

FAO. Annette Cowell, Ministry of Justice, 102 Petty France, London SW1H 9AJ  
Email: [annette.cowell@justice.gsi.gov.uk](mailto:annette.cowell@justice.gsi.gov.uk)

**THE RESPONSE OF THE PROFESSIONAL ASSOCIATION FOR FAMILY COURT  
ADVISORS AND INDEPENDENT SOCIAL WORKERS (NAGALRO) TO THE MINISTRY  
OF JUSTICE CONSULTATION PAPER CP 18/09 - LEGAL AID: FUNDING REFORMS.**

NAGALRO is the professional association for Family Court Advisors and Independent Social Work (ISW) practitioners. It has over 600 members who include many of the most highly trained and experienced child care professionals in the country. Together they have many years accumulated experience of representing children and their interests in the full range of proceedings across the family jurisdiction. Children are dependent on the quality of the skills and experience of all family justice professionals. If that reservoir of skills and experience is depleted, then it is the children at the centre of the proceedings who suffer. It is from their perspective that we make the following comments on the above consultation document, which sets out proposals intended to further balance legal aid spending.

Our core objection to the proposals is that they omit independent social work expert witness evidence from the list of experts set out at Annex B - Proposed Rates for Experts. For this reason we are not responding to the detailed questions set out in the consultation document as they are inapplicable. We would, however, like to register our deep concern that the value of independent expert social work evidence has been overlooked in this consultation by making the following points and ask the Ministry of Justice to consider the deleterious impact this will have on the lives of the many thousands of children and young people whose welfare is at the centre of all proceedings in the family jurisdiction.

The Legal Services Commission's Family Funding from April 2010 document proposed that all ISW reports should be removed from funding scope. There would instead be a departmental funding split between the MOJ and its NDPB, the Legal Services Commission (LSC), who would pay for all legal representation and the DCSF, and its NDPB, the Children and Family Courts Advice and Support Service (CAFCASS), who would pay for all social work reports. NAGALRO raised the following concerns in relation to that proposal with the LSC and the House of Commons Justice Committee which reported on July 15 2009.

1. The proposals would impose an intolerable burden of extra work upon CAFCASS at a time when there were (and continue to be) waiting lists and backlogs in all parts of the country.
2. The proposals would fail to provide sustainable access to justice for children, were not convention compliant and would constitute a breach of the Government's obligations under the UNCRC, ECHR and the HR Act 19998. Organisational and managerial imperatives were driving an agenda which took no account either of the principles of children's access to justice or the crucial importance of the tandem model of children's representation

through which children's guardians and children's lawyers work together to form a powerful axis of protection for children.

3. There was an assumption that too many children are being represented in private law proceedings, but no evidence to support this. On the contrary, Parliament debated the need for more representation for children in private law proceedings and twice passed legislation to achieve this. No explanation has ever been given for the non-implementation of both s64 Family Law 1996 and s122 Adoption and Children Act 2002.

4. The proposals constituted a dangerous disconnect in thinking between Government departments - the MOJ and DCSF - both of whom have an over-arching 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 still not happening. Surely it is counter productive to introduce measures which will prove such a drastic disincentive to ISWs at a time when the Children's Minister has said the Government is investing £109 million over the next two years to support social workers and attract more people back to the job?

The Select Committee has commented adversely on the *'unseemly battle'* about *'who should be picking up the tab'* between departments and urged the LSC and the Government to *'remember that vulnerable children are the most important party in those inter-departmental proceedings'* and to *'sort the matter out'*.

