

MOJ/LSC PROPOSALS TO LIMIT THE AVAILABILITY OF INDEPENDENT SOCIAL WORK EXPERT EVIDENCE IN THE FAMILY COURTS FROM OCTOBER 2010 - A JOINT POSITION STATEMENT.

The Organisations listed below have come together to ask the Ministry of Justice and the Legal Services Commission to reconsider their decision to impose severe limitations on the availability of Independent Social Work (ISW) expert witness evidence from October 2010 by making draconian cuts in the fees payable for the work.

In October the LSC published its response to the Family Legal Aid Funding from 2010 consultation. The revised proposals it contains will affect all children involved in proceedings across the family jurisdiction. The LSC will retain responsibility for funding ISW reports in private law proceedings but will cap the fees for independent social workers to the same rates as those paid by Cafcass - namely £33 an hour in London and £30 outside.

The full impact of the proposals and the limitation of expert social work opinion to the courts can only be understood when one looks also at the MOJ's consultation on Legal Aid Funding from 2010.¹ Here the MOJ are detailing proposals for fee levels for expert witnesses in the range of £70-£100 per hour. However, independent social workers are omitted from the extensive list of professionals who give expert evidence in both civil and criminal courts².

Our concerns are that the proposals:-

- Fail to take into account the wide range and complexity of proceedings in which independent social workers are now involved and the time and money that they can save in expediting proceedings and providing courts with the sound assessments and objective evidence on which to make the onerous decisions which will affect the rest of a vulnerable child's life. The children they involve have suffered, or are considered to be at risk of suffering, significant harm. As a consequence, the Judges in such matters require the availability of reliable and responsible expert opinion to enable them to make, profound and far reaching decisions with confidence. We have many case examples which illustrate this point.
- Are not consistent with the wider government agenda on safeguarding children in that they not only devalue the contribution of social work expert evidence in protecting children but actively discourage their involvement. It is particularly hard to understand when the Government has committed £58 million to the recruitment and retention of the experienced child care practitioners who are in such short supply and who are so badly needed. The Social Work Task Force has also emphasised the need for social work to have a clearly improved career structure in which the skills and knowledge of experienced practitioners is retained for the benefit of children and families. Independent social work is a key component of such a progressive professional career structure. The LSC's proposals are being made at a time when Cafcass is on an emergency footing because of backlogs and delays and many local authority child protection teams across the country are under extreme pressure as a result of staff shortages. This means that local authority practitioners are even more reliant on the availability of expert social work opinion in particularly complex cases, just as they need access to expert medical opinion.
- Are not compliant with the United Nations Convention on the Rights of the Child (UNCRC) in that that fail to provide children with the sustainable access to justice to which they are entitled.
- Are premature given the Government's recent announcement in January 2010 of a review of the Family Justice system.

¹ *Consultation paper 18/09. Published 20 August 2009*

² *Ref. MoJ 'Legal Aid: Funding Reforms - Consultation paper 18/09 Annex B page 32.*

- Overlook children as stakeholders in the changes, which are being pursued in the absence of any evidence base to support them. The LSC is for example, unable to say how much is spent annually on ISW reports. Nor have they carried out an impact assessment of the effect on the highly vulnerable children who depend on the family justice system to protect them. There has been, for example, no exploration of the reasons why judges consider it imperative to order such reports.
- Will drastically reduce the availability of reliable, expert social work opinion and hence the Court's access to competent, balanced and evidenced assessments. As a consequence, solicitors, barristers, Judges and the President of the Family Division have become extremely concerned about the impact of the proposals
- Pay scant regard to the submissions made by a range of experts within child and family social work, whose knowledge and experience on such matters and whose professional competence and assistance, is highly respected, valued and relied upon by the Courts.
- The LSC's comparison of expert social work opinion fee costs with that of Cafcass rates (£30/£33 per hour) is erroneous. It reflects a failure on the part of the Commission to understand the difference in the roles, responsibilities and expertise involved. It is a false economy which is likely to lead to longer court hearings and higher costs for the LSC.
- This is an approach which does not compare like with like. The capped rates being proposed are inclusive and include all associated travel and office costs. Each individual practitioner must also make their own arrangements for pensions, holidays and sickness. It cannot be said, therefore, that this is equivalent to the salary received by a Family Court Advisor employed by Cafcass.
- The wide range of work carried out by ISW's is very different from the statutory work carried out by Cafcass, although each performs complementary and vital functions in the social welfare of children.

Legal aid budgets are under enormous pressure but any cuts made should not impact disproportionately on the very children and young people whose welfare is the predominant concern of the family courts. The proposals constituted a dangerous disconnect in thinking between Government departments - the MOJ and DCSF - both of whom have an overarching responsibility for children as part of the wider safeguarding agenda set out in the government's Every Child Matters. Lord Laming's first recommendation in his Progress Report after the tragic death of Baby P was that- *'First and foremost the Secretaries of State for Health, Justice, Home Office and DCSF must collaborate in the setting of explicit strategic priorities for the protection of children and young people in each of the front line services.'*

This is precisely what is not happening.

National Association for Family Court Advisors and Independent Social Work practitioners (NAGALRO)
 British Association of Social Workers (BASW)
 Association of Lawyers for Children. (ALC)
 Independent Social Work Agency (ISWA).
 Willis Palmer- Independent Social Work Services.

Date

NOTES TO EDITORS

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A detailed briefing paper is available from the following websites-www.iswa.ltd.uk

www.nagalro.com

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