13 Guardian *ad litem* service — follow up report

13.1 A guardian *ad litem* is an independent person appointed by the court to ensure the best interests and the views of a child/children are heard in public family law proceedings. Section 26 of the Child Care Act 1991 provides for the appointment of a guardian *ad litem* in respect of care proceedings where a child is not a party to those proceedings and where the court is satisfied that it is necessary in the best interest of the child and in the interest of justice.

13.2 The presiding judge is responsible for deciding if a guardian *ad litem* should be appointed in a case. The 1991 Act does not set out criteria for such appointments, or the qualifications required for a person to be appointed to act as a guardian *ad litem;* or the role, function or status of a guardian *ad litem* in care proceedings.

13.3 The Children Acts Advisory Board (CAAB) was established under Section 20 of the Child Care (Amendment) Act 2007.[1] In May 2009, CAAB published guidance on the qualifications, criteria for appointment, training and role of any guardian *ad litem* appointed (see Annex 13A). However, the guidance was never given a statutory footing. CAAB was dissolved in 2011.

13.4 The Department of Children, Equality, Disability, Integration and Youth (the Department) is responsible for the policy relating to guardian *ad litem* arrangements. Responsibility for discharging the costs associated with the service rests with the Child and Family Agency (Tusla).[2] Tusla does not have a role in the management or monitoring of the service.

13.5 An overview of the guardian *ad litem* system is set out in Figure 13.1.

Focus of this examination

13.6 The Comptroller and Auditor General examined the operation in 2015 of the guardian *ad litem* system, and published a report on the examination in September 2016.[3] Based on the findings of the examination, the report included three recommendations, which were agreed to by the Department and Tusla.

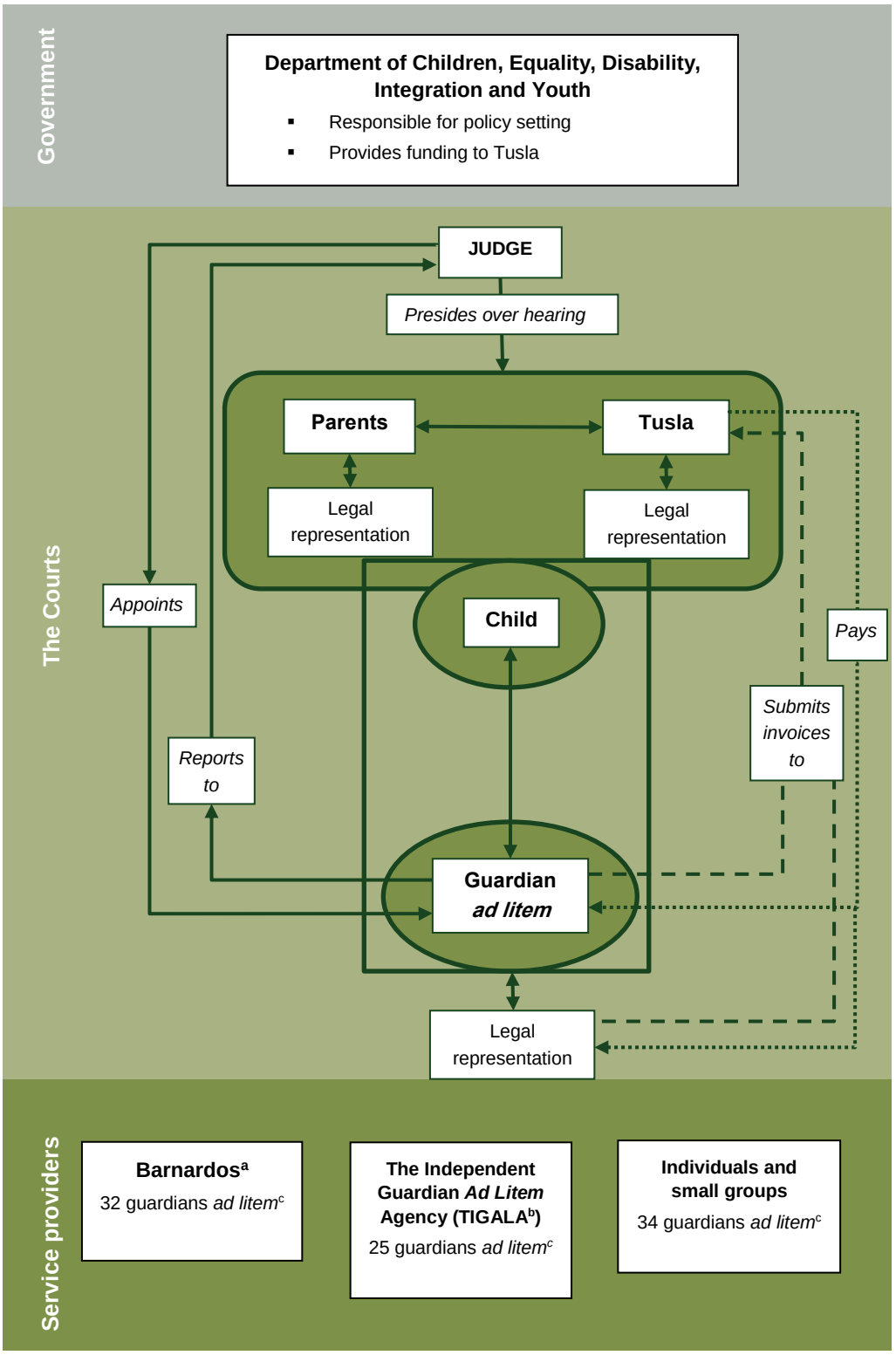
13.7 This examination reviews the progress made by the Department and Tusla in implementing the recommendations.

