Justice Select Committee Inquiry into the Operation of Family Courts

Evidence of Nagalro, the Professional Association for Children's Guardians, Family Court Advisers and Independent Social Workers

Executive Summary

1. Nagalro has approximately 670 full members who represent the interests of children involved in a range of public and private law proceedings across the family jurisdiction. Some 60% work for the Children and Family Courts Advisory and Support Service (Cafcass) acting as Family Court Advisers (FCAs) and Children's Guardians (CGs). Our members work in all areas of England and Wales and also act as Independent Social Workers who may be commissioned by the court, the parties and by local authorities to offer expert witness reports in a wide range of some of the most complex cases coming before the courts.

2. **Our evidence will address all four issues identified by the committee but our over-riding concern is how the rights and welfare of the child are protected in family proceedings and this will be a common theme in our evidence.**

- The independent representation of a particular child's interests is an essential part of mainstream child protection in cases in which there can be a conflict of interest between both the local authority and the child in public law proceedings or between one or both parents in private law proceedings. It is the only effective backstop/quality control mechanism available to the children whose lives will be changed for ever by the court's decision.

- There is a very fine line between the very limited 'proportionate' service now being provided by Cafcass and potentially dangerous practice.

- The assumption underlying Cafcass's operational decision-making and resource allocation is that what is most effective for Cafcass as an organisation will also be best for the children concerned. However, just as the interests of parents and vulnerable children may be in conflict, one has to ask whether that is a safe and sustainable assumption. Creating complex duty or watching brief systems of proportionate working around, rather than with, the child may mean the available resource is being spread dangerously thinly based on limited arm's-length risk assessments that are insufficient to protect children and their interests. Cafcass has embarked on an extremely high-risk strategy compounded by a deplorable lack of management information about when and if the child has been seen.

- Nagalro believes there are serious questions to be answered about whether the operational changes which have been introduced by Cafcass are either the most effective for the children concerned or the most cost-effective use of all available resources, both human and financial.

- The current model of service delivery is increasingly in conflict with Cafcass's statutory duties. Two examples of this are the attempts to amend a core provision – s41 Children Act 1989 - via the Children Schools and Families Act 2010 and the Cafcass Legal Note of June 2010, which attempts to re-interpret s12 Criminal Justice and Court Service Act 2000 to justify fundamental changes to service delivery which appear to be of doubtful legality.

- There is now a very real danger that the integrity of a legislative framework, which has been painstakingly built on the accumulated interdisciplinary knowledge and expertise of the last thirty years, will be sacrificed to save Cafcass as an organisation, rather than the opposite being the case. The strength of feeling on this issue led to the publication on 29 July 2010 of a joint position statement signed by a compelling cross section of family justice professionals. The sixteen organisations included legal, medical and social work professionals.

- Nagalro is gravely concerned that the extension of the President of the Family Division's Interim Guidance for a another year from September 30 2010 will be used by Cafcass to legitimise a further dilution of services already pared to the minimum and which already risks putting our members in breach of both their statutory responsibilities and their professional ethics.

3. **A second theme is the lack of joined up thinking, policy development and funding which has characterized the government's approach to family court proceedings**.

   The involvement of two government departments, the Ministry of Justice (MOJ) and its non-departmental body the Legal Services Commission (LSC) and the Department of Education (DOE) (formerly Department for Children Schools and Families (DCSF)) and its non-departmental public body, Cafcass has not worked well. In fact, it has been counterproductive, and has not worked cost effectively in terms of the limited resources available or effectively in terms of outcomes for the children and families concerned. The Justice Committee criticised the interdepartmental funding wars in its report on Family Legal Aid report, published in July 2010-
   '*We believe that what is important is that vulnerable children trapped in intractable court cases, whether public or private, receive the advice and representation that they need and that the court has available the best welfare information it can have. If achieving these goals requires a funding model that upsets departmental silos, so be it'*[1].
   Far from being resolved the departmental funding wars have continued to the detriment of the children and services concerned.

