

Tim Loughton MP  
Parliamentary Under-Secretary of State for Children and Families  
Department of Education  
Sanctuary Buildings  
Great Smith Street  
London  
SW1P 3BT

11 November 2011

Dear Mr Loughton,

**Re: Independent Social Work Expertise**

We are writing to draw your urgent attention to the harmful impact the rapid loss of independent social work (ISW) experts in the family court arena is having on vulnerable children. It is estimated that there are between 4,000 and 5,000 Independent Social Workers (ISWs) currently practising in England and Wales. Between 2,500 and 3,000 of them work in child protection and yet their position within the child protection system and their contribution to the work of the family courts has been outside the remit of both the Munro and the Family Justice Reviews. Consequently, the considerable professional resource offered by this large sector of highly qualified and experienced child protection practitioners, whose expertise is so badly needed, has been largely overlooked in discussions in relation to practice and policy development. Unfortunately, as a result of an accumulation of dis-incentivising factors there has been a steady haemorrhage of some of the best independent expert social workers who are being systematically forced out of the system at a time when they are most needed. This cannot be in the interests of vulnerable children and it appears out of tune with the government's commitment both to speeding up decision making processes and to retaining experienced social workers in front line child protection services.

This is all the more counterproductive at a time when the recommendations of the Social Work Task Force and the Munro Review have highlighted the need to improve both the career progression for front line social workers and the scope for social workers to exercise much greater autonomy in the proper exercise of their professional judgement. The need is all the more pressing as family courts continue to operate under enormous pressures, with unacceptably long delays for the children and families concerned.

This situation is of serious concern since, until this year, it has frequently been the holistic ISW expert's analysis that courts have turned to first when reaching decisions in complex family cases. The specific expertise that ISWs bring relates to their assessment of the capacity of parents and the risks to children. These are key issues for the judge to determine. It is the ISWs particular skills in these areas which enable them to put other expert's reports within a parenting context for the court.

One key problem is that ISW expert evidence straddles the socio-legal interface between the DfE and the MoJ, with neither department taking responsibility for the budget or the wider practice and policy implications. Instead, the financial agenda has driven policy, with scant consideration of the implications for either the children involved or the lack of joined

up thinking. The Justice Select Committee was highly critical of the results on the funding feud and lack of cross departmental co-ordination in their report on Family Legal Aid Reform published 7 July 2009.

The net result has been that the messages from both the DfE and the MoJ have been immensely discouraging and dismissive of the value of highly trained and experienced welfare professionals. Many of the country's most experienced and highly regarded child protection social work experts are leaving this field when they could be proactively involved in mentoring and helping to 'grow' the next generation. Practitioners feel that the considerable ISW contribution to the child protection system is not only overlooked and undervalued but is being actively discouraged and disparaged. We hope that this is not the intention and have attached a briefing paper which we hope will be helpful.

We would like to meet you as a matter of urgency in order to clarify the government's thinking on these crucial issues and to explore the place of the ISW expert witness in child protection within the family courts and the wider child protection system.

Yours sincerely



Ann Haigh, Chair, Nagalro, The Professional Association for Children's Guardians, Family Court Advisers and Independent Social Workers



Mark Willis, Chair, Confederation of Social Work Agencies



Hilton Dawson, CEO, British Association of Social Workers (BASW)

cc:

- Rt Hon. Michael Gove MP, Secretary of State for Education
- Jonathan Djanogly MP, Parliamentary Under Secretary of State, Ministry of Justice
- Sarah Teather MP, Minister of State for Children and Families, Department for Education
- Rt Hon Sir Nicolas Wall, President of the Family Division
- Carolyn Downs, CEO Legal Services Commission
- Sir Bill Callaghan Chair Legal Services Commission
- Annabel Burns DfE
- Eleanor Druker LSC

**THE CONTRIBUTION OF INDEPENDENT SOCIAL WORK EXPERTISE TO THE CHILD PROTECTION AND FAMILY JUSTICE SYSTEMS.**

**The importance of Independent Social Work expert witness evidence.**

There is confusion between independent social workers who may work in a variety of settings and include locum and agency social workers and the ISW expert witnesses who give evidence in the family courts who have very high levels of expertise in non-clinical child care matters. They are able to conduct a holistic assessment of the child's situation and the options available to the court, as well as assessing the parent's ability to care for the child and the likely risks involved in different care plans.

