child can be ordered by the court in respect of any matter concerning the welfare or best interests of the child, including hearing the voice of the child.

In certain circumstances the Legal Aid Board, where a party to the proceedings is legally aided, may agree to bear the cost of the social report but that is entirely at the discretion of the Legal Aid Board.

In many cases for a variety of reasons, it would not be appropriate for a judge to interview children directly.

HAGUE CONVENTION CASES

3. Ascertaining the Child's Views

The High Court is sometimes obliged to ensure that the child at the centre of the proceedings is given an opportunity to be heard and, on other occasions, determines that it is appropriate to do so. In cases where the Brussels Regulation applies, the court is under an obligation to ensure that the child concerned is given the opportunity to be heard during the proceedings unless this appears to the court to be inappropriate, having regard to his or her age or degree of maturity (Article 11(2) of the Regulation).

This is normally done where a child is six or more. The age of six is not an inflexible rule but will depend on all the circumstances of the case.

The current practice in the High Court in child abduction cases is for the judge not to speak with the child directly, but, rather, to make an order that the child be interviewed about certain specified matters by a suitably qualified professional with expertise in interviewing children. The court will normally also seek the expert view of the child professional on the degree of maturity of the child.

The order made in each case will depend upon the relevant facts and the issues raised in the affidavits of the parties. The child professional will normally be given copies of the proceedings, affidavits and documents exhibited. The order may include some or all of the matters next mentioned but may also differ. The precise terms of the order made in the case must be followed.

The order will generally expressly prohibit the child professional from speaking with, or interviewing, either of the parties (save for the making of practical arrangements in relation to the interview of the child). This is an important restriction, as normally, the applicant will not be present in Ireland. Any substantive contact between the child professional and the respondent could therefore be perceived as interfering with the objectivity of the child professional in interviewing the child on behalf of the court, and making an objective assessment on the matters upon which the child professional is asked to express his or her expert view.

The court order on which the child professional must base the interview will normally be divided into two parts. In the first place, the child professional will be required to interview the child on certain specified questions. This is for the purpose of enabling the child to express his or her views to the judge. It is preferable if the child professional records the views expressed by the child in his or her own words. It is helpful that the context in which the views were expressed is made clear *i.e*. the questions put. It is also helpful if the child professional records the demeanour, behaviour and attitude of the child during the interview.

Where the order includes questions in relation to an objection to returning to the

country of habitual residence, it is important that the child professional seek to ascertain, in the questioning, whether the objection of the child is truly to returning to the place of habitual residence, as distinct from living with or away from some person, and the precise reasons for those objections. As previously explained, in accordance with Article 13 of the Hague Convention, if the respondent establishes as a matter of fact that the child objects to being returned to the place of his or her habitual residence, the Irish court is given a discretion not to make an order for return and must exercise that discretion in the context of the principles relating to the Hague Convention and Article 11 of the Brussels II *bis* Regulation. To exercise such discretion, it is imperative that the court fully understands the nature of, reasons for and strength of those objections.

The order may include questions in relation to the child's wishes for his or her future care and living arrangements or manner of return. This is not because the court has jurisdiction to determine whether or not to make an order for return by reference simply to the child's welfare or his or her wishes. However, the content of the report of the child professional will normally be communicated to the parties and, in particular, where they are the parents, it may assist in helping them reach agreement about the future care of the child. In addition, where an order for return is made, the proceedings in this jurisdiction, including the report of the child professional, will normally be made available for use in court proceedings in the country of habitual residence. Further, when the Irish courts make an order for return, they have a limited discretion to specify how this should take place and will seek to ensure, if feasible, that it happens in a way which accommodates the child's views.

4. Expert Assessment

The second part of the order will typically seek the objective expert view of the child professional on a number of issues. The first issue will normally be the degree of maturity of the child. It is important to note that it is the judges who must determine whether the child has reached a degree of maturity at which it is appropriate to take into account his or her views. That is not a matter for the child professional. What the court requires of the child professional is his or her expert view on the degree of maturity of the child and other questions specified in the order and the reasons for which he or she has reached that view. The judge will also have to determine the

weight to be attached to the child's views in the overall context of the proceedings and maturity is relevant to this.

Where there are questions relating to objections expressed by the child to returning to the place of habitual residence, there will normally be ancillary questions in relation to any influence which might have been exerted, either directly or indirectly, on the child in expressing these views. In child abduction cases, typically, the child will have been in the exclusive care of the respondent for several months prior to the interview. The applicant may have a fear that the child, when interviewed, will be under the influence of the respondent. It is essential that the child professional address these questions carefully. Even in cases where a respondent does not coach or bring pressure to bear on the child, it may be that the child is aware that the respondent wants to remain in Ireland and does not want to return to the place of habitual residence of the child and the child does not wish to upset the respondent parent.

5. Explanation to Child

The age appropriate explanation to be given to the child is a matter for the child professional having regard to the nature of the proceedings as set out in this note. The primary purpose of the interview should be explained to the child as being to enable him or her have his or her views put before the judge so that they may be taken into account. It would normally, also, be appropriate to emphasise that (in the absence of agreement between the parties) the judge will be the person making the decision; that the child's views are only one of a number of matters which will have to be taken into account and are not determinative.

6. Purpose and Status of Report

As already explained, the primary purpose of the report to be prepared by the child professional, following the interview and assessment of the child, is to enable the child to express his/her views to the Judge and to assist the Judge in making decisions on the issues in respect of which the court has jurisdiction in child abduction proceedings under the Hague Convention and Brussels II *bis* Regulation. However, it

is desirable, in the interests of the child, that the parties are facilitated in attempting to reach agreement in relation to the future care and living arrangements of the child. The report of the child professional may often be instrumental in assisting the parties to reach agreement.