11 May 2016

Open Letter from Nagalro in response to the policy paper: Adoption: A vision for change (Department of Education, March 2016)

Introduction

1. Nagalro is the professional association for children's guardians, family court advisors and independent social workers. All our full members are registered as social workers currently working with children and families.

2. We have a significant number of members who have worked directly in the field of adoption, both as social workers and managers, some of whom have been involved continuously with this work for over thirty years and a few for over forty years. These practitioners have extensive experience of preparing and assessing prospective adoptive parents, of life story work and preparing children for placement, in placing and supporting adopted children and their adoptive parents, and in providing counselling to adopted adults seeking information about their history and origin. Thus, collectively, we can draw on a wide experience of adoption work and have a broad perspective on how adoption has developed as a beneficial service to children over the years.

3. We are fully aware from our experience that adoption has offered, and continues to offer, some children a most valuable solution when 'nothing else will do' - that is, where there is no viable alternative family placement available to meet their needs. We note the Policy Paper does not address how to prevent children entering the care and adoption systems in the first place.

4. Whilst formal responses have not been sought by the DoE, we consider this Policy Paper is so important and signals such a radical change in the adoption process, not least because it states *'we are determined to redesign the whole adoption system',* that it is incumbent upon us to comment both to offer encouragement and caution.

5. We are of the view that, like the curate's egg, the proposals are good and bad in parts. We are concerned that despite the intention to 'strengthen families', no more is said on this point and that there is no discussion of support for disadvantaged families despite the worrying increase in the numbers of children subject to care proceedings. The scale of reduced spending on early intervention in children's services and the way this leads to greater costs elsewhere is well analysed in *'Cuts that Cost'* (2015) produced jointly by the National Children's Bureau and Children's Society. Another excellent analysis of how funds could be better used is *'Spending on Late Intervention - How we can do better for less'* (2015) produced by the Early Intervention Foundation. The key point made by both of these publications is that by significantly reducing early preventive work, more public money has to be spent on costly proceedings, foster care, mental health provision, adoption agencies and so forth, which potentially could be avoided by better focused spending at an earlier stage.

6. We welcome the practical proposals once a Court decision has been made that a placement order and adoption is in the best interests of a child. The proposed structural and management changes, supported by increased funding to streamline the process of speedy placement and effective post placement support, are helpful and we are committed to working with the new agencies to maximise the benefits for children with an adoption plan. We are, however, concerned by the underlying tone of the document

7. We are concerned that special guardianship and family placements appear to be viewed as in some way inferior to adoption as a permanency option. We have some suggestions with regard to how the proposed improvements in the adoption process could be expanded to incorporate making the best permanency assessment for children to achieve the best outcome if they cannot be cared for by their parents.

8. We set out below our concerns with regard to the apparent prioritising of adoption as a solution for children for whom the threshold test of the CA 1989 has been passed and who cannot return home and also our suggestions regarding the future of the adoption service under the proposed new regional arrangements.

The role of research and use of statistics

9. There has been very little useful research in the field of adoption over the years – perhaps due to the long term factors involved, the parameters to be measured and, when comparing with other 'permanence' options, the problem of comparing like with like. It is acknowledged, as noted in the recent research by Selwyn et al at Bristol University, that the consensus of the limited research done to date suggests that compared with less permanent options (such as residential care, fostering and residence) adoption breakdown rates are lower (3-8%), and also that they are proportionally higher the greater the age of the child at placement. If adoption, as suggested in Policy Paper, is to become a 'preferred option' in child care planning it is imperative that both longitudinal research on outcomes and comparative research with other options, such as permanence through special guardianship is commissioned to ensure fair comparisons are made.

10. Recent research that has been done, including that referred to above, has looked at stability of placement during minority. We believe that research should go much further and address the experience of adults at various stages in the life cycle using the factors identified in the 1990s by Professor June Thoburn at the University of East Anglia, namely the 'twin pillars' of a sense of stability, legal security and permanence as well as, importantly, a sense of identity in order to provide a balanced picture. We know little of how adopted people, who have maintained stable relationships with their adopters, have felt about the experience and the impact upon their mental health. We have anecdotal evidence, but no research, that many feel 'different' and this has had a varying impact on success and fulfilment in adult life. The research on contact and open adoption is also very limited and on such a small a scale as to lack cogency.

