FROM ACTIVE PARTICIPANTS TO PASSIVE AUDITORS: NAGALRO'S CONCERNS ABOUT THE DIMINISHING ROLE OF THE CHILDREN'S GUARDIAN

Introduction

Applications to remove or replace the children's guardian are rare enough. A successful application, rarer still. The decision of Mrs Justice Theis, in *LR v A Local Authority & Others* [2019] EWFC 49 (Fam), in which the court terminated the guardian's appointment on the basis that she was acting contrary to the interests of the child, raises concerns that the role of the children's guardian, as required by the Children Act 1989 and the Family Procedure Rules 2010, is being significantly diluted.

The court has a discretion to terminate the guardian's appointment under rule 16.25 FPR 2010. However, as MacDonald J. explained in *QS v RS (No 2) (Application to Terminate Appointment of Guardian)* [2016] EWHC 1443 (Fam), this will only be done in one of two situations. The first is where 'the guardian acts manifestly contrary to the child's best interests or, but only in very rare circumstances, where the guardian has engaged in conduct that the court would ordinarily be invited simply to take into account when deciding whether to accept or reject the guardian's evidence or recommendations.

In *LR,* the court terminated the guardian's appointment on the first of these grounds, with the judge finding that the failures amounted to 'an abdication of the responsibility on the guardian' and contrary to the interests of the child. It is a damning indictment of the service given to this particular child, but is it indicative of anything more than an individual and isolated lapse?

The decision

A fuller account of the facts of this important case can be found in Debbie Singleton's excellent review which appears in this edition's *Review of Recent Case Law.* Insofar as they are important to the role of the children's guardian, they are repeated here.

At the time of the decision, the child, R, was approaching her second birthday. She was the youngest of four children born to the mother who had come to the UK from Poland to work. The other children were aged from 15 (W) to nine years. The father of all the children, apart from the eldest, was from Romania, but living with the mother in the UK. The local authority became involved with the family in 2016, when the mother was pregnant with R.

In September 2017, the local authority commenced care proceedings in relation to all four of the children. R was placed with a foster carer, LR, with whom she remained thereafter. On 9 April 2018, the local authority put forward a care plan for care orders for the three older children and for R to be made subject to a placement order, so that she could be placed for adoption. R was to remain with her foster carer until such potential adopter(s) were identified. The guardian supported

this plan. No consideration had been given to whether any of the children could, or should, be placed in Poland.

On the penultimate day of the final hearing a statement was filed on behalf of the local authority regarding the search for an adoptive placement for R. That statement showed that the foster carer, LR, had expressed an interest in adopting R. It is not clear from the judgment whether the guardian was at court when this statement was filed. The guardian gave evidence the following day. Judgment was given on 2 August 2018. The judge decided that she could not make final orders as she did not have sufficient information about the position in Poland. What the judge did, however, state was that she understood that none of the three youngest children, *including R,* could remain in their current placements. No one corrected this so far as R was concerned.

At the adjourned hearing on 20 September information had been obtained from Poland about the availability of foster placements there, close to where the children's extended family lived. On 18 September, a position statement was filed on behalf of the guardian supporting W remaining in her existing UK placement with all the other children going into foster care in Poland. The guardian did not provide a supplemental report nor had the guardian carried out any further enquiries of her own arising from the change of care plan. The following day, on 19 September, the local authority filed a statement from the team manager which set out the various options and permutations for the children remaining in the UK or going to Poland. The pros and cons of each were considered and the local authority recommended that all four children should remain in the UK. The local authority service manager stated that one of the advantages of this was that R may not have to move because her foster carer, LR, had put herself forward as a potential adopter for R. The guardian did not file any further position statement or supplemental report following receipt of the local authority statement. At the hearing on 20 September, the judge decided that the eldest child, W, would remain in the UK and that the three younger children would go to foster carers in Poland.

On the day after this decision, the guardian returned a distressed telephone call from LR who felt that no consideration had been given to R's relationship with her foster family and said that she wished to speak to the judge directly, in the hope that she would change her mind. The guardian gave LR the name of the judge and suggested that any letter should be sent via the local authority.

