

**Written evidence submitted by the National Association of Reviewing Officers (NAIRO)
(CSWB 65)**

Clauses 2 - 9 Power to test different ways of working

Summary

NAIRO welcomed the removal of the previous clauses 29 - 33 during the Bill's passage through the House of Lords and does not support the re-introduced clauses 2 - 9 despite the additional proposed safeguards.

NAIRO believes that all looked after children should be able to rely on universal statutory duties and rights regardless of where they live in this country.

It is not clear that the methodology to be used to evaluate applications and trials of different ways of working / exemptions from statutory duties will be sufficiently robust to safeguard some children and young people from being significantly disadvantaged for up to six years.

The exemption of some children's statutory rights is likely to result in extensive legal litigation including applications for Judicial Review. Local Authorities will bear the brunt of this and could suffer significant financial and reputational jeopardy.

The role of the IRO has been the most frequently proposed target for exemptions to be used in order to reduce, restrict or abolish the role. Comments made in the Lords and elsewhere have raised concern that the government remains unclear as to the role of the IRO and the many options available to children and young people in choosing how they would like their care plan to be reviewed.

The role of the IRO is not without room for ongoing improvement and innovation but is one of the most effective, child centred, quality assurance systems in existence. It is based on face to face work with children, parents and other professionals and places the voice and needs of the child at its centre. No administrative audit or monitoring system can replicate the direct work undertaken in ensuring that the plan for every child in care meets their individual needs by experienced social work professionals acting as Independent Reviewing Officers with a duty to challenge the local authority if it fails to act in the child's best interests

NAIRO believes that new clauses 2 – 9 should be completely removed from the Bill, however if this part of the Bill is to remain NAIRO strongly recommends that sections 25 A and 25 B (Appointment of independent reviewing officer and how an independent reviewing officer's functions must be performed) of the Children Act 1989 should be included in the list of legislation that local authorities can neither be exempted from or have their duties modified.

We believe that it is essential that every child in care continues to have the protection of an IRO throughout the period of their time in care. We will be very pleased to have discussions about how the exercise of IRO responsibilities may be varied in relation to the circumstances of particular children, but variation, such as the 'lighter touch' measures introduced in the 2015 Care Planning Regulations amendments does not require exemption from primary or secondary legislation.

1. Six monthly reviews of a children in care were introduced in 1946 following the death of 12 year old Dennis O'Neill who was killed by his foster carers. The coroner criticised the lack of local authority supervision. In 2008, partly in response to judicial concern that care plans agreed in court were not being honoured after proceedings had ended, legislation was introduced to make local authorities appoint Independent Reviewing Officers (IROs) to lead the review process.
2. There is no evidence that the need to have IROs to ensure that looked after children and young people are adequately safeguarded and that an effective care plan to meet their needs now and in the future is being implemented in a timely way has diminished.
3. Independent Reviewing Officers must be qualified and experienced social workers and their statutory role includes checking the local authority has informed young people of their rights to make a complaint, access support from an advocate and to help children obtain legal advice. The IRO has the authority to refer a case externally to Cafcass 'if the IRO considers it appropriate to do so' . If IROs were removed from some children this would also remove this essential protection from them.
4. In the House of Lords Lord Nash stated that *“ there is a strong consensus in the sector that in low risk cases, the role of the IRO brings no additional benefit. Exemptions will enable local authorities to trial redirecting IRO resource differently – for example to more complex cases – while reducing the number of additional people a young person doesn't know at their review, which is a known concern in more straightforward cases”*. This was followed by a Department for Education Fact Sheet stating *“ Trialling new approaches to the Independent Reviewing Officer role to target where it adds most value – at present legislation states that an independent Reviewing Officer must be present at all reviews for every child. Some children tell us that they want to chair their own reviews or that they do not like having an IRO present.”*
5. In fact IROs have a great deal of discretion in how they manage reviews for children and young people and are guided by the young person as to how they wish to make arrangements for their own reviews. IROs are often key in making sure that only those individuals a child wants to be present are present at the review meeting. Many young people do chair their own review meetings as they grow in confidence. In 2015 the Care Planning Regulations were amended by the DfE to allow children in recognised long term foster placements to have increased flexibility in how their care plans are reviewed and, in particular, to reduce the number of meetings if they wish. It is of concern that there is so little understanding of the IRO role amongst those who seek to reduce or remove it.

6. NAIRO provides a forum in which practising IROs from around the country share professional knowledge and experience in improving outcomes for looked after children by continuously improving the positive impact of the reviewing process. In terms of child centred reviews we would ask that the DfE looks at the Sheffield City Council model which was trialled and then implemented without any need for changes to legislation.
7. The Lords raised serious concerns about the impact on democracy and the rule of law in relation to passing such broad powers directly into the hands of the Secretary of State and these issues have not been addressed in the revised clauses.
8. Having different laws for children and young people in different parts of the country, possibly living next door to each other, has the potential to breach the Human Rights Act 1998 and the Convention on the Rights of the Child. This would create an extensive legal problem for local authorities exercising exemptions from their statutory duties.
9. It has not been made clear how exemptions will impact on children living in foster homes and children's homes outside their home authority or conversely those placed in a local authority which has exemptions by their home local authority. This could easily lead to children living in the same household or siblings living at different addresses having different legal rights as to, for example, access to an advocate or statutory rights to complain.
10. There is no 'duty' for local authorities to consult with safeguarding partners, relevant agencies or children and families who might be affected by an exemption before making an application to the Secretary of state. The local authority only has to consider consulting with these stakeholders. This is of serious concern when such potentially life changing amendments to the law are being considered.
11. If, despite all the concerns that have been raised with the government, by a very broad combination of social workers, independent reviewing officers, care leavers, academics, lawyers for children, children's rights campaigners and charities working with children and young people, the new clauses 2-9 remain in the Bill, the role of the IRO will be more important than ever in safeguarding looked after children and promoting their welfare. The explicit duty to challenge the local authority where it does not properly consider the best interests of looked after children or threatens to breach their human rights will be essential in the likely legal and practice confusion that these clauses will cause.
12. Consequently, if the clauses remain, NAIRO would strongly recommend that sections 25 A and 25 B (Appointment of independent reviewing officer and how an independent reviewing officer's functions must be performed) of the Children Act 1989 should be included in the list of legislation that local authorities can neither be exempted from or have their duties modified.

