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CONSULTATION PAPER

On

**Preparing a Policy Approach to the Reform of
Guardian *Ad Litem* Arrangements**

in Proceedings under the Child Care Act 1991

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CONSULTATION - KEY ASPECTS OF A REFORMED GUARDIAN *AD LITEM* SERVICE

Principles & policies

The objective is to provide for an effective nationally managed and delivered unitary service that is available in all child care proceedings under Part IV (Care Proceedings), IVA (Children in Need of Special Care or Protection) or VI (Children in the Care of the Child and Family Agency) of the 1991 Act.

The statutory principles and policies underpinning the reformed service would aim to ensure that:

- the purpose of the service is to benefit the child by supporting the court to make decisions in child care proceedings which have the best interests of the child as the paramount consideration;
- the rights of children and young people, including the right to express their views and to have due weight given to such views, are promoted in accordance with the United Nations Convention on the Rights of the Child and with Article 42A of the Constitution;
- the service is accessible to any child who is capable of forming his or her own views or who is otherwise deemed by a court to be in need of it;
- the discretion of the court regarding the appointment of the Guardian *ad Litem* is central and clearly set out;
- a high quality service is provided to assist the court in making the appropriate decision for the care of the child;
- the independence of the Guardian *ad Litem* from the parties to the proceedings, and acting in accordance with the guidance of the court, is guaranteed;
- the Guardian *ad Litem* is enabled to fulfil his/her role; and
- the service is as effective, efficient, sustainable, consistent, and transparent as possible.

Consultation Questions:

- 1. Are the principles and policies identified the appropriate ones? Please provide the reasons for your response.**
- 2. Are there other principles that you consider should be included? Please provide details and reasons.**

Consultation Answers:

- 1. We would propose the policy needs to specifically included reference to the Referendum on children's rights and to ensure all parts of the policy are congruent with the principles of the Referendum.*

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This should apply to all children involved in court proceedings i.e. Children in Family Law cases, District, Circuit or High Court Proceedings should have access to a Guardian ad Litem to protect their rights and provide a voice for the child in all Court Proceedings as the constitutional amendment proposes "for all children".

- 2. The principles as set out are comprehensive and in further developing these principles, it is important to ensure that they comply with International Protocols, Principals and legal obligations.*

Amendment of existing legislation

Section 26 of the 1991 Act (Appointment of Guardian *ad Litem* for a child) will need to be repealed in its entirety and replaced by substantial provisions, primarily relating to the areas identified in this paper.

It is to be noted that amendments in this area would have implications for the Mental Health Act 2001 which incorporates into that Act the Guardian *ad Litem* provisions of the Child Care 1991 Act.

Consultation Question:

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| 3. Do you have any observations on this approach? If so, please provide details and reasons. |
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Consultation Answer:

- 3. We believe there should also be a reference to private family law.*

In cases where the victim of either physical or sexual assaults are before the Criminal Court then provision needs to be made for a Guardian for these children where the judge sees this as appropriate.

It would be appropriate to make specific reference to unaccompanied minors. Unaccompanied minors, by their very status, have no one else to protect their rights and interests.

In particular we think that the Government's obligations under International Law and Protocols need to be included. This includes UN Developmental Goals in the context of children trafficked and unaccompanied minors.

In addition children from specific groups should always be provided with a Guardian. This includes children who have no parent alive or in the country, and children with a disability. In these circumstances the court should be required to state why a Guardian is not appointed to represent the views of children.

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Establishing a nationally organised, managed and delivered service

The broad alternative approaches that arise in the context of establishing a nationally managed and delivered service are by way of:

- direct provision through a new dedicated public body;
- utilising existing or reformed structures in either the children or justice areas (comprehending related services such as courts and probation); or
- public procurement of such services to be engaged under contract by the Minister for Children and Youth Affairs.

Each of these alternatives involves challenges and in the case of a new dedicated public body, not least among these would be the established policy on greater streamlining of the number of existing public bodies.

