Public law working group: adoption sub-group

Recommendations for best practice in respect of adoption: interim report

Response by Nagalro

What is Nagalro?

Nagalro is a professional association for social work practitioners who work in the children and families field and represent children in public and private court proceedings. It has a reputation for excellence in the services it provides: its training, journal, and the influence of its campaigning and responses.

Chapter 1: Adoption and contact

What approach should be taken to adoption and contact?

- **Do you agree with the recommendations in Chapter 1?**

We are in broad agreement with the sub-group's recommendations regarding adoption and contact. We agree that there is no need for additional legislation. The current statutes permit all of the approaches contained in the recommendations. The primary need will be for training and resources to implement the recommended approach.

Training and resources are important because post-adoption contact must always be a child-specific decision. Great harm could be caused if an assumption that there should only be letter box contact were to be replaced, in practice, by a comparable assumption that direct post-adoption contact *will* take place. Professionals need to understand the issues and how to manage them to ensure the best outcome for that individual child. It is also important to remember that the position regarding contact is likely to change from time to time as the needs of the child and the ability of the birth parents and/or other family members to meet those identified needs change. On this issue, we would also wish to stress the importance of the availability of support for the adopters should they request it and the importance of ensuring that adopters know how to ask for support.

- **Do you have any other proposals?**
- **In particular, what should any best practice guidance contain?**

We have taken the liberty of merging our responses to these two parts of the consultation.

We would suggest that, before these best practice recommendations are finalised, the issue of the ascertainable wishes and feelings of the child should be revisited. We appreciate that the recommendations foresee that the full range of contact

options will be considered during the care and placement proceedings, however, after those proceedings have concluded, the child is unlikely to be a party to the adoption proceedings and we are concerned about how easy it will be for the child's wishes and feelings to be lost above those of the adoption agency and the adopters. Those wishes and feelings may have changed significantly by the time that an adoption application is made. The extent to which the voice of the child can remain available to the court when considering an application for an adoption order seems to depend on a single footnote to paragraph 63(ii) suggesting that there 'may be a role for the IRO'.

In preparing our response to this interim report we have considered whether there is any alternative to making the child a party to adoption proceedings, bearing in mind not only the resource implications for this but also that many children may not welcome this because of having to revisit previous traumatic experiences. Unless the agency already ensures that this happens, there should be a requirement for a separate social worker, perhaps independent from the adoption agency, who is specifically tasked to focus on the needs of the child. When the responsibility for the child passes from the children's guardian to the IRO after the making of a placement order, we would welcome more detail about this and we suggest a specific role for the IRO within the adoption process.

We would like to see any final best practice guidance making it clear that the trauma suffered or witnessed by children before their removal and the extent to which contact may re-traumatise the child should be a significant factor when considering any arrangements for post-adoption contact. We would hope that this issue forms a part of the assessments being made when professionals and the court are considering post-adoption contact options.

The interim report does not deal with issues of ethnicity. One matter which is not grappled with is the fact that the proposed recommendations will apply across England and Wales. Whilst s1(5) of the Adoption and Children Act 2002, dealing with the significance of a child's 'racial origin and cultural and linguistic background' remains part of the law in Wales but not, since 13 May 2014, in England. Nagalro has, for some years, been arguing for the reinstatement of s1(5) in England. We would suggest that any best practice guidance should include an acknowledgement of that discrepancy between England and Wales. The need for a child to make sense of his or her origins may well be part of the issues to be considered where post-adoption contact is being considered. If a child is to be adopted by parents from a different ethnic or cultural background, there may be a role for post-contact contact with members of the wider family who have been assessed to be able to support the adoption and support the child within their new family.

Chapter 2: Access to records

- **Do you agree with the recommendations?**

  We agree with the recommendations set out in paragraph 104 of the interim report. We do have practical concerns about the availability of resources to improve what is, currently, a very complex and disorganised system.

- **Do you have any other proposals?**

  Because of the variety of bodies holding adoption records, we would suggest (although it, of course, lies outside the competency of the PLWG) that a single, central repository of all the various adoption records would be helpful. We are aware of cases when adoption agency records have been lost through fire, flood or simple misfiling.

- **What further public information is required?**

  We would not wish to add anything beyond the recommendations

- **How should applications to the court be approached?**

  We would not wish to add anything beyond the recommendations

- **Should there be a national protocol?**

  We would agree that there should be a national protocol.

Chapter 3: Practice and Procedure

- **What final recommendations should be made in respect of leave to oppose adoption orders applications?**

  Nagalro agrees that applications for leave to oppose adoption orders are a significant concern. We would point out that such applications may be a source of considerable anxiety for the child as well where the child is a little older, by which we mean perhaps five years old or above. Realistically, we accept that a review in 12 months, allowing the changes to legal aid availability to settle in, may be the only practical solution at the current time, given that any further changes would require primary and secondary legislation.

