



Notice 1/2019
Notice to members of the District Court family law solicitors panel
re “Voice of the child reports” in certain proceedings

Introduction

Section 32(1)(b) of the Guardianship of Infants Act 1964 (as inserted by section 63 of the Children and Family Relationships Act 2015) provides that a Court may, in proceedings for custody of, access to, or guardianship of a child, appoint an expert to determine and convey the child’s views (known as a “voice of the child report”).

Section 27(1) of the Domestic Violence Act 2018 makes similar provision in relation to an application for a domestic violence order (other than an interim/emergency remedy) where the order is sought of behalf of a child. (In the remainder of this part of the notice, where a reference is made to a particular provision of the 1964 Act it also includes a reference to the analogous provision of the 2018 Act unless otherwise stated).

Meaning of “Voice of the child report”

For the purposes of this notice the expression “voice of the child report” refers only to a report ordered under either section 32(1)(b) of the Guardianship of Infants Act 1964 (as amended) or section 27(1) of the Domestic Violence Act 2018.

It does not refer to any other type of child welfare report. In particular the expression does not refer to a report on a question affecting the welfare of the child ordered under section 32(1)(a) of the 1964 Act.

The qualifications of an expert

Section 32(10) of the 1964 Act allows the Minister to make Regulations in relation to the qualifications of an expert to be appointed (and section 27(6) of the 2018 Act extends such Regulations to also apply to domestic violence proceedings). Such Regulations have now been made, namely, the Guardianship of Infants Act 1964 (Child’s Views Experts) Regulations 2018. The following table sets out the types of experts that are, under the Regulations, qualified to be appointed as an expert:

Type of expert	Definition	Practice requirement
Psychiatrist	A medical practitioner registered in the Specialist Division of the Register of Medical Practitioners under the speciality of “Psychiatry” or “Child and	Has practiced child and adolescent psychiatry for a relevant period

	Adolescent Psychiatry”	
Psychologist	A person who practices as a psychologist and holds an appropriate qualification under the Health and Social Care Professionals Act 2005, and (following the establishment of such a register) is entered on the Register.	Has practiced child and adolescent clinical psychology for a relevant period
Social care worker	A person who practices as a social care worker and holds an appropriate qualification under the Health and Social Care Professionals Act 2005, and (following the establishment of such a register) is entered on the Register.	Has engaged in the profession of social care work as it related to the provision of social care services to children for a relevant period
Social worker	A person entered on the Register of Social Workers.	Has engaged in the profession of social work as it related to the provision of social work services to children for a relevant period
Registered Teacher	A person entered on the Register of Teachers.	Has taught children for a relevant period

In all cases the “relevant period” is a period of five years (or periods which taken together, would add up to be five years) in the ten years preceding the date of appointment.

The functions of an expert who is appointed

Section 32(6) of the 1964 Act explains the functions of such an expert in further detail:

“An expert appointed under subsection (1)(b) shall—

(a) ascertain the maturity of the child,

(b) where requested by the court, ascertain whether or not the child is capable of forming his or her views on the matters that are the subject of the proceedings, and report to the court accordingly,

(c) where paragraph (b) does not apply, or where paragraph (b) applies and the expert ascertains that the child is capable of forming his or her own views on the matters that are the subject of the proceedings—

(i) ascertain the views of the child either generally or on any specific questions on which the court may seek the child’s views, and

(ii) furnish to the court a report, which shall put before the court any views expressed by the child in relation to the matters to which the proceedings relate.”

It may therefore be the case that the report of the expert may address the matters under either:

- Sections 32(6)(a) and (b) – to ascertain the maturity of the child and report to the court on whether the child is capable of forming their own views
- Sections 32(6)(a) and (c) - to ascertain the maturity of the child and report to the court the views of the child
- Sections 32(6)(a), (b) and (c) - to ascertain the maturity of the child, report to the court on whether the child is capable of forming their own views, and (where the child is capable of forming such views) report to the court the views of the child.

