

Following the Seanad debates on the Child Care (Amendment) Bill 2009, Barnardos, the Irish Association of Young People in Care and the Irish Foster Care Association (hereafter referred to as the group) continues to have concerns that key issues arising in the Bill have not been amended as yet.

Chief among the issues of concern are:

Section 23ND:

- The group seeks clarity as to whether the provisions of 23NF as they relate to 23ND requires the HSE to obtain a High Court Order before removing the child from this jurisdiction. It is the opinion of the group that this is a basic requirement to protect the best interests of any child in special care subject to removal from the State for the purposes of medical and psychiatric assessment or treatment.
- The group recommends that in the best interests of children, this amendment should be changed to incorporate the following:

“Regard shall be had to the views of the child, having regard to the child’s age and understanding. Prior to taking steps under this section, the court shall give such directions as are appropriate where the Health Service Executive proposes to take steps to which the child does not consent.”

Guardian *ad Litem*:

- The group would welcome the opportunity to feed into the Government’s deliberations on the regulation and roll out of Guardian *ad Litem* (GAL) services. The group recommends that such deliberations take place as a matter of urgency - children have waited long enough for the consistent provision of services to allow their voices to be heard in matters affecting them.
- The group recommends that a statutory guarantee for the provision of a GAL is necessary to fully ensure the best interests of children in these significant proceedings.
- In relation to amendments proposed under the Bill to Section 26 of the Child Care Act 1991, the group seeks clarification as to who decides the reasonableness of costs incurred by GAL services and continues to recommend that the payment of GAL services be removed from the remit of the HSE and placed elsewhere.
- The group seeks clarification as to whether proposed changes to Section 26 of the Child Care Act 1991 changes the current status of Guardians involved in special care order proceedings and care proceedings in the District Court. Whether the Guardian is considered a party or a notice party to proceedings the group believes the Guardian, rather than the Court, should have responsibility for instructing their solicitor to avoid possible interference with the independence of the Guardian as a representative of the voice of the child.

Aftercare

- The group rejects the notion that only a small minority of children leaving the care system need access to aftercare services or that those in foster care do not need access to aftercare.
- The group believes that a statutory provision for appropriate aftercare for all children leaving the care system, dependent on their level of need, is the best way to ensure the provision of such services consistently across the State.

Language

- The group welcomes the acknowledgement and discussion of the need for a change in the language of the Bill and reiterates its belief that language such as “secure care placement” would better serve the needs of the children subject to such orders than the language of detention.

Details of the group's concerns and recommendations in relation to these issues are further outlined below.

Section 23ND: Authority to remove a Child from Irish Jurisdiction

The group continues to have concerns about the authority granted to the HSE under Section 23ND(e). This section outlines that the HSE:

- (e) shall have the authority to give consent to the application for, and issuing of, a passport to the child, or the provision of passport facilities to the child, for the purpose of—
 - (i) obtaining medical or psychiatric assessment, examination and treatment outside the State,
 - (ii) permitting the child to reside, outside the State, with a parent or relative, or
 - (iii) obtaining such assessment, examination and treatment referred to in subparagraph (i) and permitting such residence referred to in sub-paragraph (ii),

in accordance with section 23NF...

The group seeks clarity as to whether the provisions of 23NF as they relate to 23ND requires the HSE to obtain a High Court Order before removing the child from this jurisdiction. It is the opinion of the group that this is a basic requirement to protect the best interests of any child in special care subject to removal from the State for the purposes of medical and psychiatric assessment or treatment.

The group acknowledges Minister for Children and Youth Affairs, Barry Andrew's general acceptance of the principle contained in Amendment 12 proposed by Senators White, McCarthy, Ryan, Prendergast, Bacik and Hannigan to section 23ND, namely that in page 44, between lines 39 and 40, the following will be inserted:

"(2) Regard shall be had to the views of the child, having regard to the child's age and understanding, prior to taking steps under this section."

