



Submission by Nagalro

Response to

Department for Education Call for Views:

**Review of Contact Arrangements for Children in
Care**

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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. About half work for the Children and Family Courts Advisory and Support Service (Cafcass). Many also act as Independent Social Workers providing expert witness reports in a wide range of complex cases coming before the courts.

Members also undertake work in a variety of roles for example with fostering agencies and in independent therapeutic practice. Members have significant experience as managers, chairs of Adoption Panels and other specialist social work practitioner roles and as therapists.

CONTACT ARRANGEMENTS FOR CHILDREN IN CARE

1. We want to ensure that all professionals involved in making contact arrangements give careful and critical consideration to the length and frequency of contact, particularly for infants.

Should we strengthen regulations and guidance so that contact arrangements are purposeful and reflect the needs of the child?

Yes No

Please comment further, including any suggestions for alternative proposals:

All legislation and government policy is required to be compliant with human rights legislation: the Human Rights Act 1998, UN Convention on the Rights of the Child, and the European Convention on Human Rights. We are concerned that this paper does not consider how its proposals would comply with this legislation, affect children's rights to family life (Articles 6 and 8), nor address how the voice of child will be heard in decision-making about these fundamental issues (Article 12).

Nagalro's submission to House of Lords Select Committee on Adoption Legislation¹ pointed out that adoption is just one among several options for permanence that can all provide a stable upbringing for children. An over-emphasis on adoption at the expense other permanence options risks directing resources away from those looked after children for whom other options are preferable. We would be concerned if the Children Act 1989, a model of well-drafted legislation that has stood the test of time, were to be skewed in a pro-adoption direction when it needs to protect the interests of all children in a wide variety of situations. It is permanence, rather than adoption, that provides the 'gold standard' of security, continuity and a sense of belonging for children in the care system. Children can achieve permanence in many different ways, and contact can play differing roles according to the permanence option best suited to an individual child's situation.

Nagalro's response is informed by the research findings about contact and adoption

from the Centre for Research on the Child and the Family at the University of East Anglia, and we have had sight of their draft response to this consultation. We share the view expressed in CRCF's response that current legislation rightly neither promotes nor discourages contact, and that enabling a case-by-case consideration of what contact will best meet each child's needs. Nagalro therefore does not see that there is any need to change legislation in the direction of restricting contact.

There is room for improvement in the area of professional practice, which requires greater availability of training and use of professionals who can exercise their skilled judgment.

Contact arrangements should always be purposeful and meet the needs of the child, though contact can have a range of valid purposes e.g. to maintain an existing relationship, to promote identity needs etc. Current regulations and guidance already support this, as does current best practice. If this is not happening a more strategic look is needed at the obstacles that exist at present in the system. We identify the following issues as likely to hinder sound decision-making with and for children:

- Local authority performance is extremely variable, due to difficulties in retaining experienced workers, leading to over-use of inexperienced workers, high staff turnover, and budget pressures. There are considerable pressures within local authorities from the continuing increase in care proceedings, combined with budget pressures on local authorities.
- The IRO service is not a robust or effective means to hold local authorities to account and cannot protect children against poor practice in any consistent or reliable way. The IRO service is not capable to exercising the level of monitoring that children's needs require. The recent case *A and S v Lancs CC* [2012] EWHC 1689 (Fam)² provides a stark example. In Nagalro's view the time has come to implement s11 of CYPA 2008, which allows the IRO service to be moved from local authorities to an independent agency. Cafcass would not be able to provide a suitable home for the service.
- There has been a reduction in the amount of time and quality of work that Cafcass permits guardians to undertake under its model of "proportionate" working. This means a loss of quality in the scrutiny of local authority care plans in court proceedings. This will impact on decisions about children's contact taken during care and adoption proceedings.
- The loss of skilled ISWs from court proceedings will detract from the ability of courts to make best judgments in relation to children's needs, including contact issues. The recent publication of research by Oxford University³, the first to look at the specific contribution of ISWs to family courts, refutes many of the assumptions made about the work of ISWs. The research found that:
 - There was no evidence that ISW reports cause delay to court hearings
 - ISWs produce high quality reports to tight deadlines
 - ISWs provide new information to the court
 - There was no evidence of routine duplication with a current local authority core assessment

- ISWs have ‘added value’: they are independent, highly skilled and experienced (median 24 years in child protection work)
- They are child focused.

