



Transparency – The Next Steps.

The response of Nagalro, the Professional Association for Children's Guardians, Family Court Advisers and Independent Social Workers, to the Consultation Paper issued by the President of the Family Division on 15 August 2014.

Nagalro's members have many years' experience of working with children and young people who are the subject of family court proceedings. Their work means that they carry a specific responsibility to ensure that the court is aware of the views of the child and the impact that the decisions made by the court will have on their lives, not just at the time of the proceedings but in the future. We therefore welcome the opportunity to comment on the next steps.

Our position on the transparency agenda in relation to opening up the workings of the Family Court to further public scrutiny is as set out in the response of the Interdisciplinary Alliance for Children (IAC), of which Nagalro is a founding member. We fully support and share the concerns set out in that response.

The two underlying principles used to make the case for further transparency are: firstly, the need to improve public confidence in the family justice system and secondly, the legitimate interest of the public. There are potentially conflicting interests between the rights of children and families to respect for their private family life (Articles 6 and 8 ECHR) and the media's rights to freedom of expression (Article 10 ECHR). However the best interests of the children concerned should take precedence (Article 3 UNCRC).

There may also be potential conflict with the statutory responsibility of the court, as set out in Section 1 of the Children Act 1989, to give paramount consideration to the welfare of the child who may be very much harmed by media coverage of what are, necessarily, painful and wounding details of their private family life.

Impact on children and families.

Our overarching concern is the possible highly negative impact on the children concerned, who may be identified either directly or through a process of 'jigsaw' identification as a result of media coverage. As the President correctly points out, some consequences of increasing the number of published judgments will be foreseeable but some will not.

Children and young people are fully aware of the power of the internet to 'go viral' with implications which are permanent. Internet 'trolls' are now an unpleasant fact of life. Once material is on the internet, however inaccurate or damaging it may be, it is there forever and cannot be redacted as court judgments may be.

Our concerns are borne out by the findings of two pieces of research carried out by Dr Julia Brophy; one for the Office of the Children's Commissioner in 2010¹ and the second her recently published research for NYAS and ALC². Both studies canvassed the views of young people and clearly demonstrated their strong resistance to extending media access to the family courts and their very real fear of the consequences for themselves and their families. Nagalro would support the view of the young people that when the court is considering media access an independent person should first ascertain the views, interests and long term welfare implications for any child.

They also seriously questioned whether further media access would achieve its aims of education and reassuring the public about the workings of the family court. As they powerfully pointed out, there are more effective and less potentially damaging avenues which could be usefully explored in the interests of the wider education of the public, before attempting to harness the tiger that is the commercial press. The judges may control the input but they will have little or no control over the outcome and we are deeply troubled by the possible consequences for the children and families involved. Publicity can be an unacceptably high risk strategy.

Impact on local authorities and other professionals.

In relation to the President's question regarding the impact on family court professionals, it does significantly compromise the ability of local authority social workers, Independent Social Workers, Cafcass Children's Guardian and Family Court Advisers to give the child clear reassurances about the limits of confidentiality, whilst encouraging the child to be open and honest in disclosing their abusive experiences and innermost thoughts and feelings.

If children hold back information from family court social workers because they fear the consequences, then the input of court professionals will have a reduced value, as they may not be able to adduce the crucial evidence which courts need to ensure that they are acting in the best interests of the child. This would run counter to the interests of family justice.

Further, family court professionals, may, as some are already contemplating, withdraw from the work because of the risk of personal identification. The sort of public pillorying suffered by Maria Ward, the social worker in the case of Baby P demonstrates how trial by media can lead to a highly selective interpretation of the facts and life changing scapegoating. In the case of Sharon Shoemith, death threats were made to her own child.

Impact of any change in the level and quality of news and reporting about the family justice system.

During the passage of the Children School and Families Bill in 2010, (now Children Schools and Families Act 2010) proposals contained in Part 2 of the Bill in relation to greater media access and the publication of sensitive personal information were withdrawn and assurances were given that the possible

¹ The views of children and young people regarding media access to family courts in the context of Article 12 UNCRC. Office of the Children's Commissioner. Dr Julia Brophy (2010)

² Safeguarding, Privacy and Respect for Children and Young People and the Next Steps in Media Access to Family Courts. NYAS and Association of Lawyers for Children (ALC) Dr Julia Brophy with Kate Perry, Alison Prescott and Christine Renouf. July (2014)

changes in Stage 2 should only be introduced as a result of a process of formal consultation and adequate parliamentary scrutiny. The Ministry of Justice has yet to fully evaluate the existing pilots, so whilst appreciating the need to move forward, Nagalro is concerned that this may be premature without a detailed impact assessment. We therefore welcome the President's assurance that before any specific proposals is implemented; he will consult further on the detail of whatever is proposed. In particular, we would welcome more detail on what sensitive information' might be included in published judgments and what specific safeguards could be put in place to reassure children and their families?

There are clear issues of accountability under the present system, which include tragic deaths and miscarriages of justice. In our view these could be addressed, at least in part, by giving courts greater powers of review of the actions of local authorities in loco parentis and by exploring ways of informing the public, such as holding a series of open days in family courts as part of a coordinated public information programme. Early initiatives in this area have proved very encouraging.

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