NAGALRO

The Professional Association for Children's Guardians, Family Court Advisers and Independent Social Work Practitioners

FAMILY JUSTICE REVIEW

EVIDENCE FROM THE PROFESSIONAL ASSOCIATION FOR CHILDREN'S GUARDIANS, FAMILY COURT ADVISERS AND INDEPENDENT SOCIAL WORKERS (Nagalro).

Introduction

1. Nagalro is the professional association for Family Court Advisers, Children's Guardians and Independent Social Workers. It has approximately 670 full members in England and Wales who represent the interests of children in a range of public and private law proceedings. Some 60% work for the Children and Family Courts Advisory and Support Service (Cafcass). Many also act as Independent Social Workers providing expert witness reports in a wide range of complex cases coming before the courts.

2. In all of these cases and these roles our paramount consideration is the welfare of the child at the centre of the proceedings and it is from this core perspective that we give our evidence and offer some solutions.

3. Nagalro welcomes the Family Justice Review, which together with Professor Munro's Review of Child Protection present a much needed joint strategic opportunity to bring about real improvement in the system.

OVERARCHING ISSUES AND THE CASE FOR CHANGE

Q 1. *What does the family justice system mean to you? What should the purpose of the family justice system be? What should not be included in the family justice system?*

4. The Family Justice System is the body that adjudicates between the state children and their families. It is founded on principles of access to justice, and the paramount importance of the interests of the child in both public and private law proceedings. It is also a body of interdisciplinary professionals who represent both its greatest strength and its greatest resource.

5. Our strong view is that the legislative framework that underpins the Family Justice System is sound and requires re-enforcement and better implementation rather than substantive change. There are a few exceptions which we will refer to later in our evidence, but in general the Children Act 1989 was based on a series of key principles which have been further reinforced by research and evidence based practice since its implementation in 1991. We would be very concerned about the dangers of short term measures aimed at cost cutting which disturbed an infrastructure painstakingly built on domestic legislative provision and international convention.

6. Children need a family justice system designed to meet their needs and protect their interests. The child should be at the centre of family court proceedings, which must identify, protect and represent the child's interests. The potential conflict of interests

between children and their parents, and/or children and the local authority must be fully recognised in both private and public law proceedings. Children in public law proceedings are uniquely vulnerable because of the far-reaching life-long consequences of the decisions made at this time that affect their identity, physical safety and emotional wellbeing.

7. Children in private law proceedings may be equally vulnerable. An inspection of Cafcass '*Private law Front Line Practice*' published in August 2006 highlighted the vulnerability of children who are the subject of s7 welfare reports and emphasised the fact that some of these children are children in need or children at risk as defined by the Children Act 1989. Research by Trinder et al has also highlighted the severe emotional distress which may be suffered by children whose parents separate. The vast majority of children involved in parental separation each year are not consulted about the enormous changes in their lives and have no voice in the residence and contact arrangements agreed by their parents.

Q2. What should the role of the state be when dealing with family-related disputes that do not concern the protection of children or vulnerable adults? To what extent should the state fund this?

8. Family Court proceedings are indicative of the state's attitude and concern for the children who will become tomorrow's citizens and the onerous decisions made in relation to when and how the state intervenes in family life are therefore a matter of legitimate state funding and overriding public concern. This is particularly so when societal changes have led to so many children suffering the negative effects of family breakdown abuse or neglect. However, this is not just a problem for either local authorities or the family justice system and the costs should also be shared by the Departments of Health and Education. Child neglect, for example, has reached epidemic proportions comprising approximately 70% of care cases coming before the court and this is a public health as well as a family justice problem. Definitions of harm and vulnerability alter as awareness of social problems changes.

Q3. How effectively does the current family justice system meet the needs of its users? For example:
a Does it have the capacity to deal with all cases comprehensively?

9. The Children Act 1989 introduced excellent legislative provisions some of which have never been fully implemented. It was hampered from the outset by a chronic shortage of resources, particularly those required to support children and families as set out in Part 111 of the Act. Consequently, local authority social service departments have been driven back into a defensive, crisis driven form of practice which has put increased pressure on the family justice system as courts have become the main determinants of child welfare issues. In addition cases now routinely occupy more court time and reflect the diversity and complexity of our multi-cultural society.

b. How could capacity in the system be increased?

10. However, in relation to family court welfare services there is significant unexplored spare capacity in the system that is currently not being deployed. Cafcass's current

operating model and management systems are largely responsible for the failure and this is well documented in the Parliamentary Public Accounts Committee session of 7 September 2010 and elsewhere. Significant numbers of the country's most experienced child protection professionals are being lost to the system and early action is needed to ensure that their skills are retained and used to 'grow' the next generation of skilled practitioners.

11. '*Time for Children - A Survey of Cafcass Public Law Work*' published by Nagalro in January 2010 showed that 70% of the self-employed members surveyed had spare capacity to take on new cases at a time when courts were struggling with a deluge of new referrals. This has led to near intolerable pressures on employed staff to take on greatly increased workloads and has meant that many have left or taken early retirement.

12. At the same time experienced members who give independent social expert witness evidence which expedites proceedings in some of the most complex cases in the family justice system, are being driven out of the work by draconian cuts in legal aid provision. Taken together, these factors have substantially reduced the reservoir of experienced social work expertise available to courts and are a contributory factor in the delays which are endemic in family court proceedings.

13. There is currently an acute shortage of skilled front line child protection workers as identified by the Social Work Task Force. Considerable state resources are being deployed to attract new social workers to the profession and to retain the ones we have. It makes no sense, at such a time, for both Cafcass and the LSC to carelessly dispose of those who have between them hundreds of years' experience in the family justice system.

14. Children are poorly served by the current family justice system because its resources are poorly deployed. Endemic problems of delay exacerbate the deficits and make poor use of scarce resources. Cases vary enormously in complexity so they do not all require the same level of resource to be dealt with each comprehensively.