Consultation Questions:

- 4. Having regard to feasibility, what is your preferred approach between the stated alternatives and why? Please detail the advantages and disadvantages of each approach from your perspective.**
- 5. Are there any other feasible, effective and sustainable approaches you would recommend? Please provide details and reasons.**
- 6. What would you view as the critical elements for successful establishment and sustainable operation of a national service to be covered under each broad approach?**

Consultation Answer:

- 4. We would not favour a dedicated public body. A key element of the Guardian's role is independence and there is a concern that being part of a dedicated public body would dramatically change the perception of the public. The Guardian ad Litem could be seen as "part of the system" and this may negatively impact the engagement of children and their families. The same applies to the proposal to utilise existing or reformed structures in either the children or justice areas. It is essential that there are sufficient safeguards to ensure the independence of the Guardian ad Litem.*
- 5. We believe that the current system could be modified to allow for accountability and standardisation of practice. The current registration model as per CORU will ensure standards and accountability. In this regard we suggest that CORU ensure that each Guardian meets their obligations for a number of regulations set down by the Minister. This includes on-going Professional Development and appropriate arrangements in relation to Liability Insurance.*

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6. *Critical elements for the establishment of a national service:*

- *Our view is that there should be a body which validates the qualifications, the references and Garda clearance. This role is currently being fulfilled by CORU. CORU and CAAB have engaged in extensive work in recent years and developed a set of guidelines (CAAB 2009) and a practical mechanism of oversight which essentially inform good practice and could feasibly provide the basis for a national service.*

Children who are made a party to proceedings

Under section 25 of the 1991 Act, a court may “*where it is satisfied having regard to the age, understanding and wishes of the child and the circumstances of the case that it is necessary in the interests of the child and in the interests of justice to do so, order that the child may be joined as a party*” to the proceedings.

Section 26(4) of the 1991 Act provides that where a child is made a party to proceedings, any order appointing a Guardian *ad Litem* shall cease to have effect. This means that currently a child cannot have his/her own legal representative and a Guardian *ad Litem* at the same time. A change to enable the Court to exercise its discretion in such circumstances is under consideration.

Consultation Question:

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| <p>7. What are your views on retaining or altering the existing arrangement? Please give details and reasons.</p> |
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Consultation Answer:

7. *A key concern is “Capacity” of the child to understand all the issues. Very few of the children with whom we work have the capacity to instruct a solicitor due to the very issues that bring them into the court process, particularly in circumstances where their instructions may place them in direct conflict with their parents. It is our view that they need the objectivity of an independent professional who can hear their views and also analyse what is in their best interests. There may be a conflict between their instruction and their best interests. In our experience a number of courts including the High Court have been of the view that the appointment of a Guardian ad Litem is the appropriate safe guard for the child.*

In effect, to continue the current arrangement would be to force solicitors to work beyond their competence and education.

A solicitor is not required to have the skills and training to determine the interests of a young child nor even how to develop and maintain a relationship with a very young

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child. Nor are they required to understand how to work with abused and vulnerable children and families or, potentially, how to provide child protection.

The role of the solicitor is to present the legal case and advise the court of the instructions of their client, in this case the child. It is hard to see how they could also present what is in the child's best interests without a conflict arising.

Solicitors do, of course, have an understanding of using the law to protect children's rights but more is expected from a Guardian. There is a need for understanding developmental needs, family dynamics, the impact of abuse and addiction on the family and the role of the CFA in family crisis.

Appointment of Guardian ad Litem

It is envisaged that appointments in proceedings arising from applications under Part IV, IVA or VI of the 1991 Act would remain at the discretion of the court. While envisaged legislation would offer guidance indicating circumstances for appointment of a Guardian *ad Litem*, a broad margin of discretion available to the court in that regard should continue.

As provided for at present, a court could order the appointment of a Guardian *ad Litem* on its own motion or on the application of any party to the proceedings.

The envisaged statutory guidance would indicate that appointment should be considered in all proceedings under Part IV (Care Proceedings), IVA (Children in Need of Special Care or Protection) or VI (Children in the Care of the Child and Family Agency) of the 1991 Act and particularly where:

- The proceedings involve an application for special care, or
- The child is to be placed outside the State, or
- The child being of an age or maturity to express his/her views is unable to or constrained from doing so for any reason, whether due to physical, intellectual, emotional impairment or otherwise, or
- The child is an unaccompanied minor, or other vulnerable group
- The family background or care history of the child is considered by the court to be particularly complex or unclear so as to warrant the availability to it of independent analysis and recommendation to assist determination by the Court of the child's best interest, or
- The care plan prepared or proposed for the child by the Child and Family Agency is the subject of significant dispute with a party to the proceedings, or with the child, or significant failings/shortcomings in the care planning process are alleged, or
- The court is satisfied that in the particular circumstances of the case in order to promote best interests of the child a Guardian *ad Litem* should be appointed.