1 CAAB was set up to provide advice on policy issues relating to the coordinated delivery of services to children and young people at risk.

2 Until the end of 2013, the costs associated with this service were reported by the HSE in their annual financial statements as 'professional services'.

3 Chapter 11 Guardian *ad Litem* Services, Report on the Accounts of the Public Services 2015.

Figure 13.1 Overview of the guardian *ad litem* service



Source: Office of the Comptroller and Auditor General

Notes:
a Barnardos has been providing a guardian *ad litem* service to the courts since 1997.
b TIGALA was formed over the period 2014 – 2015 by a number of guardians *ad litem* who had previously operated on an individual basis.
c Number of guardians *ad litem* identified in 2021

Management and supervision of the service

Recommendation

Responsibility for the management and supervision of the service should be assigned to a single entity, and preferably a body that is independent of the legal proceedings. Reliable statistical information should be captured by that body and used to forecast demand for the service, to budget accordingly and to develop key performance indicators, which might include measures of timeliness and quality of service delivered, to allow for performance management.

In the interim, the Department of Children, Equality, Disability, Integration and Youth should utilise the information currently available from Tusla for this purpose.[1]

13.8 The examination reported that, in 2015, there was no national management structure or body charged with oversight of the guardian *ad litem* service. At the end of July 2022, this remains the case.

13.9 The Department commenced a process to reform delivery of the guardian *ad litem* service in 2015, which included amendments to the legislation currently underpinning the service. This culminated in the passing of the Child Care (Amendment) Act in July 2022.

Child Care (Amendment) Act 2022

13.10 The Act provides the Minister with a number of regulation-making powers, which will enable him/her to establish a new guardian *ad litem* service within an executive office of the Department. It is proposed to set up the new service as an executive office with a view to longer term arrangements for the office being dealt with in the context of the proposed transition to a family court system.

13.11 Other provisions of the Act

- create a presumption in favour of appointment of a guardian *ad litem* in proceedings before the District Court and provides for mandatory appointment in special care cases before the High Court
- set out the process whereby an individual guardian *ad litem* is assigned to a child care case and specifies the role and status of a guardian *ad litem*
- give the Minister the power to make regulations on the qualifications and experience required to act as a guardian *ad litem*
- provide for a transition period in the first year of operation of the executive office to provide for a seamless transition from the current system to a new model of provision
- require the court, where a child is capable of forming their own views, to determine how to facilitate the child in expressing those views
- require the court to give any views that the child wishes to express due weight, having regard to the child's age and maturity.

1 The Department of Children, Equality, Disability, Integration and Youth was previously named the Department of Children and Youth Affairs.

Establishment of the executive office

13.12 A project team was put in place in 2018 to manage the establishment of the executive office within the Department. The project team was put on hold in early 2020 because the legislation was delayed and staff were needed elsewhere to meet the demands of the Covid-19 pandemic. The project team has not yet reconvened.

13.13 In anticipation of the passage of the necessary legislation, the Department's financial statements for 2020 and 2021 included an estimate provision of €845,000 each year for the operation of the guardian *ad litem* executive office. In 2020, expenditure of €127,000 was incurred, the majority of which was spent on developing an IT system that will be used for case management. None of the 2021 provision was expended due to the further delay in the establishment of the office.

Statistical information for performance management and forecasting

13.14 Neither the Department nor Tusla prepares or publishes key performance indicators in relation to the guardian *ad litem* service. Tusla collects information about the cost of the service and the elements that inform the cost e.g. hours billed, kilometres travelled. Tusla prepares budgeted figures for guardian *ad litem* costs (including their legal representatives) by conducting a review of the previous year spend.[1] While data about hours and travel is being captured, it is not being used to forecast the activity for the service.

Tusla's response

13.15 Tusla does not have authority with regard to monitoring the work of a (court-appointed) guardian *ad litem* or in assessing the quality of the service provided. Tusla is not privy to matters such as timeliness nor does it have any authority to review a guardian *ad litem*'s work performance or to make any enquires in this regard. The service is demand led and Tusla has no control or input and this makes it difficult to predict with any certainty what the guardian *ad litem* activity will be for the year ahead.

