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Title	Communicating with children in court: a useful guide in child protection
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Publication date	2019-03-01
Original Citation	Burns, K., O'Mahony, C., McAuley, C., Ó Súilleabháin, F. and O'Callaghan, E. (2019) Communicating with Children in Court: A Useful Guide in Child Protection, Cork: IDEA Project, University College Cork. Available online: https://ideachildrights.ucc.ie/resources_page/tools-page/
Type of publication	Report
Link to publisher's version	https://ideachildrights.ucc.ie/resources_page/tools-page/
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Download date	2026-11-06 10:43:45
Item downloaded from	https://hdl.handle.net/10468/7719

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Communicating with Children in Court



A USEFUL GUIDE IN CHILD PROTECTION CASES

INTRODUCTION

If it is stressful for adults to attend court, it is doubly so for children and young people. Courts can be intimidating places and child protection cases are highly-sensitive and emotive. It can be hard to understand the language used by professionals; tensions can be high; there is a lot at stake; the physical design of court buildings can be intimidating; and professionals' roles can be unclear to children and parents. Professionals working in criminal and family courts often say that they feel ill-prepared to communicate with children and young people. This tool provides practical suggestions and guidance to support your practice in communicating with children in court.

EXERCISE

The next time you are due in court, try to imagine the preparation, journey, waiting, proceedings and aftermath from a child's perspective.

- What do you notice?
- What information and supports would you need?
- What questions might children have?
- How could you explain your role in child-friendly language?

Remember the 4 Ps

1. Principles and law
2. Prepare
3. Participate
4. Process

1. Principles and law

Irish law makes provision for the views of the child to be ascertained in court proceedings in a variety of contexts, including child protection, guardianship, custody, access, adoption and international child abduction. See:

- Constitution of Ireland, Article 42A.4
- Child Care Act 1991, section 24
- Guardianship of Infants Act 1964, sections 31(2) and 31(6) (as inserted by the Children and Family Relationships Act 2015, Section 63)
- Adoption Act 2010, section 55
- Brussels II bis Regulation, Article 11(2)

While each of these provisions are phrased slightly differently, the common thread is that children who are capable of forming views should be given the opportunity to be heard, with their views being given due weight according to their age and maturity. This echoes Article 12 of the United Nations Convention on the Rights of the Child.

In criminal proceedings concerning child victims, the following provisions are relevant:

- Criminal Evidence Act 1992, Part III (as amended by the Criminal Law (Sexual Offences Act 2017, section 30) – makes provision for evidence to be provided in certain cases by way of live television link (with or without an intermediary); from behind a screen; or by way of pre-trial video recording.
- Children Act 2001, section 252: the anonymity of child witnesses is protected.
- Children Act 2001, section 257: courts are empowered to clear the court when child witnesses are testifying.
- Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, Article 22(4): child victims have "have specific protection needs due to their vulnerability to secondary and repeat victimisation", and requires that they be subject to individual assessment to determine whether they would benefit from special measures.

At a European level, the Council of Europe *Child-Friendly Justice Guidelines* provides additional guidance and principles to guide our planning:

GUIDELINE 44

Judges should respect the right of children to be heard in all matters that affect them or at least to be heard when they are deemed to have a sufficient understanding of the matters in question. Means used for this purpose should be adapted to the child's level of understanding and ability to communicate and take into account the circumstances of the case. Children should be consulted on the manner in which they wish to be heard.

GUIDELINE 45

Due weight should be given to the child's views and opinion in accordance with his or her age and maturity.

GUIDELINE 46

The right to be heard is a right of the child, not a duty of the child.

GUIDELINE 47

A child should not be precluded from being heard solely on the basis of age. Whenever a child takes the initiative to be heard in a case that affects him or her, the judge should not, unless it is in the child's best interests, refuse to hear the child and should listen to his or her views and opinion on matters concerning him or her in the case.