15. Some of the delay and inefficient use of resources is caused by poor practice and insufficiently thorough, skilled assessments. Courts have such weighty and irrevocable decisions to make in relation to children and their families and must ensure they have good enough evidence on which to base these judgments. Human rights legislation requires that proper consideration is given to family members who could care for a child, with appropriate support where necessary. It is important for children that decisions taken are right. Too quick a decision may be as disastrous as too much delay.

c. How efficient is the system?

16. The Family Justice System cannot be viewed in isolation from the full range of interdisciplinary disciplines and services which support it and which in turn will be called upon to devote considerable resource to picking up the dysfunctional pieces whether this is via mental health or youth justice provision. The courts can only intervene in an episodic way and without the infra-structure of well-resourced services to support their decision making those episodes will continue to increase.

17. The variability of local authority social work practice is a major source of concern to Nagalro's members. Children's needs are overlooked and their interests denied and compromised across the country even within councils with high star ratings.

18. It is immediately apparent to practitioners within the family justice system that there are very many children who live in circumstances of neglect, abuse and domestic violence that would meet the threshold criteria but who do not reach the courts either at all or sometimes only when some incident highlights specific dangers. The recent rise in proceedings is no surprise and does not represent a change in the reality for children, so much as a different approach to thresholds by local authorities.

d. Does the system ensure equality and diversity?

19. Increasing diversity within society presents challenges to the family justice system. Assessments of family functioning need to be informed by sound knowledge of cultural issues and can also require skilled interpreters, work abroad and liaison with other jurisdictions. Courts and those working in them need to understand the concerns and very different expectations of many parents from other cultures. Many of the most complex and intractable cases include issues related to immigration, language, culture and religion.

BETTER COURTS AND ALTERNATIVES TO LEGAL PROCESSES

Q4. Are there areas within the current system where we could adopt a more inquisitorial approach, whereby the court actively investigates the facts of the case as opposed to an adversarial system where the role of the court is primarily that of an adjudicator between each side? What are the options, and advantages and disadvantages, for:

a. Private disputes arising from divorce or separation?

20. The expansion of adult dispute resolution services in which all issues agreements can be reached without recourse to an adversarial court process is welcome and is one clear and constructive way forward. We also need to consider others. Clearly mediation can be extremely helpful in encouraging parents to come to appropriate agreement and to make appropriate arrangements for their children**.** However, the purpose of mediation is parental agreement through negotiation and if the parents choose not to give proper consideration to the interests of their children, then the mediator may be powerless. Generally, children have no voice in the process and their interests may be subordinated to those of the parents. **Given that the interest of the Family Justice System is primarily to limit the collateral damage to the children involved,** w**e would caution against an over reliance on the expansion of adult dispute resolution and the allocation of the lion's share of the state's resources to what is an essentially indirect way of supporting the children concerned.**

21. Given the scale of family breakdown, the now well established pattern of serial monogamy and the fact that each year approximately 250,000 children will experience the separation of their parents, approximately 30,000 of whom will be going through the process for the second or even third time, is it either reasonable or realistic to rely on parental agreement as our main response to the problems for children?

22. The current system focuses on the process of parental separation and the regularisation of that process through the courts. Once that process is over and the parents and courts are satisfied or at least resigned to the outcome, the children whose problems may well be continuing or even be exacerbated by inappropriate arrangements, disappear from the professional radar.

23. This view is supported by child centred research on the position of children in private law proceedings which supports the establishment of a continuum of direct services of information, consultation, support and representation to be available to and accessible by children suffering the negative effects of family breakdown not just at the time of divorce but subsequently when judicial and professional attention has waned.[1]

b. Public matters, where the state intervenes to ensure the protection of children?

24. Clearly, great care must be taken to ensure that children are not subjected to the distress and anxiety of court proceedings in any more cases than necessary. However, it would be extremely dangerous for the children concerned if onerous decisions which could have the most fundamental impact on their future lives were made in a forum in which their rights and welfare could not be protected through the proper testing of any evidence adduced, and in which their interests were not separately represented. Any decision that affects the child's basic human rights such as the assumption of parental responsibilities by the state or permanent removal from the family should not be a matter for negotiation within a tribunal or other administrative forum but should be conducted in the full light of judicial scrutiny. Our present system although fundamentally adversarial, does have strong inquisitorial elements and our members form the investigative arm of the court. (See also our response to Q13.)

25. Before the Children Act 1989, local authorities could assume parental rights through purely administrative procedures in which the rights of the child and the parent were not protected and the difficulties and abuses inherent in this system are a matter of public record.

Q5. How far are users able to understand the processes and navigate the family justice system themselves?

a. Are there clear signposts throughout the system?

26. Our principal concern is the position of children and young people as service users and as far as they are concerned the system is largely unintelligible in both public and private law proceedings.

b. Do users know how and where to access accurate and timely information and advice? Is it readily available?

27. This is not just a problem of resources. It is also a problem to do with the current scatter gun approach to the provision of support services and the lack of joined up child

[1] NSPCC *Your Shout Too*. Timms, Bailey and Thoburn 2007 and *'Effective Support Services for Children and Young People when Parental Relationships Break Down - a child centred approach.' Calouste Gulbenkian Foundation 1998*

centred governmental thinking and policies. What we have now is a patchwork provision of interdisciplinary service, which fails to deploy all the available resources both human and financial in the most effective way possible. In short, it is a jigsaw without a picture and moreover one that is largely inaccessible to the children and young people who should be its chief beneficiaries. There is very little signposting of services which would benefit from a mapping exercise which could inform family justice professionals as well as service users.

Q6. How best can we provide greater contact rights to non-resident parents and grandparents?

