

Legal Proceedings: Regional Guidance for Nurses and Midwives

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1.0 Introduction

Whilst unusual, Nurses and Midwives¹ may be required to appear in court to provide evidence of their involvement in a case. This can be a stressful experience. In March 2014, the Public Health Agency (PHA) facilitated a workshop for Safeguarding Children Nurse Specialists to explore the challenges associated with court attendance. Other disciplines and agencies provided valuable contributions including BSO legal colleagues, PSNI, Guardian Ad Litem Service and a Social Services Senior Practitioner. It was agreed that the PHA should issue regional guidance for Nurses and Midwives.

A regional working group made up of Safeguarding Children Nurse Specialists (see Appendix 1) was established to develop this guidance on legal proceedings with the support of the Safeguarding Children Nurse Consultant (PHA).

2.0 Scope

This guidance is for use by Nurses, however, it contains information that may be useful for other disciplines including Allied Health Professionals.

This guidance relates only to legal requests for evidence, attendance at court or formal hearings in the context of a Nurse's employment with a Health and Social Care Trust (Trust). It is relevant to attendance at a court of law or any other quasi-legal

¹ For the purpose of this document the term Nurse will be used to refer to both Nurses and Midwives

reviews convened under statutory regulation including Nursing and Midwifery Council Hearings.

3.0 Purpose

Giving evidence in a court of law or at a formal hearing can be daunting particularly as this is a rare occurrence for most Nurses. This guidance establishes a general principle that Nurses called to give evidence should be given proper advice, guidance and support to assist them in fulfilling their responsibility confidently and appropriately, so that they assist the court or a panel in reaching a decision.

4.0 Aim

The aim of this guidance is to ensure that Nurses are prepared adequately and supported if they are involved in court proceedings.

5.0 Objectives

The objectives of this guidance are to enable Nurses to:

- feel supported by their employing Trust when involved in court proceedings
- understand what is expected of them in relation to court proceedings
- have information relating to court proceedings

- familiarise themselves with the court or panel's expectations of them
- effectively contribute to legal proceedings.

6.0 Implementation

This guidance is to be introduced with immediate effect for the benefit of Nurses involved in legal proceedings. It is the responsibility of Executive Directors of Nursing, with the support of Named Nurses for Safeguarding Children, to ensure that this guidance is brought to the attention of all Nurses employed within Health and Social Care Trusts.

7.0 Sharing information for the purpose of court hearings

Nothing in this guidance overrides the general principle of confidentiality relating to personal health records, or the duty of care owed by Nurses to keep personal information confidential and therefore not disclose a person's information without their expressed consent (or consent of a person with parental responsibility in respect of a child).

Special consideration may apply where consent is not forthcoming and the court deems that there is an overriding public interest to disclose information , for example, in a criminal case of alleged child abuse. Specific advice and support in such cases is available to Nurses from Safeguarding Children Nurse Specialist Teams.

If nursing records are required by the court these will have been previously requested via a Court Order issued through Department of Legal Services (DLS). The Judge will have decided what information is required. This is especially pertinent if the person to whom the information relates to does not consent to the disclosure.

Similarly, if a nursing report is required by the the court, this will have been previously requested via a Court Order issued through DLS. Any request for a nursing report should be notified to the relevant line manager and Safeguarding Children Nurse Specialist (as appropriate). Nurses should adhere to their Trust's report writing standards and guidelines.

Court cases are often held in public. As representatives of their employing Health and Social Care Trust, Nurses are expected to be appropriately prepared for court appearance.

8.0 Nurse's Responsibilities

It is the responsibility of a Nurse who is requested to attend and provide evidence at court to:

- notify their line manager
- discuss the relevant details of the case with their line manager
- request and avail of support.

The Nurse should make every effort to abide by the terms of the Witness Summons and must confirm their availability to the Solicitor who issued the Witness Summons. If for any good and

compelling reason a Nurse cannot attend, then she/he must notify the court and the Solicitor immediately, and clearly state the reason for unavailability. Failure to abide by a Witness Summons may result in a contempt of court which carries the possibility of a fine or, in extreme situations, imprisonment.