Department's response

13.16 Under the 2022 Act provisions, Tusla will no longer have responsibility for payments to guardians *ad litem,* which instead will be the responsibility of the executive office. The Department notes that the executive office will be required to gather statistical data so as to forecast demand and annual budgetary requirements for the service and notes that key performance indicators will be developed.

13.17 The 2021 provision in the appropriation account for the executive office was not expended due to the delay in progressing the legislation to underpin the reform of the guardian *ad litem* service and the continued impact of Covid-19 on the Department. Preparatory work relating to the opening of the executive office is ongoing, but the Office could not be set up in advance of the legislation as it would have risked infringing the separation of powers between the executive and the judiciary. In addition, the Department had discussions with the Department of Justice in relation to the final location of the executive office leading to uncertainty about the potential future transfer of the office to a family court system.

1 The Department is not involved in compiling the budget figures as part of the estimates process for the guardian *ad litem* service.

Cost of the service and performance metrics

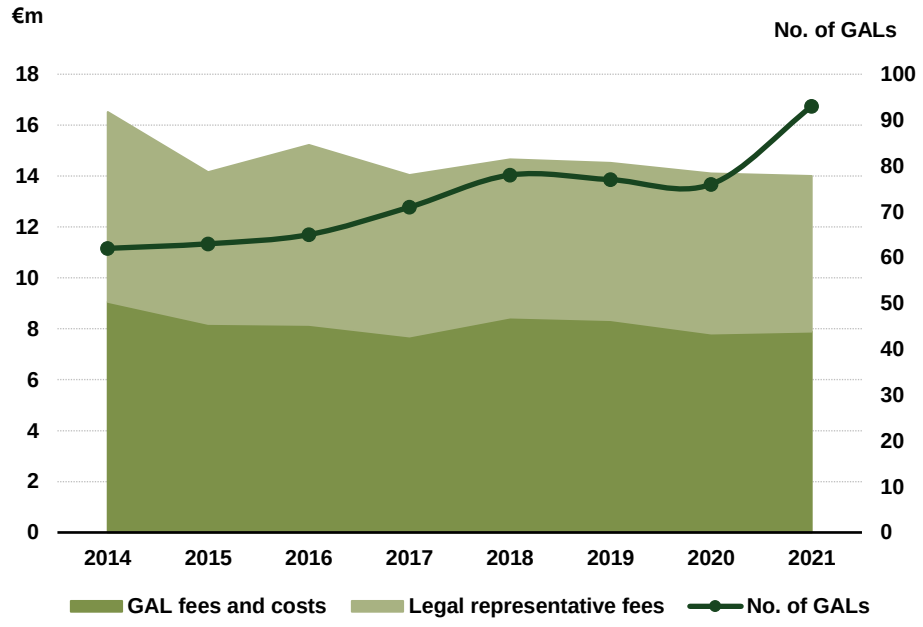
Recommendation

Tusla should utilise the available information to develop a range of performance metrics, for example average cost per case, average case load per guardian ad litem, and average cost per service type provided by guardians ad litem, in order to identify outliers and gain assurance that costs over and above average are appropriate.

13.18 Most guardians *ad litem* engage solicitors and counsel to represent them/their clients in court. Fees for both the guardian *ad litem* and their legal team fall to be discharged by Tusla.[1] In the period 2014 to 2021, Tusla incurred costs of €117 million on the service (see Figure 13.2).

13.19 As the guardians *ad litem* are appointed by the court, Tusla can only implement limited financial controls and cannot apply a value for money control over these payments. While Tusla has agreed a rate for professional hours with guardians *ad litem*, the service is demand-led, with the expenditure being determined by the number of professional hours billed for each case.

Figure 13.2 Guardian *ad litem* numbers, costs and legal fees



Source: Tusla financial statements 2014 – 2021

1 Section 26 (2) of the Child Care Act 1991 states that 'Any costs incurred by a person in acting as a guardian *ad litem*, under this section shall be paid by the health board concerned'. Responsibility subsequently passed to the Health Service Executive (in 2005) and to Tusla (in 2013).

