

11 Guardian *ad Litem* Service

- 11.1 Article 42A of the Constitution of Ireland provides that, in the resolution of all proceedings involving children, the best interests of the child must be the paramount consideration, and the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child.¹ The appointment of a guardian *ad litem* is one of the mechanisms used by the courts to ensure that the best interests, and the views of the child, are heard in public family law proceedings.²
- 11.2 Section 26 of the Child Care Act 1991 as amended (the Act) provides that, if the child at the centre of child care proceedings³ is not a party to those proceedings, the court may, if it is satisfied that it is necessary in the interests of the child and in the interest of justice to do so, appoint a guardian *ad litem* for the child. The guardian *ad litem* may, in turn, engage legal representation if they feel that it is in the child's interest to do so.
- 11.3 A guardian *ad litem* is also appointed in all applications to the High Court for special care orders. Special care involves the detention of a child for his or her own welfare and protection in a Special Care Unit with on-site educational and therapeutic supports. In the absence of primary legislation, special care has operated under the High Court's inherent jurisdiction since the 1990s.⁴
- 11.4 The Department of Children and Youth Affairs (the Department) was established in June 2011 to consolidate key areas of policy and provision for children, young people and their families. Although the Department became responsible for policy relating to guardian *ad litem* arrangements at this time, the responsibility for discharging the costs associated with the service rested with the Health Service Executive (HSE) until 2014 when the Child and Family Agency – Tusla was established.⁵
- 11.5 The Act provides that any costs incurred by a person in acting as a guardian *ad litem* shall be paid by Tusla. However, Tusla do not have a role in the management or monitoring of the service. Through the annual estimates process, the Department provide funding to Tusla which includes a budget for discharging legal costs including guardian *ad litem* costs.
- 11.6 Until the end of 2013, the costs associated with this service were reported by the HSE in their annual financial statements as professional services. Due to cost classification methods used in the HSE, comparative guardian *ad litem* costs for earlier years could not be reliably isolated from other professional service costs.

1 Following from the Children Referendum in November 2012, the Thirty-First Amendment of the Constitution (Children) Act 2012 inserted section 42A into the Constitution of Ireland. The Act was signed into law in April 2015.

2 The term 'guardian *ad litem*' literally translates as 'guardian for the suit'. It refers to the court appointed guardian in place for the duration of the court case.

3 In the context of public family law, the term 'child care proceedings', refers to the application to the courts, on behalf of the State, for an order concerning the care of a child.

4 Section 10 of the Child Care (Amendment) Act 2011 establishes special care on a statutory basis, and provides for the High Court as the appropriate court to consider matters of special care. Section 10 has not been commenced to date. In the interim, the High Court relies on its inherent jurisdiction in the granting of special care orders.

5 Tusla was established as an independent legal entity on 1 January 2014, comprising the HSE Children and Family Services, the Family Support Agency and the National Welfare Board.

Figure 11.1 Summary of guardian *ad litem* costs

	2014	2015
	€m	€m
Professional fees	9.1	8.2
Legal costs	7.4	5.9
Total	16.5	14.1

Source: Annual Financial Statements of the Child and Family Agency

The role of the guardian ad litem in Ireland

- 11.7** While the Act provides for the appointment of guardians *ad litem*, it is silent on the role. Furthermore, the legislation does not contain any guidelines on the eligibility criteria and qualifications of a person to be appointed as guardian *ad litem*, or their duties to the Court.
- 11.8** The role of the guardian *ad litem* was considered in the context of a special care case in 2007.¹ The judgement describes the function of the guardian *ad litem* as being twofold; firstly to place the views of the child before the court and secondly, to give the guardian's view as to what is in the best interests of the child.
- 11.9** The Children Acts Advisory Board (CAAB) was established under Section 20 of the Child Care (Amendment) Act 2007 to provide advice on policy issues relating to the co-ordinated delivery of services to children and young people at risk. One of the statutory functions of CAAB was to publish guidance on the qualifications, criteria for appointment, training and role of any guardian *ad litem* appointed for children in proceedings under the Child Care Act 1991.
- 11.10** In May 2009, CAAB published guidelines under the title "Giving a voice to children's wishes, feelings and interests".² The guidelines define the role of the guardian *ad litem* as to "independently establish the wishes, feelings, and interests of the child and present them to the court with recommendations". However, CAAB was dissolved with effect from 8 September 2011, and notwithstanding that they are widely accepted as best practice, the guidelines were never given a statutory footing.
- 11.11** Currently, there is no national management structure or body charged with oversight of the guardian *ad litem* service. The arrangements in place have evolved over time in order to meet the demand for the service. There are currently around 65 guardians *ad litem* operating in the State, either working alone, as part of a group or under a service provider umbrella (see Figure 11.2).
- 11.12** In October 2015, the Department launched a consultation paper on policy reform of the guardian *ad litem* service.³ The paper acknowledges that reform of the current service is necessary to establish an accountable national system for service management and delivery. At the time of writing, the consultation process has been completed and the Department are preparing proposals for reform.

1 The judgement was delivered by Mr Justice MacMenamin in the case of HSE v K (a minor) 2007. An extract from this judgement has been set out at Annex A.

