

Reform of Guardian Ad Litem Service (GAL) – Courts Service observations on consultation paper

It should be noted that this document represents the views of the Courts Service managers responsible for and with an interest in the family law courts. It does not represent the views of any member of the judiciary.

Principles and Policies – Questions 1 and 2

The Courts Service suggest that it will be important to include the following principles

- The staff engaged by the service will be highly trained and professional and will adopt an evidence-based approach to carrying out their work
- The service will be provided in a cost-effective manner

We suggest that GAL system has fallen into disrepute because of the cost of the service, which is multiplied by the propensity of GALs to seek to be represented by legal advisors. We suggest that GALs should be like any other expert witness appearing in a Court and should not expect or need legal representation

Amendment of Existing Legislation – Question 3

The Courts Service agrees that it will be important to go back to first-principles regarding the GAL system and that the legislation should be repealed.

Establishing a nationally organised, managed and delivered services – Questions 4,5 & 6

The Courts Service would support the proposal for the establishment of such a service. It is our view that this would best be delivered by employees of a new dedicated public body. We understand that this works effectively in Northern Ireland. Given the importance of providing this service, we do not consider that adding the service to the remit of an existing agency would be the most effective way of delivering the service. Using an existing agency would, most likely, mean diverting already hard pressed resources within the agency to meet the requirements of the new GAL regime. It would also mean different areas of the agency competing for resources. There would also be the question as to whether an existing agency would have the appropriate expertise to manage and deliver the proposed new service.

It is our view that a statutory agency with a clear remit as to the management and delivery of a new GAL regime would be the appropriate approach to ensuring the delivering of an effective service. Procuring such services from private providers will create huge headaches in terms of oversight and accountability and is almost replicating the existing failed system.

Children who are made a party to the proceedings – Question 7.

The children rights referendum is not prescriptive about how the voice of the child is to be heard in situations involving family law proceedings. If a child's voice is heard via a suitably qualified GAL, having them represented by a lawyer at the same time is largely replicating the existing system. The funding for legal representation would be much better spent on the provision of support services such as psychological services.

Appointment of a GAL– Questions 8. & 9.

We would support the proposal that the Court would have a broad margin of discretion with regard to the appointment of a GAL. The Courts Service suggests that it is important to think about the service being provided by the national agency as being on a spectrum - from at one end, the GAL

meeting the child and confirming back to the Judge in chambers / open court that the child's best interests are taken into account by both parents to at the other end, an in-depth intervention and report by a GAL in respect of highly conflicted parents and the impact of that conflict on their child/children. The problem at the moment is that there is only one expensive option with nothing in between. A national agency would allow Courts the facility of a range options.

Role of GAL – Questions 10. – 12.

We would support the proposed role of the GAL.

We are unsure as to what is meant by the suggestion that "the Minister for Children and Youth affairs would have discretion to make regulations etc." We would have thought that this would be a matter for the Court.

We would support the notion that the GAL might try to resolve issues of concern by way of discussion and agreement with the Agency. We would think that any intervention which might lead to agreement on matters in dispute would be welcome.

It would be interesting to see how this can be implemented from Tusla's point of view, the given the possible different interpretations of a child's needs and indeed, the funding and availability of services.

Possible provision of GAL report to the child – Question 13

It would be a good idea for a child to have available to them a GAL report, written in language that they can understand. However, I think it will be important for the new service not to spend huge amounts of time writing reports. If reports can be avoided, they should be.

Status of the Guardian ad Litem – Question 14

We are unsure as to what is meant by the GAL being enabled to make application to Court in relation to certain matters. While the GAL would have an obligation to bring matters to the attention of the Court, it may not be necessary that this would be by way of a court application. The child cannot be a fully-fledged party to proceedings. More information is required on the "certain matters" on which applications could be brought.

Qualifications and eligibility for appointment – Questions 15.-17.

We would support the proposal for all GALs to be suitably qualified and to hold Garda Vetting clearance. We note that it is envisaged that a GAL would be required to have qualifications in social work, social care or psychology as well as suitable experience in the relevant discipline. We would query how one can be appointed as a GAL if a requirement of being appointed is that you have acted as a GAL previously. We do not think that being a qualified lawyer is a sufficient qualification as a primary qualification to be a GAL. The transitioning question can only be answered when the Department decides what type of service will be rolled out.

Access to records, records management and information provision - Questions 18. – 21.

The Courts Service feels that the list seems sufficient

The Role of CFA and payment for GAL services – Question 22

Having Tusla pay the fees for the GAL service is problematic, whether the service is provided as an agency or contracted out. It would be better for an agency be set up that receives a grant in aid from DYCA and that it be accountable directly. The controls will be determined by DYCA's own specification of the breadth of the service and the provisions of the law.

Engagement of legal representation – Questions 23-24

Having regard to the costs of legal representation for GALs as set out in the consultation paper, the proposal that the new legislative regime would provide that a GAL would only have access to legal advice/representation as an exceptional matter and where the need for such advice/representation is expressly established is welcome.

Transitional provision – Question 25

The Courts Services feels that the State has to find a way of removing the need for GALs engaging legal advisors. It is hugely expensive and there is a danger that in replicating it in a new system, it is repeating the mistakes of the past.

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