



MINISTRY OF HEALTH, COMMUNITY DEVELOPMENT,
GENDER, ELDERLY AND CHILDREN

GUIDE FOR THE GUARDIAN AD LITEM SCHEME

Ministry of Health,
Community Development,
Gender, Elderly and Children
P. O Box 573 DODOMA

July, 2019



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Community Development, Gender, Elderly and Children,

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PREFACE

Tanzania has domesticated international and regional Instruments on children's rights, including the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC), by enacting the Law of the Child Act No. 21 of 2009 (LCA). LCA provides specific provisions in managing children in conflict with the law from the time of arrest up to sentencing. However, children nurturance and exposure to hostile social environments determines their personalities throughout their lives, consequently their attitude and behavior in compliance to the socially accepted norms. The law of the Child Act stipulates the need of children's cases be handled differently from adult cases. In this accord, the country through the Judiciary of Tanzania has established Juvenile Courts for hearing cases of children who are in conflict with the law, and applications relating to maintenance, Parentage, custody and access. However, in ensuring the effectiveness of these courts the Law requires these courts to have Guardians who will provide appropriate support to children who cannot afford to pay for legal representation or lack family support or their parents are not ready to support the child before the court.

Thus the Minister through the Commissioner for Social Welfare is mandated to develop a guide for the management and administration of children's cases in Juvenile Courts. As stipulated in the Juvenile Court Rules, a child has the right to legal and other appropriate assistance during case management in the juvenile court. In order to fulfill this right, the Commissioner for Social Welfare is obliged to develop a Guardian Ad Litem Scheme guide that will be used by Local Government Authority (LGA) to identify guardians who will support children in courts.

Hence it is my sincere expectation that this guide will facilitate effective establishment of these important personnel in all juvenile courts for the best interest of the children who are in contact or in conflict with law in both criminal and civil matters.



Dr. John K. Jingu

PERMANENT SECRETARY

ACKNOWLEDGEMENT

The Guide on establishment of Guardian Ad Litem Scheme provides an opportunity for guardians to represent children who are in conflict with the law before the courts. The Ministry responsible for social welfare services as obliged by the Juvenile Court Rules, 2016 (R.15) under the Law of the Child Act No. 21 of 2009, is required to develop this guide to facilitate representation of children in all designated juvenile courts.

I acknowledge the contribution made by individuals and organizations in accomplishing this task. Nevertheless, room is not sufficient to make reference to everyone who participated in or somehow contributed to the successful completion of this work. However, I would like to extend my sincere appreciation to UNICEF for their technical and financial support that made this work successfully. Furthermore, I wish to extend special attributes to the Judiciary of Tanzania, Ministry of Constitutional and Legal Affairs, National Prosecution Services, Commission for Human Rights and Good Governance and Tanganyika Law Society and other members of Criminal Justice Forum, for their valuable contribution on the development of this guide.



Dr. Naftali B. Ng'ondi

COMMISSIONER FOR SOCIAL WELFARE

LIST OF ABBREVIATION

ACRWC	African Charter on the Rights and Welfare of the Child
CHRAGG	Commission of Human Rights and Good Governance
CBOs	Community Based Organisations
CJ	Chief Justice
CSOs	Civil Society Organisations
DSW	Department of Social Welfare
DNA	Deoxyribo - Nucleic Acid
GAL	Gardian Ad Litem
JCR	Juvenile Court Rules
LCA	Law of the Child Act
LGA	Local Government Authorities
MDAs	Ministries, Departments and Agencies
MOCLA	Ministry of Constitution and Legal Affairs
MVCs	Most Vulnerable Children
NPS	National Prosecution Services
NGOs	Non-Governmental Organisation
SWD	Social Welfare Department
TLS	Tanganyika Law Society
UNCRC	United Nations Convention on the Rights of the Child
UNICEF	United Nation Children Fund

DEFINITION OF KEY TERMS

- Guardian Ad Litem*** - *means a person who takes on the responsibility or is appointed to represent and protect the interests of a child in a Juvenile Court proceeding (Rule 3, of the Law of the Child (Juvenile Court Procedure) Rules*
- Guardian*** - *means a Guardian Ad Litem.*
- Assisting*** - means helping a child to understand court procedures and what is expected of him/her.
- Representation*** - means a person appointed to provide legal representation and appropriate support to a child involved in a criminal, civil and child protection cases.
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INTRODUCTION

The child has a right to express his views or opinions as stipulated in the UN Convention on the Rights of the Child (1989), The African Charter on the Rights and Welfare of the Child (1991) and The Law of the Child Act No. 21 of 2009. In order to promote these rights, the Government has developed Juvenile Court Rules 2016 (JCR) as a guide to all court personnel lead by the Resident Magistrate to ensure child welfare is upheld in the administration of juvenile justice. These rules provide for the appointment of Guardian Ad Litem to represent a child in criminal, civil and child protection cases.

