

# Giving a voice to children's wishes, feelings and interests

Guidance on the Role, Criteria for Appointment, Qualifications and Training of Guardians *ad Litem* Appointed for Children in Proceedings under the Child Care Act, 1991



An Bord Comhairleach um Achtanna na Leanaí  
Children Acts Advisory Board

May 2009





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## Foreword



**Aidan Browne**  
*Chief Executive, CAAB*

The CAAB was established in July 2007. One of the Board's statutory requirements is to publish 'guidance on the qualifications, criteria for appointment, training and role of any guardian *ad litem* appointed in proceedings under the Child Care Act, 1991'.

The responsibility placed on the CAAB by the legislation is consistent with references in the National Children's Strategy to the need to examine and review the role of the guardian *ad litem* service in family law proceedings and the general issue of representation of children in legal proceedings, *the need for more detailed guidance on the appointment, role and function of a guardian ad litem and the adequacy of the present service including its funding and management.*

To help fulfil this requirement the Board established a consultative group comprising of representatives of key stakeholder agencies in the area. The Board also sought and received submissions from interested parties. We are very grateful to all who participated in this consultative process and are satisfied that the robust debate and consideration of the wide and varied opinions has greatly helped the Board in developing this guidance.

Our role did not extend to how the management or funding of the guardian *ad litem* service might be addressed. The Board is of the view however, that unless these issues are addressed any guidance offered to the sector cannot have the optimum effect. The Minister for Children and Youth Affairs has been advised of the Board's view in this regard.

The CAAB views the publication of this guidance as one step in an essential process of change management which will ultimately ensure that the voice of the child can always be appropriately heard in child care proceedings.

I must acknowledge the tremendous job done by CAAB Advisory Officer Jim McGuirk in skilfully and patiently steering the process of development of this guidance and undertaking the lion's share of the work involved.

A handwritten signature in black ink, appearing to read 'A. Browne', written in a cursive style.

**Aidan Browne**  
*Chief Executive, CAAB*



## Glossary

Throughout this document, the following relevant terms are referred to. These are explained briefly at the outset for easy reference and to avoid repetition within the text.

**Act of 1991:** the Child Care Act, 1991 which provides for the care and protection of children and related matters.

**Children Act, 2001:** makes further provision in the care, protection and control of children and, in particular, replaces the Children Act, 1908, and other enactments relating to juvenile offenders, amends and extends the Child Care Act, 1991, and provides for related matters.

**Child Care (Amendment) Act, 2007:** amends the Child Care Act, 1991 and makes consequential and other amendments to the Children Act, 2001; and provides for related matters.

**CAAB (Children Acts Advisory Board):** refers to the Board whose functions are set out under S. 227 Children Act, 2001 as inserted by S. 20 Child Care (Amendment) Act, 2007 and established on July 23rd, 2007.

**Guardian *ad Litem*:** literally “guardian for the case”, a person appointed by a court under S. 26(1) of the Act of 1991 to represent the wishes, feelings and interests of a child who is the subject of proceedings under parts IV, IVA or VI of the Act of 1991.

**Child:** as interpreted by Section 2(1) Child Care Act, 1991.

**Ombudsman for Children Act, 2002:** provides for the appointment and functions of an Ombudsman for Children.

**Publish Guidance:** required under S. 227(1) (b) Children Act, 2001 (as substituted by S. 20 Child Care (Amendment) Act, 2007.

**Operational Guidance:** guidance on how the standards developed in Section 1 can be achieved and adhered to in an operational sense.

**Practice Guidance:** guidance on what a guardian *ad litem* needs to do in order to achieve best practice and fulfil his/her role.

**HSE:** Health Service Executive, established under the Health Act, 2004 to perform the functions assigned to it by this Act.



## Introduction

### Setting the Scene – the Need for Guidance

A guardian *ad litem* is a person generally understood to be independent and appointed by the courts to represent children in child care proceedings. This means that s/he must attend court in care proceedings to make known a child's wishes and feelings and to advise the court on the child's best interests. Strictly speaking, however, there is no official definition and hence no nationally agreed standard for the role, qualifications, appointment or training. As a result and particularly for the sake of the children a guardian *ad litem* represents there is a need for guidance in this area.

This is recognised in the Act under which the CAAB was established in July 2007. The Child Care (Amendment) Act, 2007, by substituting a new Section 227 in the Children Act, 2001, states in Section 227(1)(b) that the Board shall: "Publish guidance on the qualifications, criteria for appointment, training and role of any guardian *ad litem* appointed for children in proceedings under the Act of 1991."

When the CAAB came to carry out this task, it decided to consult extensively with a range of stakeholders in the sector. The resultant consultative group included representatives from the Law Society, Health Service Executive, Courts Service, Legal Aid Board, Probation Service, Department of Health and Children/Office of the Minister for Children and Youth Affairs, Children's Rights Alliance, Barnardos, independent guardians *ad litem*, Law Library, ISPCC, Irish Association for Young People in Care and service providers. This group met on six occasions and, while consensus was not reached on all issues, it broadly supported the work of the CAAB. Submissions were also invited through advertising in the national press and on the CAAB's website. International examples of best practice informed the work from the outset.

The guidance for guardians *ad litem* that emerged from this consultation seeks to:

- Help standardise the provision of guardian *ad litem* services nationally.
- Help to promote the individual and human rights of all children represented.
- Develop criteria to assist in ensuring that only suitable people are appointed to act as guardians *ad litem*.
- Assist the courts in determining the need for and appointment of guardians *ad litem* in specific cases.
- Promote the establishment of training programmes to encourage and ensure the continuous professional development of guardians *ad litem*.
- Take into account custom and practice already established in service provision.

This guidance also acknowledges the rights of parents under the Irish Constitution, in addition to their duties, aspirations and wishes to promote the welfare of their children.

In drawing together this guidance, relevant legislation, case law, national policy and reports/studies in the field have been considered and while not all are specifically referred to in this text those that underpin the work are set out in full in the bibliography.