13.20 Tusla applies a number of financial controls to guardian *ad litem* invoices (see Figure 13.3).

Figure 13.3 Financial controls implemented by Tusla over guardian *ad litem* invoices

Type of control	Outcome	Details
Standard control checks — applied to all invoices	Tusla issues queries to guardians *ad litem* on any anomalies noted, which must be resolved before payment. Tusla pays the approved guardian *ad litem* invoices.	Invoice batches and payment files authorised at appropriate level within Tusla.
Reasonableness checks — applied to all invoices		**Conducted at invoice level** Checks carried out to ensure invoice is valid and totals are correctly calculated. Determine if hours claimed relate to guardian *ad litem* tasks. Ensure no duplication of claims for professional hours, mileage and expenses. Determine if the hours claimed appear reasonable based on Tusla's knowledge and understanding of the courts system and child care process.
Retrospective reviews — carried out on an ad-hoc basis	Tusla secured reductions in the amounts billed from 2019 – 2021.	**Conducted at guardian *ad litem* level** Informed by trends identified by the reasonableness checks at invoice level. Review of hours claimed and tasks completed on a cumulative level over an extended period.

Source: Analysis by the Office of the Comptroller and Auditor General

Retrospective reviews

13.21 A retrospective review involves a detailed examination of any anomaly identified in invoices over an extended period of time. As invoices are reviewed each month for reasonableness, potential issues are noted and possible patterns of billing identified. Specific matters are then queried with the guardian *ad litem* and the responses considered. The matters may be monitored over a number of months and verifications obtained.

13.22 Where Tusla has identified patterns of consistently high costs billed by *a* guardian *ad litem*, a retrospective review of invoices over a number of months or years for all or a number of cases may be undertaken. Typically, Tusla endeavours to negotiate and come to an agreement with the guardian *ad litem*, and has received discounts on fees in most reviews. For one case, where a discount on fees was not offered, the matter was referred back to the appointing court.

13.23 As the tasks involved in carrying out retrospective reviews are resource intensive, the number of these reviews is limited. The examination enquired of Tusla the number of retrospective reviews conducted each year since 2014. Tusla was not in a position to provide this information, but estimates that a total of approximately 30 reviews were carried out since 2015.

Performance metrics

13.24 The examination found that the average reported caseload per guardian *ad litem* was approximately 17 cases (see Figure 13.4). There was relatively little variance in average caseloads between the supplier groupings.

Figure 13.4 Service providers' average caseloads for 2021

Service providers	Barnardos	TIGALA	Individuals and small groups	Total
Number of guardians *ad litem* identified	32	25	34	**91**
Number of cases on hand	503	453	621	**1,577**
% share of caseload	32%	29%	39%	**100%**
Number of children represented	819	726	976	**2,521**
Average caseload per guardian *ad litem*	16	18	18	

Source: The Child and Family Agency (Tusla)

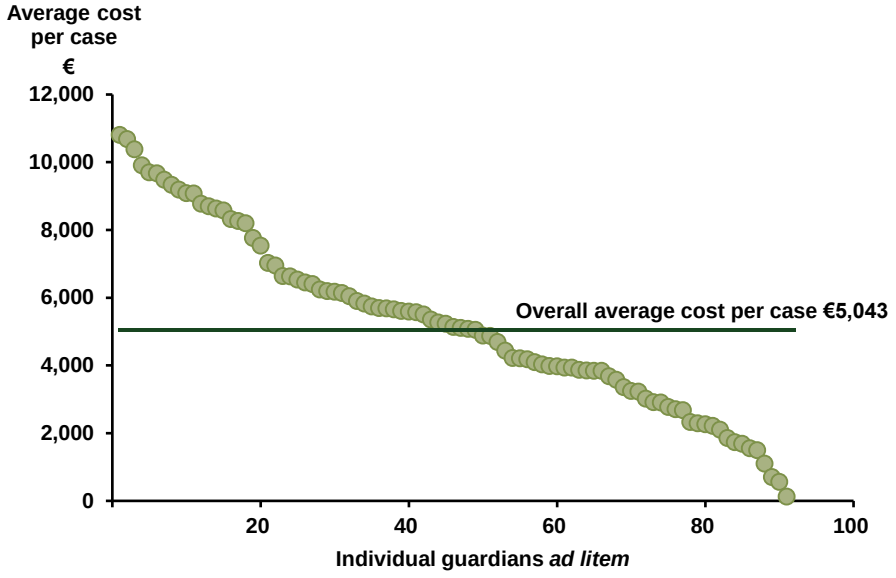
13.25 Tusla maintains a tracking spreadsheet of guardian *ad litem* activity. The spreadsheet contains the following information: case name, invoice number, invoice total, time billed, mileage, travel time, time spent on report and time spent attending court.

13.26 At the end of each year, Tusla extracts a summary of costs per guardian *ad litem* from the tracking spreadsheet. This summary provides the following information per guardian *ad litem*: total number of cases, total number of invoices, total costs, total mileage and total travel time. The average cost per case by guardian *ad litem* is calculated in this summary of costs spreadsheet.

13.27 Other than the average cost per case per guardian *ad litem*, no other performance metrics were calculated using the information available.

