

CIRCULAR: HSS (STATUTORY FUNCTIONS) 1/2006

DHSSPS CIRCULAR

RESPONSIBILITIES, ACCOUNTABILITY AND AUTHORITY OF THE DEPARTMENT OF HEALTH, SOCIAL SERVICES AND PUBLIC SAFETY, HEALTH AND SOCIAL SERVICES BOARDS AND HEALTH AND SOCIAL SERVICES TRUSTS IN THE DISCHARGE OF RELEVANT¹ PERSONAL SOCIAL SERVICES FUNCTIONS TO SAFEGUARD AND PROMOTE THE WELFARE OF CHILDREN

1 INTRODUCTION

- 1.1 Family and Child Care services occupy a unique position in the social services by virtue of the range of statutory powers and duties which direct and inform the provision of services.
- 1.2 The purpose of this guidance is to reclarify the respective roles, responsibilities, accountability and authority of the Department of Health, Social Services and Public Safety (the Department) and Health and Social Services Boards (Boards) and Health and Social Services Trusts (Trusts) with particular reference to the discharge of their statutory functions to safeguard and promote the welfare of children.
- 1.3 Since the commencement in November 1996 of the Children (Northern Ireland) Order 1995² (The Children Order), the need for greater clarity has been demonstrated by cases arising in the courts from time to time. In responding to a directive from the Judiciary to explain why a Trust had not discharged its duty to provide appropriate care for a child, some Trusts have sought, on legal advice, to involve both the Board and Department. Trusts have also sought to justify breaches in the discharge of their statutory functions by claiming that they had not been allocated sufficient resources to enable them to discharge these. None of these cases proceeded to final hearing. There has consequently not therefore been a judicial interpretation of the respective roles and responsibilities of the Department, Boards and Trusts in relation to relevant statutory functions.
- 1.4 The Review of Health and Social Services in the case of David and Samuel Briggs (DHSSPS, 2003) highlighted particular differences in the perception and understanding of the respective roles and responsibilities

¹ Commonly referred to as “statutory functions.”

² S.I. 1995/955 (N.I.2)

of the Department, Boards and Trusts. The Review contained a recommendation that the Department should 'reclarify the roles of the Board and the Trust in terms of commissioning, managing and delivering the service'.

- 1.5 This circular seeks to explain and address these matters within both the legislative framework and the arrangements governing the structures for the delivery of services.

2 LEGISLATIVE AND STRUCTURAL BACKGROUND

The Department

- 2.1 The Department's powers derive from the Health and Personal Social Services (Northern Ireland) Order 1972¹ (the 1972 HPSS Order) and subsequent amending legislation. Article 4 of the 1972 HPSS Order imposes on the Department (then, the Ministry of Health and Social Services) the duty to:-

- provide or secure the provision of integrated health services in NI designed to promote the physical and mental health of the people of NI through the prevention, diagnosis and treatment of illness;
- provide or secure the provision of personal social services in Northern Ireland designed to promote the social welfare of the people of Northern Ireland; and
- to discharge its duty as to secure the efficient coordination of health and personal social services.

- 2.2 On 1 January 1974, the Ministry of Health and Social Services became known as the Department of Health and Social Services. On 1 December 1999, the public safety functions of the Department of the Environment were transferred to the renamed Department of Health, Social Services and Public Safety (DHSSPS)².

Health and Social Services Boards

- 2.3 On 1 September 1972, Boards were established under Article 16 of the 1972 HPSS Order. The Health and Personal Social Services (Establishment and Determination of Areas of Health and Social Services

¹ S.I.1972/1265 (N.I.14)

² See S.R. 1999 No. 481 and I.1999/283 (N.I.1)

Boards) Order (Northern Ireland) 1972¹ determined the geographical area of each Board and specified its administrative Districts.

2.4 Article 17 of the 1972 HPSS Order specified the key functions of the Boards in respect of health and personal social services. These included, inter alia:

- the exercise on behalf of the then Ministry of Health and Social Services, such functions (including functions imposed under an order of any court) with respect to the administration of such health and personal social services as the Ministry may direct; and
- the exercise on behalf of the then Ministry of Home Affairs such functions (including functions imposed under an order of any court) with respect to the administration of such personal social services under the Children and Young Persons Act (Northern Ireland) 1968 (the Children and Young Persons Act) and the Adoption Act (Northern Ireland) 1967 (the Adoption Act) as the Ministry may direct;

in accordance with regulations and directions. Article 17 (2) of the 1972 HPSS Order also provides that where a function is conferred on a Board by any other legislation, that function shall be deemed to be a function which the Department has directed a Board to exercise on its behalf under Article 17 (1).