On 25 September LR spoke to the guardian's service manager. Theis J sets out the service manager's file note, at paragraph 18 of her judgment. It includes the following passage:

> *'Raised guardian not visited. Explained given workload. Not the expectation that the guardian would visit babies, toddlers at the foster home, especially if no concerns about care provided.'*

Although all three older children eventually returned to Poland, LR applied to the judge for permission to appeal against the final order for R. Whilst the judge refused permission, this was given by the Court of Appeal, who allowed the appeal on 31 January 2019. The decision of the Court of Appeal is reported as *LR v A Local*

Authority and Others [2019] EWCA Civ 528. In the Court of Appeal, Baker LJ was critical of the guardian's failure to file any supplemental analysis to support her change of position between June and September 2018. His criticism is set out at paragraphs 65–66 of his judgment, as follows:

'65. By the time of the adjourned hearing in September, however, the guardian's position had changed. She was now recommending that the three younger children should be placed in foster care in Poland. Despite these important developments, she did not prepare an addendum analysis of the advantages and disadvantages of the options for the children, which were completely different from those identified in her report. This morning, we received a copy of written submissions made by counsel on behalf of the guardian dated 18 September which informed the court that the guardian had changed her mind and was now supporting placement of the three younger children in Poland, with W to move there once her therapeutic work was completed. In the document, counsel sets out the advantages for R perceived by the guardian in the proposed move to Poland. He did not, however, address any disadvantages. The document added that the guardian had not seen the amended care plans and reserved the right to amend her recommendations once they had been received. It is plain, therefore, that this document was filed before the guardian had read the team manager's statement dated the following day. I am concerned that the guardian reached a definitive recommendation before she had seen the local authority evidence. I am also concerned that nowhere in this position statement, nor in any other document filed on behalf of the guardian, was there any reference to the possibility of R being adopted by LR. Indeed, the document, in summarising the judgment of 2 August, repeated without comment the error that "R must move".

'66. I am, of course, well aware of the great pressures on all professionals working in this field. I am sure this very experienced guardian, like all of her colleagues, has a heavy case load. But I regret to say that there was a failure to comply with the guidance given by this Court on many occasions, most prominently in Re B-S *but also on many other occasions. Specifically, in* Plymouth CC v G (Children) [2010] EWCA Civ 1271*, Black LJ, as she then was (in a passage cited and approved in* Re B-S*) stressed that*

' "the court requires not only a list of the factors that are relevant to the central decision but also a narrative account of how they fit together, including an analysis of the pros and cons of the various orders that might realistically be under consideration given the circumstances of the children, and a fully reasoned recommendation."

'With respect, I consider it was incumbent on the guardian in this case to provide the judge with an analysis of the value to R of remaining in LR's care and of the advantages and disadvantages of the proposals that R be adopted by LR and the proposal that she be placed in foster care in Poland. I can find no evidence that any such analysis was provided.'

The Court of Appeal remitted R's case back to the Family Court for rehearing and when it was listed for directions LR indicated that she would apply for the guardian's appointment to be terminated. It was this which came before Theis J on 1 March 2019. At that hearing, the local authority and parents were neutral on the application

and the guardian, whilst accepting the criticisms made of her, opposed the application.

The judge begins by looking at the obligations imposed on those who represent a child in specified proceedings. Under s41 Children Act 1989 the guardian is obliged to 'safeguard the interests of the child' in the manner prescribed by the rules. Those rules include, at para 6.1 of Practice Direction 16A, the requirement that:

'The children's guardian must make such investigations as are necessary to carry out the children's guardian's duties and must, in particular: (a) contact or seek to interview such persons as the children's guardian thinks appropriate or as the court directs; and (b) obtain such professional assistance as is available which the children's guardian thinks appropriate or which the court directs be obtained.'

At the end of paragraph 37 of the judgment Theis J, having emphasised the overriding obligation on the guardian to safeguard the interests of the child, returns to the Practice Direction and explains that:

'The rules provide the wide discretion for the guardian to make such investigations as are necessary to carry out those duties and, in particular, contact or seek to interview such persons as the guardian thinks appropriate, or – and I emphasise the ***or*** *– as the court directs.'*

The learned judge continues to emphasise the 'active' as opposed to 'passive' role of the guardian in care proceedings. The guardian's obligations 'require active investigation and assessment by the guardian before conducting a *B-S* analysis and reaching a conclusion as to what is recommended to the court.' This is reinforced at the end of paragraph 38, where the judge concludes that the 'need for the guardian to undertake a proactive role in appropriate cases is wholly in accordance with the rules and their obligation to "safeguard the interest of the child".'

At the end of her judgment, Theis J concludes that the guardian's failure to provide the court with the required *Re B-S* analysis of the options for the child and the reasoning behind her change of position was an abdication of the guardian's responsibilities and contrary to the interests of the child. In those circumstances, the application to terminate the guardian's appointment was granted.