Research demonstrates that

*'Expert knowledge of child development, attachment and the impact of abuse and neglect is fundamental to the work of all those responsible for safeguarding children'*<sup>1</sup>. ISW experts are very often able to expedite proceedings by providing the courts with the information and assessments they need to make good evidence-based decisions. Part of their 'value added' is that they are also skilled in negotiation and family mediation and therefore provide a service that is quite distinct from other parts of the child protection and family justice systems. Their input can bring about speedier and more amicable resolutions to otherwise protracted, distressing and expensive hearings. Most importantly, by taking an overview of what is happening to a child within the family justice system itself, they can expedite early placement decisions and adoptions from care if that is in the best interests of the child. In most cases in which ISW experts are instructed, they are able to complete their assessment reports for the court within eight weeks of receiving their instructions from the parties.

In spite of the above, ISW experts feel that they are being systematically excluded from the system and have consistently asked the government to carry out an urgent review of the impact on children and families. A resolution to this effect was passed unanimously at the Nagalro AGM held on 3 October 2011. The resolution is attached at Appendix 1.

**Why is Independent Social Work cost-efficient?**

Although there is no objective evidence base regarding the role of ISWs in court proceedings, experience is strongly suggestive that they provide significant additional value to the process. There are many examples of ISWs contributing to a significant shift in the thinking and direction of a case such as identification of additional risks to a child - thus affording them greater protection or conversely moving parents or carers to a position whereby they can accept and address the concerns of the local authority. This can result in shorter proceedings or even move cases away from the need for care applications in the first place. This reduces delay in decision making as well as costs to the public purse. It is the ISW expert who puts the contribution of other disciplines, psychological and medical, into perspective for the court.

In the absence of any objective evidence base, research, or child centred impact assessment, the LSC has determined that independent social work experts should be paid £30-33 per hour. This is 75% less per hour than a psychologist (£117), 70% less than a GP (£99), and 63% less than a nurse (£83). In fact they are the lowest paid by some way of all the expert witnesses who assist the family courts. Even process servers who simply deliver court papers receive a higher hourly rate (£32). For no sound reason, social

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<sup>1</sup> Davies C and Ward H, (2012) Safeguarding Children Across Services: Messages from Research.p91

workers were excluded by the MoJ from remit of the working group on experts' fees and are conspicuous by their absence. (See the schedule of LSC expert witness fees from 3 October 2011 attached at Appendix 2). Typically ISW experts will charge between £50 - £60 per hour for work such as specialist risk and parenting assessments and interventions with children and families. There are no additional costs to commissioners as all ISW experts are self-employed, either working as sole traders or with associate status of an expert agency. Often the total cost of an ISW expert assessment at this rate is lower than that of an inexperienced ISW who with apparent MoJ knowledge, is charging £33 per hour and yet needs more hours to complete the work.

An alarming picture emerges when the loss of experienced social work experts is put alongside the widespread increase in the use of agency workers, recently-qualified social workers, and even unqualified support staff to fill the gaps in the child-protection workforce. Less experienced workers take far longer to do the work; they cost more sometimes because their work has to be redone, since the breadth and quality of their knowledge can be less. More efficient deployment of ISW experts makes economic sense as well as helping to fill the skills gap in social work. Retaining them in practice creates a virtuous circle: providing a cost saving to the public purse while providing them with greater job satisfaction and the chance to practice creatively and to high standards.