The Government is striving to ensure advocate, parents or Guardian Ad Litem represents children in all hearing. However, for a long time, this has not been practical in Tanzania or in most other countries of the world. It is evident that it is very expensive to pay for the advocate, and in some cases parents or relatives are not considering the best interest of the child while taking different actions. As a result, it is necessary to look for other ways of supporting children and assisting them to make their voices heard when they are involved in court proceedings in one way or another. For example; Article 12, which is one of the underpinning articles of the UN Convention on the Rights of the Child, which the Government of the United Republic of Tanzania ratified in 1991, provides that:

- (1) *States Parties shall assure to the child who is capable of forming his own views the right to express those views freely in all matters concerning the child, the views of the child being given due weight in accordance with the age and maturity of the child;*
- (2) *For this purpose, the child shall in particular be provided with the opportunity to be heard in any judicial or 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.*

The purpose of this guide is to provide standards governing the qualifications, recruitment, screening, training, selection, appointment, supervision, evaluation, roles, responsibilities and removal of guardians appointed to support and assist children. This guide comprises of six parts;

PART 1:

SETTING UP THE GUARDIAN AD LITEM SCHEME

Part 1, Provides set up of the guardian ad litem scheme; **Part 2**, deals with the recruitment and selection of GALs; **Part 3**, is based on the appointment of GALs; **Part 4**, outlines roles of GALs in different types of proceedings; **Part 5**, is dwelling with the Supervision and **Part 6**, provides on the procedures in handling complaints and removal from the list of Guardian Ad Litem.

- 1.1 Rule 15(9) of the Juvenile Court Rules provides that the Magistrate-in-charge of a Juvenile Court shall, in consultation with the head of the Social Welfare Department for the district in which the court is situated, ensure that the district has an adequate number of GALs to assist a child. The responsibility therefore, falls on both the Court and the Social Welfare Department.
- 1.2 Given the close contact that GALs will have with children, and the sensitive nature of the tasks that they will undertake, there is a need to take great care that the right people are recruited.
- 1.3 In order to ensure an adequate number of GALs, the Magistrate in-charge and the head of the Social Welfare Department should consult and agree on the number of guardians needed for the district, taking into account the numbers of relevant cases coming before the Juvenile Court.

Guardian Ad Litem are going to be volunteers, and therefore only likely to be able to contribute a limited amount of time, they should probably not have more than 3 cases each at any one time. However, LGAs, CSOs, CBOs and the entire community members should support them in order to carry out their responsibilities

Appointment of a coordinator for the Guardian Ad Litem scheme

- 1.4 The Magistrate in-charge should appoint a member of the administrative staff of the court to coordinate guardians in respective districts.
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The coordinator's role is to ensure; the list of GALs is kept up to date; keeping GALs personnel files; notifying GALs of their appointment to a case; providing details of the child to the GALs; keeping the guardian informed of dates of hearings or dates for submission of evidence and for notifying witnesses who are called by the child etc.

Appointment of a supervisor for the Guardian Ad Litem scheme

- 1.5 The Magistrate in-charge and the head of the Social Welfare Department for the district in which the court is situated, should agree on the appointment of a supervisor from amongst the GALs. At the start of a GAL scheme, this will probably need to be a member of the social welfare department, but once the GALs are recruited trained and their names have been placed on the list kept by the court, one of the GAL should be selected as a professional supervisor.
 - 1.6 The role of supervisor should be publicised amongst the guardians and they should be invited to apply. GAL with the most experience and appropriate skills for the job will be appointed as supervisor. The GALs should be invited and encouraged to apply for supervisor's post among them. The roles for supervisor should be publicised amongst the GALs, and the one with the most experience and appropriate skills for the job will be appointed as supervisor
 - 1.7 **Function of the supervisor**
To provide guidance to the GALs, to provide professional supervision and to ensure that GALs can obtain advice and are supported to provide a good quality service to children.
 - 1.8 The supervisor should be a member of the Case Flow Committee.
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PART 2:

RECRUITMENT AND SELECTION OF GUARDIAN AD LITEM

Minimum requirements for Guardian Ad Litem

- 2.1 The following are the basic essential qualities for the appointment of GALs:
- a. Have demonstrated interest in children and their rights and needs;
 - b. Have sufficient listening, speaking and writing skills to conduct interviews successfully, to prepare short written reports and make oral presentations;
 - c. Not involved in any conduct or activity that would interfere with their ability to carry out the duties of a guardian ad litem;
 - d. Have knowledge and appreciation of the ethnic, cultural and socio-economic backgrounds of the children and families in the population to be served;
 - e. Be available for a period of at least 18 months (in order to see cases through to the end) and have sufficient time, including evenings and weekends to visit the child, appear in court and otherwise discharge the duties required of a GAL;
 - f. Have the ability to relate to children and family members;
 - g. Have the ability to exercise sound judgment and good common sense;
 - h. Understand the need for confidentiality;
 - i. Candidates must be over 25 years of age;
 - j. Not to have been removed previously from the list of guardians in the district or any other district for failure to carry out the duties expected.

Publicising vacancies for Guardians Ad Litem

- 2.2 The Local Government Authority through the Social Welfare Department is responsible for recruiting Guardian Ad Litem. In order to reach a wide audience, vacancies for Guardian Ad Litem should be announced at ward and district council meetings, women and children protection committee meetings, on public notice boards and on community radio.
- 2.3 The head of the Social Welfare Department in the Local Government Authorities is responsible for publicizing the roles of the Guardian Ad Litem; how to apply and where an application should be sent or the person to whom the application
-

should be given. The information provided to potential applicants should also make clear the minimum requirements contained in Para 2.1 and 2.2 above

- 2.4 Special consideration should be given to publicising the vacancies for Guardian Ad Litem to paralegals community justice facilitators, members of the former MVC Committee, Community Case Workers, childcare workers, child supporters, NGOs, retired teachers, court assessors, or former court assessors or community development officers.
- 2.5 Guardian Ad Litem will support children on voluntary bases as such, an employed social welfare officer is not eligible for an appointment as a Guardian Ad Litem. In addition, social welfare officer is an officer of the court, so being a GAL can bring a conflict of interest during the case. However, there is nothing to stop such a person being appointed once he or she has retired or has moved to another job.

