

The 2022 House of Lords Select Committee on the Children and Families' Act 2014 - adoption, care proceedings, special needs: Inquiry – is the Children and Families Act 2014 fit for purpose?

Impact of the repealed provisions of s1(5) Adoption and Children Act 2002.

Nagalro's Evidence.

Summary

1. Nagalro's submission is limited to just one of the areas being considered by the committee: *"What has been the effect of the requirement to consider ethnicity, religion, race, culture and language in England when placing a child for adoption? Are any further legislative or other measures needed to address disparities?"*
2. Nagalro is very concerned about the impact on Blackⁱ children of the repeal of S1(5) of the Adoption and Children Act 2002 by the Children and Families Act 2014. This legislation removed the requirement that adoption agencies must "give due consideration to the child's religious persuasion, racial origin and cultural and linguistic background." In our opinion there was no valid evidence that this was in the children's interests or that it would shorten waiting times.
3. Nagalro also considers that as a result of the deletion of S1(5), Black children are in effect being treated differently from their white counterparts, who are almost certain to be placed with adoptive parents who reflect their cultural, religious and linguistic needs. The impact of the deletion of section 1(5) of the Adoption and Children Act is that Black children are more likely to be placed with families who do not reflect their heritage and who are not able to meet their cultural, religious and linguistic needs. They are likely to grow up not being able to connect with their own communities nor sure that they will be fully accepted into the communities in which they have been placed. This sacrifice was considered to be in the children's interests, as long as it reduced waiting times.
4. Their visibility as adopted children becomes more obvious, and their sense of self and their identity and development as Black children is significantly impaired. It is also likely to diminish their ability to deal with racism. In such circumstances, Nagalro considers this could be emotionally abusive and damaging to these children. Nagalro also considers that as a result of the deletion of S1(5), Black children are in effect being treated differently from their white counterparts, who are almost certain to be placed with adoptive parents who reflect their cultural, religious and linguistic needs. We strongly recommend that S1(5) should therefore be re-instated.
5. Should the committee find it of assistance Nagalro would welcome the opportunity to be invited to provide verbal evidence to the Committee.

Overview

6. Nagalro is the professional association for Children's Guardians, Family Court Advisors and Independent Social Workers. It has nearly 1000 members who have many years of experience working with and formally representing children and young people in the full range of family proceedings in both public and private law matters (<https://www.nagalro.com/>).
7. The Nagalro BCLM (Black Children's Lives Matter) sub-group was set up in 2020 to look specifically at the difficulties facing Black children with whom Nagalro members are involved. They are the group disproportionately represented in the Local Authority care system. The group comprises of Nagalro council members and aims to raise awareness of the needs of Black children through its educative resources, to promote high standards of social work practice to meet Black children's needs, as well as to influence social policy for the benefit of Black children. It also aims to commit to working against any practice in social work which discriminates against the needs of Black children.
8. Institutional racism affects Black people in all walks of life, none more profoundly than within the care system. We know that Black children are more likely to be removed from their parents through care proceedings than other children and that they will generally wait much longer for adoptive placements than a comparable white child. As a response to the latter, for children in England, (but not Wales) s1(5) of the Adoption and Children Act 2002 was repealed by the Children and Families Act 2014, to remove the requirement that adoption agencies must
"give due consideration to the child's religious persuasion, racial origin and cultural and linguistic background."
From the Explanatory Notes to the 2014 Act and the debates which took place in Parliament when the Bill was before the House of Commons, it is very clear that these provisions were only to apply to Black children being placed with white adopters and not to white children being placed with Black adopters. and it is difficult to see this as other than indirect racism.
9. Nagalro believes that, this reform was and remains the wrong solution. The removal of 1 (5) from the Adoption and Children Act 2002 is in danger of creating a policy of "colour-blind" and "culture-blind" adoption. It also avoids tackling deeper problems by focussing on the perceived wishes of the adult adopters instead of the wishes, feelings and needs of the children who are to be adopted.
10. Nagalro questions how the repeal of this legislation sits with the Equality Act 2010. It was never suggested that we were moving to a "colour-blind" system for all adoptions. The Explanatory Notes to the 2014 Act specifically refer to dealing with delays "*so that Black and minority ethnic children are not left waiting in care longer than necessary because local authorities are seeking a perfect or partial ethnic match.*" Parliament never intended this to be of universal application and it follows that Black children are treated less favourably than others.
11. Nagalro believes that what should be done is to address, firstly, the reasons why such disproportionate numbers of Black children find themselves in care and, secondly, why there are insufficient Black adopters. In reality, an adequate pool of Black foster carers and