Using agency workers in local authorities and Cafcass is a very expensive option:

- Current average cost for recruitment of a locum qualified social worker in England is circa £65,000 pa.
- Average cost of an agency worker is on average £14,400 higher than the recruitment of a newly qualified worker (Sefton Council research 2010). In London the figures are higher.
- In the last financial year, spending on agency workers was in excess of 50 million pounds. (Community Care September 2011). Average cost of a Cafcass agency worker is reported as £38.93 per hour.<sup>2</sup> This equates to an average salary of circa £63,522. However, the true cost is likely to be higher as this figure excludes on-costs incurred by Cafcass as well as fees to the agency. These figures are not disclosed.
- Many ISW experts also work as self-employed contractors (SECs) for Cafcass and there is considerable cross over in the workforce. Cafcass pays SECs, who are freelance £30 an hour (£33 in London). This figure makes no allowance for operating costs that Cafcass meets for its employees. eg national insurance, pension, office costs, IT equipment, training and travel costs etc which SECs must pay for themselves. To earn the equivalent of an employed practitioner, a self-employed practitioner would need an hourly rate of around £45 an hour.
- In choosing to set rates for expert ISWs in family proceedings at the Cafcass SEC rate, the LSC is remunerating these highly skilled workers very significantly below the level that their expertise attracts elsewhere in the sector.
- There is compelling evidence of the effectiveness and cost effectiveness of using SECs rather than agency workers and Cafcass continues to assert its commitment to the use of a mixed economy workforce. However, the Cafcass figures for the quarter from 1 April to 30 June 2011 tell a different story and show that £2,909,278 (11.9% of its total spend on salaries) was spent on agency workers, whilst £1,157,853 (4.7%) was spent on self-employed staff.

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<sup>2</sup>Evidence to Justice Select Committee on the Operation of the Family Courts ( 14 July 2011) Evidence of Cafcass para 177

- The heavy use of agency workers by Cafcass continues in spite of the concerns expressed by the Justice Select Committee about *'Cafcass's continued aversion to the use of self-employed guardians, especially when the amount it spends on agency social workers has more than doubled in a year. Self-employed guardians are cheaper than agency staff and no more expensive than directly employed staff. At the same time they offer greater flexibility and their expertise is valued by the judiciary. Cafcass should be making considerably greater use of self-employed staff especially in the geographical areas where it has difficulties recruiting.'*<sup>3</sup>
- Cafcass has not disclosed the average post qualifying experience of agency workers for is likely that these workers have significantly less experience than self-employed practitioners.<sup>4</sup> Further, *'there used to be many more of them working within Cafcass before the reorganisation in 2003 who did a rather good job. Part of the problems now with Cafcass is the haemorrhaging of some of those staff going back 10 years'*<sup>5</sup>. That haemorrhaging continues unchecked.

### **The importance of independent assessment**

One factor which has been consistently overlooked in the debate about ISWs is why, in so many cases, they succeed in engaging successfully with neglecting or abusive parents where previously the local authority has failed to gain co-operation. We would assert that this relates not only to the experience and skills of the ISW expert, as practitioners they are at the top of their profession, but also has much to do with the dynamic that independence brings to the process. Frequently local authorities have been working with families for months or even years and entrenched attitudes take hold on both sides. This is both understandable and unavoidable. Conversely an ISW expert has the advantage of both independence and objectivity which is recognised and accepted by families as well as the courts as being enormously helpful in moving the case forward. Recent research by Judith Masson has highlighted the importance of perceived independence to families and found that the independence of assessments is a key factor in the determination of cases. *'Assessments provide an independent source of information, which parents may accept when they would dismiss the same information emanating from the local authority'*<sup>6</sup>

Independence is therefore, a powerful agent for change and review and its importance should not be overlooked. Skilled and experienced social workers are freed from bureaucracy and are able to practice creatively in partnership with parents and their families. Far from causing delay or duplication this process becomes empowering and creates the best possible opportunity for families to demonstrate, one way or another, whether they can care safely for the child at the centre of proceedings. The ISW's expert assessment can provide the Court with timely, realistic and achievable solutions.