If a child or young person cannot attend court or it is deemed not to be in their best interests, they can still participate and have their voice heard through indirect methods: 'Intermediaries facilitate communication between a witness, party, suspect or defendant and others in the justice process to ensure that communication is as complete, coherent and accurate as possible. Intermediaries are impartial and neutral; their duty is always to the court' (see Triangle.org.uk). A guardian ad litem is an independent person who ascertains the wishes and feelings of children and helps to ensure that a child's voice is heard in court proceedings. A child could write a letter to the judge or be facilitated to produce a creative piece of art to express their views and wishes. A child can also be separately legally represented in certain proceedings.

2. Prepare

All decisions about children attending court should be made in the child's best interests. Practitioners need to balance child participation theory and principles with an assessment of the physical court building, training and skillsets of court staff and professionals, the circumstances of the case, the parents' circumstances, the quality of parents' relationship with the child and professionals, the practice orientation of the court system (inquiry, adversarial, child-friendly), exposure to threats, the risk of harm from cross-examination, the developmental, emotional and communication needs of the child, and so on. Once you have made a decision or if there is no choice and the child must attend, you will need to prepare for the child's attendance.

SETTING

- Make the space age-appropriate, child-friendly, private, welcoming and without distraction. It is important to make the waiting space as child-friendly as possible. Consider what refreshments/toilet facilities a child and parents might need while they are waiting.
- Arrange a pre-hearing visit to the court-room for the child witness where possible even if the child will give evidence via video-link.
- Explain the function of key personnel in the courtroom and where they sit in the courtroom.
- When the court is close to criminal proceedings, make additional efforts to ensure that children are not exposed to inappropriate content. It is essential that children do not associate child protection / family law proceedings with being 'in trouble'.

PERSONNEL QUESTIONING CHILDREN SHOULD:

- Adopt an objective and neutral approach.
- Adopt a warm and friendly approach.
- Present as genuinely interested about what the child has to say.
- Use the child's first name.
- Be attentive when the child is talking.
- Avoid showing frustration.
- Avoid criticism.
- Do not reward desired responses and do not be dismissive of undesired responses.

SUPPORT

- Where a support person is deemed to be in a child's best interests, the identified support person should be not be connected to the hearing and should adopt a neutral position about the substantive matter before the court.
- The support person should be given the authority to request a break for a child witness.
- Are there security measures required to protect the child from overt or covert intimidation?

USING TECHNOLOGY

- If it is not practicable to physically meet a solicitor in advance, a quick 5–10 minute Skype the day before can be helpful to support the child / young person to prepare.
- The provision of free public Wi-Fi can help a child / young person to settle and provide distraction while waiting.

COURT PERSONNEL

- While all legal cases are serious matters, children and young people may have limited interest in legal settings and customs.
- Take time to demystify the legal setting for child witnesses in an age-appropriate, developmentally sensitive manner.
- Children perform better in a setting which has a supportive, but non-suggestive atmosphere.
- Someone will need to prepare the child that the court will hear their views and wishes, but that the court is not bound nor required to do as the child requests.
- It is important that adults do not make promises to children that cannot be kept.

TRAINING AND KNOWLEDGE BASE

- It is important that professionals and court staff keep up-to-date and undertake training in communicating with children; children's rights; child development and child protection research, policy and law.
- Project TALE, an EU-funded project provide free online modules for professionals to make justice child-friendly.

Adapted from: Lyon, T. D. (2005). *Ten Step Investigative Interview*. Available at: https://works.bepress.com/thomaslyon/5/ and Saywitz, K.J, Lyon, T.D. and Goodman, G.S. (2018) When interviewing Children: A Review and Update in J.B. Klika and J.R. Conte (eds). *The APSAC Handbook on Child Maltreatment* (4th edition) London: Sage.

3. Participate TALKING TO AND ASKING QUESTIONS OF CHILDREN IN A COURT SETTING

In this section, we provide example of questioning approaches. Text in pink indicate how NOT to ask questions and text in blue are examples of child-friendly questions. No two children are the same in terms of their communication style and ability. You will need to be flexible and adapt your approach to meet the needs of each individual.

Plan questions in advance. Simplify language as much as possible and follow a logical, chronological order. Help the child to understand when a topic is changing.
We've finished talking about what happened in your classroom. Now I'm going to ask you about what happened in the playground.