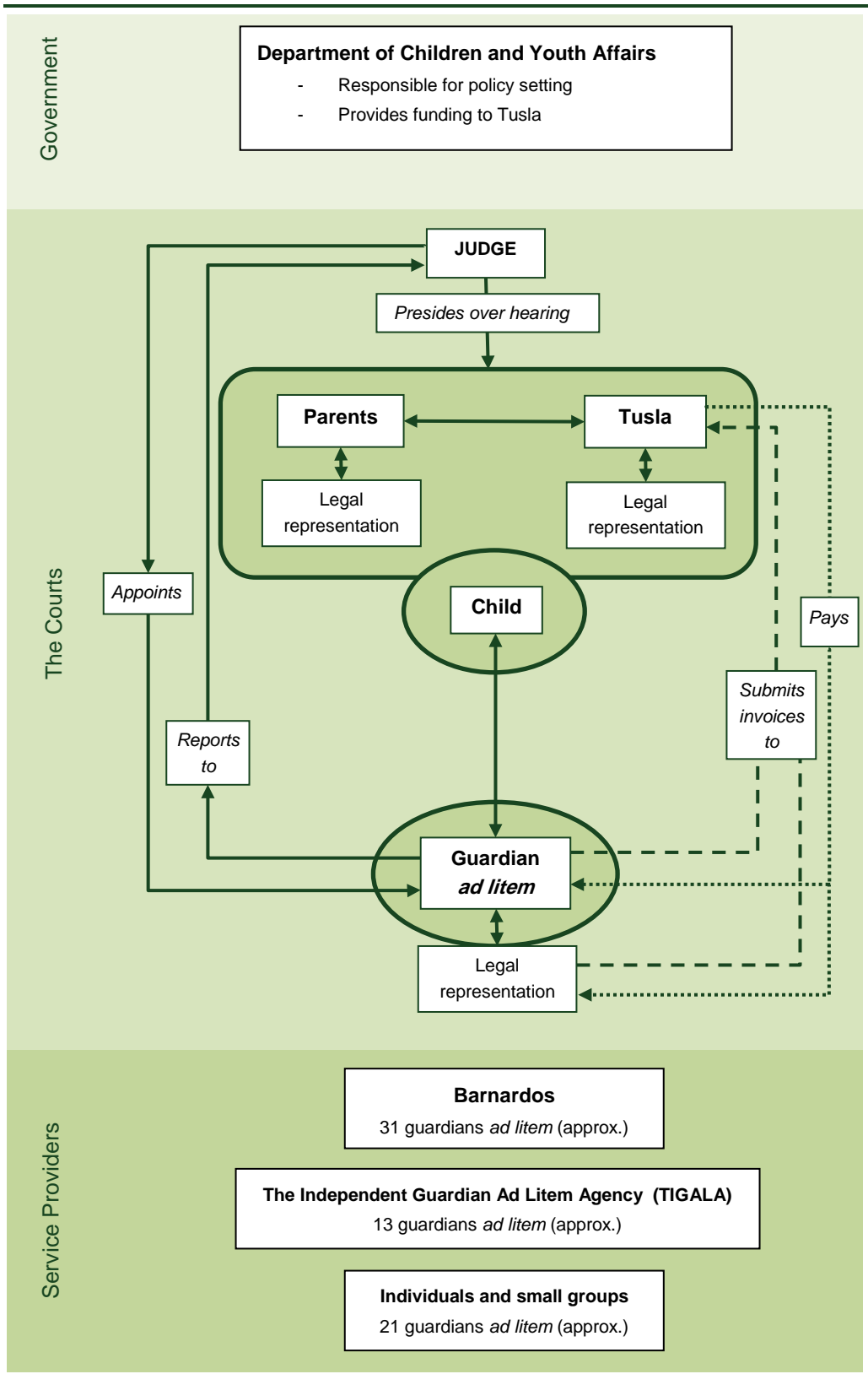
2 An extract from the CAAB guidelines has been set out at Annex B.

3 The National Strategy for Children and Young People's Participation in Decision-making 2015 – 2020 commits that the Department of Children and Youth Affairs will bring forward proposals to significantly reform the provisions of the Child Care Act 1991 relating to guardians *ad litem*.

Focus of this examination

- 11.13** This examination reviewed
- the process by which a guardian *ad litem* is appointed in public proceedings
 - the costs associated with operating the service
 - the benchmarking of the service against the equivalent service in other common law jurisdictions.
- 11.14** In order to develop an understanding of the operation of the guardian *ad litem* service, the examination team met with Barnardos, the largest service provider of guardians *ad litem* in Ireland. They work with 31 of the estimated 65 guardians *ad litem* operating in the State, who represent approximately 800 children per year.

Figure 11.2 Overview of the guardian *ad litem* service



Source: Office of the Comptroller and Auditor General
 Notes: Barnardos have been providing a guardian *ad litem* service to the courts since 1997. TIGALA was formed over the period 2014-2015 by a number of guardians *ad litem* who had previously operated on an individual basis.

- 11.15** In order to benchmark the service, the examination team researched the equivalent service in a number of other common law jurisdictions.
- Northern Ireland — the guardian *ad litem* service is managed by an independent State agency funded by the Department of Health, Social Services and Public Safety, known as the Northern Ireland Guardian Ad Litem Agency (NIGALA).
 - England and Wales — the children's guardian service is managed by a non-departmental public body, accountable to the Secretary of State in the Ministry of Justice, known as the Children and Family Court Advisory and Support Services, (CAFCASS).
 - Scotland — the person appointed to represent the interests of the child at a children's hearing is referred to as a safeguarder. The Scottish government has outsourced the operation and management of the national safeguarder panel to a national children's charity, Children 1st.
- 11.16** This examination does not review or comment on
- guardian arrangements in private family law proceedings relating to children¹
 - the direct legal costs incurred by Tusla in child care proceedings
 - the outcome of any legal proceedings or judicial actions
 - the quality of the service provided by guardians *ad litem*.

Appointment of a guardian *ad litem*

- 11.17** In England, Wales and Northern Ireland, the legislation around child care cases states that the court shall appoint a guardian *ad litem* for the child concerned unless satisfied that it is not necessary to do so in order to safeguard his/her interests. This usually results in an automatic entitlement to a guardian *ad litem* in child care cases in these jurisdictions.
- 11.18** In Ireland, in cases heard under the Child Care Act 1991, the presiding judge is responsible for deciding if a guardian *ad litem* should be appointed in the case. The legislation states that when the court appoints a guardian *ad litem*, it must be satisfied that to do so is necessary in the interests of the child and in the interests of justice.²
- 11.19** The legislation does not expand on this, but the CAAB guidelines include the following considerations which may affect the decision to appoint a guardian *ad litem*
- the complexity of the case
 - the ability of the child concerned to express his/her wishes and feelings
 - the nature of the care proceedings and the implications for the child and family.
- 11.20** The CAAB guidelines also outline that the decision to appoint a guardian *ad litem* to a specific case may be influenced by the particulars of the case, such as when
- there is reduced or no parental support
 - there are issues about a child's identity
 - a child's liberty is at issue
 - the child had been represented by a guardian *ad litem* in previous proceedings.

¹ Private family law proceedings relating to children are legislated for under the Guardianship of Infants Act 1964, as amended, and are concerned with such issues as custody, access and guardianship of children. Section 63 of the Children and Family Relationships Act 2015 inserts Part V, concerning the best interests of the child, into the Act of 1964.

² In practice, a guardian *ad litem* is always appointed to special care cases.