There is significant spare capacity in the ISW sector that is not being deployed because of structural barriers. This valuable part of the workforce need to be ‘stitched in’ to the system in order to stem the loss of the most experienced ISWs.

It is extremely concerning that such fundamental changes in children’s rights are being proposed by this consultation at the same time that the capacity for independent scrutiny and challenge of the state’s exercise of its powers towards children are being significantly reduced by proposals for change in the family courts. The cumulative effect of the reduction in the court’s role in addition to the constraints in services detailed above are likely to lead to increasingly arbitrary and poorly thought-out decision-making for children.

The question that needs to be answered is what needs to change to make contact decisions more purposeful and child-centred?

¹ <http://www.nagalro.com/activities/publications.aspx>

² <http://www.bailii.org/ew/cases/EWHC/Fam/2012/1689.html>

³ Brophy, J., Owen, C., Sidaway, J. and Johal, J., (2012) *The Contribution of Experts in Care Proceedings: Evaluation of the work of independent social work assessments* University of Oxford

2. We want to ensure that arrangements are appropriate to their age and stage of the child and specifically infants, ensuring they are not, for example, subject to long journeys. Each case will need to be decided on an individual basis, however we should like to propose that a starting point might be that children under two are rarely exposed to contact more than two or three times a week and for sessions of no more than two hours.

Should we strengthen statutory guidance to ensure more consideration is given to the purpose of contact for infants?

Yes No

Please comment further, including any suggestions for alternative proposals:

It is good professional judgment that enables practitioners to make well-informed decisions that are in children’s best interests. Blanket rules are counter-productive as one size does not fit all children: it is the underlying principles that professionals need to grasp which they can then apply to individual situations. Practitioners need to have a good grasp of the evidence base. It is this that provides the basis for making sound decisions about the amount of contact that will be in a child’s interests on a case-by-case basis. Good dissemination of research findings and training is needed to assist in this process. Sadly local authority training budgets are often the first area to be cut in times of recession.

Many of the cases involving infants go through the family courts. Practice in the courts has been influenced by judgments in particular cases. The recent training and publicity within the socio-legal system about research conclusions on the impact of frequent and lengthy contact on infants is a helpful means to inform

practice, and could be further developed.

Most helpful will be interdisciplinary training for social workers, lawyers and judges. For example Nagalro put on a recent successful conference on the subject of 'Interim Contact – Meeting the Needs of Infants', and we run a number of well-regarded training courses on key topics in the socio-legal field relating to child care issues.

The Children's Guardian should have a key role in safeguarding the interests of children in proceedings. Previously it would have been the Children's Guardian who was best placed to identify the quality of contact and to provide authoritative advice to courts about what frequency of contact is in an individual child's interests. However, the new Cafcass Operating Framework, which embeds the model of 'proportionate working', does not encourage practitioners to spend the time observing contact that they would need to do for them to challenge inappropriate local authority proposals for individual children. Many children see their Guardian for only a brief time, if at all, during the case.

The issue of contact cannot be taken out of the context of all the decisions that need to be made about vulnerable children in care proceedings. The contact needs of children are extremely varied. Where parents are successfully dealing with their issues, or where kinship care alternatives are under assessment the infant's contact needs may be very different from a case where parents are not making progress and there is agreement between the parties that permanence through adoption is the option most likely to meet the child's needs.

3. To ensure the role of Independent Reviewing Officer in scrutinising contact arrangements, as part of the care planning process for the child, is sufficiently emphasised,

Should we look again at guidance for Independent Reviewing Officers?