2.5 The Functions of Health and Social Services Boards (No. 1) Direction (Northern Ireland) 1973 (The No. 1 Direction) specified the functions under the 1972 HPSS Order to be exercised by Boards on behalf of the then Ministry of Health and Social Services subject to the conditions contained in the Direction.

2.6 The Functions of Health and Social Services Boards (No. 2) Direction (Northern Ireland) 1973 (the No 2 Direction) specified functions of the then Ministry of Home Affairs under Articles 72 and 73 of the 1972 HPSS Order relating to personal social services under the Children and Young Person's Act and the Adoption Act which were to be exercised by Boards on behalf of the Ministry of Home Affairs subject to the conditions contained in the Direction.

2.7 A number of functions under the Children and Young Person's Act, including those relating to training schools, attendance centres and remand homes were reserved to the Secretary of State in accordance with the provisions of the Northern Ireland (Modification of Enactments – No 1) Order 1973 (the 1973 Order) made under the Northern Ireland

¹ S.O. 1972 No. 217

Constitution Act 1973. These remained the responsibility of the Northern Ireland Office.

- 2.8 Additional functions under the Children and Young Person's Act, including Fit Person's Orders, in so far as they related to the treatment of children and young persons found guilty of offences were also reserved in the 1973 Order to the Secretary of State. Operational difficulties that this presented to Boards were overcome by a subsequent agency arrangement made under section 11 of the Northern Ireland Constitution Act 1973, whereby the Department undertook these functions on behalf of the Secretary of State. The Functions of Health and Social Services Boards (No 1) Direction (Northern Ireland) 1974 provided for the local discharge of these functions by Boards.
- 2.9 By virtue of the Departments (Transfer of Functions) Order (Northern Ireland) 1973¹, all functions under the Adoption Act and all remaining functions under the Children and Young Persons Act transferred on 1 January 1974 to the Department from the Ministry of Home Affairs² subject to the provisions of the 1973 Order as referred to in paragraph 2.7. The No. 2 Direction (see paragraph 2.6) remained the applicable instrument of delegation for these functions.
- 2.10 With the introduction of the Adoption (Northern Ireland Order) 1987 (the Adoption Order) certain functions were conferred directly on Boards. Article 17 (1) of the 1972 HPSS Order was amended by that Order so that those functions under the Adoption Order are functions which the Board must exercise in accordance with regulations made by, and directions given by the Department.

The community care reforms

- 2.11 During the early 1990s, the changes introduced by the White Papers "Caring for People" and 'Working for Patients', (DoH, 1989) respectively set out proposals for improving community care services and health services in England and Wales. The equivalent Northern Ireland policy document, "People First" (DHSS,1990) introduced for the first time a division between the purchasing and provider roles within health and personal social services in Northern Ireland.
- 2.12 The role of Boards as coordinators, purchasers and quality controllers was strengthened relative to their primary role, at that time, as service providers. Management at local level was also strengthened through the

¹ SR & O 1973 No 504

² See S.I. 1973/2162 (C.64)

appointment of Unit General Managers. In the early 1990s this internal reorganisation changed the administrative structure from districts to General Units of Management, and reconfigured the geographical areas of the former administrative districts.

2.13 Under the People First policy reforms, Boards as commissioners and purchasers of services, were responsible for:

- assessing the health and social care needs of their resident population;
- strategic planning to meet need; and
- the development of purchasing plans.

2.14 People First required Boards to promote a mixed economy of care and a range of providers to maximise user choice and ensure the economic, effective and efficient delivery of services.

2.15 The Health and Personal Social Services (Northern Ireland) Order 1991 (the 1991 HPSS Order) gave effect to these changes and enabled health services bodies to enter into arrangements (HSS contracts) for the provision of goods or services to or by them.

Health and Social Services Trusts

2.16 Central to the reforms in England and Wales was the concept that hospitals and community health providers were to be given the option to become self-governing Trusts.