Anonymised Case Studies from Independent Reviewing Officers (names have been altered)

Simon, aged 8 and suffering from Post-Traumatic Stress Disorder, had 7 placement breakdowns within 9 months. His IRO used his role to challenge the local authority to undertake an assessment to match Simon's placement needs with the capacity of potential carers to meet those needs. Simon is now in a stable placement with experienced carers who are better able to meet his need and is starting to access therapeutic support.

Peter, 13, made a number of serious complaints about the behaviour of his foster carers. No action was taken in respect of his allegations. He did not feel that he was believed and felt that he was seen as the cause of the problems. His IRO, who knew him well, drew up a chronology of events which highlighted the times and circumstances in which he had alleged abuse. As a result Peter was moved from the placement and the foster carers were investigated, eventually leading to them being deregistered as foster carers.

Ashley is a 17 year old boy who has been in care for 6 years on a care order with a foster family who has offered him excellent care and with whom he has made solid, secure and affectionate attachments. Ashley has mild learning difficulties.

Ashley's plan was to join the army and with the help and support of his carers he had been offered a place on a course with a view to recruitment. The carers wanted to continue offering a home base for Ashley and this is also what he wanted. If the army worked out it would be a base for him on leave from the army. If it didn't work out, he could return there and think about other options. The carers wanted to offer him a staying put arrangement.

The local authority didn't think a staying put arrangement was suitable in these circumstances. The local authority wanted to provide him with other supported lodgings for his periods out of the army. The IRO could see no sense in this at all and thought a staying put arrangement was certainly applicable and obviously in Ashley's interests.

The IRO raised a dispute with the local authority about their decision that staying put was not suitable. The dispute failed at stage 1, but the service manager at stage 2 agreed that staying put was suitable and that it should go ahead.

Without the IRO intervention, Ashley would have been forced to leave this placement against his will and the will of his carers, to his great detriment.

Linda, is a 15 year old girl who was placed at a residential children's home under S20. She had previously been in a foster placement that had ended as she was missing more often than there. Her Mother is an alcoholic and drug user and was unable to keep her safe or to meet her needs. Linda was often reported missing overnight at the new placement and would not say where she was. She insisted that she was with friends and was safe.

At a LAC review the social worker announced that she would be moved to a placement 100 miles away as she would not conform with the rules of the placement. This would have meant leaving her education in year 10 and ending her weekly camhs sessions. This had not been

discussed with her prior to the review. She attended and was engaged positively with school and camhs.

The IRO challenged this and insisted that the SW carry out a risk assessment and, more importantly, a plan to manage this risk. Linda stayed where she was and risks were addressed. She took GCSEs and went on to an apprenticeship, qualification as a full time pre-school worker and independent living. Without the IRO she would have been moved and disrupted her education, camhs support and local friendships.

Roy, aged 16, was looked after under S20 after falling out with his Mother and Step Father. He was in a residential placement. One Friday it was decided that he should move home as senior managers were frustrated at the lack of progress toward a return home. The Team Manager told Roy's IRO that his mother had ended her agreement to S20 and agreed to his return. This turned out not to be the case, according to the Mother. It remained in dispute. Roy went to sofa surf at a friend's but this was a temporary solution. Mother said she would not have him back and Roy's college place was suffering. Roy's IRO challenged the authority and supported Roy to obtain independent legal advice. Roy did so, through Shelter, and he became looked after only after the LA were threatened with Judicial Review. Roy has been in his supported lodgings since then, is nearly 18 and in a full time apprenticeship.

The IRO intervention was instrumental in enabling him to challenge the L.A. with his own legal support.

Sally had been looked after under a care order for 6 years, she was 17 and settled with a long term foster carer. Staying Put had been agreed and confirmed by the IRO at two LAC reviews. It was in the Care Plan and Pathway Plan. A decision was taken by senior management that staying put may not be appropriate and that there was 'not sufficient paperwork' to support it.

Sally was very distressed and became very anxious when told this by her social worker. (This was her 6th SW in 2 years). The IRO challenged the local authority and encouraged Sally to seek support from an advocate and, if necessary, independent legal advice.

Sally stayed put and is now working full time aged 18.

Mary was 17 and had been looked after for 4 years under S20, having previously lived with her maternal grandparents under a residence order. She had been in 8 different placements, foster and residential and two mental health providers. She had self harmed and was sectioned at one time.

Her final residential placement, in an area 120 miles from her home town, had been very successful and her self harming had stopped and she was managing her anger and emotions. Mary wanted to stay in that area. She had a long term boyfriend and did not wish to move back to her home town, having been away for 4 years.

A year before her 18th birthday there was no planning for her accommodation post 18. This had been addressed at more than one LAC review and the IRO was told that there was no

funding for her to remain in the area and that, if she stayed there, she would have to go into a YMCA hostel. The IRO challenged this, asking why this could not be funded in the same way as Staying Put or Supported Lodgings. The LA then agreed to fund an independent flat through a local provider with support, she moved in 2 months before her 18th birthday. This was a really good outcome for Mary who is thriving

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