Yes No

Please comment further, including any suggestions for alternative proposals:

See comments in section 1 about the IRO service. The Independent Reviewing Officer role is structurally flawed because it is not truly independent of local authorities. Some IROs are unable to challenge their employers and children therefore lack the effective scrutinising of their care plans. In addition in some authorities IRO workloads are far too high to allow them to provide the level of detailed scrutiny required. CLA reviews do not take place with sufficient frequency for IROs to be in a position to monitor in detail the week-by-week contact issues for each child in a timely way. However, the issue of contact for children in the longer term should certainly form part of the care plan discussion at every review meeting.

It is unlikely that changing the guidance for IROs will make a significant difference when there are such constraints on the role. Training will be more effective. IROs,

as with all social workers, need to consider the contact needs of each child on a case by case basis.

4. We think that the duties on local authorities to allow children in care reasonable contact with their birth parents and to promote contact for looked after children, may encourage a focus on the existence and frequency of contact arrangements, rather than on whether they safeguard and promote the best interests of the child. Removing these duties would remove the perceived presumption of contact in all cases and help local authorities to take a case-by-case decision about the best contact arrangements for the individual child.

Should we remove the duties on local authorities in primary legislation to allow children in care reasonable contact with their birth parents and to promote contact for looked after children?

Yes No x

Please comment further:
Emphatically no.

This would be a retrograde step. It would be likely to contravene human rights legislation and it would unhelpfully skew the principles of the Children Act 1989 which serve to protect the interests of all children, whatever the eventual outcome for them. It must be recognised that adoption is only an outcome for a proportion of children who come in to care. Views within society about the best care outcomes for children can swing over time and it is important that the legislation steers a steady course.

Family and friends care will always remain an important option for children, able to meet their identity as well as their attachment needs. Research evidence shows the stability and commitment that kinship care provides for children, even when poorly supported by local authorities. Children benefit from the sense of belonging that comes from knowing the people connected to them.

Financial and workload pressures already mean that local authorities tend to skimp on support for family contact, and altering the legal requirements would only tend to exacerbate these deficiencies.

5. Alternatively, we could look to ensure that arrangements are made in the child's best interests, taking account of views and wishes of all concerned, and aligned with the longer term plans for the child.

Should we replace the duties on local authorities in primary legislation to allow children in care reasonable contact with their birth parents and to promote contact for looked after children, with a new requirement that local authorities consider contact arrangements that have a clear purpose documented in the child's care plan?

Yes No x

Please comment further:

No, as already stated we think a change in legislation will diminish children's legislative rights and remedies and damage their interests. Given the frequency with which local authorities already use their powers in unhelpful and even irrational ways we believe it is a fundamentally misplaced strategy to alter their duty to promote reasonable contact between children and parents.

We favour change through encouraging best practice; embedding better training through from basic social work degree level to post graduate and on the job training; and proactively promoting the capacity for high quality professional social work judgment in the profession as envisaged in the Munro Review of Child Protection.

CONTACT ARRANGEMENTS ONCE ADOPTION IS THE PLAN

6. We want to ensure that contact arrangements change as a child's circumstances change and that they are consistent with plans for the child's future. There are three key points at which contact arrangements need to be considered and reassessed:

- (a) when the local authority makes a decision that a child should be placed for adoption, but no placement order has been made;
- (b) at placement order; and
- (c) when the child is placed with prospective adopters.

Should we look at existing guidance and regulations and consider where and how these can be strengthened to ensure a formal review and a clear decision making process about contact takes place at each of the three points?

Yes No

Please comment further:

(a) The consultation document is fundamentally wrong to assume that the local authority alone has the power to implement a decision about adoption where parents are not in agreement and that the court will merely act as a rubber stamp. This is exactly the kind of flawed thinking too often leads to bad local authority practice. A court has to make this decision, and the parties involved - parents, children and others joined as parties as well as the local authority - have constitutional rights to have their views heard. This is especially important with such an irrevocable decision as adoption. It is surprising to read the sentence in paragraph 28 that "notwithstanding the court's decision, their child is unlikely to return home." If the court decides that the local authority case is not made out then the child may return home, or to live with extended family members.