13.28 For the purposes of this examination, Tusla provided the examination team with an analysis of information it had captured in relation to hours billed per case in respect of 91 guardians *ad litem* for the period January to December 2021, and the average cost per case by guardian *ad litem*. This indicates a wide spread between guardians *ad litem* in the average cost per case handled. The overall average cost per case was €5,043, but for individual guardians *ad litem*, the average cost per case varied from just over €127, to over €10,800 (see Figure 13.5).

Figure 13.5 Analysis of average cost per case by guardian *ad litem*, 2021



Source: The Child and Family Agency (Tusla)

13.29 In 2021, Tusla carried out a comparison exercise using the summary of costs data from 2020 and 2019. From the exercise, Tusla reports that it was possible to identify the highest billing guardians *ad litem* across the two years, readily identify guardians *ad litem* whose costs increased or decreased, to get an overall view of the movement across the two years and it also assisted in identifying guardian *ad litem* matters which may require further review.

13.30 The comparison indicated a 9% increase overall in the number of guardians *ad litem* submitting invoices, a decrease in total costs by 11%, a decrease in professional hours billed by 12% and a 39% decrease overall in mileage billed. However, with the onset of Covid-19 and the impact it had on the State, a comparison of the years may not give a reliable or meaningful picture.

Tusla's response

13.31 Tusla receives over 1,000 invoices per month from over 90 guardians *ad litem.* They are required to provide an extensive amount of information on each invoice. The data required to provide an average cost per case and an average case load per guardian *ad litem* is recorded mainly on spreadsheets. A case management system is used for invoices from Barnardos.

13.32 In carrying out the required service, it is necessary for guardians *ad litem* to engage in a number of activities. In order to collate information relating to the frequency and cost of each activity it would be necessary for invoices to be received via a bespoke case management system. Pending the takeover of the guardian *ad litem* service by the new agency it was decided not to proceed with procuring a new system.

13.33 The legal office endeavours to capture as much information as is feasible in circumstances where it does not have either sufficient IT or human resources. Furthermore, Tusla has no remit regarding the performance of the service.

Competitive tendering

Recommendation

The Department should examine the options for engagement of guardian ad litem legal representatives by way of a competitive tendering process.

13.34 A guardian *ad litem* may appoint a legal representative if he or she feels it is in the best interests of the child to do so. However, the current provisions of the 1991 Act does not allow a child to be represented by both a solicitor and a guardian *ad litem*. Therefore, in practice, a guardian *ad litem* may engage a solicitor to act on their (the guardian's) behalf. While Tusla discharges the legal costs incurred by guardians *ad litem*, there is no data collected on the number of guardians *ad litem* who engage legal representation.

13.35 In the period 2014 – 2021, Tusla paid €51.6 million in legal costs for guardians *ad litem*. Department of Public Expenditure and Reform (DPER) circulars require public bodies, where possible, to use a competitive process when procuring legal services. However, because guardians *ad litem* are not employed or managed by a public body, the procurement of their legal services does not come under the scope of DPER's guidance.

13.36 The Child Care (Amendment) Act 2022 states that the Minister shall provide, or arrange for the provision, to the guardian *ad litem* of legal advice and also legal representation where they consider that it is in the best interests of the child.

Department's response

13.37 The Department has been exploring the options for engagement of legal representatives for guardians *ad litem* in the planned executive office. Currently guardians *ad litem* have no obligation to use such services and the Department had no statutory basis to advance this work in advance of the enactment of the Child Care (Amendment) Act 2022.

13.38 The Department's broad plan is to establish a legal unit within the executive office which will provide legal advice to guardians *ad litem*, sometimes provide legal representation and will set up a panel of legal practitioners to represent guardians *ad litem.* While it is intended that this measure will reduce expenditure on legal representation, it is the intention of the Department that guardians *ad litem* will have legal representation when necessary.

Conclusions

13.39 Significant annual expenditure continues to be incurred by Tusla in relation to the payment of fees to guardians *ad litem*, and to their legal representatives. In all cases, Tusla itself is a party to the legal proceedings in which the guardians *ad litem* are engaged. This arrangement creates a conflict of interests that would be better avoided.

13.40 Recommendations made in a 2015 report of the Comptroller and Auditor General, and accepted then by the Department and Tusla, have not yet been implemented.

13.41 Legislative changes were required to create an independent entity to be responsible for the management and supervision of the service. Legislative reform commenced in late 2015, but this was interrupted and delayed by the 2020 general election, and as a result of Covid-19 impacts. A revised legislative basis for provision of the service was finalised in July 2022, with enactment of the Child Care (Amendment) Act 2022. The provisions of the Act create potential for implementation of the recommendations, including establishment of an executive office within the Department to manage and oversee the service for the foreseeable future. In the longer term, it is envisaged that the management and oversight of the service would transfer to a family law court service.

13.42 Tusla maintains a tracking spreadsheet of guardian *ad litem* activity which includes number of cases, total costs, mileage and travel time. Tusla requires the details of legal representatives be included on invoices, but it does not collate this information as standard to inform its overview of the service and to understand the drivers of cost.

