

NAGALRO PRESS RELEASE

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President's landmark judgement re-asserts independence of Children's Guardians as vital element in protecting children against poor social work practice.

In a landmark judgment in the High Court Sir Nicholas Wall, President of the Family Division, today emphatically underlined the independent status of the Children's Guardian. In a ruling that supported the argument put forward by Nagalro, the professional association for children's guardians, who were granted leave to intervene in the proceedings, he told Cafcass that it cannot remove Guardians from cases before the court. Neither must it substitute a corporate or organisational view for the court-appointed guardian's view of what will be in the best interest of the child.

The President did not support Cafcass's assertion that a manager's view would prevail in any disagreement between manager and guardian. The proper and transparent course is for the Cafcass manager to go to court and explain why they have a contrary view. It will then be for the court to decide on the basis of all the evidence before it.

In his robust public judgment Sir Nicholas stated:

"I yield to no-one in my view that the guardian's independence needs to be cherished." He re-iterated how important it is for children that guardians can exercise independent judgment when working with solicitors in the 'tandem model' and that this *"remains the child's best protection against poor social work practice"*.

The issue arose in a case where local authority and Cafcass managers communicated between themselves, without reference to the parent's or child's solicitors or to the court, to engineer the removal of a children's guardian who had successfully opposed the local authority's interim care plan in court.

Sir Nicholas called it *"shocking"* that the parents were kept in ignorance of the discussions and was particularly critical of the lack of transparency and fairness in the case.

Nagalro successfully applied to intervene in the case. It argued that Cafcass guidance to its staff was unlawful as it allowed managers to change a



guardian's recommendations where there was disagreement between them. Nagalro members have been put in a position of professional conflict as they risk being in breach either of their organisational duty to Cafcass as their employer or their statutory duty to the court as set out in s41 Children Act 1989.

Ann Haigh, Chair of Nagalro, said today: *"We welcome this judgment and its clear statement of the boundaries between organisational and professional accountability. It is much needed and we are delighted that it fully supports our view that personal responsibility and the professional judgment of skilled and independent practitioners offers the best protection for children."*

"We expect Cafcass to review its organisational policies to take account of this judgement and to ensure that all managers and practitioners fully understand the importance of the professional independence of the Children's Guardian role and their proper relationship with the court."

Sir Nicholas's judgment makes it clear that although Cafcass as an organisation has a role in quality assuring the work that guardians undertake, this must be balanced against the guardian's independence. In the judgment he emphasises that his agreement with Anthony Douglas, Chief Executive of Cafcass, of 1 October 2010, was designed to assist with the increasing pressure on Cafcass from rising numbers of cases, but it specifically states that it should not inhibit a guardian from investigating issues that he or she sees as necessary to safeguard the welfare of children: *"Nothing in the Agreement fetters the responsibility of the children's guardian independently to represent the interests of the child in accordance with the statute and court rules."*

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Notes to Editors:

1. NAGALRO is the Professional Association for Children's Guardians, Family Court Advisers and Independent Social Workers. The association aims to promote and enhance the quality of practice of those concerned with the

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independent representation of children's interests before the courts, throughout England and Wales.

2. Children's guardians are appointed in public law proceedings in the family courts i.e. where Local Authority Children's Services take court action to protect children whom they believe are suffering significant harm within their families, - physical, sexual or emotional abuse. The role developed to give children an independent voice and access to independent representation after the tragic death of Maria Colwell, a seven year old girl whose voice was not heard when the court returned her to mother and step father who murdered her. Children's Guardians act in 'tandem' with children's solicitors to critically appraise the actions of local authorities acting in loco parentis as well as those of parents or carers. Their independent investigation and assessment of the child's situation ensures that his or hers rights and welfare are protected by the court. It is the independence of the Guardians view which provides the critical safeguard for the child.
3. Guardians are also appointed in adoption proceedings, emergency protection orders, and applications for secure accommodation. In addition, Family Court Advisers act in private law cases, reporting to the court on children's welfare in relation to contact and residence issues. A Guardian can also be appointed for a child in private law proceedings under Rule 16.4 Family Proceedings Rules 2010 where their welfare requires independent representation.
4. The NAGALRO website can be found at: www.nagalro.com

