Department of Children and Youth Affairs:

Review of the Child Care Act 1991

Submission on behalf of The Independent Guardian Ad Litem Agency(TIGALA)

30 September 2020

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Introduction:

The Independent Guardian ad Litem Agency (TIGALA) welcomes the opportunity to comment on the proposed amendments to the ChildCare Act 1991. We believe that TIGALA can provide a unique insight into some of the recommendations by outlining some of the issues that have arisen in the cases of the Guardian's Ad Litem, as well as identifying practical issues that may arise with some of the proposals in certain circumstances.

TIGALA, which operates nationally, was created represent the voice and interests of children in Court proceedings. Guardian's are independent persons appointed by the Court for the duration of Court proceedings relating to a child. We give the child a voice in the proceedings and advise the court in respect of the child's best interests by acting as an advocate for the child.
Our Guardians bring their skills and knowledge to working with children in Court proceeding and insure a consistently high level of practice standards for all Guardians within the Agency. All our Guardians have a minimum of ten years of experience working with children and families. We work across the country and work with all stakeholders in the Court process to ensure that the service is delivered to provide children with positive experience of engagement and children remain central to decisions made about their lives. We therefore have a keen insight into the day to day workings of the Act and the children it affects.

While we do not intend commenting on all of the proposals contained in the July 2020 Consultation Paper ("Consultation Paper") on the review of the Child Care Act 1991 (the "Act"), we hope that our views might assist the Department in the their review. For the avoidance of any doubt, we have confined ourselves to our areas of expertise and issues of which our Guardians have direct knowledge and experience.

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Proposals

A. Proposal for Guiding Principles

TIGALA warmly welcome the proposal that there would be composite guiding principles that would enshrine the child's best interests and ensure that the child be held at the centre of all decision-making processes that affect their welfare. We note that the guiding principles in the Childcare Amendment Bill 2019 are proposed for the insertion in the Child Care Act 1991. It is the view of TIGALA that these guiding principles should be child centred and exclusively focused on identifying what is the best interests of the child.

B. Part II Promotion of Welfare of Children

(I) Interagency coordination

TIGALA warmly welcome the proposal that there would be strategic interagency co-operation enshrined in legislation. We believe that services which are utilised in the context of Child Care proceedings remain fragmented at present. We believe that the proposal for local area assessment paired national oversight will be to the benefit of children and strongly support the adoption of a localised service with inter- agency cooperation and a national oversight body. We also support the aforementioned co-operation be placed on a statutory footing. Our Guardians have direct experience and knowledge of instances whereby children in care have suffered the consequences of agencies failing to cooperate and work with one another.

TIGALA offer the following example for TIGALA's consideration:

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There are many instances where children in care have struggled to obtain access to services due to the lack of interagency cooperation and operational systems failures. In particular, the issue has arisen for children in care who require special needs assistant's (SNA's) in an education setting but due to a placement move, they have been forced to re-apply for an SNA assessment despite having been approved for an SNA in a different locality. This has left some children unable to commence education for a period of months due to the lack of national co-operation, which can have a substantial impact on a child's educational and social development.

Early intervention and family Support

While TIGALA don't ordinarily have direct contact with children and families prior to children coming into care, we regularly observe the consequences of the lack of early intervention and support vulnerable children and families. We therefore strongly support placing early intervention measures on a statutory footing. We further concur that a proposed national policy and guidance is in the best interest of children and families so they can have clarity on available support services and entitlements.

Voluntary Care Agreements

TIGALA support the amendments to section 4 of the Childcare Act 1991 and to the separation of voluntary care from unaccompanied minors. We are cognisant that there is a significant gap in data regarding children that are the subject to voluntary care agreements.

It is our view that children can be poorly served by voluntary agreements in the current form. As things stand, these children do not have recourse to all the remedies available pursuant to the Act. Reform is needed to ensure children who are subject to voluntary agreements have access to all the provisions of the Act

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In particular, we strongly recommend that any child that becomes the subject of a voluntary care agreement also have access to a Guardian Ad Litem, even on a review/periodical basis, to ensure that their right to be heard and for their views to be firmly ensconced in their care planning.