13.43 In response to the 2015 report, Tusla agreed to develop a range of performance metrics and the Department stated it would engage with Tusla in the development of those metrics. Apart from calculating the average cost per case, Tusla has not developed performance metrics, noting that it has no remit regarding oversight of the performance of the service.

13.44 The Child Care (Amendment) Act 2022 will allow the new guardian *ad litem* service to provide advice on legal matters to guardians *ad litem*, and in some cases legal representation for guardians *ad litem* in child care proceedings.

Annex 13A Section 1 of the Children's Act Advisory Board guidelines — "Giving a voice to children's wishes, feelings and interests," May 2009

Section 1: Guidance for the Role, Appointment, Qualifications and Training of Guardians *ad litem*

1.1 Role

Following the CAAB's consultation with national stakeholders it was agreed that the role of the guardian *ad litem* should be to "**independently establish the wishes, feelings and interests of the child and present them to the court with recommendations**".

The guardian *ad litem* has a dual role, to inform the court of the child's wishes and feelings and to advise on the child's best interests.

This role informs – or at the very least influences – the appointment, qualifications and specific training of candidates for the role of guardian *ad litem*.

In this light, Section 1 is the core of the document, setting the tone for what follows in Sections 2 and 3. Section 1 looks at good practice standards for the role, appointment criteria, qualifications, and finally training.

1.2 Standards for Good Practice

1.2.1 Summary of Standards

In providing independent representation to a child who is the subject of child care proceedings under the Act of 1991, the guardian *ad litem* must recognise the Health Service Executive's responsibility for management of any case in which s/he is involved. The following standards are applicable to the various aspects of the role of a guardian *ad litem*:

(a) **Independence:** the guardian *ad litem* is independent of all other professionals and agency staff involved with the child and family.

(b) **Inclusiveness:** the guardian *ad litem* shall ensure that the views of all parties and others of significance are taken into account.

(c) **Inquiry into the child's circumstances:** the guardian *ad litem*'s approach to the task shall be planned, focused, and flexible. Avoiding delay, other than planned and purposeful, will be a priority. The inquiry shall comply with the provisions of the Freedom of Information Acts, 1997 and 2003, and the Data Protection Acts, 1998 and 2003.

(d) **Interests of the child:** the guardian *ad litem* shall meet the child as often as necessary to be satisfied that his/her wishes, feelings and interests are ascertained and adequately represented to the court.

(e) **Evaluation and report:** the guardian *ad litem* shall complete a written report for the court, unless the exceptional nature of the case requires otherwise.

(f) **Attendance at court:** the guardian *ad litem* shall attend on all court dates unless excused by the court.

(g) **Closing the case:** when proceedings have concluded, the guardian *ad litem's* involvement in the case ceases. However, if the case is scheduled for further review, s/he shall seek clarification from the court regarding its expectations of his/her further involvement.

These standards are now examined in more depth.

1.2.2 Independence

The guardian *ad litem* is independent of all other professionals and agency staff involved with the child and family.

To achieve this, a guardian *ad litem* shall:

(a) Avoid cases where there may be a conflict or a perceived conflict of interest for him/her and notify the court of any possible conflict that may arise in the course of proceedings.

(b) Take professional responsibility for his/her assessment and recommendations in each case and be accountable to the court.

(c) Seek to achieve an appropriate outcome based on the wishes, feelings and interests of the child through adopting a partnership approach and consulting and involving all parties.

1.2.3 Inclusiveness

The guardian *ad litem* shall ensure that the views of all parties and others of significance are taken into account.

To achieve this, a guardian shall:

(a) Ensure the child is aware of what is happening throughout the proceedings and of the outcome.

(b) Taking into account the age and/or level of maturity of the child and using professional judgement, consider sharing some or all of the contents of his/her report with the child.

(c) Ensure his/her report is made available to all parties, via their legal representatives where appropriate, and that recommendations are included.

(d) Explain the nature and purpose of expert assessments and examinations which s/he recommends and seek the agreement of all parties on such provision.

1.2.4 Inquiry into the Child's Circumstances

The guardian *ad litem*'s approach to the task shall be planned, focused and flexible. Avoiding delay, other than that which is planned and purposeful, will be a priority. The inquiry shall comply with the provisions of the Freedom of Information Acts, 1997 and 2003, and the Data Protection Acts, 1998 and 2003.

In conducting an inquiry a guardian *ad litem* shall:

(a) Address areas relevant to the particular court proceedings.

(b) Record initial and updated plans throughout the investigation and retain these together with notes and other documentation acquired throughout the inquiry.

(c) Inform the child of the nature and purpose of the guardian *ad litem's* role.

