

NAGALRO PRESS RELEASE

Publication of Nagalro's 'Guide to interpreting and lawfully applying Cafcass's professional time guidance' and the outcome of our judicial review claim

Cafcass and Cafcass Cymru's 'Draft Guidance on the Use of Professional Time to Benefit Children' came to Nagalro's attention a year ago. Here, Judith Timms OBE, Nagalro Policy Consultant, explains the decisive action Nagalro has taken to air members' concerns, to champion the interests of the children they represent and to secure change.

Background

Cafcass' Professional Time Guidance followed the publication of an '*Agreement (between Cafcass and ADCS) and Guidance on How Local Authorities and Cafcass Can Work Effectively in a Set of Care Proceedings and Pre Proceedings in the English Family Courts*' dated 21 April 2017. This controversial document was withdrawn by Cafcass following a proposed judicial review challenge by Nagalro. Given this, it was disappointing to Nagalro that the Professional Time Guidance was not consulted upon openly at all. Instead, Cafcass sought the views of only a small number of judges.

The July 2017 version of the document also had a number of substantive problems creating tensions both with the statutory framework and the professional independence and autonomy of the Guardian. Nagalro was concerned it might well lead to unlawful and unfair decisions. Practitioners will be aware of the recent Court of Appeal warning on how poorly formulated guidance can have such consequences (see *In the matter of P-S (Children)* [2018] EWCA Civ 1407). Cafcass was therefore asked to withdraw the document and consult with stakeholders, but it decided not to do so. A judicial review claim was then issued by Nagalro, challenging both the lack of consultation and the substance of the document. The claim was recently settled because Cafcass made concessions and modified the July 2017 document following discussions with Nagalro. It also agreed to the publication of solicitors' correspondence clarifying certain aspects of it.

The current position

The latest version of the Professional Time Guidance (still referred to as a 'draft') can be found on Cafcass' website at <https://www.cafcass.gov.uk/about-cafcass/policies/>. Various modifications have been made over the last year. However, the document is still not perfect and Nagalro has several ongoing concerns, as do many practitioner groups and other stakeholders including the Association of Lawyers for Children, the British Association of Social Workers and Coram BAAF (see <http://www.nagalro.com/system/site/uploads/content/docs/2018%2004%2004%20Nagalro%20JPS%20with%20signatories.pdf>).

Nagalro has therefore published its own 'Guide to the Professional Time Guidance' so children's guardians, family court advisers and independent social workers can benefit from what Nagalro learnt during the judicial review proceedings about how

the document is intended to be interpreted, to identify aspects of it that remain legally problematic and to recommend other material which may be helpful should problems arise. That Guide can be found here:

<http://www.nagalro.com/system/site/uploads/content/docs/2018%2007%2024%20Nagalro%20Guide%20to%20the%20Cafcass%20Guidance.pdf>

Key points for practitioners

There are three critical points children's guardians and family court advisors should keep in mind about the Professional Time Guidance.

First, whether or not to follow the Guidance in any particular case is a matter for the practitioner. Cafcass rightly observes in the judicial review correspondence that there can be *“no question of any practitioner being disciplined for failing to comply”*. As the late Sir Nicholas Wall stated when President of the Family Division in the case of *A County v K & Ors (By the Child’s guardian)* [2011] EWHC 1672 (Fam), *‘in the event of a disagreement, the ultimate decision is not for CAF/CASS nor for the guardian but for the courts’*

Secondly, as a recent judgment has stressed, guidance is no substitute for, and does not override, the law. (See *In the matter of P-S (children)* [2018] EWCA Civ 1407). Cafcass has told Nagalro in solicitor’s correspondence *“the status of the guidance remains clear. It has no statutory authority and is an internal tool which is intended to guide and support practitioners”*.

Thirdly, Cafcass has told Nagalro, again in solicitor’s correspondence, that *“nothing in [the document] should be taken to compromise the independence of the children’s guardian and that the advice to the court is subject to the direction of the court”* Further *“the judiciary of course are not bound by our internal guidance”*.

Conclusion Guidance can be helpful and no doubt that was Cafcass’ intention when issuing the Professional Time Guidance. But practitioners’ compasses must always be aligned to what the law requires, especially when children’s interests are at stake.

-ENDS-

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Notes to Editors:

Nagalro is the professional association for Family Court Advisers, Children’s Guardians and Independent Social Workers. Its members represent the interests of children in a range of public and private law proceedings. Nagalro members are senior, highly experienced children and family social workers who work in a variety of roles. 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. The Nagalro website is at www.nagalro.com