The Minister has proposed to examine the phraseology of this. However, the group recommends that in the best interests of children, this amendment should be changed to incorporate the following:

"Regard shall be had to the views of the child, having regard to the child's age and understanding. Prior to taking steps under this section, the court shall give such directions as are appropriate where the Health Service Executive proposes to take steps to which the child does not consent."

The group continues to support Amendment 13 as proposed by Senator Fitzgerald and recognises the assurances that consent previously given shall continue to apply as per Amendment 14.

The Voice of the Child

The group continues to have concerns regarding the appointment, standing and payment of guardian *ad litem* in respect of changes proposed in the Child Care (Amendment) Bill.

Review for the regulation and provision of Guardian ad Litem Services in Ireland

During the Seanad Committee stage debate Minister Andrews stated that wider issues in relation to GAL services were currently under examination and the group welcomes this. As the largest provider of such services and the only one operating nationally, Barnardos, in particular, would like to put on record that they wish to assist as fully as possible in this review and would welcome the opportunity to feed into any process regarding the further development of GAL services in Ireland. The group recommends that this take place as a matter of urgency - children

have waited long enough for the consistent provision of services to allow their voices to be heard in matters affecting them.

The group noted the report to the Cabinet by Geoffrey Shannon, the Government's Special Rapporteur on Child Protection recommends that the guidelines for the appointment, role and qualifications of Guardians *ad Litem*, who speak for children in care proceedings, should be enacted on a statutory basis and a regulatory and management body for Guardians *ad Litem* should be established.

Provision of Guardian ad Litem in Special Care Proceedings

The group continues to believe that the Child Care (Amendment) Bill provides an opportunity to make the appointment of GAL a requirement in all cases affecting children subject to special care orders. The Minister stated during debate that all children in special care proceedings receive GAL representation. While this is indeed true in the vast majority of cases, the group is aware that in some situations this is not the case. The group believes that a statutory guarantee for the provision of a GAL is necessary to fully ensure the best interests of children in these significant proceedings.

Payment of Guardian ad Litem Costs

The importance of the GAL service is to give children a voice and to involve them in the decision making about them, leading to better outcomes for children. In addition, the GAL is an experienced professional whose expertise is valuable in giving the court an independent view of the child's interest. Independence is crucial in the work of the GAL. The group continues to have concerns regarding proposed amendments to Section 26 of the Child Care Act 1991. In particular, the group is concerned by Section 26(b) which calls for:

(b) in subsection (2), by inserting "reasonably" after "Any costs",

The group and seeks clarification as to who decides the reasonableness of costs incurred by GAL services. If the reasonableness of costs is decided by the HSE rather than the court, the group believes that this proposed amendment could impede the independence of a GAL. The group continues to believe that the payment of GAL services should be removed from the remit of the HSE and placed elsewhere.

Status of Guardian ad Litem in District Court Care Proceedings

The appointment of a GAL in Child Care Law cases, which can be very complex, is to represent the voice of the child and to assist the Court in its decision making process. The importance of their contribution has long been recognised in both regards. The GAL should not also be expected to understand the complexities of Constitutional, Domestic and International Law but should be free once appointed by the Court to instruct a Solicitor where necessary.

Ireland ratified the United Nations Convention on the Rights of the Child in 1992. The provisions however do not form part of the domestic law but it is important to note that the Convention recognises children's rights as follows:

Article 3 of the Convention states, *inter alia*,

1. In all actions concerning children, whether undertaken by Public or Private Social Welfare Institutions, Courts of Law, Administrative Authorities or Legislative Bodies, the best interest of the child shall be a primary consideration;
2. State Parties undertake to ensure the child such protection and care as is necessary for his or her wellbeing, taking into account the rights and duties of his or her parents, legal guardians or other individuals legally responsible for him and her, and to this end, shall take all appropriate legislative and administrative measures;

Article 12 of the Convention provides for the separate representation of children:

1. State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age of maturity of the child;
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any Judicial and Administrative proceedings affecting the child, either directly or through a representative or an appropriate body in a manner consistent with the procedural rules of National Law;

It is not insignificant that Ireland's European partners some 21 years ago recognised the importance of the need for separate representation of children.