- 11.21** Barnardos has stated that, in its experience, when selecting a guardian *ad litem* for appointment, the court may request
- a list of persons currently available to take on additional cases
 - a number of persons' curricula vitae
 - a service provider, such as Barnardos, to nominate a person for appointment as a guardian *ad litem*
 - the parties involved in the case to agree between themselves and nominate a person for appointment as a guardian *ad litem*.
- 11.22** The Courts Service has stated that, in the Dublin Metropolitan District, it is practice to accept curricula vitae from persons who are available for appointment, and maintain this information on a database which can be accessed by the judiciary. The regulatory body, experience and qualifications of such persons are set out in their curricula vitae.¹ The Courts Service advised the examination team that all such persons on the database are Garda vetted and suitably qualified.
- 11.23** The examination team found that there is no national panel of persons or complete list of practitioners, available to the court when selecting a guardian *ad litem* to be appointed. As such, the method by which persons are selected for appointment may vary from judge to judge and case to case.
- 11.24** As previously stated, the legislation is silent on the eligibility criteria and qualifications necessary for a person to take on the role of a guardian *ad litem*. The CAAB guidelines recommend that candidates should
- be vetted by the Garda Síochána
 - have a third level qualification in social work, psychology or another third level qualification relevant to the role
 - have at least five years' postgraduate experience of working directly in the child welfare or protection system
 - have an understanding of child care and family law, and knowledge and experience of the courts system
 - have a skills set which includes analytical capability, well developed interpersonal skills, report writing skills, communication skills, and an ability to assess and understand complex family relationships
 - be independent of all other professionals and agency staff involved with the child and family.
- 11.25** Barnardos has informed the examination team that guardians *ad litem* recruited by them are selected, referenced and vetted in accordance with the CAAB guidelines.
- 11.26** The examination team found that, due to the nature of the appointment process described above, and the fact that the CAAB guidelines have no binding legal effect, it falls to the judge to consider the eligibility criteria when selecting a guardian *ad litem*. The Courts Service noted that each judge is independent in the exercise of his or her judicial functions and the choice of the guardian *ad litem* is one for the presiding judge.

¹ CORU is the regulatory body for health and social care professionals. The Psychological Society of Ireland is the regulatory body for psychologists.

- 11.27** The examination team sought data on the number of guardians *ad litem* appointed to child care cases. This information is not recorded by the Courts Service and could not be retrospectively collated. The Courts Service informed the examination team that the number of care orders granted by the District Court in 2015 was 7,771, (2014: 7,332). However, the data is not recorded using unique identifiers for individual children. Consequently, it is not possible to identify the number of children involved in these proceedings, as any one child could have been the subject of a number of orders or reviews of orders during the course of the year.
- 11.28** The most recent relevant information on the frequency with which guardians *ad litem* are appointed in child care cases comes from the Child Care Law Reporting Project.¹ This is an independent project supported by the Department of Children and Youth Affairs. It was established under Section 3 of the Child Care (Amendment) Act 2007, to examine and report on child care proceedings in the courts. The project collected data obtained by attending 1,194 District Court child care cases over the period December 2012 – June 2015, and observing and recording the particulars of the case.² The report estimated that a guardian *ad litem* was appointed in 53% of the District Court cases observed (636 cases).
- 11.29** However, the Child Care Law Reporting Project notes that this estimate may not be complete as it relates to a single point in time for each of the cases observed. It is possible that a guardian *ad litem* could have been discharged prior to the hearing or appointed after the hearing and the report would not have captured this. As a result, it is not possible to extrapolate a figure in order to estimate the level of demand for the guardian *ad litem* service.

Cost of the professional service

- 11.30** Under Part IV of the Child Care Act 1991, as amended, Tusla has a duty to initiate care proceedings for children who are deemed unlikely to receive adequate care and protection in the absence of a court order. The CAAB guidelines highlight the need for the guardian *ad litem* to be independent of all other professionals and agency staff involved with the child and the family. However, under the current structure, the guardian *ad litem* is dependent on Tusla to meet their costs. The position of Tusla as the party initiating the proceedings, and as paymaster of the guardian *ad litem* costs, may lead to a perceived conflict of interest.
- 11.31** Tusla is the only State body in a position to gain an insight into the activity levels of the guardian *ad litem* service. However, as Tusla do not have a role in the management or monitoring of the service, the information they capture is purely for the purpose of financial control.
- 11.32** The examination team sought to establish an average caseload per guardian *ad litem*. In order to collate this information, Tusla contacted each service provider known to them as at 21 April 2016 and requested that they provide details on the current caseload of each of their guardians *ad litem*. As outlined in Figure 11.2, the guardian *ad litem* service is provided by Barnardos, TIGALA, and individuals and small groups. The responses for 65 guardians *ad litem* were received over a period of two months. Figure 11.3 summarises the information submitted by the guardians.
- 11.33** The examination team found that, notwithstanding that the information is self-reported and cannot be verified, the average caseload per guardian *ad litem*, across each service provider type appears to be consistent.

¹ The final report of the Child Care Law Reporting Project was published by Dr. Carol Coulter in November 2015. www.childlawproject.ie

² The Child Care Law Reporting Project also attended 78 High Court cases relating to the Minors List over the period October 2014 to March 2015. A guardian *ad litem* was in place in 100% of these cases. The Minors List details minors detained under special care orders and their discharge arrangements. It is reviewed by the High Court on a weekly basis.

Figure 11.3 Service providers' caseload, April 2016 to June 2016

Service providers	Number of guardians <i>ad litem</i> identified	Number of cases on hand	% Share of caseload	Number of children represented	Average caseload per guardian <i>ad litem</i>
Barnardos	31	316	50%	541	10
TIGALA	13	113	18%	225	9
Individuals and small groups	21	200	32%	318	10
Total	65	629	100%	1,084	

Source: The Child and Family Agency

Guardian *ad litem* professional fees and expenses

11.34 As shown in Figure 11.1, guardian *ad litem* professional fees paid in 2015 amounted to €8.2 million (2014: €9.1 million).¹ From a review of the Tusla payments, the examination team identified the main cost drivers impacting on the amounts being invoiced by the guardians *ad litem* as follows

- the number of professional hours billed per case
- the professional rate paid to a guardian *ad litem*
- the number of cases in which guardians *ad litem* are appointed.

11.35 The examination noted that factors such as the complexity of the case, the number of times the care order is scheduled for review, and the length of time that the case is before the courts, can have an impact on the number of professional hours billed by the guardian *ad litem*.

11.36 Tusla has no legislative authority to set the fees charged by guardians *ad litem*. Up to the end of 2014, there were no agreed standard hourly rates in place. Tusla informed the examination team that fees paid for representing a child could vary from anywhere between €35 and €111 per hour, and payment rates for related travel time could vary from €40 to €46 per hour.

11.37 With effect from 1 January 2015, Tusla fixed the professional fee rate at €125 per hour and ceased payment for time spent travelling. The professional rate is applied to time spent attending court, writing court reports, meeting with the child, interviewing and meeting people central to the child and observing the child's interaction with them, as well as dealing with all relevant correspondence. Reimbursement of allowable motoring expenses is paid by way of a flat rate mileage allowance per kilometre in line with civil service rates.²

11.38 Tusla informed the examination team that the new hourly professional fee set for 2015 onwards was agreed following an informal consultation process with a number of guardians *ad litem*. They stated that the rate determined takes account of the existing rates paid up to the end of 2014, the qualifications and experience required to fulfil the role, the hourly rates for other self-employed professionals, and the fact that travel time was no longer being paid. However, Tusla were unable to provide documentary evidence of this analysis to the examination team.