We would further support voluntary agreements being subject to a time limit. Our Guardians have worked with children who, while subject to indefinite voluntary agreements, have been left without the long-term planning, oversight, aftercare and supports which children in care of foot of a Court Order receive.

If a care order is made, there a number of standard directions that a Guardian will seek for the case to come before the Court;

1. A placement breakdown;
2. the case has an unallocated social worker for a period of time,
3. there is no fostering link worker
4. the placement hasn't been finalised(long term matched).

This is to ensure that all planning for that child is the subject of judicial oversight and to be certain that the child's wishes and feelings are considered as part of that planning. In voluntary agreements, children are without these safeguards and, as a result of same, can be left without the necessary supports for health and education. We submit that no part of the Act should serve to render some children in care at a disadvantage to others.

Finally, while TIGALA agree that there is a real and tangible benefit to avoiding adversarial proceedings where this is not necessary, that benefit cannot outweigh the rights of every child in care to receive all the safeguards that are associated with same. Therefore, while TIGALA endorse the provision of a mechanism for creating a voluntary arrangements between families and the CFA, the child(and their needs) cannot be secondary to those agreements.

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Unaccompanied Children seeking Asylum and taken into care

TIGALA have significant direct experience of working with unaccompanied minors. Our Guardians first began working with unaccompanied minors since 2015. We therefore hope that the following insights might be of particular use to the Department.

We strongly support the proposal that a separate statutory provision is inserted in the Act which can be used to deal with unaccompanied minors. We support the recommendation that a different threshold should be provided to take unaccompanied minors into care. Typically, in our experience, the reasons unaccompanied minors come into the care of the State is unrelated to parental behaviour. These particularly vulnerable children need all the protection of the Act and, as identified in our submissions above, voluntary care provides insufficient safeguards for their unusual circumstances.

In particular, TIGALA wish to highlight that unaccompanied minors need extra provisions to be enshrined in statute to protect their interests, We recommend that unaccompanied minors should have a statutory right to legal representation for the purposes of processing their asylum application. The provision of legal services should be provided as part of their after-care planning.

We further recommend that as unaccompanied minors reach the age of majority,they should be entitled to foster care/residential placement services until such time as the question of their immigration status has been resolved. This should include access to foster care, residential units and/or any allowances that, but for the formalisation of their immigration status, they would otherwise receive. A failure to properly provide for these children in this way, given their specific and unique vulnerabilities, can lead to terrible consequences.

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We offer the following example for your consideration:

Boy A:

A young person arrived in Ireland, having been concealed in a truck and was unaccompanied by a parent or any responsible adult. He was placed in a short-term residential placement, then a foster placement and a longer-term residential placement specifically for separated children. He thrived in Ireland, attended school, made friends and developed positive relationships with his caregivers. This young person was unable to make contact with any family members and the CFA could not establish contact with any relatives. The young person was subject to an Interim Care Order and later a Care Order. An application for protection was made under the International Protection Act and when he was aged 17 years the young person was advised that both his applications for Refugee status and Subsidiary Protection were refused. With the support of the CFA these decisions were appealed, three weeks before the young persons' 18th birthday. While this appeal was outstanding, the CFA advised that this young person was not eligible for a financial support aftercare package due to his lack of status in Ireland, despite being in the care of the CFA for two years and five months. Despite the concerns of the Guardian Ad Litem, the young person was transferred from a residential unit for separated children, staffed by qualified social care staff, to a Direct provision centre, where he shared a room with unknown adult males. He remained a full-time secondary school pupil at the time.

We therefore strongly support the insertion of a Statutory Provision which provides that an aftercare plan is not dependent on an unaccompanied minors' immigration status, if a decision of their immigration status is pending or under appeal.