Making an application

- 2.6 Any person who desires to become a Guardian Ad Litem shall be required to submit an application in writing and must provide the details of two persons who can act as referees. The applicant should also attach his or her photograph together with the application

Selection

- 2.7 The Magistrate in-charge and the head of the Social Welfare Department shall review the applications and shall interview applicants who meet the minimum requirements. In the event that there are more applicants than are needed, a selection of applicants who are deemed most appropriate for the role should be interviewed, bearing in mind the need for diversity. There should be a gender balance of Guardian Ad Litem on the list, and a mix of different tribes and religions reflecting the population of the area.
 - 2.8 Before an applicant is approved for inclusion on the Guardian Ad Litem list, the coordinator of the Guardian Ad Litem scheme shall contact the two referees named by the candidate and seek information about the applicant and his or her suitability for the role. If the applicant has not lived in the area for a year, the applicant should be asked to name an additional referee who knew them at their old address.
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- 2.9 The coordinator must contact the police and ask them whether the applicant is known to have a criminal record or has been involved in activity, such as domestic violence, an offence of violence, a sexual offence or dishonesty that would make him unsuitable to work in a position of trust with a child. It is essential that a GAL is a person of integrity.

Training

- 2.10 Once an applicant has been interviewed, selected, and appointed, GALs will be required to undertake training and to observe court hearings before his or her name is entered on the list and he can be appointed as a Guardian Ad Litem to a child.
- 2.11 It is the role of the Ministry responsible for Social Welfare through the Commissioner for Social Welfare to specify the training to be undertaken by GALs before their name is entered on the list. The Five Days Training Manual for Guardian Ad Litem developed by the Ministry through the Department of Social Welfare (DSW) is available. In addition, GALs can also use the MVCC training manual, which contains some of the basic training materials on child development and child protection.
- 2.12 The Magistrate in-charge and the head of the Social Welfare Department should agree on how training is to be made available to GALs. The members of the Case Flow Committee should be prepared to offer training to enable GALs to carry out their role and the Magistrate in-charge or the head of the Social Welfare Department should consider approaching appropriate NGOs to support training.
- 2.13 Training will include training on the law, child development, child protection, basic rules of evidence and cross-examining, the role of social workers, how to listen, hear and represent a child and observations.

Observations

- 2.14 Magistrates should permit selected applicants to attend court hearings in chambers and closed courts to observe and learn about court procedure.
- 2.15 The head of the Social Welfare Department (SWD) should arrange for selected applicants to meet social welfare officers in the department and to observe
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interviews with families and children to familiarise themselves with child protection procedures and family disputes.

- 2.16 The coordinator of the GAL should arrange for the selected applicants to meet with Police Gender and Children's Desk Officers in the district to enable them to understand the role of the police and the issues relating to child victims and witnesses, and to observe interviews with children.
- 2.17 The coordinator of GALs should arrange for the selected applicants to meet with the DPP's office in the district to gain an understanding of how a decision to charge and prosecute a child is made and to gain a greater understanding of criminal procedure.

Certification

- 2.18 When a selected applicant has completed the necessary training and undertaken the necessary observations, and demonstrated an understanding of the duties and responsibilities of a Guardian Ad Litem to the supervisor, his or her name may be entered on the GAL list. In recognition, the head of the social welfare department shall award a certificate of attendance to the Guardian Ad Litem recording that he or she has successfully completed the training.

Capacity Building

- 2.19 All Guardian Ad Litem need to be trained once a year to enable them performs their duties. The Commissioner may specify the content of the training to be undertaken for Guardian Ad Litem whose names are already on the list, but if he does not the Magistrate, in-charge and Head of the Social Welfare Department may decide on the content of the training to be provided.
- 2.20 Guardian Ad Litem will be trained in order to improve their performance in supporting children in court. The nature and type of training to be provided will be decided by the Magistrate in-charge and the Head of the Social Welfare department. Also in some ways and whenever appropriate, should consult with the members of the case flow committee. There may have been a gap in the district, which has identified that there is a lack of knowledge on the part of the Guardian Ad Litem, or the range and nature of cases coming before the court may be changing and some new law or skills need to be taught. The Magistrate in-charge or the head of the social welfare department may decide to deliver the
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training, or an external body, such as NGO with relevant experience in working with children and families, could be invited to give the training. Other members of the Case Flow Committee can also be asked to deliver training.

- 2.21 Where updates on law or new initiatives are being offered to members of the Case Flow Committee, Guardian Ad Litem should be invited to attend.

PART 3:

APPOINTMENT AND ROLE OF A GUARDIAN AD LITEM

Appointment of a guardian by the Court

- 3.1 When the Court appoints a guardian, the coordinator should be notified of the appointment. The coordinator will then select an available and suitable guardian from the list.
- 3.3 When selecting a guardian for appointment, the coordinator should take into account where the child and family live. The appointment of a guardian from the same street or the same small village might not be appropriate but where practicable, the appointed Guardian Ad Litem should not live too far from the child in order to make it easy for the Guardian Ad Litem to visit the child.
- 3.2 The coordinator should check, with the selected guardian to ensure:
 - (a) that the Guardian Ad Litem to be appointed does not have a conflict of interest in the case: eg the Guardian Ad Litem is not related to the victim and is not a friend of the victim's family if representing a child in a criminal case, or a friend of one of the parties in a civil case; and
 - (b) that he or she will be available for the likely duration of the case.