## Legislation and Guardians *ad Litem*

### Child Care Act, 1991

Guardians *ad litem*, as already stated, are appointed by the courts to act on behalf of children involved in child care proceedings. However, Section 26 (2) of the Act of 1991 provides that the HSE is responsible for any cost incurred by a person acting as a guardian *ad litem*.

The Act of 1991 specifically refers to the importance of a child's wishes and his/her welfare and in certain circumstances a guardian *ad litem* may be the only independent promoter of these considerations.

The following sections are inextricably linked and exist to ensure that the child's wishes are made known to the court and that there is a mechanism for this to be achieved.



**Section 24 of the Act of 1991** states: “The court, having regard to the rights and duties of parents, whether under the Constitution or otherwise, shall regard the welfare of the child as the first and paramount consideration and in so far as is practicable, give due consideration, having regard to his age and understanding, to the wishes of the child.”

**Section 26 (1) of the Act of 1991** allows for the appointment of a guardian *ad litem*. It states: “If in any proceedings under Parts IV, (care proceedings), or VI (children already in the care of the HSE), the child to whom the proceedings relate **is not a party**, 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*.”

In addition **Section 16 of the Children Act, 2001** inserts a new Part IVA into the **Act of 1991** relating to ‘children in need of special care and protection’. Children, the subject of proceedings under Part IVA, are also included in the provisions of Section 26(1) above. The Child Care Act, 1991 is divided into a number of parts which deal with the various aspects of State care provision for children.

The actual proceedings that a guardian *ad litem* might find him/herself appointed in are:

#### **Part IV**

Applications for an interim care order

Applications for a care order

Applications for a supervision order

Applications to vary or discharge any of the above orders

#### **Part IVA**

Applications for a special care order

Applications for an interim special care order

Applications to vary or discharge a special care order

Applications to vary or discharge an interim special care order

Appeal against the making of a special care order

Appeals against the making of an interim special care order

#### **Part VI**

Access applications

Applications to vary or discharge any access orders

Applications for an order directing a child to be delivered into HSE care

Applications for directions on the care or welfare of a child already in HSE care

## **District Court Rules**

The general District Court rules lay down the practice and procedures to be followed and the forms to be used in the **District Court** proceedings to which they relate. Any party to proceedings, their solicitor/counsel or any Garda may appear, address the court and conduct proceedings. Unless prevented by law from doing so, a father, mother, son, daughter, husband, wife, brother or sister may appear on behalf of that party with the court’s permission if that party is unable to be present. This is called ‘right of audience’.

**Order No. 7 (S.I. 93/97)** provides additional protection for children/minors and states that:

“Where any proceedings are brought before the court on behalf of or against a minor, the court may – if it thinks it appropriate – at any stage of the proceedings by an order in writing appoint a **next friend** to sue on behalf of the minor or a **guardian *ad litem*** to defend any proceedings on behalf of such a minor, and may at any time replace a person so appointed”.

This rule refers to civil cases involving children where a **child is a party** to the proceedings. Guardians *ad litem* are sometimes appointed to represent the mother of a child, the subject of care proceedings where the mother is herself a child.

## **Guidance Structure**

For clarity and ease of use, this guidance is divided into three sections. The first concerns standards for the role, appointment, qualifications and training of a guardian *ad litem*. This is the core of the document and the other sections flow from it. Section 2 describes how the standards developed in Section 1 can be achieved and adhered to in an operational sense. Section 3 deals with what a guardian *ad litem* needs to do in order to achieve best practice and fulfil his/her role. Finally a number of appendices are also attached.





# 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 judgment, 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 Síochána.
- (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.



## Section 2: Operational Guidance

### 2.1 Section Introduction

This Section provides guidance on how the standards developed in Section 1 should be achieved and adhered to in an operational sense, as it deals with the tasks and considerations for both guardians *ad litem* and the courts.

### 2.2 Tasks for the Guardian *ad Litem*

While engaged in a case, a guardian *ad litem* has specific tasks, set out below, which s/he must carry out. These can help achieve fulfilment of the role bearing in mind his/her responsibilities to the child and the court.

In the course of his/her work the guardian *ad litem* shall:

- (a) Meet the child who is the subject of the proceedings.
- (b) Identify the nature of the proceedings and the parties involved.
- (c) Conduct a thorough inquiry into the child's circumstances and provide independent recommendations to the court. Some cases may require more extensive inquiry than others. Whatever the level of difficulty, a guardian *ad litem* shall be familiar with the family and child's history during proceedings.
- (d) Understand the judicial, legal, social, political and governmental systems affecting the child.
- (e) Try to achieve the most appropriate outcome for the child.
- (f) Consult with the child's family.
- (g) Assess the impact of the proceedings on the child and, if necessary, act promptly to help protect the child from further stress or distress. A guardian *ad litem* shall be aware of the options available to him/her in any situation.
- (h) Decide on the necessity or otherwise of expert evidence bearing in mind the possible negative implications of delay.
- (i) Assess the level, timing and the manner of State intervention in the life of the child.
- (j) Provide a written report to the court which takes account of all information gathered during the inquiry. The contents of this report shall not be revealed to anyone who is not a party to proceedings.

### 2.3 Criteria for Appointment

#### 2.3.1 Criteria for Appointment to the Role of Guardian *ad Litem*

To be considered for appointment as a guardian *ad litem*, prospective candidates shall:

- (a) Be in a position to undertake the role.
- (b) Be prepared to undergo an interview process.
- (c) Be prepared to provide sufficient information to courts indicating that s/he is qualified to act as a guardian *ad litem*.
- (d) Agree to declare the possible existence of any conflict of interests when a referral is received or if any arises during a case.
- (e) Undertake to provide independent and professional representation to children in child care proceedings.
- (f) Be cognisant of the need to promote the individual and human rights of the child represented.
- (g) Have the ability to work in a manner which promotes equality and respects diversity.
- (h) Have a thorough knowledge of courts systems, working methods and general requirements including the requirements of in-camera proceedings.
- (i) Maintain the highest professional standards at all times.
- (j) Be independent of and have no current professional connection with any parties to the proceedings.





