

## Guardians ad litem

### Who are they?

The office of guardian ad litem is an ancient one; guardians have traditionally been appointed in court proceedings to safeguard the interests of children and mental patients. But from May 1984, in response to the Maria Colwell tragedy, the courts have been given new powers to appoint guardians ad litem to look after children's interests in care proceedings—where a local authority goes to the magistrates court for an order allowing it to take a child into care, usually because of neglect or ill treatment, or where parents apply to the magistrates to have a child in the care of the local authority returned to them.

### Why were they needed?

The inquiry into Maria Colwell's death highlighted the fact that the interests of children and their parents often do not coincide. Parents are not parties to care proceedings—the two parties are the local authority and the child. Because they are not parties, parents until recently were denied legal aid. But solicitors acting on legal aid for the child did not always appreciate the possible conflict of interest between the child and his parents and too often took their instructions from the parents, as if they were the clients. The 1975 Children Act provided for local authorities to maintain panels of independent social workers to act as guardian ad litem to the child, and for parents, though not parties, to have legal aid to instruct their own, separate, solicitor. It took nearly 10 years for the new system to come into operation, but in the meantime, as a result of Law Society guidance, solicitors acting for children in care proceedings increasingly asked independent social workers to assist them, as happened in the Jasmine Beckford case, where the proceedings took place before the new system was brought into force.

### The guardian ad litem's role

The roles of an independent social worker and of a guardian ad litem are, however, different. The solicitor can disregard the social worker's report or put it forward as he chooses, depending on whether it advances his case. The guardian ad litem, by contrast, is appointed by the court and is very much in control of the case. It is the guardian who

instructs the solicitor on the child's behalf, carries out the investigation, and puts all the relevant circumstances before the court. Unlike independent social workers, guardians ad litem have the right to examine social services' and other records.

### Selection and duties

Guardians ad litem, drawn from panels kept by local authorities, are trained social workers who are independent or employed by voluntary agencies or by other local authorities. As the report of the Jasmine Beckford enquiry points out, 'the leitmotif of modern child care law is preventive action.'<sup>1</sup> Local authorities have a general duty to provide support for children in their families, so as to lessen the need to take children into care. This overall preventive duty, however, is no part of the guardian ad litem's role. His task is to safeguard and promote the child's interests until adulthood, assist the court, and ascertain, and inform the court of, the child's wishes and feelings. He has a duty to 'so far as it is reasonably practicable, investigate all circumstances relevant to the proceedings' and, to do this, to 'interview such persons and inspect such records and obtain such professional assistance' as he thinks appropriate.

In the Beckford case the magistrates were not shown a crucial paediatric radiologist's report. Had a guardian ad litem been appointed, says the panel's report, 'Dr Levick's report would never have suffered the fate of courtroom confusion, or subsequent interment in a departmental file.'

It is up to the guardian, however, whether he thinks it relevant to the proceedings and appropriate to interview a paediatrician who has been involved with the child. Some paediatricians have complained that in some cases guardians have not approached them and have also bypassed social workers and health visitors who have known the family intimately. The blue book prepared by the Department of Health and Social Security (DHSS) states: 'He (the guardian) should not overlook other adults with whom the child has established a relationship or who may be able to comment on his needs. Legal aid will usually be available to pay for expert advice or reports from specialists such as educational psychologists, doctors or child psychiatrists.'<sup>2</sup> It is certainly up to the guardian what weight to attach to a paediatrician's view on whether the child should be

returned to his parents when he comes to write his report for the court.

#### **If the child and the guardian disagree**

What if the child disagrees with what the guardian ad litem believes to be in his best interests? The child, for instance, may not want to be taken into care, while the guardian ad litem may favour a care order. If the solicitor thinks the child is old enough and has sufficient understanding he must take instructions from the child. From that point, the solicitor and the guardian ad litem cease to work together, and the solicitor may challenge the guardian ad litem's report by calling an independent social worker as witness. In these circumstances a paediatrician who had not been approached by the guardian might be called as a witness by the child's solicitor.

#### **What can paediatricians do?**

DHSS advice to a paediatrician who feels his

possible contribution has been overlooked by a guardian ad litem is first to approach the guardian offering to assist with the investigation. If the offer is turned down he may wish to get in touch with the child's solicitor or make it known to the clerk of the court that he feels he has an interest in the case. A DHSS spokesman has pointed out that the guardian has access to social services records and if a paediatrician has been part of a child abuse team his views may already be noted in those records.

#### **References**

- <sup>1</sup> Brent Borough Council. *A child in trust*. London: Brent Borough Council, 1985.
- <sup>2</sup> Department of Health and Social Security. *Guide for guardians ad litem in the juvenile court*. London: DHSS, 1984.

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