



## **Preparing a Policy Approach to the reform of Guardian Ad Litem Arrangements in Proceedings under the Child Care Act 1991**

### **Submission to the Consultation Paper**

In the words of Hoyano and Keenan: “Because much of the safe-guarding work is nuanced absolute rules will not necessarily be useful or used; instead, clear principles combined with a reduced amount of guidance, and time and fora for considered decision-making, would be more effective.... Aspirational legislation can never be implemented effectively by those who are besieged, overburdened and poorly trained.”<sup>1</sup>

1. Are the principles and policies identified the appropriate ones? Please provide the reasons for your response.

EPIC is in agreement with the majority of the principles and policies identified. However, in question three, it would be positive to see *equality of accessibility* being the cornerstone of all accessibility. This point requires further expansion. For example, it would be good to qualify that all children who are not capable of forming his or her own views shall be deemed to be in need of a Guardian *ad litem* by the court. This would ensure that all children involved in care proceedings – from the very young child to any child or young person with a disability, would be automatically entitled to a Guardian *ad litem*. This need has been well documented by Carol Coulter through the course of her work for the Child Law Project.

Currently it is fair to say that many children who get a Guardian *ad litem* appointed experience a very high quality service, but unfortunately not all children do. The quality and standards of Guardian *ad litem* varies across the country, as

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<sup>1</sup> Hoyano, Laura and Keenan, Caroline, *Child Abuse: Law and Policy Across Boundaries*, Oxford University Press, 2010.

does the appointment of such a Guardian. Such inconsistencies are unacceptable and must be safeguarded against. Carol Coulter's *Interim Report: Child Care Law Reporting Project* in 2013 made it clear that the appointment of a Guardian *ad litem* is often patchy; and that the appointment of a Guardian *ad litem* was not always clear, and that they were more likely to be appointed by the courts in Dublin and other major cities while rarely in rural towns especially along the Western seaboard.<sup>2</sup>

The law relating to the appointment of a Guardian *ad litem* is too vague. Section 26 of the *Child Care Act* permits the court to appoint a Guardian *ad litem* if this is in the interests of the child and in the interests of justice, which unfortunately and effectively leaves the matter up to the discretion of the individual judge. The Act provides no further guidance as to the role of the Guardian *ad litem*, or indeed what his or her qualifications should be. This deficit is well known and has been widely discussed in particularly detail from about 2009 with the report of the former Children's Act Advisory Board on Guardian *ad litem*.

2. Are there other principles that you consider should be included? Please provide details and reasons

The Guardian *ad litem* should be bound and made adhere to a professional code of ethics which centres on loyalty to the young person and indeed, should be regularly inspected by an independent body such as the *Health Information and Quality Authority (HIQA)*, in relation to set criteria in regulations and standards as well as a professional code.

In order for a Guardian *ad litem* to properly fulfil his/her role s/he must be given the necessary amount of time to properly develop a relationship of trust with a child to ensure that they are accurately able to fully represent the views of the child as well as the best interests of the child. EPIC fully understands the onerous time consuming nature of working with children and young people, but it is the only way to properly ensure that the child's voice is central to any proceedings. This is also central to our obligations under the Constitution and the UN Convention on the Rights of the Child.

In order for a Guardian *ad litem* service to be effective, consistent, efficient, transparent and sustainable a number of issues must be considered:

- i. Regardless of the amount of training received by judges it will be impossible to promote an equitable and consistent appointment of a Guardian *ad litem* service across the country. EPIC would therefore

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<sup>2</sup> GALs were present in 75.3% of cases in Dublin but only 51.5% of cases elsewhere. GALs were appointed in 62.5% of cases in Cork.

strongly urge the appointment of a Guardian *ad litem* for every child involved in care proceedings to ensure equity and consistency.

- ii. In order to promote effectiveness, efficiency, transparency and thereby promote sustainability, EPIC suggests, as stated above, that Guardian *ad litem* be subject to random and regular inspection by an independent body such as the HIQA. Furthermore, if Guardian *ad litem* were nationally and independently managed, the managers could assist with quality control and consistency, and be accountable to the relevant Department and Minister.
3. Do you have any observations on this approach? If so, please provide details and reasons.

Any amendment to the *Mental Health Act 2001* in relation to the appointment of a Guardian *ad litem* should take on board the same approach in terms of appointing a Guardian *ad litem* to a young person as mentioned above. The appointment of a Guardian must be consistent across all legislation, and must adhere to the standards and principles alluded to above under question 1 and 2. Consistent regulations and standards should be developed and inspected against.