The appointment would cease on a determination by the court to:

- refuse an interim care order, or
- grant or refuse either a care order, a supervision order or a special care order, or

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- grant or refuse other relevant applications (access, appeal, vary, discharge, directions) provided for under the 1991 Act, or
- otherwise by order cease the appointment.

Given that a nationally managed and delivered service is envisaged, for the purposes of clarity it would be provided that only a court may cease/terminate the appointment of a Guardian *ad Litem* in the course of specific proceedings.

Except for specified transition arrangements referred to below, only a Guardian *ad Litem* operating as part of the national service would be eligible for appointment by the courts for the purposes of proceedings under the 1991 Act.

Consultation Questions:

- 8. What are your views on the envisaged approach as outlined? Please provide reasons for your response.**
- 9. Are there any additional matters you would recommend for inclusion as regards the basis, or envisaged guidance, for appointment of a Guardian *ad Litem*? Please give details and reasons.**

Consultation Answers:

- 8. We support the proposal that the discretion for appointments and discharge of Guardians *ad Litem* should remain with the Courts. We would further propose that the court retain the discretion to reappoint Guardians working under the current structure should future issues arise to cases to which they are now appointed.*
- 9. We propose including that the Guardian *ad Litem* should remain appointed for the duration of the special care episode and for any review that the court deems necessary. These are the most vulnerable in the state and their needs can change very quickly.*

We also propose that specific reference be made to mental health and private family law cases in which children are involved.

*It is important to take cognisance of the needs of children who are placed outside the jurisdiction and it is our view that the Guardian *ad Litem* should remain appointed for as long as the child is outside the country with liberty to re-enter the case before the Court where necessary.*

Role of Guardian *ad Litem*

The envisaged role of the Guardian *ad Litem* would be to independently:

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- ascertain the views of the child, as far as practicable, having regard to the child's age, level of maturity, and understanding, and inform the court of same;
- provide the court with the answers to any specific questions it has raised or any information, including opinion, it has sought in relation to the views and best interests of the child;
- provide the court with such assessment and analysis of the child's situation as it requests for the purpose of its consideration and determination of the application before it; and
- formulate and present recommendations to the court as to the course of action generally available that, in the professional opinion and experience of the Guardian *ad Litem*, would be in the best interests of the child.

Subject to the paramount consideration of promoting the best interests of the child, wherever possible in the performance of his/her role the Guardian *ad Litem* would adopt an enabling approach to clarifying misunderstandings that may exist in that regard with the parties to the proceedings. In seeking to implement such an approach, unless the facts and circumstances of the particular case provide a contrary indication, the Guardian *ad Litem* would have regard to:

- the principle that it is generally in the best interests of a child to be brought up in his/her own family (s. 3(2)(c) of the 1991 Act);
- that the Child and Family Agency in the performance of its functions in respect of an individual child under the 1991 Act regards the best interests of the child as the paramount consideration (s. 9(2) of the Child and Family Agency Act 2013); and
- The professional duty and acknowledged field of competence of other professionals providing evidence in the proceedings.

The legislation would require the Guardian *ad Litem* to make such enquiries of such persons, particularly the child, as is necessary to provide a written report to the court containing the relevant information, assessment, analysis and recommendations. The Minister for Children and Youth Affairs would have discretion to make regulations generally governing the making of enquiries by the Guardian *ad Litem* and the nature of the matters to be covered in the report of the Guardian *ad Litem*.

With a view to obtaining directions of the court on any matter necessary to the continued performance of his/her functions or to safeguarding the best interests of the child, the Guardian *ad Litem* may at any time make such applications to the court as appear to him/her to be required for such purposes.

Where, in the course of the proceedings, a Guardian *ad Litem* is concerned that a significant shortcoming exists regarding the care being provided to, or proposed for, the child by the Child and Family Agency, he/she should attempt to resolve the issue of concern by way of

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discussion and agreement with the Agency in the first instance. Where, in the view of the Guardian *ad Litem*, his/her concerns are not resolved or likely to be resolved in early course, he/she would be required to inform the court of the matter as soon as possible.

The Guardian *ad Litem* should bring to the attention of the Child and Family Agency any risk(s) which he/she believes may have a serious adverse effect on the best interests of the child and which the Guardian *ad Litem* considers are not being sufficiently addressed or mitigated. If not satisfied with the response provided by the Agency, or in the absence of a response being provided within a reasonable time by reference to the nature of the risk, the Guardian *ad Litem* would be required to bring the matter to the attention of the court.