It is misguided to assume that local authority assessment and decisionmaking is always correct. Nagalro members have experience of many situations where local authority thinking is flawed, where assessments are inadequate and wrong-headed, where vital evidence has not been sought, or has not been accurately evaluated.

As we said in our evidence to the House of Lords Select Committee⁴ looking at adoption legislation “High-quality, timely assessment of children and parents in parallel with extended family and friends, and non-related carers is required to provide sound enough evidence for courts when making irrevocable life-changing decisions for vulnerable children.

Social work assessment must be front-loaded. For robust, accurate decisions about children at risk of abuse and neglect to be made in a timely way the most skilled, specialist-trained social workers need to be involved early in the process.” Too often local authorities do not undertake adequate assessment of either parents or extended family members before formulating plans for adoption.

Local authority performance continues to be extremely variable, under pressure from budget stringency and a workforce limited in experience and training. With the diminution in the quality of work undertaken by Cafcass practitioners a vital protective mechanism for children against poor social work practice is being seriously weakened. The provisions for contact in the legislation provide a vital protection for children of their family connections. Where adoption plans are premature or do not work out children’s kinship relationships often remain available and enduring.

What is important is that the quality of contact between child and parent should always be evaluated on an ongoing basis, with social workers giving consideration to the lived experience of the child. Where there is clear evidence that contact is of poor quality and is liable to damaging the child this should be presented to the court with an application to reduce or stop contact. This should be done whatever the stage of proceedings.

A major concern is the variability in the quality of contact supervision. Many of those who have responsibility for monitoring and recording what happens in contact sessions are not fully qualified social workers. While some family workers are skilled, too often workers lack specialist training and a sound theoretical framework for interpreting and evaluating the behaviour they observe. It is hard for courts to be confident in making decisions that have the most far-reaching consequences for children when the evidence before them is not convincing. Again this is a training issue as it is damaging for children if decisions about their relationships are based on ill-informed observations. Expertise in the ISW workforce can be brought in to assist in filling the skills gap.

It is certainly the case that when decisions are made about what care plan will be in the best interests of the child that contact should form a part of this discussion, and clear recommendations made informed by the evidence in the case and sound practice knowledge. This is what current guidance would expect. It should be remembered that children’s contact relationships are not just with parents: there are other significant people in their lives, siblings, grandparents etc, with whom contact will be beneficial for the child.

In summary we contend that the current legislation allows courts to make appropriate decisions to limit or end contact and it is a matter of training and encouraging best practice to ensure social workers know how to present sound evidence, and how to use the legislation available to safeguard the interests of children. This is another

role that expert ISWs could be used in – to train and mentor less experienced workers.

(b) Placement Orders are very commonly made at the same point that care Orders are made i.e. at the conclusion of care proceedings. Placement Orders are powerful instruments, giving local authorities considerable authority to make arrangements for children to achieve their adoption.

The concerns raised in the consultation document about contact at this stage are anecdotal and unevidenced. They relate to worries about informal agreements for contact being brokered in exchange for parental agreement to adoption plans. The extremely small number of contact orders made at this stage shows that this is only exceptionally an issue at this stage. It is not clear with whom contact is being ordered at this stage and whether some are orders made to extended family.

Some of the bargaining reported may reflect the difficulty inherent in concluding placement proceedings at the same time as care proceedings. A short space between, even a month for example, can allow all parties time to come to terms with the care order decision and to think forward more clearly about what contact will be in the child's interests and how contact needs to change. All contact decisions should be based on what will be in the child's best interests, and this is a matter of encouraging best practice. Good quality work with birth parents at this stage can lead to some parents supporting a placement and giving the child permission to move on.

(c) Adoption is a service for children and their interests must be paramount. Contact plans for children should be well thought through and realistic, which will reflect social workers' training and understanding of the issues in adoption. Adoptive parents also need good training and support around contact issues, and the support should be available long term.

Thinking and practice around post adoption contact has been influenced by feedback from adopted people who have reached adulthood. The use of indirect contact as a safe means of sharing information that assists children make sense of their dual identity has become widespread. The use of video may be more appropriate for parents with learning difficulties than letterbox contact. Research evidence about post-adoption contact, such as from UEA, needs to inform practice.