¹ **Correction:** the costs for 2014 and 2015 were incorrectly transposed in the originally published report. The correct figures are now shown.

² Civil service motor mileage rates vary from 21.22 cent per kilometre to 59.07 cent per kilometre depending on the engine capacity of the car and the cumulative number of miles travelled in a calendar year.

- 11.39** Barnardos informed the examination team that in 2014 they notified Tusla that the new standardised fee structure could lead to an increase in costs, as it would result in an increase in earnings for guardians *ad litem* who had a higher professional time to travel time ratio.
- 11.40** Tusla conducted an analysis to evaluate the impact of the revised fee structure. The analysis was conducted on the basis of re-calculation of invoices submitted for 27 individual guardians *ad litem* over the period January to June 2015 using the old fee structure. This analysis indicated a marginal savings rate of 2%.
- 11.41** While the analysis was limited to a comparison of invoices for six months of 2015 for about half of the guardians *ad litem* paid by Tusla, it does give an indication of the effect of revising the fee structure.

Comparison of fee structure in common law jurisdictions

- 11.42** The examination reviewed the fee structure in place in the other common law jurisdictions. As part of the review, the examination team established that the tasks associated with the role of guardian *ad litem* in each jurisdiction were broadly similar. In all of the common law jurisdictions, the service provided by the guardian *ad litem* includes
- liaising with the child and family members in order to establish the best interests of the child
 - engaging with the social work department and other professionals involved in the child's care plan
 - conducting a thorough assessment into the child's circumstances
 - providing independent recommendations and a written report to the court.
- 11.43** The Scottish fee structure system works on a flat fee basis. The initial appointment fee covers all preparatory work from appointment as guardian *ad litem*, and writing of the report through to court attendance, irrespective of the amount of time taken to perform these tasks. There is an additional flat fee paid for attendance at court and some further fees are payable depending on the particulars of the case, for example, the number of siblings involved in the case.
- 11.44** In Northern Ireland, and England and Wales, where the guardian *ad litem* service is managed by an independent State body, the role of a guardian *ad litem* is predominantly fulfilled by staff directly employed by those bodies. Both bodies also use a panel of self-employed qualified practitioners in times of increased demand for the service. An hourly rate applies to the self-employed workers and the employees are paid according to a set salary scale.
- 11.45** Figure 11.4 shows the results of the examination's comparison of rates paid to self-employed staff fulfilling the role of guardian *ad litem* in the common law jurisdictions. The rate paid in Ireland appears to compare unfavourably to the contracted hourly rate in other common law jurisdictions.
- 11.46** However, the examination team noted that in each of the other common law jurisdictions, in addition to the amounts paid to the guardian *ad litem* to provide the service, costs associated with the administration, operation and management of the service are also incurred by the governing bodies.

- 11.47** The examination team noted that, although there is a standard rate per hour paid in Ireland, there is not a standard service delivered. This is due to the variety of organisation structures providing the service. For example a guardian *ad litem* operating under Barnardos is supported by administration, management, training and supervision functions, whereas a guardian *ad litem* operating individually is less likely to have access to such support.

Figure 11.4 Irish fee structure compared with other common law jurisdictions

Fee structure ^a	Ireland	Northern Ireland	England and Wales	Scotland
Fee base	Per hour	Per hour	Per hour	Piecework
Fee rates for professional time – preparatory work, liaising with child and family and report writing	€125 p/h	€40 p/h	€42 p/h	€333 flat fee
Fee rates for professional time – attendance at court	€125 p/h	€40 p/h	€42 p/h	€167 flat fee
Fee rates - travel and waiting time	€0 p/h	€24 p/h	€42 p/h	Exceptional basis only ^b

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

Notes: a Sterling rates have been converted to € equivalent using the Central Bank exchange rate as at 8 June 2016.

b Under the Scottish fee structure, travel time is built into the flat fee payments for appointment and attendance at court. Return trips over 4 hours are classed as exceptional travel and attract an additional fixed fee of €83 for 4-6 hrs and €167 for round trips in excess of 6 hrs.

Financial controls over guardian ad litem costs

- 11.48** As there is currently no governing body assigned with the responsibility to monitor or supervise the work performed by a guardian *ad litem*, Tusla, in its capacity as paymaster, has no means of verifying the accuracy of the hours invoiced. In order to determine whether the hours being claimed appeared reasonable and were consistent with other guardians *ad litem* invoices, Tusla applied additional control checks in 2015 which were further enhanced in 2016. Figure 11.5 outlines the financial controls applied and the timeline of implementation.

Reasonableness checks

- 11.49** Tusla has assigned responsibility for the reasonableness checks and retrospective reviews to a senior staff member with professional expertise of both the legal and child care systems. These checks are completed by visual inspection and examination of invoices submitted for payment by reference to the staff member's knowledge of the content of other invoices and the child care legal system.
- 11.50** The current system for conducting reasonableness checks, where reliance is placed on one staff member's knowledge of the system and previous invoicing by guardians *ad litem* increases the risk that potential over claiming would not be detected.

11.51 The examination team noted that the reasonableness checks were not applied to invoices received from Barnardos, equating to 43% of the 2015 spend, until October 2015. Tusla informed the examination team that, due to the resources available, the implementation of the reasonableness checks was prioritised according to risk. Tusla gained some assurance from the internal procedures in place in Barnardos and therefore the reasonableness checks for these invoices were not introduced until the latter phase of the process.

11.52 The examination team also found that when adjustments are required as a result of the reasonableness tests, the original invoice is withdrawn and a revised invoice is submitted by the guardian *ad litem*. There is no record of original and revised billing amounts maintained, and so the level of adjustment obtained as a result of the reasonableness checks cannot be measured. Tusla advised the examination team that this information has been captured for guardian *ad litem* invoices received from June 2016 onwards.