Consultation Questions:

- 10. What is your view of the description of role of a Guardian *ad Litem*? Please provide reasons for your response.**
- 11. While a mediation role in any formal sense is not envisaged for the Guardian *ad Litem*, what opportunities, if any, would you consider exist for a Guardian *ad Litem* to contribute to increasing mutual understanding between the parties to the proceedings and between any of the parties and the child?**
- 12. Are there other matters that you consider to be fundamental to the role of a Guardian *ad Litem* that you would recommend for inclusion? If so, please provide the necessary details and reasons.**

Consultation Answers:

- 10. The role of the Guardian *ad Litem* in safe-guarding is rightly identified by HIQA in their reports.*

The description as outlined would be appropriate with the following additions:

*The role should specify that the Guardian *ad Litem* should make whatever application is necessary to the Court as well as informing the Court of shortcomings.*

The Guardian should have the authority to make an application for a direction under Section 47 of the Child Care act 1991. This should be stated in the regulations.

- 11. We would suggest that this is already an established part of the role for most Guardians *ad Litem*. The Guardian *ad Litem* works from a perspective of inclusiveness includes the views of all parties and uses the opportunities that arise from these discussions to negotiate on behalf of the child to achieve the best outcome.*

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It would be appropriate to include this in the definition to ensure that this is standardised across the country.

The Current Standing Directions in the Dublin Metropolitan District Court on Section 47 applications is extended nationally.

12. *We consider the after care of a child fundamental to the role of Guardian ad Litem.*

It is in the child's best interest that there is a provision to allow Guardian ad Litem to continue to represent the young person in areas of Mental Health and Disability/Special Complex Needs beyond their eighteenth birthday if they are deemed to be vulnerable by the Court.

Very often the Guardian ad Litem is the consistent professional involved and the importance of this should be emphasised in the role.

Possible provision of the Guardian ad Litem report to the child

It is envisaged that the legislation may address the matter of the child's entitlement to receive a copy of the Guardian *ad Litem* report, perhaps modelled on the lines of the provision in the Children and Family Relationships Act 2015 in relation to furnishing to a child a copy of a report procured regarding any question affecting his/her welfare. Section 63 of that Act inserts a new Part V into the Guardianship of Infants Act 1964 and the matter in question is provided for under section 32 of Part V.

Consultation Question:

13. What is your view regarding possible provision being made for a copy of the Guardian *ad Litem* report to be made available to the child or have you any alternative arrangement to suggest? Please provide reasons for your response.

Consultation Answer:

13. *We are cognisant of case law in respect of parents' access to report and, to ensure equity, the same principles should apply to the child.*

It is always appropriate for the Guardian ad Litem to discuss in broad terms with the child what will be included in the report. How much information is shared would depend on their age, level of understanding, and the potential impact on their emotional wellbeing. For some children, reading complex family histories etc can cause considerable distress and become destabilising.

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Status of the Guardian ad Litem

The approach being considered is that the status of the Guardian *ad Litem* would be that of a court-appointed adviser to assist the court's determination of the application under the 1991 Act through the provision to it of information, assessment, analysis and recommendations relating to the views and the best interests of the child.

It is envisaged that this status would be reinforced by enabling the Guardian *ad Litem* to make application to the court in relation to certain matters. This aspect is further elaborated below in relation to the engagement of legal representation by the Guardian *ad Litem* in exceptional circumstances.

Consultation Question:

14. What is your view on the status envisaged? Please give reasons for your response.

Consultation Answer:

14. The status of the Guardian ad Litem as outlined above appears to apply only to the Childcare Act 1991 and does not take cognisance of the broader remit for the role of the Guardian in family law cases, disability and mental health. The definition of the status of the Guardian ad Litem as it stands is too narrow.

In our view the framework set out by the department does not take account of the breadth of the work; specifically that the voice of the child internationally is now recognised as central to good practice models. The voice of the child cannot be appropriately heard or a legal remedy sought in the absence of the right skills mix of legal and Social Work. The proposal as it stands would in fact diminish the rights of the child from the current practice.

Cases before all Courts present complex legal issues. There are some legal issues which have serious complex implications not only for the child but also for precedent, policy, or issues of human rights and constitutional rights. There needs to be flexibility about legal representation, the right to make an argument and to look for legal redress. This should be addressed in all regulations in the interest of fairness.