  We would agree that the current procedures can raise false hopes for biological parents, without ensuring that they also understand the difficulties involved in such an application. Whilst the leaflet proposed in paragraph 161 will be helpful, not all will be able to understand the subtleties of this but the availability of legal aid may remedy this. The recommendations in paras 162 and 163 are also likely to be helpful.

  A paper published in Nagalro's journal, *Seen and Heard,* in 2014 provides a possible way forward if the changes to legal aid eligibility do not resolve the problem. In the article,[1] it is argued that the provisions of the Adoption and Children Act 2002 allowing parents to seek permission to revoke a placement order or oppose an order for adoption would be improved as follows:

[1] Bentley, P. (2014) *Continuing Conflicts in Adoption Law and Policy,* Seen and Heard, 2014(3) pp 26-34

'1) To provide for a protected period of, for example, four months after the court has made a placement order, for the local authority to place the child for adoption under the adoption agency regulations. During these four months, only the local authority that applied for the order would have the power to apply to the court to revoke it.

'2) After placement, the proposed adopters would have four months to lodge their adoption application with the court. During this time, only the local authority that applied for the placement order could apply to the court to revoke it and/or apply to the court to remove the child from the proposed adopters.

'3) If the time limits in (1) and (2) are complied with, then if the court considers and makes the formal adoption order within three months of the adoption application being made, no one apart from the local authority that applied for the placement order would have the power to oppose the making of the adoption order to the proposed adopters'

The author continues, arguing:

'By adhering to the time limits above, the likelihood of a "change in circumstances" under the present caselaw would be minimised, and the obvious distress of potential adopters would be prevented'

- **What changes, if any, should be made to the core documentation and reports?**

Nagalro would support the proposal, in para 134, to ensure that, when a free-standing placement order application is made, parents should have access to a leaflet to explain the process. We would, however, go further and argue that parents, who may have varying levels of literacy and understanding, particularly when anxious and stressed, should have the information explained to them face-to-face, if possible. We would suggest that Cafcass or the local authority should confirm to the court that this has been done when a free-standing application is made to the court.

It is a matter of regret for Nagalro that the Adoption Panel no longer has a role in the decision about whether a child should be placed for adoption. Under regulation 18 of the original Adoption Regulations 2005 the panel was required to make a recommendation which fed into the Agency Decision Maker's final decision about whether the child should be placed for adoption. That measure has been revoked so that the Agency Decision Maker acts without a panel recommendation. The full text of the former regulation was:

Function of the adoption panel in relation to a child referred by the adoption agency

18.— *(1) The adoption panel must consider the case of every child referred to it by the adoption agency and make a recommendation to the agency as to whether the child should be placed for adoption.*

(2) In considering what recommendation to make the adoption panel must have regard to the duties imposed on the adoption agency under section 1(2), (4), (5) and (6) of the Act (considerations applying to the exercise of powers in relation to the adoption of a child) and—

(a) must consider and take into account the reports and any other information passed to it in accordance with regulation 17;

(b) may request the agency to obtain any other relevant information which the panel considers necessary; and

(c) must obtain legal advice in relation to the case.

(3) Where the adoption panel makes a recommendation to the adoption agency that the child should be placed for adoption, it must consider and may at the same time give advice to the agency about—

(a) the arrangements which the agency proposes to make for allowing any person contact with the child; and

(b) where the agency is a local authority, whether an application should be made by the authority for a placement order in respect of the child.

We would argue that this external scrutiny brought with it several benefits which would be relevant to the best practice recommendations being proposed:

1. Before the decision is made to apply for a placement order, regulation 18(3)(a) would give additional consideration to any post-adoption contact plans or the lack of such plans.

2. Nagalro's experience of adoption panels has been that this early scrutiny means that the panel has a more thorough knowledge and understanding of the individual child and their needs by the time the child is returned to Panel with a proposed match. The child's history and experience are known to the panel members who have the ability to consider the child's present situation in the context of their journey following removal from their birth family. The particular value of the CPC (Child's Permanence Report) being presented to the Panel in earlier parallel permanence planning, was that the detail of the child's needs was subject to independent scrutiny. This ensured that sufficient work had been done with the child and their family, and their global needs carefully identified. If details were not clear or thorough enough panel could require social workers to undertake further investigations to provide more thorough detail as required. Once satisfied, the Panel

would then send the papers with its recommendations to the ADM, for the next layer of independent scrutiny.

3. In our comments on Chapter 1, we have referred to s1(5) of the Adoption and Children Act 2002 and the issue of the child's cultural heritage and identity. Involving the panel at the stage of deciding whether the child should be adopted may be of particular importance for children from ethnic minorities because there may be forms of post-adoption contact which can be devised to meet the individual child's needs in this respect.

Overall, our view is that the work carried out by the adoption panel at this earlier stage was useful and the measure of independent scrutiny was often helpful. If there is to be a renewed focus on post-adoption contact, we would argue that some input from the panel would be a helpful safeguard against decisions which do not fully explore the child's wider contact needs.