2.17 As health and personal social services in Northern Ireland, however, are integrated under the 1972 HPSS Order, account had to be taken of the Boards' responsibilities for the discharge of certain functions in relation to the personal social services. Under the 1972 HPSS Order, these included services delivered under the Children and Young Person's Act and the Adoption Order. The 1991 HPSS Order empowered the Department to establish bodies, to be known as Health and Social Services Trusts. The first of these were established in shadow form in 1993 as corporate bodies, managerially and administratively independent of Boards. Further primary legislation was required to enable newly established Trusts to discharge the personal social services functions on behalf of their respective Boards.

- 2.18 The Health and Personal Social Services (Northern Ireland) Order 1994 (the 1994 HPSS Order) provides for certain functions of Boards to be exercisable on behalf of Boards by Health and Social Services Trusts. These functions were prescribed for the purposes of the 1994 HPSS Order in The Health and Social Services Trusts (Exercise of Functions) Regulations (Northern Ireland) 1994 (The Exercise of Functions Regulations) and are known as “relevant functions.” The schedule to the regulations, which defined the relevant functions, is set out in full at Annex A. It includes functions under the Adoption Order and the Children and Young Person’s Act and was subsequently amended in 1996 to include functions under the Children Order.

3 THE LEGAL RELATIONSHIP BETWEEN BOARDS AND TRUSTS IN RELATION TO CHILDREN’S SOCIAL SERVICES AND THE DISCHARGE OF RELEVANT FUNCTIONS

- 3.1 Under the 1994 HPSS Order, Boards may, by instrument in writing under seal (“an authorisation”) provide for such relevant functions of the Board as are specified to be exercised by a Trust on behalf of the Board. Authorisations require the approval of the Department. The 1994 HPSS Order requires each Trust to submit to the Board or approval a scheme for the exercise by the Trust of specified relevant functions. The Board must then submit the scheme for the approval of the Department.
- 3.2 Schemes, known as “Schemes for the Delegation of Statutory Functions” were developed by Trusts in co-operation with the relevant Board, which subsequently approved each scheme and submitted it to the Department for approval. As part of the approval process, the Department’s role was to ensure that proper provision had been made for the exercise of the relevant functions to be delegated to Trusts and that Boards had appropriate arrangements in place to assure themselves that Trusts were exercising relevant functions effectively.

The Children (Northern Ireland) Order 1995

- 3.3 Prior to the commencement of the Children Order in November 1996, the Department amended the Exercise of Functions Regulations¹ to prescribe as relevant functions all functions under the Children Order. The Department subsequently approved all schemes to enable the Trusts to discharge specified relevant functions under the Children Order and the Adoption Order.

¹ SR 1996 No. 439

- 3.4 Boards continued to exercise functions under Articles 80 – 87 and 96 – 103 of the Children Order, which deal with the registration and inspection of children’s homes and under Article 176 of the Order which provides for the inspection of schools accommodating children. The arrangements and standards for the discharge of these functions had to be equivalent to those of the Trusts and were quality assured by the Department. The HPSS (Quality, Improvement and Regulation) (Northern Ireland) Order 2003, has now transferred the above registration and inspection functions from Boards to the Northern Ireland Health and Personal Social Services Regulation and Improvement Authority, now known as the Regulation and Quality Improvement Authority (RQIA).
- 3.5 In 1998, the Department amended the Children Order to add to the duties of Boards in the Children (1995 Order) (Amendment) (Children’s Services Planning) Order (Northern Ireland) 1998¹. This requires each Board to review the services provided in its area under Part IV of the Children Order and prepare and review plans in light of the review of services.

4 ACCOUNTABILITY

Legal accountability

- 4.1 The State is ultimately the parent of all children, in accordance with the common law principle of ‘*parens patriae*’. Generally, the State exercises its powers to safeguard and promote the welfare of children through statutory agencies, named as the responsible authorities in primary legislation. Legislation specifies, in broad terms, what the State considers is required to safeguard and promote the welfare of children and provides the legal authority for responsible authorities to discharge statutory functions on behalf of the State. There are circumstances in which the State names the appropriate Government Department in legislation as the responsible authority. In these situations the Department is responsible in law for the exercise of the statutory functions unless it has delegated the functions to another statutory body.
- 4.2 In primary legislation, where Boards are named as the responsible authorities for the exercise of the functions, these functions are deemed to be a function which the Department has directed the Board to exercise under Article 17 (1) of the 1972 HPSS Order. Where a Board delegates relevant functions to a Trust in accordance with the provisions of the 1994 HPSS Order, under Article 3(7) of that Order the Trust:

¹ SR 1998 No. 261

“...shall be liable in respect of any liabilities (including any liability in tort) in the exercise of these functions in all respects as if it were acting as a principal and all proceedings for the enforcement of such rights or liabilities shall be brought by or against the HSS Trust in its own name”.