4. **The committee also cautioned the LSC against introducing policies in the absence of the necessary consultation, evidence and impact assessments to support drastic changes and this is our third theme.** This is once again the case in relation to fundamental changes in legal aid provision, namely the drastic reduction in the availability of independent expert social work witnesses and the cull of experienced family law solicitors as a result of legal aid

[1] House of Commons Justice Committee-Family Legal Aid Reform-Conclusions and Recommendations. para.70 page 29 and para14 p.32 -. TSO.July 7 2009

changes from 2010. These restrictions will effectively dismantle a well-established infrastructure of mainstream child protection socio-legal services. Nor will they achieve the stated objective of saving money, as the dearth of legal and social expertise will further exacerbate problems in courts already crippled by delay and will only lead to additional costs elsewhere in the system.

ISSUE I. The effect of Cafcass's operations on court proceedings and the impact on the courts of the sponsorship of Cafcass by the Department of Education.

The effect of Cafcass's operations on court proceedings.

5. The rise in public law applications following the Baby Peter case has put great pressure on the courts and Cafcass. As a response to the pressures, the President of the Family Division published Interim Practice Guidance on 30 July 2009 and Cafcass introduced new service Priorities from August 2009. A duty guardian system was introduced in an effort to reduce waiting lists.

6. At a hearing on 7 September 2010, the Chief Executive of Cafcass, Anthony Douglas, told the Parliamentary Public Accounts Committee that it would be necessary to extend the emergency measures and the minimum service provision for another year from September 30. The continuing failure to provide the services to which children are statutorily entitled was described as 'shocking' by the Committee Chair, Margaret Hodge.

7. In carrying out their task, guardians act as independent professionals who provide a non-partisan view to the court. The guardian carries out an investigation of all the child's circumstances and has specific duties set out in court rules, such as giving age-appropriate advice to the child and obtaining any expert opinion needed. The guardian instructs the child's solicitor on what would be the best outcome for the child and works with the solicitor to ensure that the voice of the child is heard in the proceedings, to present the case in court, and to make recommendations in the child's best interests. This 'tandem model', in which solicitor and guardian work together, is one of the most effective quality assurance mechanisms for children found in any jurisdiction.

8. The question arises as to whether the wide powers and duties which are legally vested in the child's guardian can be properly exercised if the guardian's professional decisions are overridden or vetoed by managers. Nagalro has recently written to Cafcass to express concern about a template letter it has written for children's guardians to send to solicitors representing children, asking them to inform the court and parties that they are standing themselves down from their role. The apparent authority for this letter is a legal note produced by Cafcass which contains a new more 'flexible' interpretation of its powers under s12 Criminal Justice and Court services act 200 - the Act under which Cafcass was established. Our legal advice indicates that the note contravenes s41 Children Act 1989, which is designed to ensure that the child receives the protection afforded by the continuity of appointment of the same children's guardian throughout the proceedings.

9. Nagalro's report, *Time for Children*[2], examined the impact of changes in service delivery brought about by this guidance. It was based on a survey of members' public law work for Cafcass in Sept-Oct 2009 and produced a

[2] Nagalro, (2010) "*Time for Children",* available from website www.nagalro.com

dismal and worrying picture of services provided by Cafcass. The experience of our members is that matters have deteriorated further since the survey was carried out.

Backlogs and Delays

10. In early autumn 2009, taking the most conservative estimates, there were over 860 cases waiting, which equates to at least 10% of the annual workload. Of cases survey respondents held, 40% were unallocated for over two months - including 10% for over three months;

11. It has subsequently become apparent that Cafcass waiting list figures are unreliable. Many cases are allocated to managers, which removes the case from the waiting list but the child may receive no service and may be effectively parked in an administrative limbo. Cafcass statistics are now classified as the official statistics and are accepted without external analysis. A General Social Care Council conduct committee held on 3 September 2010 criticised Cafcass for "*dishonest spin on the scale of the problems it faced*" in relation to delays.[3]

Restricted services and lack of continuity of appointment

12. The pared down services provided to children under duty systems and proportionate working arrangements are becoming further and further removed from the service required by the primary statute and court rules.