(Ref. House of Commons Justice Committee. Conclusions and Recommendations – Guardians and Independent Social Work. Para. 11/p31. Published TSO. July 15 2009)

In October the LSC published its response to the Family Legal Aid Funding from 2010 consultation. In a welcome step forward the proposals to remove ISWs from funding scope were dropped. The LSC will retain responsibility for funding ISW reports in private law proceedings but will instead cap the fees for independent social workers to the same rates as those paid by CAF/CASSS - 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 current consultation on Legal Aid Funding Reforms. Taken together the proposals will affect all children involved in proceedings across the family jurisdiction

The MOJ are detailing proposals for fee levels for expert witnesses in the range of £70-£100 per hour. However, social workers are not mentioned in the extensive list of professionals who give expert evidence in both civil and criminal courts (Ref. MoJ Legal Aid: Funding Reforms - Consultation paper 18/09 Annex B page 33). Considering the impact of this omission, it is disappointing to note that NAGALRO, the Association of Lawyers for Children, the Family Law Bar Association, Resolution, the British Association of Social Workers, the Office for the Children's Commissioner (11 Million) and others who have a stakeholder interest in these proposals are conspicuous by their absence in the list of those to whom the consultation has been sent.

- The proposals fail to take into account the wide range and complexity of proceedings in which ISWs 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. If implemented, the proposals will inevitably lead to the shortages of ISW expertise

to mirror the shortage of experienced children's panel solicitors and family law barristers.

- To devalue the contribution of social work expert evidence in protecting children and to actively discourage their involvement by such a drastic reduction in fees is yet another example of the dangerous disconnect in government policies relating to children. It is particularly hard to understand at a time when experienced child care practitioners are in such short supply and are so badly needed.
- NAGALRO is opposed to the limitation of fees to ISW practitioners to the level paid by CAF/CASS to its self employed practitioners (SECs). The role of an ISW expert is very different from that of an SEC contracted to CAF/CASS and should be treated as all other experts and paid a fee commensurate with expertise and experience. When undertaking an expert role ISWs carry the same high level of individual professional accountability for the work undertaken. The capped fees would mean a reduction of at least £40 and possibly £70 an hour. This is not a reduction that is being applied to all expert witnesses on an equitable basis. ISWs appear to have been singled out without any prior consultation.
- ISWs are usually appointed in cases which have become complex or reached a stalemate. The preparation of an ISW report, for example an assessment of relatives in a case where the local authority has ruled them out, can turn a case around, thereby removing the need for a contested hearing and any further delay – with the corresponding reduction in costs to the LSC, as well as a proper focus on the child.
- The previous LSC Consultation of Family Funding from 2010 suggested that there is a plentiful supply of ISW experts. NAGALRO would dispute this assumption. Both local authorities and CAF/CASS are finding it difficult to recruit and retain the number of trained and experienced social work experts needed to cope with the current rise in numbers of children involved in both private and public law proceedings. The local government association found six out of ten councils in England have reported problems in retaining staff - a 50% rise on the year before. If the fees do not relate to the level of experience of ISW experts there will be a further loss of experienced ISWs.
- CAF/CASS is under extreme pressure and the Chief Executive has said that it is now on an emergency footing. Hundreds of highly vulnerable children are waiting for the appointment of Children's Guardians and reports in both private and public law proceedings. The acute shortage of both financial and human resources mean that CAF/CASS is now able to offer only a minimum safe standard of service delivery. This is not the time to propose measures which will further deplete the diminishing pool of trained and experienced social work practitioners.
- Once again, children have been overlooked as stakeholders and once again the proposals carry no impact assessment of the likely effect on the vulnerable children and young people who depend on the family justice system to protect them.

As Lord Thomas of Gresford said in the debate in the House of Lords on Nov 2 –  
*'It is ironic that at the moment when public concern about the protection of children is rising as a result of the Baby P case and others, the Government step forward and cut the provision for legal aid in this sensitive area'*.

(Ref. Debate on Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2009).

Legal aid budgets are under enormous pressure but NAGALRO asks the MOJ to reconsider the exclusion of ISW expert witness reports from the list of approved experts. This is necessary in order to ensure that any re-balancing of the legal aid budget should not impact disproportionately on the very children and young people whose welfare is the predominant concern of the family courts.

Judith Timms OBE  
Policy Advisor NAGALRO