- **Other matters outside the consultation questions:**

Although not covered by a specific question in the consultation, we have also considered the PLWG comments on 'Celebration visits'. Our experience is that these events are very important to adopters and some will choose to celebrate the anniversary of the event in the same way as, and in addition to, the child's birthday. The suggested renaming of the event as a 'Life Appreciation Visit' is not one Nagalro would favour. The phrase 'Life Appreciation' is already sometimes used in the context of life story work. It is also unfortunately close to other terms sometimes used for funeral and memorial services.

We note the sensible proposal, in paragraph 207, for a national protocol to facilitate the transfer of a case to allow adoptive parents to attend a local court. We assume that such a protocol will allow the judge making the adoption order to deal (as now) with the 'Celebration Visit'.

In paragraph 210, the report suggests that consideration should be given to amending the Adoption Agencies Regulations 2005 and the Welsh counterpart to make it clear that a local authority may proceed with stage 2 checks notwithstanding that responses to some of the stage 1 checks are still outstanding. Whilst Nagalro is not opposed to this, we would wish to ensure that prospective adopters do not have access to the sensitive stage 2 information, such as the child permanence report, until the agency has the clear enhanced DBS certificate.

Chapter 4: Adoption with an international element

- **Do you agree with the recommendations?**

In preparing our response to this report, our sub-group has liaised with Nagalro members who have substantial experience in adoptions with an international element. Based on the feedback from these practitioners we would specifically endorse the recommendation in paragraph 255(vii) for the creation of a fast-

tracked visa system for such children. One member told us about a case which had taken eight years to resolve and had caused significant harm to the child, in terms of bonding and attachment. This is clearly not acceptable and were such a delay to occur within a domestic case it would rightly be regarded as scandalous.

Feedback from another Nagalro member specialising in such cases has asked us to draw the sub-group's attention to the special expertise held by Coram IAC. We understand that most local authorities refer potential international adopters to Coram IAC and their experience is invaluable to help adopters navigate a very complex area.

Chapter 5: Adoption by consent

- **What should be the focus of any national strategy and training**

There is little in the thrust of paragraph 279 of the consultation paper with which Nagalro would disagree. Adoptions by consent are relatively rare and therefore all adoption agencies must have staff trained to deal with these cases. We would suggest having a designated team who are trained to deal with such cases correctly and swiftly.

The most recent published study into early permanence placements ('EPPs') is *Understanding Early Permanence* by Rebecca Brown and Claire Mason published in February 2021. Conclusion three of this report finds that:

> *'The data analysis presented in Chapter Two and the qualitative data from professionals suggest substantial variation in early permanence practice across both regions and RAAs. FfA* (Fostering for Adoption) *has been rapidly implemented by LAs and RAAs following legislative amendment and despite the lack of evidence regarding its effectiveness, it is now more widely used as a pathway to early permanence than CP* (Concurrent Planning)*. The findings suggest confusion and variation regarding the use of the term early permanence.'*

This research reinforces the need for a national strategy and consistent training since although FfA and CP are similar, they are by no means identical and it must be a matter of concern if agencies are unclear about these important differences. Recent, albeit entirely anecdotal, reports from professionals to Nagalro have suggested that training on these important nuances would assist members of the judiciary as well as adoption agencies.

We would argue that such training and planning should specifically deal with the important period of 6 weeks after the birth of the child. During that period the mother cannot, legally, give consent to the child's adoption, although she may have indicated her intention to do this. Nagalro would therefore like to see the

issue of concurrent planning explicitly dealt with as part of any national strategy and training, making it clear that plans should include working with the parents or mother to help them make a balanced decision and ensuring that the child is not subjected to any avoidable delay.

In paragraph 281 it is proposed that EPPs 'should be considered' for all babies relinquished at birth. We would argue that rather than simply being 'considered', such a placement should be prioritised. It is a matter of emphasis but, in our view, an important one. Ideally, a baby in this situation should move directly from the hospital to carers who will, if the mother continues with her plan to relinquish, become the child's adoptive parents. Studies by Coram's Centre for Early Permanence seem to support this approach.

Adopters approved for EPPs need to be very carefully recruited, trained and supported. They will be expected to take a baby into their home and care for it knowing that there is a risk that the mother or parents may change their mind and ask for the baby to be returned.

Nagalro would support the proposal in paragraph 284 to make public funding available to parents who are considering relinquishing a baby. Some parents may have a difficult previous relationship with children's social care or have been told misleading things about social workers and babies. The ability to discuss matters with someone who is demonstrably independent from the local authority may be very important.

- **Do the consent forms require simplification?**

  We would agree that a simplification of the forms would be a useful exercise. Since some mothers considering whether to relinquish their child may not have English as their first language, we would suggest that these should be available in many different translations.

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