13. In cases where the child is a party, Cafcass has a statutory obligation to provide the courts with a named guardian who has continuity of appointment for the duration of the proceedings (s41 Children Act 1989). The guardian works in 'tandem' with a children's solicitor to ensure that the child's rights and welfare are both protected and that he or she is not procedurally disadvantaged in relation to the other parties in accordance with Article 6 European Convention on Human Rights (ECHR), that their voice is heard in the proceedings (Article 12 United Nations Convention on the Rights of the Child (UNCRC) and that their rights to family life are protected (Article 8 ECHR). Having a consistent relationship with an adult they can trust is also very important for children themselves at a time of maximum distress and disruption, when they are very likely to have been separated from their parents, family, school and friends[4].

14. If too much time elapses between the child's removal from home and the final placement decision, outcomes may be determined through the passage of time and drifting relationships rather than on the original facts of the case.

15. Given the current upsurge in the number of care proceedings being taken by local authorities, it becomes even more important that guardians are able to ensure that the right children are being removed from their families and the right arrangements made for them. These are matters of significant public interest.

An OFSTED framework of evaluation which is not fit for purpose leading to excessive administrative procedures

16. The framework of evaluation being used by OFSTED is not fit for purpose and is extremely wasteful of scarce professional time. It fails to take account of

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[3] GSCC hearing on 3 September 2010 Placehttp://www.gscc.org.uk/Conduct/Conduct_hearings/recently_concluded_hearings/

[4] Voice (2005) "*Start with the child, stay with the child*, *A blueprint for a child-centred approach to children and young people in public care",* London

the statutory differences between public and private law cases and inspects Cafcass as a safeguarding agency using the five general outcomes set out in 'Every Child Matters' as inspection criteria rather the specific forensic framework clearly set out in primary statute and the accompanying court rules and guidance. The net result has been that the OFSTED inspections have skewed rather than supported the professional task.

Poor workforce management

17. The workload for employed staff has increased from a norm of 12 to 25 public law cases, with pressure to take on even more work. This has resulted in increased rates of sickness in both front-line staff and management. Practitioner time spent on each case has diminished in proportion even though the task has not changed.

18. Cafcass has imported a flawed and now largely discredited model of line managed accountability from local authorities. This is not only inappropriate but incompatible with the direct line of professional accountability which children's guardians have to the courts as well as to Cafcass as their employer. Cafcass has never fully understood the nature of the dual accountability and this has had a negative impact on the court welfare services received by the court.

19. There is significant spare capacity within the self-employed workforce to take on new cases, although this group continues to be substantially underused by Cafcass. 70% of self-employed members surveyed had spare capacity at the time of the Nagalro survey and many have now left the service. Instead, numbers of more expensive agency staff have been greatly increased. Many are inexperienced in the role but are likely to ask fewer questions about the way the role is being re-defined.

Reduced focus on the child

20. *Time for Children* found that respondents were being instructed by managers to prioritise tasks other than work done with and for the child and to see children less often than practitioners think is appropriate. The voice of the child is lost when duty advisers frequently do not see the children and there is delay in appointing a permanent guardian. Valuable opportunities may be lost to scrutinise the local authority plan for the child and change the direction of the case at the earliest stage, with attendant significant saving of time and costs to the court..

Constraints on professional independence and the independent representation of the child

21. Cafcass has become an increasingly managerial and bureaucratic agency and *Time for Children* showed guardians were being directed by managers (who do not have detailed knowledge of cases) not to make visits or attend court hearings which they thought were necessary for a thorough investigation of the child's situation and to be able to properly advise the court.

Definitions of a 'safe minimum service'

22. Cafcass has now been on an '*emergency footing*' able to only a *'safe minimum service'* delivery within the finite resources available since August 2009. Recent very significant changes in policy and practice have been driven through by what many staff experience as an oppressive and unsupportive management culture. The concept of a '*safe minimum*' is essentially a subjective rather than an absolute concept, dependent on

different local and managerial definitions. The organisational pressure to do much less work on many more cases has created tension between management's dictates and the statutory duty of the children's guardians under the Children Act 1989 – to give paramount consideration to the child's best interests. This has resulted in considerable confusion and anxiety for front-line staff concerned about potentially dangerous practice and the risks to children. Many have left rather than appear to be compliant with a system which they feel exposes children to an unacceptable level of risk and which compromises their professional ethics. The problems are compounded by a perceived fettering of professional independence and a blurring of the boundaries of professional accountability between Cafcass the corporate body, and its individual practitioners.