In this jurisdiction, the GAL in District Court child care proceedings is a Notice Party. Guardians frequently give evidence as to their professional opinion in relation to the welfare of children, the children's wishes, and what is in the child's best interests. Currently, the GAL is effectively treated as witnesses rather than parties to the proceedings and is subject to examination and cross examination. To leave them exposed without legal representation to what can frequently transpire to be lengthy adversarial cross examination, may be detrimental to the children's best interests as the legal representative of the father and the mother and the HSE dissect the legal issues in Court with the child's needs and interests taking second place.

The group remains concerned at changes proposed to Section 26 of the Child Care Act 1991, namely that:

- (2C) Where the court makes an appointment under subsection (1) (as amended by the *Child Care (Amendment) Act 2010*)—
- (a) the court may, if it thinks fit, appoint a solicitor to represent the guardian *ad litem* in respect of those proceedings and give directions as to the performance by the solicitor of his or her duties, which may include, if necessary, having regard to the circumstances of the case, directions in relation to the instruction of counsel...

The group seeks clarification as to whether this provision changes the current status of Guardians involved in special care order proceedings in the High Court and care proceedings in the District Court. Whether the Guardian is considered a party or a notice party to proceedings the group believes the Guardian, rather than the Court, should have responsibility for instructing their solicitor. The group believes, again, that there is a potential affect on the ability of Guardians to carry out their duties independently inherent in the above provision which must be clarified and addressed before the Bill becomes law.

Aftercare

The group welcomes Minister Andrew's acknowledgment of the importance of aftercare. However, we reject the notion that only a small minority of children leaving the care system need access to aftercare services or that those in foster care do not need access to aftercare.

It is generally accepted that children and young people need continuing parental support after they reach "adulthood" at the age of 18. The majority of parents accept responsibility to continue to support children financially and emotionally as they make the transition from childhood to independence. Parents continue to provide accommodation, clothing, food, educational support, advice and emotional support until well into their children's 20's.

The State is "in loco parentis" of children in the care system and as such has the same obligations to provide for children in its care after they reach the age of 18. There is no evidence or research available to support the claim that only a few of those leaving the care system will need such support. On the contrary international research and the experience of those working with young people leaving the care system highlight that these young people are far more vulnerable than their peers in the general population.

A longitudinal study carried out by Judy Cashmore in NSW, Australia found that:

“As a group young people leaving care fare more poorly than their peers in the general population. They are more likely to have frequent accommodation moves, be dependent on social welfare and leave school at an earlier age without finishing high school.”¹

In relation to foster care, a recent internal survey carried out by the Irish Foster Care Association showed that 28.4% of members involved in the survey expressed ‘*serious concern*’ with regards the future welfare of the young people in their care.² While it is recognised that the majority of foster carers continue to provide a home for young people over the age of 18, some IFCA members ‘*expressed a sense of resentment and frustration on the expectation and presumption of the HSE that they would do so*’.

Regardless of their best intentions, foster carers require an aftercare service for the young people living with them regardless of how capable the young person may be. This support may be financial until the young person starts employment or continues on to third level education, support in obtaining grants for third level education and support to help young person achieve independent living. Many care leavers may not have a strong relationship with their carers and many have limited support from their family of origin. These young people will be dependent on the HSE and Social Services to enable them make the transition to independent living and require support over a number of years to make the gradual transition from dependence to independence.

The group believes that a statutory provision for appropriate aftercare for all children leaving the care system, dependent on their level of need, is the best way to ensure the provision of such services consistently across the State.

¹ Judy Cashmore and Marina Paxman, 1996, Longitudinal study of wards leaving care ,Social Policy Research Centre, University of New South Wales.

² Irish Foster Care Association. 2009 *Voice of Foster Carers. A survey of foster carers by the Irish Foster Care Association.*