28. Much can be done without adding to the number of people entitled to make court applications, for example:

- Consistent availability of more skilled intervention services to work proactively with contact disputes that threaten to become cases of intractable hostility.
- Changes in availability of legal help to grandparents.
- Independent social workers are frequently used to assess grandparents who have been swiftly written off by LAs in public law cases.
- In addition, we would ask the Review panel to consider the lack of contact rights between siblings who are often separated in the course of both public and private proceedings.

Q7. How effective is alternative dispute resolution (ADR), such as mediation, collaborative law and family group conferencing? What types/models of ADR are more effective and for which circumstances? Does this differ according to cases? How could we improve it and incentivize its use and what safeguards need to be put in place?

29. It can be very effective but care should be taken to ensure that the voice of the child is not subsumed within the adult's wishes and feelings.

Q9. Are there elements of cases which could be considered outside of a court setting and if so by whom? For what type of cases would this be appropriate and what sort of settings might be suitable alternatives? What are the benefits and disadvantages?

30. The pre-proceedings stage in public law cases brought in following the Public Law Outline offers one approach to diverting cases from court by earlier focussed intervention. Unfortunately children have no independent representation at the pre-proceedings stage, unlike parents and social workers. There is no-one whose role is to make an independent assessment of whether proposed decisions are in their best interests and to speak up for them.

Q10. Would adding a triage stage, whereby cases are assessed as to the appropriate course of action, make the system more efficient; i.e. by speeding processes up, ensuring resource could be allocated appropriately etc? In what areas might this be appropriate?

31. Repeated attempts by Cafcass to introduce a triage system have not been effective, and have put children at greater risk by using arms-length assessments. Decisions are made on the basis of reading only limited local authority information. Family situations

in complex cases cannot in our view be reliably assessed in sufficient depth to ensure a sound decision without seeing the child where they are living, seeing the parents, reading local authority files and taking a proactive, inquisitorial stance. The separate interests of the child require this. It is sound professional judgment that best protects children. The parallel with medical emergencies is flawed, as just reading the papers does not give sufficient information to make a sound decision. Significant changes frequently occur during proceedings – partners split up and get together, placements breakdown or are changed etc – so an early assessment may quickly become irrelevant. What looks on paper like a straightforward case can be very complex and vice versa.

32. Cafcass has also sought to press Children's Guardians to "stand themselves down" from cases after an initial period. Nagalro, together with the Association of Lawyers for Children and others oppose this as probably unlawful and a serious weakening of the protection offered to children in the course of proceedings.

33. A better approach is to appoint an experienced Children's Guardian or Family Court reporter straight away, and support a culture where professionals make decisions about how much time a case will need, in a flexible, non-defensive way. Where the child is being appropriately cared for and sensible plans for their future are in place a Children's Guardian may need to do very little work, but they know the case if it alters in complexity, as often happens in an unpredictable way.

GOVERNANCE AND MANAGEMENT

Q11. Do you think the family justice system is well organized and managed? What are the strengths and weaknesses of the current governance and management structures? Who should take responsibility for the decision- making process? Who should be responsible for the administrative running of the system?

34. There is considerable scope for improving the organization of the family justice system. Problems arise from a lack of joint planning and 'joined-up thinking' with government departments taking budget decisions that have an adverse impact on others' responsibilities. Lord Laming referred to this, as did the parliamentary Select Committee (see Q3 above). Medical and social work professionals with a family court specialism are crucial to court functioning but this aspect of their work may be on the periphery of their own professions. For example, although Cafcass is apparently the largest employer of social workers in the country, the work done by family court practitioners tends to be overlooked in considerations of mainstream social work such as the Social Work Task Force, as social work is seen as solely a Local Authority responsibility.

35. We suggest that a major realignment of thinking, funding streams and structures around local court centres would provide better coordination between those professional groups who have roles in the family justice system. It would enable a more streamlined service, reduce duplication, and assist in providing a more coherent service for children and families. In private law cases, for example, a child in high-conflict case may be dealt with by mediation services, a Children and Family Reporter, a contact centre, different levels of court, a Rule 9.5 Guardian ad Litem, a solicitor, possibly the local authority Children's Services and expert witnesses. Some cases return to court many times over many years to the great detriment of the children involved. If legal, social

work, health and court professionals were more closely aligned at a local level robust targeted service provision could develop which would enable cases to move more speedily to the right level of intervention to the benefit for all concerned, agencies and children.

36. Although coordination at a national level has its place, it is at a more local level that new working relationships could have most effect. Cafcass has been a very inward-looking agency, with its senior levels lacking understanding of how to work within the court system and the tandem model. Interdisciplinary training once standard is now rare.

Q12. What systems issues are there? E.g. How could things like IT, filing and administrative processes be improved?

37. A more streamlined approach could reduce the administrative burden on all the agencies involved. We support Napo's suggestion of using IT so that relevant case data is entered once and shared between family justice agencies where appropriate. IT systems in different departments need to be compatible. However, large scale IT projects rarely deliver all that is hoped for them. Centralised national schemes often cause more problems and lose the benefits of local knowledge.

38. Ofsted's inspection regime has exacerbated Cafcass' failings. The sheer amount of time required to complete proliferating paperwork requirements, often poorly related to the task, has had a significant effect in decreasing time available to see children and families and undertake the core work. A service based on senior professionals should have a proportionate inspection regime. Paperwork should be the minimum necessary to support the task.

39. There is a lack of key information to assist in understanding what is happening in the family justice system and how it could be improved. Consultations between agencies and departments and with researchers could assist in designing a system that collects the most useful data. Management information tends to be poor, as MoJ and LSC seem to lack even basic data about cases, leading to decisions being taken without sound evidence. One example is fees for independent social workers. LSC is planning a draconian cut in these even though it cannot say in how many cases ISWs are used, what type of cases these are or what the outcomes are. The Family Funding 2010 consultation on which this decision was based was, in Nagalro's view, fundamentally flawed, lacking a thorough analysis of the roles and purposes of ISW evidence in family proceedings.