### 2.3.2 Criteria for Appointment of a Guardian *ad Litem* by a Court in a Specific Case

The overall objective of these criteria is to encourage a level of consistency in appointing guardians *ad litem*. Legislation in the area is limited and offers little guidance to courts on when and where to appoint a guardian *ad litem*.

As stated previously, Section 26(1) of the Act of 1991 allows the court to use its discretion in such appointments. The only criteria laid down by the legislation are that the court must be satisfied that it is necessary to do so because:

- (a) It is in the interests of the child.
- (b) It is in the interests of justice.

In addition, Section 24 of the Act of 1991 provides that “the court, having regard to the rights and duties of parents, whether under the Constitution or otherwise, shall regard the welfare of the child as the first and paramount consideration and in so far as is practicable, give due consideration, having regard to his/her age and understanding, to the wishes of the child.”

Together with these overriding criteria, the court may consider the following:

- (c) The appointment of a guardian *ad litem*.
- (d) The benefits or otherwise to the child of appointing a guardian *ad litem*.
- (e) The advantages or otherwise to achieving an appropriate outcome for the child by appointing a guardian *ad litem*.
- (f) How appointing a guardian *ad litem* may benefit the administration of justice.
- (g) How the appointment of a guardian *ad litem* may assist the court in its deliberations.
- (h) Of its own motion decide whether or nor to appoint a guardian *ad litem*.
- (i) On the application of any party to proceedings, decide whether or not to appoint a guardian *ad litem*.

### 2.3.3 More Difficult Cases

In more difficult cases, the court may consider the appointment of a guardian *ad litem* where:

- (a) There is significant variance between the child’s wishes, feelings and interests and the provisions of the care plan placed before the court.
- (b) A care plan is currently unavailable or there is significant dispute over some or all of its provisions.
- (c) There is a question of terminating or reducing contact between a child and his/her family.
- (d) The proceedings involve an application for special care.
- (e) There have been previous child care proceedings.

### 2.3.4 Other Considerations for the Court

In addition to the above, when deciding to appoint a guardian *ad litem*, the court may also consider the following issues:

- (a) The wishes, feelings and interests of the child concerned if they can be ascertained (considered in light of his/her age and level of understanding) regarding the appointment of a guardian *ad litem* or a specific guardian *ad litem*.
- (b) Any evidence contained in supporting information available to the court concerning the child’s physical, emotional and/or educational needs, now and in the future.
- (c) The likely effect of any change in the child’s circumstances, now and in the future.
- (d) The likelihood of the child being removed from his/her parent(s) or guardian(s).
- (e) The age, gender, background and any other characteristics of the child the court may consider relevant.
- (f) Any evidence of harm the child has suffered or is at risk of suffering now or in the future.
- (g) The perceived need to stabilise an extreme situation.
- (h) The perceived need to provide care and protection.
- (i) The effects of multiple placements on the child.
- (j) Any evidence of behaviour that poses a real and substantial risk to the child’s health, safety and welfare.

- (k) Any interventions/services already provided to the child.
- (l) Any concerns regarding the child's mental health.
- (m) The existence or otherwise of a learning disability.
- (n) The possibility of a special care order being made.
- (o) The capability of each parent – and/or any other person for whom the court considers the question relevant – of meeting the child's needs.
- (p) The range of options available to the court under the legislation in the proceedings in question.

### 2.3.5 Considerations for the Court following the Appointment of a Guardian *ad Litem*

Where the court decides to appoint a guardian *ad litem* in a specific case it may:

- (a) Independently identify a suitable guardian *ad litem*.
- (b) Inform the parties to the proceedings of its decision.
- (c) Identify the guardian *ad litem* so appointed to the parties to the proceedings.
- (d) Complete an order assigning the identified guardian *ad litem* to the case.
- (e) Ensure the order specifies the court's requirements.
- (f) Ensure the order enables the guardian *ad litem* to perform his/her duties to the court.
- (g) Ensure the person appointed as guardian *ad litem* is informed of the appointment as quickly as possible.
- (h) Inform the guardian *ad litem* appointed of the court's requirements.
- (i) Request the provision of a report.
- (j) Specify any concerns the court may have about the case.
- (k) Specify any issue the court believes requires urgent attention.
- (l) Indicate to the guardian *ad litem* the effects any possible delay may have on the case.
- (m) Request the provision of an interim report if necessary.
- (n) Issue any directions the court deems necessary.

## 2.4 Criteria for Qualification to Serve as a Guardian *ad Litem*

### 2.4.1 Academic Qualifications

The following are required qualifications:

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

### 2.4.2 Experienced Based Qualifications

The following are required qualifications:

- (a) Minimum of five years' postgraduate direct experience in child welfare and/or protection work.
- (b) Knowledge and experience of the court system.
- (c) Relevant experience of child welfare/child protection systems.

### 2.4.3 Skills Based Qualifications

The following are required qualifications:

- (a) Ability to communicate with and assess children in stressful situations.
- (b) Ability to communicate with and assess parental functioning and family dynamics.
- (c) Ability to understand and assess attachment patterns between children and significant others.
- (d) Ability to understand and assess the functioning of professional systems involved with the child.
- (e) Ability to understand and use the legal system as it affects the child's interests in the proceedings.
- (f) Ability to understand and assess the dynamics of interaction between family and professional services and maintain an impartial position.
- (g) Ability to negotiate.
- (h) Ability to understand together with skills in, systemic work in statutory/family systems.
- (i) Knowledge of and experience in the statutory child care field.
- (j) Report writing skills.





## 2.5 Criteria for Training

### 2.5.1 Overview

The CAAB, together with the consultative group, recognises the need for ongoing training. This will help to, maintain general standards, ensure consistency of service provision, maintain morale within the ranks of guardians *ad litem*, assist in the retention of guardians *ad litem* in the role and promote a positive image.

