RESPONSE BY NAGALRO TO THE PRESIDENT'S DRAFT GUIDANCE AS TO REPORTING IN THE FAMILY COURTS

1. Nagalro is the professional association for children's guardians, family court advisers and independent social workers. As such, our response focuses on the position of those representing the child when an application is made to vary or lift the statutory reporting restrictions and the position of the child.

2. It is regrettable that the child in *Re R (A Child)(Reporting Restrictions)* [2019] EWCA Civ 482 was not represented. That decision highlighted, but for the reasons set out in the judgment, was not able to answer, the very important question of 'what priority the welfare of a child is to have when a court is determining what, if any, relaxation of the automatic reporting restrictions is to be allowed or whether any additional reporting restriction order is to be imposed'. Nagalro recognises that, quite correctly, the draft guidance does not, and could not, address that issue. We hope that in the not too distant future it will be possible to have a clear answer to that point.

3. The guidance is directed to dealing with applications in a proportionate way and avoiding unnecessary costs and delay. Whilst we would take no issue with that, we would wish to ensure that the voice of the child is sufficiently heard and the potentially lifelong consequences for the child fully considered.

4. We would point out that the applications which are subject to this guidance are almost, if not exclusively, proceedings in which the welfare of the child has been the paramount consideration in reaching the decision which may now be subject to some form of reporting. We would suggest that, in the light of the lack of any representation for the child in *Re R,* that the guidance should emphasise the importance of ensuring that the children's guardian and the solicitor for the child have had an adequate opportunity to discuss the application with any child who may be able to express a view and that the court must have before it the wishes and feelings of such a child before making a decision about the application.

5. Whilst the adult parties are likely to be at court and able to speak to their legal representatives, that is unlikely to be the case for the child and so an adjournment is likely to be necessary to enable discussions. This is

particularly likely in the case of an older child, who is likely to have a full understanding of social media and to be able to express reasoned views about any relaxation of reporting restrictions which may be proposed. Nagalro would be concerned that paragraph 13 of the draft may be read as suggesting that adjournments were to be confined to cases of significant importance. It goes, almost without saying, that for the child, who may have to live with the publicity and its consequences for the rest of their lives, that every case is of 'sufficient importance'.

6. Nagalro has an on-going concern that the child's voice is in danger of being drowned out by the vociferous voices of the media and the adult parties when these issues arise and we would suggest that judges need to be alive to that danger when carrying out the necessary balancing exercise.

7. Reference is made, at paragraph 6 of the guidance to the current practice guidance on anonymisation of judgments before publication. We feel that it would be helpful if the guidance included a reminder of the dangers of 'jigsaw' identification which was highlighted by Dr Julia Brophy in her report of July 2016, upon which the current guidance is based.

8. Nagalro welcomes the inclusion, at paragraph 12 of the draft guidance, of the possibility of a more bespoke form of order which may allow very case-specific restrictions to be imposed for the protection of the child whilst, at the same time allowing accurate and responsible reporting of matters which will assist to dispel myths about the operation of the family justice system.

Sukhchandan P. Kaur
Chair Nagalro

Nagalro,
PO Box 264
Esher
Surrey
KT10 0WA

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