Figure 11.5 Financial controls implemented by Tusla

Financial controls applied to Guardian <i>ad litem</i> invoices					
Type of control	Details	Timeline of implementation			Outcome
		2014	2015	2016	
Standard control checks	Checks carried out to ensure invoice is valid and totals are correctly calculated. Invoice batches and payment files authorised at appropriate level within Tusla.	●	●	●	Tusla pays the approved guardian <i>ad litem</i> invoices.
Reasonableness checks	Conducted at invoice level Determine if hours claimed relate to guardian <i>ad litem</i> tasks. Ensure no duplication of claims for professional hours, mileage and expenses. Determine if the hours claimed appear reasonable based on Tusla's knowledge and understanding of the courts system and child care process. Determine if the level of hours claimed appears to be consistent with other guardians <i>ad litem</i> invoices.	◐	◐	●	Tusla issues queries to guardians <i>ad litem</i> on any anomalies noted and withholds payment of the invoice until the query has been resolved.
Retrospective reviews	Conducted at guardian <i>ad litem</i> level Informed by trends identified by the reasonableness checks at invoice level. Review of hours claimed and tasks completed on a cumulative level over an extended period of time.	○	◐	◐	Tusla identifies instances whereby potential refunds may be due.

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

Notes:

- Applied to all invoices
- ◐ Applied to a subset of invoices
- ◑ Carried out on an ad-hoc basis
- Not applied

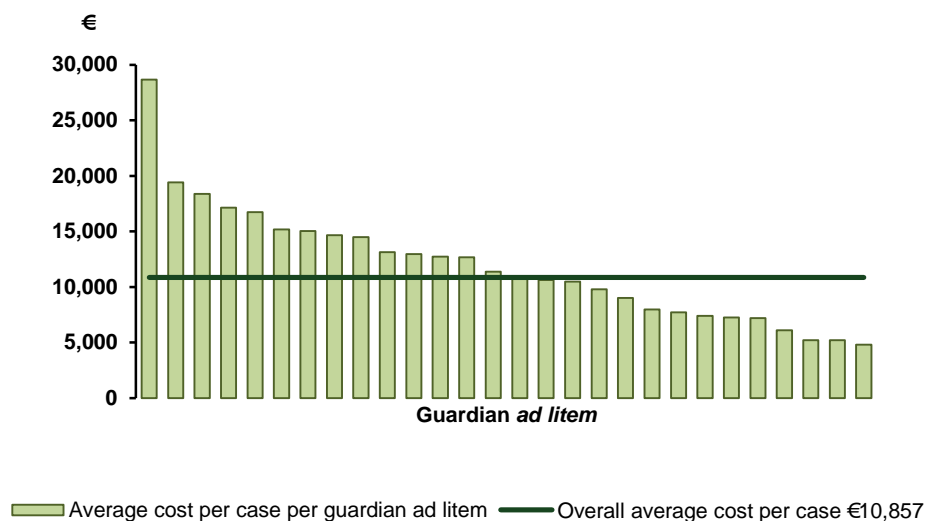
Retrospective reviews

- 11.53 With effect from January 2015, Tusla began capturing the professional hours billed per guardian *ad litem*, excluding Barnardos, on a per case basis. This information along with the staff member’s retained knowledge is used to identify trends and inform retrospective reviews.
- 11.54 A retrospective review involves a detailed examination of an anomaly identified, over an extended period of time. For example, Tusla may carry out a review of the cumulative hours billed per day by a guardian *ad litem*, spanning a number of cases, to ensure the aggregate hours claimed per day appear reasonable.
- 11.55 As guardians *ad litem* submit their invoices on a ‘per case per month’ basis, the tasks involved in collating the cumulative data and carrying out the retrospective reviews are resource intensive. Consequently, Tusla is restricted in how frequently its staff can perform these reviews.

Average cost per case

- 11.56 As outlined earlier, the data captured by Tusla in relation to guardian *ad litem* costs is for the purpose of financial control. As a result, it does not use this data to develop and monitor performance measures such as the average cost per case by guardian *ad litem*. Analysis of trends in these measures would allow Tusla to develop a better understanding of how factors such as the complexity of the case, or the length of the case, impact on the overall costs.
- 11.57 For the purpose of this examination, Tusla provided the examination team with an analysis of information they had captured in relation to hours billed by 28 guardians *ad litem* for the period January to December 2015, by case and the average cost per case by guardian *ad litem*. The results of this analysis are shown below in Figure 11.6.

Figure 11.6 Analysis of average cost per case by guardian *ad litem*, 2015



- 11.58** This does not present a full picture of the average cost per case, since an individual case may span a number of years and this data is limited to costs incurred in 2015. Notwithstanding these limitations, it shows a high level of variation in the average cost — from a low of €4,800 to a high of €28,700.
- 11.59** Tusla informed the examination that the factors affecting the difference in average costs are numerous and varying and could include
- the approach taken by each guardian *ad litem* in carrying out their duties
 - the nature and complexity of the specific case in question
 - the number of children involved in each case
 - the number of court attendances required throughout the duration of the case.
- 11.60** The data above indicates how analysis of metrics such as the average cost per case and the factors giving rise to changes in the average cost could be used to assess the cost effectiveness of the service.

Resolution of queries

- 11.61** The examination team noted that Tusla negotiates with the guardian *ad litem* to resolve queries or issues arising from their control checks. As there is no legislative basis for doing so, this process is dependent on the guardian *ad litem* engaging with Tusla.
- 11.62** The Child Care Act 1991 provides for Tusla to apply to the courts to have guardians *ad litem* costs or expenses measured or taxed.¹ To date, Tusla has not exercised this option. It informed the examination team that, for the most part, anomalies are identified when guardian *ad litem* invoices are reviewed at a cumulative level, covering multiple cases. An application for measurement or taxation of costs can only be made on a case by case basis and can only be heard by the judge who appointed the guardian *ad litem*. It is not possible for Tusla to resolve queries that span a number of cases by means of measurement or taxation.

Cost of legal services

- 11.63** The CAAB guidance acknowledges that the guardian *ad litem* may need to appoint a legal representative to ensure that the child's wishes, feelings and best interests are adequately represented to the court. The guidelines also suggest that the guardian *ad litem* should seek the approval of the court when engaging legal representation.
- 11.64** Under the current provisions of the Child Care Act 1991,² a child cannot be represented directly by both a solicitor and a guardian *ad litem*.³ This has led to a practice whereby, when the guardian *ad litem* feels that legal representation is necessary, they engage, instruct and direct a solicitor to act on their behalf. This contrasts with the system in place in England, Wales and Northern Ireland whereby the child can be directly represented by both a solicitor and a guardian *ad litem*.
- 11.65** There is no data collected on the number of guardians *ad litem* who engage legal representation. However, the Child Care Law Reporting project found that in the 636 cases observed in the District Court, the guardian *ad litem* was represented by a solicitor in 82% of the cases and a barrister in 7%. This would suggest that legal representation is sought in the majority of cases.

¹ Taxation and measurement of costs is designed to be an independent and impartial process of assessment of costs which endeavours to achieve a balance between the costs involved and the services rendered. Costs associated with cases heard in the District Court can be referred back to the relevant District Court judge to be measured. In cases heard by the High Court, the judge can either measure the costs or make an order to have the costs taxed by the Taxing Master.

