

Nagalro Response to the *Case for Change* by the Independent Review of Children's Social Care

Background to Nagalro

Nagalro is the professional association for children's guardians, family court advisers and independent social workers. Nagalro was formed over 30 years ago to support the work of children's guardians in child care proceedings and has been one of the architects of the practical development of the tandem model of representation of the child in care proceedings, whereby specialist social workers and solicitors work together to promote the welfare of the child, provide an understandable explanation to the child and convey their wishes and feelings to the court. Nagalro's brief has since expanded to support diverse independent social workers but remains the only professional social work organisation exclusively concerned with practice within the field of child protection and children involved with the family court.

Nagalro responded to the review's Call for Advice with details of suggested research and relevant papers that should be read.

Summary of main issues

In our response to *The Case for Change*, we have attempted to answer those questions posed by the review which are within our experience and expertise, additionally raising further issues raised within each chapter.

This foreword does not purport to be an executive summary of the submissions which are contained within this document. Reading the body of the document, however, it seems to us that there are several recurrent themes and our intention in this section is to highlight them.

1. Mr MacAlister's Foreword to *The Case for Change* describes the 'children's social care system' as 'a 30-year-old tower of Jenga held together with Sellotape.' In Nagalro's view, the description of a children's social care system is misleading. Children's social care only exists as a part of the wider family of public services for adults and children whose ability to work together is often dysfunctional. Children's social care, to continue the metaphor, is but one Jenga brick in a tower from which bricks have been removed and knocked out of place. For a demand-led service, it is essential to look more widely at those areas, such as poverty, mental health, domestic abuse and housing which drive levels of demand but which are outside the control of those within children's social care.
2. It is misleading to disregard the damage and trauma that children, growing up in care, have suffered before they came into care. Their outcomes are partly dependant on the help which they can access during their time in care.

Children's social care cannot provide such therapy alone and in our work, we see stark illustrations of the interdependency of the different services.

3. The Children Act 1989 is an essential and adaptable legislative framework to build arrangements for the care and protection of vulnerable children. Rather than, as Mr MacAlister does, alleging an 'inadequate system' Nagalro contends that the structure around the Children Act is a piece of powerful and well-designed machinery if it is properly funded and operated with all its essential components. There is much, particularly around early help and support for children and families, which is underused. It is not a case that we have outgrown the Act. On the contrary, we have yet to fully use the facilities and tools which it provides. The Act provides for every child entering the family justice system, through the public law route, to have a children's guardian and a solicitor appointed, ensuring the best possible safeguard for good decision making in the family court. Children's guardians provide a voice for the child in court, are accountable to the court for their recommendations and are independent. This independence ensures they are unfettered in reaching a conclusion and recommendation that is in the child's best interest. No bureaucratic structure is necessary to ensure high standards of work for children's guardians or Child Care Panel solicitors.
4. It is impossible to avoid the issue of funding. Nagalro is not a political body but it is obvious to anyone working around children's services that deep cuts have been made in this area with consequences for anyone who has eyes to see. The submissions made in the *North East Submission to the Independent Review of Children's Social Care* make matters very clear from the voices of those who have been trying to balance their budgets with their legal responsibilities.
5. *The Case for Change* looks closely at the need for more use of early or family help. The use of such facilities is fairly universally agreed within those working in children's social care.
 - The structures for providing such help are already in place in the Children Act. All that is required is to use the tools which have been enacted and an increase in section 17 funding is overdue.
 - Despite consistent calls to increase facilities to support young children and families over many years, during the period of austerity they have been allowed to fall by the wayside. There will be work and costs involved to rebuild services such as those for early years, parenting programmes, family centres and to enhance them whilst continuing to meet the ongoing acute cases of child protection.

6. It is disappointing that the review makes only a cursory mention of the specific challenges faced by Black and Asian children and we have tried to set out some of these issues.
- Before the inception of this review, Nagalro has been researching the impact caused by the revocation, by the Children and Families Act 2014, of s1(5) Adoption and Children Act 2002 and Nagalro is seeking its reinstatement. Whilst '*The Case for Change*' looks at preserving relationships, it does not consider the key importance of a child's wider ethnic and cultural relationships, nor the child's religious and linguistic heritage. Nagalro contends that Black children should have their race, culture, language, religion and heritage effectively promoted and that there should be serious efforts to recruit Black and Mixed Heritage foster carers and adopters.
 - We would urge the review to seek an understanding of the factors that lead to disproportionate numbers of Black and Mixed Heritage children coming into care and the role played by deprivation.
 - We have found that there is a need for ongoing, consistent and uniform training for the staff and management of children's social care.

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Chapter one: The Context

The opening assertion made by the review is children's social care needs to change, based on 'the overwhelming message from the children, families, foster carers, adopters and others we have spoken to with and whose views are contained throughout this report.' No professionals are included in this list, although the review asserts that it is not a criticism of those working to improve the lives of children and families. Nagalro notes that the report does not intend to criticise professionals or

governments. Notwithstanding this, it is of concern that the efforts of the professionals are apparently dismissed.

Repeating an old message

The Case for Change draws together statistics for health, offending, education, unemployment and homelessness and demonstrates the disproportionate number of care leavers needing these services. Mr MacAlister quotes the cost of such services, repeating the same message given by parliamentary committees, academic researchers and children's organisations for decades which is that money is more appropriately spent on young children rather than providing a 'fire-fighting service' when things go wrong. Whilst we shall return to this issue in our response to chapter two, Nagalro agrees with *The Case for Change* where it argues for providing services for early years and family support.

The financing of such services will always be in danger of being eroded by other needs and so Nagalro suggests a budget is necessary to provide such services at a national level. The budget would be based on the scheme for services to be designed by experts in the field and, importantly, with the inclusion of service users. This cannot be achieved by reducing existing services elsewhere to fund early help if that creates a loss of current care, education and support services.

Better quality care, regulated accommodation and support are also urgently needed for older children who are at risk of sexual abuse, domestic slavery, county lines drug gangs, drug abuse, mental health difficulties, violence and crime. In our representations to chapter four, we reflect on the essential need for *care* to be provided for those aged 16 to 18-years, rather than simply *support* within semi-independent or independent accommodation.

The costs of poor outcomes

The Case for Change lays out the costs of the unacceptable outcomes for some of the children that have been in care. and included some statistics, referring to poor experiences having a huge human cost. Whilst not necessarily disagreeing with the spirit in which this statement is made we worry that the analysis is too simplistic and that the remedies will similarly lack reflection of the more complex features which feed into these outcomes. These would include:

- The children in care do not (generally) enter care as a blank page. Most of the children have, by definition, been subjected to serious harm within the care of their parents and that trauma left unresolved, also contributes to these outcomes (Filetti 2002).
- Whilst the author of *The Case for Change* may feel the need for tact, it is impossible to divorce this discussion from the unparalleled austerity cuts from all forms of local services which, inevitably, have costs to be paid by those least willing to bear them.

- The provision for children's social care does not exist in a silo. Health, housing and a reliable supply of food all impact the developing child. Those providing children's social care have no control over budgets for treatment for an adult mental health issue, even though mental health is one of the main factors leading to care proceedings.
- A further example of outside events, which add pressure to children would be the well-researched damage to children's attachment and development by food insecurity (Zaslow *et al* 2009). Children's social care has no control over the enormous rise in food insecurity and food bank reliance but it does have to meet the consequences.