40. Cafcass management information is lacking, even though it has now been given the status of official statistics. Cafcass does not record when a child has been seen, a key piece of information required to measure what must by any standard be a key performance indicator.

41. Cafcass waiting list figures are highly unreliable. We know that many cases are effectively hidden by being allocated to managers. The children and their families these cases relate to are in an effective limbo, neither receiving an active service from Cafcass staff, nor being recognised and acknowledged as not receiving a service. It is extremely hard to obtain accurate information about this, because staff risk disciplinary

action if they disclose, but information received by Nagalro at points during this year indicates that there continue to be a few managers who hold very high numbers of cases indeed. In July 2010 four managers between them held 230 public law cases over and above the National Audit Office public law waiting list figures for the of 260. They also held 730 private law cases when the official waiting list was 1800.

Q13. *Who should take ownership of cases when they are in the family justice system? Who is the case manager? And at which point do and should they relinquish responsibility?*

42. The Children Act 1989 gave Children's Guardians a case management role alongside that of the court, although this has become less apparent as the Cafcass managerial approach has disempowered guardians and reduced their authority and availability. "[Guardians] have a proactive role with regard to the conduct of proceedings including timetabling and offering advice to the courts..."[2] Under the Children Act 1989 s41 (10) guardians can take cases back to court and participate in reviews of cases by the court. It would be cost-effective for this role to be re-invigorated. The investigative guardian role is well placed to 'take ownership' of cases alongside the court, and to work proactively to ensure a good outcome for the child, given sufficient authority and time. It is often noted that the guardian recommendation for the child at the end of a case is the same as that of the local authority social worker. This bare fact gives no clue to the amount of work with the child, family members, local authority staff and others, which narrows the issues and hammers out the details of a care plan that meets the child's specific needs. This work leads to a large proportion of agreed final orders and provides a quasi-inquisitorial system.

43. The drawback to the CG role is that it stops when the final order is made, when in some cases a review of the implementation of the detailed care plan would be in the child's interests. Re-involvement of the CG at a later date would offer a more effective protective mechanism for children than the rather toothless IRO service. See also Q21.

Q14. How can we ensure that there is sufficient and appropriate accountability throughout the system?

44. 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 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. We would support the creation of a separate independent Social Work Inspectorate, which needs to fully understand the dual accountability of family court practitioners in a legal context.

45. The Ofsted inspection regime has had a profound impact on the priorities and working of Cafcass. Some practitioners report that they now spend up to 80% of their time in front of a computer screen creating plans and records which duplicate each other, driven by the need to provide Ofsted with data for its inspections, leaving

[2] The Children Act Guidance and Regulations Vol 7, Guardians ad Litem and other court related issues, HMSO (1991)

insufficient time to work with children and families. Quality control and record keeping are extremely important but time spent on these functions must be reduced to a sensible level. The inspections act as a perverse incentive as they take up a disproportionate amount of professional attention and divert practitioners away from direct work with children. Each Ofsted inspection costs Cafcass £150,000 to £230,000 (to inspect the work of some 50 practitioners). There have been several each year. '*The resources used in preparation for and facilitation an Ofsted inspection are estimated at being the equivalent to some 4.000 hours of staff time, comprising a combination of front line, managerial and support staff*'.[3]

46. Pre-Cafcass in some areas trained independent appraisers, drawn from the ranks of senior Guardians, undertook professional appraisal of peers in other areas. This system of peer review is one found in other professions and we would commend it as facilitating high standards of practice.

Q15. *How well do different organizations/partners in the family justice system communicate, share information and work together to resolve cases?*

47. In general there is a high level of co-operation, trust and mutual respect between individual professionals who work in the Family Justice System and that is one of its greatest assets. The problem lies more with the lack of strategic overview and co-ordination between government departments.

Q16. How clear are the different roles and responsibilities of those who are involved in the family justice system (such as the judiciary, legal practitioners, social workers, Cafcass officers, expert witnesses, administrators, IROs, court staff)? Are all these roles necessary? How effectively are these roles fulfilled?

48. Our response deals with the respective roles of Children's Guardian, the Independent Social Worker and the Independent Reviewing Officer.

49. **The Children's Guardian.** A key guiding principle is that in any proceedings in which the child is a party and the interests of the child are potentially in conflict with those of the other parties to the proceedings, whether the local authority in public law proceedings or one or both parents in private law proceedings, then that child should be afforded the protection of independent representation and should not be disadvantaged in relation to the other parties to the proceedings. (Article 6 European Convention on Human Rights incorporated into our domestic legislation by the Human Rights Act 1998) Children's Guardians are appointed under s41 CA 1989 in public law proceedings and under Rule 9.5 Family Proceedings Rules in a small number of private law proceedings.

50. The tandem model of representation in which both the rights and welfare of children are protected by a children's solicitor and a children's guardian respectively

[3] See Hansard 6 April 2010: Column 1337W. This estimate was made during 2009 as part of the work on an issues analysis carried out by PA Consulting and relates to a single Cafcass service area. This answer was given by Dawn Primorolo, DCSF Minister, in answer to a parliamentary question (9307487) put down by Tim Loughton in which he asked the Secretary of State for Children Schools and Families for an estimate of time taken by Cafcass staff to prepare for an Ofsted inspection.

does not duplicate the role of the local authority who are the instigators of public law proceedings and does not constitute an optional extra in the system. It is an essential part of the child protection armoury and is essentially one of the Family Justice Systems key quality control mechanisms, and this is its "value added".

