

## **Nagalro Response to The President's consultation:**

### **Recommendations to achieve best practice in the child protection and family justice systems**

#### **About Nagalro**

**Nagalro is the professional association for Family Court Advisers, Children's Guardians and Independent Social Workers.** It has approximately 700 full members in England and Wales who represent the interests of children in a range of public and private law proceedings. Our members are senior, highly experienced children and family social workers who work in a variety of roles. Members also act as Children's Guardians and Family Court Advisers for the Children and Family Courts Advisory and Support Service (Cafcass) where they work in tandem with children panel solicitors to represent the interests of children in care and other family proceedings. Many work as independent social workers and risk assessors providing expert witness reports in a wide range of complex cases coming before the family courts; in fostering and adoption agencies; in independent practice providing therapeutic services; as academics; as supervisors, mentors and consultants. Members have significant experience as managers, chairs of Adoption Panels and other specialist social work practitioner roles. Our members are primarily concerned to promote the paramount welfare of vulnerable children who are involved in family court cases. They have an important role in enabling the child's voice to be heard in court proceedings, so enabling compliance with Article 12 of the United Nations Convention on the Rights of the Child. They assist family courts to reach decisions about what plans will safeguard the child's interests and best provide for their future welfare.

#### **Nagalro response to the consultation**

Nagalro welcomes the opportunity to respond to this consultation and thanks the various working groups for their work and their recommendations. In general terms, we welcome the recommendations and believe practice would be greatly enhanced if the majority were implemented as soon as possible.

Nagalro has participated in the responses prepared by CoramBAAF Legal Advisory Group (LGAC) and the Kinship Care Alliance (KCA). Nagalro agrees in full with the CoramBAAF response. Nagalro also wishes to associate itself with the KCA response.

In addition to the submissions made by the organisations referred to above, Nagalro wishes to further submit as follows:

#### **Long Term Recommendation 12 : Further analysis and enquiry.**

We note that the submission of the Family Rights Group (FRG) details many concerns in relation to the working of a proposed 'Interim Special Guardianship Order'. Nagalro agrees with FRG comments in relation to an Interim Special Guardianship Order.



### **Recommendation 5: Re-focusing the role of the local authority legal advisers and the use of the legal gateway meeting.**

We particularly have doubts about the suggestion concerning the involvement of the local authority legal adviser. We believe that the professional skills of a registered social worker should be acknowledged and not apparently dispensed with. The proposals have the risk of undermining the social work profession. It is important that it is clear who (ie the LA social worker) is instructing the lawyer and not risk lapsing into the dangerous territory of the lawyer instructing him/herself. The issues of professional legal privilege also come into play. Social work decisions are transparent and will be subject to disclosure in future legal proceedings whereas legal advice is privileged.

### **Recommendation 9: Working with children, including using the FJYPB's Top Tips.**

We are also concerned that whilst there is a reference to 'the *ascertainable wishes and feelings of the child concerned (considered in the light of ... age and understanding* ' [as per Section 1(3)(a) of the Children Act 1989 ], it needs to be firmly emphasised in many areas of the interim report. Section 41 of the Children Act 1989 imposes a duty on the children's guardian 'to safeguard the interests of the child' in the manner set out in the rules of Court. The Children's Guardian is required to advise the Court about the wishes and feelings of the child along with other matters. We outline below our concern that Cafcass may be diluting this vital part of the Guardian's duties. Recent court judgements reflect that the child's voice may be disappearing from the court proceedings that concern them. However, we particularly welcome that the interim reports references to the FJYPB's 'top tips' that are included at appendix J, which we think are excellent. FJYPB is a refreshingly honest and clear-sighted voice for the children and young people who have been through the Family Court. For example, tips 2, 3 and 4 state that:

- *'Every child or young person should have sufficient time to build a relationship with the Cafcass worker involved in their case.*
- *The child or young person should feel that their needs, wishes and feelings have been listened to, valued and respected.*
- *Children and young people should be offered the opportunity to express their wishes and feeling using effective and age appropriate tools and resources that best meet their needs.'*

We suggest that the 'top tips' should be at the heart of the Court's decision making, not only because it is what the children we represent are asking for, but also because it was what Parliament has said they should receive. Nagalro believes that every child must be seen and heard.

### **Comment on the Full Interim Report**

On reflection of the findings of the working groups, we are concerned that we can see no evidence of any consideration / discussion as to whether Cafcass, in managing the delivery of a Children's Guardians service, is fully complying with the relevant Statute, Family Procedure Rules and Court Practice Directions.

The members of the Public Law Working Group may be aware that Nagalro has recently raised its concerns about Cafcass. Nagalro is concerned that Cafcass's policies and

structure appears to be diluting the role of the Children's Guardian in Court proceedings. This is evident on the Cafcass website which does not even reflect the role of Children's Guardian as required by the legislation. In September 2019 Nagalro issued the following press release which was reported and commented on by two prominent social work and legal professional journals, namely, Community Care and Family Law Week.

**Press Release: NAGALRO RAISES CONCERN ABOUT CAFCASS UNDERMINING THE ROLE OF THE CHILDREN'S GUARDIAN**

Nagalro is concerned that Cafcass public statements have disseminated inaccurate information on its website, which appear to dilute the role of the Children's Guardian and minimise their legal obligations. A number of recent judgments have reinforced our view that children's interests are being compromised. For example, in *Leicestershire County Council v AB & Ors* [2018] EWFC 58 (31 August 2018), the Judge was not able to rely on the evidence of the Children's Guardian. In another case, the Children Guardian's appointment was terminated for an abdication of her responsibility as the Children's Guardian and acting contrary to the interests of the child in *LR v A Local Authority & Others* [2019] EWFC 49 (Fam).

The full reports can be found at:

<https://www.bailii.org/ew/cases/EWFC/HCI/2018/58.html>;

<https://www.bailii.org/ew/cases/EWFC/HCI/2019/49.html>

In June 2019, Nagalro became aware of inaccurate details on the Cafcass website, specifically the page that explains to parents the role of the Children's Guardian in care proceedings.

(<https://www.cafcass.gov.uk/grown-ups/parents-and-carers/care-proceedings/cafcass-role-care-proceedings/>)

Nagalro wrote to Julie Brown, interim Chief Executive of Cafcass, explaining its concerns; particularly that the information does not accurately reflect the legal powers and duties of the guardian and that it may impede guardians in carrying out a thorough investigation on behalf of the children whose rights and interests they represent.

Further, Nagalro drew Cafcass' attention to the Gov.uk website, which explains the Children's Guardian's role accurately and in plain English and suggested that this should replace the Cafcass publication.

<https://www.gov.uk/if-your-child-is-taken-into-care/going-to-court>

We are disappointed that we have now received a reply from Cafcass declining to change their website content.

Nagalro urges Cafcass to review their policies in the light of the evidence of the service failings revealed by recent court judgements and to provide accurate information to the public and practitioners. The powers and duties of the Children's Guardian are clearly set out in the Children Act 1989 and the associated Family Proceedings Court rules and are designed to ensure that Children's Guardians are able to exercise the full extent of the legal powers available to them in order to safeguard each child's welfare.

END OF PRESS RELEASE

The role of Cafcass is of vital importance in facilitating the provision of an independent voice of the child in the child protection and family justice system. Nagalro welcomes the opportunity to meet with the public working group to provide further information about our concerns and would welcome an opportunity to be part of the working group in the future.