The Case for Change's author also includes a graph (page 18) of spending on children's services in 2020 prices, split by statutory and non-statutory spending and provided by the Department for Education this year. The author then goes on to identify a dichotomy between the needs of children and families and how they are responded to. The needs are listed as:

- domestic abuse;
- neglect;
- emotional, physical and child sexual abuse;
- mental health;
- disability;
- criminal exploitation;
- unaccompanied asylum seekers and immigrants;
- alcohol and substance abuse;
- no recourse to public funds;
- alcohol and substance misuse.

The conclusions from this, which the review fails to grasp, are that the drivers for increased demand for children's social care are outside the world of the children so that unless and until we seize the larger nettles of mental health, poverty, housing and abuse any reform will largely be in vain.

The review also lists the sources from which the needs are responded to. The identifications are, largely, unexceptional, save for the section dealing with the judiciary. All laws on child protection and care are based on statutes passed by parliament. There is no role (as with common law) for judges to 'invent' laws to meet a perceived need. The judiciary is limited to interpret what Parliament must be taken to have intended when it passed that piece of legislation. The reference to 'the Southwark Judgment in 2009' is a good example of this. The case (*G v LB Southwark* [2009] UKHL 26) relates to the duties owed by a local authority towards a child aged 16 or 17 years under the Children Act 1989 and the Housing Act 1996. These are two pieces of legislation, passed by parliament, where the court had to decide how

parliament must have intended those Acts should work together. It is therefore grossly simplistic to say that the court's decision 'influenced the number of looked after 16- and 17-year olds.' The numbers were caused by the rights and duties created by our democratic processes when parliament enacts legislation. If parliament disagrees with the court's interpretation, it is always able to enact clarifying legislation.

The Case for Change also looks at the changing attitudes to risk and alludes to the understanding of risk being balanced with '*our willingness to intervene and our resources to do this.*' This ignores:

- the statutory duties placed on local authorities to safeguard children at risk; and
- even if the above were disregarded, the consequences for the individuals for whom those risks actually happen.

Social care services are demand-led services for local authorities and Cafcass. We acknowledge this can be difficult to meet but we would say, quite emphatically, that the criteria for defining children in need and children at risk of harm should not be changed. Modern assessments of risk and the actions to be taken are based on two axes of the graph: the likelihood of the risk happening and the consequences if it does. Any debate about risks has to be on an understanding that children's social care is concerned with children's lives.

Inequalities in which families are involved with children's social care

There is a reference to different decisions being taken in different areas but Nagalro is aware that variation in decision-making can be caused by a variety of reasons, including the level of deprivation in different areas, the resources available to support families and the lack of resources in some areas. There is a postcode lottery as understood for many years and the report has referred to relevant studies by (Bywaters et al 2020).

This review asserts that the evidence supports poverty as a root cause for children needing care and Nagalro is well aware of this as it is a matter that has been known for decades and was referred to by Munro (2011) and is the day-to-day professional experience of our practitioners. The report suggests we refer to 'child welfare inequalities' in future.

The review suggests that this would be a 'shift in framing.' The author contends that practitioners 'consider how deprivation contributes to a family's stress' rather than, it is said, as a 'wallpaper of practice.' Whilst these are high sounding words we struggle to read into the actual practicalities. It is the experience of our members that such issues are never simply dismissed as 'wallpaper', which is offensive to the families involved. Equally, however, the welfare of the child must be paramount.

We would hope that no professional would ever conflate poverty with neglect. There should be no need review to children's social care to achieve this, but Nagalro members are aware that poverty can lead to neglect.

Race and Ethnicity

We are surprised that these issues are treated very briefly and with a very cursory look at certain research regarding the rates of children in care comparing ethnic group populations. There is no exploration of the reasons for the disparities nor any discussion about the placements or experiences of Black and Mixed heritage children. We welcome the citation of research that promotes a social model of child protection which contextualises children's lives, and encourages social work practice to examine the intersectional relationship between race, ethnicity, poverty, class, health and gender.

We know that the proportion of Black and Mixed heritage children in the care system is disproportionately high, whilst the population of Black Asian children entering the care system is disproportionately lower. We also know Black children wait longer for adoption than any other ethnic group. We look to this review to actively search for answers as to why this is the case, and how such disproportionality can be remedied.

We recognise the answers are many and complex. Deprivation is known to be a key factor and almost half of people living in a family in the UK where the head of the household is black are in poverty (Social Metrics Commission 2020). Research has shown that the economic impacts of the Covid-19 pandemic are most heavily impacting those who were already in poverty prior to the crisis, including those from Black and Minority Ethnic families, disabled people, those with low qualifications, in low-skilled sectors and in part-time work.

There is no discussion about methods that could be used to recruit more Black and Mixed heritage carers as adopters or foster carers. Research is required to assess the impact of transracial or cross-cultural fostering and adoption on Black children. There is a need to commit to training for all social workers and prospective carers around cultural competency and how to equip a Black or Mixed heritage child to deal with the impact of racism and discrimination.

We note the review raises the questions of how the state intervenes. Why are some professionals intervening differentially with different ethnic groups at different times? We seek a commitment from this review to recommend adequate training for all professionals involved in children's social care around deprivation, age, race and ethnicity, culture, language, religion and state intervention.

Nagalro also seeks total commitment from this review to tackling all disproportionality in children's social care for Black, mixed heritage and minority ethnic children. This needs to be underpinned by a solid research base, and evidence from both service users and those professionals providing these services.

Intergenerational experiences of care

The review refers to the number of parents of children in care who were also in care themselves and there is a statistic quoted that 40 per cent of mothers who have had more than one child removed were themselves looked after as a child. It is asserted that social care has not 'broken the cycles of trauma and abuse' or the cycle of deprivation and this is used as evidence for the failure of children being looked after.

As we have pointed out, a child coming into care is, as a result of harm and trauma which they have already sustained, in need of therapeutic care to recover from this. Children's social care is not a closed system; it is part of many organisations which (should) operate together to meet the needs of the child, all of which are underfunded. In a review exclusively about children's social care, we must be vigilant not to attach the responsibility for issues that children's social care is powerless to resolve, such as mental health.

The purpose of children's social care

This chapter concludes with a heartfelt plea to keep children within their homes. As an organisation immersed in the decision-making process of whether a child should be removed from his or her parent or parents, Nagalro is in full support of the statement 'the role of the state should be to support and enable the inherent strengths of families and communities.' In our response to chapter two, we shall expand on this, looking at the practical issues to be overcome if such support is to be comprehensively available.

The final two paragraphs of the review suggest that this might sometimes best be done by 'getting out of the way'. Nagalro asserts that this is a very naïve statement, as the role of the state is ultimately to protect children from harm and a minority of families cause significant harm to their children, including severe injury abuse and death. The rose-tinted picture of families, friends and neighbours voluntarily taking care of children out of goodwill is an abdication of the state's domestic and internationally assumed obligations and will leave the most vulnerable children dangerously exposed to the whims of the community.

Chapter two: We're not doing enough to help families

The role of community networks

It is accepted that *The Case for Change* is not making recommendations and is limited, at this stage, to explore the scope for harnessing community resources. It is self-

evident that families and individuals who have stronger social relationships will have greater resources when dealing with periods of adversity. We must, however, not regard this as a panacea for the difficulties which lead to children needing help and protection. Domestic abuse, for example, is no respecter of social status or relationships since it is often covert. Similarly, substance abuse may be masked and continue 'hidden in plain sight' (see Bernard 2018 and 2019).