A Guardian Ad Litem who is on the list, must not act as a Guardian Ad Litem until he is appointed by the court.

- 3.4 The coordinator should place a note of the Guardian Ad Litem's appointment
 - (a) on the Court file of the case relating to the child;
 - (b) on the Guardian Ad Litem's personnel file.

The role of the Guardian Ad Litem is set out in Rule 15(6) Law of the Child Act (Juvenile Court Procedures 2016) and covers the appointment of a GALs in criminal, civil and family cases and where the child is a victim or witness in a criminal case.

In criminal cases

- 3.5 Under the Juvenile Court Procedure Rules every child who is involved during court proceedings should be provided with legal representation. However, it is not clear at the present time, how such advocates are to be funded and made available in all areas of the country. When a child does not have an advocate, it is common for a parent to support and assist the child in the court. However, parents are often not familiar with courts or their procedures, and they may feel uncomfortable or intimidated by the court process or simply feel that it is beyond their ability to help the child present his defence or express his views in court. In some cases, the parent may not be able to support the child adequately or the parent or guardian may not come to court, or it is not appropriate for the parent to be the child's representative in all these instances, the Court must appoint a Guardian Ad Litem.
- 3.6 The Magistrate should explain to the accused child at the first hearing that if he does not have an advocate, he can choose to be assisted and 'represented' by his parent or he can choose to have a Guardian Ad Litem. The child should be told that he can select and appoint a Guardian Ad Litem or request that the Court appoint such a person.
- 3.7 If the child chooses somebody he knows to act as his Guardian Ad Litem that person will be allowed to come into court and to assist the child in cross-examination of witnesses and in presenting his defence. However, in most cases, it is unlikely that the child will know of anyone who understands the criminal justice system and knows how court works, and it is likely, particularly once the Guardian Ad Litem scheme becomes known, that the child will ask the Court to appoint a Guardian Ad Litem from the list held by the Court.
- 3.8 A Guardian Ad Litem does not have the same role as an advocate and does not replace the work of an advocate. The Guardian Ad Litem's role is to provide '*appropriate assistance*' to the child. This includes providing assistance from the time of appointment until the end of the proceedings (including sentencing). The main purpose of the assistance is to ensure that the child's rights are upheld: in particular, the child's right to a fair trial and the child's right to be heard.
- 3.9 One of the major roles of the Guardian Ad Litem is to explain to the child what he is accused of, the facts that are being alleged against him, what will happen
-

during proceedings, the role of the various people present in the Court and what is expected of the child.

- 3.10 The second major task of the Guardian Ad Litem in criminal proceedings is to ensure that the child is heard and can participate in the proceedings. Put another way, the role of the Guardian Ad Litem is to help the child to give his story about the alleged offence to the Court, and to assist the child in calling any witnesses who can show that the child did not commit the offence. The guardian will also be expected to help the child to cross-examine witnesses who give evidence against him.
- 3.11 The Guardian Ad Litem should not put words into the child's mouth but should help the child to give his evidence. If the child is unable to speak for himself, or finds it too difficult, the guardian may speak for the child, including asking questions of the witnesses.

Should the court appoint a Guardian Ad Litem if there is a social welfare officer present in the court?

The answer to this is 'yes'. The role of the social welfare officer is different to that of a Guardian Ad Litem. The social welfare officer is there to assist the court.

- 3.12 The Guardian Ad Litem should meet with the child once he or she is appointed and should spend sufficient time with the child to understand the facts relating to the alleged offence and what the child says happened. If in any doubt, the Guardian Ad Litem should ask the child questions, find out who else was around and whether anyone can confirm the child's story. If the Guardian Ad Litem thinks certain people would be useful as witnesses, he should discuss this with the child. If the child agrees, the Guardian Ad Litem should inform the coordinator and provide the names of the witnesses so that the coordinator is able to summon them to the trial.
- 3.13 After the hearing, the Guardian Ad Litem should make sure that the child understands what took place and the result of the hearing, particularly if the child has been found guilty of an offence and given a sentence by the court.
- 3.14 The role of the Guardian Ad Litem as set out in the Juvenile Court Rules is:
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- (i) To assist the child:
 - In putting his case in criminal proceedings;
 - When the child is a witness and is giving evidence in criminal proceedings (either against another child or an adult);

- (ii) To ensure that the voice of the child is heard:
 - When the child is a party to civil proceedings or the subject of contested custody, access or other complex family proceedings;
 - When the child is the subject of child protection proceedings;

- (iii) To assist the child to express his or her views and wishes to the Court or, if the child is unable or does not wish to speak directly to the Court, to inform the Court about the child's views and wishes.

- (iii) To give evidence to the court on the outcome that he or she believes would be in the best interests of the child where the child is too young to express a view or wishes.

The Law of the Child (Juvenile Court Procedure) Rules which came into force on 25th July 2014, as repealed on 20th May 2016, require the appointment of a Guardian Ad Litem in three different types of cases heard by the Juvenile Court:

1. In criminal cases, where the child cannot afford to pay for legal representation and it is not practicable to provide free legal assistance, and where a parent or guardian is not available or cannot provide effective representation to a child, the magistrate must ensure that a Guardian Ad Litem is appointed (Rule 15(1)).
2. Where a child is a party to civil proceedings (Rule 15(3)).
3. When a child is the subject of child protection proceedings (Rule 15(3)).
4. In addition, the judge must permit the appointment of a Guardian Ad Litem where a child is a victim or witness to a crime and will give evidence in court. The prosecutor, a social welfare officer or a child who is a victim or witness can apply to the Court to appoint a Guardian Ad Litem when such an appointment is in the child's best interests (JCR, Rule 15(4) and (5)).