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.
- i. Direct provision of a Guardian *ad litem* through a new dedicated public body could prove to be unnecessarily bureaucratic, and expensive, particularly at the set up stage. Furthermore, the establishment of such a body would be slow, at a time when reform is long overdue.
  - ii. Utilising existing or even reformed structures in either the children or justice areas would be unsatisfactory to EPIC, as it would not create the necessary independence. However, the Department of Justice or the Department of Children and Youth Affairs could be involved in the discharge of payment for Guardian *ad litem* services.
  - iii. Public procurement of such services under contract could prove the easiest way to proceed at this stage, but appropriate safeguards would need to be put in place to ensure financial and quality control. Independent inspections and the development of strict regulations, standards and protocols would be required. The service would need to be monitored and reviewed regularly.

5. Are there any other feasible, effective and sustainable approaches you would recommend? Please provide details and reasons.

A variation on point 4.iii. above.

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?

As mentioned above, the critical elements of a national service must be: independence, experience, training, good practice guidelines, strict regulations and standards that can be inspected against, as well as ensuring that the operational needs of providing adequate support and supervision for Guardian *ad litem* are in place.

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

The provision of a child to have his/her own legal representation should not be mutually exclusive to the provision of a Guardian *ad litem*. Both professionals bring different skills and added value to proceedings. However, where you have an overlap in terms of the qualifications and skills of a Guardian *ad litem* who may also be a practising legal representative, then flexibility should be encouraged in terms of appointments. As a result of this, the professional qualifications deemed to be necessary for Guardian *ad litem*, should be broadened to include the law, so long as social care experience and knowledge can be justified by other means. The doubling up on roles, where it is seen to be advantageous to a child, must be considered. Any service and therefore its individual professionals, must be able to live up to inspection against strict standards. Any national service could also consider retaining its own in house legal advisors to offer advice and support to Guardian *ad litem*.

The appointment of a Guardian *ad litem* to a child must be subject to appeal, should there be a conflict of interest, or indeed where a young person feels that his/her voice, needs and wishes are not being listened to or advocated for appropriately. A young person must have a right to seek alternative support and representation, should s/he not be satisfied with the particular Guardian *ad litem* appointment made – subject to approval, and ensuring that appropriate safeguards to protect against abuse are established.

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

The legislation and relevant statutory guidance should make it clear that appointments should always be made in proceedings under Part IV (Care Proceedings), IVA (Children in Need of Special Care or Protection), and VI (Children in the Care of the Child and Family Agency) of the 1991 Act and would fulfil our obligations under the Constitution and the UN Convention on the Rights of the Child. Any child who is non-verbal, or has moderate to severe special needs and who is in care must be automatically appointed a Guardian *ad litem*.

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.

In a recent case involving an EPIC Advocate, a Guardian *ad litem*, was not appointed due to the Judge in question believing that there “were already too many professionals involved in the case”, despite the clear need for a Guardian *ad litem* to be appointed. The inconsistency in terms of current granting and refusing of applications is frustrating and unjust.

It would be advantageous for Guardian *ad litem* to develop specific areas of expertise, and would ensure greater productivity and understanding of specific issues, such as disability. The needs of the child should be matched with the expertise of the Guardian *ad litem*.

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

Consultation with a child by a Guardian *ad litem* must be mandatory and the frequency of such meetings should be dependent on the complexity of the case, the age of the child, the ability of the child to express his/her views, and any other relevant criteria. The Guardian *ad litem* must be required to keep in regular contact with the child before and during a legal hearing. If there is a significant break in terms of when the case will next be heard by the courts, then a suitable pause and re-engagement of the Guardian *ad litem* must be agreed by all.

Any child who is non-verbal, or has moderate to severe special needs and who is in care must be automatically appointed a Guardian *ad litem*.

There must be a clear and distinct differentiation between the Guardian *ad litem* and the social work system, as in the experience of EPIC, some young people regard the two as part of the same system and do not have a unique relationship with their Guardian. A common criticism is that the Guardian “just

does not listen'.<sup>3</sup> Some Guardian *ad litem* have worked as social workers and then transitioned seamlessly in to the role of Guardian, which does not always ensure a quality Guardian *ad litem* service, particularly if the now Guardian had knowledge of the case as a social worker . This should be born in mind in terms of the requisite professional qualifications of Guardian *ad litem* suggested in this consultation document.

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.

Please see points raised in questions 10 and 11.

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.

Any child who has a Guardian *ad litem* appointed should be entitled to access the full report of the Guardian on reaching the age of majority. While the child is below the age of majority, the child should be entitled to a copy of the Guardian *ad litem* views and decisions, in a child friendly format. The detail given to the child of why decisions were made should depend on the age and maturity of the child, as well as the circumstances involved in the case. Any report given to a child must be in a child friendly format, and must be in an easily accessible manner. Guardian *ad litem* should be appropriately supported and provided with independent advice in the drawing up of such versions of the reports.