adopters would address the delay and lead to appropriate ethnic matching. We firmly believe that the repealed provisions of s1(5) Adoption and Children Act 2002 must be reinstated. Adopted children have to deal with the fact of being adopted. The additional emotional burden to their identity development and sense of self as a result of being inappropriately placed is an unnecessary burden which we consider is not in their interests. We consider that the government was using a very simplistic solution to tackle a much more complex problem.

The 2012 Select Committee in the House of Lords response:

12. Nagalro notes that the 2012 Select Committee in the House of Lords (Chaired by Baroness Butler-Sloss - a previous President of the Family Division of the High Court) produced a very detailed and considered report published on 19th December 2012.ⁱⁱ In the Report a summary indicated

“We share the Government’s belief that children should not experience undue delay whilst a search for a perfect or near perfect ethnic match takes place. We believe that considerations of race, culture, religion and language are essential components of a child’s identity. We are concerned as to how the removal in England of Section 1(5) of the Adoption and Children Act 2002 will be interpreted by those working in the field, and that it may be seen as a signal that race and ethnicity should be given no weight in the matching process. A better balance needs to be achieved. We, therefore, propose that the Welfare Checklist, at Section 1 (4) of the Act should be amended to include considerations of ethnicity. This will ensure that issues of race, religion, culture and language are considered alongside other elements of a child’s welfare”.

13. Importantly, the 2012 House of Lords Select Committee quoted Article 20 of the United Nations Convention on the Rights of the Child; that children who cannot be looked after properly by their own family have a right to special care and *“when considering solutions due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.”* Despite these concerns about the message this legislative change could send out to social workers and that it could lead to *“no consideration being given to any of these matters”*, the recommendations of the Committee were not acted on.

14. The 2012 Select Committee report indicates that:

“the change in legislation is intended to both overcome any suggestion that legislation places ethnicity above other considerations when seeking an adoptive match and, also to facilitate the matching of children with their prospective adoptive parents more quickly....it is unacceptable for a child to be denied adoptive parents solely on the grounds that the child and prospective adopter do not share the same racial or cultural background.”

15. The House of Lords quotes a key finding in Professor Farmer et al’s studyⁱⁱⁱ

“That 29% of BME children were placed with families who did not match their ethnicity, often to secure a placement for children with complex needs where the need to place was considered more important than finding an “ideal” match.” This conflicts with the assumption that children wait unnecessarily to find the perfect match and that ethnicity is placed “above other considerations.”

16. The evidence of Professor June Thoburn^{iv} to the committee considered that the issue of delay caused by ethnic matching was not as widespread as portrayed, but she believed that there were anecdotal examples of poor practice which indicated that problems were still occurring, and that it is unclear how widespread the problem is
17. Importantly the 2012 House of Lords Select Committee Quoted Article 20 of the United Nations Convention on the Rights of the Child:
“Children who cannot be looked after by their own family have a right to special care and must be looked after properly, by people who respect their ethnic group, religion, culture and language”.
This indicates that there was a concern in the sector about the message this legislative change could send out to social workers, and could lead to *“no consideration being given to any of these matters.”*

The matching process in adoption:

18. The “matching process” is designed to find a match with potential adopters that best suits a particular child. The purpose of matching is to ensure that a placement is a success and for the child to achieve long-term stability in that placement. If the match ignores a child’s, race, religion, cultural or linguistic background, how can such a match be considered to be meeting a child’s needs? The Adoption Strategy Report^v published by the DfE in July 2021 indicates (p31) that *“making a good match between a child and prospective adopter is a highly skilled task and is vital for both the child and the prospective adopter”*, which appears to be a contradiction if a child’s race, religion, culture and language are to be excluded in such a matching process. What is the cost to the child if these vital aspects of a child’s identity are ignored?
19. It is important to bear in mind that a Black child’s race, culture and language are (as for all children) central to who they are and who they become in later life. Black children in particular have many issues to grapple with and their identity and sense of belonging are central to their ability to think of themselves positively. If, as a Black child, you are brought up in a white family, you do not get the benefit of understanding and learning who you are as a Black person and how you are perceived in the world by others who are not Black. You do not have the lived experience of learning how to protect yourself from racist assaults both verbal and unspoken, you don’t understand why you’re treated differently and how to manage that and defend yourself. Being subject to racism, overt and otherwise, impacts Black people’s mental health throughout their lives; always trying to find a way to be accepted, as the consequences of not “fitting in” significantly impact on a child’s life chances. Constantly being told you are not good enough or do not have the right look, narrows a child’s perspective of who they are and how they fit into the world and narrows their possibilities and opportunities.
20. Having the opportunity to be brought up within a Black family gives a child the confidence and knowledge of how to challenge. There is also the opportunity of gaining support from those who have endured similar experiences. A child cannot gain that knowledge in a transracial placement simply by being taken to get his or her hair done at a Black hairdresser, or by going to libraries to learn about where they have come from. It is the daily lived experience that is required, without which Black children are affected, psychologically,

for the rest of their lives. Not having the opportunity to live in a family that represents the child's culture is likely to impact on the child's ability to fit in anywhere, even their own community. They may not function wholly in either environment, or understand its language origin, humour or social norms. These are not things one can learn other than by living them. If a child's self-esteem and who the child is not valued, then the child can become ashamed of his or her heritage.

21. For children in transracial placements, their homes are not sanctuaries for them if their adoptive parents are not able to help them to deal with subtle racism such as unconscious or internalised. A Black child in a white environment is not automatically equipped to learn the skills of how to straddle both worlds. The emotional impact of a transracial placement impacts every aspect of their lives and cuts to their core. Black children need the lived experience of knowing how to recognise and challenge or even just survive these experiences, otherwise, they can be subjected to lifelong trauma. Consideration was not given to the children's life-long needs before the repeal of the legislation. This is particularly clear given Section 1 (2) of the Adoption and Children Act 2002, which has the force of law and states that the *"paramount consideration of the court or adoption agency must be the child's welfare, throughout his life."*

22. The Adoption Strategy Report indicates that *"ethnic minority children wait for the longest to be found a new home."*^{vi} and indicates that maintaining continuity of the heritage of their birth family is important to most children; it is a means of retaining knowledge of their identity and background. However, the report appears to contradict itself when it also states that social workers should:

"Avoid placing the child's ethnicity above other characteristics when looking for an adoptive family for the child'...' many adopters provide brilliant love and care for children with whom they do not share the same ethnicity."

Matching a child's ethnicity is more than allowing a child to retain the knowledge of their heritage of their birth family as is indicated in the report. It is about ensuring that the child feels confident about who they are, as already indicated above, it ensures that they are not stigmatised as being different; it is a means of helping to provide them with the tools to deal with the impact of the racism which they are likely to face. This is about giving a child the tools to live as successful a life as possible.

