



The Independent Guardian ad Litem Agency
2.10 Smithfield Business Centre
New Church Street,
Smithfield,
Dublin 7

9th November 2015

Family Functioning and Children's Rights Policy Unit
Department of Children and Youth Affairs
43-49 Mespil Road,
Dublin 4
D04 YP52

Dear Sir/Madam,

We welcome the Minister's position in moving towards a reformed guardian ad litem service in Ireland with a unitary system for the delivery of that service. We attach our response to the consultation paper and the questions arising. We have included some information on The Independent Guardian ad Litem Agency by way of informing your department as to who is involved in preparing this response.

We would be delighted to be of assistance in any further deliberation of how a unitary system can be achieved in Ireland. We look forward to learning of the outcome of this consultation by your department.

Regards,

Eugene Bigley Claire Quinn

Managing Director Director

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Response to Consultation Paper

On

Preparing a Policy Approach to the Reform of Guardian ad Litem Arrangements

In Proceedings under the Child Care Act 1991.

Introduction to The Independent Guardian ad Litem Agency.

The Independent Guardian ad Litem Agency was set up in February 2014 by Eugene Bigley, Managing Director who was subsequently joined by Claire Quinn as a Director. Both have long and established practice in the field of child protection and child welfare. Claire Quinn is also a qualified Barrister. The Independent Guardian ad Litem Agency was formed to offer independent Guardians ad Litem an organisational structure with a practice framework through which to deliver a guardian ad litem service. This included quality assurance measures of Garda vetting, training and mentoring. The Agency has grown from strength to strength with 11 Guardians ad Litem operating under its remit. (A list of the names and email addresses for Guardians in the Agency is attached to this response) The Agency provides a Guardian ad Litem Service nationally. During September 2015 the Agency provided a Guardian ad Litem Service to 197 children subject to care proceedings under Child Care Act 1991.

The Agency brings a significant cohort of skill and knowledge to working with children in court proceedings in the District Court, the Circuit Court, the High Court, the Supreme Court and the European Court. All Guardians ad Litem who work with TIGALA have a minimum of 10 years social work experience of working with children and families. The Agency has an agreed and published set of practice principles that inform how each Guardian in the Agency conducts their business. See appendix.

The Independent Guardian ad Litem Agency head office is in Smithfield, Dublin, with administrative offices in Cork and Galway.

Consultation questions and response:

Principles and Policies

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.

(Composite Response to questions 1 and 2)

The principles and policies outlined in the paper are consistent with TIGALA's practice principles. This Agency works to such principles and believe they should be written into policy. The Agency has worked hard in consultation with key stakeholders and research to arrive at these practice principles so believe they should become the cornerstone to a more regulated and standardised approach to service provision.

The Agency believes that children of all ages and ability who are subject to court proceedings should have equal access to a guardian ad litem service. The Guardian ad Litem service should also be accessible to all children coming to the attention of care proceedings and where their care circumstances are subject to scrutiny and adjudication before the Court.

The Agency is of the view that for a high quality service to be delivered a clear and comprehensive set of policy and practice principles must be in place against which to measure performance, facilitate review and achieve continuous development. There is also the need to ensure the delivery of service is established within a safe framework. Policy and practice guidelines will form the building blocks for a safer and more robust guardian ad litem service. It will also ensure that all stakeholders in court proceedings are provided with a shared narrative as to 'how' the guardian service is delivered and how those who come into contact with it will experience the service.

Amendment of existing legislation.

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

The Independent Guardian ad Litem Agency is aware that significant legislative reform will be required to inform the design, structure and implementation of a reformed guardian ad litem service in Ireland.

The Agency would support and welcome legislative reform that ensures the rights of the child remains central to the work carried out by the guardian ad litem service. The legislation should facilitate the unitary guardian ad litem provision to ensure the child is held central to decisions and judgements and that it is in line with international legislative frameworks that uphold the rights of the child.

Establishing a nationally organised, managed and delivered service.

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?

(Composite response to questions 4, 5 and 6.)