### 2.5.2 Training Effectiveness

To be effective, training shall adhere to the following guidance:

- (a) Training shall be directly related to the desired requirements of a guardian *ad litem* service and include induction programmes.
- (b) Training shall be directly related to the individual's present or foreseeable work responsibilities and based on assessed need.
- (c) Training shall equip guardians *ad litem* with the necessary knowledge, skills and values pertaining to their role.
- (d) Training shall assist in advancing the goal of providing the best possible service to vulnerable children and young people.
- (e) Training shall ensure continuous professional development.
- (f) Training shall provide opportunities for developing new skills and knowledge.

### 2.5.3 Training Methods

The following are examples of how training shall be delivered:

- (a) Internal away days, seminars and conferences.
- (b) Internal professional development groups.
- (c) Literature research.
- (d) Legal Judgment research.
- (e) External seminars, conferences and courses.

### 2.5.4 Training Objectives

Training shall be focused on achieving the following objectives:

- (a) Improvement of performance and service to children.
- (b) Provision of training on an equal opportunity basis.
- (c) Provision of training by diverse methods.
- (d) Exploration of opportunities for joint training.
- (e) Sharing of external training where possible
- (f) Opportunities to promote the service at external training events.
- (g) Opportunities for those already trained to train others.
- (h) The monitoring and evaluation of all training.



## Section 3: Practice Guidance

### 3.1 Section Introduction

This section expands on sections 1 and 2 by providing guidance on what a guardian *ad litem* needs to do in order to achieve best practice and fulfil his/her role.

### 3.2 Fulfilling the Role of the Guardian *ad Litem*

#### 3.2.1 Preliminary Considerations

A guardian *ad litem* shall consider the following issues when appointed to represent a child:

- (a) The ascertainable wishes, feelings and interests of the child concerned (considered in the light of his/her age and understanding).
- (b) The child and his/her circumstances.
- (c) Physical, emotional and educational needs.
- (d) The likely effect of any change in his/her circumstances.
- (e) Age, gender, background and any characteristics which the court considers relevant.
- (f) Any harm suffered or at risk of suffering.
- (g) Capability of each of his/her parents, and any other person for whom the court considers the question to be relevant, of meeting his/her needs.
- (h) The range of powers available to the court under legislation in the proceedings in question and their possible impact on the final outcome of the case.
- (i) The HSE involvement and care plan.
- (j) Continuous reviews of the effectiveness of the care plan.
- (k) Circumstances regarding contact between the child and his/her parent(s) and siblings.

#### 3.2.2 Inquiry into the Child's Circumstances

The guardian *ad litem* shall conduct a detailed inquiry into the child's life and this shall include:

- (a) The history of the case.
- (b) The child's health and physical growth.
- (c) Psychological and emotional development and educational needs.
- (d) Parental ability and commitment to change.
- (e) The level of attachment between parent(s) or guardian(s) and child.
- (f) Paying attention to ethnic, cultural and religious needs.
- (g) Identifying other significant people in the child's life and identifying them to the court.
- (h) Reading all the statements, affidavits and reports filed during the proceedings.
- (i) Discussing the situation with all relevant people, professionals and agencies involved with the child.
- (j) Ascertaining the child's wishes and feelings regarding his/her future.
- (k) Accessing all relevant reports, information and data available.
- (l) Identifying the key issues in the case.
- (m) Ascertaining the necessity or otherwise of legal representation or consultation.

#### 3.2.3 Stages of the Inquiry

It may be helpful to divide the inquiry into stages to ensure an efficient and time measured process.

##### 3.2.3.1 Stage (1) Planning the Inquiry

The following shall be considered in the planning stage of the inquiry:

- (a) The completion of a check list to help ensure all relevant areas are addressed in a timely manner.
- (b) The relevant court requirements and the next court date.



- (c) What is required during that time-frame.
- (d) The nature of the proceedings.
- (e) The identity of the parties involved.
- (f) The identity of the child's social worker.
- (g) What is specified in the court order.
- (h) The possibility of any professional conflict of interest.

The level of information available regarding:

- (i) The child.
- (j) The grounds for the application.
- (k) The child's immediate and extended family.
- (l) Anyone with parental responsibility.
- (m) The care plan for the child into the future.
- (n) Where the child is currently residing.
- (o) The child's level of knowledge of the proceedings and the roles and functions of all the parties involved.

### 3.2.3.2 Preliminary Inquiry

During this **preliminary inquiry stage (2)** the guardian *ad litem* shall:

- (a) Make a preliminary list of people to be contacted/ interviewed to include:
  - 1. Parents and other adults important to the child including previous and current carers.
  - 2. Siblings.
  - 3. Members of the extended family where relevant.
  - 4. Professionals involved, for example social worker, family support worker, general practitioner, teacher, youth worker, garda juvenile liaison officer, residential/unit manager or foster parent.
  - 5. The child's solicitor, if appointed.
- (b) Examine all available information.
- (c) Identify any gaps in that information.
- (d) Request the provision of whatever additional information is perceived necessary.
- (e) Inform the child of the appointment and explain the role including any remedies to resolve tensions or dissatisfaction occurring between the child and the guardian *ad litem*.

- (f) Inform the child's carers of the appointment and explain the role.
- (g) Inform the relevant social worker of the appointment both by phone and in writing.
- (h) Compile a record of appointments, information provided, contact details of parties and professionals involved.
- (i) Identify the issues to be addressed and the tasks to be completed.
- (j) Ascertain if any additional directions from the court are required.

## 3.2.4 Areas of Inquiry


### 3.2.4.1 Approach

The **inquiry stage (3)** shall concentrate on two areas, gathering information and identifying the areas of the case which are in dispute or where more detailed information is required.

### 3.2.4.2 Gathering Information

When gathering information, the guardian *ad litem* shall:

- (a) Ensure that the child understands the role of the guardian *ad litem*.
- (b) Speak to all the people included in the preliminary list.
- (c) Make notes of all interviews conducted.
- (d) Request permission to examine all social work or other relevant files regarding the child.
- (e) Liaise with the child, develop a plan of meetings and endeavour to keep each appointment made.
- (f) Using professional judgment, meet the child in different environments.
- (g) When a case involves a family group of children, ensure that the children's interests are represented individually and as part of the family group.
- (h) Ensure that the child's wishes and feelings are ascertained regarding contact with each family member and the other significant people in the child's life.

