

Written evidence submitted by Nagalro

Nagalro welcomes the opportunity to submit evidence to the Commons Education Select Committee inquiry into the impact of COVID-19 on education and children's services.

About Nagalro

Nagalro is the professional association for Family Court Advisers, Children's Guardians and Independent Social Workers. It has approximately 900 members in England and Wales who represent the interests of children in a range of public and private law proceedings. Our members include senior, highly experienced children and family social workers who work in a variety of roles. Many work as independent social workers and risk assessors providing expert witness reports in a wide range of complex cases coming before the family courts; in fostering and adoption agencies; in independent practice providing therapeutic services; as academics; as supervisors, mentors and consultants. Members have significant experience as managers, chairs of Adoption Panels and other specialist social work practitioner roles.

Members also act as Children's Guardians and Family Court Advisers for the Children and Family Courts Advisory and Support Service (Cafcass) where they work in tandem with children panel solicitors to represent the interests of children in care and other family proceedings.

Our members are primarily concerned to promote the paramount welfare of vulnerable children who are involved in family court cases. They have an important role in enabling the child's voice to be heard in court proceedings, so enabling compliance with Article 12 of the United Nations Convention on the Rights of the Child. They assist family courts to reach decisions about what plans will safeguard the child's interests and best provide for their future welfare.

Our Submission

We confine our response principally to the second term of reference of the Committee's request for evidence which is 'The capacity of children's services to support vulnerable children and young people'.

Nagalro strongly endorses the campaign led by Article 39 on behalf of organisations and individuals supporting the scrap SI 445 campaign to immediately revoke Statutory Instrument 2020 No 445 [The Adoption and Children (Coronavirus) (Amendment) Regulations 2020] and as such we fully endorse the submission made separately by Article 39 to the Education Select Committee. We also support the submission by the Kinship Care Alliance.

Of particular concern to Nagalro is that the Department for Education made the SI 445 Regulations on 21 April, laid them before Parliament on 23 April and that they came into force on 24 April 2020. By the Department's own admission (at paragraph 10.1 of the Explanatory Memorandum to the SI) the Children's Commissioner was informed but not consulted. Significantly the SI was not formally laid before

Parliament for 21 days before coming into effect, additionally the Department for Education has acknowledged that there was no public consultation (paragraph 10.1 of the Explanatory Memorandum).

We find the lack of consultation with the Children's Commissioner extraordinary as the members of the Committee will be aware that section 2(1) of The Children Act 2004 defines the statutory primary function of the Children's Commissioner for England. It reads: *'The Children's Commissioner's primary function is promoting and protecting the rights of children in England'*.

We note that on 30 April the Children's Commissioner issued a statement in which she stated:

'I would like to see all the regulations revoked, as I do not believe that there is sufficient justification to introduce them. This crisis must not remove protections from extremely vulnerable children, particularly as they are even more vulnerable at this time.'

The Committee will be aware of the Written Ministerial Statement on 14 July by Vicky Ford, the Children's Minister. The following day, 15 July, the Children's Commissioner, Anne Longfield, tweeted her continued wish for the SI 445 regulations to be revoked. We quote from her 3 x twitter feeds on 15 July that is *Children's Commissioner for England @ChildrensComm*

1. *'At this time, when the pandemic means that children are less visible to statutory services, it is more important than ever that children's rights are protected'.*
2. *'I maintain my view that these changes are not necessary, particularly as some of the fears around staffing levels in children's services have not materialised.'*
3. *'Anne Longfield: I am disappointed that the Government has not taken the opportunity to revoke these regulations as soon as possible, although I am pleased that the vast majority will be revoked in September.'*

We also note the concerns expressed by the Joint Committee on Statutory Instruments in their twelfth report of Session 2019-21 where at paragraph 3 the Joint Committee formally reports SI 445 to the House for 'requiring elucidation and for defective drafting'. We note also, with some incredulity, that at paragraph 3.5 the Joint Committee felt the need to state *'.and trusts that the Department will neither operate the law, nor encourage anyone else to operate the law, in the form in which they wish they had made it, rather than in the form in which they did make it'*.

We believe that the Government has not shown respect to the relevance of the functions of the Statutory post of the Children's Commissioner in relation to children's rights. We also believe that the Department for Education has not demonstrated due diligence in drafting SI 445 as is the view of the Joint Committee on Statutory Instruments. We request that the Education Select Committee make an appropriate

finding on this and any other matters it considers necessary in relation to SI 445, in respect to the welfare of children and young people.

Whilst preparing this submission we have become aware of SI 2020 No 664 [The Secure Training Centre (Coronavirus)(Amendment) Rules 2020]. This came into force on 2 July 2020, only a day after being laid before Parliament and which remains in force until 25 March 2022. Again this SI was not laid before Parliament for 21 days before coming into effect, nor was any consultation undertaken (paragraphs 3.1 and 10.1 of the Explanatory Memorandum).

We note that the Explanatory Memorandum accompanying this Statutory Instrument states at paragraph 7.3: *'The temporary minimum restricted regime provides children with ... reduced time out of room: At least 1½ hours out of room a day (normally 14 hours).'*

This means that children as young as 12 could be subject to 'solitary confinement' (defined as 22 hours per day in a cell without meaningful human contact). We suggest to the Committee that this is totally unacceptable. We believe that the risk of a child taking, or attempting to, take their own life is significantly increased if a child is kept in solitary confinement for 22½ hours in a 24 hour period. We draw attention to the fact that a child would immediately be safeguarded by Children's services if he / she were confined to their room for similar amounts of time in their home.

We note that the Children's Commissioner on 8 July in a statement said:

'I am deeply concerned about the amended statutory rules for secure training centres. This legislation (The Secure Training Centre (Coronavirus) (Amendment) Rules 2020) legalises the unacceptable treatment some of the most vulnerable children in our society have been experiencing since the start of lockdown. Children in STCs can be as young as 12 and this legislation allows for restrictions to their rights, including no visits from family or professionals and severely reduced access to education and other activities'

The committee will be aware of, for example, the death of [Name], who in August 2004, at the age of 14 took his own life at a Secure Training Centre. The jury at his inquest concluded that the manner in which he was treated at the training centre contributed to his death.

We request that the Committee urgently consider the provisions of this Statutory Instrument (SI: 2020 no 664) in relation to a Local Authority's responsibility to the welfare of children as per the provisions of the Children Act 1989.

We are aware that the Committee has received much evidence regarding the effect of closure of schools on vulnerable children. We are very concerned about and draw attention to the fact that children who have not been seen by teachers nor social workers during the lockdown period are obviously at increased risk of witnessing or being exposed to domestic abuse in their home and consequently not being adequately safeguarded.

In summary Nagalro urges the Education Select Committee to thoroughly investigate the capacity of children's services to support vulnerable children and young people and in particular (a) to scrutinise whether the DfE has demonstrated due diligence in drafting SI 445 and (b) to take into account the provisions of Statutory Instrument (SI: 2020 no 664) in relation to a Local Authority's responsibility to the welfare of children as per the provisions of the Children Act 1989.

Covid-19 has had an enormous impact on children coming before the family courts. During the Covid-19 lockdown, the wishes and feelings of very young children and children with disabilities have not been ascertained by a professional. Cafcass has issued new protocols whereby Children's Guardians are to continue to work *mainly* remotely. Nagalro is concerned about the welfare of this vulnerable group where the Children's Guardian's attendance at court is now being restricted. Crucial decisions are being made about the future of the child and it is vital that the wishes and feelings of the child are fully represented.

Nagalro is happy to answer any queries the Committee may have regarding the above submission.

July 2020