

21st July 2015

Email: mentalcapacitybill@niassembly.gov.uk

Committee Clerk: Dr. Kathryn Aiken
Room B32, Parliament Buildings,
Ballymiscaw, Stormont,
BELFAST BT4 3XX

Dear Sir/Madam

NIGALA Comments on the Mental Capacity Bill
Submitted to the Ad Hoc Joint Committee on the Mental
Health Capacity Bill

I refer to your call for evidence in respect of the Mental Capacity Bill. I realise the closing date was 7th July 2015, but would appreciate if you could include the comments of NI Guardian Ad Litem Agency. My apologies for the late submission.

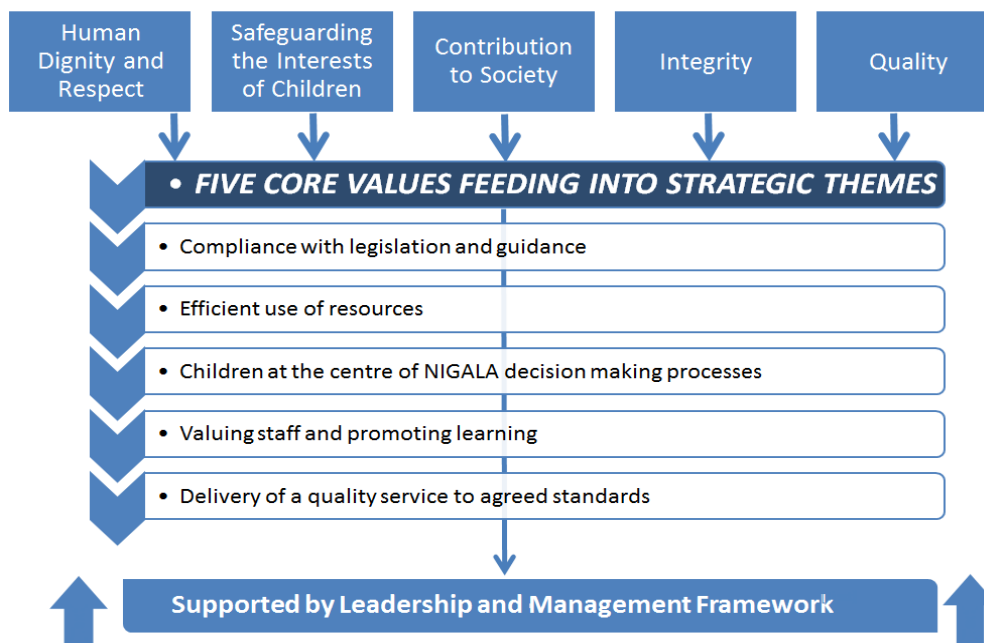
The Northern Ireland Guardian ad Litem Agency was established by DHSSPS in accordance with Article 60(7) of the Children (Northern Ireland) Order 1995 and Guardian Ad Litem (Panel) Regulations (Northern Ireland) 1996. The function of the Agency is to safeguard and promote the interests of children by providing independent social work investigation and advice in specified proceedings under the Children (Northern Ireland) Order 1995 and Adoption (Northern Ireland) Order 1987, and to provide effective representation of children's views and interests.

NIGALA mission statement is to advise the courts of children's wishes and feelings and to independently represent and safeguard the interests of children in specified public law and adoption proceedings in Northern Ireland. The Mission Statement expresses the core principles enshrined in Articles 3 and 60 of the Children (NI) Order 1995.



Figure 1 below identifies the five core values which are enshrined in NIGALA's culture and these underpin the delivery of the five core strategic themes of the organisation.

Figure 1



In recent years the Agency has recognised the need to improve the information collated in respect of children with disabilities, including mental health needs. In 2014/15 the Agency worked with 704 new cases involving 1052 children. These children represent some of the most vulnerable in society and many experience significant mental health difficulties. NIGALA is aware of the fact that recent research has demonstrated the disproportionately high level of mental health problems in the Looked After Children population.

NIGALA recognises the significance of the proposed reforms to legislation in Northern Ireland as set out in the draft Bill and welcome the endeavour to give effect to the recommendations from the Bamford Review 2006 through a single Bill approach.

NIGALA is grateful for the opportunity to comment on the draft Bill and would comment on the provisions of the Bill relating to children at Section 3 as follows;

Clause 1-2 These clauses set out the principles underpinning the Bill in relation to Autonomy and best interests. NIGALA notes that the Bill is proposed to extend to children aged sixteen and over with younger children being subject to the provisions of the Mental Health (NI) Order 1986.

NIGALA would seek to understand how such arrangements align with other pieces of legislation such as the Children Order (NI) 1995, which defines all children as those aged 18 and under check this fact NIGALA is concerned to ensure that there is equality of service provision and of safeguards for all children.

NIGALA is interested in exploring whether there is a potential issue in respect of children who are assessed as legally competent for purposes of public law Proceedings such as Article 44 Secure Accommodation applications in respect of children who may later be assessed as suitable for the provisions of the relevant mental health legislation. As currently Drafted this same child would not be able to be deemed capacitous.

NIGALA notes that the Department plans to expand on these issues in the Explanatory Memorandum and in a Code of Practice. The Agency would urge early and timely clarification of these issues in respect of equality of legislative safeguards for children aged 16-18 with mental health needs.

The Agency would seek to be assured of the timescale for any review of the Children Order in line with the timescale for the implementation of the new legislation in order to ensure that safeguards and protections for all children subject to deprivation of liberty are equal.

Yours faithfully



PATRICIA NICHOLL
Chief Executive NIGALA