² Section 25 of the Child Care Act provides for the court, having regard to the age, understanding and wishes of the child, to make the child a party to the proceedings, and if the court sees fit, to appoint a solicitor to represent the child. Section 26 (4) provides that if a child is made a party to proceedings the order to appoint a guardian *ad litem* shall cease to have effect.

³ In Special Care cases heard under the inherent jurisdiction of the High Court the child may be represented directly by a guardian *ad litem* and a solicitor or barrister.

- 11.66** Barnardos have provided their guardians *ad litem* with guidelines to be considered when deciding whether legal representation is necessary. The guidelines cover factors such as the complexity of the case, the number of other parties to the proceedings, and the significant issues of the case which require legal representation. The guidelines also state that the guardian *ad litem* should consult with their supervisor as to the necessity of legal representation.
- 11.67** Guardian *ad litem* legal representation costs in 2015 amounted to €5.9 million (2014: €7.4 million), comprising solicitors' fees of €5 million and counsel fees of €0.9 million. Figure 11.7 gives an overview of the distribution of the total spend on legal representation across the number of suppliers paid in the period. Payments may be to individual solicitors, barristers or firms.

Figure 11.7 Guardian *ad litem* solicitor and counsel fees, 2014 and 2015

Payment bands (in year)	2014	2015
0 – €50,000	46 ^a	56
€50,001 – €100,000	5 ^a	9
€100,001 – €200,000	10	5
€200,001 – €400,000	6	5
€400,001 – €600,000	3	3
Payments greater than €600,001	2	1
Total	72^a	79

Source: The Child and Family Agency

Note: a **Correction:** The number of payees for 2014 was originally overstated due to data matching difficulties. The correct figures are now shown.

- 11.68** As set out in the Department of Public Expenditure and Reform (DPER) circular 05/2013,¹ public bodies are required to use a competitive process when procuring legal services. The circular outlines that public authorities with a frequent need for legal services have the option of setting up panels consisting of suitable qualified legal practitioners. The circular also notes that services which attract an estimated cost in excess of €25,000 should be subject to a competitive tendering process.
- 11.69** While Tusla – a State body – has a responsibility to pay the guardian *ad litem* legal costs, it has no involvement in the appointment or selection of guardians *ad litem* or their legal representatives. The selection and appointment of legal representation is usually a matter for each individual guardian *ad litem*.² As a result, because guardians *ad litem* are not employed or managed by a public body, the procurement of their legal services does not come under the scope of DPER's guidance in that regard. Significant expenditure incurred in relation to legal services associated with the guardian *ad litem* service has therefore not been subject to competitive tendering.
- 11.70** The examination team found that 36 of the 79 solicitor firms received payments in 2015 in excess of the public procurement threshold for competitive tendering of €25,000, at a total cost to Tusla of €5.6 million.
- 11.71** Barnardos informed the examination team that they encourage their guardians *ad litem* to be cost effective when selecting legal representation. They also request that their guardians *ad litem* use a varied group of solicitors.

1 Circular 05/2013 Procurement of Legal Services and Managing Legal Costs.

2 In the case of special care orders heard by the High Court the selection and appointment of a solicitor may not always fall to the guardian *ad litem*.

- 11.72** Tusla has no oversight of the level of legal expenditure that the guardian *ad litem* incurs until the invoice is presented for payment. Equally, the guardian *ad litem* has no oversight of the fees charged by their own legal representatives as these are submitted directly to Tusla.
- 11.73** It is open for Tusla to challenge the costs of the guardians *ad litem* legal representation when the bill of costs is presented, unless the costs have been fixed by the court. In order to gain some assurance over the costs incurred, Tusla asks its own solicitors involved in the same proceedings to review the bill of costs and assess for reasonableness. Where Tusla's solicitor is of the view that the bill of costs may be too high in the circumstances of the case, they will negotiate — on Tusla's behalf — a reduction in the costs. Tusla's solicitors bill at their hourly professional rate for providing this service. Tusla estimates the costs associated with the fee negotiation service in 2015 to be €123,750.
- 11.74** The examination team analysed a sample of 37 legal invoices with a total original claim value of €358,816, paid in 2015. Reductions were negotiated in 81% of the invoices tested, resulting in savings of €94,023 or 29% of amounts originally billed.
- 11.75** Further high level analysis by Tusla of all legal invoices sent for payment in 2015 indicated that reductions were secured in 71% of cases amounting to €1.89 million which equated to 24% of the amounts originally billed.
- 11.76** Tusla does not record the basis for the reduction in legal costs, and the examination team was unable to extract this information directly from the detail recorded on the legal invoices. In order to inform the examination, Tusla requested this information from two of their solicitor firms. The responses received indicate that reductions may be secured based on
- the overall fee charged by the solicitor for taking instructions from their client throughout the case
 - the time spent in attendance at court
 - costs and outlays associated with administrative tasks
 - overall professional time billed to the case.
- 11.77** In 2016, when Tusla began accepting guardian *ad litem* legal invoices through an electronic system, it ceased capturing the original invoiced amounts. On foot of the examination team's concerns regarding the loss of this information, and the impact that this would have on Tusla's ability to measure the effectiveness of the fee negotiation process, Tusla informed the examination team that it has recommenced manually recording original invoiced amounts with effect from June 2016.
- 11.78** Similar to guardian *ad litem* professional fees, Tusla has the option to refer the guardians *ad litem* legal costs to the courts for taxation or measurement, in cases where agreement cannot be reached. However, prior to initiating this process, Tusla engages the services of a legal cost accountant to further examine the costs and negotiate on their behalf. Tusla informed the examination team that, since 2014, four cases have been referred to the legal cost accountants at a cost of €39,290, resulting in reductions in the region of €693,000, from original invoices amounting to €1,366,980. No cases have progressed to taxation.

Benchmarking of the service

- 11.79** As previously outlined, the examination attempted to benchmark the service provided in Ireland with the equivalent service in other common law jurisdictions. In doing so, the examination team reviewed the key statistical information on the demand for the service, and the key features of a model service.
- 11.80** The examination team obtained key statistics on the guardian *ad litem*, or equivalent, service in each of the other common law jurisdictions, from NIGALA, CAFCASS and Children's 1st. These statistics are based on the financial reporting period 1 April 2014 to 30 March 2015. The examination team used the mid-2014 population estimates as published by the Office for National Statistics to establish the child population for each of the common law jurisdictions in the United Kingdom. The figure for the child population in Ireland was extracted from the annual population estimates collated by the Central Statistics Office. These statistics form the basis of the comparison in Figure 11.8.