Whilst we would welcome the appropriate use of community resources, they must take place within a larger structure. These resources will need to be provided with funds and expertise and ensure that they form a part of a coherent plan for the protection of children. There has to be an overall responsibility for the welfare of the child, which must remain with those with statutory responsibility for the safety of children. Someone must take responsibility for the decision to allocate, or not, community help for a family and be answerable for any consequences. Likewise, training and safeguarding work will need to be carried out on an ongoing basis.

There will be instances where community resources may not be appropriate. There seems to be a dearth of research about this. The only programme specifically referred to in *The Case for Change* is the Australian model Family by Family plan, currently being tested in the UK by Shared Lives Plus. The only literature we can find that assesses Family by Family was carried out in the early stages of the project in 2012. We note that a substantial number of the families assisted are either first-generation immigrants to Australia or aboriginal people. We are not able to find any research to suggest whether this approach may work with higher-risk cases such as domestic abuse or substance abuse which are more common in the UK.

There may also be many families who positively *do not* wish to be referred to a community-based resource. That may be because they are concerned about their own privacy or that of their children and parents should not be, perversely, be discouraged from seeking help because they fear, rightly or wrongly, that they will be 'named and shamed' within the community. We cannot find any research on Family by Family cases that looks at this issue.

In the final paragraph of this section, the report suggests that 'the mindset of "safeguarding" may be resulting in risk aversion around how we make greater space for communities to play a fuller role in supporting families'. This passage is worthy of spending more time than the document currently gives. It is possible to read this sentence as implying that a mindset of safeguarding is something detrimental to children. No one who has read the reports published by the Independent Inquiry Child Sexual Abuse could think that any of the children in this inquiry were damaged by an excess of 'safeguarding'.

Equally, it is possible that some of the increase in care proceedings may be attributed to an unwillingness by local authorities to take the responsibility of managing and accepting risk, following cases such as the *Baby P* case. This may be correct and there should, perhaps, come a point when our society decides what level of risk it will accept and the consequences it will accept if those risks come to pass. That is something that society needs to confront in an adult and honest manner. Taking risks means that, inevitably, some children will suffer harm or even die. We need to be honest about the realities of this and when we, collectively, decide that the benefits outweigh the risks.

As with most questions in child care, however, the question is even less than straightforward. A local authority that has the staff and the time to devote will be better able to safely manage a marginal level of risk, whereas one stretched for basic resources will more likely choose the safety (for the local authority) of an application to the court to remove the child. The consequence can be seen by the repeated care applications at or immediately after birth, highlighted by the report by Pattinson *et al* this year, issued by the Nuffield Family Justice Observatory.

Providing early help for families

Before commenting on the benefits (and loss) of early help for families as a resource for families, we must first draw attention to the section heading (page 27) that ‘the focus should be support, *not* investigation’ (emphasis added). Nagalro is surprised and concerned that such a remark should come from someone who has worked to train and devise training programmes, for social workers. It is a foundational principle of most professional work, whether by doctors, lawyers, psychologists, social workers or chartered surveyors, that advice and support must be based upon a professional assessment of the nature of the problem, which can then form the foundations to the advice and assistance.

What can be criticised, is the situation in which the assessment does not produce anything further. This reflects the raising of thresholds for intervention and support as local authorities have been compelled by shrinking budgets to concentrate resources in the most serious cases. We shall return to this theme below when discussing the reports by the All-Party Parliamentary Group for Children, *No Good Options* and *Storing Up Trouble* below. Essentially, what we are seeing is a screening process to determine whether a family is ‘bad enough’ to receive a share of a scarce resource.

The recent report, published jointly by the National Children’s Bureau, University of Cambridge and University of Kent, (Edwards *et al* 2021) highlights, once more, the benefits which may result from timely support for families. The old adage that ‘*a stitch in time saves nine*’ remains true. It is a valuable contribution to the Independent

Review of Child Care and we are glad to see that Mr MacAlister has seen it and appears to be impressed by the findings.

Without in the least diminishing the authors' findings, the value of providing early help to families is not a new one, even if it has, of late, fallen out of sight by politicians. Members of Nagalro, who are practising in the relevant fields of child protection, estimate that around 60 per cent of the early help resources, previously available for children and families, are now lost.

As long ago as 28 March 1984, the House of Commons Social Services Committee published its report *Children in Care* which discussed the issue which we now refer to as early help. In paragraph 30 the Committee concludes:

'While there is a general acceptance that more could and should be done explicitly to prevent children entering long term care, and some awareness of the courses of action that would make this possible, there is as yet regrettably little indication of any concerted strategy which could translate pious thought into action. There are many reasons for this ... If half the funds and the intellectual effort which has gone towards developing strategies for finding alternative families had been put into what we can only tamely call preventive work, there would be unquestionable advantage to all'

The Committee continues, at paragraph 32, as follows:

'There are various reasons for this noticeable absence of a positive approach to "prevention". The gains are too nebulous. Society at large does not take kindly to money being spent with uncertain results on socially incompetent families, although vastly greater sums spent on rescuing victims of such circumstances are apparently less begrudged. Even where the will is there, the money may not be.'

At the start of the millennium, a joined-up approach to child development and care that took notice of the whole family unit was promoted through government policies such as *Every Child Matters* (DfE, 2004). Investment into children's centres, which brought a number of family services under one roof, benefitted a wide range of children and families. The financial crash of 2008 caused a radical refocusing of public funding and the number of children's centres declined dramatically (Smith *et al* 2018).

The report of Professor Eileen Munro in May 2011 made clear findings and recommendations about the importance of early help to relieve pressures that would otherwise build when work could only be dealt with on an acute basis. She told us that:

‘Like the reviews led by Graham Allen MP, Dame Clare Tickell, and Rt Hon Frank Field MP, this review has noted the growing body of evidence of the effectiveness of early intervention with children and families and shares their view on the importance of providing such help. Preventative services can do more to reduce abuse and neglect than reactive services. Many services and professions help children and families, so coordinating their work is important to reduce inefficiencies and omissions. The review is recommending the Government place a duty on local authorities and their statutory partners to secure the sufficient provision of local early help services for children, young people and families. This should lead to the identification of the early help that is needed by a particular child and their family and to the provision of an offer of help where their needs do not match the criteria for receiving children’s social care services.’

In March 2017, the All-Party Parliamentary Group for Children published *No Good Options: Report of the Inquiry into Children’s Social Care in England*. The Group reported:

‘The Inquiry heard repeatedly that increasing resource is being directed towards children who have already suffered abuse or neglect, or those at high risk of harm. Correspondingly, fewer resources are allocated for early intervention and prevention, including support for families. The result is a shift towards late intervention, where needs have often escalated significantly before any support is put in place. This often results in more children being taken into care, and ultimately in poorer outcomes for children and families.’

The suggestion that help should be made earlier, to prevent families spiralling into crisis, is, therefore, not new. What we have seen is that repeated reports and research have not been acted upon. Any proposals from this review must confront how the suggestions are to be translated into genuine action.

The total scheme of the Children Act 1989 is a graded and proportionate approach to assistance and intervention with families, starting with s17 of the Act which provides:

17. Provision of services for children in need, their families and others.

(1) It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part) —

(a) to safeguard and promote the welfare of children within their area who are in need; and

(b) so far as is consistent with that duty, to promote the upbringing of such children by their families,

by providing a range and level of services appropriate to those children’s needs.

