

General scheme of Child Care (Amendment) Bill 2017 - Guardian *ad litem* arrangements

Pre-legislative Scrutiny by the Joint Oireachtas Committee for Children and Youth Affairs

Opening statement of Minister for Children and Youth Affairs

5th April 2017

I thank the Joint Committee and its Chairman, Deputy Daly, for providing me and officials of my Department with the opportunity to brief the Committee on the General Scheme of the Child Care (Amendment) Bill 2017. I welcome the Committee's engagement and interest in the matter.

The General Scheme provides for the extensive reform of existing ad hoc Guardian *ad litem* arrangements in child care proceedings. Before going into the detail of the General Scheme, I would like to highlight a number of key positive features of the reform proposals:

- There will be a presumption in favour of the appointment of a Guardian *ad litem* in all child care proceedings, and where the court decides not to appoint a Guardian *ad litem*, the court will be required to give the reasoning behind its decision.
- A nationally organised, managed and delivered Guardian *ad litem* service will be established.
- This service will be responsible for providing Guardians *ad litem* to the courts and will support the professional practice and development of Guardians *ad litem* and monitor their performance.
- The service will also be responsible for making legal advice available to Guardians *ad litem* through an in-house legal facility and arranging legal representation for a Guardian *ad litem* where it is deemed by a service provider to be required.
- The role and function of a Guardian *ad litem* and the qualifications and experience required to act as a Guardian *ad litem* will be clearly defined.

In conjunction with reform in this area, my Department is progressing a review of the 1991 Child Care Act in its entirety. This detailed review includes identifying areas which need to be revised or updated to reflect current practices and to respond to current needs. It also includes the examination of a number of potential new areas for development – for example the inclusion of principles underpinning the revised Act including explicit reference to the principle that **all** those involved in child care proceedings promote and uphold the rights of the child. My Department has been engaging with Tusla in this regard and intends to commence a comprehensive public dialogue very shortly to inform this important review. My Department will be working with the Children's Rights Alliance in this regard.

Importance of Guardians ad litem to the court and to children

It is important to acknowledge at the outset that Guardians *ad litem* perform a very important function in child care proceedings. They are an invaluable source of advice to the Courts and they are also a great support for the children and young people who are involved in these proceedings.

I am taking a **child-centred** and **child-rights based approach** to the reform of current Guardian *ad litem* arrangements. My focus is on ensuring that **all** children in child care proceedings get the opportunity to have their voice heard, through having access to an independent Guardian *ad litem*. The emphasis in these cases is on what is in the child's best interests.

Child's views

The first area of focus is on hearing the views of the child. One of the key objectives of *The National Strategy for Children and Young People's Participation in Decision-making 2015-2020* published by my Department is that children and young people will have a voice in the Courts and legal system.

One such mechanism for hearing the views of the child in public law cases is for the appointment of a Guardian *ad litem*. Under current arrangements, the appointment of a Guardian *ad litem* is made where a court considers this to be necessary in the interests of the child and in the interests of justice. This is entirely at the discretion of the individual judge. This approach has resulted in the uneven appointment of Guardians *ad litem* across geographical areas. I want to ensure an end to inconsistency in this area.

While the court has discretion to determine how it hears the views of the child, for example through a direct meeting between the judge and the child in chambers, the approach I am taking is for a presumption in favour of appointment of a Guardian *ad litem* for all children in child care proceedings. Where the court decides not to appoint a Guardian *ad litem*, the court must openly state its reasons. This approach will help ensure that more children, across all areas of the country, get access to the services of a Guardian *ad litem*.

National Guardian ad litem service

The second key reform is the establishment of a nationally organised, managed and delivered Guardian *ad litem* service, separate from Tusla. The purpose of this service will be to enhance the decision making capacity of the courts by operating a well-managed, high quality and cost-effective service, in the best interests of children and young people.

I intend that the new service will be established initially by means of public procurement to facilitate speedy reform. The service established under this arrangement will be closely monitored for effectiveness and efficiency so as to inform the further development of the

service and the final positioning of the national service in a new or existing/reformed public body.

As is currently the case, it is intended that Tusla will continue to make the necessary payments in relation to Guardian *ad litem* costs and will now make such payments to the new national service, in accordance with the provisions of the contract between me and the national service provider. Care has been taken in the General Scheme to ensure the independence of the service and its Guardians *ad litem* from Tusla by stating explicitly that the *Guardian ad litem* is independent in the exercise of his/her functions and that Tusla will not exercise any governance or oversight of the service provider or of the performance of individual Guardians *ad litem*. This will limit any perception of a conflict of interest or lack of independence on the part of the Guardian *ad litem* or the national service.

Guardian *ad litem* role, qualifications and experience

The role and function of the Guardian *ad litem* will be clearly set out. The Guardian *ad litem* will have two functions, firstly to inform the court of the child's views and secondly to advise the court of what, in the Guardian *ad litem*'s professional opinion, is in the best interests of the child.

The current absence of formal qualification requirements and experience standards for those who wish to act as Guardians *ad litem* is being addressed. Those who wish to work as Guardians *ad litem* in the future will have to have qualifications in social work or psychology and at least five years' experience in child welfare and child protection. They must also supply a vetting disclosure as provided for under the National Vetting Bureau Act, 2012.

Legal representation for Guardians *ad litem*

Under the proposals, access to legal representation will be more transparent and formalised. The national service provider will be required to provide in-house legal advice to Guardians *ad litem* and will organise legal representation with expertise in care proceedings for Guardians *ad litem* where the service is satisfied that the circumstances of the case warrant it. This approach will not remove the ability to engage legal representation which will be paid for by the State but will regulate it in a way that is more cost effective but still provides for a child's rights to be vindicated.

Rebalancing of funding

While this proposal will enhance governance, it is not a cost-saving exercise. It is about providing the best service to the courts and to children to ensure that the child's best interests are served and that children's views are taken into account in child care proceedings. The intended approach will result in an increase in the number of appointments of Guardians *ad litem* with attendant increase in expenditure on Guardian *ad litem* fees and expenses, and a reduction in spending on external legal advice. My aim is to

re-focus current expenditure so that resources are available to meet increased Guardian *ad litem* costs by reducing the current spend on legal costs. I anticipate that the reforms will lead to substantially reduced legal costs. This will come about through the provision of in-house legal advice by the national service provider and the introduction of standardised legal fees for a national panel of legal representatives for those cases where legal representation for the Guardians *ad litem* is required.

While every effort will be made to introduce these reforms within existing resources, I acknowledge that some additional expenditure may be required. Should this arise, any additional funding required will be quantified and sought by me in the context of the Estimates process.

Parallel work

My Department is also carrying out a number of steps in parallel with the work on the Bill, including the preparation of 'Request for Tender' documentation for the procurement of a national service provider. It is intended that the new service will be evaluated over time, and other options can then be examined as appropriate, including for example, the option of establishing it within the proposed family courts system, establishing the Guardian *ad litem* service as a separate public body, or placing it within existing statutory structures.

Conclusion

The proposed new legislation is designed to address those deficiencies in the current Guardian *ad litem* service which are acknowledged by all interests. I believe it is vital that we put in place a well organised, quality assured and cost effective national Guardian *ad litem* service as soon as possible, and I am committed to achieving this. I and my Department will work intensively to implement it as soon as the Bill can be finalised and enacted.

Once again, I thank members for the opportunity to brief the Joint Committee today and I welcome the observations of the Joint Committee on the proposed legislation. I am happy to address any questions that the Committee may have or to provide any clarifications that may be required.

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