11. Longitudinal studies, however useful, will also present risks of misinterpretation due to demographic changes over time as the population of children and prospective adopters in the 1950s and 1960s is very different from now. Then a relatively healthy group of unmarried mothers from a wide range of social backgrounds, gave up their babies due to societal pressure to a relatively young group of adopters for whom there were few fertility treatments available. The experience of this group, some of whom are the current policy and decision makers, cannot be directly extrapolated without allowing for a changing context.

12. The current situation is very different for three principal reasons: Firstly, many of the children now available for adoption come from backgrounds where the 'toxic trio' of mental health (including learning difficulties), substance abuse and domestic violence are present. We are only just beginning to recognise the 'iceberg' of foetal alcohol syndrome and its effects, evident only with hindsight and from the accounts of adopters of young adults, many of whom feel they were not advised at the time of placement regarding all the issues in their child's background and who have struggled with inadequate support over many years. Adoption is certainly not an endeavour for the faint hearted!

13. Secondly, there is reduced availability of suitable prospective adopters due to other options now more widely available, such as surrogacy and egg/sperm donation to assist people unable to have children naturally. Further, many of the current population of prospective adopters are older and some have suffered the severe emotional stress of a number of cycles of IVF and complex fertility treatment.

14. Thirdly, there continues to be a mismatch between the children needing homes (older children and sibling groups), compared with the aspirations of most adopters for younger children. The speeding up or even streamlining of the adoption process is unlikely to redress this imbalance. Aspirations need to be realistic otherwise all involved with the adoption/permanency process risk carrying an unreasonable sense of failure. These are all factors, which in our view, require much closer examination. The recent research of Selwyn et al notes the significant levels of stress and depression experienced by adopters and, by inference, the importance of resilience in coping with a much more damaged cohort of children, all of which also requires closer examination.

15. There is also the issue of fairly comparing like with like. The Policy Paper curiously, does not mention the outcome noted by Selwyn et al for special guardianship although it does for residence orders. However, the two are not comparable as unlike special guardianship, residence is not a permanence option.

16. At the time of Selwyn's research it was found that more special guardianship than adoption placements broke down in the early stages. It should be noted that this was in the context of pressure from the court process to assess relatives within 26 weeks and the reluctance of both courts and local authorities to 'test out' special guardianship placements in comparison with adoption, whereas the interval for adopters from initial application to placement is usually much longer.

17. Further, adopters are usually assessed and prepared by dedicated teams of adoption specialists with a high level of skill and expertise compared to the far less coherent process experienced by most prospective special guardians whose assessments are generally squeezed into other functions such as fostering or left to a social worker to do as a low priority amid other pressures or by a range of independent social workers, all of which results in a process of very inconsistent quality. Adoption and special guardianship cannot be compared regarding outcome until there is a level playing field. There appears, as a result of the poorer service received by special guardians, to be a suspicion by policy makers of special guardianship as an effective placement outcome leading, presumably, to the current emphasis on adoption.

The role of adoption in children's permanency decision making

18. Unlike an earlier Government document *'Adoption: The Future'* (November 1993) there is no recognition in the Policy Paper of the draconian nature of adoption against the wishes of parents, or that adoption severs the legal relation between a child and their birth parents and family. This was acknowledged in the 1993 document in the following terms: *'In* domestic *adoptions the balance between the rights and interests of the child, his adoptive parents and his birth parents will be defined afresh. In particular there will be …. recognition that the permanent legal severance of the relationship between child and birth parents should be justified by clear and significant advantage to the child compared with less* permanent *options'*

19. The basis of the careful crafting of CA 1989 was to provide support for parents to care adequately for their children and for the state to intervene by an application for a care order, where the threshold for making such an order must be proved. If amendments are to be made to CA 1989, it could be possible for parents seeking a s.20 placement may to find themselves in a position whereby a local authority could make a 'foster to adopt' placement and the carers/potential adopters may gain legal rights never initially intended. Furthermore it could, in effect, be the regressive step of a return to s.2 CA 1948 when local authorities by a committee decision could assume parental rights and responsibilities for a child without any due process of law.

20. Whilst most European states have a process for permitting adoption without parental consent, in her study of adoption law and practice in England and Wales for the European Parliament (2015), Dr Fenton-Glynn comments: *'it must be acknowledged that few - if any - States exercise this power to the extent to which the English courts do'* (page 27). In her recommendations to the UK Government, Dr Fenton-Glynn states: *'The complete severance of all legal and social ties between a child and their birth family should only be considered in the most severe and exceptional circumstances, which are not necessarily present in all cases where a child cannot return to their birth family'* (page 46). This recommendation appears not to have been heeded in this DoE Policy Paper.

