

Ministerial Correspondence Unit
Ministry of Justice
102 Petty France
London
SW1H 9AJ

14 May 2024

Dear Sirs

Re: Formal Complaint by Nagalro

This letter is a formal complaint on our behalf regarding:

- a) the failure of the Ministry of Justice to respond substantively to our correspondence; and
- b) the failure of the Ministry of Justice to provide timely information to independent social workers (ISWs) regarding the increase in the hourly rate payable to ISWs in legally aided cases.

In accordance with your website, we look forward to receiving a full response within 20 working days.

By way of background, Nagalro is a professional body representing the majority of independent social workers carrying out assessments for the family court, when permission is given by the court under Part 25 of the Family Procedure Rules 2010. Since April 2023 we have been attempting to discuss with the Ministry of Justice (Legal Aid Agency) the issue of the hourly rates payable to ISWs in cases where the fees are paid through the Legal Aid Agency.

We enclose herewith a copy of all correspondence between ourselves and the Ministry of Justice, commencing 27 April 2023.

The hourly rates for most expert witnesses whose fees are paid through legal aid are set out in Schedule 5 of the Civil Legal Aid (Remuneration) Regulations 2013. Independent social workers are not included in Schedule 5. Instead, the Legal Aid Agency announced (in 2014) that ISWs would be paid 'based on the rates paid by Cafcass'. Hence, until 2022, the hourly rate paid by both bodies was fixed at £33.00 per hour.

In 2022, Cafcass told us that ISWs carrying out work for them would, from 1 May 2022, be paid at £35.00 per hour. Cafcass were very clear in their discussions with



us that they were not in a position to speak for the Legal Aid Agency on this issue. This split between Cafcass and the Legal Aid Agency appeared to be confirmed when, in September 2022, the Legal Aid Agency published version 7 of the *Guidance on the Remuneration of Expert Witnesses in Family Cases*. This document stated:

‘5.2 The current rate for independent social workers (ISWs) is based on the rates paid by CAF/CASS. ISWs are not listed in the Remuneration Regulations, and they are instead paid in accordance with paragraphs 7.180 and 7.181 of the Standard Civil Contract in line with the rates payable by CAF/CASS for the work.

‘5.3 In 2014 Cafcass introduced a national rate of £33 per hour. Accordingly, the LAA will allow claims for this rate in relation to ISW instructions that take place on/after 1 April 2014 regardless of the date that the certificate was issued. Those instructions that took place prior to 1 April 2014 will continue to be remunerated at the previous rates, namely £30 p/h outside of London and £33 inside of London depending on where the case takes place.’

Anyone reading this document, having seen that it was brought out *after* the rate increase by Cafcass, would understand that the Legal Aid Agency was not matching the Cafcass rate increase.

On 27 April 2023, on behalf of our members working as ISWs, we wrote to the Legal Aid Agency and a copy of that letter is attached. After being passed from one desk to another, a response finally came on 18 September 2023 when Eleanor Druker informed us, by email, that the rate for ISW ‘is now the rate of £35’. Further questioning of Ms Druke, and pointing out that the current version of the *Guidance on the Remuneration of Expert Witnesses in Family Cases* still referred to £33 per hour elicited a response pointing us to version 3.4 of the *Civil Finance Electronic Handbook* which sets out the new rate. Version 3.4 of the *Handbook* was, of course, only published on 1 August 2023 but it seems to be the first published statement informing anyone that ISWs could be paid at the higher rate, even though the increase is said to have been effective 15 months earlier.

Our correspondence then moved on to the practical consequences of the Ministry of Justice’s apparent failure to inform anyone about the increased hourly rate for ISWs and how members should deal with cases where, in consequence of the lack of any announcement, they have prepared bills at the incorrect rate. On 14 February 2024, we set out a list of detailed questions which needed to be answered so that our members can deal with their own cases correctly. On 26 February 2024, Ms Druker said that a reply would be

forthcoming 'later this week', which (we calculate) would mean no later than 1 March 2024. No further correspondence has been received.

As a matter of interest, we do note that version 8 of the *Guidance on the Remuneration of Expert Witnesses in Family Cases* was published in March of this year with the express purpose of updating the hourly rate that the Legal Aid Agency will pay for the services of an independent social worker without prior authority. Ostensibly, this appears to retrospectively increase the rate to £35 per hour *from 2014*, with paragraph 5.3 the new publication now stating:

'In 2014 Cafcass introduced a national rate of £35 per hour. Accordingly, the LAA will allow claims for this rate in relation to ISW instructions that take place on/after 1 April 2014 regardless of the date that the certificate was issued. Those instructions that took place prior to 1 April 2014 will continue to be remunerated at the previous rates, namely £30 p/h outside of London and £33 inside of London depending on where the case takes place'.

In order to deal with this complaint, we require you to:

- a) Provide a full and detailed response to our letter dated 14 February 2024, including answers to the numbered questions contained therein;
- b) Provide an explanation for your failure to notify professionals of your decision to increase the maximum rate permitted for ISWs;
- c) Provide an explanation and an apology for your inexcusable delays in responding to correspondence from a professional body, carrying out its duties and endeavouring to assist the work of the courts; and
- d) Provide your suggestions about how future communications between us may proceed rather more efficiently.

We look forward to hearing from you.

Yours sincerely

Yvonne Wilson, Nagalro Chair, and Fiona Wallace, Nagalro Vice Chair
3 to 26 February 2024 to and supporting documentation