



**ISPCCA Submission to the Department of Children and
Youth Affairs**

Preparing a Policy Approach to the Reform of Guardian Ad Litem
Arrangements in Proceedings under the Childcare Act 1991

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ISPCC Background

The Irish Society for the Prevention of Cruelty to Children (ISPCC) is the national child protection and child welfare charity. We develop and deliver a range of services to keep children safe, including the national listening service, Childline, which answered over 460,000 calls in 2014. Furthermore we provide a range of prevention and early intervention services to children and families across Ireland, and we invest heavily in quality assurance to ensure our services meet the highest standards and deliver positive outcomes.

For more information see www.ispcc.ie/services

Introduction

The ISPCC welcomes the opportunity to provide feedback and insight into the consultation regarding the reform of guardian ad litem services under the Childcare Act 1991.

“Preparing a policy Approach to the Reform of the Guardian ad Litem Arrangements in Proceedings under the child Care Act 1991”

The ISPCC is commenting on the issues on the basis of our experience in providing a Guardian ad Litem service in the past and of our staff and service user’s current experience of the service. We look forward to feeding into the consultation process and are available should further information be required.

The ISPCCs experience and interest in the Guardian ad Litem Service

The Guardian ad Litem service has been a key lobbying area for the ISPCC for a number of years, from the initial lobbying for the establishment of a service to the need to develop and enhance the current service.

In 1993, the ISPCC submitted a proposal to the then Ministers for Health and Justice for the establishment of an Irish Guardian ad Litem Service. In 1995, as a result of a number of requests for the provision of Guardians, the ISPCC established an Advisory Committee made up of key professionals from Ireland and the U.K. The function of the Advisory Committee was to support the ISPCC in developing an efficient and effective Guardian ad Litem panel, which would best meet the needs of children within the Irish context. A panel of professionals who could act in the role of Guardian ad Litem was subsequently established and panel members received specialised training. The ISPCC's panel was established in the absence of an established independent Guardian ad Litem service. It was established as an interim response to meet Guardian ad Litem demands on the Society to provide Guardians. The ISPCC panel was established to provide Guardian ad Litem under the Child Care Act 1991 only.

The ISPCC were members of the consultative group established by the Children's Act Advisory Board in 2009 to develop guidance on the role, criteria for appointment, qualifications and training of Guardians ad Litem appointed for children in proceedings under the Child Care Act, 1991.

Today, the ISPCC does not provide a Guardian ad Litem service but we have experience from our advocacy and on the ground work of the current situation with regard to this much needed service for children and young people.

Principles and Policies

Response to Question 1 & 2

The ISPCC supports the principles and policies but believes that remit should be extended. Section 11 of the Children Act, 1997 inserted a new section 28 into the Guardianship of Infants Act, 1964 to make provision for the appointment by the Court of a Guardian ad litem in private law proceedings concerning custody, access or guardianship matters. While this was only to happen in exceptional circumstances, which ISPCC believe should be extended, it was never commenced.

Amendment of existing legislation

Response to Question 3

The ISPCC agrees that the current legislation (section 26 of the Child Care Act) should be repealed. A new section should be drawn up stipulating that a Guardian ad Litem should be appointed in all cases where children are involved in Child Care proceedings, in line with the U.N. Convention on the Rights of the Child. The new legislation should detail the role, duties, function etc. of a Guardian ad Litem.

Establishing a nationally organised, managed and delivered service

Response to questions 4, 5 & 6

The ISPCC would prefer the establishment of a new dedicated public body.

A Guardian ad Litem is intended not merely to provide another voice in proceedings relating to a child, but to provide an **independent** voice. It is generally recognised that there are four key areas relating to independence:

- a) Independence of professional opinion
- b) Personal independence
- c) Perceived independence
- d) Administrative independence

In order for any Guardian ad Litem service to be effective it must be, and be seen to be, independent of any conflicting interest in the proceeding and it must be efficiently and effectively managed. These requirements are interconnected where the management of the service is not independent then managing the service can be seen to be compromising the independence of the Guardian ad Litem service.

Any new Guardian ad Litem service must be, and be seen to be, independent while ensuring quality control and quality enhancement. The service needs to be part of an integrated structure, which is independent from the parties to the proceedings at all levels, while allowing for management and supervision structures which continually monitor and evaluate the service.

The Northern Ireland Guardian *ad Litem*¹ system where an independent body, independent of the Courts, of the Legal Aid System, of TUSLA, is available with a panel of Guardians who are appropriately trained qualified and appointed and are available when the requirement arises demonstrates the effectiveness of such a model.

The ISPCC believes that utilising existing or reformed structures in either the children or justice areas would not achieve this.

Children who are made party to proceedings

Response to Question 7

The ISPCC support this provision

A child who is the subject of such proceedings should be entitled to dual representation. There are significant differences between representation by a solicitor and a Guardian ad Litem. The U.K. experience tells us that if a child's wishes and needs are to be effectively represented to the court, both a Guardian ad Litem and solicitor are necessary. To have a Guardian ad Litem but no solicitor disadvantages both the child and the Guardian ad Litem from the outset, as neither are legal experts.

Appointment of Guardian ad Litem

Response to Question 8 & 9

The ISPCC feel that the right of the child to be provided with a Guardian ad litem should not be restricted by the discretion of the judge. Also the remit should extend beyond the provisions currently set out to private family law cases.