51. It is designed to ensure that the voice of the child is heard in proceedings in (Article 12, United Nations Convention on the Rights of the Child (UNCRC)) and those miscarriages of justice which may have devastating results for the child concerned do not occur. Without that separate and independent representation, children who lack capacity by reason of their immaturity could not be afforded the same access to justice as the other parties. Further, it is against the interests of natural justice for one party to the proceedings (the local authority applicant) to provide all the evidence on behalf of another party to the proceedings (the child).

52. It would be an over simplistic fallacy to assume that because the local authority has a statutory duty to protect the best interest of the child then their view of what is best for the child will always be right and will lead to the best outcomes for the children concerned. That is not a position that is supported by the evidence for the following reasons:

- The poor outcomes for children in public care are a matter of public record and public concern.

- Local authority social workers sign employment contracts which require them to abide by the policies and procedures of that local authority. Therefore they cannot represent the interests of individual children. Resource led placement policies are a prime example of this. The imposition of Government targets for Adoption from Care have an inappropriate influence on decision making.

- The local authority is a best a fragmented parent and its collective responsibility dissipates at the elected member level.

- The 'best interests of the child' is not an absolute concept. It is a subjective definition which may be differentially interpreted in many different ways by many different professionals as any round table discussion by interdisciplinary professionals will reveal.

- Local authority social work decision making is susceptible to public opinion and that can skew their decision making as evidenced by the Cleveland Enquiry and more recently the so called 'Baby P effect'.

- Some of the worst abuses of children in care have concerned abusive regimes that purported to be in the 'best interest of the child'. The pin down regime in Staffordshire is just one example. There are many more.

53. The Children's Guardian role, when given sufficient authority and professional autonomy, provides scope for undertaking proactive independent investigation on behalf of the court. Frequently the CG's discussions with parents and social workers, the other parties to the case, have the effect of narrowing the issues and reaching an agreed way forward that protects the child's interests. In many respects this is a quasi-

inquisitorial role. As Cafcass has sought to limit the work of its frontline practitioners so it has undermined the effectiveness of this important role for children.

54. The question of who provides independent representation of the child's interests in any system must be rigorously addressed. The emphasis on pre-proceedings work ushered in by the PLO is significantly flawed by the lack of provision for the child's voice to be heard. Decisions can be made that suit the adult parties, as happened in Maria Colwell's case.

55. The crucial importance of the guardian's role is that it provides the child with a guardian for the purposes of the proceedings. That is quite a distinct role from that of the local authority social worker and the duties are clearly set out in s41 Children Act 1989 and its accompanying court rules and guidance. Such is the strength of interdisciplinary feeling on this issue that proposal from the previous government to make fundamental changes to the legislative framework was vehemently opposed by an interdisciplinary Alliance of 22 organisations and associations.

56. The guardian has to make a judgement between the potentially conflicting demands of children's rights, children's rescue, the autonomy of the family and the duty of the state.[4] Their role was seen as the 'lynchpin' to successful implementation of the Children Act 1989 and it remains a vital core of the legislative framework which protects children.

57. **Independent social workers** are an under-used resource rather than a luxury. Their use often reduces the need for other more expensive experts and frequently leads to agreement, shortening cases and avoiding contested hearings. Their role is different from that of Cafcass practitioners, who undertake an investigation rather than a detailed social work assessment and have a continuing role in relation to communicating with and representing the child. ISWs are selected for their personal reputation and specialist skills in, for example, risk assessment, learning disability, attachment and family functioning.

58. Suggestions that Children's Guardians and ISWs represent unnecessary duplication of social work resources do not reflect the real world. Time and again our members report children suffering from local authority decision-making, rigid thinking, inadequate safeguarding or poor practice. Children are moved between placements because of LA budget decisions; relatives are given scant assessment in favour of a plan for adoption; family support services are limited and patchy; child and adolescent mental health services are scarce and have long waiting lists.

59. The skilled intervention that independent social workers can bring are also sought in highly complex issues of contact where children may have been alienated from parents, where contact may have broken down and the issue is not simply one of rights but how to move a situation on in a constructive way for a child.

60. 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.

[4] Manual of Practice Guidance for Guardians ad Litem and Reporting Officers. Department of Health. HMSO 1992, p 3.

The decision to cut ISW fees flows from the LSC consultation 'Family Legal Aid Funding From 2010' in December 2008.[5]

61. 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.

62. 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.

63. 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'.*

64. 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.

65. 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.

66. 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

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

justice if ISW evidence is severely restricted.[6] 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.

67. 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.

68. It would appear that social workers, alone of all professionals who provide expert evidence to courts, are not considered by the MoJ 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.

69. 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. We have requested that ISWs are included within the remit of the 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.

70. 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. 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.

71. Even the Cafcass rate for its self-employed children's guardians is some 50% below where it should be to equate with the salaries of employed staff. Nagalro was involved

[6] 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

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 that was finally offered was not based on these principles. For example, Cafcass has never included home office costs in their calculations[7]. Annual increments to fees had not been included by Cafcass for several years

72. 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.

73. **Independent Reviewing Officers. (IRO'S)**There is a lacuna in the Children Act 1989 in that it did not provide the court with powers to review the local authority's implementation of care plans after the final order has been agreed by the court. This remains a problem and is an area where children's interests are not well served. The Independent Reviewing Officer (IRO) service was set up as an alternative to the starred care plan - that is a system in which the judge orders that 'starred cases' should be returned to court within an agreed period to ensure that the agreed plan was being carried out within the agreed timetable for the child. Unfortunately the service lacks true independence, because it is located within the local authority. Also, as IROs do not have ready access to legal advice and the courts they are effectively toothless and cannot challenge local authorities on behalf of children. An alternative approach would be to revert to the preferred option of starred care plans and for courts to ask the Children's Guardian with experience and knowledge of the case and the intentions of the court, to follow up the case in the agreed time frame and advise the court of any breach of the care plan.