Qualifications & eligibility for appointment

The holding of a qualification in social work would be among professional requirements for appointment as a Guardian *ad Litem*. Consideration is also to be given to including other relevant professional disciplines for the purpose of eligibility for appointment; the disciplines involved are those involving a third-level qualification in social care or in psychology. A person appointed as a Guardian *ad Litem* would also be required to have a minimum of three years postgraduate direct experience in a child-related area.

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At the time of appointment a Guardian *ad Litem* would also be required to hold a Garda vetting clearance issued within a specified time period of the appointment.

It would be provided that the Minister may make regulations relating to any further knowledge and skill requirements necessary to be eligible for appointment.

It is envisaged that as an exceptional transitional matter, persons would be deemed eligible for appointment if on the date of the publication of the reform legislation they complied with certain criteria, possibly along the lines indicated in A and B below:

- A. The person holds another professional qualification (e.g. social care or psychology if these are not included as core relevant qualifications), and
- has been appointed and acted as a Guardian *ad Litem* on not less than 20 occasions over the preceding 24 months; and
 - not less than 10 of those appointments occurred in the preceding 12 months; and
 - holds a Garda vetting clearance issued within the specified period as referred to above.
- B. The person does not hold a relevant qualification, but
- has been appointed and acted as a Guardian *ad Litem* on not less than 35 occasions over the preceding 24 months; and
 - not less than 10 of those appointments occurred in the preceding 12 months, and
 - holds a Garda vetting clearance issued within the specified period as referred to above.

Consultation Questions:

15. What are your views regarding appropriate qualifications and professional experience for appointment as a Guardian *ad Litem*? Please give reasons for your response.

16. Do you have any alternative or additional qualifications/criteria to suggest? If so please give details and reasons.

17. What are your views and/or recommendations regarding the transitional provisions envisaged for qualifying those who have recent experience of acting in the capacity of Guardian *ad Litem* but do not meet the envisaged qualification and professional experience criteria? Please give reasons for your response.

Consultation Answers:

- 15. We support the view that the recognised qualification should be social work. The social work profession has developed particular sets of experience and expertise in the field of child protection including assessing multiple issues, complex dynamics between children and families and is focussed on problem solving and change management. Social Workers have an understanding through their training of childcare and family law, child protection and the complexities of the services for children and the challenges for the services to meet these needs. They are also best placed to work alongside the social work services in the CFA and to determine if these are meeting the child's needs.*
- 16. Our view is that it would be more appropriate that a Guardian ad Litem would have five years post-qualifying experience and that it should be specified that this experience must be in the area of child protection or social work with children in care. This is important if you are to have a quality Guardian ad Litem service.*
- 17. The transitional plans as outlined above are appropriate but remain a matter for the court.*

Access to records, records management and information provision

The Guardian *ad Litem* would be entitled to have access to relevant case records of the Child and Family Agency (i.e. those not subject to legal privilege).

During the course of proceedings, the Guardian *ad Litem* would be entitled to receive information from the Child and Family Agency, as soon as possible, concerning any change in the child's circumstances.

The national service provider and individual Guardian *ad Litem* would be required to ensure safe-keeping and proper management of all records and information created or obtained by them. The national service provider would be required to have in place a robust data protection and management policy consistent with relevant legislation in the area.

It is envisaged that legislation would provide for the Minister to obtain from the national service provider such aggregate or non-identifying information relating to the management and delivery of Guardian *ad Litem* services, as the Minister deems appropriate and it would be the duty of each Guardian *ad Litem* to cooperate in the provision of such information. The Minister would be at liberty to make public such non-identifying information relating to the operation of Guardian *ad Litem* services as he/she deems appropriate.

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Consultation Questions:

- 18. What are your views on the approach identified?**
- 19. Are there additional matters you would recommend for inclusion? If so, please provide details and reasons.**
- 20. What type of information do you consider should be publicly available regarding the management and delivery of Guardian *ad Litem* services?**
- 21. In your view and/or experience, what type of information should be available to the Minister to enable effective monitoring of the quality of Guardian *ad Litem* services?**

Consultation Answers:

- 18. We are in agreement with the approach identified and recognise the importance of the Data Protection legislation.*
- 19. In considering data protection, we note also the need for secure maintenance of files, including secure buildings with appropriate protection.*
- 20. Standard non-identifying information should be available publically.*
- 21. We support the proposal of provision of information to the Minister as outlined.*

Role of the Child and Family Agency & payment for Guardian *ad Litem* services

The basis of payment for the work of a Guardian *ad Litem* will be determined by reference to the arrangements decided regarding the establishment of a national unitary service. That matter is not the subject of this consultation. The information that follows in this section relates to the mechanism by which such payment might be made and how this may be approached in a reformed service.