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Accommodation for homeless children

TIGALA support amendments to the provisions of section 5 of the Act. In particular, we are aware of children who are the subject of care order being placed in homeless accommodation. We therefore recommend that section 5 place a specific duty to establish the reason why a child can't be placed in foster/residential care, other than homeless accommodation, at first instance. We further submit that no unaccompanied minors should be placed in homeless accommodation as we are aware that this has happened in the past.

We offer the following example for your consideration:

Boy B:
A young person arrived in Ireland, aged 13 years and one month, unaccompanied by a parent or responsible adult. The young person gave the CFA no contact details for a parent or family member in his country of origin or the country from which he reported travelling. He was placed in a short-term residential placement for separated children following his arrival. The CFA applied for an Interim Care Order a week short of four months following this young person's arrival in Ireland, he was accommodated under Section 5 of the Child Care Act for that period. During this time the young person had no access to the protection of the Courts or a Guardian ad Litem, and the CFA had no means to consult with his parents.

We therefore welcome the proposed introduction of a statutory requirement for TULSA to provide national guidance in relation to the use of Section 5, including but not limited to, minimum appropriate age for intervention, time limits for use, circumstances in which it may be used.

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Part III Protection of Children in Emergencies

Emergency Care Order

We support the appointment of Guardians at the Emergency Care Order stage, particularly if the time limit for the Emergency Care Orders is extended to 14 days from 8 days. We believe that a Guardian's expertise, child centred approach and input at an early stage in proceedings is to the benefit of all involved.

Part IV Care Proceedings

Interim Care Orders

Duration:

TIGALA support the proposal that final decisions should be made as swiftly as possible as we believe this is likely to be in the best interests of the child. We further support any and all provisions that undermine "drift" within proceeding. However, it is not clear how the proposal to extend Interim Care Orders for a maximum of 3 months after an initial 29-day Interim Order will undermine that drift. We are concerned that this could lead to further delays in the care process, which is not in the best interests of the child. There may be what could be described as "3 monthly drift" as opposed to what can occur at present, namely "monthly drift".

We would therefore support extending the Initial Care Order period to a period of 3 months if this is for the purpose of assessment and intervention planning only. Therefore if a Court is satisfied with the assessment planning and timelines, the Court may extend an interim care order for a maximum period of three months, without the consent of the parents, if they are satisfied that the extension is to facilitate the necessary assessment or therapeutic interventions.

Making of an interim care order without the need for a full care order

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TIGALA supports the provision for interim care orders without the need for a full care order in circumstances where a case is at an interim investigation stage only. This is particularly so where there is a need for engagement and cooperation with parents for this assessment. However, TIGALA also acknowledge that a child should not be left the subject of interim care orders without sight of a final determination. This leaves children in a state of continual uncertainty and undermines their ability to settle in placements and can undermine their relationships with their parents. We therefore further propose that a provision to limit the use of interim extensions be considered. As it stands, TIGALA are aware of many children that have been the subject of interim orders for more than 5 years. The children are deprived of both their family of origin and the opportunity to fully integrate into their foster families, which is not a child centred approach and must be reviewed.

TIGALA offer the following example:
Boy C:
Boy C is a child with special needs. He has been the subject of interim care orders for almost six years. Notwithstanding same, the application for the extension of the interim care order is made on a monthly basis. The applications are often contested and the child must be asked about his wishes and feelings about his placement, thus highlighting to him the uncertainty of his placement. His ability to settle and fully integrate within his placement has been compromised by the duration of interim orders.

We therefore recommend that the children, being the subject of these orders, remain at the heart of the decision making process. Our Guardians observe that children are acutely aware that they may have to return to their parent and, in instances of abuse, be it physical or sexual, this threat of return is a source of considerable stress to them. In particular, returning to a child and asking then on a monthly basis what their feelings and wishes are and expect them to change and get a different answer. This provides no certainty for a child.

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TIGALA offer the following example:

Five children, the subject of interim- care orders, accused their parents of deliberate harm. On foot of these disclosures, the paretns were remanded in prison awaiting prosecution. The children have been the subject of 12 orders but no full care hearing can be set until after the criminal trial. This decision has left the children in a state of constant fear that they will have to return home and the delay in a full care hearing has undermined their ability to recover.