The Independent Guardian ad Litem Agency is of the view that a public procurement process for such a service would be most appropriate means through which to establish a service that is fit for purpose. The service to date in Ireland has been delivered through independent providers. Significant skill and expertise and a developed understanding of the landscape in which the guardian ad litem service operates is already in existence. There needs to be an agency/unitary body in place through which the current providers can be brought together to allow for the guardian ad litem service in Ireland to be standardised and regulated. The current provision could experience an evolution in this context without unnecessary distress or upset to the children who have Guardians ad litem working with them.

The proposal of setting up a state body to deliver a guardian ad litem service may have some advantages for the Minister in terms of central control, where Guardians are employed directly with contractual arrangements and the benefits of such in managing workloads and expectations as a government employee.

However, what can be observed in the independent sector is significant flexibility in approach to how the job is managed, and for example a greater flexibility with working unsociable hours and weekends. There is the feature of Guardians who have had to set themselves up to provide a service but also to establish a business framework to create an income for themselves and sustain that business. These individuals are usually characterised as being driven and focused. In this instance only good quality child focused practice is sustainable as for those who do not perform at the highest level, are unable to attract work. There is a natural selection of the Guardians who are most able to manage in a complex environment and who provide the best service to children. The Independent Guardian ad Litem Agency has been formed on this basis, to attract competent professionals who are also able to function in an environment that requires effectiveness and efficiency. This Agency believes that, as an independent body there is the possibility of providing a guardian ad litem unitary body with a flat management structure and with a lean infrastructure. These are not organisational outcomes normally achieved by a state body/ public organisation. A flat organisational structure and lean infrastructure are elements that allow for greater transparency, service improvement and accountability at a more effective level than large organisations with several layers of management where service improvements and responses to service concerns take an inordinate amount of negotiation and time to get to.

The Independent Guardian ad Litem Agency recognises that the Minister wishes to establish a guardian ad litem service that is financially viable and sustainable. As such there is a greater possibility of targeting financial resources to provide a service to an optimum number of children, where the Minister does not have to bear the infrastructural costs for the set up of a new body. The pre-existence of an already established body to ensure the policy and principles are achieved in delivery of service strikes us as being a more effective means of establishing a unitary system in a more timely and cost effective manner. With the existence of a tendering process and the award of a contract an agency could then effectively work on a unitary price for the delivery of a guardian ad litem service on the basis of maximising the number of children that can be reached in the Courts with the finite amount of funding available.

And finally a government body directly employing the guardian ad litem service may be seen to compromise the distance that should exist between the independent function and role of a Guardian ad Litem and the role of the government, for example with the Child and Family Agency within child protection.

There are a number of critical elements that need to be in place and that are common to whatever structure is agreed, to set up the unitary system.

1. A comprehensive operational policy and plan.
2. A management and reporting structure with good governance and quality assurance.
3. A workforce planning strategy.
4. Comprehensive financial planning with provision for yearly reporting.
5. Identified performance indicators with yearly review and reporting.
6. A full review of service provision on a three yearly basis.

Children who are made a party to proceedings

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

The Agency believes that the instances where the child is made a party to proceedings and is expected to instruct a solicitor should be defined with a clear basis set out as to why that should be the case. Children subject to proceedings are vulnerable and have experienced significant trauma. The Guardian ad Litem has the necessary skills and expertise to allow the child to share their wishes and feelings with the Court in the context of understanding the child's development and any trauma that they are experiencing. This is not a function of a solicitor's role. Therefore, the child could become directly involved in an adversarial situation with giving instruction to a solicitor. This is not a child centred approach and is not sensitive to the backdrop of abuse and neglect children in care proceedings have experienced. There are significant and wide ranging negative implications for a child to be joined as a party to proceedings. The application before the court is usually against a parent and where the child is given responsibility as a party it could at the very least be overwhelming for them or create a situation where a child will compromise their own safeguarding needs rather than speak out directly to the Court via a solicitor. A scenario where a child may be forced to attend Court to give evidence if they become a party would not be in the interests of justice for children in a system that is dominated by adults and where the effects of attendance in itself could be further abusive to the child.

Appointment of Guardian ad Litem

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.