Children are used to adults knowing the answers to the questions they ask. Children need to be told, and reminded, in the court environment that this is not the case.
I don't know because I wasn't there.

Ask open questions whenever possible. If you need to ask specific closed questions or forced choice questions to clarify details, return to open questions as soon as possible. If forced choice questions are used, always offer a third option.
Were you there with Mummy?
Tell me all about what happened?
Was it black or red?
Was it black, red or something else?

If yes/no questions must be used, try to avoid asking them in series. If this is the only option, reverse some questions to ensure a mix of yes and no answers. This will increase the accuracy of a child's responses.
(Q) *Do you and Lucy live with Mummy?* (A) *Yes.*
(Q) *Do you and Lucy live with Daddy?* (A) *No.*
(Q) *Did you and Lucy ever live with Daddy?* (A) *Yes.*

At school and at home, children are used to being encouraged to guess if they do not know the answer to a question. Children need to be taught that there is a different rule for interviews with professionals and at court.
When we do talking in this room we don't do guessing. If you don't know the answer, we need you to say 'I don't know'.

Practise this talking rule with the child ahead of questioning by asking questions you know the child cannot answer.
What did I have for breakfast today?
What colour is my front door?
What's my cat's name?

Use the child's own words for people, places and body parts.
What room were you in when Jamie touched your private parts?
What room were you in when Jamie touched your minnie?

Children can be easily confused by pronouns; always use names and explain exactly what you are asking about, even when asking a series of questions about the same event.
Did Michael say anything to you when he pushed your Mum?

Children need questions to be asked in a way that makes it clear that an answer is required. Instead of making a statement or comment, phrase the question as a question.
You were worried about your Mum finding out.
Were you worried about your Mum finding out?

Tagged questions (where a statement is made and a short question is added inviting a child to agree) should always be avoided.
Uncle David didn't really touch you, did he?
You said Uncle David touched you. Uncle David said he didn't touch you. Did Uncle David really touch you?

Children will often take questions literally. They are often unable to imagine why a question is being asked.
(Q) *Are you in school at the moment?* (A) *No, I'm at the court, talking to you. Do you go to school?*
(Q) *Can you tell me what happened at School?* (A) *Yes. Tell me what happened at School when X happened.*

Be specific. Children are less likely to be able to generalise questions, especially when they do not understand why a question is being asked. When planning questions, think about whether they could be misinterpreted.
(Q) *Were you wearing your clothes at the time?* (A) *No. (may mean they were wearing their school uniform or pyjamas). What were you wearing?*
Young children may associate the word 'touch' only to hands or fingers.
(Q) *Did Harry touch you?* (A) *No.*
Did any part of Harry's body touch your body?

Children are unlikely to be able to determine the motives of others. Such questions should be avoided if possible as they may produce unreliable answers. Young children particularly, find it difficult to answer questions starting with "Why".
(Q) *Why did Dennis take you to the park?* (A) *I don't know.*
What made Dennis take you to the park that day?

Children may find it difficult to answer questions about when something happened. Some children will say "Yesterday" or "Last week" for anything that happened in the past.
Was it a school day? Was it before or after dinner?
Was it light or dark or don't you know?

Children will need to have questions about how long something lasted carefully worded.
Was it shorter or longer than an advert on TV? Was it longer or shorter than morning break at school?

Questions about how many times something happened or where the answer is a number are particularly likely to encourage children to guess. Children's ability to estimate numbers will still be developing.
Have you been to Granny and Grandpa's caravan one time or more than one time?

Ask all questions about the past in the past tense.
(Q) *So, you're in Mary's car. What is happening now?*
(A) *I'm not in Mary's car!*
You told me you got into Mary's car. Then what happened?

Questions should not be asked more than once unless necessary. At home and at school, children learn that if a question is asked more than once it means that their first answer was wrong. If something needs to be clarified, explain this to the child.
I'm a bit muddled. Tell me again what Anna said to you that day. I didn't hear what you said. Please tell me again.