There are two types of Summons:

1. Summons to attend
2. Summons Duces Tecum – (attendance with the documents specified on the Summons).

9.0 Line Manager's Responsibilities

It is the responsibility of the Nurse's line manager to provide support, including this guidance, to a Nurse who is in receipt of a Witness Summons. It is standard practice for a witness to be accompanied to court. The accompanying person should be a relevant nurse manager. Nursing managers should seek support and advice from senior managers as required.

It is the responsibility of a line manager to assist a Nurse who is a witness and ensure that the Nurse is appropriately prepared for their appearance in court. It is essential that adequate arrangements have been made to discuss the case with the relevant Assistant Director, Complaints/Claims Manager, Solicitor, and appointed Barrister as necessary. A senior manager should attend all cases of Coroner's Inquest and civil court cases to support the Nurse providing evidence.

The Assistant Director or Complaints Manager will keep the Trust's Communications Manager informed of any case likely to attract publicity. If the Trust is party to the proceedings the case should be discussed with DLS.

10.0 Additional Support

Nurses need to have prompt access to supervision with line managers and/or Safeguarding Children Nurse Specialist Team before, during and following court appearances. Supervision relating to court appearances should be a priority for Nurses who are witnesses, their line managers and Safeguarding Children Nurse Specialist teams.

Nurses can access confidential support offered by their Trust for example Care Call or the Occupational Health Service. They may also avail of support from professional organisations.

11.0 Recording of Legal Advice

Advice provided by DLS in relation to court appearance, evidence and witness statements should not be recorded within nursing records. Nurses may choose to retain notes for their own reference. These notes must be stored in keeping with confidentiality and data protection policy and procedures.

12.0 Types of Witness

If you are called simply to describe how an event or course of events happened, you are a “*witness of fact*”.

A court may also call you as an “*expert witness*” because you hold a particular qualification. This will usually involve the provision of a formal report giving a professional expert opinion.

13.0 Acting as a Witness

13.1 Why have I been asked?

You have been asked to be a witness because you have something to contribute which may help a person (known as a “party”) who is making a claim or defending a claim in court. The person who introduces the claim is called the “*claimant*,” “*petitioner*” or “*applicant*” and the person disputing it is called the “*defendant*” or “*respondent*”.

You may be asked by a party (or their solicitor) if, for example, you have witnessed an accident take place or have in some way been closely involved with the treatment or care of a client who is the subject of a dispute.

If you receive a Witness Summons entirely unrelated to your employment with the Health and Social Care Trust you can request a leave of absence from your line manager. Court appearances which are unrelated to work will normally be taken as annual or unpaid leave. Expenses can be reimbursed at a later date. Advice can be obtained from the court.

13.2 How will I give my evidence?

Most of the practical work associated with legal processes takes place out of the courtroom however you may be called to appear in court as a witness. The following guidance notes are intended to help you with your preparation:

- the court will decide if your evidence is to be given in writing or in person or both
- if you are required to give written evidence this should be contained in a “witness statement” (see Appendix 2)
- the opposing party may agree that the witness statement is sufficient evidence on its own and you may not have to attend the court hearing - you will be advised if this is the case
- if the parties do not agree with your written evidence, or feel for any reason that you should be at court, you will be advised of the time, date and place of the hearing and expected to be there

13.3 What should I do to prepare?

In preparation for court you should:

- review and have a good knowledge of all nursing records applicable to the evidence before attending Court
- take an opportunity to meet with the solicitor and/or barrister presenting the case who will prepare you for any difficult

questions which you might face in court - these “devil’s advocate” questions are designed to be helpful rather than critical and will enable you to formulate clear and confident answers (‘coaching’ cannot be provided as this is ethically and legally unacceptable)

