

***RESPONSE ON BEHALF OF
THE CHILD AND FAMILY AGENCY
TO THE DCYA GAL REFORM CONSULTATION PAPER***

INTRODUCTION

The Child and Family Agency welcome the Consultation Paper regarding the proposed reform of the Guardian Ad Litem arrangements under the Child Care Act 1991.

The Child and Family Agency have a statutory function under the 1991 Act and this forms the basis of our interest in the reform of the GAL service provision. The Child and Family Agency currently fund the GAL service delivery (including their legal representatives). Despite there being a clear association between accountability and spending of public funds, the Child and Family Agency has no involvement in the governance or responsibility for ensuring the effective performance in the GALs roles in the current arrangement nor is it appropriate given the independence of the role that we should have that remit in the future. We would therefore submit that the Child and Family Agency should not continue to fulfill this function, not least as there would continue to be a perceived conflict of interest.

RESPONSE TO THE PROPOSALS

Principles and Policies

The Child and Family Agency welcome the objective to provide an effective nationally managed and delivered unitary GAL service.

Question 1 Are the principles and policies identified the appropriate ones?

We particularly welcome the principles in respect of the rights of children and young people, “including the right 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”.

This principle enhances the view of the Child and Family Agency that the key role of the Guardian Ad Litem is to inform the court of the child’s wishes and feelings.

Question 2 Are there other principles that you consider should be included?

We would recommend that the key principles underpinning the welfare and protection of children (as outlined in Children’s First, National Guidelines for the Protection of Children 2011) are also included in the proposed principles and policies.

Amendment of Existing Legislation

Question 3 Do you have any observations on this approach?

The Child and Family Agency support the proposal to repeal Section 26 of the 1991 Act and for the enactment of new legislative provision.

Establishing a nationally organized, managed and delivered service

Question 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.

The Child and Family Agency would propose that that the remit for the GAL service delivery would lie with the Department of Justice.

The advantage of this approach is that it is more aligned with the role of the GAL as an advisor to the Court and will assist with maintaining the independence of the GAL. It will also assist in promoting the same approach in both private and public legal settings.

The Child and Family Agency do not see any disadvantages with placing the GAL service delivery under the remit of the Department of Justice.

Question 5 Are there any other feasible, effective and sustainable approaches you would recommend?

The Child and Family Agency would also see merit in the proposal for the direct provision through a new dedicated public body. However, the funding of this public body should be independent of the Child and Family Agency.

The existing structure does not provide accountability and does not represent either a clear quality assured service or value for money.

Question 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?

The Child and Family Agency strongly recommend that the funding of the GAL service delivery should be independent of the Child and Family Agency as we are a party to public child care proceedings.

There should be a national, transparent uniform fee charging arrangement which can adequately demonstrate accountability and governance of public funds.

Children who are made a party to the proceedings?

Question 7 What are your views on retaining or altering the existing arrangement? Please give details and reasons.

The Child and Family Agency would support the retention of both Sections 25 and 26 (4) of the 1991 Act.

Appointment of Guardian Ad Litem

Question 8 What are your views on the envisaged approach as outlined? Please provide reasons for your response.

Although the Consultation Paper envisages the appointments of GALs would remain at the discretion of the Court, the proposed statutory guidance is very broad and there might be merit in consideration of restricting the proposed guidance or recognising that the appointment of a GAL should always be considered at the discretion of the court.

Question 9 Are there any additional matters you would recommend for inclusion as regards the basis, or envisaged guidance, for appointment of a GAL. Please give details and reasons.

It is arguable that the current system is underpinned by adversity. Therefore, we would recommend that the focus remain on a root and branch reform of the current public child care system with a view to creating a child centered system where the appointment of the GAL, as an advisor to the court, is to independently establish the wishes and feelings of the child and present them to the court.

Role of Guardian Ad Litem

Question 10 What is your view of the description of role of a guardian ad litem? Please provide reasons for your response.

The Child and Family Agency are concerned that the role of the GAL includes ascertaining the best interests of the child. The social worker is the professional who has the statutory obligation and corresponding accountability to act in the best interests of the child. The allocation of lead responsibility on this issue to more than one party creates confusion and will contribute to adversity. We believe that the role of the GAL is to represent the views of the child to the court and this should underpin the recommendations the GAL makes to the court. Any analysis of care proposals to the court from a GAL should be from the perspective of the child's view.

Question 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?

The Child and Family Agency do not envisage the GAL in a mediation role. Through independently representing the voice of the child, the GAL may contribute to increasing understanding of the child's wishes and feelings to the process. The Child and Family Agency would support efforts to establish pre-court mediation and arbitration services but see them as a separate function to the work of GALs.

Question 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.