(Composite response to questions 8 and 9)

The Independent Guardian ad Litem Agency would concur with the criteria identified in the consultation paper for appointment of a guardian ad litem. However, this Agency would go further to support the view that all children who are subject to child care proceedings should have access to a guardian ad litem service without exception. This would serve to address the stark inconsistency in appointments and practice throughout the country. It also recognises the rights of each child to have an equal opportunity to have their wishes and feelings heard in Court and their best interests independently represented. There is currently little consistency in the appointment of Guardians ad Litem across the country and as such no sense of equality of access to this service for children across Ireland exists. Whilst this might pose a challenge to a unitary system in maintaining the financial viability of the guardian ad litem service it would encourage the further development of a practice framework to maximise the number of children that can be reached in the Court process.

Role of Guardian ad Litem.

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

The Independent Guardian ad Litem Agency believes this to be a comprehensive overview of the role of the guardian ad litem. This Agency has gone to extensive efforts to bring the role of the guardian ad litem into focus for the purpose of clarity and shared understanding. This Agency has published its account of the role of the guardian ad litem on the TIGALA website for public access. Each guardian in the Agency works within that role. A comparison of this paper's role description and that of this Agency finds a comfortable and agreeable fit on the role of the guardian ad litem. This agency would therefore welcome this role description having national agreement for implementation.

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?

There is a significant opportunity in the role of the guardian ad litem to bring a sense of mediation to the process. Invariably the guardian's focus on the individual needs of the child allows them to bring parties to agreement on a number of matters affecting the child. The Guardian is often able to contribute time and effort to creating a collaborative approach in addressing the child's interests. As the guardian is not caught up within the sometimes adversarial nature of proceedings they can use that position to forge relationships with both parties to good effect, help to mediate and build on care planning issues that can become stuck in the 'fight' between a parent and TUSLA.

The Guardian has a key role in ensuring that the child has an age appropriate but clear understanding of the application affecting them that is before the Court. As such the report provided by the Guardian can set out the areas of consensus between the parties and can invite the parties to work with them for a clearer understanding of the child's position.

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.

The Independent Guardian ad Litem Agency believes that the guardian ad litem has quite a unique position in the child's life and in the process of determining what is in their best interests. This agency recognises that often there can be drift in matters being brought to a conclusion for children in Court due to a number of factors. This Agency would see a role for the Guardian ad Litem in advising the Court on timetabling of decisions being made for the child. This includes assisting parties to agree what assessments are to be progressed and completed, expected timescales for these to be completed and advising the Court as to when matters could be listed for full hearing.

Possible Provision of the guardian ad litem report to the child

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.

Whilst it is important that a child is engaged in the process in so far as is possible it is not always appropriate for the child to read the guardian ad litem report. The report can contain information that speaks to the analysis of assessments and information pertaining to their parents' circumstances e.g. Chronology of events in parental behaviour that the child may not be aware of.

It is this Agency's view that it would be inappropriate for the child to read the Guardian ad Litem reports in its entirety due to the very sensitive nature of the overall content. It is however appropriate for the child to review the wishes and feelings section of the report with the guardian ad litem and this Agency would support such a practice measure being in place.

The child should also be given an age appropriate explanation of the guardian's recommendations. In instances where the wishes and feelings of the child and the best interest opinion of the guardian's professional opinion are different, then a clear account should be given to the child in relation to this.

Status of the Guardian ad litem

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

The Independent Guardian ad Litem Agency welcomes discussion of clarity on the status of the guardian ad litem in Court. There is significant variation in perception as to the status if the guardian in Court. This perception impacts on acceptance of the role and therefore the Guardian ad Litem's influence in developing an appropriate plan for the child.

This Agency believes that the role of the guardian ad litem should at the very least be that of an independent court appointed adviser. However, there is concern that the role should carry the necessary gravitas to reflect the child's position as being central to the proceedings. Further that the guardian ad litem can give evidence on the child's wishes and feelings and also what is in the best interests of the child. That the enquiries the guardian ad litem brings to the Court within a written report are constructively used in determining what is best for the child.

This Agency would support the need for status to be clearly described in legislation where it takes account of a child's right to be heard, their interests to be independently represented and the mechanism within a Court hearing for that to be protected.

Qualifications and eligibility for appointment

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.

(Composite response to questions 15 and 16)

All Guardians ad Litem in this Agency hold at least 10 years post qualification experience and extensive post qualification training. It is the view of The Independent Guardian ad Litem Agency that all Guardians ad Litem should hold a Social Work Qualification in order to have the skill and experience to conduct the relevant wide ranging enquiries and to be in a position to understand and analyse the content of assessments and their likely impact on children, families and the process.