- use the support that is available to you
 - preparation of witnesses by Trust solicitors is only likely to occur in complex care proceedings cases or cases involving child abuse or neglect
 - support will be provided by the Safeguarding Children Nurse Specialist Team in less complex child care cases
 - talk to your line manager regularly
- be sure about the time, date and venue of the hearing
- dress smartly and be comfortable as there can be long periods of waiting prior to giving evidence

13.4 What do I do at Court

It is important that you:

- arrive in good time and report to the Receptionist who will make a note of your arrival, inform the Solicitor who issued the Witness Summons
- go directly to the waiting area
- tell the Court Clerk, Usher or Solicitor where you can be found if you have to leave the waiting area for any reason

- listen carefully to the Solicitor who will brief you prior to going to court and may have some last minute instructions for you - you may even find that the case has been settled at the last moment and the hearing does not need to take place
- check the list of cases to be heard on the day as this will tell you whether your case is in public or in private, and also the name of the Judge and whether he/she is a high court, circuit or district Judge - some hearings take place in the Judge's room where there is no witness box
- do not discuss the case in a public area where you may be overheard
- follow the directions of the Court Usher who will usually call out your name when it is time to give your evidence and show you to the witness box where you should remain standing until requested to take a seat - it depends upon the parties and the Judge as to whether you will be in the court room until your evidence is required or whether you will be requested to remain outside the court and wait being called
- inform the Court Usher of your preference before you go into the hearing if you are required to take an oath that what you say is the truth - normally taken on the bible or a holy book but you may give a promise to tell the truth, known as an 'affirmation'
- answer questions about your statement and/or report from the Solicitor/Barrister who called you as a witness - you are permitted to bring your witness statement and or report into the witness box and will have access to such notes and

records which will have been already tendered as evidence (may be available in Court Bundles²)

- answer the opposing party (or Solicitor) - known as “cross examination”
- answer the Judge if you are asked questions
- say that you cannot remember if you cannot recall the detail (which may have occurred a long time ago)
- be guided by what was documented in your records at the time
- try to relax, keep control and stay calm as cross examination by the opposing Barrister is often challenging - if the cross examination becomes too difficult the Trust or defendant’s Barrister will object and the Judge can intervene
- take your time answering questions
- speak clearly and direct your answers to the Judge and not to the person who asks the questions
- ask for the question to be repeated if you do not understand the question or cannot hear what is said
- keep responses factual and succinct - the Judge will make a distinction between good witnesses and poor witnesses and decide who and what to believe - straightforward truthful answers are always best

² In some cases where there are a lot of records relevant to the case, these will have been collated into bundles so that the Judge, Lawyers and witnesses can find and refer to the same document easily during the hearing. In public law cases the DLS will prepare these bundles.

- avoid the use of third party information if possible - in some instances this may be unavoidable but bear in mind that you are there to provide evidence of your own direct involvement in the case - if someone else's information is important they will be called as a witness.

13.5 What do I call the judge?

At high court and crown court the judge is addressed as "My Lord" or "My Lady".

At county court the judge is addressed as "Your Honour"

At district court the Judge is addressed as "Your Worship"

14.0 Types of Court

14.1 Criminal Court including Magistrates Court

Criminal courts deal with offences against the law with prosecutions brought by the Police Service NI via the Public Prosecution Service. Crown court involves the use of a jury. Both courts may impose penalties including fines and imprisonment.

Magistrates courts deal with lesser criminal offences and their powers of detention are limited to six months. It is rare for a health service employee to be summoned as a witness to a criminal court. A criminal offence committed in hospital or elsewhere where an employee was a material witness are exceptions to this.

14.2 Coroner's Court

Coroner's inquests are held to investigate sudden death. The Coroner's responsibility is to establish how, when and where the death occurred, and the medical cause of death (see Appendix 3).

14.3 Family Law

Some civil law courts deal with legal issues arising from the breakdown of families, child care proceedings, fostering and adoption. In cases involving children, certain health professionals including Health Visitors and Paediatricians may be required to provide evidence.