The legal position is abundantly clear in our view that contact post-adoption needs to be in the children's interests and that adoptive parents are the ones who will make this judgment. However, adoption itself will always contain the potential for tensions because children have a dual identity. It is important that legislation and guidance is constructed to encompass this duality in a way that is helpful for children.

Some plans for adoption are never achieved, some adoptions disrupt, and some adoptions while not disrupting never achieve a sense of real belonging for children. So the continuing sense of connection to birth family can be very important for children. The issues raised in the recent case of *A and S v Lancs CC* [2012] EWHC 1689 (Fam)⁵ illustrate the importance of continuing family connections for children who become 'statutory orphans' yet never find adoption or permanence. Sometimes it is grandparents or another member of the extended family who has the capacity to maintain a child-centred contact relationship, whether direct or indirect.

4 <http://www.nagalro.com/activities/publications.aspx> Summary, p 2.

5 See footnote 2 above.

7. We want to minimise the risks of harm for the child as a result of badly planned and inappropriate contact arrangements.

Should we introduce a presumption of 'no contact' unless the local authority is satisfied that contact would be in the best interests of the child?

Yes No

Please comment further:

Nagalro is strongly opposed to this suggestion, which in our view would be positively harmful to children's interests. The existing legislation relates to all situations involving children of which adoption cases constitute just one section. It goes against natural justice and human rights legislation to make 'no contact' the default position. It gives the state, in the guise of local authorities, far too much power when it already has sufficient power to act protectively for children who need it.

Relationships between children and their relatives have the capacity to provide many benefits for children as well as containing risks in some cases. Children, especially the infants and very young children most likely to be affected by this provision, are entirely dependent on adults to safeguard their interests because of their youth and immaturity. Even when parents are not able to care safely for children some have the capacity to care about their children, and to take on an advocacy role which would be undermined by such a change.

No contact is an appropriate order to make in certain situations, where parents continue to present risks of significant harm to children. The thrust of this whole consultation may reflect the fact that knowledge about how contact can be harmful for children needs to be better disseminated. It is also the case that such decisions require very skilled judgment, which is not always currently available.

8. We want birth parents to gain the court's permission to apply for contact, rather than being able to make a direct application. The court

Should we introduce a 'permission' filter for birth parents, requiring them to get permission from the court to apply for contact with a child?

Yes No

Please comment further, including any suggestions for alternative proposals:

It is unclear what stage this refers to. In our view existing legislation performs well and no new hurdles are required in relation to contact in adoption. While care proceedings are taking place we do not think such a filter is appropriate. The very low numbers of applications made in placement order proceedings would indicate that a filter is unnecessary. After adoption birth parents have no standing and would have to obtain permission in any case so the issue is not relevant.

Nagalro has recommended in our evidence to the House of Lords⁶ that parents should require leave of the court before being able to make a contact order in special guardianship.

⁶ See footnote 1

9. We want potential adopters views to be taken into account at an early point when making contact arrangements.

Should we introduce a provision to explicitly seek the views of the potential adopters at an early point in relation to contact at the point of the placement order?

Yes No

Please comment further:

We would expect potential adopters to be consulted about contact as a matter of good practice. We would expect that they will have been given information about the already identified needs of the child in relation to contact, as these will have been identified when the plan for adoption was agreed. The basis on which potential adopters will be forming their views needs to be taken into account. If they are involved at a very early stage they will know little about the child apart from using the information given to them by the local authority. To expect adopters to form a view before they know the child, have experience of the relative's capacity to manage contact, or have experience of how contact may impact on the child may unhelpfully polarise their position or lead to a view that is not based on knowledge or evidence.

Children can show some distress around contact, but this does not necessarily mean that contact should be stopped. The situation needs to be looked at carefully. The child's ability to express their feelings, which may include confusion and distress can reflect the reality of separation. It is the response children receive that is crucial in helping them to process and deal with the issues.