The consistent experience of practitioners, across a wide range of local authorities and types of practice, has been that these provisions have not, for a long time, been exercised in a practical fashion or, indeed, at all. This failure does not arise from an unwillingness or apathy by local authorities. As the APPG in *No Good Options* notes:

‘A survey of directors of children’s services carried out by the Inquiry found that a staggering 89 per cent reported finding it increasingly challenging to fulfil their statutory duties under S.17 in the last five years. Furthermore, where children are in touch with services, interventions are focused on child protection concerns, rather than on identifying and responding to a broad range of needs.’

The following year, the APPG for Children issued a follow-up report, *Storing Up Trouble*, which revisits the concern about the concentration of resources into the most draconian of interventions and denuding the lower levels of support:

‘No Good Options highlighted how increasing demand and a reduction in resources were hindering the provision of early help services and support for ‘children in need’ under s.17. Further evidence heard during this inquiry suggests that thresholds for these services are more likely to vary across the country, when compared to more acute statutory support, and that fewer children and families are accessing help when they first need it.’

‘The majority of Directors of Children’s Services responding to the inquiry’s survey said that the qualifying thresholds for early help varied across local authorities, while 90 per cent said that it has become harder to fulfil their duties for ‘children in need’ over the last three years. The balance of spending has shifted, such that a far smaller proportion of resources is spent on early help and family support.’

‘This not only means children and families are missing out, and left to face increasingly complex challenges, it also stores up problems for the future, resulting in further demand for intensive support. Directors of Children’s Services giving evidence to the inquiry called for a ‘statutory safety net’ for early help services, echoing Eileen Munro’s recommendation from her 2011 review into child protection.’

None of these recommendations, made over the last 10 years, have been followed. It will be a matter for politicians and historians to debate whether the political choices, made at the time were correct or not. As the phrase has it, ‘we are where we are’. The pragmatic and child-focussed question is, what to do now if we wish to move away from the expensive and crisis-based approach currently in use? A recommendation to refocus on early help is attractive, particularly from the view of the spending

constraints imposed by the review. Whilst it does have a part to play, to rely on this, other than as part of a holistic approach, would be as simplistic and as doomed to failure as the opposite approach, seen over the last 12 years or so. Several inescapable realities have to be grasped:

- The majority of the facilities, personnel and their skills are no longer there. It is not simply a matter of opening the doors again and switching the lights back on; it will be necessary to rebuild the system which has been largely lost. This will take time and funds.
- The children, whose development has been damaged by the lack of help but below the threshold for help or intervention, will remain with us and Treasury requirements to see immediate changes and savings are, sadly, detached from reality.
- Although a balanced scheme of child protection, including realistically funded early help, will gradually reduce the number of children in acute need and requiring court intervention, there will remain a 'long-tail' of cases where the window for providing effective remedial work has closed and the inevitable consequences will follow.

None of this is to suggest that the work should not be done. Our role in Nagalro is to provide independent and realistic advice. We do not paint a rose-coloured picture, just to make an option we support, more attractive.

Nagalro's experience, built over 30 years' experience by our professional body and considerably longer than that by the cumulative experience of our members, is that an efficient system of child protection is based on a fully equipped toolkit that can be applied to the individual needs of the child. There is no 'one-size-fits-all' solution. Some can be helped by a short, helpful intervention to deal with a particular difficulty. Others are suffering such gravity of harm that only care proceedings will suffice. However, if we can reach a position where early help starts to reduce the volume of cases reaching the court, it should then be possible to commit the appropriate court and professional time and expertise to deal with those cases, which are currently stretched to breaking point.

Children are no respecters of departmental budgets

Any discussion about the future of children's social care must be a dialogue with health providers and particularly those responsible for adult and childhood mental health. The reality is that however departmental budgets may be separated, the border between children's social care and mental health is so permeable as to be virtually non-existent. An overflow in one area will inevitably lead to the neighbour suffering flooding; as we are seeing in care proceedings now.

The ACE study (Filetti *et al.* 2002), produced data linking Adverse Childhood Experiences (ACEs) with adult outcomes. Childhood adversity was linked to higher rates of drug and alcohol problems in adulthood. Childhood trauma may increase the incidence of substance abuse due to the need to shut down overwhelming emotions (Van der Kolk, 2014) and it may cause brain changes that directly increase a person's susceptibility to addiction (Andersen and Teicher, 2009). The rate of childhood sexual abuse among women misusing substances has been found to vary between 32 per cent and 75 per cent (Boyd, 1993).

The outcome of this, which all practitioners will be fully aware of, is that there is an inter-generational aspect to children in need. Children who have suffered harm or abuse will grow up and have children of their own. The data shows that a significant number will find themselves unable to care for themselves, let alone a child. The impact on the child then sows the seeds of the next generation of adults with unresolved childhood traumas for which they are 'self-medicating' with alcohol or drugs or who are vulnerable to abusive relationships. This is not something that children's social care, alone, can deal with. A much broader, holistic approach is needed to stem the flow further upstream and to accept that the results are likely to be measured in decades.

The tension between protection and support in Children's Social Care

We are aware that there is a perennial misconception by families that practitioners are 'our' social worker. This causes tension and conflict with family members when child protection measures are initiated because they perceive that someone invited into their family for help has 'turned against them'. The lack of clarity by social workers is sometimes also evident to Nagalro members, acting as children's guardians, where they sometimes see child protection measures being unjustifiably delayed because the social worker has become invested in, and identifying with, the adult rather than the child.

It needs to be clearly understood that, currently, the task of *Children's Social Care* is the support and protection of children. Their task is not to meet the needs of all family members, which may well be irreconcilable. The support or improvement of the situation of the adults is based on this being a means of improving the situation of the child. If adult family members need help in ways entirely unconnected to the child, then that may fall within Adult Social Care or health services but it is not the responsibility of Children's Social Care. Whatever work may be done must be based on section 1(1) Children Act 1989, namely that the welfare of the child is the paramount consideration. It, therefore, follows that the social worker is *the child's* social worker and as long as they are focussed on the child, and their focus is understood, conflict should not arise.

A further issue, which probably arises in the accounts of those with 'lived experience' of children's social care, is that many parents have not had an opportunity to see how family support can operate because the withdrawal of funding for anything other than assessment and protection work.

A possible definition of 'family help'

Nagalro is an apolitical, professional organisation and it would be inappropriate for us to comment on the scope of those who should be in-scope and, by definition, those who fall outside of such assistance. That demarcation is an exercise of political judgment. Ideally, we would wish to see any family with children able to seek help and support. We accept that there will, inevitably, be political and fiscal constraints but it is not for us to define where they should be drawn.

It is unclear whether the five paragraphs on page 36 are intended to form a draft definition. If that is the case, we would suggest that 399 words is much too long for a definition and will prove almost impossible to apply consistently. Practitioners, elected officials and the public need to have a clear and broad definition that does not lay up endless future disputes about whether a proposal amounts to family help or not. Beyond practical considerations of the drafting, it would not be appropriate for us to say more.

Chapter three: We need a child protection system that keeps children safe through more effective support and decisive action

How do we raise the quality of decision making in child protection?