In public Law cases the Trust will be a party to the proceedings. DLS will be available for assistance. In private law cases, which

usually relate to issues between parents, the Trust will probably not be involved as a party to the proceedings.

A Nurse may be required to provide information about their involvement with a child, parent or carer. Requests for such information may be received from a Guardian Ad Litem appointed by a court, a Solicitor representing a parent in child care or custody proceedings, or a Police Officer as part of a criminal investigation.

Nurses should adhere to own Trust Policy and Procedure in relation to any request for supporting testimony in cases of parental dispute at family courts.

15.0 Civil Law Claims for Damages

Acting on legal advice, Trusts often seek to defend claims for damages for personal injury (e.g. injuries sustained by a patient, visitor or member of staff on Trust premises). Clinical negligence claims tend to be dealt with as a separate category but are essentially a specialised type of personal injury case. Nurses involved in the particular incident or patient's management may be asked by the Trust's Solicitors to act as a witness in the court case.

16.0 Other quasi-legal proceedings

Employment Tribunals (formerly Industrial Tribunals) have lost their informal status and are similar to other kinds of courtroom appearance. A Nurse may be asked to appear as a witness where the Trust is defending a claim for unfair dismissal or discrimination (e.g. sex discrimination, race discrimination). Both sides in the dispute are almost always legally represented, and court

procedures are similar to other kinds of civil law cases, but where the claimant can petition for reinstatement as an alternative to financial compensation.

Hearings of professional regulatory bodies and statutory organisations such as the Nursing and Midwifery Council, General Medical Council and FHS Appeal Authority are not legal courts but their responsibilities are underpinned by legislation. Processes are formal and usually involve legal representation. Much of this guidance will be helpful to any member of staff called to give testimony at a professional hearing.

Public enquiries or judicial enquiries are further examples of formalised settings for which much of this guidance is relevant.

Where a Nurse has any doubt about their responsibility in formalised hearings or the legal process she/he should seek help and guidance from their line manager in the first instance and as soon as possible.

17.0 Roles and Responsibilities of other Agencies

17.1 Department of Legal Services (DLS)

DLS represents Health & Social Care organisations when in cases where they are 'party' to the proceedings. DLS cannot represent Trust staff in any other proceedings. In other proceedings it may be appropriate and helpful for the Nurse to be accompanied by a line manager, colleague or representative from a professional organisation.

17.2 Court Children's Officers

Court Children's Officers are qualified Social Workers, trained and experienced in working with children and families. Their role is to assist the court regarding the best interests of children in private law cases.

17.3 Guardian ad Litem (Guardian)

The role of the Guardian is a statutory function determined by legislation. In public law proceedings, the child is a party to those proceedings and it is the role of the Guardian to ensure the child is legally represented.

The statutory duty of welfare is dictated by the principle enshrined in the Children (NI) Order 1995, which is that the welfare of the child is the paramount consideration. Nurses have a responsibility to share information with the Guardian and should refer to regional guidelines for nurses, midwives and specialist community public health nurses³ when sharing information with the Guardian ad Litem Agency (Public Health Agency, 2012) when doing so.

³ Available in the nursing section of the PHA website at :
http://www.publichealth.hscni.net/sites/default/files/Regional%20guidelines%20for%20nurses%20when%20sharing%20info%20with%20NIGALA%20-%20Aug2012_0.pdf

Appendix 1

Working Group

Emily Roberts, Chairperson - Named Nurse Safeguarding Children (SHSCT)

Bridget Burnside - Safeguarding Children Nurse Specialist (NHSCT)

Cathy McCarron - Safeguarding Children Nurse Specialist (WHSCT)

Aideen McLoughlin - Safeguarding Children Nurse Specialist (BHSCT)

Joan McMahon – Safeguarding Children Nurse Specialist (SHSCT)

Jackie Todd - Safeguarding Children Nurse Specialist (SEHSCT)

APPENDIX 2

WITNESS STATEMENT PROFORMA

CLIENT'S NAME:

DOB:

CLIENT'S ADDRESS:

WITNESS STATEMENT

Witness statement of [TITLE/NAME]

[DATE]

1. State your full name
2. Provide professional address
3. State your current post
4. Provide details of your qualifications
5. Provide details of your post and grade at the time of incident in question
6. Provide details of where you worked, either unit or team, and explain the nature of ward/team and the client group that you worked with.