FINANCE AND FUNDING

Q17. Where do you think there is scope to make efficiency savings within the family justice system?

74. The Family Justice system needs all the resources it has at its disposal and we are concerned particularly about the limitations to the Family Legal Aid funding arrangements due to be introduced from October 2010 and currently the subject of Judicial Review by the Law Society. The recent 'cull' of nearly half the countries' family law practitioners has been made using very dubious criteria. Many highly skilled and respected practitioners face exclusion from a field of work to which they continue to make an invaluable contribution. The strength of the tandem model will be significantly undermined. This haemorrhage of experience will be an incalculable loss to children, vulnerable parents and the courts. It will impose great additional pressures on a system which needs all its skilled and experienced practitioners.

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

75. The family court services provided by Cafcass also need all the resources it has. However, the budget could be deployed much more effectively than is currently the case by giving a far greater proportion of the budget to professional front line staff who are constantly struggling to reduce backlogs and delays.

76. In 1998, before the establishment of Cafcass, the combined annual cost of the guardian service, the divorce court welfare service and the Official Solicitors High Court Children's cases was £66.5 million compared with Cafcass's present 2009/10 budget of £138 million. The huge discrepancy in costs cannot be explained by increased demand. The number of public law cases requiring a Children's Guardian was 8,900 in 1998, in 2009/10 it was 8,684. In 1997, the number of private law welfare reports was 36,100, in 2009/10 the number of private law requests received by Cafcass was 38,449.[8]

Q18. What improvements to funding arrangements and mechanisms could be made?

77. The funding splits between DCSF now DfE and the MOJ have been particularly unhelpful and counterproductive and has led to internecine funding wars between government departments. The Parliamentary Justice Select Committee reporting in July 2009 stated:
'*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*'[9].

78. Far from the situation improving since the Select Committee's report, the battles are intensifying as pressure increases to reduce the family legal aid budget. This is impacting particularly negatively on the provision of social work services to the family courts as DfE and its Non Departmental Public Body (NDPB) Cafcass and the MOJ and its Executive Agency, the Legal Services Commission (LSC) both attempt to limit their services and funding responsibilities in ways which are increasingly at odds with both the primary legislation and the Government's wider safeguarding agenda for children.

WORKFORCE DEVELOPMENT

Q19. Please tell us about your role in the family justice system. What value does this add to the family justice system?

79. The background to the decision to introduce statutory separate representation of children into public law proceedings is well documented.[10] It followed the death of and subsequent enquiry into the death of Maria Colwell in 1973 at the age of seven. As a baby Maria was removed from her mother and made the subject of a care order following concerns about neglect; she was placed with relatives for several years but

[8] *Support services in Family Proceedings: Future organization of Court Welfare Services* DOH, Home Office and LCD joint consultation paper (1998). Chapter 1 Introduction Paras. 5.11.35, para 1.14 and 1.25.
[9] Ref. House of Commons Justice Committee. Family Legal Aid Reforms. Eighth report of 2008/9. Conclusions and Recommendations. Para.14 p32
[10] See White Paper The *Law on Child Care and Family Services* Cm 62 (1987).

returned to her mother following revocation of the care order which was unopposed by the local authority, Maria was not represented at the hearing, and the court thus had no independent way of knowing whether her return to her mother's care was in Maria's best interests.

80. Shortly after Maria's return she was beaten to death by her step-father. Along with other child deaths, Maria's case demonstrated that in disputes between parents and the state, the child's perspective – and safety – could be overlooked because the child was not represented. Courts had no way of ascertaining children's interests and wishes independently of the view of parents and social workers.[11]

81. **The benefits of separate welfare and legal representation.** The Children Act 1975 and the Children Act 1989 and Rules closed that gap on behalf of the child. Sec 41 (1) CA 1989 instructs the court to appoint a guardian for the child and Rule 11A of the Family Proceedings Rules empowers the guardian to appoint a solicitor for the child. Together this specialist welfare and legal representation (called the 'tandem model') gives children an independent voice in the proceedings and provides a balanced operational synthesis of children's rights and children's welfare.

82. The tandem model also provides judges with a mechanism to investigate the work of the local authority under Part III of the Act (duty of the local authority to provide support for children and families prior to bringing proceedings) and for making welfare enquiries and obtaining advice about what is best for the child, what expert evidence might be necessary (e.g. with regard to meeting the threshold for a court order), the pros and cons of any court order for the child along with an assessment of any placement plan proposed by a local authority. It also provides a channel to communicate the child's wishes and feelings to the judge, independently of the views of both parents and the local authority.

Q20. What qualifications and experience should be required for the different roles of those who work in the family justice system? What should be included in initial training and continuous professional development?

83. Cafcass practitioners should have a minimum of five years experience in child protection and family placement social work to be able to sustain any credibility as the court's 'child care experts', a view expressed by the President of the Family Division in a judgment. Cafcass has recently been appointing numerous agency workers some with very limited, if any, statutory child care and family court experience. The Cafcass Workforce Development Policy (2010) proposes to take newly-qualified social workers straight from courses, and give them one year's placement in a LA setting. How such practitioners will be able to sustain any credibility when acting as expert witnesses in court and providing a critique of local authority child care policy and practice is hard to fathom. Cafcass has an increasing number of Family Support Workers who may have skills in work with children but are not qualified in social work. They are used to ascertain children's wishes and feelings, even in highly complex cases. Splitting this sensitive, core task off from the work of the qualified social work practitioner is professionally dubious and fraught with difficulties.

[11] See the Field Fisher report, the report of the Committee of Enquiry into the care and supervision provided in relation to Maria Colwell. (1974)

84. Much could be achieved in improving the efficiency of the family justice system through a concerted programme of interdisciplinary training. Before the implementation of the Children Act 1989, 55,000 family justice professionals received intensive training on the new provisions. That was now nearly twenty years ago and a similar initiative could pay substantial dividends in improving the efficiency and cost effectiveness of the system. We recommend that training should be interdisciplinary, and focused on a clear understanding of the law and the specialist skills necessary for all those professionals who work within the system.