It is of concern to Nagalro that there is a reference to the 'system' throughout *The Case for Change*. This lax use of the term 'system' is not helpful because it suggests something self-contained, whereas children's social care is a part of a much larger complex of public services which interact and have mutual dependencies. Josh MacAlister was present at a recent select committee meeting where this subject was addressed. It is not the first time that it has been raised. It was clear, in the evidence given and the questions put, that there is an awareness, certainly amongst the committee, that the complexity of the multiple systems, which work with children in need of protection, do not necessarily work together to provide the safeguarding and support they need and sometimes, in fact, hamper the efforts of other agencies. Children's social care is not the only agency involved with teenagers and there are numerous other systems such as the Courts, CAFCASS, Police, Youth Justice, MEOG, Health, Schools, Social Housing etc and each of these systems work independently within their own constraints and budgets. Unfortunately, the Care Review is only focussing on one element.

Nagalro believes that, without considering the multiple and complex roles of other agencies involved in child protection, satisfactory solutions will not be possible and for this reason, the independent review of children's social care has deep structural defects in its foundations.

How do we fill the accountability gap in order to take effective action to keep teenagers safe?

The question posed is simplistic and implies that, by making changes in Children's Social Care, the problem can be significantly changed to a point where these children can be kept safe.

In Nagalro's view, confining the examination of this extremely complex problem only in the context of children's social care will not provide a solution to, for example, the issues of child exploitation. Tinkering (and we use this term deliberately) with children's social care will not make things any better for these children until the government tackles organised drug supply gangs that are exploiting young people, particularly children in care, as a part of the business model (Calouri *et al* 2020). We also, as part of our daily practices as children's guardians, see children needing to come into care because the parents of these children are also victims of the remorseless exploitation of people in crisis.

It is Nagalro's view that central government has to grasp the much larger issue by facing up to the parallel economy built around drugs and to stop criminalising children, who are actually victims. Without doing this, having a coherent policy in relation to drugs and having a coherent view on the criminalisation of children, this embedded pattern will only continue.

There is no joined-up service for this group of children and to have such a thing would need changes across all agencies in how they treat and support this deeply vulnerable group of children. Let us answer this question with our own question. How can children's social care protect these children when it is well known that they are predated upon from Alternative Learning Colleges (formerly Pupil Referral Centres), mainstream schools, children's homes and unregulated placement? ALCs can only provide limited hours for these children who are then left with hours of unoccupied time. This is simply a further example of how children's social care cannot manage these issues alone because the problems spread out across a range of agencies.

Rather than placing children in (as the Children's Commissioner for England documents in *Unregulated*) bed and breakfast, hotels, tents and narrowboats there should be properly funded resources to ensure these most vulnerable of children are given placements where their needs can be met and they can be given the support they need to break free from their exploiters. There is a carefully thought-out, balanced

structure within the Children Act 1989 which allows us to do this for all children up to 18 years of age.

We would argue that is a national disgrace that children are being placed through private fostering agencies in inadequate accommodation and without the support they need to overcome the traumatic experiences they have experienced. Private fostering has placed a massive financial burden on local authority budgets, with little control over how this money is spent. This is something that a number of other concerned agencies and institutions have reported in their evidence to the review. We need to look carefully at our priorities. There is insufficient funding to allow local authorities to provide provision for these children but funds have to be found to pay vastly higher fees to unaccountable, private equity funded, companies to provide accommodation.

It is not clear why teenagers have been selected specifically in this section of questions. Safeguarding is an issue for all age groups and it is a duty imposed upon a whole range of agencies. Children's social care cannot reasonably be held solely responsible for all aspects of safeguarding children of any age or pre-birth. If there was more joined-up responsibility for safeguarding children it would be a step forward. Unfortunately, telling agencies that they should provide information and take responsibility for child protection planning does not mean that this happens in reality. In reality, children's social care carries this burden and there are simply unrealistic expectations of what can be achieved by children's social care alone.

It is the view of Nagalro that, the issue of exploited teenagers should be dealt with in a separate review that involves *all* of the relevant agencies, rather than trying to place responsibility on children's social care as part of this review.

All public services have been starved of funding and it should not be a surprise to the government that there is insufficient funding for these agencies to be able to implement the Children Act 1989. It would be shameful if this child and family focussed piece of legislation was to be watered down and Nagalro would strongly oppose any such proposal. If this Act was properly funded, within the services which are relevant to children such as children's social care, Cafcass, police, and education, this legislation would be able to provide the necessary support to families. Every element of what makes the Children Act 1989 the world breaking legislation for which is and was universally praised at the time, has dwindled due to a lack of funding. When this is coupled with the levels of poverty and disadvantage that have been highlighted in responses to the call for evidence, it is hardly a surprise that the agencies which are expected to safeguard children are struggling. 'Tweaking' and 'programmes' are not going to change anything for these most vulnerable children and families.

It is Nagalro's view that *all* relevant agencies need to take more responsibility for children who require safeguarding and that the independent review's weakness is that it does not and cannot bring into the review those other agencies, without whom children's social care is effectively stymied.

What can we do to support and grow kinship care?

Nagalro is committed to children remaining in their family, kinship group and this would be the first consideration when making recommendations to the court where a child cannot remain with their parents. Sadly, as has been set out in the evidence to this review, these placements are under-funded and under-supported and this can often end a placement for a child, despite the willingness and effort put in by family members. Family members have to take on a huge financial burden, many of whom are on low incomes and get no financial support. There are many reported court cases where family members have had to bring proceedings against a local authority to obtain a fraction of the financial input that a foster placement would cost. We need only illustrate the point with *Barrett -v- Kirklees MBC* [2010] EWHC 467 (Admin). There is *legislative provision* for financial support in the Children Act 1989, either through special guardianship support services or (for child arrangements orders) Schedule 1 of the 1989 Act, but there was never *funding* put into children's social care to actually provide this support.

In Nagalro's view, the government cannot expect families to be able to cope, unsupported, with the complex difficulties many of these children have due to the trauma and neglect they have experienced. Whilst we would be happy to be proved wrong, we fear that supporting kinship care will become a cynical means of transferring complex problems into the hands of those who will break their hearts trying to meet complex problems without the skills, resources or support to do this. There has been no investment in CAMHS or up-skilling social workers, family support workers, family aides, teachers etc to be able or encouraged to use trauma-based work programmes that, the evidence suggests, is a good, tried and tested, way to support children, parents and kinship carers. While there is, albeit limited, provision to support children in foster care, there is often nothing for kinship carers who are quickly left to get on with caring for the children.

Given the clear evidence of positive outcomes and value for money from programmes that support parents at the edge of care and post-removal, we are driven to ask, why aren't they more widely available and what will it take to make this the case? Nagalro's response to this question is a lack of commitment from the government to provide it and this is why such services are not universal.

Chapter Four: Care must build rather than break relationships

The central involvement of Nagalro members is around the court process, whether this is in care proceedings or adoption. So far as this chapter is concerned, therefore we are limiting our remarks to the areas where we have direct knowledge and experience, accepting that this chapter raises wider issues about how children's relationships can be preserved and enhanced.

All these comments are, necessarily, generalised and the circumstances of each child will be different. The circumstances which have led to the child being subject to a care order are important. Family members who accept the causes and want to support the child cannot be approached in the same way as those who have caused harm to the child and/or wish to work against the plans for keeping the child safe. All of these details will be different for each individual and must be the framework that leads to the construction of the child's care plan.

The approval of the care plan is an issue with which our members are intimately involved, including how each child's important relationships should be retained. Care plans are, sadly, not always followed.

There are four issues which we would hope to be of assistance to the inquiry.

The role of the children's guardian in identifying the child's important relationships

A child does not come with a folder of important relationships. Those who are regarded by the child as important may coincide with the views of the adults but may contain surprises as well. The care plan for the child should reflect these relationships and how they are to be preserved for the future benefit of the child, but how to find out which they are?