As can be seen, Guardian Ad Litem Ad Litem has a wide role to play, and the role that they play differs, according to the nature of the case.

Practice note for Guardian Ad Litem helping accused children

DO

- (a) Meet with the child and listen carefully to what the child has to say;
- (b) Meet with people the child believes are witnesses to his innocence and listen to what they say;
- (c) Decide with the child who should be called as a witness;
- (d) Help the child prepare for giving evidence in court;
- (e) Submit documentary and other evidence on behalf of the child if would help the child's case;
- (f) Speak up for the child when he is not able to express himself in Court.
- (g) Make sure that you explain to the child what is happening with his or her case at every stage of the process;

DON'T

- (a) Try to provide counselling to the child or the parents;
- (b) Try to make friends with the child and/ or parents while the case is going on;
- (c) Give the child or the parent's gifts or money;
- (d) Try to give the child or the parent's legal advice;
- (e) Try to change the child's story.

At the preliminary hearing or the trial, the Guardian Ad Litem should:

- (a) Remember at all times that he is there to support and assist the child;
- (b) Be clear about the child's story in relation to the offence before the preliminary hearing or trial;
- (c) Be sure that the Magistrate understands what the child is saying. If the child has said something when being cross-examined that you don't think is correct and doesn't match with what the child told you, question the child about this again when the Magistrate offers you the chance to re-examine the child.

When the child is a victim or witness to a criminal offence

- 3.15 Children who are victims of a crime or a witness to a crime are often frightened at the idea of having to appear in court and give evidence against somebody who harmed them, or who they watched harm or steal from another person.
- 3.16 It is unlikely that the child will have been to a court before and they will not know about court procedure. They are also unlikely to understand who plays what role in the court.
- 3.17 In addition to these difficulties, a child will have to give evidence in front of the accused and usually at least another 5 or 6 people who are present in the court or chambers. If the child is giving evidence in chambers, the room is often very small and the child victim or witness may be very physically close to the accused when he or she gives evidence. This can be very intimidating for a child.
- 3.18 The role of the Guardian Ad Litem is to support and assist the child. The Guardian Ad Litem is not a replacement for an advocate in cases where a child is a victim or witness. Nor is the Guardian Ad Litem a replacement for a parent in these cases. They are appointed because it is accepted by the Juvenile Court Rules that being a witness can be a very upsetting and stressful process for children. The role of the guardian is to explain what is happening to the child and to put them at their ease, making it easier for the child to give good evidence to the Court.
- 3.19 As soon as the appointment is made, the Guardian Ad Litem should talk to the prosecutor and the social welfare officer (if one is involved) and gain an understanding of the case. It is also a good idea to meet the police officer at the Gender and Children's Desk before visiting the child to discuss what is known about the child and the family.
- 3.20 The Guardian Ad Litem should meet the child as soon as possible and get to know the child a little so that the child feels comfortable. Once the child is at ease, the Guardian Ad Litem should explain to the child what is happening and what will be expected of the child. It is helpful if the Guardian Ad Litem can take the child to the Court before the trial to see the courtroom and understand who will be in the court and where everyone will sit. This should apply whether the child is a witness in the juvenile court, a district court, a regional court or the High Court.
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- 3.21 The visit to the Court should be arranged with the coordinator. Where possible the child should be introduced to the magistrate who will be presiding in the case. No discussion of the case should take place. The purpose is not to discuss the case but to familiarise the child with the Court so that the magistrate is not a complete stranger to the child when he enters the court.
- 3.22 The Guardian Ad Litem should keep in contact with the prosecutor's office so that he is aware of what is happening in the case and can keep the child and his or her family up to date with the details. This should include the dates of hearings, reasons for any adjournments and the outcome of the trial.
- 3.23 The guardian should accompany the child to every court hearing and wait with the child. The guardian should sit next to the child victim or witness when he is giving evidence. If it is clear to the Guardian Ad Litem that the child is finding the questions he is being asked confusing, or that he does not understand what is being asked, the Guardian Ad Litem should inform the magistrate of this. The magistrate may ask the Guardian Ad Litem to rephrase the question, but otherwise the Guardian Ad Litem should not speak.

Infringement of a child's rights

- 3.24 The Law of the Child Act allow actions against parents and Guardian Ad Litem who are infringing a child's rights

Rule 89(5) of the Juvenile Court Rules provides:

“The Court may, in the exercise of its powers under s.95(3)(a) of the Act, provide the child with protection and make any order or determine any issue in respect of infringement of the child's rights including, but not limited to -

- (a) Orders to restrain publicity;
 - (b) Orders to prevent an undesirable association;
 - (c) Orders relating to medical treatment, including the obtaining of a DNA test;
 - (d) Orders to protect abducted or trafficked children or children where the case has another substantial foreign element;
 - (e) Orders for the return of children to and from another state; and
 - (f) An order that the social welfare department undertake an initial investigation to determine whether the child is suffering or is at risk of suffering significant harm.
-

In such cases, the court can ‘*provide protection*’, ‘*make any order*’ or ‘*determine any issue*’ in respect of infringement of a child’s rights.