Currently under the 1991 Act the Child and Family Agency's sole statutory responsibility as it applies to the appointment of a Guardian *ad Litem* for a child is to pay any costs incurred by a Guardian *ad Litem*. In discharging that role, the Agency may apply to court to have the amount of any such costs or expenses measured or taxed.

Any reforms to be introduced would involve no greater role for the Agency and would have the intended effect of mitigating any perceived conflict of interest relating to any role that may remain for the Agency in disbursing payments. In such an eventuality, elaboration of the roles of the respective parties involved would make clear that the Agency would not exercise any oversight, governance or similar responsibilities regarding discharge by an individual Guardian *ad Litem* of his/her responsibilities. Functions relating to the appointment of a Guardian *ad Litem* and guidance regarding the discharge of his/her work in individual

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proceedings would clearly be exercised solely by a Court. In addition, any role in fee transactions that may remain for the Agency would be between it and the national service provider. The relationship and engagement with the individual Guardian *ad Litem* on such matters would be the responsibility of the national service provider.

Consultation Question:

22. If involvement by the Child and Family Agency is to be retained strictly for the purposes of making payment in respect of Guardian *ad Litem* services, are there particular safeguards in addition to those indicated that you would wish to see implemented? Please give details and reasons.

Consultation Answer:

*22. There is a concern that the CFA may have a conflict of interest if responsible for paying the Guardian *ad Litem* fees while also a party to the proceedings. The CFA is constrained by budgetary considerations and may argue against the appointment of a Guardian *ad Litem* on these grounds. This does not protect fair procedures and the constitutional rights of the child.*

*The minister should ensure that proper funding is in place to provide a comprehensive National Guardian *ad Litem* Service to be available to children on the basis of need.*

Engagement of legal representation

The Child and Family Agency has advised that in 2014 public expenditure on Guardians *ad Litem* amounted to €16.1 million, which comprised €8.6 million paid in respect of Guardian *ad Litem* fees and expenses and €7.5 million expended on legal advice/representation engaged by Guardians *ad Litem*. The corresponding expenditure of public funds in 2015 (up to the end of August) is €6.3m paid to Guardians *ad Litem* and €3.7m paid for legal advice to/representation of Guardians *ad Litem*.

Currently, no statutory or generally applicable criteria exist to underpin necessity, value for money or accountability in regard to the engagement of legal services by individual Guardians *ad Litem*.

The envisaged policy approach is to provide for a Guardian *ad Litem* to have access to legal advice/representation as an exceptional matter and where the need for such support is expressly established and is indispensable the effective discharge of the Guardian *ad Litem*'s role. Potential circumstances envisaged as warranting an application in respect of legal advice/representation might be where:

- a Special Care Order is being sought, or

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- the proceedings involve the law of another jurisdiction regarding which the Guardian *ad Litem* has identified a need for legal advice, or
- there is an irreconcilable difference between the Guardian *ad Litem* and the Child and Family Agency concerning a significant aspect of the care being provided, or planned, by the Agency which requires to be articulated before the court and this would not be likely to occur unless the application is granted, or
- the care application involves issues of uncommon legal complexity which give rise to a specific need for legal advice and/or representation.

In any such application, the Guardian *ad Litem* would be required to specify to the court:

- the particular circumstances that warrant the application, and
- the compelling reasons as to why granting the application is necessary to the performance of his/her functions as regards the views and best interests of the child, and
- the issues regarding which legal advice and/or representation are required.

In the event that a change is made to the approach that currently applies under section 26(4) of the 1991 Act - which would enable the appointment of legal representation for the child who is a party to proceedings and continuation at the court's discretion, of the appointment of a Guardian *ad Litem* - the court would require to be satisfied that the child's legal representation would not be sufficient to address the identified issue(s).

Having considered any such application, the court may, if it thinks fit, appoint a solicitor to advise and/or represent the Guardian *ad Litem* in relation to some or all of the issues identified. The court may give directions as to the performance of the solicitor's duties which may include, if necessary in the view of the Court, directions in relation to the instruction of counsel.