Isolated case or structural failing?

The guardian's appointment is a personal appointment. Although cases are allocated by Cafcass, once that has taken place the guardian can only be removed by the court. This was the lesson spelt out very clearly by the late Sir Nicholas Wall P in *A County Council v K and Others* [2011] EWHC 1672 (Fam), when Cafcass sought to 'de-appoint' the guardian, with whose views the Cafcass manager disagreed. Guardians are employed by Cafcass but are appointed by and directly accountable to the court. As the decision in *LR* shows, the guardian has a personal obligation to decide what steps are needed to protect the interests of the child in an individual case and takes personal responsibility for those decisions about what is done or omitted.

The reality, however, is that those decisions are strongly influenced by the policies and management decisions taken by the guardian's managers within Cafcass, even though those managers are not themselves answerable to the court and are often divorced from the realities of practice.

Case numbers have escalated and the resources made available are finite. Between the financial years 2014/15 and 2018/19 Cafcass' grant-in-aid from its sponsorship department for revenue expenditures rose by 3.7 per cent. Over the same period, public law cases rose by 21.5 per cent and private cases by 28.6 per cent. Notwithstanding this, Cafcass is required to provide a service in all cases referred to it by the court and its pragmatic response has been to adopt a model of 'proportionate' working which has put increasing strain on many practitioners who feel that they are not being allowed to do the work which the court expects of them and that the conflicts inherent in trying to serve two masters are rapidly becoming irreconcilable.

The concern is that, faced with a seemingly inexorable rise in caseloads and severely constrained resources, a policy decision was taken to limit the work carried out by the guardian in a way which is incompatible with the spirit and letter of s41 of the Children Act and the work which is mandated by Practice Direction 16A. Does the evidence bear this out?

In February 2017, an agreement was reached between Anthony Douglas, on behalf of Cafcass, and Andrew Webb, on behalf of the Association of Directors of Children's Services. It was headed 'Agreement About How Local Authorities and Cafcass Can Work Together in a Set of Care Proceedings and Pre-Proceedings in the English Family Courts' and provoked an outcry from the Association of Lawyers for Children and from Nagalro. Both bodies argued that the agreement was unlawful because it diluted the independence of the guardian and circumvented the role of the court. On 20 June 2017, the document was withdrawn in the face of threatened legal proceedings to challenge its validity. Whilst the letter of the document may have gone, it is now clear that its spirit remained and has lain behind much of what has followed.

It is useful to go back to the terms of the Cafcass/Association of Directors of Children's Services agreement. At paragraph 13 it was stated that:

> *'The guardian role is to analyse the local authority assessments, not to repeat them. The guardian should always carry out enough direct work of their own to be able to give effective primary evidence in court. That direct work can include spending time with the child, discussing the child's situation with the social worker and primary carers, and seeing the child's birth parents. The degree to which this is done depends on the circumstances of each case.'*

It is interesting to compare this with how Cafcass, at the date of going to press, defines the role of the children's guardian. The Cafcass website has explanations for parents and carers about what their role will be. Explaining the role of the guardian, the web page says:

'In care proceedings, their job is to check the local authority's care plan and make sure that it is the best possible for the child. It is also to let the court know what they think should happen.'

In June 2019, Nagalro wrote to the acting Chief Executive of Cafcass, pointing out that this does not accurately reflect what the law says about the role of the guardian. Nagalro issued a press release on this issue, whereupon further discussions were offered.

Section 41 of the Children Act 1989 imposes a duty on the guardian 'to safeguard the interests of the child' in the manner set out in the rules of court. Those rules are the Family Procedure Rules 2010 and paragraph 6.1 of PD16A sets these matters out as follows:

'The children's guardian must make such investigations as are necessary to carry out the children's guardian's duties and must, in particular –

(a) contact or seek to interview such persons as the children's guardian thinks appropriate or as the court directs; and

(b) obtain such professional assistance as is available which the children's guardian thinks appropriate or which the court directs be obtained.'

It is notable that nowhere is there any reference to 'checking the local authority care plan'.