- 3.25 Although a local government authority will make most applications or one of the parents against the other, there may be some instances where a child wants to make his or her own application against a parent or guardian. In such cases, the child needs the assistance and support of a Guardian Ad Litem in filing the case. A child under the age of 18 is not legally able to file an application him or herself. The application must be made through a next friend. If a child tries to lodge an application with the court or seeks advice from the court on how this can be done, the coordinator may ask a Guardian Ad Litem to support and assist the child to act as a next friend.
- 3.26 The Guardian Ad Litem should talk to the child about the intended court application and consider whether he or she is willing to act as the child’s next friend. The Guardian Ad Litem is not bound to act as a next friend, and may refuse to act, but should give careful thought to what the child wants to do and why, before refusing. He should not refuse just because he doesn’t agree with children taking their own actions, or he would not like his child taking such an action. However, if he believes that the taking of such an application could seriously damage the child, and is not in the child’s best interests he would be justified in refusing to do so.
- 3.27 In most cases it is likely that a child who needs a next friend, will be estranged from his or her parents and family or is without parental care. The role of the Guardian Ad Litem in these cases is to help the child fill in the court forms to present the evidence in support of the child’s claim to the Court, and to speak on behalf of the child if the child wishes him to do so.

Family proceedings

- 3.28 ‘Civil’ family proceedings are likely to include: parentage applications, complex custody and access proceedings, maintenance proceedings and applications under Rule 89 of the JCR where the ‘interested person’ may be a Guardian Ad Litem.
- 3.29 A child cannot make an application him or herself for custody or access, but in complex custody and access cases the child may be joined as a party to proceedings
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under Rule 70 of the JCR. This may happen where

- (i) an application is made by the social welfare officer to join the child as a party or
- (ii) the child, where he is of sufficient age and understanding asks to be joined.
- (iii) the Court joins the child on its own motion (usually because the case is complex and the Court is of the opinion that the child's views should be separately represented).

3.30 Once the child is a party, the Court *must* appoint a Guardian Ad Litem for the child.

3.31 It is the role of the court social welfare officer to provide a social enquiry report to the court in such cases, and within that report to set out what forms of action and decisions would be in the child's best interests. The role of the guardian is not the same as the role of the social welfare officer. The role in family cases is to support and assist the child where he or she is of sufficient age and understanding to participate in proceedings and to help the child to express his views and wishes.

3.32 The Guardian Ad Litem should meet and discuss the case with the child, so that he understands fully what the child wants to say to the Court. In some cases, the child will disagree with what the social welfare officer says is in her best interests. The role of the guardian is to help the child explain why the social welfare officer's view is wrong and why the child takes a different view. In some cases, the Guardian Ad Litem might think that the social welfare officer is right and the child is not being realistic in his view, or is misguided. The Guardian Ad Litem can discuss this with the child in the hope that the child might change her views, but the guardian must not substitute his own views for those of the child when in front of the court. The Guardian Ad Litem's role is to help the child to present her views and wishes, even if these are unreasonable. If the child doesn't feel able to speak herself in Court, the guardian's role is to speak for the child and to present the child's views and wishes to the Court.

What if the Child is too young to express a view?

3.33 Sometimes the child will be too young to have a view or opinion on the matter, but may still be joined as a party. In these cases, the role of the Guardian Ad Litem is more of a 'protective' role. If the child is too young to give his or her view, the guardian should give a view as to what he or she sees as being in the child's best

interests. The social welfare officer will, of course, set out what she considers to be in the child's best interests in the social inquiry report, but the guardian may have a different view, or want to add to what is said by the social welfare officer based on meetings and observation of the child and the family. The Guardian Ad Litem may have seen the parents and the child more often and may have spent more time with the child than the social welfare officer and have some important insights to contribute to the report. Wherever possible the Guardian Ad Litem should meet the social welfare officer before the report is finalised in order to discuss the child. It will be the role of the court to decide what weight it gives to the different views presented to the Court, remembering always that the Court must act in the child's best interests.

When the Child is the subject of Child Protection proceedings.

- 3.34 Children have a right to legal and other appropriate assistance in care and supervision proceedings just as much as in criminal proceedings. However, given the numbers of advocates who practice in the field of child protection and the fact that legal aid for children in child protection proceedings is very limited, it needs to be recognised that most children will not have legal representation during care proceedings. Rule 15(3) of the Juvenile Court Rules provides that in addition to a right to be legally represented, a Guardian Ad Litem shall be appointed for a child who is a party to child protection proceedings. This means that when a local government authority applies to the Juvenile Court for a care or supervision order, the Court is required to appoint a Guardian Ad Litem for a child unless one has already been appointed in the course of other proceedings before the Court.
- 3.34 It needs to be remembered that in child protection cases, the local government authority is the applicant, while the child who is the subject of the proceedings is a respondent. A social welfare officer presents the case for the local government authority and cannot represent the applicant and the respondent at the same time. For this reason, a Guardian Ad Litem needs to be appointed to ensure that the child has a representative in the proceedings, as the parents are also likely to be parties to the proceedings.

The role of the Guardian Ad Litem in a child protection case is rather different. It is more akin to the role of an advocate than a parent. The guardian is there to protect the rights and interests of the child, to support and assist the child

throughout the proceedings and to work with the social welfare officer to ensure the best outcome for the child.