Consultation Questions:

23. What is your view regarding the envisaged approach? Please give reasons for your response.

24. Are there alternative or additional measures you would recommend to support sustainability, transparency, accountability and value in the expenditure of public funds in this area? Please give details and reasons.

Consultation Answers:

23. The key issue is that the voice of the child should not have any less status than that of the parents. Where the parents are represented it is appropriate that the child,

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through the Guardian ad Litem, is also represented. This issue becomes more critical in circumstances where the parents cannot or do not take an active role in the proceedings and are unrepresented. It is not possible at the outset of a case to determine if this will transpire. The Child and Family Agency is represented and the Guardian ad Litem is possibly the only contradictor and needs also to be represented.

In the same way that Social Workers require representation in making applications under the Childcare Act, Guardians ad Litem require the same support to ensure the that child's constitutional rights are safeguarded. The Court has to be satisfied that the child's constitutional rights are protected. The Guardian ad Litem's focus should be solely on the child and not on presenting a legal case. It is a completely different skill set.

We suggest before there are any changes to the current system a pilot project with limited random cases in Dolphin House at least four areas countrywide is setup to test the validity and the benefits of this proposal. The Child Care Law Project and Court Service may be best placed to identify the best courts for such a project.

24. *We recommend that the Body which approves, recommends and assures all standards, references, Garda Clearance etc. be separate to the Agency which pays Guardians ad Litem.*

Transitional provision

It is envisaged that a Guardian *ad Litem* who was appointed in proceedings under the 1991 Act before the coming into force of a nationally managed and delivered service would be entitled to continue to act in that capacity for the purpose of the specific proceedings concerned as if the appointment was made in accordance with the new arrangements. Such continuation would be subject to the Guardian *ad Litem* being in possession of a current Garda Vetting clearance.

It is further envisaged that in such circumstances, legal representation already engaged by a Guardian *ad Litem* would also continue until those particular proceedings are concluded.

Consultation Question:

25. What are your views and/or recommendations regarding the envisaged transitional approach?

Consultation Answer:

25. *We are in agreement with envisaged transitional approach.*

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Regulations by the Minister

The Minister would have the power to make regulations ancillary to the legislation as necessary in relation to the general management and operation of Guardian *ad Litem* services.

Consultation Question:

26. Other than as indicated in this paper, are there other aspects of reformed arrangements you consider would necessitate the Minister making regulations and what do you consider to be the essential components of same? Please provide details and reasons.

Consultation Answer:

- 26. (a) *Criteria for Appointment*
- (b) *Criteria and standards of Appointments*
- (c) *Standards for Training*
- (d) *Membership of CORU*

Conclusion

In addition to the specific consultation questions set out above, the Department would welcome any other information/views/recommendations you may wish to provide concerning necessary fundamental reform in this area.

General Consultation Questions:

- 27. What are the elements of existing service arrangements that warrant retention and strengthening in a reformed service? Please provide details and reasons.**
- 28. What do you consider to be the priority matters to be addressed in reforming current arrangements? Please give details and reasons.**
- 29. Have you any further information, views or recommendations to convey that would assist the Minister in devising policy proposals for an effective and sustainable national system to manage and deliver Guardian *ad Litem* services under the 1991 Act? If so, please provide details and reasons, as appropriate.**

General Consultation Answers:

27. (a) *The absolute independence of the Guardian answerable only to the Court.*

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(b) The ability of the Court to appoint Guardians who are not affiliated to any Organisation; in other words, who are not perceived by the children and/or their families as being part of "the system". This is a huge strength. It creates confidence in the role and offers a very unique and valuable service to the child.

(c) At all times, the child should be at the centre of the regulations, the Guardian offers a unique protection support and service to the child. It would be important to protect this role from vested interests.

28. Priority should be in ensuring standards of professional experience. Again CORU should be a benchmark for standards. Social Work Team Leader with minimum 5 years' experience in Child Protection is essential to safeguard the Court and the Child.

29. We note that there is frequently discussion about the consideration of modelling a national service on the systems in operation in Northern Ireland and the UK. We point out that these systems do not operate in the context of our Constitution or, in particular, the recently passed referendum in respect of children's rights. There is limited value, therefore to these comparisons.

We are confident that we can develop a service which is uniquely Irish that reflects our values on family, and the uniqueness of children's rights. When all views have been gathered we look forward to the opportunity to contribute to a White Paper on the structures which will deliver this service.

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02nd November 2015