

CHAPTER 4 REPRESENTATION OF THE CHILD IN COURT

INTRODUCTION

- 1 This chapter is about the implications of the Act for the appointment of independent representation and advocacy. It covers:
 - what kind of representation is available in different circumstances;
 - in what circumstances the child may be represented;
 - who decides on representation.
- 2 It is important for social workers and others trained and experienced in England or Wales to know that there is no automatic right to independent representation for children appearing in court in public law cases on the Island.
- 3 However, if the court is to consider a care or supervision order or a private law order under the provisions of Section 11, it will frequently obtain an external, disinterested and expert view based on a skilled assessment to support its judgment. It, or the Attorney General in some cases, can do this by appointing:
 - a Guardian Ad Litem (High Court only),
 - a Court Welfare Officer,
 - an Advocate for the Child (who may in turn appoint a professional adviser).

Guardians Ad Litem

CYPA 2001 s.102

- 4 These appointments are made under the High Court's inherent/customary jurisdiction and can be made in either public or private law hearings. They are not governed by Statute Law or by the Rules of Court.
- 5 The criteria for these appointments in private law are based on case law established in England and Wales. As in England and Wales the appointment of a Guardian Ad Litem is unusual in private proceedings.
- 6 The High Court will only become involved in public law proceedings (the usual situation in which a Guardian Ad Litem would be appointed in England and Wales) where private law proceedings are already ongoing in the High Court and the question of a Care or Supervision Order arises. It is important to note that it would never be involved under part 3 or 5 of the Act, which include hearings for Assessment, Emergency Protection or Secure Accommodation Orders.
- 7 When a Guardian Ad Litem is required by the High Court the appointment is usually made by an approach for a suitable nomination to the Child and Family Courts Advisory and Support Service, which

<p>CYPA 2001 s.30</p>	<p>serves the courts in England and Wales for this purpose.</p> <p>8 The Summary Court has no power to appoint a Guardian Ad Litem in any kind of case.</p> <p>Court Welfare Officer</p> <p>9 This is a much more frequent appointment in private law hearings. It is available to all courts in both public and private hearings. The Court may appoint an officer of the Department or, more usually, a probation officer to report on the best interests of the child. The Officer is then treated as a party to the proceedings in most respects and effectively performs the function of a court appointed expert. It would be extremely unlikely for the High Court to appoint both a Court Welfare Officer under Section 30 and a Guardian Ad Litem under its inherent/customary jurisdiction in the same case.</p> <p>10 The only independent representation available in Assessment, Emergency Protection or Secure Accommodation hearings, which are always heard in the Summary Court, is by the appointment of a Court Welfare Officer. The Attorney General has no powers to appoint an Advocate for the child in these cases.</p> <p style="background-color: #cccccc;">See section on Court Welfare Officers above</p> <p>11 The Court is not bound by the recommendations of the Welfare Officer or the Guardian Ad Litem, but if it decides to depart from them it must explain why it has done so.</p>
<p>CYPA 2001 s.96 & 102</p>	<p>Advocate for the Child</p> <p>12 This form of independent representation is in the hands of the Attorney General rather than the Court. He may appoint a legal advocate to represent a child concerned in any family proceedings in any court where that child is not already represented. "Family proceedings" involving children are defined in the Act as including proceedings under parts 1, 2 and 4. The definition excludes parts 3 and 5 (Secure Orders, Assessment Orders and Emergency Protection Orders) but includes Care/Supervision Orders and private law orders.</p> <p>13 If an Advocate is appointed, the child, if not already a party, will be treated as such. The Advocate must act in connection with the proceedings in the best interests of the child, subject to the directions of the Attorney General.</p> <p>14 The Attorney General has the power to appoint an advocate for the child irrespective of whether the court has also decided to appoint a Court Welfare Officer or Guardian Ad Litem.</p> <p>Professional adviser appointed by an Advocate (de facto Guardian Ad Litem)</p> <p>15 Most Public Law proceedings take place in the Summary Court. As the Summary Court has no power to appoint a Guardian Ad Litem it would</p>

	<p>seem that the possibilities for representing the child are greatly reduced but this is not the case in practice.</p> <p>16 The problem is overcome by the Advocate for the child appointing someone with professional expertise to advise him or her. This person is usually a Guardian Ad Litem nominated by the Child and Family Courts Advisory and Support Service of England and Wales. He or she is generally known as "the de facto Guardian ad Litem".</p> <p>17 In practice the roles of the de facto Guardian ad Litem and the de jure Guardian ad Litem appointed by the High Court are identical. Both:</p> <ul style="list-style-type: none"> • interview all necessary people, • seek the approval of the Court to appoint appropriate experts to assist and to gain access to documents if required, • produce a report available to the parties and the Court, • attend and give evidence at some or all of the hearings, • give the Court oral advice regarding the child's best interests. <p>18 In law the difference between the two is that the officer appointed directly by the court reports directly to it. The officer appointed by the Advocate reports to him or her. But as that is the advice he or she uses to inform the court anyway the distinction has no practical consequence.</p>
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