

NAGALRO:

Response to LSC consultation Civil Bid Rounds for 2010 contracts

NAGALRO is the professional association for over 600 Children's Guardians, Family Court Advisers and Independent Social Workers. Many of our members are appointed to provide expert reports in Family Courts and appear in family cases, alongside medical experts. A proportion of them also work as employed or self-employed practitioners for CAFCASS appointed in public and private law family cases, as caseworkers for the National Youth Advocacy Service, and act as independent social work experts in public and in private law matters. They have substantial experience in safeguarding children's interests in family proceedings, especially in those cases where children are parties.

NAGALRO does not contract with the LSC to provide services to clients but most of our members work with solicitors who do, and the proposed changes would have a significant effect on the way in which our members are able to carry out their work. One focus of our members' work is on ensuring that children whether in public or private family law have access to justice. Many members are actively involved in representing children in court proceedings, either in public law or as 9.5 guardians for Cafcass or for NYAS.

There are a number of features of the consultation which give rise to concerns on behalf of children. The most significant one from NAGALRO's perspective is the proposals to move to providers who are able to offer the full range of services to their clients. This change could be of benefit to those clients who are likely to need a range of services. However NAGALRO is very concerned that children are included in this group of clients.

In public law applications and in some private law matters the child becomes a party and, as such, needs and is entitled to legal representation. The decision to be part of these proceedings is very rarely the child's but is a consequence of the situation they find themselves in. It is essential that in these circumstances the child has access to representation which is of a high quality, and which has the skills and expertise to respond to the special needs of this client group.

The proposals outlined in the consultation would have the effect of reducing the availability of such legal advice to children. NAGALRO is particularly concerned about the impact on NYAS which is a national organisation and whose client base is entirely children and young people. It appears that NYAS would no longer be able to represent children in private law 9.5 applications. NAGALRO has also identified that the proposals would lead to the demise of some sole solicitor practices where the solicitor has built up an expertise in representing children but cannot offer all the services which the LSC would require.

In practice children have a very different relationship with their legal representatives from that of adult clients. It is more difficult for them to access justice and organisations such as NYAS have developed skills and expertise in reaching out to these children in a child-focused way. Children do not need to visit a solicitor's office, and in many cases it is preferable for them not to do so. NYAS and other solicitors, working with caseworkers and guardians have developed ways of seeing children in situations which are child-friendly and cost effective. In practice children have face-to-face with their solicitor much less frequently than adult clients.

The NSPCC has sponsored two pieces of research concerning children and young people's involvement in family court proceedings – “Your Shout” and “Your Shout Too”. The Rt Honourable Sir Mark Potter in his foreword to the Your Shout Too¹ said “*The findings in this report lend emphasis to the need for continuing efforts by all involved in the process, at whatever stage, to find appropriate and flexible ways of ensuring that children of all ages have a say in decisions regarding their future. I welcome this excellent report, and would urge all involved with children’s cases in private law proceedings to take note of its messages in order to help shape policy and practice for the future.*”

This is a message which the LSC should take into account. There would be very serious consequences for children if the changes outlined in this consultation are implemented. Such changes should not be a result of a consultation from one arm of government which has a limited, though understandably so, remit. Such changes should only take place once there has been a full consideration by all those involved in providing services for children, to include in particular the DCSF and the Ministry for Justice – and then only if safeguards are put in place to meet the needs of these children.

Given the major impact which the changes would have on NYAS’ situation and therefore the life choices for many vulnerable children there is a need for a comprehensive look at the ways in which these needs of these children’s can be met. It would be better if all those involved in the future of these children – the Ministry of Justice, the DCSF and the Treasury – looked at the situation as a whole to make sure that children do not fall through the net.

Children along with all other parties should have the right to ‘equality of arms’ as required by Article 6 of the European Convention on Human Rights which is incorporated into our domestic law by the Human Rights Act 1998. It is not acceptable for children’s access to justice to be compromised, particularly if this is a consequence of a bureaucratic process which does not take into account the full picture.

NAGALRO has seen the response to the consultation from NYAS and fully supports the views and concerns expressed by NYAS. NYAS has substantial experience of helping children engage with the courts and other organisations and has developed imaginative ways of doing this. In particular NAGALRO agrees that NYAS should be considered to be a niche/specialist provider for children.

The consultation states in par 3.22 that “One of the overarching objectives of these proposals is to help ensure that CLS funding is distributed within the budget available ...” NAGALRO fully accepts the need to keep within budgeting limits, and to be realistic about the services that can be offered. However it is of crucial importance when looking at how to reduce costs that the full impact of the changes is taken into account. It is not acceptable for the costs saved to be transferred to another government organisation, or for the immediate savings to result in increased expenditure in other areas. The cost to the children in terms of their ability in the future to function adequately as adults in the community also needs to be taken into account.

In considering the costs involved care must be taken to ensure that the savings are real. The expertise that is offered by NYAS in complex 9.5 cases often leads to a resolution of the case in a way which finalises the matter with no further return to court. This contrasts with those

¹Timms J, Bailey S and Thoburn J and (2007) Your Shout Too NSPCC Policy and Practice Series

applications which are dealt with quickly but where a child's case returns to court time and again. On a case by case analysis the costs per child are not so easy to identify, but the full picture needs to be considered to be sure that any savings are real ones.

There is a protocol between NYAS and Cafcass relating to 9.5 cases which recognises that there are situations when a child needs representation outside Cafcass. If NYAS is unable to continue to represent them, children in these situations would have nowhere else to go for their representation. It is clear that at the present time Cafcass is struggling to provide a service for all those children who are currently referred to them. A change which reduced NYAS' ability to provide a service to some children at a time when Cafcass is stretched would only further limit children's access to justice.

A different aspect of the consultation which has relevance for many of our members is the question of experts' costs. NAGALRO members would want reassurance that all the work undertaken prior to a hearing would be paid for, but recognise that the time released by a cancellation of a court hearing can usually be used for other work.

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