ISW experts are highly experienced and skilled social work practitioners who bring specific and extensive knowledge in assessing risks to children and evaluating adults' capacity to parent them appropriately.

Now an established part of the social work landscape, independent practice frees expert practitioners to use their professional skills to best effect outside the straitjacket of excessive bureaucracy. It offers experienced social workers opportunities to remain in

<sup>3</sup> Ibid. Committee Conclusions and Recommendations para 26 and see also para 180

<sup>4</sup> Ibid. Evidence of Mrs Justice Pauffley para 176

<sup>5</sup> Ibid. Evidence of Tim Loughton MP Parliamentary Under-Secretary of State. Department for Education. Para 179

<sup>6</sup> The use of experts in child care proceedings in England and Wales: benefits, costs and controls. Judith Masson 2010. Pages 11 and 17

face-to-face practice, an aim identified in the Conservative Party report *No More Blame Game* (2007). It is cost effective to keep trained social workers in the profession for longer. Research shows that it costs two or three times as much to train social workers compared to health professionals and yet social workers only remain in practice on average for 7.7 years whilst nurses are in practice for 16 years and doctors for 25.<sup>7</sup>

It is our view that this is not the time to dispense with the services of such a valuable resource in complex care proceedings. Yet this is exactly what is happening.

### **Survey of Nagalro ISW members**

In May 2011 Nagalro carried out a survey of ISW members. Data was received from 157 ISWs of whom the average post social work qualification experience was 27 years, with a minimum of 7 years post qualifying experience. Similarly, each ISW had on average 21 years of experience of family court work. The average post qualifying experience of ISWs undertaking court work is in the region of 17-27 years.<sup>8</sup> BASW and CISW-UK report similar levels of experience amongst their membership.

The cut in fees brought in by LSC is driving many of the most experienced and well respected ISW experts away from this work even though the rates charged by ISWs compare very favourably with those of other experts. ISWs represent a considerable return on the money invested in their training and demonstrate the loyalty and commitment which this sector has consistently brought to its work.

### **Research on the contribution of ISW expert witnesses to the work of the Family Courts**

There is a remarkable lack of research data on the contribution social work expert witnesses make to the work of the family courts. The Family Justice Review reporting on 2 November 2011 has recommended that ISW reports are only commissioned when they provide new evidence, but in fact there is no research data which analyses the content of ISW reports. This is all the more surprising when the MoJ's recent court case file study found that ISWs were commissioned in a third of cases, an increase from a previous study<sup>9</sup>.

Both the DfE and the MoJ have acknowledged the lack of hard data on which to assess the contribution and impact of ISW expert witness evidence and the Justice Select Committee. The Justice Select Committee concluded as a result of its enquiries that *'the late commissioning of research, which should have been undertaken before formulating proposals, suggests an attempt to find support for conclusions already reached, rather than a genuinely evidence-based approach to reform.'*<sup>10</sup>

Dr Julia Brophy, from the University of Oxford, is currently carrying out research into the contribution of ISW expert witnesses in the family courts and the findings should be available early next year.

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<sup>7</sup> Curtis, L., Moriarty, J., and Netten, A. *The Costs of Qualifying a Social Worker Br J Soc Work (2011)*

<sup>8</sup> Nagalro members survey (2011) BASW and CISWA-UK information

<sup>9</sup> Cassidy, D and Davey, S (2011),

Masson et al. *Care profiling study (2008) Ministry of Justice*

<sup>10</sup> Justice Select Committee-Report on Legal Aid Reform 7 July 2009 Conclusions para 8