(d) Be aware of the duty of confidentiality under the provisions of Children First National Guidelines 1999 whether updated, amended or replaced, professional confidentiality, the limitations of confidentiality in certain circumstances and the rights to privacy.

(e) Comply with the requirements of the Data Protection Acts, 1998 and 2003 and the Freedom of Information Acts, 1997 and 2003 together with the rights to privacy of all individuals.

1.2.5 Interests of the Child

The guardian *ad litem* shall meet the child as often as necessary to be satisfied that his/her wishes, feelings and interests are adequately represented to the court.

To achieve this, a guardian *ad litem* shall:

(a) Regularly analyse, review and assess any risks to the child.

(b) Continually focus on the need to arrive at specific decisions that are in the child's interests and evaluate all information obtained throughout the inquiry taking account of the rights of the child and his/her parent(s), guardian(s) or carer(s).

(c) Report on any other issues as appropriate as directed or requested by the court.

(d) State for the court's assistance, key areas of agreement and disagreement between the relevant parties including the child, to the proceedings.

(e) Comment on the criteria for making an order for the proceedings in question.

(f) Consider whether it is in the child's interests to seek the appointment of a legal representative to represent the child in the proceedings.

(g) Consider seeking the approval of the court regarding:

1. The appointment of a legal representative for the guardian *ad litem*.
2. Consulting where necessary, with a legal professional regarding legal issues in the proceedings.

(h) In particular, when representing children in special care or civil detention, a guardian *ad litem* shall:

1. Keep in mind the constitutional rights of the child and his/her parents.
2. Inquire into the circumstances in which the child is placed in a special care unit or civil detention by High Court Order, reporting to the court on the suitability of the placement, the appropriateness of the care plan and any alternatives.

1.2.6 Evaluation and Report

The guardian *ad litem* shall complete a written report for the court, unless the exceptional nature of the case requires otherwise.

To achieve this, a guardian *ad litem* shall:

(a) Systematically analyse all the material gathered before writing the report.

(b) Address significant differences in views and incorporate these into the report.

(c) Focus on a well-argued independent case analysis containing clear recommendations to help the court make appropriate decisions for the child.

(d) Consider and report on all options open to the court and indicate the suitability or otherwise of each.

(e) Be familiar with all work undertaken together with its relevance and refer to relevant professional knowledge and research findings in support of recommendations.

(f) Not duplicate work done elsewhere.

(g) Not take on the responsibilities of other service providers or agencies.

(h) Highlight any issues regarding the services available to the child.

(i) Ensure that where interim reports are requested by the court, each report contains up-to-date information.

(j) Make reports available to all parties involved before the next court date, the timetabling for which should be agreed at previous hearings.

1.2.7 Attendance at Court

The guardian *ad litem* shall attend on all court dates unless excused by the court.

The purpose of attending will be to:

(a) Present a report to the court and be available to give evidence.

(b) Bring to the court's attention any urgent matter affecting or likely to affect the child's rights, well-being and interests.

(c) Assist in the overall court management of the case by contributing at court hearings relevant views which focus on the child's needs.

(d) Alert the court to issues of avoidable delay in decision-making for the child.

1.2.8 Closing the Case

When proceedings have concluded, the guardian *ad litem's* involvement in the case ceases. If the case is scheduled for further review, the guardian *ad litem* shall seek the court's clarification on its expectations of his/her further involvement.

In addition:

(a) When proceedings conclude, the guardian *ad litem* shall advise the child of the outcome of the case and of the termination of his/her involvement.

(b) S/he shall inform other relevant individuals, for example expert witnesses, of the outcome of the court hearing and that the guardian *ad litem's* involvement has concluded.

(c) At the close of proceedings the guardian *ad litem* shall ensure that appropriate security measures are taken against unauthorised access to, or alteration, disclosure or destruction of any data gathered during the course of the case and against their accidental loss or destruction in accordance with the provisions of Section 2(1)(d) of the Data Protection Act, 1988.

1.3 Appointment Standards

1.3.1 Interpretation of the Term 'Criteria for Appointment'

It was further acknowledged during the consultative process that the term 'criteria for appointment' could have two meanings. Firstly that those wishing to become guardians *ad litem* shall comply with the eligibility criteria set out in 1.3.2 below; and secondly, that the court may consider the guidance suggested by the CAAB in deciding to appoint a guardian *ad litem* to a specific case as described in 1.3.3.

1.3.2 Eligibility for Appointment to the Role of Guardian *ad Litem*

To be eligible for appointment to the role of guardian *ad litem*, the following criteria shall be adhered to:

(a) Candidates for the role of guardian *ad litem* must be vetted by An Garda Siochána.

(b) Candidates must be prepared to provide a self-declared statement of fitness to practice every three years.

(c) If a candidate has lived in any country other than Ireland for longer than three months, s/he must be vetted by the police of that country.

