



empowering people in care

EPIC

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Joint Committee on Children and Youth Affairs

Leinster House

Dublin 2

### **Submission to the Joint Committee on Children and Youth Affairs**

As per the invitation of the Joint Committee on Children and Youth Affairs, please find in this submission EPIC's opening statement, a case study illustrating the opening statement, and a briefing document on the key issues presenting to EPIC's Advocacy Service.

Yours respectfully,

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## **OPENING STATEMENT**

### **Child Care (Amendment) Bill 2017**

EPIC welcomes the opportunity to discuss the crucial issue of Guardians *ad litem* with the Joint Committee on Children & Youth Affairs in relation to the Child Care (Amendment) Bill 2017.

EPIC's position is that every child involved in legal proceedings requires a Guardian *ad litem*, as it is crucial that the child's best interest be represented in any court proceeding that will have an impact on the child's life. It is important to note that such proceedings can be very intimidating and confusing to a child. This is especially true for children in care, for whom court proceedings can determine their separation from their parents, siblings, community and the extent of their contact and access to their birth family. EPIC believes it is crucial that all children involved in legal proceedings have a right to have their voice heard and have their best interests represented. EPIC however recognises that Guardians *ad litem* are appointed for a limited period of time, and therefore children involved in care proceedings should have the support of both a Guardian *ad litem* and an independent advocate, with whom they have had time to develop a trusting relationship. EPIC is encouraged that the Joint Committee has dedicated time to examine the importance of the voice of the child, and is grateful for the opportunity to put forward the opinion that children with care experience must have access to both a Guardian *ad litem* and an advocate.

#### **1. Guardians *ad litem* and children with care experience**

Guardians *ad litem* and advocates provide different, yet complementary support to children in care. Whilst Guardians *ad litem* will outline the wishes and feelings and defend the child's best interest, the role of the advocate is solely to support the child in having his or her voice heard. This is a particularly significant distinction given how disempowered children can feel in care proceedings where decisions are being made about their future. Because of the difference in their role, Guardians *ad litem* typically only have the opportunity to meet the child on a limited basis and only when proceedings are in being. Guardians *ad litem* do not have the opportunity to develop a trusting relationship with the child. This is especially significant for children in care, which is why EPIC is drawing the attention of the Joint Oireachtas Committee to the importance of having an advocate who will have the opportunity to work with the child



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before, during, and after the court proceedings. Children in care are a particularly vulnerable cohort, and often struggle to build relationships and trust adults. Advocates have the opportunity to build a relationship with the child over an extended period of time, and position themselves as a long-term support that the child can count on. An advocate will encourage the child to speak where possible, or will accurately represent their views in court proceedings. The relationship between the child and the advocate is further helped by its voluntary nature. The child chooses to work with the advocate, whereas the Guardian *ad litem* is court-appointed. EPIC has successfully supported children and young people with care experience in large part because of the time, effort and expertise that advocates devote to developing this trusting relationship. In EPIC's opinion, Guardians *ad litem* would benefit significantly from working in collaboration with advocates when representing a child in care proceedings. Furthermore, it is the child at the centre of these proceedings who will ultimately benefit most from a closer collaboration between an advocate and a Guardian *ad litem*.

## 2. Opinion on the proposed legislation

EPIC welcomes the child's best interest being highlighted as paramount in child care proceedings. EPIC's opinion of the proposed legislation is two-fold. Firstly, EPIC welcomes a regulation of the GAL service, to ensure consistency in practice, adequate oversight and structured complaint procedures. This is especially welcome given that there are currently significant geographical inconsistencies in a child's access to a court-appointed Guardian *ad litem*, and such a lottery is unacceptable.

Further, it is EPIC's duty to promote the right of the child to have their voice heard in matters that affect them. As it currently stands, the proposed regulation of the GAL in *Head 5, subhead (1)* insists that "while the Guardian *ad litem* will hear the child's views, and have regard to them, in formulating his/her report for the court, the GAL will advise the court [...] on what is in the best interest of the child. S/he is not constrained by the views of the child [...]". While EPIC understands this is consistent with the Guardian *ad litem's* mandate, children, and especially children in care, should have access to both a Guardian *ad litem* and an advocate in court proceedings. EPIC's opinion is that it would be beneficial to both the child and the court if a formal structure was in place to enable better collaboration between a child's advocate and the Guardian *ad litem*. Such collaboration would be facilitated by the establishment of a single Guardian *ad litem* service. Indeed, it would open the possibility of advocates being appointed alongside Guardians *ad litem* for children in care.