In fairness to Cafcass, it should be said that the website follows the instructions which it gives to children's guardians about how they should approach cases. The Cafcass Operating Framework says that there are three types of public law cases, as follows:

***'First type of case:** Applications where the local authority has carried out and coordinated sufficient assessments and where the outline care plans are sound. In this group of cases, the guardian should carry out sufficient enquiries to be able to provide the required independent evaluation of the local authority case to the court. The court may also need our assistance much less in certain types of case such as straightforward discharges from care, which may be subject to a local accelerated procedure. In this type of case, parental responsibility will be exercised well by the local authority and potentially by the family.*

***'Second type of case:** Applications where the local authority work is good, yet more work is needed, perhaps because of a difficulty engaging with the family or because a specific expert report is not yet available. A case analysis can be written along these lines, ready to be updated if all goes to plan. Parental responsibility for the child is likely to be exercised well in this type of case, by the local authority and potentially by the family.*

***'Third type of case:** The third group of cases is those where the guardian needs to be intensively involved on behalf of the child because the assessments, care plans, or both, have glaringly obvious flaws. In this type of case, the exercise of parental*

responsibility may also be poor, requiring more input by the guardian to work on behalf of the child to secure a good enough assessment and the best possible care plan.'

How far this approach can be reconciled with the guardian's statutory duties must be open to doubt.

The 'fiction', as we contend it to be, of the children's guardian as an auditor rather than investigator, reappears in Cafcass' 2018 Ofsted report, which explains that:

'The role of the children's guardian is to safeguard and promote the child's welfare and to scrutinise the local authority's plan and ensure that it is in the child's best interests.'

Section 41 and paragraph 6.1 only make practical sense when they are read alongside section 42 of the Children Act, which gives the guardian 'the right at all reasonable times to examine and take copies of' the local authority files in relation to a child whose interests they were instructed to represent. Logically, until those files have been examined, the guardian is in no position to decide what further investigations may be necessary, or whether the local authority's plans are appropriate. Even if the guardian's duty was simply to check the care plan, how can this be done without reading back into the files to see if anything has been overlooked? Local authority files are often large, complex documents which have been prepared by a number of people. Is it inconceivable that something, such as a contact from a concerned extended family member, may have been overlooked in the haste of preparing an application for court?

Reading the Cafcass Operating Framework on this issue is instructive. At paragraph 4.21, guardians are told:

'Whilst s42 of the Children Act allows Cafcass to look at all local authority material on the child, requests should always be proportionate to the main lines of enquiry. Extra information should be sought if there is a glaring omission from the local authority bundle; work with the grain of public policy, which stipulates that cases will be heard using a small amount of high quality paperwork.'

At paragraph 4.11 the guardian is recommended only to make a telephone call to the social worker. There is no indication as to how the children's guardian is to detect 'a glaring omission' if they have not read the local authority files.

Paring away these tasks can only be done on the basis that the local authority information presented to the court is inevitably correct. That, however, flies in the face of the cases which led to the establishment of the children's guardian in the first place. No one is infallible and local authorities are subject to pressures that may have nothing to do with the needs of the child. The role of the guardian is to shine the light of independent scrutiny on the local authority decision-making and care planning and to work in tandem with the child's solicitor to represent the child's interests before the court. It is the independence of the investigation, which constitutes the safeguard for the child. They cannot do this when they are subjected

to restrictions by their employer that are irreconcilable with the level of service which the courts expect from them and which the law requires of them.

No sooner had the agreement between Cafcass and ADCS been withdrawn than, in July 2017, a new document emerged. This was the 'Draft Guidance on the Use of Professional Time to Benefit Children', which was again issued without any consultation with stakeholders and hardly any publicity. On 10 February 2018, Nagalro and 17 other professional bodies and individuals issued a Joint Position Statement, setting out their concerns about the lawfulness of the information being given to children's guardians by Cafcass. In view of the unsatisfactory response from CAFCASS, an application by Nagalro for judicial review did lead to amendments being made and clarification given about the status of the document and how it should be applied. That clarification has been published as *Nagalro's Guide to the Professional Time Guidance,* which Cafcass has failed to circulate to its staff members and practitioners despite requests to do so.

One of the key issues with the 'Professional Time Guidance' was that it failed to make clear that it was not intended to, and could not, override the statutory obligations of the guardian, or restrict the guardian's discretion about the work which they needed to undertake in any given case. One area where the guidance does seem to have led to difficulties is the issue of whether a case analysis should be filed or a position statement. The 'Professional Time Guidance' calls for flexibility in this area and Nagalro explains, in its *Guide*, that 'extra-statutory position statements and reports of this kind are not a substitute for what is statutorily required, but may usefully complement it in some cases'.

It is this loose approach which led to some of the difficulties in *LR*, where, rather than the required analysis from the guardian of the pros and cons of the placements in the UK and Poland, the judge simply had a position statement drafted by counsel. That particular counsel had not appeared at the earlier hearing and so did not have the knowledge which comes from having conducted a lengthy contested hearing in a case.