This is important because the prescribed fee structure differs based on whether or not the expert is required to furnish a report on the views of the child (i.e, section 32(6)(c)). A fee of €240 is prescribed where such a report is not required. A higher fee of €325 applies where such a report is required. Where the expert is called as a witness they are entitled to seek a maximum of €250 in expenses in respect of their appearance before the Court.

Granting legal aid for voice of the child reports

As and from Friday, 11th January 2019, funding for a voice of the child report, ordered under section 32 (1) (b) of the Guardianship of Infants Act 1964 (as inserted by section 63 of the Children and Family Relationships Act 2015) will be automatically granted on Private Practitioner Legal Aid Certificates for proceedings under the Guardianship of Infants Act 1964. Accordingly, it will not be necessary to contact the Board to request an amended legal aid certificate for this type of report provided the certificate was granted on or after Friday 11th January 2019 and includes proceedings pursuant to the Guardianship of Infants Act 1964. Where the proceedings authorised on the Legal Aid Certificate initially do not include proceedings under the Guardianship of Infants Act 1964, but the Board subsequently amends the certificate to include the Guardianship of Infants Act 1964, this amendment also will cover the grant of a voice of the child report.

It should be noted that this automatic authority does not extend to the similar section 27(1) reports in domestic violence proceedings and where a voice of the child report is sought in domestic violence proceedings an application must be made to the Board to amend the Legal Aid Certificate to include same.

The Board should grant authority for the report provided that the person on whose behalf the domestic violence order is sought is a child.

All grants of legal aid for voice of the child reports are conditional and these conditions will be stipulated on the Legal Aid Certificate. That is to say the Board grants authority to obtain the report subject to the following conditions:

1. The court must order the report;
2. One report per child (who is the subject of the proceedings and in respect of whom the Court has ordered such a report) is authorised;

3. The expert appointed must have the proper qualification and experience outlined in Regulation 3(1) of the Guardianship of Infants Act 1964 (Childs' Views Experts) Regulations 2018;
4. The Board will pay, on behalf of the legally aided person, 50% of the relevant fee stipulated in the Regulations, in relation to the particular functions under section 32(6) of the 1964 Act that the expert has carried out;
5. Where the expert is called as a witness the Board will pay, on behalf of the legally aided person, 50% of the expert's expenses in attending court to a maximum of €250.

Solicitors acting in proceedings pursuant to the Guardianship of Infants Act 1964 should check that the Legal Aid Certificate includes authorisation for a section 32(1)(b) report. **If such authorisation is not stated on the Legal Aid Certificate, then it must be sought in advance from the Board.**

Authorisation for the other party's contribution to the cost of the report

It may arise that the other party is not legally aided but is not in a position to contribute to the cost of the report. In these circumstances it is open to the legally aided party to make an application for an amendment to the legal aid certificate to have the entire cost of the report/attendance authorised. It is a matter for the Board to decide on a case by case basis whether to authorise such payment where it considers it reasonable to do so and in accordance with the Act and Regulations.

Appointment of the expert

As noted above the qualifications of an expert to perform a "voice of the child report" are prescribed under law. In the first instance, in the absence of a Judge taking the lead and determining what expert to appoint, it is a matter for both parties to agree and propose to the Court an expert who meets the requirements of the Regulations.

A solicitor acting on behalf of a legally aided person may not agree to the appointment of an expert who does not meet the requirements of the Regulations as this is a condition attached to the grant of legal aid. However it may be that the parties fail to agree such an expert or a situation otherwise arises where there is a question about the qualifications of the proposed expert. In such circumstances the solicitor should explain clearly to the legally aided person:

- that the appointment of such a person to carry out a report will not be covered by the grant of legal aid;
- that they will be personally liable for their share of the costs of such a report.

and take instructions accordingly. If necessary the solicitor should make submissions to the Court regarding the proposed appointment.