It is fundamental that accountability, transparency and responsibility for professional practice are of primary consideration. There is ample evidence which demonstrates that current child care hearings are excessively lengthy and adversarial. In the absence of regulation, reform and standards, the role of the GAL in the current system has contributed to these challenges but of ultimate concern is the direct impact on the lives of children and young people who are in the care of the Child and Family Agency. The practice of lengthy proceedings has ultimately resulted in children's lives being placed on hold which directly impacts on the outcomes for children. As the agency responsible for the best interests of the child and having accountability to the child, their families, the Courts and others with a bona fide interest in child care matters, it is imperative that the best interests of the child is at the centre of reform.

Possible provision of the Guardian Ad Litem report to the child.

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.

The Child and Family Agency support the principle of the child having access to the GAL report but would recommend that this would be subject to the normal safeguards.

Status of the Guardian Ad Litem

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

The status of the GAL is to assist the court through providing independent representation of the child's views, wishes and/or feelings. The Child and Family Agency view the GAL as integral to the Court process and therefore should not need legal representation.

Qualifications and Eligibility for Appointment

Question 15 What are your views regarding appropriate qualifications and experience for appointment as a guardian ad litem? Please give reasons for your response.

The Child and Family Agency accepts the qualifications as set out in the proposals including consideration of other relevant professional disciplines but recommend 'five years postgraduate direct experience' in a childcare related service as this ensures the appropriate direct professional knowledge and experience to represent the voice of the child.

Question 16 Do you have any alternatives or additional/qualification criteria to suggest? If so please give detail and reasons.

We would recommend registration with an appropriate recognised professional body as an additional safeguard.

Question 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.

We would recommend that this is a matter for the Department.

Access to records, record management and information provision

Question 18 What are your views on the approach identified?

It will be important to have clear data management and record keeping policies.

Question 19 Are there additional matters you would recommend for inclusion? If so, please provide details and reasons

It is important to remember that the Child and Family Agency have data protection obligations to third parties.

Question 20 What type of information do you consider should be publicly available regarding the management and delivery of guardian ad litem services?

At present, the provision of GAL services comes at a considerable cost to the public purse. This is in the absence of regulation, governance and accountability. It is imperative that evidence on the service delivery can demonstrate effectiveness and a direct impact on improved outcomes for children in care and value for money.

Question 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 the guardian ad litem services?

There should be transparent and accountable governance processes that facilitate independent quality assurance.

Role of the Child and Family Agency & payment for guardian ad litem services.

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 wish to see implemented. Please give details and reasons.

The Child and Family Agency would strongly contend that we should not be retained as the funder of GAL service provision. The current arrangements have not led to value for money or accountability for the tax payer. As stated previously, the Child and Family Agency is a party to the proceedings and the continuation of the role of funder creates conflict of interest or at the very least the perception thereof.

There should be a clear independent mechanism for the funding of GAL services with uniform national fee structures which are transparent and represent value for money. In 2014, the cost of funding GALs and their legal representatives amounted to 16 million euro. This is set to rise in 2015 even though GALs are appointed in only approximately 18% of public child care cases. This is a disproportionate and excessive cost that should not be borne by the Child and Family Agency.

Engagement of legal representatives

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

Given the envisaged role of the GAL as the court appointed independent professional representing the voice, wishes/feelings of the child, there is no need for legal representation.

Question 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.

If there are exceptional complex cases, there has to be clear guidance as to the appointment of legal representation and it should be subject to regular review. There should be enhanced governance and oversight to evidence accountability and value for money.

Transitional Provisions

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

The transitional provisions should be enhanced by a commitment to transparency, accountability and an assurance that there will be no unnecessary delays in current child care proceedings.

Regulations by the Minister

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

We would recommend consideration be given to the implementation of complaints, quality assurance and registration processes.

Question 27 What are the elements of existing service arrangements that warrant retention and strengthening in a reformed service? Please provide details and reasons.

The role of the GAL should be clarified to ensure that the voice, wishes and feelings of the child are represented in public child care proceedings. This will enhance the concept of child centered service delivery across all spheres

Question 28 What do you consider to be the priority matters to be addressed in reforming current arrangements? Please give details and reasons.

The current arrangement lacks accountability and transparency. It has evolved into a system underpinned by adversity at a huge cost to the taxpayer. The proposed reformed GAL service should lie within the remit of the Department of Justice as this is the natural home of court

appointed professionals. As advisors to the court, the GAL should not require legal representation.

The funding of the reformed service should not lie with the Child and Family Agency as a party to childcare proceedings as this creates conflict of interest.

Question 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 manager and delivery guardian ad litem services under the 1991 Act. If so, please provide details and reasons as appropriate.

The role of the GAL is the opportunity to ensure that the child's voice, wishes and feelings are included in the public child care proceedings. However, despite the fact that this service delivery comes at a significant cost to the tax payer, there is a lack of empirical evidence to demonstrate positive impact on the outcomes for children in care proceedings. This is an opportunity to reform the current system and create a transparent, quality assured accountable national GAL system and as such is welcomed.