Theis J's attention could also, helpfully, have been drawn to the terms of the Cafcass Operating Framework, where she would have read, at paragraph 4.9, the following:

'Cafcass has a national agreement with the President of the Family Division that, in most cases, the guardian will produce one case analysis – for either the CMH, the IRH or the final hearing – depending on the circumstances of each case. At other times, the child's solicitor will file a position statement when needed.'

Far from being an isolated case of a guardian making mistakes, it seems more likely that *LR* is simply the working out in practice of the constraints which have been placed on practitioners by Cafcass's policies and organisational models of proportionate working, notwithstanding that, as a result of this, this may mean that they are unable to fulfil their statutory obligations.

This case is not an isolated one. Part of the criticism of the guardian by Ms Justice Russell in *F v H and B* [2017] EWHC 3358 (Fam) stemmed from the

provision of a position statement, drafted by the solicitor for the child, where a detailed analysis was required. That case highlights the dangers of proportionate working. As structured by Cafcass, it is for the practitioner to justify extra work beyond the irreducible minimum. Inevitably, many will just follow the manual rather than taking the active investigative approach, which the law requires of them. The situation would be different if the default position was to do *everything* and to see *everyone*, but allowing practitioners to justify omissions, where these could safely take place and the practitioner was content to take responsibility for that judgment.

In *F v H and B*, the guardian, coming into complex and long-running private law proceedings, was also heavily criticised for failing to read all the earlier papers and judgments in the case before making recommendations in a position statement. Although it does not feature in the judgment, the failure becomes more comprehensible when set against the 'Professional Time Guidance' and the guidance it gives to Cafcass staff under the heading 'Work following first hearings in private law cases'. The work here was to be 'streamlined' and 'subject to the most change'. In its current form, as appearing on the Cafcass website, it states:

'Cafcass and Cafcass Cymru plan to deliver clearer and more defined interventions after the first hearing, either a three or four session casework intervention in the most complex cases such as Rule 16.4 appointments, or new child impact reports which will be piloted for up to 6 months in Essex, York and North Yorkshire and North Wales.'

In solicitors' correspondence, during Nagalro's judicial review proceedings, Cafcass, rather confusingly, said that this section was not intended to apply to private law cases where a child is separately represented. It was also said that 'Cafcass is not suggesting a specific period of time for each case' and that 'Cafcass does not dictate to FCAs the needs of each case, though we do exercise appropriate management oversight'. Against the clear terms of the 'Professional Time Guidance', the much-criticised guardian might have said that she was simply following the requirements of her employer. The judge found it unacceptable. How was the guardian to meet the conflicting demands of both masters?

The guardian was severely criticised by Keehan J in *Leicestershire County Council v AB and Others* [2018] EWFC 58. The court was considering, amongst other things, whether two siblings, aged four and three years, should be separated. The judge considered that there had been a 'failure by all the professionals to engage with and consider sufficiently the adverse impact and harm of separating EF and GH'. He was particularly scathing, however, about the guardian, who only seemed to realise that this was an issue when she came to give her evidence at the final hearing. The guardian made a sudden recommendation that there should be an independent expert instructed on this because 'the needs of the children appeared to be greater, or at least different, from that which she had understood when she wrote her report'. What is unclear from the published judgment is what time, if any, the guardian had spent with these children. If the comments of the guardian's service manager in *LR* are any guide, perhaps none at all.

The impression that time with the child does not (in the eyes of Cafcass) form a significant part of the guardian's duties is reinforced by reading Part 4 of the

Operating Framework, which sets out how guardians, in a public law case, should go about their duties. What is shocking is that there is no reference anywhere to going to visit the child, taking time to get to know them and to understand their wishes and feelings about what will, for them, be life-changing decisions. There is a template letter which may be sent to the child, but no suggestion that time should be spent seeing the child and explaining things to them face-to-face, or trying to answer their questions. Paragraph 4.21 suggests that the guardian should:

'Work actively with the child's "significant others" who know the child well and can be relied upon, such as safe carers (family, foster carers) or professionals in regular contact with the child, to build up a working knowledge of the child before the case management hearing or the first contested hearing, as far as possible …'

'… Meet the parents, foster carers and the child's social worker – use observations where necessary to gain a critical insight.'

A guardian who had spent time with the children would know what kind of relationship they had and how important they were to each other.