The guardians ad litem in this Agency would unanimously agree that three years experience is inadequate to be able to carry the role of guardian ad litem effectively. Confidence and competence grows and develops over time. Functioning as a guardian ad litem means being able to carefully navigate a professional presence in a complex environment and maintain professional independence in what can be on occasion very testing situations.

It is the view of The Independent Guardian ad Litem Agency that guardians ad litem should have at least 7 years post qualifying experience in social work with additional training in child development, direct interviewing of children, attendance at Court and report writing.

This Agency believes that social care and psychology qualifications provide for professionals to engage in direct therapeutic work with children. However, these professionals would have the disadvantage of not having as full and understanding of the approaches and interventions utilised by TULSA as would independent professionally qualified social workers.

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.

The Independent Guardian ad Litem Agency believes it is prudent that where there are Guardians ad Litem appointed to cases an agreed means of bringing those appointments to closure should be put in place. Where a guardian is practicing and holds qualifications and eligibility to practice outside the agreed criteria then their appointment to existing cases should be allowed to expire on conclusion of those proceedings as exceptional circumstances.

Access to records, records management and information provision.

18. What are your views of the approach identified?

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

(Composite response to questions 18 and 19)

It is the view of The Independent Guardian ad Litem Agency that Guardians should be entitled to have access to relevant case records of the Child and Family Agency or any other documents commissioned by the Child and Family Agency, the Courts or another party to the proceedings. The Guardian should be furnished with a letter of appointment from TUSLA via the Court, setting out the relevant papers and reports in the case that they will have access to.

The proposed national Guardian ad Litem Agency would be obliged to hold responsibility for the secure storage and correct management of these documents. The Agency should have an established policy in relation to data protection that all guardians associated with the agency adhere to. This would include electronic files and data transfers, where all documents should be encrypted.

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

The Independent Guardian ad Litem Agency hold a clear and unambiguous view that all activities of any such proposed Guardian ad Litem Agency should operate in an open and transparent manner within the confines of the confidential nature of case information. It should be incumbent upon any such agency to produce a yearly report to reflect accountability and value for money.

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?

Key headings should be agreed with the Minister to identify and formalise the transfer of essential and useful information to the said Office. This would include statistics of operational activity, and performance indicators with progress measurements relevant to the agreed key headings. This could include:

1. Number of children allocated a guardian ad litem.
2. Types of application under which guardians' ad litem are appointed.
3. Length of time guardian ad litem appointed to a child.
4. Which Court the guardian ad litem has been appointed by.
5. What TUSLA area the child is located in.
6. Outcome for the child who is allocated a guardian ad litem.
7. Number of suitably qualified guardians ad litem available to be appointed to children.
8. Complaints and compliments received against the guardian ad litem service.
9. Steps being taken to encourage continuous review and service development.
10. Any adverse issues impacting upon the prevailing policy principles for the delivery of service.

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

22. If involvement of 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?

It is the view of The Independent Guardian ad Litem Agency that an essential quality in the role of the guardian ad litem is their independence before the Court. The Agency believe it is preferable to maintain independence and ensure greater independency by severing the financial connection between the Child and Family Agency and the Guardian and the financial responsibility for this budget be given to a Department separate from the Child and Family Agency.

Engagement of legal representation

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

The Independent Guardian ad Litem Agency has articulated a view on this in previous sections of this response. This Agencies view is based around the principle that the child in these proceedings is an independent rights holder and should have equal access to Justice as do their parents and TUSLA have. Ultimately for equality of arms guardians ad litem should have the benefit of legal advice and/or representation when representing the wishing and feelings of a child and what is in their best interests. This Agency believes that this can be achieved in one of two ways. That access to direct instruction of solicitors continues or the service provider provides access to in-house legal advice on routine matters and external advice on those matters that are deemed to be of a more complex nature. This also goes to the issue of the level of qualification required by a guardian ad litem and reinforces this Agency's view that at least 7 years experience in social work is required to practice independently and competently in this field.

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.