23. The debate has long raged as to whether 'love is enough.' What are the implications for a child if these vital factors of a child's identity and heritage are overlooked and ignored? A study was published in 2013, by the British Association for Adoption and Fostering (BAAF), on the experiences of children who had been transracially adopted (Feast, *et al.* 2013).^{vii} The study combines qualitative and quantitative data of 74 out of 106 women who were adopted from Hong Kong as children, into mostly white British households. It sought to investigate the childhood experiences of these women, to identify if their transnational and mostly transracial placements had lasting or negative effects on their mental health. Despite some limitations in its applicability to this thesis, such as the small sample size and the international elements, it nonetheless provides important insight into the feelings of the children who had been transracially adopted and the role of ethnicity in adoption placements. The study revealed that resistance to maternal care was one of the effects of institutional care, resulting in the child being less responsive to love when it is made available. It concluded that simply loving a child was not enough to overcome the earlier deprivation of

sensitive and attuned maternal care. Since most of their adoptive parents were unable to understand and address the difficulties arising from their race, most of the women were less equipped to survive on the provision of love alone.

International comparisons:

24. Whilst it is not possible to make direct comparisons between England, the USA, and Canada because each system is very different, parallels can be drawn between the lessons learned in the approaches to race in Canada and the USA. An attempt to reduce waiting times for adoption in the USA also led to a colour-blind approach in their adoption law, where transracial adoptions constituted around 40% of all domestic adoptions. Whilst there is still a lack of understanding of the impact of such placements on the identity of children who have been placed transracially, Baden et al^{viii} surveyed the experiences of those children who were transracially adopted domestically and internationally. This research found that from as early as aged four, the children desired to know “*where they had come from*”, (which indicates an awareness of race at an early age), and that later in their childhood or adolescence many associated with a white heritage and a white identity and 78% desired to be white as children. These experiences support the conclusions of the 2013 BAAF study that a colour-blind approach to adoption can contribute to a life-long negative self-image for the children concerned.^{ix}
25. In Canada, it was concluded that neglecting to take race, religion or culture into account could lead to unjust outcomes. Since then, cross-cultural judgements now attempt to recognise diversity where it is relevant to equality. These experiences in Canada and the USA demonstrate that laws that attempt to ignore race can only perpetuate the damage caused to Black children in the care system, and that the experience gained in the USA and Canada should be a lesson to the current approach being taken in England.^x

Conclusions:

26. The research overall found that many determinants influenced Black children having to wait longer for adoptive placements than white children. These included Court delays, delays in decisions being made to place a child for adoption, that Black children were older when removed from their parents – making adoption more difficult, a lack of appropriate placements, lack of resources trying to recruit adoptive families as well as a lack of training – particularly in respect of how to assess whether adopters are able to adopt transracially. The delays could reflect a lack of understanding of the complex issues of matching.
27. The view that children wait for appropriate adoptive placements because they are “*waiting for a perfect match*” appears to have been the determining factor that drove the change in legislation, although this was made in the absence of clear supporting data. This in our opinion demonstrates how ill-judged this decision was.
28. The 2012 House of Lords select committee considered the evidence relied upon to justify the 2014 legislation. Whilst they supported the proposed change in legislation, they proposed instead that the Welfare Checklist, at Section 1 (4) of the Act should be amended to include considerations of ethnicity. Clearly, the 2012 House of Lords Select Committee did not consider the Welfare Checklist without reference to issues of ethnicity to be an appropriate

replacement for the deletion of Section 1 (5) of the Act, and Nagalro agrees with them on this. The 2012 House of Lords Select Committee indicated that this would ensure that issues of race, religion, culture and language are considered alongside all of the other elements of a child's welfare. This very clear recommendation was not acted upon by the Government. It is a poor reflection of the UK's international role to promote the international rights of children that it has deliberately repealed legislation that mirrors the language of Article 20 of the UNCRC.

