

Mental Health Commission

Response to the Consultation Paper on Preparing a Policy Approach to the Reform of Guardian Ad Litem Arrangements in Proceedings under the Child Care Act 1991

The Mental Health Commission ('the Commission') welcomes the opportunity to respond to the Consultation Paper prepared by the Department of Children and Youth Affairs (DYCA) on proposals to reform the law regarding Guardian *Ad Litem* arrangements in proceedings taken under the Child Care Act 1991.

The Commission notes that the Consultation Paper has been prepared by the DYCA against the background of a commitment to "*bring forward proposals to significantly reform the provisions in the Child Care Act 1991 relating to Guardians Ad Litem.*"

Section 25 of the Mental Health Act 2001

The Commission has an interest in these proposals having regard to section 25 of the Mental Health Act 2001 ('the 2001 Act') which provides for the involuntary admission of children and incorporates certain provisions of the Child Care Act 1991 into the 2001 Act. The Commission believes that many children who are the subject of section 25 applications may already be the subject of proceedings under the Child Care Act 1991. The Commission considers that these cases make up a small but significant group of children who suffer from mental ill health to the extent that they are required to be detained but who, in many cases, may have also had extensive contact with the State's child care services.

The Commission notes that the number of section 25 orders since the commencement of Part 2 of the Mental Health Act 2001 are as follows:

2014	15
2013	14
2012	18
2011	21
2010	13
2009	9
2008	8
2007	3

Section 25(14) of the 2001 Act provides:

"The provisions of sections 21, 22, 24 to 35, 37 and 47 of the Child Care Act, 1991, shall apply to proceedings under this section as they apply to proceedings under those sections with the modification that references to proceedings or an order under Part III, IV or VI of that Act shall be construed as references to proceedings or an order under this section and with any other necessary modifications."

With regard to the appointment of a guardian *ad litem* the key provision is section 26 of the Child Care Act 1991, as amended. Section 26 provides *inter alia* that "*the court may, if it is satisfied that it is necessary in the interests of the child and in the interests of justice to do so, appoint a guardian ad litem for the child*". It further provides that "*the guardian ad litem concerned may instruct a solicitor to represent him or her in respect of those proceedings...*"

The Consultation Paper envisages that the appointment of a guardian *ad litem* would remain at the discretion of the Court under the revised legislation in applications under Part IV, IVA or VI of the Child Care Act. However, in the Commission's view, the appointment of a guardian *ad litem* and a legal representative on behalf of the child should be mandatory where an application is being brought pursuant to section 25 of the 2001 Act. This is because, in the Commission's view, children the subject of section 25 applications are particularly vulnerable and their views should always be taken into account by the Court, in so far as this is possible, when hearing such applications. The Commission considers that applications under section 25 are often particularly complex and that the child should therefore be entitled to legal representation as of right. The Commission is further of the view that the guardian *ad litem* and legal representative should continue to represent the child even after a section 25 order has expired where the child continues to be the subject of proceedings under the Child Care Act, 1991 in order to maintain continuity and protect the child's best interests.

The Commission believes the appointment of a guardian *ad litem* and a legal representative to children the subject of an application under section 25 of the 2001 Act may have a therapeutic effect in some cases.

Establishing a nationally organised, managed and delivered service

The Commission would favour an approach whereby guardians *ad litem* were engaged on a contract for service basis and that this panel was managed by a public body which had no involvement whatsoever in proceedings or applications taken under the Child Care Act or section 25 of the Mental Health Act. This would avoid any possibility of conflicts of interest arising.

Children who are made a party to proceedings

As is clear from the above, the Commission is of the view that there are circumstances in which a child should have the benefit of both a guardian *ad litem* and a legal representative and the Commission would therefore welcome such a change in the law.

Qualifications & eligibility for appointment

The Commission is of the view that any nationally managed panel of guardians *ad litem* must receive an extensive and approved programme of training irrespective of their qualifications and experience with the aim of ensuring that all guardians *ad litem* have extensive knowledge of:

- child development;
- the attachment patterns and disorders in childhood;
- the harmful effects of neglect and abuse whether physical, sexual or emotional on the child's development;
- mental health disorders in childhood;
- And the possible negative of a parental mental illness including addiction on a child's overall development.

The Commission is available to discuss further if required.

24 November 2015