Finding those relationships, the people themselves and what they may be able to offer to the child is part of the independence and freedom of action which is part of the statutory foundations of the role of the children's guardian. Those duties and the guardian's freedom of inquiry are set out in s41 Children Act 1989 and given more detail by para 6.1 Practice Direction 16A Family Procedure Rules 2010 which says as follows:

'The children's guardian must make such investigations as are necessary to carry out the children's guardian's duties and must, in particular: (a) contact or seek to interview such persons as the children's guardian thinks appropriate or as the court directs; and (b) obtain such professional assistance as is available which the children's guardian thinks appropriate or which the court directs be obtained.'

In her decision in *LR v A Local Authority & Others* [2019] EWFC 49 (Fam), Mrs Justice Theis emphasises the active role which the children's guardian should take when she says:

*'The rules provide the wide discretion for the guardian to make such investigations as are necessary to carry out those duties and, in particular, contact or seek to interview such persons as the guardian thinks appropriate, or – and I emphasise the **or** – as the court directs.'*

In our analysis of this case and the policy decisions which led to it, (Nagalro, 2019) we have been clear that the moves to diminish the children's guardian from an active and enquiring role to one who is primarily a 'checker' for the local authority plan are not only to be deprecated but drive a coach and horses through the intentions of the Children Act.

The work of the children's guardian, spending time with the child, understanding their wishes and feelings and being able to speak with the parents as an independent professional can often be a valuable resource which has, in our experience, often led to the discovery of important people who can, in a small or greater role, be of long-term benefit to the child.

Maintaining relationships with siblings

Our relationships with our brothers and sisters are, generally, the most enduring relationships we have and, for children who are no longer able to be with their parents, it will, in most cases, be vitally important that the siblings can remain together. For children leaving care, relationships with siblings are a group of caring, loving individuals to whom they can reach out for help and support.

In England, our legal protection of sibling relationships is not extensive. Section 22C Children Act 1989 requires a local authority for whom accommodation is provided for two or more siblings to enable them to live together, where this is practicable. Other full or half-siblings, not being looked after, do not fall into the duties imposed by the statute.

An interesting approach is being taken by Scotland where The Looked After Children (Scotland) Amendment Regulations 2021 have just come into force. The regulations provide a clearer duty to place siblings together unless it is detrimental to the welfare of the child to do so. There are further changes arising from s25 of the Children (Scotland) Act 2020. There is an acceptance that hearings may significantly affect contact or the possibility of contact between the child in the proceedings and siblings who are not parties to the case. The amendments to the Children's Hearing (Scotland) Rules will provide a proper opportunity to provide their views to decision-makers on their contact with their brother or sister who is the subject of the hearing. The Policy Note issued with the amendment to the Children's Hearings Rules sets out that:

‘Ministers recognise that the preservation and development of sibling relationships and contact will usually have a positive impact on the subject child’s best interests, as well as on the rights and interests of their siblings.’

Research by Jones and Henderson (2017) found that more than two-thirds of looked-after children were living apart from at least one of their familiar biological siblings and two-fifths were living apart from all of their familiar biological siblings. Whilst there will be some cases where children need to be moved away from abusive or harmful interactions, in far too many cases children are suffering further harm and distress. In 2020, the BBC sent out a series of Freedom of Information Act requests to 200 local authorities about the placements of siblings in their care (Kenyon and Forde, 2020). The replies showed that more than half of sibling groups in care were split up and more than 12,000 children were not living with any of their brothers or sisters.

These separations are not simply thoughtless official policies. Lawson and Cann (2019) demonstrated that some 54 per cent of foster carers would like to offer a home to more children so that they could live with their siblings but were unable to do so. Most commonly, the issue is related to a lack of housing capacity. Even where siblings cannot live together, foster carers could be helped to facilitate regular meetings and communications between siblings, so that bonds are preserved for the future. For children being looked after by the local authority, research by Meakings *et al* (2017) showed that brothers and sisters who are placed together were more likely to remain together whilst those who are separated were more likely to remain apart.

Beckett (2021) helpfully summarises the research, looking at the benefits for siblings who can remain together after they start to be looked after:

- *‘increased chances of achieving reunification, and some limited findings suggest more favourable educational outcomes than for siblings living separately (Meakings et al., 2017)’*
- *‘easing the transition into care because there is continuity of family relationships (Herrick and Piccus, 2005; Leathers, 2005). In an unknown, unfamiliar situation, the presence of one or more siblings can play a crucial role in maintaining emotional stability and a sense of safety (Shlonsky et al., 2005)’*
- *‘better emotional support: care-experienced young people typically report that being placed with siblings was experienced by them as being emotionally supportive, helping to provide them with a ready-made support group, an ally, someone to talk to if they had problems and someone on whom they could depend’*
- *‘warm sibling relationships can help to protect the emotional well-being of children and young people in care (Wojciak, et al., 2013)’*
- *‘particular benefits for boys, helping them to develop relationship skills and competence, perhaps because boys may otherwise have fewer opportunities*

outside their sibling relationships to develop these qualities (Richardson and Yates, 2014).'

What Beckett (above) also explains is how the older siblings may have carried out significant caring and parenting of their younger siblings before the children came into care. When a group of siblings have to be separated it is common for the older children to be separated from the younger, sometimes with the latter having plans for adoption. Those children may 'deeply grieve the loss of these relationships.' We would contend that some children experience the equivalent of multiple bereavements.

These are the stark realities. Nagalro is happy to accept that no local authority sets out to deliberately inflict such harm. In the majority of cases mental health issues, substance abuse (often self-medicating to relieve the former) and domestic abuse mean that the parents cannot, without causing serious harm, be left to care for the children. Finite resources have to meet the needs of those children. The resources may be inadequate and the children may suffer further harm because we are not able to fully meet the children's needs.

Building cultural relationships

Section 1(5) Adoption and Children Act 2002 provided that, when an adoption agency was placing a child for adoption, it must give 'due consideration' to the child's 'religious persuasion, racial origin and cultural and linguistic background'. The statute never required the agency to only find a complete cultural match for a child or that a child must wait indefinitely. It was simply one factor in the welfare checklist to preserve (where possible) the adopted child's cultural heritage and background.

So far as England, but not Wales, is concerned s1(5) was repealed by s3(1) Children and Families Act 2014. The basis for the repeal, as set out in the Act's Explanatory Notes, was to reduce the delay experienced by black children waiting for adoption. In reality, the problem was far more complex and the legislative solution does not begin to address these issues. Nagalro's own research (Hughes, 2021) sets out the more challenging background as follows:

- *'There is a consensus in all the research I have read that young people require placements that promote their self-esteem and a sense of identity and that wherever possible this should be a same-race placement.'*
- *'The research did not find a systemic bias against, or mishandling of, minority ethnic children compared to white children, nor did the study find a tendency to take minority ethnic children into care more precipitately.'*
- *'Black children came to the notice of children's services when they were older compared with the sample of white, Asian or mixed ethnicity children – this affected their subsequent path through the care system and that they were less likely to be adopted than white or mixed ethnicity children. The study considers that the fact that these children come into care later might be due to 'differential*

social work practice', such as fears of offending community sensibilities or of being accused of racism.'