85. A curriculum framework for interdisciplinary continuing professional development was put together in about 2005 under the aegis of Professors Douglas Hooper, Mervyn Murch and June Thoburn, and remains a useful resource.[12]

86. Nagalro has developed a range of training courses which have a high reputation, and which often use the tandem model of joint legal and social work input.

A MORE USER FRIENDLY AND CHILD FOCUSED SYSTEM

Q22. How could the system be improved to ensure it meets the needs of users and secures positive outcomes for children?

87. Nagalro hopes that the present review will prove a valuable catalyst for change. We believe that it is now is the time to look at alternative models for the future delivery of family court welfare services currently provided by Cafcass. We believe that the model we are proposing would be both more effective in terms of outcomes for the children concerned and cost effective in terms of value for money. It would also be compatible with government thinking in relation to the future commissioning of services currently commissioned by Primary Care Trusts and with BASW's proposals for the future commissioning of social work services. (An explanatory diagram will forms part of our submission)

88. In our model, Cafcass the NDBP would be disbanded to be replaced by a Family Justice Commissioning Board who would be the budget holding body responsible for delivering the present family court welfare services currently delivered by Cafcass through a network of 39 Child Representation Units which would be co-terminous with the 39 Care Centres in England and Wales. The advantages of the new system would be that the top heavy central administrative layers would be greatly pruned and simplified and services would be commissioned and delivered locally to meet the needs of the local courts. The Units would make maximum use of a mixed economy workforce geared to respond flexibly to local need.

89. The new structure would facilitate interdisciplinary working regional and local level with strong links to the local family justice councils who could act as local representative bodies to inform service delivery.

Q23. How can we ensure sufficient protection is afforded to vulnerable adults through the system?

[12] http://www.family-justice-council.org.uk/paper_continuing_profdev.htm

90. Delays in the Official Solicitor's availability to represent vulnerable parents are causing serious delays in courts being able to finalise otherwise straightforward decisions for children. In a recent case involving a new-born child a wait of at least seven months for the OS just to be appointed is likely, even before they undertake any work. This means considerable further unavoidable delay for essential local authority steps, filing of evidence and fixing a court hearing.

91. A greater flexibility in commissioning ISWs and other experts in specific fields would enable a speedier service for children, vulnerable adults and the courts.

Q24. In what types of cases is it important to hear the voice of the child to assist with decision making? How should the child's voice be heard in the family justice system?

92. The UK Government has a commitment under Article 12 UNCRC to ensure that the voice of the child is heard in all decision making fora both in and out and court. Article 12 requires not only that the child is consulted but that they are also afforded a representative to ensure that their views and interests are incorporated into the decision making.

93. Although the Children Act 1989 brought together public and private law proceedings in one unifying piece of legislation, and provided a voice for children in public law proceedings through the tandem model, it failed to provide a unified approach to the representation of children and their interests and this has attracted criticism from the UN Committee.

94. **The Voice of the Child in Private Law Proceedings.** Arrangements for hearing the voice of the child when parents are divorcing or separating have been predicated around the erroneous assumption that 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.

95. One question which needs to be urgently addressed is how the voice of the child is to be heard in mediation. Mediators, by the very nature of their role, cannot represent the interests of the child although of course they will encourage the parents to consider the impact of any proposed arrangements on them. However, once the parental agreement is made, children may be locked into unsuitable or distressing arrangements which may mean they lose contact with people who are important to them. Processes of extended dispute resolution including direct consultation with children are being developed by both CAFCASS as part of the President's Private Law Programme and by Mediation services. However, these initiatives are developing separately and there have been few co-ordinated approaches to the problem.

96. 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.

97. 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 in complex, long running and intractable residence and contact disputes the amplification of the voice of the child in proceedings (via the use of Rule 9.5 Family Proceedings Rules 1996) can break up the adversarial dyad between parents, put an end to repeated court proceedings and act as a catalyst for change and the review of previously entrenched attitudes and opinions.

98. 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.

99. 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.

Q25. How effective are Cafcass and CAFCASS Cymru? What should their role and remit be in the future?

Please note that our comments in this section relate to Cafcass and not Cafcass Cymru.

100. 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. In January this year Nagalro published its members survey of Cafcass Public Law Work '*Time for Children*' which is included as part of our submission. The survey results made worrying and dismal reading. One of the most significant findings was that over 80% of those surveyed said that they were being instructed to prioritise tasks other than the work done with and for the child. In the intervening months the experience of our members is that matters have deteriorated further.

101. 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 from an Interdisciplinary Alliance for Children composed of a compelling cross section of family justice professionals.[13]

102. Our view is that that the family court services provided by Cafcass have now dropped to unacceptably low levels and represent poor quality service to children and poor value for money. There is now a very fine line between the very limited 'proportionate' service now being provided by CAFCASS and potentially dangerous practice.

103. 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.

104. The current operational 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.

105. Nagalro is gravely concerned that the extension of the President of the Family Division's Interim Guidance for 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 risk putting our members in breach of both their statutory responsibilities and their professional ethics.

106. **Basic failures in CAFCASS's service delivery include**

(1) Failure to understand its core function and the statutory framework and duties as set out in the Children Act 1989 and accompanying court rules resulting in:

- A move to amend a key section of the Children Act 1989 (s 41), which was designed to ensure that vulnerable children's voices are heard.[14]
- Confusion between general safeguarding functions and a blurring of the specific statutory functions in relation to s7 reporting and s41 representation of the child's interests before the court.
- A lack of understanding of the importance of independent representation for children as a key quality assurance mechanism.