- 
- (i) In particular when representing a child in special care or civil detention, a guardian *ad litem* shall:
    1. Ensure that the child's wishes, feelings and interests are represented to key staff and managers and to the care planning group.
    2. Consider the child's ability to give informed consent to medical and other assessments.
  - (j) Focus on key areas regarding:
    1. Analysis of social work and other relevant files.
    2. Reasons for decisions taken by the HSE.
    3. The appropriateness of the current application.
    4. The various areas of contact with the child.
    5. The anticipated duration of the proceedings.
    6. The perceived urgency of the situation.
    7. The identification of the key issues.
  - (k) Explain the purpose of the interview and what will be done with the information obtained to the interviewee.
  - (l) Focus on the wishes, feelings and interests of the child.
  - (m) Ensure that the child participates in the decision-making process without bearing responsibility for the decisions made.
  - (n) Keep the court updated on progress and developments.
  - (o) Discuss the case with the appropriate HSE professionals or with HSE agents and identify possible areas of conflict, confusion or agreement.
  - (p) Try to resolve any perceived difficulties in a non adversarial way through discussion and negotiation before the next court date while not becoming involved in the management of the case.
  - (q) Actively seek the provision of other reports before the next court date so that issues identified can be taken into account in the guardian *ad litem's* report.
  - (r) Discuss the case with the child's solicitor, if one has been appointed.
  - (s) Seek legal advice/consultation if legal issues are a likely or actual impediment to achieving an appropriate outcome to the proceedings.
  - (t) Attend case conferences/reviews where invited and participate in a constructive manner while being aware of the independence of the role and the responsibility of the HSE for management of the case.
  - (u) Using professional judgment, and taking account of the provisions of, the Children First National Guidelines 1999, whether updated, amended or replaced and the provisions of the Data Protection Acts, 1988/2003, be prepared to share relevant information with other professionals involved with the child.

#### 3.2.4.3 Identifying Areas of Dispute

Following the inquiry and examination of all relevant issues the guardian *ad litem* shall identify any areas of dispute or where more detailed information is required.

In particular, guardians *ad litem* shall:

- (a) Be familiar with the opinions expressed in files and reports.
- (b) Be satisfied as to the veracity of the information contained in files and reports.
- (c) Examine the source of disputed or contentious information contained in files and reports.
- (d) Be in a position to differentiate between matters of fact and opinion.
- (e) Identify additional people to be interviewed or re-interviewed if necessary.
- (f) Ascertain the need for the provision of expert opinion/assistance.
- (g) Ascertain the need or otherwise for additional directions from the court.
- (h) Conduct focused interviews with key people.
- (i) Be clear about the purpose of the interview and the specific information required.
- (j) Explain the purpose of the interview and what will be done with the information obtained to the interviewee.
- (k) Focus on the wishes, feelings and interests of the child.
- (l) Ensure that the child participates in the decision-making process without bearing responsibility for the decisions made.
- (m) Keep the court updated on progress and developments.
- (n) Discuss the case with the appropriate HSE professionals or with HSE agents and identify possible areas of conflict, confusion or agreement.
- (o) Try to resolve any perceived difficulties in a non adversarial way through discussion and negotiation before the next court date while not becoming involved in the management of the case.
- (p) Actively seek the provision of other reports before the next court date so that issues identified can be taken into account in the guardian *ad litem's* report.
- (q) Discuss the case with the child's solicitor, if one has been appointed.
- (r) Seek legal advice/consultation if legal issues are a likely or actual impediment to achieving an appropriate outcome to the proceedings.
- (s) Attend case conferences/reviews where invited and participate in a constructive manner while being aware of the independence of the role and the responsibility of the HSE for management of the case.
- (t) Using professional judgment, and taking account of the provisions of, the Children First National Guidelines 1999, whether updated, amended or replaced and the provisions of the Data Protection Acts, 1988/2003, be prepared to share relevant information with other professionals involved with the child.

#### 3.2.4.4 End of the Inquiry

By the end of the **inquiry stage (3)** the guardian *ad litem* shall:

- (a) Have all the relevant facts of the case.
- (b) Have interviewed all those relevant to the proceedings.
- (c) Be in a position to independently represent the child's wishes, feelings and interests to the court.
- (d) Be in a position to inform the court on all welfare aspects of the case.



- (e) Where difficulties remain unresolved following discussion and negotiation, be in a position to inform the court with recommendations and/or possible solutions.
- (f) Have addressed any issues of gender, ethnicity, culture and language.
- (g) Be in a position to provide an independent view of the outcome of the work of the HSE and other agencies involved with the child.
- (h) Be satisfied that the case is being heard within a reasonable timeframe.
- (i) Be able to offer independent advice on the options available to the court and the possible effects of each course of action on the child.
- (j) Be in a position to present a view to the court on whether making an order would be better than making no order.
- (k) Be in a position to make clear independent recommendations to the court regarding the course of action most appropriate to the interests of the child.
- (l) Be in a position to advise the court on any conditions to be attached to whatever order is made.
- (m) Advise the child's solicitor on the cross examination of any witnesses.
- (n) Inform the HSE of the recommendations to be made to the court.
- (o) Be in possession of contemporaneous notes of interviews so that these may be tendered in evidence to the court if necessary.

## 3.3 Representation

### 3.3.1 Report and Court Appearance

Representation involves providing a report and representing the wishes, feelings and interests of the child to the court. The courts that have significant experience of guardians *ad litem* recognise and appreciate the benefits of these reports and advice.

The report shall be readable for its range of readers. The layout shall make it easy to read. The use of jargon, phrases or words not easily understood shall be avoided. It shall be written in clear, concise and correct language. It shall differentiate between professional opinion, undisputed and disputed fact.

