

SUBMISSION ON REVIEW OF THE ADMINISTRATION OF CIVIL JUSTICE

RE: WARDS OF COURT

This submission is prepared by a newly formed, informal group of families who have come together to support Wards' families and Wards in the difficulties they are experiencing in relation to that system. Justice for Wards was primarily formed to try to have the losses to funds experienced by some Wards investigated but we have had to extend into other areas due to the number of calls and issues that have come to our attention.

We are all aware that the Wards of Court System operates under the Lunacy Regulations (Ireland) 1871 and this is reflected in the outmoded practices and manner which exists in relation to dealing with Wards and their families.

Justice for Wards is ill-equipped or resourced to prepare the type of Submission which ought to be done and so we are relying heavily on recent documents which support our submission.

The points being made in this submission relate to a number of areas – most covered in the recent National Safeguarding Committee's Report on the Review of Current Practice in the use of Wardship for Adults in Ireland. This is an outstanding piece of work and is long overdue. It deals with the many issues of relevance to Wards both entering the system and in the current system.

This Report deals with current system; the proposed change to the new Decision Support System and the Legislation underpinning this and the Convention on the Rights of Persons with Disabilities. It also deals with

- Procedural Transparency
- The Legal Test for Capacity
- Medical Reports and Medical Visitors
- After admission to Wardship – Voice of the Ward, Deprivation of Liberty, Review and Safeguards
- Complaints
- Alternatives to Wardship
- And finally Recommendations

As one can see in this 130 Page long Report – it touches on all aspects of Wardship and Mr Justice Peter Kelly, who is also Chair of the Review Group, launched this Report and in is very au fait with this matter, as well as having responsibility for Wards of Court as part of his remit as President of the High Court.

Mr Kelly spoke at the launch of this Report about the Wards of Court system and I am afraid that the very benign, helpful picture he painted is very far from the experiences of those reflected in the Report and those families who have approached Justice for Wards for help.

A submission like this with such a broad remit would require a legal professional which we do not have within our resources, with both the Wards and ourselves being

as it were ‘impecunious litigants’ – as families cannot afford to pay such professionals and certainly cannot or probably would not be allowed to access funds belonging to the Wards to carry out such work.

The Wards are without a voice and the families are without a Voice in all that is said on done in relation to these matters – which take place behind closed doors. There is no transparency or accountability for decisions or actions. There is no justice for Wards or their families in this system.

Families cannot get Statements and in reply to a recent Parliamentary Question it was said that 350 Statements had now been issues – it was some 50 in October last. At that rate the Decision Support Service will be up and running and families will still not have received Statements for their relative. Some will have died without ever getting a Statement.

Family members/Committee of the Person who are under the remit of the Office of the General Solicitor will not receive Statements and in cases we are dealing with cannot get a response from that Office or indeed the General Office of Wards of Court either. Service Providers are heard and can do as they please and families are pushed aside.

In the round, the NSC Report can take the reader through the many difficulties experienced by Wards and demonstrates how the System is failing them and their families.

We attach this Report and we ask that it be read in conjunction with our Submission in order to inform the Review Group as a whole.

Apart from this our original reason for coming together to take action continues to be of grave concern and the matter of Wards of Court Funds has been with the Public Accounts Committee in 2001-02 when recommendations were made and supposedly put in place.

In 2015 the Public Accounts Committee published a further Report on the losses sustained to some Wards’ Funds during the financial crisis. This issue has been ongoing since 2009 when families first became aware of the situation. (Remember that Statements are not sent out so how are families supposed to know how their relatives’ funds are doing?

The matter has been before the Oireachtas Committee on Justice as recently as October 2017 and their Report was published in February 2018. This Report makes a number of recommendations – and again we would ask the Review Group to consider this Report and recommendations.

The Courts Service has provided two Reports which are supposed to demonstrate to families that no Wards have lost funds – but all that these Reports have succeeded in doing is confusing everyone – information appears to be provided in different types of format and does not deal with the concerns we raise nor the issues that need to be explored in a forensic examination of the funds. We fully expect the Minister to follow through with these recommendations. Families can only deal with the

information they have and those who have accounts and have seen a depletion of their relative's fund must get the answers they deserve in the interests of openness and transparency.

Since 2000 we have been asking for the Comptroller and Auditor General to audit these funds and when the Public Accounts Committee examined these matters in 2000-02 it was found that no audits had taken place in a decade and no Reports had been sent to the Department of Justice as required. The advice of the then Attorney General was that there was no impediment to the Comptroller and Auditor General Auditing these funds. Families now believed that this was happening – and still receiving no statements, had no idea it was not.

In 2010 legislation was in process to enable the C&AG to audit these funds and all court funds... but for some reason nothing happened.

Now we are back in the PAC in 2014-15 with the problems ongoing and still the C&AG cannot audit these funds.

It appears that if for any reason losses occurred to Wards' Funds that the Exchequer would be liable – yet there is no oversight by any Oireachtas Committee or the C&AG which hardly makes any sense.

There is an internal auditor and an external auditor appointed by the Courts Service and Reports are published regularly – however, these audits are not designed to capture or go into the in-depth analysis of the issues that is required – so Wards have continuously been failed in this regard of transparency and accountability.

There is no access to justice in this matter. If we were to find a firm of solicitors to even consider taking such a matter to court we could not fund it nor could we expect the Wards to fund it either.

This is neither fair nor just.

We only became aware of the invitation for submission on this Review of Civil Justice by chance, quite recently, but with such meagre resources and our main concern at present being the Wards' Funds, we were unable to prepare the type of submission that would do justice to this situation.

We would need to have been able to pay legal professionals to do this and so it falls to us again to submit this for your consideration.

We would ask that you consider this carefully with the attached reports and we would like to have the opportunity to present further information or oral evidence at a later stage. I am trying to get this in by a deadline of 5.00pm today.