- *'A child's age was the most important predictive factor as to whether the child was adopted or not.'*
- *'Some children were not adopted because there was little or no promotion of them and their social workers believed that adopters could not be found, as many were searching for a two-parent family who would match the ethnicity of the child.'*
- *'Plans for Asian and black children changed from adoption for 64 per cent of the children. Plans changed away from adoption placements for 25 per cent of the minority ethnic children and for 17 per cent of white children who had adoption recommendations.'*
- *'Children were looked after on average ten months before an adoption recommendation was made. Black and Asian children waited longer in care before a recommendation was made.'*
- *'The time it took to find adoptive placements ranged from 0–31 months and most children were in placements exactly or partially matched by ethnicity. Changes to the adoption plan occurred on average 14 months after the recommendations, usually because no suitable adopter could be found. In relation to minority ethnic children, their plan changed away from adoption if no adopters had been found within six months, showing a discrepancy between how minority ethnic children are treated as opposed to white children.'*
- *'Social workers used the term 'ethnicity' interchangeably with 'culture', implying that crude ethnic labels did not necessarily contribute to understanding a child's culture.'*
- *'There are no definitions that the researchers could find which clearly understood the meanings of what is meant by 'consideration of a child's racial origin and cultural background'.'*
- *'There is a striking lack of data on minority ethnic children in the care system and how they come into care, although it is clear that black and mixed ethnicity children are over-represented in care and there are fewer Asian children looked after than would be expected.'*
- *'Agencies are struggling to find adoptive parents for minority ethnic children. The likely explanations for this are: poor recruitment efforts; social workers' desire to achieve exact matches; a preference amongst potential minority ethnic carers for foster or kinship care; institutional racism; differential acceptance of contact arrangements; and also a reluctance actively to recruit prospective adopters in mixed relationships.'*
- *'More delays were due to legal proceedings, parental behaviours or the assessments of kin.'*
- *'Hardly any data were recorded on how carers might give the child opportunities to develop and celebrate their own cultural traditions, language and religion.'*

- *'White children are often placed on the basis of their skin colour, although little consideration is given to matching them according to their cultural backgrounds.'*
- *"Asian" was often used as a distinct ethnic category with no distinguishing between the different cultures of different Asian communities.'*
- *'The child's age and ethnicity were significant predictors of whether a child was, or was not, in an adoptive placement. Infants were ten times more likely to be adopted than a child older than three years and mixed ethnicity children were four times more likely to be adopted than Asian children.'*
- *'Social workers thought that adoption procedures and regulations deterred minority ethnic adopters, while Eurocentric assessments and current recruitment techniques reflected a lack of sensitivity to 'race' and ethnicity issues.'*
- *'Most of the adopted children had been placed in a two-parent heterosexual family, where there were other children.'*
- *'There had been little promotion of the children still waiting for a permanent placement. Promotions, where they did occur, had happened sequentially.'*
- *'Mixed ethnicity children's pathways through care were similar to those of white children.'*
- *'The researchers considered that social workers struggled with how to think about mixed ethnicity children. The common approach was to view the children as 'black', even when the ethnicity of the father was not known, or when the child had been brought up entirely within a white culture.'*
- *'Mixed ethnicity children waiting for adoption were viewed as black and their ethnicity was seen as a deterrent to potential adopters.'*
- *'The profile of children of mixed heritage in the study differed significantly to those in the general population, in that the children were generally the children of white single mothers, had a father who was never part of their lives and many of them had siblings who had a different ethnicity.'*
- *'25 per cent of children of mixed ethnicity who were part of the study were showing symptoms of FASD or neonatal abstinence syndrome. The majority of them were referred as infants and were more likely to be placed for adoption than black or Asian children and their chances of being adopted at older ages were higher than those of other minority ethnic children.'*
- *'Social workers struggled with how to consider matching mixed ethnicity children. The common approach was to view the children as 'black' and to prioritise the ethnicity of the birth father. They were confused as to whether to preserve the child's present identity, or to enable the development of other minority ethnic identities to which the child had some genetic connection.'*
- *'While far more efforts need to be made to recruit as wide and diverse a pool of adopters as possible, there needs to be greater realism about the likelihood of finding the 'perfect match'. A more sensitive and sophisticated approach to assessment, matching and placement is required.'*

- *'Virtually all minority ethnic children are subject to racism and for many children a placement matched on ethnicity will be in their best interests. It will be where children feel comfortable'.*
- *'A review by the Evan B. Donaldson Institute Finding Families for African American Children: The role of race and law (2008) concludes that the available research evidence suggests that 'transracial' adoption does not, in itself, produce psychological or behavioural problems in children, but those who adopt 'transracially' face a range of additional challenges. The way in which adoptive parents handle those challenges facilitates or hinders their child's psychosocial development.'*
- *'Mixed ethnicity children came from a wide variety of ethnic heritages and it was unhelpful to refer to them as if they comprised a meaningful group or community.'*
- *'Finance was an issue for many black African respondents, as was housing, and many were not convinced that adoption was a viable option as opposed to long-term fostering due to financial reasons.'*
- *'38 per cent of local authorities had a specific recruitment policy for minority ethnic careers.'*
- *'The Adoption Register for England and Wales (2003 from agencies across England and Wales about children waiting for adoption between 7 August 2001 and 31 March 2002 demonstrated that of all the children waiting for adoption 17 per cent were of mixed parentage, 2 per cent were Asian, 3 per cent were black and 78 per cent were white children, whereas 10 per cent of approved adoptive families were black, Asian or mixed parentage and 90 per cent were white.'*
- *'The government has recently responded to a call for better data by introducing from 2009/10 a census of all referrals to children's services which will include data on ethnicity.'*
- *'Rigidity in relation to ethnic matching was considered to be an important cause of delay and also a barrier in identifying families when a child had specific problems such as developmental delay, health difficulties or uncertainty about inherited conditions.'*
- *'75 per cent of mixed ethnicity children had a sibling of a different ethnicity to themselves.'*

The implications for the child of being put in placements that are not culturally appropriate were not considered when s1(5) of the Adoption and Children Act was repealed. Whilst 90 per cent of prospective adopters were white, 22 per cent of the children requiring placements for adoption were of black, Asian or mixed parentage. This indicates the urgent need to reach out to local communities to locate and recruit adopters who can provide a closer fit for the waiting children and better meet the needs of black, Asian and mixed parentage children. It is only recently that consideration and funding have been provided to recruit more appropriate adopters for black and Asian children. Nagalro contends that the importance of a child's

religious persuasion, racial origin and cultural and linguistic backgrounds are essential to a child's emotional, cultural and identity development.

The use of unregulated accommodation for children looked after by local authorities

At the time of submitting this response, it remains lawful for the state to accommodate children, as young as 13-years, in tents, caravans and squalid bed-sitting rooms, notwithstanding that the court has ordered the local authority to take care of the child and to have parental responsibility for that child. If a lay parent behaved in this way they could expect intervention by children's social care. From 9 September 2021, happily, it will no longer be permitted to place a child under 16-years in such accommodation. There is a consultation on children older than this.

So far as the changes in September 2021 are concerned, these changes will only affect two per cent of the looked after children who are left to fend for themselves. At the end of March 2019, there were a further 6,100 children aged 16 or 17 years whose accommodation was outside any control or inspection. Their fate remains to be decided. *The Case for Change* supports the government stance that there should remain independent and semi-independent accommodation for those 16-years and above. Nagalro cannot concur with this stance and our reasons are set out below.