The report shall be a free-standing, independent document. Its purpose shall be to describe in clear and unambiguous terms the background of the case, inquiries undertaken, the child's wishes, feelings and interests, an assessment of the child's needs, an analysis of the options available to the court and a recommendation regarding the disposal of the case.

Opinions or assessments outside of the expertise of the guardian *ad litem* shall not be provided. Expert assistance regarding the interpretation of information that is difficult to understand shall be sought. The report shall present to the court a fair and balanced assessment based on the information available.

The report shall assist the reader by enabling the making of notes in the margins for the purpose of questioning or cross examination. Reports shall conform to a standard template and provide consistent information.

In particular the report shall contain:

- (a) A title page
- (b) Report contents
- (c) Details of qualifications
- (d) Details of the proceedings
- (e) Summary of the case
- (f) Inquiries undertaken
- (g) Family composition
- (h) Background history
- (i) Circumstances of the child
- (j) Wishes, feelings and interests of the child
- (k) Physical, emotional and educational needs of the child
- (l) Child's experience of harm
- (m) Assessment of parental involvement and other relevant care of the child
- (n) Details of HSE involvement and care plan
- (o) Options available to the court
- (p) Recommendations

### 3.4 Post Proceedings

When proceedings have concluded but depending on the court's order, the guardian *ad litem*'s involvement usually ceases.

However, it has become increasingly common for courts to make orders and set further review dates requesting updates from the guardian *ad litem*.

In these situations it is important for the guardian *ad litem* to clarify the position with the court regarding his/her continued involvement.

Issues covered in any update of proceedings shall include:

- (a) Any behaviour that might affect the well-being or interests of the child.
- (b) Any change in circumstances that might affect the well-being or interests of the child.
- (c) An assessment of the level of any existing risk.
- (d) An assessment of any action required to address any risk.

Notwithstanding the above, there are certain responsibilities which the guardian *ad litem* shall discharge upon conclusion of proceedings:

- (e) Ensure the child understands the outcome of the proceedings.
- (f) Ensure the child is aware of his/her rights to make application to have orders varied or discharged.
- (g) Consider the need to comment formally on any significant issues arising from the case.
- (h) Consider the appropriateness of lodging an appeal.

In addition, the guardian *ad litem* take all reasonable steps to:

- (i) Ensure that all data gathered during the life of the case is stored, handled, transferred or disposed of in a way that attends to the needs for privacy and security.
- (j) Ensure adequate plans are in place for the appropriate disposal of records in the event of illness or death.
- (k) Ensure records over which s/he has control remain personally identifiable as long as is necessary in the interests of those to whom the records refer.

### 3.5 Appointment

When a guardian *ad litem* is appointed to a specific case s/he shall:

- (a) Declare any possible conflict of interests (self declaration), when initially appointed to a specific case or arising at any point during the case.
- (b) A conflict of interests might occur where:
  - 1. The guardian *ad litem* has had direct contact through previous employment with the child or his/her family or siblings
  - 2. The guardian *ad litem* has had direct case or case management responsibilities in previous proceedings through previous employment
  - 3. The guardian *ad litem* has had a previous professional or personal relationship with any party connected to the case
- (c) Where any of the above or similar situations exist, the guardian *ad litem* shall satisfy the court that his/her independence while acting in the case specified is not compromised.
- (d) The guardian *ad litem*, on appointment, shall be responsible to the court and shall comply with all directions and requests of the court.



## Appendices

### Appendix A: Format for Report to Court

#### Title Page:

Name of the child

Court

Court Date

Date of Report

Court References

Report (whether final, interim, review, 1st or 2nd, etc.)

Name of Guardian *ad litem*

Reference to the confidentiality of the Report

#### Report Contents:

List of everything contained in the Report

#### Qualifications:

Professional qualifications of author

Experience of author

#### Details of Proceedings:

Type of proceedings

Details of child

Court dates

Date of appointment

Details of solicitor if appropriate

#### Summary of Case:

Concise summary of case

#### Inquiries Undertaken:

People spoken to/interviewed

Details of contact (personal interview/telephone)

Examination of files

Contact with child

#### Family Composition:

Parents

Former and current carers

Extended family where appropriate

Significant adults

Siblings

#### Background History:

Significant events

Professional involvement

Social Work files

Schools

G.P.

Early intervention

#### Circumstances of the Child:

Family circumstances

Current placement

Other court involvement





## **Wishes and Feelings of the Child:**

Description

Indication of how communicated

Consistency

Methods of interpretation

## **Physical, Emotional and Educational Needs:**

Special Needs and Requirements

Medical Needs

Needs tailored to specific situation

Child's Experience of Harm:

Details of any assault, ill treatment, neglect or sexual abuse

Details of any impairment to health, development or welfare

Details of any likely impairment to health, development or welfare

Details of any requirement of special care or protection

Details of any behaviour posing a real and substantial risk to health, safety, development or welfare

## **Assessment of Parental Involvement and other Relevant Care of the Child:**

Capability of parents to provide adequate care

Support needed

Ability to effect change/take responsibility

Parents' own experience of being parented

Physical and Mental Health

Available support systems

Lifestyle circumstances

## **Details of HSE Involvement and Care Plan:**

Evaluation of HSE involvement

Perceived appropriateness of decisions taken

Any inadequacies in service provision or practice

## **Observations Regarding the Suitability of the Provisions of the Care Plan and In Particular:**

Its ability to meet the identified needs of the child

The aim and timescale of the plan

The proposed placement

Services to be provided to the child and/or family

Arrangements for contact and reunification

Support in placement

Likely duration of placement

Contingency plan if placement breaks down

Arrangements for terminating placement

Who is responsible for implementing the plan

Specific details of the parents' role in arrangements

Wishes and views of the child

Views of parents and other significant adults

Views of other agencies involved

Reasons supporting the course of action taken

Arrangements for input from child, parents and others into decision making process

Arrangements for the notification of disagreements or making representations

Arrangements for health care

Arrangements for education

Dates for review





## Options Available to the Court:

List of options available

Merits of each

Possible effects of the implementation of any

Appropriateness of making an order as opposed to making no order

## Recommendations:

Recommendations should be:

Based on information available

Based on professional judgment

Based on the wishes, feelings and interests of the child

Based on the needs of the child

Realistic and achievable



## Appendix B: Summary of Research/Consultation Findings

### Some Findings from Two UK Research Projects on Guardians *ad Litem*

These research projects were carried out during the period when guardians *ad litem* were attached to panels established by individual local authorities. This system was discontinued when CAFCASS (Children and Family Court Advisory and Support Service) was established.