7. If appropriate state the details of your role on the ward/team e.g. do you have primary nurse responsibility, do you participate in multi-disciplinary team planning and so on.
8. Provide summary of your first contact with the client.
9. Then set out in chronological order and in first person details of your contact with the client including relevant details of your interaction with them and/or others involved in their care. When referring to others use name and job title. So far as possible be clear where you have witnessed events. It is important to clarify source of any third party information.

Sign and date⁴

⁴ There is usually no need to sign and date each page

APPENDIX 3

CORONER'S INQUEST

Who is the Coroner?

- The Coroner may be a Lawyer or a Doctor (or may hold both qualifications) and is an independent judicial officer. The Coroner has a legal duty to investigate sudden death where the cause is unknown, violent or unnatural. The Coroner will decide the identity of the person who died, how, when and where the death took place, and the medical cause of death.

The Inquest

- Despite the above the Coroner's inquest is a fact finding exercise not a fault finding exercise. There are no "parties", no prosecution, no defence and no trial. Relevant nursing staff are required to attend the inquest if requested. The invitation from the Coroner's Court should be interpreted as an order given that the Coroner can subpoena witnesses if necessary.

At the hearing

- Witnesses will be informed of the date, time and place of the inquest. Where there are important clinical commitments which cannot be changed, it is possible to request that a Coroner agree to call witnesses in a different sequence if sufficient notice is given.
- Coroner's Inquests are held at the Coroner's Court. If you are called as a witness you should report to the Coroner's

Clerk upon arrival. Remember you will be waiting in a reception area with other witnesses and members of the deceased family. Be careful not to discuss the inquest in public waiting areas and be sensitive to the formal nature of proceedings and the feelings of the bereaved family

- The degree of formality in court depends largely on the Coroner. Each witness will begin by taking the oath and will then be asked questions by the Coroner. If the Coroner believes the evidence contained in a statement is not controversial he may decide simply to read the statement and dispense with the need for the witness to attend.

Evidence from the Pathologist

- The pathologist will be called either at the beginning of the inquest or at the end. With this one exception, witnesses are usually called in chronological sequence.
- When the Coroner has finished his examination of each witness the relatives or their lawyer may cross examine. Where a number of relatives have attended and there is no legal representation, one member will be appointed as spokesperson. It is important to recognise that the family members may be emotional. There may be background noise or mutterings from the back of the court room which can be distracting. A Coroner is less likely than a judge to stop this.
- After the family (or legal representative) has asked questions, the Trust's legal representative will have an

opportunity to ask further questions by way of re-examination.

Verdicts

- The Coroner must give a verdict. Technically there is no prescribed list of verdicts, although the most well-known are accident, misadventure, unlawful killing, suicide, and natural causes. Where the evidence is inconclusive an open verdict will be recorded.
- The Coroner will normally sum up the evidence before giving his findings which are made on the balance of probabilities. No verdict can be framed in such a way as to determine any question of civil liability but the Coroner does have powers to make recommendations where he believes that action should be taken to prevent occurrence of similar fatalities.
- Some verdicts may be supplemented by a rider such as “lack of care”, “industrial disease”, or “neglect”. Comments of this nature can reflect badly on those responsible for the deceased person’s care and could lead to the family of a deceased person pursuing a legal claim.

Publicity

- Coroner’s inquests are held in public and media representatives may be present. Trust staff should not speak to reporters after the hearing but instead refer them to the Trusts Communications Manager. The Trust may have already prepared a press and publicity statement in relation to controversial cases or has aroused public interest.



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