23. Children's Guardians have a dual accountability to the courts and to Cafcass. Placing Cafcass within the DCSF (now the DfE) has distanced family court services from the court. A closer link to local courts is widely felt to be more appropriate. Many experienced staff who have left the service may well consider returning if there were a fundamental change of ethos and organisational culture.

Impact on the courts of the sponsorship of Cafcass by the Department of Education

24. Cafcass was established in 2001 as non-departmental body under the sponsorship of the Lord Chancellor's Department - now the Ministry of Justice. Following a highly critical report from a Parliamentary Select Committee of Enquiry in 2003, the Chair and Board were replaced and the sponsorship department moved to the department for Children Schools and Families (DCSF) - now the Department for Education (DfE). Unfortunately Cafcass and the provision of family court welfare services to children generally has not been seen as central in either department and Cafcass appears to have occupied a peripheral position in both department's planning. This is all the more regrettable given that Cafcass is now the largest employer of social workers in the UK.

25. Further, the departmental split between the legal services provided by the MOJ and the social work services provided by the DCSF has resulted in attempts by both departments to off load as many costs as possible to the other department. This has in turn resulted in a failure to appreciate and capitalise on the potential to develop a range of interdisciplinary services, which could have bridged many gaps in service provision and ensured that scant resources were deployed in a truly joined up and cost effective manner.

26. One example of this is the current lack of connection between the conciliation and dispute resolution services provided by Cafcass and funded by the DOE and the mediation services including direct consultation with children provided under contract to the Legal Services Commission and funded by the MOJ. Another is the way in which contact centres are funded and commissioned by Cafcass. The resulting patchwork pattern of service provision shows little evidence of inter-departmental strategic thinking.

27. Although Cafcass is legally constituted as a non-departmental public body, it has always operated as a de facto government agency and this has had a severely restrictive effect on its capacity to advocate for the constituency of children whose interests it represents. Cafcass was established as an NDPB

only after extensive consultation in which all other options were explored[5]. One of the key questions addressed was that of the independence and accountability of both the organisation and its practitioners if the service were to enjoy the confidence of the public and the families and children it serves. It was therefore seen as essential that the service was able to operate at arm's length from government. This has become less and less evident, culminating in Cafcass head office moving into Sanctuary Buildings to share an office building with its sponsorship department.

Issue 2. The impact on court proceedings and access to justice of recent and proposed changes to legal aid.

28. This section of our submission will focus on issues affecting access to justice for children and the negative impact of the LSC's proposed cutting of independent social work expert witness fees from October 2010. Around 80% of Nagalro's members currently carry out independent expert witness work in the family courts. Many have said they will be forced to seek alternative work after October and their absence will have a significant impact on court proceedings. The decision to cut ISW fees flows from the LSC consultation 'Family Legal Aid Funding From 2010' in December 2008.[6]

29. The cases where family courts require independent evidence are characterised by the complexity of the issues and concern about the adequacy of the evidence provided by others. In public law this includes cases where local authority evidence is seriously flawed or absent; Research tells us that approximately 40% of public law cases arrive in court without the necessary core assessment having been carried out by the local authority. In these cases courts turn to independent social workers to expedite proceedings.

30. In other cases the local authority has a fixed view that it refuses to reconsider; where one or more family members may have been inappropriately discounted; and/or where a local authority has behaved inappropriately, without due cause and has lost the confidence of parties and/or the court. In private law, courts may require an independent assessment of highly contested issues of contact and residence in order to be assured that their decisions protect children's interests.

31. Without the necessary evidence, courts cannot proceed and lengthy and costly adjournments may ensue. Independent social workers are seen as an extremely valuable resource by the courts. However their fees are paid by the LSC rather than the DfE, and the LSC are very anxious that the DfE pays for all social work input in the courts either through Cafcass or Local Authority social work. Hence the decision to cap the fees at the CAFCASS rates. This is therefore a decision which has nothing to do with access to justice for children and everything to do with offloading costs – which, by the MOJ's own admission, they are unable to quantify - to another Government department. A letter to Nagalro from The Secretary of State for Justice, Jonathan Djanogly dated12 August 2010 stated '*that is not possible to provide an exact estimate of the savings as a result of capping ISW rates'.*