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Role of the Guardian ad Litem

Responses to questions 10, 11 & 12

The ISPCC welcomes the clarification of the 2 roles of the guardian ad litem; to ascertain the child's views and best interests.

¹ <http://www.nigala.hscni.net/>

Possible Provision if the Guardian ad litem report to the child

Response to Question 13

The ISPCC supports a legislative provision that a child friendly version of the report provided to the courts should be made available to the child where appropriate.

Status of the guardian

Response to question 14

The ISPCC supports the proposed status of the guardian.

Qualifications and Eligibility for appointment

Response to question 15 & 16

Communicating effectively with children and being able to understand and articulate to the court a child's wishes and feelings is a key role of the Guardian ad Litem. This can be a difficult task in itself given that it is time limited and dependent on the child's willingness to express feelings. It also demands that the Guardian ad Litem is a skilled, child centred person who has an understanding of child development.

Given that most of the assessment work of the Guardian ad Litem will most likely take place in the child's home or place of residence, the Guardian ad Litem needs to be comfortable and familiar with working in this setting as opposed to a clinical/office based setting.

Guardian ad Litem need to be carefully and independently selected prior to being placed on a panel. This should include proper recruitment procedures.

While a relevant third level qualification is essential, appointment of Guardians should not be profession specific; rather individuals should be selected on the basis of their skill and their ability to work effectively with children in their own home/environment. While relevant experience is important, a more significant issue is the skills the Guardian ad Litem has in working with children and families. Guardians should have a commitment to child centred practice, a commitment to children's rights, an understanding of child development, the ability to remain focussed on the child at all times and be independent, and seen to be independent, of the proceedings. Guardian ad Litem should have an understanding of the current Irish legislation and the judicial process and be committed to articulating the wishes and/or "best interests" of the child in sometimes very conflictual circumstances.

Response to Question 17

The ISPCC supports the transitional provisions but it should also include end date for operation of these provisions. Also, all guardians who fall under these provisions should have to adhere to any new practice guidelines that will be developed as a result of new legislation.

Access to records, record management and information provision

Response to Questions 18, 19, 20 & 21

The ISPCC supports the ability of the guardian to access records and the responsibility of guardian to maintain records and provide information,

This national data collection should be both qualitative and quantitative. Data should be analysed to inform the state and the public on the functioning of professional child care practices in relation to children in Ireland.

An Annual Report should be published and promoted widely which would give an overview of the service including numbers of guardians, numbers of cases and reason for appointment.

Role of the Child and Family Agency & Payment for the guardian ad Litem Service

Response to question 22

The ISPCC believes that in order to ensure a comprehensive and independent Guardian ad Litem service, it should be funded by central Government as opposed to TUSLA.

Engagement of legal representation

The ISPCC supports this approach

Transitional Provisions

Response to question 25

The ISPCC supports these recommendations

General Consultation Questions

Response to questions 27. 28 & 29

While the ISPCC is aware that a practice manual was developed by CAAB in 2009², these were never implemented. There is an urgent need to develop a manual of practice guidelines for Guardian ad Litem to address the following:

- The parameters of the role
- The role and function of the Guardian ad Litem
- A comprehensive Complaints Procedure, including a children's version
- Appraisal and evaluation measures should be developed. Children's views should be sought as an integral component of any appraisal/evaluation process

² <http://www.caab.ie/Publications/PDFs---Publications/Giving-a-Voice-to-Childrens-Wishes,-Feelings-and-L.aspx>

- Appropriate models of “supervision”
- Responsibility and accountability of the Guardian ad Litem
- Guidelines for ongoing training and professional development of the Guardian ad Litem
- The process of how appointments are made
- Set out a clarity as to when a Guardian ad Litem’s role ceases
- Develop guidelines as to who should be appointed
- Detail the powers of a Guardian ad Litem
- Detail what is best professional practice when working as a Guardian ad Litem
- Detail the limitations of the role of a Guardian ad Litem

While some of these are outlined in the consultation document, additional guidelines are needed as outlined above.

There is also a need for a manual of management for Guardian ad Litem panel managers.

Awareness and Promotion

Once the new legislation is enacted and the service is in place, there is a need for Awareness and Promotion of the Guardian ad Litem Service

It is clear that not all of the judiciary is aware of the legislative provision to appoint a Guardian ad Litem. Similarly parents, children and professionals are also not always aware of its provision.

- The judiciary should be made aware of the provision to appoint a Guardian ad Litem and the subsequent benefit to the courts, families and indeed children
- Information sessions for the judiciary should happen on a regular basis with the aim of keeping judges, solicitors and other members of the legal profession up to date and informed of best practice when working with children
- A public awareness campaign should be initiated nationally informing parents and children in general, of child care and child protection legislation and the rights of children and parents under this legislation
- There should be an ongoing focussed information campaign targeting children and their families who are most likely to come into contact with the child protection judicial process.
- Child friendly literature should be published and distributed to children informing them of the Guardian ad Litem service and indeed their rights in general.

Child Advocates

Consideration should be given to the positive role that trained volunteers can play in supporting children through difficult experiences in their lives. The utilisation of trained volunteers is worth exploring within an Irish context in terms of supporting children and ensuring their voices are heard. This could be provided where a child does not need a Guardian ad litem but would benefit from support and would facilitate hearing the voice of the child.