Figure 11.8 Demand in Ireland compared to other common law jurisdictions 2014/2015

Key statistics on the demand for the service	Ireland	Northern Ireland	England and Wales	Scotland
Number of guardians <i>ad litem</i> in operation	65 ^a	53	770 ^b	196
Number of appointments of guardians <i>ad litem</i> to public care proceedings	Unknown	704	11,159 ^c	1,586
Average number of cases per guardian <i>ad litem</i>	10 ^a	13	14.5	8
Number of children represented by guardians <i>ad litem</i> in public care proceedings	Unknown	1,052	19,420	2,287
Estimated child population aged 0-17 years in 2014	1,194,462	433,161	12,221,310	1,032,698
Average number of guardians <i>ad litem</i> per 10,000 child population	0.54	1.22	0.63	1.90

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

- Notes:
- a This figure is estimated based on a review of the financial information collated by Tusla (see Figure 11.3).
 - b This figure is estimated based on the total number of practitioners in operation in the period (1,400) and the percentage assigned to public law cases (55%) as determined by CAFCASS.
 - c This figure is estimated based on the care level demand. The actual number of appointments is not separately recorded by CAFCASS. CAFCASS have confirmed that any variance between the care level demand and the number of appointments is likely to be marginal.

- 11.81** As previously stated key statistics, such as the number of court appointments of guardians *ad litem* in Ireland, are unknown. The examination team noted that the statistics collected in the other common law jurisdictions are used to provide key performance indicators, to assess demand for the service, to forecast and budget for expected costs and to measure trends in the delivery of the service over periods of time.

- 11.82** The examination attempted to identify the key features of the service, as informed by the CAAB guidelines, and the examination team’s research into the operation of the service in other common law jurisdictions. The examination team used these key features to benchmark the service in Ireland against that in other common law jurisdictions. Figure 11.9 presents the result of the benchmarking exercise.
- 11.83** The examination team noted that Barnardos has developed its own internal practice manual based on the CAAB guidelines, its own internal working policies and experience in the role. Barnardos has informed the examination team that it has internal structures in place for the training, supervision, support and management of their guardians *ad litem*. As such, the examination team found that at least 50% and possibly more of the guardians *ad litem* in Ireland are operating in a structured environment, albeit one that is not currently regulated or monitored at a national level.

Figure 11.9 Key features of the service in Ireland compared to other common law jurisdictions.

Key features of the service	Ireland	Northern Ireland	England and Wales	Scotland
The role of the guardian <i>ad litem</i> is clearly defined.	◐	●	●	●
The service is managed by a body, independent of the parties involved in the legal proceedings.	○	●	●	●
There is a national panel, or complete record of people who can be appointed to the position of guardian <i>ad litem</i> .	○	●	●	●
Guardians <i>ad litem</i> are vetted against minimum eligibility criteria prior to appointment.	◐	●	●	●
Structured arrangements are in place for monitoring and supervising of guardian <i>ad litem</i> activities	◐	●	●	●
Structured arrangements are in place for the training of guardians <i>ad litem</i>	◐	●	●	●
Clearly defined key performance indicators are in place.	○	●	●	●

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

- Notes:
- Feature applies throughout the service at a national level
 - ◐ Feature is adopted to varying degrees by the service providers
 - Feature is not currently applied to the service

Conclusions and recommendations

- 11.84** Regulation of the guardian *ad litem* service could help to ensure that a quality standardised service is available. Although the CAAB guidelines, published in May 2009, attempted to address the lack of practice standards in place, they cannot be enforced without a legislative basis. As a result, there is a lack of transparency surrounding the selection, registration and vetting of practitioners who fulfil the role of guardian *ad litem*.

The Accounting Officer of the Department of Children and Youth Affairs has stated that his department is currently in the process of finalising policy proposals for substantial reform of statutory provisions governing guardian *ad litem* arrangements in proceedings under the Child Care Act 1991. Subject to the approval of proposals by the Minister and the Government, the Department aims to have the General Scheme and Heads of Bill prepared by the end of 2016 for consideration by Government. As a first step, the Minister recently obtained the agreement in principle of Government to a proposed policy approach to key aspects of guardian *ad litem* reform.

While the detailed reform proposals will be subject to Government approval, it is envisaged that reform measures will provide a clear statutory framework for the management and delivery of a national guardian *ad litem* service, including vetting and qualification standpoints formulated having had regard to the CAAB guidelines. The intention is to enable the courts to be provided with clear and full details of all those who may be appointed as a guardian *ad litem* in child care proceedings.

- 11.85** Tusla, in its current position as paymaster, is responsible for ensuring that adequate financial controls over payments to guardians *ad litem* continue to be applied. There is no complete record of the number of cases guardians *ad litem* are appointed to, or the average hours worked per case. As a result, Tusla is limited in its ability to monitor metrics such as the average cost per case, or identify and review cases with higher than average costs.

Recommendation 11.1

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

Tusla Chief Executive Officer's response

Agreed. The Agency will seek to further develop methods of identifying and measuring guardian *ad litem* costs in order to identify outliers and gain assurance that costs over and above average are appropriate.

Accounting Officer's response

I fully accept this recommendation which is addressed to Tusla. The Department will engage with Tusla with a view to enhancing the approach to reasonableness checks and retrospective reviews already in place, as well as the development of a range of performance metrics.

- 11.86** The responsibility to monitor and manage the guardian *ad litem* service has not been assigned to any State body. As a result, there is a lack of reliable information available on the operation of the service. There are no processes in place to measure demand for the service, assess performance, or deal with complaints. Furthermore, key metrics are not available to the Department in order to forecast and budget for expected costs. In addition, Tusla's responsibility to discharge the costs of guardians *ad litem* appears to be contrary to the CAAB guidelines on independence.

Recommendation 11.2

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

In the interim, the Department of Children and Youth Affairs should utilise the information currently available from Tusla for this purpose.

Accounting Officer's response

Agreed. Subject to Government approval, legislative reforms will seek to assign responsibility for the management and supervision of a reformed service to a single entity that is independent of the parties to the proceedings. The statistical information to be gathered and the identification/application of appropriate key performance indicators will form part of the arrangements to be made with the national service provider.

Until such time as a national service provider is in place, the Department will continue to engage with Tusla to obtain necessary insight to the processes, practicalities and timelines involved.

- 11.87** Of the €5.9 million guardian *ad litem* legal costs paid in 2015, €5.6 million involved payments to individuals or firms in excess of €25,000 — the normal level at which an open competitive public procurement is required. The method of recruitment of legal representation by the guardian *ad litem* means that no single entity is responsible for procuring services, and accordingly the services are not subject to competitive procurement.