What is also missing from Part 4 of the Operating Framework is any reference to the wishes and feelings of the child and how these are to be ascertained. This problem is compounded by the fact that none of the Cafcass Key Performance Indicators (KPIs), which are agreed with the sponsor department, the MOJ, each year, include a requirement to record whether, or when, the child has been seen. Nagalro and the members of IAC have expressed their joint concerns about this serious deficiency to no avail.

The Cafcass website's 'Plain English' explanation for parents about who the guardian is and what they are required to do has already been referred to. It cannot be irrelevant to the issue of how far cases such as *LR* represent the working out of a culture within Cafcass that deliberately ignores the statutory obligations of the guardian that, until the summer of 2019 when Nagalro took the Chief Executive to task over it, that page made no reference at all to the child's wishes and feelings, or the guardian's obligation to convey these to the court. Even now, the relevant page only says that it is 'very likely' that the guardian will see the child, though Nagalro hopes that further discussions may produce improvements.

The Cafcass website includes the home of the Family Justice Children and Young People's Board, which is a refreshingly honest and clear-sighted voice for the children and young people who have been through the Family Court. The members of the Board have developed a number of sets of 'top tips', including their ten top tips for Family Court Advisers working with children and young people. Tips two, three and four deserve to be repeated here:

- *'Every child or young person should have sufficient time to build a relationship with the Cafcass worker involved in their case.*
- *The child or young person should feel that their needs, wishes and feelings have been listened to, valued and respected.*

- *Children and young people should be offered the opportunity to express their wishes and feeling using effective and age appropriate tools and resources that best meet their needs.'*

It is these words, we would suggest, that should be at the heart of the Operating Framework, not only because it is what the children we represent are asking for, but because it is what Parliament has said they should receive.

Conclusions

It is easy to be shocked by the failings in these individual cases and to put it down to inexperienced and/or overworked individuals. When the practices emerging from the recent judgments are set against Cafcass' own policies, however, the impression is of children's guardians following their employer's policies and then being blamed for the inevitable failures which follow. The decision in *LR* may, therefore, only be the tip of the iceberg.

Whilst Nagalro and Cafcass have, over the years, found themselves on opposite sides of the debate on a number of issues, this is in the context of having a shared commitment to promoting the welfare of children. Different viewpoints can, and do, give a different perspective and disagreement is both healthy and necessary. It would be difficult for the management of Cafcass to say that financial or political pressures are driving them from the independence of thought and action which the law requires of a children's guardian. That independence, however, is vital; both legally and practically.

As Sir Nicholas Wall said in his judgment in *A County Council v K and others* [2011] EWHC 1672 (Fam); a landmark case in which Nagalro was allowed to intervene:

'*I yield to no one in my view that the guardian's independence needs to be cherished. At the same time, Cafcass has to manage and to 'quality assure'. Can the circle be squared? I believe it can and the means of doing it lies with the court…the proper course in the event of an irreconcilable difference of view is for CAFCASS to apply to intervene, and for there to be placed transparently before the court the views of the guardian and the views of the manager, each explaining why the other is not to be preferred. As I have already indicated there is nothing wrong or humiliating in such a course of action. The court will then decide. It may decide to replace the guardian: it may not. But the decision will be that of the court-as it always should be.'*

Cafcass was established as a Non-Departmental Public Body (NDPB) under the sponsorship of the Ministry of Justice. It is directly accountable to the Secretary of State for Justice, but it was deliberately not constituted as a Government Agency, which is an important distinction. It gives Cafcass the freedom, indeed the responsibility, (if it is prepared to use it) to challenge Government policy on behalf of its constituency of service users. In this case, children and families.

It is also right to point out that the esteem in which the children's guardian is currently held stands on the foundations of the innovation and hard work of Nagalro's founding members, who developed the role, its independence and ethos, in the early

years following the enactment of the Children Act 1989. In this, Nagalro's 30th anniversary year, it is inconceivable that Nagalro would not speak out and will continue to speak out, when it perceives that this institution is threatened.

The children's guardian is an independent and personal appointment. There is a duty to *personally* assess what is required in that *individual* case and to *personally do it*. That is always going to be something which will clash with the ethos of a managed and structured organisation, particularly where budgets are under pressure. However, parliament, in the Children Act 1989 and in the Family Procedure Rules 2010, has set out what is required of the children's guardian. The courts have reiterated the central importance of the guardian's independence as a thing to be cherished. If that free-ranging independence is to be constrained, then Parliament is the place for those changes to be proposed and debated. What is not acceptable is for those legal duties to be reinterpreted and undermined by an unelected body, to whom Parliament has given clear and specific statutory duties.