Children may not answer questions with words. Many children will use gesture to convey what they cannot explain in words. Children's gestures and actions must be recognised as communication. Commenting about what the child is doing can help a child to know that you are paying attention. Important: children should *not be asked* to show on their own bodies because it can be potentially triggering or traumatic for them.
You're showing me with your hands.

4. Process

It is important that time is invested after the court hearing to help the child / young person to process what happened in the court. The Council of Europe *Child-Friendly Justice Guidelines* advise us that:

GUIDELINE 49

Judgments and court rulings affecting children should be duly reasoned and explained to them in language that children can understand, particularly those decisions in which the child's views and opinions have not been followed.

GUIDELINE 75

The child's lawyer, guardian ad litem or legal representative should communicate and explain the given decision or judgment to the child in a language adapted to the child's level of understanding and should give the necessary information on possible measures that could be taken, such as appeal or independent complaint mechanisms.

Project TALE in their module on explaining decisions to children, recommend that children are provided with an honest, clear and complete explanation that should include:

1. 'What has been decided.

2. The reasons given for the decision, including the extent to which the child's expressed wishes and feelings were taken into account (although this may not always be apparent in the judge's reasoning).

3. The implications of the decision for the child in the short, medium and longer term. This should be as comprehensive as possible, and might cover immediate enforcement, further appeal, sanctions, access to compensation, criminal records, access to higher education, implications for family members, etc.'

Additional comprehensive guidance and advice is provided in the free Project TALE online training modules (see link below). Another way, admittedly a rare one, is for children and young people to process what happened in the court by reading a court decision/judgement. There are a few example of judgements written in child and parent-friendly language from England. These may be useful templates to help you think about how to communicate in writing.

1. X (A Child), Re [2018] EWFC B82 (19 December 2018) – https://www.bailii.org/ew/cases/EWFC/OJ/2018/B82.html

2. A (Letter to a Young Person), Re (Rev 1) [2017] EWFC 48 (26 July 2017) http://www.bailii.org/ew/cases/EWFC/HCJ/2017/48.html

3. Lancashire County Council v M & Ors (Rev 1) [2016] EWFC 9 (04 February 2016) http://www.bailii.org/ew/

While this tool is has been designed to help you as a practitioner to communicate appropriately with a children in court, remember that you need to communicate with their parents/carers as well. Carers and parents play a vital role in supporting children during a court process.

RESOURCES

1. Ahern, E. C., & Lyon, T. D. (2011). *Supplemental Investigative Interview Questions*. Available at: https://works.bepress.com/thomaslyon/74/
2. *Appearing in Court: Presenting the Child's Voice in Formal Proceedings* – Module 4 and F*ollow-up Action: Acting on Decisions – Module 5*, Project TALE – http://www.project-tale.org/online-training
3. Cashmore and Parkinson (2009) 'Children's Participation in Family Law Disputes: The Views of Children, Parents, Lawyers, and Counsellors', *Family Law Matters*, 82, pp. 14-21, https://aifs.gov.au/sites/default/files/jc.pdf
4. Council of Europe (2011) *Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice* – https://rm.coe.int/16804b2cf3
5. Lyon, T. D. (2005). *Ten Step Investigative Interview*. Available at: https://works.bepress.com/thomaslyon/5/
6. Saywitz, K.J, Lyon, T.D. and Goodman, G.S. (2018) When interviewing Children: A Review and Update in J.B. Klika and J.R. Conte (eds). *The APSAC Handbook on Child Maltreatment (4th ed.)*, London: Sage.
7. Shannon, G. (2018) *Eleventh Report of the Special Rapporteur on Child Protection. A Report Submitted to the Oireachtas*, https://www.dcya.gov.ie/documents/child_welfare_protection/2018121811ReportSpecRappChildProtect.pdf (see section 2.5 on hearing children).

A PDF version of this tool can be downloaded from:
http://ideachildrights.ucc.ie/resources/

Acknowledgement: The authors wish to thank Project TALE for providing permission to use elements of their training modules in the preparation of this tool.

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