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[5] Support Services in Family Proceedings - Future Organisation of Court Welfare Services. Consultation paper. July 1998. Department of Health, Home Office, Lord Chancellors Department, Welsh Office. Reference number LASSL(98) 11

[6] http://www.parliament.uk/deposits/depositedpapers/2008/DEP2008-3118.pdf

32. Cases frequently call for specialist social work expertise relating to managing risk, an understanding of family dynamics and attachment relationships, and/or assessment of those with a learning disability, substance misuse problems or mental health issues as these relate to parenting. Some require specific cultural knowledge. ISW evidence assists courts to resolve complex cases more speedily. It can obviate the need for much more expensive psychological and psychiatric reports. ISW evidence can thus be very cost-effective and conversely its absence is likely to increase overall costs across the family justice system.

33. Social work skills related to child protection are a scarce commodity and the Social Work Task Force recognised the need to retain experienced practitioners by offering suitable levels of remuneration and scope for the exercise of expert professional judgment.

34. The decision to cut ISW fees has been based on a confused and procedurally inadequate consultation. The LSC consultation paper concentrated on one specific issue: that of Rule 9.5 cases where children are made parties to private law cases. By its own admission, it has no evidence on the numbers and types of cases in which ISWs are used, the outcomes of these cases and the likely impact on children's access to justice if ISW evidence is severely restricted.[7] Once again the LSC has made a '*considerable rod for its own back'* in failing to marshal the evidence before proceeding with fundamental changes to the system. The LSC has failed to address the variety, depth and function of ISW use in family court proceedings and the influence of ISWs on the court's decision-making. There has been no assessment of the impact on children. There has been no consultation with children as stakeholders, indeed there has been continuing failure to even recognise them as stakeholder. Finally, there has been no assessment of the impact on the timetabling and completion of court proceedings.

35. Many organisations and individuals who would have responded did not do so as they were simply unaware, because of the flawed content, that the proposals applied to them. ISWs were under the impression the MoJ Expert Witness consultation, which immediately followed, would consider independent social work along with all other expert witnesses. The LSC has acknowledged that there was confusion on this point.

36. It would appear that social workers, alone of all professionals who provide expert evidence to courts, are not considered by some to be expert witnesses. This distinction has no basis in fact and it is impossible to see how such differential treatment can be justified. ISWs often provide holistic advice to courts that sets in context the medical and psychological expert evidence. Medical and psychological expertise is remunerated at a much higher rate and reduced availability of ISWs will increase reliance on these much more expensive experts. None provide the link to family functioning which is the expertise of the independent social worker.

37. Nagalro, working with BASW and ISW agencies, has made strenuous efforts to engage with MoJ and LSC to explain the adverse consequences for child protection of an inadequately evidenced decision to cut ISW fees and to challenge the flawed consultation processes. Our experience points up the lack of a credible independent element in the MoJ and LSC complaints processes. We have requested that ISWs are included within the remit of the

[7] Alan Pitts – MOJ head of Family Legal Aid speaking at a conference in London on March 25 2010, confirmed at a subsequent meeting with the MOJ and LSC in April 2010

Expert Witness Review Group, which is looking at the fees for all other expert witnesses. Given the necessity to reduce the total spend on expert witnesses, our members ask only that they be included in the review on the same basis as all other experts. We have asked the Secretary of State for Justice, Jonathan Djanogly to review the previous administration's decision and he has declined.,

38. The LSC/MoJ approach to ISW costs is misguided and unfair. By any reasonable accounting analysis the fees are set too low to properly remunerate ISWs for their level of experience and expertise. Nagalro was involved in discussions with Cafcass when they reviewed their fees for self-employed children's guardians. A principled basis for fees was discussed, but the rate of £30 per hour (£33 in London) that was finally offered was not based on these principles, which would have produced a considerably higher rate. Cafcass has never included home office costs in their calculations[8]. Annual increments to fees had not been included by Cafcass for several years.