#### 1. Jean McCausland - “Guarding Children’s Interests – The Contribution of Guardians *ad litem* in Court Proceedings” Published by the The Children’s Society in 2000.

This research was conducted in 1997/1998 and involved two separate processes. Firstly a questionnaire was distributed to professionals involved in 21 randomly selected public law cases. The professionals included social workers, local authority solicitors, children’s solicitors, parents’ solicitors and guardians *ad litem*. The response rate was 73.8%.

One aim of the study was to evaluate professional’s perception of the contribution of guardians *ad litem* to public family law proceedings.

Secondly, a representative group of 28 children involved in public law cases in 1998 and ranging in age from 8 to 17 years were interviewed to elicit their views regarding what they perceived as an “ideal guardian *ad litem*”, what the role of the guardian *ad litem* is and if they felt listened to and understood.

### Views of Professionals

Recommendations of guardians *ad litem* were the same as that of Local Authorities in 90.2% of the cases included in the research following:

- Negotiation
- Modification of care plan
- Modification of length of secure accommodation
- Assessment, Discussion and Negotiation

Areas of disagreement included:

- Issues around the non diagnosis of mental illness
- Care plan not specific enough regarding commitment and time scales
- Possible separation of siblings
- Care Plan not flexible enough to meet child’s needs
- Grand standing by local authority – appropriate care plan only produced at final stages of process
- Issues over contact – resolved by negotiation
- Care plan criticised by guardian *ad litem* to mother

Defined areas of disagreement revolved around social work practice rather than specific proceedings issues, including:

- Inappropriate placement of children
- Delay or refusal to undertake assessment work by local authority
- Inappropriate timing of contact sessions
- Hostile relationships between families and social workers

Advantages of guardians *ad litem* in cases where there is disagreement included:

- Acting as mediator between parties where “sticking points” occur
- Mediating adjustments to care plan where there is disagreement between parents and local authority
- Providing unbiased opinion which is child centred
- Ability of guardian *ad litem* to spend time with parents
- Ability to act as liaison between parents and local authority where there is disagreement
- Ability to make decision making process easier
- Ability to help parties move towards agreement

Added value of guardian *ad litem* involvement in cases included:

- Raising new information
- Raising new issues
- Expressing the wishes and feelings of children



- Providing an unbiased view of a case leading to a final settlement
- Explaining the court process to children
- Assisting the Local Authority to focus on relevant issues and
- Providing a thorough independent investigation

In relation to the guardian *ad litem's* **influence** on the outcome of a case, 27 professionals stated that the outcomes in 15 out of 21 cases would have been different if a guardian *ad litem* had not been involved.

Differences cited include:

- Different placements due to orders not being renewed or different orders made to those originally applied for
- Cessation of continued applications by the Local Authority for an order when no evidence existed to support the application
- Cases resolved more quickly because of mediation on the part of the guardian *ad litem*
- Cases not contested because of guardian *ad litem* intervention
- Less conflict between parties because of parent's confidence in guardian *ad litem*

The findings suggest that the contribution of guardians *ad litem* assists in the decision making process, make proceedings less contentious, shorter, more comprehensive and more child focused.

These issues should also be taken into account when evaluating the contribution of guardians *ad litem* to proceedings rather than just focusing on recommendations and outcomes.

However, the fact that there was agreement in over 90% of cases between the guardian *ad litem* and the Local Authority may also suggest that there was a willingness on both sides to reach agreements that were in the best interests of the child.

## Views of the Children

No.	Characteristics of an Ideal Guardian <i>ad Litem</i>
23	Kind, helpful, easy to talk to, get things done, explain, be interested, listen, Give time
3	The above + see you more often, see you once every two weeks and always give you time
20	1 of top 2 characteristics = ability to listen
12	1 of top 2 characteristics = explain things
	<b>Understanding the role of the Guardian <i>ad Litem</i></b>
14	Comprehensive understanding
14	Limited understanding
4	Help protect children
7	Thought guardian <i>ad litem</i> works for social services
	<b>Children's Personal views of their Guardian <i>ad Litem</i></b>
5	Dissatisfied with guardian <i>ad litem</i> , mostly on practice issues, e.g. not listening, not paying attention, failing to tell them things, not getting things done, being difficult to talk to, too busy to meet, not interested, not explaining things
14	Were positive about their guardians <i>ad litem</i> , e.g. interested, good listeners, explained things, gave them time, easy to talk to,
22	Thought their guardian <i>ad litem</i> understood them
4	Believed they were not understood
	<b>Children's Understanding of the Court Process</b>
2	Were unsure
5	Declined to answer
21	Knew that the guardian <i>ad litem</i> told the court what they wanted
17	Understood how the guardian <i>ad litem</i> told the court what they wanted
9	Believed that the guardian <i>ad litem</i> only talked to the court
20	Believed that the guardian <i>ad litem</i> knew them well enough to tell the court what they wanted and why



## Other Issues for the Children

- Meeting children on their own
- Revealing contents of reports to children
- The difference between hearing what the child is saying and understanding enough to make appropriate recommendations
- Issue of confidentiality (one child felt that her guardian *ad litem* had repeated something she said in confidence)
- Attendance by children at court
- Learning of the courts decision

The following areas were identified as being vital to the role of the guardian *ad litem* regarding their interaction with children:

- Explaining their role to the child
- Explaining that they are independent of all other agencies/services
- Explaining the limits of confidentiality
- Ensuring the child understands the responsibility of the guardian *ad litem* to inform the court of the child's wishes and feelings
- Ensuring that the child will know how the guardian *ad litem* will inform the court
- Seeing the child alone
- Ensuring the child knows the guardian *ad litem*'s views
- Ensuring discussion with the child about meeting and attending meetings
- Ensuring that the child is made aware of the court's decision
- Ensuring that the child knows about complaints and grievance procedures
- Ensuring that the guardian *ad litem* says goodbye to the child

Opportunities for the child:

- Contribute to the guardian *ad litem*'s report
- Have the opportunity to read at least parts of the report
- Have the opportunity to see or attend the court
- Develop a system for feedback

## Conclusion

The value added to proceedings by the appointment of guardians *ad litem* who bring independence and experience while focusing on the best interests of the child is confirmed by this research. Their negotiation and mediation skills are seen as advantageous to reaching satisfactory conclusions to complex cases and their role within the court setting is an added value.

### 2. Judith Masson and Maureen Winn Oakley – “Out of Hearing, Representing Children in Care Proceedings” Published in 1999 by Wiley

This research was commissioned by the National Society for the Prevention of Cruelty to Children and was carried out in 1996/1997. The children and professionals involved in 20 cases from two Local Authority areas in the midlands of England were interviewed during and after the proceedings. The children interviewed ranged in ages from 8 to 16 and the professionals interviewed included guardians *ad litem* and children's solicitors.

Interviews/interaction with the children highlighted a number of issues including:

### Isolation:

- Physical (isolated from family and friends and communities)
- Uncertainty (temporary placements, court proceedings)
- Lack of social worker support (poor relationship, constant change)
- Fear of isolation returning (settled in care for a considerable time and parent(s) suddenly wanting to renew contact)
- Being different (in care, new schools, lack of possessions, clothes etc.)

### Making and Keeping Contacts:

- With parents
- With siblings
- With current or previous foster carers/carers



### Going to Court:

- Child wants to go to court
- Guardian *ad litem* does not want child to go to court
- Local Authority does not want child to go to court

### Policy and Practice Issues:

Bad Practice:

- Failings of individual practitioners
- Systemic failings
- Diversity of practice (this includes the courts)
- Local practices influencing the way cases were dealt with
- Failure to achieve desired outcomes
- Poor communications systems

The research also indicated that while diversity in practice may indicate a responsive system it is also a characteristic of one which is arbitrary. Diversity may have assisted practitioners achieve the best for their clients but it may also have disempowered children who generally lacked easy access to information about how the system worked. It can also render practitioners unable to predict what an outcome might be. It appeared that some 'bad practice' was inherent in the system and practitioners had to work within this system.

In addition, despite their independence guardians *ad litem* had limited opportunities to influence the way the system responded to the children's needs. Their practice was dependent on the attitude and approach of judges and magistrates. It also suggested that the emphasis on independence could dilute any accountability for failure to achieve desired outcomes.

### Other Practice Issues:

- Lack of provision of consistent information to children
- Negative attitude of the courts towards children's attendance
- Lack of court control on care plan content and implementation
- Attendance of guardians *ad litem* at case conferences
- Children's access to guardian *ad litem* reports
- Children being informed of court decisions.

### Conclusion

Despite the representation system and sometimes despite considerable efforts on the part of representatives, children's concerns frequently remained unaddressed. Some concerns remained unidentified while others were recognised as important for their welfare but were not vigorously advocated. One reason for this was the court's limited power over Local Authorities while another was to protect the children from the process itself. Overall the children felt that they did not know enough about the process and it appeared to them that the system existed for adults and not for them.

## 2.2 Consultation with Children in Ireland

Consultation by CAAB with a small number of children and young people to whom a guardian *ad litem* had been previously appointed revealed similar issues to those already identified in the UK research, e.g.:

- Diversity of practice
- Differences in levels of information provided to children/young people
- Differing approaches to children/young people's attendance at court
- Failure to achieve desired outcomes

Positive Indicators included:

- Children/young people felt the guardian *ad litem* understood them
- They felt listened to
- They felt that the guardian *ad litem* was easy to talk to
- They felt that the guardian *ad litem* did his/her best for them
- they felt that the guardian *ad litem* acted in a professional manner at all times



## Appendix C: Acknowledgements

The CAAB would like to acknowledge the invaluable contributions of the members of the Consultative Group:

Freda McKittrick	Barnardos/Beacon Guardian <i>ad Litem</i> Service
Miriam Lyne	Barnardos/Beacon Guardian <i>ad Litem</i> Service
Roisin Webb	Children's Rights Alliance
Olive Caulfield	Courts Service
Tadgh Delaney	Dept. of Health & Children
Michele Clear	Health Service Executive
Bill Meagher	Health Service Executive
Carol Galavan	Independent Guardian <i>ad litem</i>
Harry Law	Independent Guardian <i>ad litem</i>
Carmel Murphy	Independent Guardian <i>ad litem</i>
Orla Ryan	Independent Guardian <i>ad litem</i>
Fiona Murray	Irish Association for Young People in Care
Caroline O'Sullivan	Irish Society for the Prevention of Cruelty to Children
Mary Nicholson	Irish Society for the Prevention of Cruelty to Children
Joe Gavin	Irish Youth Justice Service
Marie O'Reilly	Irish Youth Justice Service
Theresa Blake	Law Library
Mary Fay	Law Library
Sinead Kearney	Law Society
John McDaid	Legal Aid Board
Brian Dack	Probation Service
Gerry O'Brien	Solicitor



# Appendix D: Submissions Received

Shane Costello	Barrister at Law
Pat Dunne	Local Health Manager
Rose Forrest	Barrister at Law
HSE	Health Service Executive
Eugene McCarthy	Barrister at Law (former guardian <i>ad litem</i> )
Alex McCluskey	Guardian <i>ad Litem</i>
Sarah Molloy	Solicitor
Trish Walsh	University Lecturer



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# Notes