The Independent Guardian ad Litem Agency is of the view that the establishment of a unitary service for the provision of Guardian ad litem services to children in Ireland is required to ensure that the activity in all aspects of the provision of this service are transparent, fit for purpose and represent value for money. The Independent Guardian ad Litem Agency are of the view that the current disjointed and unregulated system is untenable and there is an absence of consistency or accountability. It would be envisaged that a unitary agency would provide a regular periodical review, the term to be set down in the service level agreement. Accounts and reports to be furnished to the commissioning body on a yearly basis.

Transitional provision

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

The Independent Guardian ad Litem Agency would support this provision.

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.

Discretion to be left with the Minister to introduce further reform as is deemed required, following a consultation process.

Conclusion.

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

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.

(Composite response to questions 27, 28 and 29)

The Independent Guardian ad Litem Agency would envisage the unitary Agency carrying out all activity under an agreed budget. That an Agency would have a robust financial management system. A workforce management strategy would be essential to include detail on the recruitment, retention and direct employment as well as sub contractual arrangements, of competent and effective personnel. The unitary Agency would have a formula that quality assures the performance of guardian's ad litem. The unitary agency could consider a level of in-house legal expertise to field standardised and common legal issues, to ensure effective use of financial resources to minimise, when appropriate, costly external legal consultations. The Agency ought to provide professional development and mentoring to Guardians, as well as shared learning events with key stake holders.

The Independent Guardian ad Litem Agency is of the view that there may be scope for developing the role of the Guardian before the Court. The Guardian would be required to be heavily involved in the matter before the court and with the children at the outset of the case, gathering information to produce a comprehensive set of recommendations in an initial analytical report. This would include a detailed plan as to the steps that should be taken to bring the matter to conclusion and options for the Court to be able to advance the matter in the most effective way. Thereafter the guardian ad litem to come before the Court with an updated report within an agreed timeframe as is deemed necessary by the Court or the Guardian and as the matter approaches conclusion, the Guardian is to submit a full and final report before the Court.

A unitary Agency will be required to develop a system, as The Independent Guardian ad Litem Agency have, to capture the detail of Guardian's work in real time, for the purpose of transparency and consistency in time management and financial matters.

*The Independent Guardian ad Litem Agency
Directors: Eugene Bigley and Claire Quinn
Date: 9th November 2015.*

Appendix

Guardian ad Litem	Email address
Eugene Bigley	<u>eugene@tigala.ie</u>
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Julia Costello	<u>jcostelloe.guardian@outlook.ie</u>



Appendix Practice Principles

1. The enquiries carried out by a Guardian ad Litem is focused on direct contact with the child, meaningful engagement, and accurate representation of the child's wishes and feelings. The Guardian ad Litem will tailor their approach to the individual needs of the child, depending on their age and stage of development.
2. Where a Guardian ad Litem professional opinion differs from the child's explicit wishes, this will be clearly acknowledged in a written report, and a clear explanation given as to why this is the case.
3. The Guardian ad Litem acknowledges the important role of the family in each child's life. The Guardian ad Litem enquiries will view the child in the context of a family system. The Guardian ad Litem will acknowledge the role of parents taking into consideration their individual needs and personal challenges and life experience to date.
4. The Guardian ad Litem enquiries will identify the community and culture of where the child came from and ensure that this is included in the planning for the child's care. The Guardian ad Litem will make recommendation as to the cultural requirements of the child.
5. The Guardian ad Litem works to establish a collaborative basis to achieve a clear understanding of a child's wishes and needs. This includes holding the child's wishes and feelings at the centre of focus in all deliberations.
6. The Guardian ad Litem completes a written report to the Court on the basis of clear evidence gathered through comprehensive enquiries. Guardian ad Litem written recommendations are balanced and have a professionally objective basis. Recommendations are made to support the care planning process and to assist the Court to make decisions in the best interest of the child.
7. The Guardian ad Litem practice will be quality assured through continuous professional development with regular clinical supervision, training and practice reflection. Guardians ad Litem sign up for membership of professional bodies. Garda clearance for each Guardian ad Litem is achieved and can be produced when requested through the Court. Each Guardian ad Litem has at least 10 years experience in the field working with vulnerable children and families.
8. The GAL will make all enquiries in a manner that respects all others, is inclusive; child centred and supportive of positive outcomes for children subject to proceedings.

Guardians ad Litem adhere to practice principles, and ethical position as advertised on the website www.tigala.ie