Transferring Cases between Guardians

12th January 2015

For Approval by Social Care Governance Committee.

2nd draft for approval

Summary of Contents:
The Purpose of the Policy is to detail how NIGALA will transfer a Guardian from a live case when required to do so in the context of a Guardian’s absence due to illness.

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Related documents:
NIGALA Policy and Procedure for Case Allocation
NIGALA’s absence management policy.
NIGALA case file management policy.

Superseded documents:
None

Status of Contents:
For Approval

Implementation:

Additional Copies:
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1. **Introduction**

The Northern Ireland Guardian Ad Litem Agency (NIGALA) is committed to providing a high quality service to children and the courts and to the efficient use of the resources allocated to the Agency. The Guardian Ad Litem Service is demand led, the volume of work is dictated by the number of applications made to the courts in respect of specified public law proceedings and adoption proceedings and the subsequent appointment of a Guardian Ad Litem (Gal) by the courts.

2. **Purpose**

The purpose of this paper is to set out the rationale, guidance and procedure to be followed in the transfer of cases in circumstances where a Guardian ad Litem is on a period of absence as a result of sick leave.

3. **Background**

*The legislative origins of the Guardians role and transfer.* Art 60 of the Children [NI] Order 1995 gives legislative effect to the appointment of a Guardian ad Litem by the court. “For the purposes of any specified proceedings the court shall appoint a Guardian ad Litem for the child concerned unless satisfied that it is not necessary to do so in order to safeguard his interests.

The courts have an expectation that, in cases where the Guardian ad Litem is absent, there will be no prejudice to the child’s welfare and representation or undue delay in the progress of proceedings. The unavailability of a Guardian ad Litem as a result of illness often has the greatest potential to effect proceedings and presents particular challenges for NIGALA.
The Guardian ad Litem role carries an expectation of *independence of professional opinion*. *Therefore* when a case is transferred the replacement Guardian must undertake and demonstrate evidence of having undertaken an independent assessment and will be required to provide ‘defensible decision making’, under cross examination. *Case law precedent relating to the transfer of a case between Guardians ad Litem during proceedings by an Agency* is outlined in “A County Council v K & Ors (By the Child’s Guardian HT) [2011] EWHC 1672 (Fam)”

4. **Actions to be taken in circumstances where a Case may be transferred from a Guardian to another in the context of staff sick leave.**

a) **Absence relating to planned long term sick leave ( Defined as over 4 weeks under NIGALA’s Absence management policy )**

Where a Guardian ad Litem has informed their Line Manager/Case Co-ordinator that they will be on a period of long term absence due to sickness a full review of cases will be conducted by the Line Manager/Case Co-ordinator and the Guardian (where appropriate), to identify those cases which require transfer at an early stage, those which will require monitoring in the context of a potential return of the Guardian.

For those cases requiring transfer and review the Line Manager/Case Co-ordinator shall notify the respective appointed Solicitors of the absence of the Guardian. When a new Guardian can be appointed to the case with immediate effect; their name and contact information will be included.

b) **Absence as a result of unplanned sick leave.**

Where a Guardian ad Litem first indicates their unavailability as a result of unplanned sick leave the Line Manager/Case Co-ordinator should, if possible, liaise with the Guardian to clarify the likely timescale of the absence and those cases that are appearing before court or have court timescales that are likely to be impacted on by the Guardian’s absence. The liaison with the Guardian should consider the appropriateness of transfer. Following from this the Line Manager/Case Co-ordinator should liaise with the respective solicitors for the cases considered to advise of the Guardian’s position in respect of these cases.
Where the Line Manager/Case co-ordinator is unable to liaise with the Guardian concerned the line Manager/Case Co-ordinator should review the Guardian’s cases to establish the matters above. The Line Manager/Case Co-ordinator should liaise with the respective solicitors concerned to provide Guidance for the solicitors representing the children and seeking written feedback from the solicitors on the courts views of proposals to deal with the Guardian’s absence.

The Line Manager/Case Co-ordinator should undertake weekly review of the Guardian’s caseload during the period of absence to determine the need to transfer cases and the management of those cases that are not transferred.

When a decision is made to appoint another Guardian to a Case the Line Manager/Case Co-ordinator should ensure that the previous Guardian is unallocated on GCIS and that the court and solicitor are advised in writing of the identity of the new Guardian and the date of allocation.

Prior to re-allocation of the case the Line Manager/Case co-ordinator should ensure that the file is transferred to the new Guardian and that a record of transfer of the pink and blue files is maintained including the date of transfer under NIGALA’s file management procedures.

5. **Matters to be given consideration in deciding to transfer a case.**

In considering the decision whether to transfer the case the Line Manager should take into account the following:

- **The anticipated period of unavailability of the Guardian.** [if known] may be significant in the decision making e.g. 2 weeks/ 4 weeks may equate to 1 hearing during which the Guardian is unavailable.

- **The likely impact on delay for the child in resolving the proceedings.** Consideration needs to be given to the child’s timeline and how far delay will impact on this.

- **The stage of proceedings and matters being considered.** Consideration needs to be given to whether there urgent decisions to be made by the court. If assessments such as parenting or
kinship are ongoing prior to decision making and no apparent disadvantage to the child on an immediate basis arises this may allow for the Guardian with knowledge of the case to return to the case. Alternatively a decision may need to be made imminently e.g. where a question arises about the removal of a child.

- **Any issues related to the ability of the court to determine the case in the absence of the original Guardian ad Litem.** As indicated above there may be questions as to the need to retain the original Guardian ad Litem to secure defensible decision making.

- **Any other issues related to the effect on the child of involving a new Guardian ad Litem.** Consideration should be given to the child’s gender, age, religion, ethnicity, disability and sexual orientation, feelings about having a new Guardian ad Litem or any characteristics of the child which the existing or proposed guardian is particularly suited to address.

6. **Related issues.**

Case transfer should proceed under the auspices of the Agency’s Case Allocation procedure. The Line Manager/Case Co-ordinator should liaise with the allocation manager when a decision has been made to transfer a case. The Line manager/Case Co-ordinator should unallocate the Case and responsibility is then transferred to the Allocation manager to allocate the Case through the GCIS allocation system.

7. **Transfer of paper files.**

The Line/Manager/Case Co-ordinator responsible for transferring the case should secure the case files and transfer responsibility for these to the newly allocated Guardian, confirming the transfer in writing to the File Manager. Guardians accepting a case must accept responsibility for the management of previous files in the case.