21. When our closest neighbours are so reluctant to take such a draconian step with their own children, surely we should exercise caution in our use of what some would call 'forced adoption'. It was, after all, not so long ago that the UK was transporting children to Canada and Australia, a piece of social policy that is now perceived as quite morally wrong and misguided despite its justification at the time as being in the best interests of children and enjoying the support and management by such respected voluntary agencies as Barnardos.

22. We are concerned that any envisaged changes to the CA 1989 may be the thin end of the wedge and depart from the principles enshrined in the Act that if a child cannot live with a parent then consideration of a family placement must be made and that adoption should only be the choice when 'nothing else will do', a situation which reflects European jurisprudence.

23. Prior to Re B and Re B-S, it was the experience of some of our members that some local authorities took a somewhat cavalier approach to assessing family members who, having no legal status in care proceedings or basis to participate unless viewed favourably by the Guardian, had difficulty in challenging care plans. There was a tendency for local authorities to choose adoption as both a simpler and also expedient option to a kinship placement, with all the attendant complications of assessing and supporting family members. It is conceivable that the drop in

adoption figures after these two judgments, far from presenting a cause for concern as suggested in this Policy Paper, in fact showed that more appropriate and legally correct decisions were being made by local authorities upon being reminded by these judgments of their proper duty to assess family members adequately.

24. There are many children in England and Wales who would have better life chances if removed from both parents and family members and placed with people assessed as suitable to adopt. However, this would be social engineering and the danger of this has been noted in various judgments, even prior to the CA 1989. For example, Lord Templeman put it this way in Re KD (1988): '*The best person to bring up a child is the natural parent. It matters not whether the parent is wise or foolish, rich or poor, educated or illiterate, provided the child's moral and physical health are not endangered. Public authorities cannot improve on nature".* This is a normative statement, such that whilst Local Authorities could improve on nature, they have no right to do so other than in very exceptional circumstances.

25. It can be argued that the same point applies equally to family members, particularly where the child has a close, pre-existing relationship and a secure attachment. This point has been made by inference in many subsequent cases as Wall LJ in Re L (2006) pointed out: *''There are many statements in the law reports warning of the dangers of social engineering".* He cites Butler- Sloss LJ in Re O (1992): "*If it were a choice of balancing the known deficits of every parent with some added problems that this father has,* against *perfect adopters, in a very large number of cases, children would immediately move out of the family circle and towards adopters. That would be social engineering"*. It is noteworthy that she mentions the 'family circle', which seems to imply that caution must be exercised not only in choosing adopters over parents, but also over family members.

26. Hedley J reiterated the point in Re L (2007), where he specifically states: *"Society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent".* He notes that *"very unequal consequences"* will flow from children's differing experiences and states explicitly "*it is not the provenance of the State to spare children all the consequences of defective parenting".* He goes on to say that to justify removal *"there must be something unusual; at least something more than commonplace human failure or inadequacy"*. The original CA 1989 Guidance and Regulations is helpful in stating that such harm as to reach the threshold should be *"*considerable*, noteworthy or important"* (Vol 1, 3.19). It is not sufficient that a child would be better off in another family. This is the very reason for the threshold and in our view the same high test should be applied when considering placement with family members, particularly where there is a pre-existing positive relationship.

27. We would wish to caution that by unreasonably raising the yardstick for kinship carers versus adopters, the risks outlined in these cases may arise. We agree that the additional criteria added to the special guardian assessment schedule are appropriate and concur with the comments made by John Simmonds of CoramBAAF in his article in Community Care entitled *'Special guardianship reforms do not address time pressures facing Social Workers'* (24.02.16). We believe that to achieve balanced, comprehensive and accurate assessments of prospective kinship carers they must be afforded the same quality of assessment as prospective adopters.

28. We believe the proposal to establish regional adoption agencies (RAAs) as set out in this Policy Paper, offer an opportunity to bring together all the expertise needed to make the best permanence assessments and that decisions for children and should

include not only adopters but potential kinship carers. Thus, rather than calling these new agencies regional adoption agencies a better title to reflect the functions that should properly be included would be 'Regional Permanence Teams/Agencies'. This is a proposal also suggested by TACT.