[13] The sixteen organisations included such wide ranging legal, medical and social work professionals as the Family Law Bar Association, the British Agencies for Adoption and Fostering (BAAF),the British Association of Social Workers and the Royal College of Paediatrics and Child Health

[14] The Children, Schools and Families Act 2009 originally included a provision to amend s41 CA 1989. This would have meant that Cafcass the organisation was appointed as Children's guardian rather than a named practitioner who could provide the continuity of appointment and individual professional oversight needed to keep the child safe. The proposed amendment was opposed by an alliance of 22 interdisciplinary organisations.

(2) Failure to achieve an appropriate framework of evaluation with Ofsted, i.e. one which reflects the statutory duties carried out by the service.
(3) Failure to give front line staff clear and consistent operational guidance in key areas of policy and practice.
(4) Failure to put in place an appropriate professional model of training, consultation and support, clearly linked to evidence based practice, regular appraisal and the continuing professional development of front line staff.
(5) Failure to recognise that it employs a workforce of professionals with the result that it has adopted an unsuitable model for managing the service, resulting in

- Excessive caseloads
- Interference by managers in professional judgements
- Delay in cases
- Collapsing morale
- Lowering recruitment standards so that increasingly inexperienced frontline staff are appointed

(6) Failure to prioritise front-line services, resulting in:

- Rising spend on central office.
- Unquantifiable spend on staff that have face to face contact with children as opposed to managers and support staff.
- A gradual deterioration over the past seven years of its capacity to absorb demand for its services.
- Poor workforce management and support and failure to make the most effective use of the professional resources available particularly the self employed[15].
- Extensive backlogs, delays and hundreds of children waiting.

(7) Failure to avoid excessive bureaucratisation of the service.

107. It is a sad indictment of Cafcass that it has not just failed to provide the services to vulnerable children that is its remit but that under its current CEO it has actively sought to dismantle the protective statutory framework of children's rights that has been built up over the past twenty plus years. Cafcass presents a dismal picture of waste and inefficiency, where service standards have deteriorated as organizational costs have grown dramatically.

108. Nagalro recommends that Cafcass is effectively dismantled, with its huge bureaucracy being significantly reduced to the minimum necessary to provide national consistency. Its bullying, oppressive management culture has no place in an expert service. Any national office must be staffed by those with understanding of and experience in the statutory roles. It should be the servant of local interdisciplinary court centres, not the master.

109. There needs to be a drive to attract back the skilled people, both employed and self-employed, who have been driven away by Cafcass' oppressive culture and relentless undermining of professional judgment. These are senior professionals who find the managerialist, paper-driven culture in local authorities and Cafcass prevents them from undertaking productive work with families.

[15] In 2001 when Cafcass was established there were 150 employed children guardians and 650 who were self employed. This ratio has now more than reversed throwing doubts on Cafcass's commitment to a mixed economy workforce and whether this constitutes the best deployment of all the professional resources available.

110. Cafcass works in spite of the large, expensive bureaucracy because of its frontline practitioners – FCAs, SECs and administrators. However, the quality of work that its practitioners are able to provide is inexorably declining as workloads soar and staff who lack understanding of the role are recruited from local authorities. There has also been an increasing reliance on expensive Agency staff.

111. Examples of management-led bad practice include preventing practitioners seeing children and parents in their homes, encouraging the use of telephone interviews using proforma scripts, prioritizing paperwork over professional tasks and attending court, and forcing caseload levels up so that a proper standard of investigation is virtually impossible.

112. Our proposal for Children's Representation Units attached to local Care Centres would enable better interdisciplinary working across all disciplines, a range of skilled assessment and intervention services, practitioners who have the scope to exercise their professional judgment, with services being planned in a coordinated way to meet local needs, within the ambit of court, although courts would not need to be directly involved in each case. Strategically deployed, the resources of skilled professionals would lead to a much more effective and cost effective family justice system.

Q26. What has guided your response to the questions posed above, e.g. personal experience, feedback from the public, specific research or evidence?

113. The fact that our members work in all areas of England and Wales gives us a bird's eye view of the workings of the family justice system and the factors, which militate for and against positive outcomes for children and families. In addition, our views are informed by relevant research, the observed outcomes for children and many years accumulated experience of front line child protection and family court work.

Q28. Do you know of any good and innovative practice in the UK that the Review Panel should consider? What wider services could be tapped into (especially in the children's sector) to support the family justice system?

114. The National Youth Advocacy Service (NYAS) is unique in providing a wide range of socio-legal services to children in both public and private law proceedings and has consistently pioneered the developed of services of information, consultation, support and representation to children and young people aged 0-25 living in all parts of England and Wales.

Q30. What question would you have liked us to ask that we haven't posed and what would your response be?

115. **Our question would be:** *What is your view of recent changes introduced by the Children Schools and Families Act 2010 to allow more transparency and openness in Family Courts?*

116. Nagalro is committed to 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.

117. 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. Our concerns were 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 no-body seems very happy and which may be even more wasteful of scant resources as lawyers attempt to clarify the new law.

118. 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, or to undertake appropriate impact assessments of the effect of the new provisions on the children concerned. Recent research evidence on the views of children, commissioned by the Office of Children's Commissioner, showed that children fear the identification of themselves and their families.[16]

119. The question to be answered in relation to this legislation is 'who benefits?' From the point of view of the hundreds of thousands of children who have their future lives determined by the family courts, 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 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.

Judith Timms
Alison Paddle
For Nagalro Council
30 September 2010

NAGALRO PO BOX 264 ESHER SURREY KT10 OWA
Tel: 01372 818504 Fax: 01372 818505 nagalro@globalnet.co.uk www.nagalro.com

[16] The Views of Children and Young People Regarding Media Access to Family Courts in the Context of Article 12 of the UNCRC. Julia Brophy for the Office of the Children's Commissioner. 2010