39. LSC proposes that ISWs should be paid at the Cafcass Children's Guardian rate without analysis of the differences in the roles. Nagalro contends that the ISW role is a different one, requiring a greater range of entirely independent and specialised assessment skills undertaken without organisational support or managerial support. Cafcass limits the scope of the work of children's guardians. Under its Workforce Development Strategy (2010), Cafcass will now appoint newly qualified social workers to practitioner posts and will seek to use unqualified family support workers to co-work cases. These changes make the comparison between the work of expert ISWs, who are personally appointed based on reputation, and Cafcass Children's Guardians even less appropriate.

40. Without ISW expertise, courts may make the wrong decisions about children because they will lack sufficiently expert independent advice. Some children are left at serious risk within their own families and the ISW contribution leads to their removal to safe care. Frequently the issue is whether family members could care for children for whom the local authority plan is adoption and ISW assessments can lead to extended family care for children, for example by grandparents, removing the need for adoption. The quality of local authority social work practice and decision-making is extremely variable across the country, within local authorities and even within single teams. Access to expert ISWs is therefore a crucial safeguard for children and a child protection issue.

41. Additionally, the impact of proposed funding changes on provision of legal aid help for children and parents is a very grave concern to Nagalro members. The unparalleled loss of so many skilled and experienced family lawyers will have a profoundly destructive effect on the operation of the courts. The 'tandem model' of children's guardian and solicitor forms a key partnership that is an effective child protection mechanism for children who are at a uniquely vulnerable point in their lives during care proceedings. Guardians face the prospect of not being able to find an experienced children's lawyer because so few firms will exist in some areas. Parents in family court proceedings, many of whom have significant needs themselves, equally need skilled representation. Without the experience and commitment of family legal aid practitioners it is probable that court functioning will be impaired, there will be more litigants in person and delays will increase further.

[8] Jane Booth, Cafcass Corporate Director, in meetings with Nagalro.

ISSUE 3.The role, operation and resourcing of mediation and other methods in resolving matters before they reach court.

42. Many Nagalro members are involved in providing adult dispute resolution and extended dispute resolution procedures, which include direct consultation with children. These services are provided by Cafcass as part of the President's private law programme, introduced in July 2004. The primary aim of the private law programme is to divert separating parents from long running and acrimonious disputes through the early provision of a range of support services. The prime focus of government policy is on 'minimising conflict and supporting good outcomes both for children and their parents, preferably without recourse to the courts'[9]

43. Historically, from the implementation of the Family Law Act 1996 onwards, the lion's share of resources in private law proceedings has gone towards the expansion of adult mediation services as an essentially indirect way of supporting the children involved. This is based on two highly questionable assumptions-

- **First,** that provided separating parents agree about future arrangements, then the resulting arrangements will be in the best interests of their children; and
- **Secondly**, that parents will act reasonably and always in the best interests of their children at a time of maximum emotional turmoil and disruption.

44. Recent research findings indicate that these are not safe assumptions, the impact of domestic violence had been largely overlooked and the voice of the child is often drowned by the noise of the parental dispute. NSPCC research[10] questioned the concentration on the expansion of adult mediation services and the resulting allocation of the lion's share of available resources to adult centred interventions around the time of the court hearing. Research suggests that an over reliance on what is essentially an indirect way of helping children may be at the expense of the development of a continuum of direct and indirect support services to the increasing numbers of children - currently approximately 250,000 a year- who are suffering the negative effects of family breakdown.

45. Although the Children Act 1989 brought together public and private law proceedings in one unifying piece of legislation, it failed to provide a unified approach to the representation of children and their interests. This was based on the erroneous assumption that in private law cases in which parents are divorcing or separating, there will never be a conflict of interests between the wishes of the parents and the long term safety and interests of the child. For the vast majority of children, thankfully, this will be the case, but an inspection of Cafcass private law practice published in August 2006 emphasised the vulnerability of children who are the subject of Cafcass welfare reports in private law, some of whom may also be children at risk or in need in terms of the Children Act 1989. For the 10% of children of separating couples who have their residence and contact arrangements ordered by the court, their childhood may by punctuated by repeated and acrimonious contested court proceedings over which they have no control and in which most have no voice.