There is an issue of legality which is raised in our response to the Department for Education's consultation. In essence, the position is this. Once a court grants a care order under the Children Act 1989, s33 of the Act imposes a duty on the local authority 'to receive the child into their care and keep him in their care while the order remains in force'. Since the order continues until the child reaches the age of 18-years, the duty to keep every looked after child in their care remains until then or until the care order is revoked. The proposed national standards set out by the Department for Education omits any requirement to provide care for those who are placed in the anticipated independent and semi-independent accommodation, which we contend is in breach of the requirements of the Children Act and therefore unlawful without a change of primary legislation.

In her report of September 2020, *Unregulated*, the then Children's Commissioner for England, Anne Longfield, paints a very clear picture of the reality of life for children in unregulated accommodation. Whilst she records instances of good accommodation and staff who go out of their way to take care of the children placed with them, for the majority the picture is a very different one. During her research, police told the Commissioner about providers who were affiliated to 'major organised crime operations' who exploited these children for their own gain. One young person reported being given cannabis to sell by a staff member and this was believed to be only the tip of the iceberg. Many unregulated premises offer accommodation to adults and children and so *Unregulated* reported children living alongside adults struggling with homelessness, mental health problems or transitioning back into the

community from prison. Many children reported being frightened and were vulnerable to exploitation. Others described how easy it was to get lost in drugs and alcohol because they were bored, lonely or simply had too much time on their hands.

A concern which the government's proposals will not address is that some of the teenagers spoken to by Anne Longfield's team described how they were forced out of foster homes where they felt safe. As her report points out, unregulated care is often cheaper and moving the child will free up space for younger children entering care. Teenagers reported being moved with little or no notice and no real preparation for a more independent life.

The issue, which *Unregulated* highlights, is that the children in such accommodation are not receiving *care* as they should under a care order. The lack of care lies at the heart of the children being vulnerable to exploitation and falling into drug and alcohol abuse. The government proposals may improve the physical conditions in which children are accommodated and may (conceivably) lead to the provision of such accommodation not longer providing an income stream for organised crime. Without the provision of care, however, these children will remain vulnerable to exploitation, whether this might be from sexual exploitation or providing expendable foot-soldiers to the county lines drugs gangs.

Research by Crest Advisory in 2020 (Calouri *et al*, 2020) shows abundantly clear data showing that looked-after children are disproportionately represented in county lines networks. Children are at higher risk of going missing and nothing other than 'care' will work to reduce this. No matter how well-regulated, clean and maintained the accommodation might be, if there is no one who takes *care* to look after the children and to ensure that they are kept safe, they will remain easy pickings for anyone wishing to exploit them for their personal gain. The Crest Advisory report explicitly calls for the Independent Review of Children's Social Care to consider the exploitation of children and to support local authorities to create suitable placements for vulnerable adolescents close to their home area.

Chapter five: System factors

Since Nagalro is an association of independent practitioners, we have thought carefully about how far we can usefully contribute to this chapter. However, a number of our members have significant experience within the management of children's social services before they moved to independent practice and we see the way in which cases are handled when our members are looking at cases as children's guardians, independent reviewing officers and independent social work consultants brought in by local authorities for specific projects. We can therefore provide insight from an informed outsider's stance.

When finalizing these submissions, we have had the opportunity to read the recently published representations contained within the *North East Submission to the Independent Review of Children's Social Care* (the 'North East Submission' see [North East Submission to the Independent Review of Children's Social Care 2021 \(adcs.org.uk\)](https://adcs.org.uk/north-east-submission-to-the-independent-review-of-childrens-social-care-2021)). With the exception of independent and semi-independent accommodation, we find ourselves in substantial agreement with most of their submissions, particularly regarding chapter five. We shall therefore refer to these submissions, where appropriate, rather than repeating the arguments which have been documented already in the North East Submission. Significantly, these submissions emanate from a group of 12 directors of children's services who draw from their lived experiences of operating children's social care services in a mixture of urban and rural areas and across a range of political control. A frank account of what those responsible say that they need to work better is, therefore, to be taken seriously.

Is it helpful to discuss 'a system'?

We would draw the review's attention to the underlying thesis of the Department for Education's *Working Together to Safeguard Children*, that the work of children's social care is a part of a much larger picture. If there is to be, as we are promised, a 'once in a generation' reform of children's social care it will fail unless all the other parts of the machinery are sitting around the table and participating. We would include representatives for health, criminal justice and housing at the very least. Because children's social care does not and cannot work in a vacuum, it is of very limited help, save for internal purposes, to discuss 'a system' at all, since the actions of so many other areas can completely undermine efforts to improve the welfare of the children involved.

Where does the Children Act 1989 stand within this discussion?

The structure of the Children Act 1989 remains one of the best frameworks which to construct child protection and help for children and families, with a proportionate and graduated system, moving between the (much neglected) provisions in Part III of the Act setting out support for children and families and supplemented by detailed powers and provisions in Schedule 2 of the Act, right through to care and supervision orders under Part IV of the Act. Nagalro would echo the submissions of the North East Submission that it is not the structures within the Act that are broken but rather that the unbearable stresses and the uses to which those structures are being put. The Act reflects not only a coherent and useful internal system but also reflects the state's international obligations under the European Convention on Human Rights and (largely) those under the UN Convention on the Rights of the Child. What is needed is to operate that legislation fully and as the legislators originally intended.

A way ahead for reform

The North East Submissions set out (on page 6) two ‘asks’ and six ‘headline recommendations.’ We fully support these proposals for the way forward to improve the lives of our most vulnerable children.

Strengthening multi-agency working

The North East Submissions deal with this issue in a constructive fashion which we would support. We are particularly impressed with the proposed ‘duty to collaborate’ which would force different professionals out of their individual silos to cooperate with each other for the benefit of the children.

Freeing up social workers to spend more time in direct practice

There are two issues that we would highlight in this section. The North East Submissions put forward proposals from the viewpoint of local authorities which we would agree with.

The role of the children’s guardian is also important on this point. There is concern about social workers being promoted out of direct practice and into management functions. With a minimum of 3-years relevant post qualification experience the role of children’s guardian provides a route for highly experienced practitioners to work towards in a role which has been described by, the now President of the Family Division, Sir Andrew McFarlane in the Court of Appeal in the following terms:

‘All we need say is that the children's guardian is on any view pivotal to the whole scheme. The guardian is both the voice of the child and the eyes and ears of the court. As any judge who has ever sat in care cases will be all too aware, the court is at every stage of the process critically dependent upon the guardian. In a jurisdiction where the State is seeking to intervene – often very drastically – in family life, the legislature has appropriately recognised that determination of the child's best interests cannot be guaranteed if the proceedings involve no more than an adversarial dispute between the local authority and the parents. Parliament has recognised that in this very delicate and difficult area the proper protection and furthering of the child's best interests require the child to be represented both by his own solicitor and by a guardian, each bringing to bear their necessary and distinctive professional expertise.’ (R and others v Cafcass [2012] EWCA Civ 853)

What will need to be different about this review’s recommendations

As we have shown, there have been many reviews and reports which have made sensible, constructive suggestions. The issue is with the implementation, which is a political matter and outside our remit. The Children Act 1989 was a cross-party initiative and we would hope that any work to take forward this review will be approached similarly. Our children demand better than to be used in political

gamesmanship. In our responses to chapter two, we have set out a series of recommendations around early help for families which have either not been implemented or subsequently allowed to fall into disuse. The recommendations made by the North East Submissions would make a huge difference, but only if the political will and resources can be found. Without that, they will remain fine words gathering dust on library shelves.

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