

# AN BORD UM CHÚNAMH DLÍTHIÚIL

Recd Today  
20/11

**An Bord Um Chúnamh Dlíthiúil**  
48-49 Sráid Bhrunsaic Thuaidh  
Lána Sheoirse  
Baile Átha Cliath D07 PE0C  
**DX 1085 Na Ceithre Chúirteanna**



**The Legal Aid Board**  
48-49 North Brunswick Street  
George's Lane  
Dublin D07 PE0C  
**DX 1085 Four Courts**

Tel: (01) 6469600  
Faics: (01) 6469799

**LEGAL AID BOARD**

Tel: (01) 6469600  
Fax: (01) 6469799

Mr Colm Keenan  
Principal Officer  
Department of Children and Youth Affairs  
43 Mespil Road  
Dublin 4

16<sup>th</sup> November 2015

Re: Reform of guardian *ad litem* services under the Child Care Act, 1991

Dear Colm

I refer to your letter of the 12<sup>th</sup> October 2015 which I copied to the solicitors working for us in order to give them the opportunity to voice their own views. I understand that a small number may have done so.

I appreciate that I had the opportunity to attend at your offices and discuss the draft Consultation Paper and I'm also mindful that the time for formal submissions has now passed but in any event I'll offer my own thoughts in writing on some of the matters raised. My own background is that I worked as a solicitor in a number of our law centres and would have represented respondent parents in these cases. I was also our Director of Civil Operations for a period of time during which I had a broader overview of the Board's legal representation on behalf of respondent parents.

## **Questions 4, 5 and 6**

I don't believe that direct provision through a new dedicated public body is necessary. There is some political impetus to reduce rather than increase the number of State bodies. There is a significant administrative and management cost associated with new bodies. I also don't believe that public procurement of services to be engaged under contract by the Minister is sufficient to give the sort of oversight that is necessary. I believe that this work sits relatively comfortably with the work of the Probation Service. As you are aware the Probation Service has been involved in the family law area in the past, dating back to in or about 20 years ago and also more recently on foot of a pilot project involving the Courts Service whereby the Probation Service provided reports on foot of section 47 of the Family Law Act 1995.

It already has a significant geographically dispersed infrastructure for supporting the Courts and management arrangements that are used to managing dispersed services provided by experts or professionals. It no doubt has in place systems on the criminal justice side in terms of standards and quality assurance that could offer a good template.

One other option is the Courts Service itself. While there may be reluctance on its part, if the services are to be provided at the beck and call of the Judiciary, there is a logical argument that the Courts Service would manage the provision of guardian ad litem services. A counter argument is that unlike say with the Probation Service, the Courts Service does not have the experience of managing the delivery of what might be termed 'third party support services' provided through experts or professionals.

While not part of the Consultation Paper, it would in my view be very appropriate that consideration is given to the operation of the provisions in the Children and Family Relationships Act 2015 in relation to the voice of the child – I refer specifically to the provisions of the new section 32 of the Guardianship of Infants Act 1964 (inserted by section 63 of the Children and Family Relationships Act 2015) in tandem with the GAL considerations. The section enables the private family court Judge to give such directions as it thinks proper for the purpose of procuring from an expert a report in writing on any question affecting the welfare of a child or appoint an expert to determine and convey the child's views.

Issues on the private law side in terms of the qualifications, suitability, oversight, quality assurance etc of experts reporting on the welfare and the wishes of a child, are likely to be similar to the issues prompted by the GAL considerations. I understand that the Department of Justice and Equality is actively looking at trying to commence the aforementioned provisions in the 1964 Act and I believe there is a strong argument to at least consider looking at the issues relating to the management of the provision of private law experts and public law GALs, in tandem. The fact that different government Departments have responsibility for the two issues cannot or should not be a factor, particularly post the Civil Service Renewal Plan.

### **Question 7**

I believe there needs to be clarity in relation what the role of the guardian ad litem is in these circumstances. My understanding is that a GAL's role is to give an expert opinion on what he or she believes to be in the best interests of the child and to relay the child's wishes to the court. I'm assuming that the logic of the current legislative position is that if the child is sufficiently mature or able to participate as a party to the proceedings, he or she has no need for a GAL. There is merit in this argument. That circumstance would not preclude a court getting a 'welfare' report from an expert in relation to best interests of the child.

### **Question 8**

In truth I believe the seventh bullet point – enabling the court to appoint a GAL where it is satisfied that it is in the best interests of the child to so appoint one, is so broad that it catches all and in many ways it renders Question 9 redundant. I don't see this necessarily as being a negative, though I believe it should be anticipated that in practice, a GAL will be appointed in the vast majority of cases.

### **Question 20**

I would submit that the more information that is publicly available, the greater the level of accountability there is likely to be. There should be transparency in relation to any GAL panel. Certainly all standards, qualification requirements, payment schedules etc should be available. Careful consideration should be given to the statistical data that can better serve the provision of GAL services. That data should include cost. Without having made much enquiry, it appears to me that there is very little information available in relation to issues such as GAL cost per case, the cost of GAL services generally, the number of cases involving GALs, geographical differences in the use of GALs etc. My understanding is that the Child and Family Agency are somewhat reluctant to overly involve themselves in actively managing the costs because of the perceived conflict of interest in doing so.

While not directly related to this question, there needs to be much greater transparency into the money that is being spent on the legal process for these cases generally. I hear occasional anecdotal comments about the cost of the legal proceedings or particular applications, where they could involve multiple sets of solicitors and barristers as well as a GAL and others, outweighing the cost of a service that might be the subject of a disputed application.

### **Question 22**

My response to this is there shouldn't be an involvement by the Child and Family Agency at all. There should be a budget transfer to the body that assumes responsibility for GAL oversight.


### **Question 23**

It has never been clear to me, the basis for a GAL requiring legal representation. My understanding is that in general terms a GAL is appointed on account of their expertise and experience in the area of child welfare. They are essentially an 'expert'. Like any other expert in a court situation, they are open to give evidence in court and to be cross-examined. They do not represent the child as such and may well give evidence that runs counter to the child's wishes. While I appreciate that a comparison is not entirely appropriate, to the best of my knowledge there are no other areas of law where 'experts' who have no personal interest in the outcome of a case, are legally represented.

### **Question 24**

It is not clear to me how the GAL legal costs are controlled at the moment or what criteria there are for the appointment of particular solicitors to represent GALs. If GALs are to formally be entitled to seek legal representation there needs to be some element of management of this. Allowing GALs to appoint their own solicitors without any supervision or accountability mechanism in terms of solicitor choice or the terms and conditions upon which the solicitor is retained, runs counter to good practice in terms of much of what is being promoted in the public service regarding openness, fairness and transparency in the retention of lawyers where they are being paid from the public purse.

Yours sincerely



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John McDaid  
Chief Executive