The sharing of relevant child and parent information between professional services on foot of an Interim Care Order

TIGALA wishes to express some concern regarding the proposal that there would be "sharing of relevant child and parent information between professional services." While it is understood that inter departmental co-operation should be encouraged, there is no guidance in the proposal as to how this would work, what information would be shared and in what circumstances. Further very sensitive information could be shared in an unintended, but inappropriate manner. This far-reaching provision may result in highly sensitive information being inappropriately shared, resulting in significant harm to a child, the subject of the information.

We offer the following example for your consideration:

Boy D:

Boy D is a child in care who, prior to coming into care, engaged in sexually inappropriate behaviour with a sibling. On foot of same, he was assessed for risk of harm to other children. If the broad and unspecified provision was enacted, the risk assessment could be provided to any number of third parties in a health or educational setting. It is further submitted that many

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people who fall within the categories may not have the expertise to utilise the report. In addition, once this highly sensitive information leaves the control of the Agency, the ability to control how that information is used may also be lost. This could easily have the affect of harming or prejudicing the child in question.

We would therefore express our concern about broad provisions that could result in extremely sensitive information being disseminated without the need for Court orders where the relevance can be established and safeguards and/or conditions could be attached to same.

Care Orders

TIGALA supports the review of section 18 provisions. In particular, we support the proposal for the Court to provide written reasons where a shorter Care Order is granted than was applied for. We support this proposal so that child, the subject of Care proceedings, can read the judgment and understand why a decision was made and for parents to understand the work that must be done to resume care.
We also support the proposal for reasons for all orders be given in child friendly language. This is particularly relevant for children as they get older and wish to understand, in a more indepth way, why a care order might be made. We would respectfully say that this should be written in a child friendly manner and essentially written for the child with a view to the child reading it at a later date. We would also recommend making this narrative available to the child as part of the preparation of their after-care plan. We further recommend that the child's right to access this information be placed on a statutory footing.

The Consultation Paper contains a proposal to allow "leave to apply" hearings for a discharge application to be made. We understand that this would mean a parent would have to show evidence of a change in circumstance, before the hearing of any applicaiton. We support this

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proposal, We do so because a discharge application can cause unnecessary and avoidable stress for a child in a stable placement. The "leave to apply" hearings would act as an initial filter for potentially unwarranted proceedings, thus avoiding unnecessary stress for the child. That is not to say that the threshold should be unduly burdensome, we suggest a low threshold be applied in this situation to show a change in the parents circumstances since the care order was made.

Finally, we recognise that care order proceedings can be considered to have two parts; the threshold criterion for remaining in care and the welfare provisions for a child, if they are to remain in care. In recognition of same, we ordinarily seek that the Court create a number of safeguards to protect the child's interests while in care. The following are usually incorporated in Care Orders:

- The matching assessment is commenced on the foster carers and concluded without delay and the matter to be re-entered if the matching is not completed within a specified time.
- This case should be brought to the court's attention should the Child move to an alternative placement.
- This case is brought to the court's attention if the Child is without an allocated social worker for longer than a specified time.
- This case is brought to the court's attention if the Child's carers are without a fostering link worker for longer than a specified time.
- This case is reviewed in court before Child's eighteenth birthday(a minimum of 12 months prior) to confirm the aftercare plan.

We support placing the above on a statutory footing so that all children will derive the benefit of these safeguards.

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The sharing of relevant child and parent information between professional services on foot of a Care Order

We would repeat our observations in this regard as set out under the Interim Care Order section.

Part V Jurisdiction and Procedure

Jurisdiction Operating of the Courts and Hearings of Proceedings

We would support any proposed changes which place the child at the centre of its operations. Proceedings should move at the child's pace and drift should not be allowed to occur. Any proposed changes should take account of this, as children develop at a very fast pace.

Voice of the Child

We would respectfully repeat the submissions which we made in respect of the reform of the Guardian Ad Litem Arrangements in November 2015. A copy of this is attached at Appendix A.

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Appendix A

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