29. Importantly no further follow up research has been undertaken since the deletion of S1 (5) in 2014 to consider the implications of the change in legislation.^{xi} There has been no national data collected on the numbers of children being placed transracially since the deletion of S1 (5).
30. There is confusion amongst social workers about what is meant by "*consideration of a child's racial origin and cultural background*" and there is no guidance for them about what is meant by this term.^{xii} It is vital for such guidance and appropriate training to be provided.
31. The issues relating to children of dual heritage are complex and include concerns that social workers are often confused about how to define and place such children. There also appeared to be confusion amongst the researchers about definitions, and a lack of understanding of identity development and the components that lead to a healthy identity development. The research (Feast et al 2013) assumes that if the child was previously cared for by a white parent, then the search of prospective adopters should then be for white carers, the basis for this assumption is not argued in the research.^{xiii}
32. It is clear that the issues are complex and that there is a multitude of factors that lead to the delay in Black children being placed with prospective adopters. It appears that the adoption world is another area where Black children are being discriminated against as a result of institutional barriers. However, withdrawing the consideration of the child's religious persuasion, racial origin and cultural and linguistic background becomes a further infringement of a child's rights. A better understanding of the obstructions to appropriate placement is required. The complete removal of Section 1(5) gives a false impression that a child's religious persuasion, racial origin and cultural and linguistic background are not important. The removal of Section 1(5) disproportionately impacts Black children as, whereas white children are more likely to be placed within families who reflect their backgrounds, Black children are not, and the effect of this change on Black children is indirect racism.
33. 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 and therefore the repealed provisions of s1(5) Adoption and Children Act 2002 should either be reinstated, or, as the House of Lords Select Committee recommended in 2012, be made part of the Welfare Checklist. Nagalro believes that we must afford Black children equality of treatment within the adoption process and that the child's interests should be the primary focus rather than blanket policies that ignore the child's significant characteristics and needs.

ⁱ "Black" is a political definition to refer to a population who are liable to be subjected to racism based on their skin colour. Many now capitalise Black when describing people and cultures of African origin: "...for many people the

capitalisation of that one letter is the difference between a colour and a culture.”

(<https://www.nytimes.com/2020/07/05/insider/capitalized-black.html>)

ⁱⁱ House of Lords Select Committee on Adoption Legislation 1st Report of the Session 2012 – 13. Adoption Pre-Legislative Scrutiny Report. Published 19 December 2012.

ⁱⁱⁱ Social work assessment of children in need: what do we know? Messages from research, Danielle Turney, Dendy Platt, Julie Selwyn and Elaine Farmer, March 2011, ref DFE-RBX-10–08, p.

^{iv} Q586 House of Lords Select Committee on Adoption Legislation 1st Report of the Session 2012 – 13. Adoption Pre-Legislative Scrutiny Report. Published 19 December 2012.

^v Adoption Strategy Achieving Excellence Everywhere: DfE July 2021.

^{vi} Op cit.

^{vii} Feast, J., Grant, M., Rushton, A., Simmonds, J., and Sampeys, C., (2013) *Adversity, adoption and afterwards*, London, BAAF, ISBN: 978 1 907585 64 7

^{viii} Baden, A.L., Threeweke, LM. And Ahluwalia, M.K. (2012) “Reclaiming culture: Reculturation of Transracial and International Adoptees.”, *Journal of Counselling and Development* 90(4) pp 287 – 99, Doi:

<http://doi.org/10.1002/j.1556-6676.2012.00049.x>.

^{ix} as ix above

^x Bunting, A (2004) “*Elijah and Ishmael, Assessing Cultural Identity in Canadian Child Custody Decisions*” *Family Court Review* 42 (3) pp 471 - 84

^{xi} (point 23) <https://committees.parliament.uk/writtenevidence/106942/pdf/>

^{xii} “*Pathways to adoption for minority ethnic children in England – reasons for entry into care*”: Julie Selwyn and Dinithi Wijedesa: *Child and Family social work*:15th November 2010

^{xiii} Op cit.

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