Recommendation 11.3

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

Accounting Officer's response

Agreed. Subject to Government approval, reform measures will include provision in legislation to address the provision of legal services for guardians *ad litem*. A number of options, including the possibility of a competitive tendering process, will be examined with a view to introducing a standard basis for engaging such services that is as transparent, cost effective, stable and predictable as possible.

Annex A Judgement of Mr Justice MacMenamin in the case of HSE v K (a minor), 2007

Context of the judgement

This judgement of Mr Justice MacMenamin in the case of HSE v K (a minor) 2007 was made in the context of a special care case.

Special care is short term care in a secured therapeutic environment known as a special care unit. A child who is taken into care under a special care order is placed in a special care unit and detained for his or her own welfare and protection. Given the restriction on the child's liberty, special care placements can only be made pursuant to an Order of the High Court.

Although the role of the guardian *ad litem* outlined in this judgement is specific to special care cases, the functions described apply to the role of the guardian *ad litem* in care proceedings in general.

The judgement below was delivered when the HSE was responsible for the care and welfare of the child. Since 2014, that responsibility now lies with Tusla.

Extract from the judgement

59. 6. The role of the guardian *ad litem*

It has been pointed out:-

(a) Unless there are exceptional circumstances only suitably qualified guardians *ad litem* will be used in High Court proceedings in the Minors List.

(b) The function of the guardian should be twofold; firstly to place the views of the child before the court, and secondly to give the guardian's views as to what is in the best interests of the child.

(c) A guardian *ad litem* should bring to the attention of the Health Service Executive any risks which he or she believes may adversely affect the best interests of the child, and if not satisfied with the response may bring the matter to the attention of the court. The guardian *ad litem* should take steps where necessary to co-operate with, and where possible share relevant information with, other care professionals engaged with the minor.

(d) A duty of a guardian *ad litem* is to ensure compliance with the constitutional rights of a minor. For this purpose, the guardian should ensure that there is provided to the minor a means of making his or her views known.

(e) A guardian *ad litem* may fulfil the dual function of reporting to the court regarding the child's care and also by acting as the child's representative in any court proceedings and thereby communicating to the court the child's views.

- (f) On an application for detention, and for the appointment of a guardian *ad litem* the court should be afforded such basic information as would suffice to satisfy it that the said person was an appropriate candidate to act as a guardian *ad litem*. In particular, the court should be furnished with the qualifications of the guardian *ad litem* and also details of any vetting of such person by An Garda Síochána.
- (g) The guardian *ad litem* should meet the minor as often as necessary in order to be satisfied that the minor's wishes and views are adequately represented regarding his or her detention and care.
- (h) The guardian *ad litem* should meet with the minor's family or carers in the community and be familiar with their views and desires regarding the minor's detention and care.
- (i) The guardian *ad litem* should make himself/herself aware of the minor's history and the minor's interaction with the various social service agencies.
- (j) The guardian *ad litem* should seek to interact in a positive way with the staff of the Health Service Executive charged with the minor's care while in detention. The guardian should ensure that their views concerning the minor's welfare are expressed at each case conference meeting held by the H.S.E. to discuss the minor's care, and should be familiar with the outcome of decisions reached at such meeting.
- (k) When proceedings are listed before the court, the guardian *ad litem* should, where necessary, prepare a report specifically addressing the issues set out above. Additionally, where an issue arises from the contents of any other reports prepared for the court by other parties to the proceedings, the guardian *ad litem* should, where necessary, address those issues in the report. This can only be done where such reports are available to the guardian *ad litem* in sufficient time.
- (l) When the Health Service Executive moves to have a minor discharged from secure care, the guardian *ad litem* should apprise the court of the child's view regarding his onward placement. In addition, the guardian *ad litem* should inform the court of his or her professional opinion regarding such a move and the proposed onward placement.
- (m) Where a divergence of opinion as to the care of the minor exists between the Health Service Executive and the guardian *ad litem*, the guardian should first attempt to resolve this issue with the H.S.E. However, where this is not possible, the guardian *ad litem* should inform the court as soon as practicable of their concerns.
- (n) Where a minor has absconded from secure care and the guardian *ad litem* is aware of this, the guardian *ad litem* should be satisfied that steps are being taken to address the problem. If the issue persists, then the guardian *ad litem* should take steps to inform the court of the minor's absence having first informed the H.S.E. that they are about to do so.
- (o) The guardian *ad litem* should express a view to the court as to how a case is best kept under review after a minor is discharged from secure care. When a minor is discharged from such care the guardian *ad litem* should confirm with the court whether they are to continue to remain involved in the proceedings.

Annex B Section 1 of the Children’s Act Advisory Board guidelines - “Giving a voice to children’s wishes, feelings and interests,” May 2009

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

1.1 Role

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

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

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

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

1.2 Standards for Good Practice

1.2.1 Summary of Standards

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

- (a) **Independence:** the guardian *ad litem* is independent of all other professionals and agency staff involved with the child and family.
- (b) **Inclusiveness:** the guardian *ad litem* shall ensure that the views of all parties and others of significance are taken into account.
- (c) **Inquiry into the child’s circumstances:** the guardian *ad litem*’s approach to the task shall be planned, focused, and flexible. Avoiding delay, other than planned and purposeful, will be a priority. The inquiry shall comply with the provisions of the

Freedom of Information Acts, 1997 and 2003, and the Data Protection Acts, 1998 and 2003.

- (d) **Interests of the child:** the guardian *ad litem* shall meet the child as often as necessary to be satisfied that his/her wishes, feelings and interests are ascertained and adequately represented to the court.
- (e) **Evaluation and report:** the guardian *ad litem* shall complete a written report for the court, unless the exceptional nature of the case requires otherwise.
- (f) **Attendance at court:** the guardian *ad litem* shall attend on all court dates unless excused by the court.
- (g) **Closing the case:** when proceedings have concluded, the guardian *ad litem*’s involvement in the case ceases. However, if the case is scheduled for further review, s/he shall seek clarification from the court regarding its expectations of his/her further involvement.

These standards are now examined in more depth.

1.2.2 Independence

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

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

- (a) Avoid cases where there may be a conflict or a perceived conflict of interest for him/her and notify the court of any possible conflict that may arise in the course of proceedings.
- (b) Take professional responsibility for his/her assessment and recommendations in each case and be accountable to the court.
- (c) Seek to achieve an appropriate outcome based on the wishes, feelings and interests of the child through adopting a partnership approach and consulting and involving all parties.

1.2.3 Inclusiveness

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

To achieve this, a guardian shall:

- (a) Ensure the child is aware of what is happening throughout the proceedings and of the outcome.
- (b) Taking into account the age and/or level of maturity of the child and using professional 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.