## Summary of dis-incentivising factors

- **The Family Justice Review interim recommendations were generally critical of the role of ISWs which is seen as a possible duplication. This is erroneous as consistent research findings<sup>11</sup> show that 40% of local authority cases continue to arrive in court without a core assessment having been carried out.** Moreover, 50% of ISW experts are commissioned by local authorities, who are all too well aware that they do not have the in house resources to undertake the work, though this is rarely acknowledged. Realistically, it will be a decade before the Munro Review recommendations are fully implemented and in the meantime pressures on the courts are not likely to ease. Regrettably, many local authority practices in this area are lacking or are, in the words of John Coughlan, Director of Children's Services in Hampshire, "*pretty shaming*".<sup>12</sup> This is not only an organizational failure but a structural one. Poor and incompetent social work practice means courts lack confidence in social work assessments. Local authority performance is hugely variable across the country. Even the best local authorities with high quality social workers benefit from commissioning a skilled ISW expert in the way that an experienced GP might refer to a medical Consultant in complex cases, where the need for specialist advice is unavoidable and certainly in the best interests of the patient. In this context specialist experience, skills and objectivity are seen as advantageous and complementary not duplication or a cause of delay.
- **The suggestion that ISWs should return to work for local authorities appears unrealistic.** Even if all of the approximately 150 local authorities recruited ISWs as Principal Child and Family Social Workers and they were all external appointments, which would seem very unlikely, the majority of the ISW workforce would still be lost.
- **From 9 May 2011 all ISW expert witness fees were capped at Cafcass rates of £30 an hour outside London and £33 an hour in London.** The blanket capping means that there is no acknowledgement of the possibility of career development and there is ample evidence to demonstrate that this is not comparing like with like. Cafcass's recruitment requirements have been significantly lowered in recent years and a practitioner who is newly qualified or having only two or three years' experience cannot be compared with a practitioner with twenty years' experience in the family courts who possesses considerable 'bolt on' specialist skills.
- **The MoJ specifically excluded independent social work expert evidence from its review of all other categories of experts carried out earlier this year.** Following the review, the Legal Services Commission implemented its new reduced fee scales for expert witnesses on 3 October.
- **Even after the capping of all other fees there is no profession in the list which is paid as little as social workers.** To put this in perspective, the lowest paid category are the court process servers and even they are paid £32 an hour, whilst the agreed rate for experts' travelling time is £40 per hour, a sum significantly in excess of the rate paid to ISW experts for face to face work with children and families.
- **Although there is considerable support and appreciation from the judiciary of the contribution of ISW expert witnesses in keeping the court cogs turning, there is no acknowledgement in either DfE or MoJ policy terms of the existence of an**

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<sup>11</sup> See *Research review: Child care proceedings Under the Children Act 1989*. Julia Brophy. DCA Research Series 5/06 May 2006. Department of Constitutional Affairs

<sup>12</sup> See one such example in the *Bristol Safeguarding Children Board serious case Review re Child M. Overview Report April 2011*, which found very serious failings in the performance of both the local authority and Cafcass.

expert witness who is a social worker and this is an extremely negative message to social work professionals.

- **It is estimated that between 70 and 80% of clinical expert witnesses will withdraw their services to the courts as a result of the introduction of the revised fee schedules introduced on 3 October 2011.** If even half of this estimate is true the courts will be increasingly reliant on the expert social work evidence which often precludes the need for more expensive expert witness evidence provided by paediatricians, psychologists and child and adolescent psychiatrists.

The net result of all of the above is that large numbers of discouraged ISWs are giving up the work as they do not see a viable future career path.

### **Conclusion**

There are good professional and financial reasons for promoting the use of ISW experts, a skilled and cost-effective resource whose social work expertise is badly needed. ISW experts add value through bringing specialist knowledge to bear on complex multi-dimensional problems. Their advice is highly valued by the judiciary and magistracy, as the Justice Select Committee learned from senior judges, by parents and by local authority social workers, who appreciate the help they offer in identifying issues, expediting proceedings and finding realistic, child-centred, lasting solutions. We ask the Government to review the current position and contribution of ISW experts before the skills and experience of this dedicated and dwindling workforce are lost to the children and families who have the most need of them.

Nagalro, BASW and CISWA

11 November 2011