Training for adopters is important so that they can consider the issues involved in contact and its potential benefits as well as hazards.

CONTACT ARRANGEMENTS FOR ADOPTED CHILDREN

10. We want to give adoptive parents recourse where informal contact arrangements were causing difficulties.

Should we provide that the court can, on application for an adoption order, make an order for no contact?

Yes No x

Please comment further, including any suggestions for an alternative proposals:

The current legal position makes this unnecessary and we are unaware of evidence of problems in this area that would warrant the proposed changes.

There are concerns about unagreed contact happening via social media such as Facebook but this issue will affect older children rather than young children at the time of placement.

An order for no contact at the point of an adoption order should only be considered in response to situations where adopters are facing specific difficulties. The situation outlined at paragraph 40 of the consultation paper, where some adopters apparently feel obligated to continue with contact even when they believe it is not in the child's best interests should be dealt with through training pre-adoption and post-adoption support, rather than by a change in law.

Informal contact arrangements, which are the norm, should be established by reference to the child's needs, and an agreement reached about what is expected through discussion between the parties. It should be made clear in the agreement that the child's needs, as assessed by their adoptive parents, will take precedence and that there is no obligation on adopters to maintain contact where it no longer meets the child's needs.

11. In addition to introducing a "no contact" order, we could raise the bar for any birth parent to make an application for a contact order. Criteria for granting permission already exists therefore we will explore how this might be strengthened.

Should we amend legislation to create a new more demanding 'permission filter'?

Yes No x

Please comment further, including any suggestions for an alternative proposals:

In our view the legislation already has a high presumption that contact is an issue for adoptive parents to decide according to their view of children's best interests.

We are not aware of there being significant problems in this area for which current legislation cannot provide suitable remedies.

12. What additional support do social workers and family justice professionals need to ensure their own practice and recommendations are informed by evidence about the positive and negative effects of contact for children who are adopted?

Please comment further:

More access to training, dissemination of research findings and best practice examples, as already discussed. Nagalro runs a varied training programme that provides high quality training relevant to social work and legal professionals in the field of statutory child care, and we would be pleased to be consulted about our experience.

It may be that there needs to be wider availability of training related to the impact of abuse, neglect and trauma on young children, and training about using the existing law to protect children's interests.

13. In what ways should we strengthen the training about contact for prospective adopters as part of the new adopter assessment process?

Please comment further:

Ensuring adopters understand the legal situation, and also appreciate the complexities of developing an accurate sense of self as an adopted person.

The availability of skilled therapeutic support to adopters is particularly important, to enable placements to flourish and to establish emotionally sound family relationships. This will provide the surest basis for being able to deal with uncertainties and issues that children may feel in relation to birth family and identity issues.

It may be that some of the frustrations in adoption will be expressed around contact when they may also arise from the underlying challenges of forming attachments in adoptive relationships.

14. What additional post adoption support could be offered, to help adoptive parents support their child to understand how to make or stop contact with their birth family?

Please comment further:

More accessible, better resourced post-adoption support.

It is likely that issues around contact via social media will assume greater prominence in coming years and development of best practice will assist adoptive families.

15. How can unsolicited contact, either from a birth parent or from an adoptive child to their birth family, be better managed?

Please provide any examples of good practice, particularly managing the use of social media.

Please comment further:

This is not an issue where we have much direct experience.

16 Please use this space for any other comments you would like to make on the review of contact arrangements for children.

This consultation has been unhelpfully timed: the time available is far too short to allow for proper consultation processes within agencies; it does not take account of Cabinet Office guidance for the length of responses; it comes in the summer when many are away on holiday, further restricting the time available; and there have been a spate of other consultations on related topics at the same time.

With several of these proposals Nagalro members question what problems the changes identified in this consultation are designed to remedy because despite our members working in the field these issues and the consequent need for legislative change are not being frequently raised as portrayed in this consultation. It is a concern that draconian changes are being proposed on what appears to be sometimes very slight evidence.

The concerns raised would in our view be much more appropriately dealt with by means of enhanced professional practice, better training and knowledge of the existing law.