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

The skills and experience of a Guardian *ad litem* should not be solely those associated with the social work profession. Other varied professional disciplines must be considered, and must include those listed in the

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<sup>3</sup> Feedback given by a young person in relation to a Guardian *ad litem*, to an EPIC Advocate, 2015.

consultation document and broadened to include other professions such as teaching, youth work, and the law. Flexibility in terms of applicants must also be available, whereby skills and expertise relevant to the post have been developed other than through a professional qualification route. The current consultation suggestions are too narrow and limiting.

Greater flexibility should be included under section B, whereby a Guardian *ad litem*, may not have acted as a Guardian *ad litem* over the preceding number of years due to a pause in service due to career breaks, or career changes, maternity leave etc, so long as the gap in service can be appropriately explained.

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

There is no mention of *Children First* training; a must for any Guardian *ad litem*.

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

Please see response provided under question 16 above.

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.

Please see response provided under question 16 above. The current suggestions listed in the consultation are too limiting.

18. What are your views on the approach identified?

The 1991 Act should be amended so that payment of Guardian *ad litem* should not be the sole statutory responsibility of the *Child and Family Agency*. The *Child and Family Agency* should not be involved as this would create a conflict of interest and would not ensure independence. The consultation paper does not adequately clarify how any perceived or other conflict of interest would be mitigated if the Agency remained in control of disbursing payments. Furthermore, is not satisfactory for the Agency to disburse funds but to have no role in the oversight, governance or similar responsibilities regarding discharge by an individual Guardian *ad litem* of his/her

responsibilities. It would be superior for the *Department of Justice*, or the *Department of Children and Youth Affairs* to oversee these functions.

It is also unsatisfactory that the functions relating to the appointment of a Guardian *ad litem* and guidance regarding the discharge of his/her work in individual proceedings would be exercised solely by a court. As it stands, there are about 50 district court judges around the country. As previously mentioned, there is great inequity in the allocation of Guardian *ad litem* by judges, and training of such judges would only go some way in improving the current discrepancies in terms of equality of access to Guardian *ad litem*. There must be an oversight group that would guarantee consistency, as well as ensuring that standards and practices are consistent throughout the country.

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

All aspects of the service, from appointment of a Guardian *ad litem*, to the delivery of the service, should be subject to independent inspection by an independent body such as HIQA (as mentioned above under question 2). This would ensure equitable service delivery and quality control.

See also points raised in question 18 above.

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

All service provision, regulation and monitoring should be transparent and therefore publicly available, including the financial breakdown of the service. A report of the service, including evaluation by the service users (the children and others) should be regularly carried out, and published. This should be part and parcel of any inspection process, and must include a breakdown across regions. Data must be collated on the service provided by the Guardian *ad litem*, on the frequency and duration of visits, the total length of involvement in the case, and an analysis of key issues must be carried out.

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?

The same information as stated in question 20 above, as well as more regular briefings as to the quality and satisfaction of the service.



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.

As stated above in question 18, EPIC does not believe that the *Child and Family Agency* should be involved in the discharge of payments in respect of a *Guardian ad litem* service.

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

To the best of our knowledge, EPIC is satisfied with the current suggestions with regard to the envisaged approach in relation to the access to legal advice or representation for a *Guardian ad litem*. The use of any legal advice by a *Guardian ad litem* must be consistently monitored and be part of any inspection process. Any independent body established to deliver a national service could retain its own in house legal advisors, who would be able to offer advice to *Guardian ad litem*, as well as reduce costs.

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.

Please see points raised above bearing in mind that that any service development must safeguard the constitutional rights of the child, and be in line with the Convention on the Rights of the Child.

*Guardian ad litem* should receive regular training and development, as well as expert support and management, to continuously ensure that the service is operating to the highest of standards.

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

The development of regulations and standards is necessary to ensure a quality equitable professional service is delivered, and that this service can be inspected and monitored against such regulations and standards. Any development of regulations should involve consultation with stakeholders

(including children and young people who have been appointed a Guardian *ad litem*), and be regularly reviewed.

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.

The review of the entire service, from appointment to delivery, requires overhaul. The service must be adequately resourced, be independent, be independently inspected, and be held accountable for the quality of service provided, as well as value for money.

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.

As part of this consultation process, it would be very worthwhile if the views of some young people who have direct experience of working with Guardian *ad litem* were sought. EPIC would gladly assist in the facilitation of any such consultation.