- 4.3 The Children Order, Article 2(3), confirms that “where a function is exercisable by a Health and Social Services Trust by virtue of an authorisation for the time being in operation under Article 3(1) of the Health and Personal Social Services (Northern Ireland) Order 1994, references to an authority are, to the extent that that function is exercisable by that Trust, references to that Trust”. Trusts, therefore, are responsible in law for the discharge of all relevant functions delegated to them by Boards.

Accountability for Implementing the Schemes

- 4.4 Whilst Trusts are responsible in law for the discharge of statutory functions, they are also accountable to Boards and to the Department for the implementation of the schemes and the proper discharge of those relevant functions delegated to them. There is therefore a clear line of accountability from provider Trusts, through commissioning Boards to the Department. A delegating Board is able to hold a Trust to account for how it is discharging relevant functions on its behalf. A Board may, with the approval of the Department, revoke an authorisation to a Trust to exercise relevant functions, should circumstances warrant such action.

5 ROLES AND RESPONSIBILITIES

The Department

- 5.1 The Department has a responsibility to safeguard and promote the welfare of children. Its main role is to provide the legislative and strategic policy direction to enable its agents and significant others, such as the independent sector to achieve its objectives for children. In discharging its responsibilities the Department undertakes a wide range of functions. These include establishing regional priorities, setting targets and providing resources to meet those priorities in the form of a Public Service Agreement. The Department also monitors delivery against these targets and ensures value for money for the citizen. The Department also has a duty to ensure the quality and good governance

of the social services and to liaise with other Government Departments and relevant non HPSS bodies, for example education services and the family and criminal justice systems to assist the achievement of its objectives.

- 5.2 The State is the parent of all children. Under the 1994 HPSS Order, the Department has power to direct Boards to execute authorisations in such terms as it may direct. The Department is also responsible for approving the schemes for the delegation of relevant functions and any subsequent proposed changes to them. Under the 1991 HPSS Order a Trust must comply with any directions given to it by the Department about the exercise of the Trust's functions. The Department is also responsible for ensuring that there are satisfactory arrangements in place for the exercise of statutory functions by Boards and Trusts and that Boards have established mechanisms to assure and determine that these functions are being properly exercised and to agreed standards. Under Article 152 of the Children Order, the Department may cause local or other inquiries to be held in any cases where it appears to the Department to be advisable to do so in connection with the functions of an authority in so far as those functions relate to children
- 5.3 Since the enactment of the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001¹, (the Adoption Intercountry Aspects Act) intercountry adoption is the only area of children's services for which the Department is legally responsible and accountable for the discharge of specified statutory functions. The Adoption Intercountry Aspects Act gave effect to the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption concluded at the Hague on 29 May 1993. Under this Act, the Department must exercise all the statutory functions of a Central Authority under the Convention. The Department must also ensure that in each adoption there is compliance with the Intercountry Adoption (Hague Convention) Regulations (Northern Ireland) 2003² in the case of Convention adoptions and the Adoption of Children from Overseas Regulations (Northern Ireland) 2002³ in the case of non Convention adoptions.

Health & Social Services Boards

- 5.4 Boards are responsible for commissioning services to meet the needs of their populations. Boards receive allocations from the Department at the start of each financial year on a capitation basis. They are required to

¹ 2001c.11 (N.I.)

² SR 2003 No.16

³ SR 2002 No 144

spend these monies to secure the delivery of health and personal social services in line with the schemes for the delegation of statutory functions, Departmental priorities and agreed plans as set out in the Priorities for Action and Health and Wellbeing Investment Plans. They have a strategic planning and coordinating role, including that of Children's Services Planning as set out in paragraphs 2.12 and 3.5.