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[9] *('Parental Separation: Children's needs and parent's responsibilities.* Crown Copyright: CM 6273. DCA and DfES 2004)

[10] *Your Shout Too - a survey of the views of children and young people involved in court proceedings when their parents separate or divorce'.* Timms, Bailey and Thoburn. NSPCC 2007

46. Parliament has agreed that children in private law proceedings should have access to separate representation more frequently than they do at present and has twice passed legislation to address this problem, namely S64 Family Law Act 1996 and s122 Adoption and Children Act 2002. Neither piece of legislation has yet been implemented, in spite of a considerable body of research evidence which indicates that the amplification of the voice of the child in proceedings can break up the entrenched adversarial dyad between parents in complex and long running disputes and can act as a catalyst for change by re-focusing both parents attention on the best interests of their child and the need to put their needs before their own sense of grievance.

47. Notwithstanding the reluctance of all adults and professionals to involve children in adversarial proceedings, it would be dangerously naïve to assume that all children's private law matters can be decided through mediation processes in which their separate interests may be overlooked. Mediators can do little if parents agree arrangements which are clearly not in their children's best interests, but which stop short of significant harm.

48. The prime purpose of state intervention into private family life is to limit the collateral damage to children. There has, however, been little analysis of how effective mediation and other more general interventions are for the children concerned. Once parents have agreed arrangements and the court proceedings are concluded, professional attention wanes. What is urgently needed is the development of a range of direct support services for children and young people suffering the negative effects of family breakdown, both before, during and after parental separation.

ISSUE 4. Confidentiality and openness in family courts, including the impact of recent changes in the Children, Schools and Families Act 2010.

49. Nagalro supports efforts to make the decisions made in the family courts more transparent. This should not, however, be done in a way which allows the media and the general public to identify or increase the distress of already highly vulnerable children and we are opposed to any relaxation of rules on the publication of sensitive personal information.

50. Nagalro, together with 21 other organisations who signed a joint position statement as an Interdisciplinary Alliance for Children, had severe reservations about the content of Part Two of the Children Schools and Families Act 2010. We, in common with the other Alliance members, do not believe that the provisions will be sufficient to protect the welfare and safety of the children. Our concerns are exacerbated by the fact that the Act was passed in something of a rush during the 'wash up' process in the final days of the last parliament. There was therefore no time to properly debate the final version of the bill, which has resulted in something of a hotch-potch of confusing provision, about which nobody seems very happy and which is likely to be extremely wasteful of scant resources as lawyers attempt to clarify the new law.

51. In practical terms, we are particularly concerned about the court's capacity to identify '*any risk which publication of the information would pose to the safety or welfare of any individual involved',* as stated in s14 (4), on the basis of what may be limited or incomplete evidence from children themselves.

52. Nagalro's view remains that the changes were premature in that there has been no time to undertake either a proper evaluation of the changes to media access to Family Courts, introduced in April 2009, complete evaluation of the Family Court Information Pilots looking at anonymous judgements or to undertake appropriate impact assessments of the effect of the new provisions on the children concerned.

53. Recent research evidence on the views of children, commissioned by the Office of Children's Commissioner, showed that children fear the identification or themselves and their families. Almost all the children in the independent study-(96%) said that once children are told a reporter might be in court they will be unwilling/less willing to talk to a clinician about ill treatment or disputes about their care, or their wishes and feelings.[11]

54. It would be extremely counterproductive if children were to be inhibited by such additional concerns at a time of maximum vulnerability and stress. Young people have highlighted the fact that what used to be yesterday's fish and chip paper is now eternally available on the internet and that once personal information is in the public domain, it is now virtually impossible to eradicate it. This is an aspect of transparency which the Act fails to address and it also has implications in relation to compliance with the rights of the child conferred by Article 12, UNCRC.

55. The two key questions to be answered in relation to this legislation are first- who benefits and secondly whose needs are paramount? From the point of view of the hundreds of thousands of children who have their future lives determined by the family courts in extremely distressing and often traumatic circumstances, what is important to them is to be able to understand why and how the decisions were made and on the basis of what information. This is the information can be enormously important in allowing children to make healthy adjustments in their adult lives and to make sense of what has happened to them.

56. If this legislation is implemented as currently drafted, it will increase both the risks and distress to children and will also result in considerable extra costs to the courts and the family justice system.

Nagalro. 15 September 2010

[11] Media access to family courts: views of children and young people. J Brophy (2010). London. Office of the Children's Commissioner. England