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To conclude, EPIC believes that this legislation is a positive development. However, the current proposal dilutes the voice of the child by limiting the child to a witness status. This does not, in EPIC's opinion, give appropriate or adequate weight to the voice of the child in respect to court proceedings, in a manner that is consistent with Article 42A of the Constitution, which states "in all proceedings [...] in respect of any child who is capable of forming his or her own views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child." It is EPIC's contention that the key to ensuring the child's voice is heard is through structured collaboration between Guardians *ad litem* and advocates. The voice of the child must be central to that process and must inform a court's decision during child care proceedings. If the voice of the child is absent, the court will not be in a position to make a fully informed decision. This is critical to the vulnerable cohort of children in care.

## APPENDIX 1: Case Study

### Children in care, Guardians *ad litem* and advocates

David\* is 17 years old and is under a full care order. He has lived in the same foster placement for 5 years. David is a film-maker and strong advocate for young people's right to speak out and have their voices heard. He was keen to raise awareness about foster care and highlight his positive experience of being in the care system, and to this end made a video about his life in care and what care had done for him as a person. David posted this video online. He was unaware that he was in breach of the *in camera* rule and a case was brought to court. David was not appointed a Guardian *ad litem*, but he did, however, access the support of an EPIC advocate. The EPIC advocate had a number of key functions in David's case:

- To ensure that David understood why his actions, though unintentional, had breached the *in camera* rule and what the possible consequences may be.
- To support David in identifying and articulating his motivations, feelings and concerns about his actions and the situation he found himself in.
- To help David to prepare to attend court and to ensure that David did not feel overwhelmed or act inappropriately in the court setting.
- To support David in court and ensure that David had the opportunity to fully participate in proceedings.
- To ensure that David understood the outcomes of the proceeding and the decisions of the court and to follow up with any follow-up actions that David needed to take as a result of the court decision.

David was required to appear before the judge multiple times and he was supported on each occasion by his advocate. David's position on the issue was contrary to that of his social workers and as a result the court proceedings were, at times, very difficult. David felt he was being unfairly penalised and treated differently to his peers, who were unrestricted in terms of their engagement with social media. The advocate had to ensure that David was enabled to have his views heard while also ensuring that David understood the complex legal restrictions under the Child Care Act 1991 which were designed to protect David's privacy and identity. The advocate was also able to support David both before and after court proceedings, and link in

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\* Names and identifying details have been changed to protect the privacy of individuals



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with him to provide emotional support and encourage him to make appropriate and informed decisions throughout the process. David felt empowered to participate in court proceedings, as opposed to passively listening to people speaking on his behalf.

Although the outcome was not what David had hoped for, he accepted the decision of the court as he felt he had been given the opportunity to be heard. Without his advocate David would not have been as prepared or supported to participate in these proceedings. His meaningful participation, supported by his independent advocate, meant that David accepted the outcome of the proceeding as a full participant.



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## APPENDIX 2

### BRIEFING DOCUMENT

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**To:** Joint Committee on Children and Youth Affairs

- **Background**

EPIC (Empowering People in Care) is a national organisation that works with children in care and young people with care experience throughout the Republic of Ireland. EPIC provides a National Advocacy Service to young people in care and young people who have care experience.

- **Issues Presenting to the Advocacy Service**

**Aftercare** - Main presenting issue for young people preparing to leave care and in aftercare:

- Aftercare services are currently inconsistent across the country: issues of no aftercare planning, no allocated aftercare worker, no access to accommodation, homelessness
- Only 34% of 16 and 17 year olds have an aftercare plan (Q3 2016, Tusla)
- Only 36% of 16 and 17 year olds have an allocated aftercare worker (Q3 2016, Tusla)
- Lack of information and understanding of entitlements and rights
- Difficulties in accessing aftercare after an area transfer or having disengaged in services
- No aftercare for young people who have come into care after the age of 17

**Homelessness** - Certain cohorts of care leavers are particularly at risk of homelessness:

- Young Mothers with babies & children
- Young people with a disability
- Young people who have entered the care system after the age of 17

**Disability** - EPIC is witnessing an increase in the number of disability-related issues:

- Gap in services after 18 between HSE Disability Services and Tusla.
- Lack of equality in between children with disabilities and all other children in care
- Lack of clarity regarding the legal status of children with disabilities in the care system
- Lack of supports available for parents with a disability who have been/are in care
- No advocacy service dedicated to disability

**Placement:**

- Lack of suitability and appropriateness of placements (including distance from families)
- Lack of stability in placements (frequent placement breakdowns and moves)

**Access to Services:**

- Lack of multidisciplinary support: mental health, therapeutic and rehabilitation services
- Necessity of being prioritised in accessing social services (medical card, transport, housing)