- 5.5 Boards are also responsible for agreeing the schemes for the delegation of relevant functions with Trusts and following approval by the Department these functions are then delegated to Trusts by way of a written authorisation sealed by the Boards. Under the terms of the schemes the Boards, as commissioners and purchasers of services:
- prescribe professional and other quality standards to provide a baseline for the provision of services in accordance with statutory requirements;
 - approve policies and procedures in respect of relevant functions;
 - monitor, evaluate and inspect services to ensure that they are provided in accordance with prescribed policies and standards and within agreed and approved procedures; and
 - must satisfy themselves as to the arrangements that Trusts have in place to quality assure the services and satisfy accountability requirements.
- 5.6 Following the delegation of relevant functions, Boards are responsible for ensuring that the schemes are properly implemented and that they are reviewed at least bi-annually. The Boards also have a role in quality assuring the discharge of those relevant functions which they have delegated to Trusts.
- 5.7 Under the schemes, Boards are required to agree the Trusts' monitoring arrangements, as well as the information that will be provided and at what intervals. They have the authority to monitor, evaluate and inspect services directly and to require Trusts to provide them with information on any matter related to the discharge of relevant functions. The Board must specify areas of service in which it intends to have a direct monitoring role, taking account of the information already provided by the Trusts in order to avoid unnecessary duplication.
- 5.8 Boards are also required under the schemes to receive from Trusts reports of untoward incidents, including serious complaints. Boards have

a responsibility to keep the Department informed of the outcome of their quality assurance arrangements in respect of Trusts' discharge of relevant functions, or if there is an unresolved dispute, to bring it to the attention of the Department.

Health & Social Services Trusts

- 5.9 Trusts are accountable to Boards for the quantity, quality and efficiency of the service they provide. Boards agree contracts with Trusts at the start of each financial year. In their delivery plans, Trusts are required to describe how they will deliver services in an efficient manner. Their performance and expenditure are monitored by Boards and the Department. Trusts are responsible for the exercise of all of the relevant functions delegated to them by the Boards. They have the legal authority and are responsible in law for the discharge of these functions in accordance with the approved schemes and for ensuring that the standards required under the authority of the schemes are met.
- 5.10 Trusts are also responsible for evidencing compliance with the schemes through their monitoring and reporting arrangements, in accordance with the format and frequency agreed with the Boards.
- 5.11 As separate legal entities accountable for the discharge of these functions, Trust must create sound organisational arrangements to ensure that professional practice in the discharge of relevant functions is of a high standard and that staff are appropriately qualified, supported and trained to ensure competency in the discharge of the functions. Trusts must also ensure that there is clear and appropriate managerial and professional accountability.
- 5.12 Trusts also have a responsibility to assist the Boards and Department, as appropriate, in the discharge of functions which have not been delegated to them, and for which they are not responsible in law. For example, Trusts have a responsibility to contribute to the strategic partnerships which Boards operate within the wider HPSS and other non HPSS bodies, which impact on the discharge of relevant functions by Trusts.

6 WORKING RELATIONSHIPS

- 6.1 This circular sets out the roles, responsibilities and accountability of the Department, Boards and Trusts in relation to the discharge of relevant functions relating to children's services. Partnership is a fundamental

principle, however, in safeguarding and promoting the welfare of children. Other agencies are required to assist Boards and Trusts with the discharge of certain functions, in so far as this is compatible with their bodies' own statutory duties and obligations (Article 46 of the Children Order) and in the investigation of matters under Article 66 of the Children Order, unless to do so would be unreasonable in all of the circumstances of the case. Boards and Trusts must therefore give priority to developing and maintaining good working relationships with all agencies involved with children in a 'working together' approach, which is in the best interests of children and their families.

The Schedule to the Health and Social Services Trusts (Exercise of Functions) Regulations (Northern Ireland) 1994.

Relevant functions of Health and Social Services Boards

Statutory Provision	Relevant functions of a Health and Social Services Board
Children and Young Persons Act (Northern Ireland) 1968	All functions.
Health and Personal Social Services (Northern Ireland) Order 1972	Functions under Articles 14A, 15, 36, 37, 38, 29, 71(2), 99, 101, 101A and Schedule 6.
Chronically Sick and Disabled Persons (Northern Ireland) Act 1978	Functions under sections 1(2), 2 and 12(1).
Mental Health (Northern Ireland) Order 1986	All functions except that of designating a hospital under Article 46(1) for the purposes of Article 46(2)(a), and those under Articles 28(3), 42(9)(a), 46(3)(a), 86(2), 90(2), 108(2), 112, 113, 114, 116, 118, 121(1), 123(1)(a), 129(7) and 133(4).
Adoption (Northern Ireland) Order 1987	All functions.
Disabled Persons (Northern Ireland) Act 1989	All functions.
Children (Northern Ireland) Order 1995	All functions.
Carers and Direct Payments Act (Northern Ireland) 2002	All functions.