(d) Candidates must supply the required number of references.

(e) Candidates must have a third level qualification in, social work recognised by the National Social Work Qualifications Board, psychology or other third level qualification relevant to the role.

(f) Candidates must have at least five years' postgraduate experience of working directly in child welfare/ protection systems.

1.3.3 Guidance on the Appointment of a Guardian *ad Litem* by a Court in a Specific Case

Areas of consideration that may influence the appointment of guardians *ad litem* to specific cases shall include:

(a) Only suitably qualified persons, as outlined at 2.4 shall be appointed as guardians *ad litem*.

(b) The complexity of the case, for example where there is a difficulty in identifying an appropriate placement for the child.

(c) The ability of the child concerned to express his/her wishes and feelings.

(d) The nature of the proceedings and the implications for child and family, for instance in some circumstances, there may be the possibility of long-term separation from parents, siblings or extended family.

(e) Cases, where there is reduced or no parental support or where parent(s)/guardian(s) are absent.

(f) Cases where there are issues about a child's identity, nationality or entitlement to residence in the jurisdiction. S/he may be separated from his/her family or be an unaccompanied minor.

(g) Cases where a child's liberty is at issue, for example where the young person's emotional and behavioural needs can only be met at that time by a secure placement in a special care unit and where the HSE seeks a special care placement for the child.

(h) Cases where other circumstances exist as determined by a court, such as the effects on the child of an out-of-state placement due to the unavailability of an appropriate placement nationally.

(i) A guardian *ad litem* who has been appointed to represent a child in previous proceedings may be appointed in new proceedings.

1.3.4 Interests of the Child, Justice and Benefit to the Court

Overview

In addition to 1.3.3 above, legislation states that when a court appoints a guardian *ad litem* it must be satisfied that to do so is in the interests of the child and justice. Additionally, there should be a benefit to the court in making such an appointment. The interests of each of these may and sometimes do overlap. The following are examples of how the interests of the child and justice can be served and benefits to the court can be achieved.

1.3.4.1 Interests of the Child

Appointing a guardian *ad litem* can serve the child's interests by:

(a) Examining the nature of proceedings and the implications of the proceedings for the child, his/her family, parent(s), guardian(s) or carer(s).

(b) Ensuring the complexity of the case does not prevent achieving an appropriate outcome to the proceedings.

(c) Assessing the child's ability to express his/her wishes and feelings and ensuring these are communicated to the court.

(d) Ensuring the child's circumstances are considered in every case.

(e) Considering and addressing areas of disagreement between parties and the possible implications of any disagreement for a child who is the subject of care proceedings.

1.3.4.2 Interests of Justice

Appointing a guardian *ad litem* can serve justice by:

(a) Determining the nature of the proceedings before the court.

(b) Assessing the complexity or otherwise of the case.

(c) Identifying possible areas of disagreement between parties that can affect the outcome of the case.

1.3.4.3 Benefit to the Court

Appointments may be made by a court of its own motion or following an application by a party to the proceedings.

A guardian *ad litem* can be of benefit to the court by:

(a) Ensuring that the wishes, feelings and interests of the child are made known to the court.

(b) Assisting the court with independent professional advice.

In addition, during the consultative process, stakeholders acknowledged that independent appointments made by the court ensured that guardians *ad litem* were seen to be and were in effect independent.

The following are important in maintaining the independent role of the guardian *ad litem*:

(c) The court of its own motion appointing a guardian *ad litem.*

(d) The court appointing a guardian *ad litem* based on the application of any party to the proceedings.

(e) The court independently appointing a guardian *ad litem.*

1.4 Standards for Qualification

Guardians *ad litem* shall meet certain standards in order to qualify for the role namely:

(a) Possess a third level qualification in, social work recognised by the National Social Work Qualifications Board, psychology or other third level qualification relevant to the role.

(b) Have a minimum of five years postgraduate direct experience in child welfare and/or protection work.

(c) Have an understanding of child care and family law.

(d) Have knowledge and experience of the courts system.

(e) Possess analytical capability.

(f) Possess the ability to assess and understand complex family relationships.

(g) Have well-developed inter-personal skills.

(h) Be skilled in communicating with children of different ages and circumstances.

(i) Have relevant report writing skills.

1.5 Standards for Training

During the consultation process, stakeholders broadly agreed that training was important for guardians *ad litem*. The child care and legislation landscapes are constantly changing and guardians *ad litem* must keep up with these changes if they are to play an effective role in representing children. Training can help them to be properly briefed in all areas in which they operate. This is covered in more detail in 2.5.

With this in mind, any training undergone shall:

(a) Be directly related to the consistent provision of a guardian *ad litem* service.

(b) Enhance existing knowledge, skills and values.

(c) Ensure continuous professional development.

(d) Develop new relevant skills and knowledge.

(e) Help to improve performance and service delivery.