29. Any assessment relating to permanency decisions for children should take into account, and give proportionate and appropriate weight to the child's existing secure attachments. Inevitably there are some children subject to placement orders in foster care awaiting a suitable adoption match who, during the time waiting, establish such a secure attachment to their foster carers that removal to unrelated adopters is clearly not in their interests. It is our experience that foster carers wishing to adopt in such cases rarely receive support from their local authorities in the first instance. This seems to stem from financial reasons because foster carers typically are unable to afford to adopt unless they continue to receive financial help. Local Authorities (LAs) are also reluctant to lose foster carers who provide a skilled, expensively trained, resource and this results in either the child continuing to live with a sense of impermanence and fear of removal as a 'looked after child' or, in some cases, a stressful, not infrequently bitter, stand-off results between carers and their local authority (in one case a judge threatened to give judgment in open court with media present to shame a local authority to provide financial support). None of these experiences are conducive to the welfare of a child and we hope that the new RAAs will have the means, either directly or via their constituent local authorities, to enable a smoother transition from foster placement to adoption for this significant minority of children. Children adopted by foster carers sometimes also have the additional benefit of established contact arrangements with their birth family with which their carers feel comfortable, unlike most unrelated adopters. This provides the duel benefit of legal security and identity as described by June Thoburn.

30. We were surprised to read in the research quoted, albeit limited, that the stability rates for foster carer adoptions were no better despite the advantages of having no disruption in placement and contact. We postulate that in such cases an undermining factor has been the usually protracted and contentious nature of the adoption process as described here, which has been a barrier to children achieving a sense of permanence as soon as possible. We welcome any support, which the RAAs can offer in streamlining and speeding this process for this group of children.

The role of the Regional Adoption Agency

31. Nagalro broadly welcomes any restructuring of the adoption process which enables economies of scale in developing the range of skills and services needed in the assessment, approval and support of prospective permanent carers, and also the assessment, preparation and support of children in need of permanency. We believe that as stated in the Policy Paper, this provides an exciting potential for the wider use of innovative and child centred strategies such as life appreciation days. We acknowledge that much innovative work has come from the voluntary adoption agencies, but not exclusively and are concerned that the tone of the Policy Paper, with little evidence, suggests that the private and voluntary approach as opposed to the public and 'bureaucratic' is always best. We are concerned about this and would caution against a cavalier approach to decision making, riding rough shod over the regulations, in the drive to remove bureaucratic constraints. We would also caution against removing a corporate approach, such as the use of panels, from the decision making process as this would lose the very wide range of expertise and knowledge which is brought to bear when life changing decisions are being made for children.

32. We would appreciate much greater clarification as to what is envisaged regarding the relationship between RAAs and the LAs holding parental responsibility for children. It is unclear whether parental responsibility will be devolved to the RAAs or whether it will remain with the individual local authority. If it remains with the LA, any decision on 'matching' a child to adopters will remain only a 'recommendation' for the LA's decision maker. Much greater clarification of the legal and governance relationship between RAAs and the LA with responsibility for the child and the LA where the placement is to be made, is needed.

33. We acknowledge that some small LAs have had particular difficulties in providing the whole range of services from their own resources, although some, such as in London and elsewhere, have already recognised their limitations and set up consortia arrangements prior to the RAAs initiative.

34. We wonder how performance indicators will be set for the new LAAs as it seems that any increase in adoption figures is perceived as 'a good thing' and any reduction 'a bad thing', which may not reflect whether the right permanence decision has been made for each child and put into effect in a timely way. Dr Fenton-Glynne in a further article in Family Law (February 2016) warns how the imposition of *"adoption score cards"* and similar data can result in a distortion of professional activity to *"meet the target"* rather than effect the best outcome for each child. We strongly warn against an approach where an increase in special guardianship orders and decrease in adoption orders will negatively impact upon the evaluation of the performance of RAAs and LAs.

35. We strongly encourage proposals in the paper regarding increasing the amount and quality of adoption support, but urge that this support should be extended to include special guardianship. Social workers in this field have long been aware of the vulnerability of adopted teenagers who have been disproportionately represented in Child Guidance/CAMHS clinics for many years and welcome targeted support for this group of adopters and children. Dr Selwyn notes this in her research and makes recommendations for a wide range of support that needs to be made available.