- 3.35 As in other cases, the guardian should support and assist the child to address the Court, but if the child does not want to do so, or is unable to do so, the guardian should present the child's views and wishes to the Court. In those cases where the child is too young to have a view or wishes, the Guardian Ad Litem may address the court on what the Guardian Ad Litem believes to be the best interests of the child, and the most desirable outcome for the child. In most cases, the guardian is likely to take a similar view to that of the local government authority. But that will not always be the case, especially where the child is older and has different ideas about what should happen to him or her.
- 3.36 The Guardian Ad Litem should visit the child and listen to what the child has to say. It is likely that the guardian will need to visit the child on several occasions, and should always see the child before a court hearing so that he can explain to the child what will be discussed in the court hearing and the likely outcome. It is not for the Guardian Ad Litem to tell the child what to do or what to say, but to get to know the child and help the child express his views to the court directly or indirectly. In other words, the Guardian Ad Litem can help the child to speak in the court or the Guardian Ad Litem can speak for the child.
- 3.37 Where the child is young, the Guardian Ad Litem should still visit to check on how the child is being cared for and whether the child's needs are being met.
- 3.38 The local government authority can only apply for a care or supervision order where the child has suffered significant harm or is at risk of suffering significant harm because of the care being given or the child being out of control. As many of the children who are the subject of such an application are likely to have been abused, exploited or neglected by their parents, they are unlikely to want to go to court and listen to the evidence or speak against their parents. Indeed, in many cases it would not be in the child's best interests to sit through the hearing. In these cases, it is the role of the guardian to tell the Court about the child, and about his views and wishes.
- 3.39 Although a social welfare officer will give evidence about the family background and the child to the Court, the Guardian Ad Litem still has an important role to
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play, even where the child is too young to express a view. The Guardian Ad Litem is the child's representative and the Guardian Ad Litem's only concern is the child. The social welfare officer has to talk about and consider the whole family, but the Guardian Ad Litem does not have to consider anyone else's needs or wishes.

Care and Supervision Plans

- 3.40 The Guardian Ad Litem should discuss the care or supervision plan with the social welfare officer assigned to the case. The guardian should consider all aspects of the plan: where the child will live, education, health etc. If the guardian does not think that the care or supervision plan will meet the child's needs, it is up to him to discuss this with the social welfare officer and to ask the social welfare officer to amend the plan. If the local government authority does not think, it needs to amend the plan, and leaves it as it is, the Guardian Ad Litem should raise the issue at the court hearing. The social welfare officer should take responsibility and should make sure that he arranges a meeting with the Guardian Ad Litem before the hearing.
- 3.41 The Guardian Ad Litem is the child's representative and is there to act for the child, replacing an advocate. In some cases, local government can suggest placing the child in an approved residential home, but the Guardian Ad Litem believes that the child's best interests would be to live with a family, the guardian should discuss the issue with the social welfare officer before the hearing and ask the officer to reconsider and look for a family for the child. If the social welfare officer does not agree or fails to do so and does not change the care plan, the guardian should raise the issue in court, explaining why it would be better for the child to be in a family and the observations and evidence that this conclusion is based upon. If the guardian chooses, he can prepare a short written statement with the court setting out the child's views and if he thinks the care plan does not meet the needs of the child, why not.
- 3.42 The court should consider all the evidence in the care and supervision proceedings: including evidence from the parties and any evidence that the Guardian Ad Litem submits. It is then for the Magistrate to weigh up all the evidence and to decide:
- (i) Whether the threshold criteria for a care or supervision order have been met;
 - (ii) Whether it is in the best interests of the child to make a care or supervision
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order;

(iii) Whether the care plan meets the needs of the child.

- 3.43 The Guardian Ad Litem's role finishes when the court proceedings end. However, the maximum duration of a care order is three years. If the local government authority decide to make an application for a second or subsequent order, the coordinator should try to re-appoint the same Guardian Ad Litem wherever possible.
- 3.44 Where a Guardian Ad Litem is reappointed, part of the role is to check what attempts have been made by the local government authority to reintegrate the child with the family, or if that is not in the child's best interests, what alternative plans have been made. In addition, the Guardian Ad Litem should check that the local government authority implemented the care plan. The guardian should consult with the social welfare officer on the preparation of a new care plan for the child and put forward the child's views and wishes.
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PART 4:

SUPERVISION OF GUARDIAN AD LITEM AND REMOVAL OF A GUARDIAN FROM A CASE

Supporting Guardian Ad Litem

- 4.1 The role of the supervisor is to offer support and professional supervision to the Guardian Ad Litem in the district, by making himself or herself available to meet and discuss cases and any issues arising. It is also the responsibility of the supervisor to ensure that Guardian Ad Litem are performing their statutory duties in a satisfactory manner.
- 4.2 The supervisor should meet with the Guardian Ad Litem at least four times a year in the first year of appointment to review the cases to which the Guardian Ad Litem has been appointed and to evaluate performance. After the first year, the supervisor should meet with a Guardian Ad Litem at least 3 times a year. The supervisor can choose whether to meet the Guardian Ad Litem ad litem as a group or individually.
- 4.3 Supervisors should make themselves available for further meetings if issues arise and Guardian Ad Litem need support and advice on a case.
- 4.4 The supervisor should consult with the Magistrate in-charge at least once every six months to receive feedback on individual Guardian Ad Litem.
- 4.5 If, following the supervision, the supervisor is of the view that further training is required, the supervisor shall request the Magistrate in-charge and the Head of the Social Welfare Department to assist in the provision of such training.
- 4.6 A record of the supervision must be made in writing and added to the guardian's file kept by the coordinator.

Removal of a Guardian from a particular Case

- 4.7 The Juvenile Court Rules provide for two situations when a Guardian Ad Litem may be removed.
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- (a) Where a child who is of sufficient age and understanding and the Guardian Ad Litem are in conflict, the child may request the removal of the Guardian Ad Litem and either select another Guardian Ad Litem or ask the Court to appoint another. There should be a serious conflict before a request to replace a guardian is granted. A conflict is likely to occur where the guardian disagrees with the child's views and wishes and does not want to present them to the Court, on the basis that he or she considers that they are not in the child's best interests. In such a case, the guardian cannot continue to assist and support the child (Rule 15(7)).
- (b) The Court may of its own motion or following an application by the social welfare department; dismiss a guardian who acts contrary to the best interests of the child, and shall in such instance ask the child to select a new guardian or where the child is too young or does not select another Guardian Ad Litem, appoint a new Guardian Ad Litem (Rule 15(8)).

It will rarely apply to Guardian Ad Litem ad litem who are appointed from the list by the court. This provision intended to cover cases where the guardian fails to carry out his duties and responsibilities, such as failing to attend court, or in a criminal case, fails to inform the Court of witnesses that the child wishes to call and to seek a summons for them to attend. In some cases, the guardian selected by a child may turn out to have a conflict of interest, to be protecting himself or another person rather than the child or to be negative about the child, making statements or bringing evidence that prejudices the child.

A person who has a complaint about the Guardian Ad Litem whose name is on the Court-held list, may present the complaint to the supervisor who shall investigate the complaint.

PART 5:

COMPLAINTS PROCEDURE

- 5.1 In conducting the investigation, the supervisor may seek information from the person making the complaint, from the Guardian Ad Litem and from any other source that the supervisor thinks appropriate and necessary.
 - 5.2 Once the complaint has been investigated, the supervisor should write a short report on the findings. A copy of the report should be sent to the person who complained and the Guardian Ad Litem.
 - (a) If the supervisor finds that the complaint is justified, but it is a minor failing on the part of the Guardian Ad Litem, the supervisor should consider asking the Guardian Ad Litem to apologise to the complainant and/or reprimand the guardian and/or require the Guardian Ad Litem to undergo further training;
 - (b) Where the failings are more serious, the matter should be referred to the Magistrate in-charge.
 - 5.3 On receiving the report, the Magistrate in-charge should decide whether the conduct of the Guardian Ad Litem was so far below what was expected, that his or her name should be removed from the list. If the Magistrate in-charge considers that the failings in conduct are not so serious that they require that the Guardian Ad Litem's name be removed from the list, he may request that the Guardian Ad Litem undergo specified further training.
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PART 6:

REMOVAL FROM THE LIST

Guardian can be removed from the list basing on the following grounds;

- 6.1 If a Guardian Ad Litem fails to carry out his duties, has breached the Code of Conduct, fails to make him or herself available to act as a guardian, without reasonable excuse, or on his request to be removed, the supervisor may recommend that the guardian's name be removed from the list.

 - 6.2 In appropriate cases as an alternative to removal from the list, the supervisor may give a warning, may require the guardian to undergo further training, to observe a set number of cases with another guardian to get further experience or such other action as may be necessary.
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CODE OF CONDUCT FOR GUARDIAN AD LITEM: HOW TO BEHAVE IN THE JUVENILE COUR

- (i) A Guardian Ad Litem carries out a sensitive role, and needs to bear in mind that he or she owes responsibility to act in a professional manner to both the child and the court.
- (ii) Do not discuss the case with anyone outside the court – you owe a duty of confidentiality to the child.
- (iii) Do not gossip about the child or the family: you owe the child a duty of support and care.
- (iv) You are not allowed to build social friendship rather working relationship: you are there to assist and support the child during court proceedings.

In the Court

- (i) Be neat and clean in your appearance – it shows respect for the Court and for the child.
 - (ii) Remember that everyone, and particularly the child, is depending upon you to show up at the Court on time and prepared. Don't let the child and yourself down.
 - (iii) Introduce yourself to the clerk and if you are in any doubt about the conduct of the proceedings, ask the clerk.
 - (iv) Make sure that your telephone or any other electronic gadgets are switched off the entire time that you are in Court.
 - (v) It is acceptable to drink water in the Court, otherwise do not drink or eat during court proceedings.
 - (vi) Stand up when the Magistrate enters the court and when the Magistrate leaves.
 - (vii) Address the Magistrate with respect: the appropriate manner is to call the Magistrate 'Your Honour'.
 - (viii) Always address the Magistrate when you speak during proceedings and not the parties.
 - (ix) Listen carefully to the facts of the case and what is being said by the parties in court and make a note of it if necessary.
 - (x) It is important to show respect in the Court. It is acceptable to have a few words with the child when he wants to tell you something during the court proceedings, but if there needs to be a conversation between you and the child, you should ask the Magistrate if you can have a short adjournment.
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- (xi) Speak firmly and clearly so that you can be heard by everyone in the courtroom or chambers,
 - (xii) Be concise and to the point when speaking in court.
 - (xiii) Remember – you are there to support and assist the child to put his case and to express his views and wishes. You are not there to substitute your ideas, view and wishes for those of the child.
 - (xiv) If the child tells you that information he has given you is a lie, you cannot ignore it. You must tell the child that you cannot lie to the Court.
 - (xv) If the child is too young to express a view or wish, and you are informing the Court about the child's best interests.
 - (xvi) Treat all participants in the court process with courtesy even if they are taking action in relation to the child that you do not agree with.
 - (xvii) Once a court hearing has finished, explain to the child what has happened and the result: even if it is only the date of the next hearing. Remember to ask the child if he or she has any questions about the hearing.
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