36. We are concerned that sufficient funding will be available and note that the Adoption Support Fund was given an initial budget of £19 million pounds, £16 million of which was spent in the first 6 months. This suggests that at least £32 million will be necessary in the first year, and this is without taking into account any increase in numbers that this Policy Paper encourages and anticipates. It would be unfortunate if demand outstrips supply and many adopters, having been rushed into adoption, are left feeling let down.

37. We welcome proposals to develop the work force such that RAAs should become a 'centre of excellence' and repository of skills in preparing children for placement and assessment of all prospective permanent carers, both related and unrelated. These skills should be available for assessment at both the pre-proceedings stage and during proceedings, not exclusively post proceedings. Without this, there is the significant danger of adopters receiving a superior service to prospective kinship carers and special guardians thus replicating, in our view, the current unsatisfactory situation. The establishment of Regional Permanency Agencies offers a real opportunity to establish a fair system and level playing field for all prospective permanent carers and we hope the opportunity will be grasped.

38. We also welcome the potential that exists for the new regional agencies in concert to become what might be described as a 'research hub', where a variety of data can

be systematically collected which could include longitudinal and comparative studies of various forms of permanency placement. More information is needed too about the impact of 'open adoption' and other arrangements where contact continues with birth parents.

Amendments to legislation

39. Page 23 of the Policy Paper sets out the intended amendments to the CA 1989 whereby when considering the appropriate final order/care plan, the court will have to consider whether the different proposed placements will be sufficient to meet the child's needs, including any increased needs which they may have arising from any previous mistreatment, and whether this level of care will continue until the child is aged 18 years. This provision appears to be an attempt to restrict family placements and the making of special guardianship orders when, in our view, the proper test for a child with a pre-existing relationship should be the 'threshold' test with all the attendant caveats against 'social engineering' as outlined above so clearly by a series of judgments from eminent judges and confirmed by Re B-S. In our submission the relatively poorer outcomes in respect of the stability of special guardianship placements arises for the most part from the haste which was imposed by the 26 week limit and the inconsistent quality and process of assessment by LAs of prospective special guardians compared with the more rigorous and consistent assessment process used for prospective adopters. We accept, as proposed by John Simmonds, that the process for assessment of kinship carers should be more rigorous and are of the view that the amendments to the Special Guardian Regulations (29.02.16) sufficiently address that need.

Conclusions and recommendations

40. We welcome the establishment of regional agencies as centres of excellence and repositories of skills to address the need to improve the speed and effectiveness of placing children with their best permanence option but believe that, most importantly, their remit should include assessment of potential kinship carers and special guardians.

41. We suggest that such agencies be called Regional Permanence Agencies rather than Regional Adoption Agencies.

42. We suggest that the skills and resources of these agencies are available at all stages from pre-proceedings to placement in order to provide a level playing field and best evidence for the family court.

43. We recommend that social workers in these new agencies should have responsibility for assessing both prospective adopters and kinship carers as this will enable them to develop a broad range of experience and depth of understanding of the strengths and limitations presented by both categories of permanent care. Such will, it is hoped, enable practitioners to develop a balanced child-centred, professional understanding independent of any particular external influence or prevailing philosophy.

44. We strongly warn against an 'evangelical approach' to adoption, whereby it is perceived as a good in itself. This perception is contrary to the majority view of European and western thought and jurisprudence, and it fails to appreciate it represents a serious and draconian step and a measure to be considered only 'when nothing else will do'.

45. We strongly advise against performance indicators that positively promote an increase in adoptions as these inevitably lead to a distortion of professional activity in favour of adoption at the expense of other choices, particularly permanent family placements.

46. We consider that current legislation in statute and regulations, bearing in mind the recent strengthening of the special Guardianship rules and taking into account Article 8 ECHR, is adequate to ensure a proper and proportionate assessment of a child's permanence needs when return to parents has been ruled out by a court. We warn that any further tinkering with CA 1989 would be unwise and the thin end of the wedge of social engineering.

47. We welcome the role of the new regional agencies, as a source of expertise and repositories of skills, to advise, guide and support related professionals, such as teachers, in their support of children who are in permanent care. We believe the agencies potentially have an important role to play as 'research hubs' and repositories of data to enable much better, relevant and useful research in the highly complex field of adoption and permanent placement.

Ann Haigh, Chair and Margaret Payne, Policy Officer

Nagalro
PO Box 264
Esher
Surrey
KT10 0WA

Tel: 01372 818504
Fax: 01372 818505
www.nagalro.com
nagalro@globalnet.co.uk

Principal Administrator: Karen Harris