

The role of the state in supporting relatives raising children who cannot live with their parents

A policy response from the Kinship Care Alliance to the Care Matters Green Paper: Transforming the Lives of Children and Young People in care

Action for Prisoners' Families
Addaction
Adfam
Barnardo's
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Children Law UK
Family Rights Group
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Grandparents Plus
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The Who Cares? Trust
Voice
**Centre for Family Policy and Child Welfare, School for Policy Studies,
University of Bristol**
**Family and Friends Research project, Dept of Social Policy and Social
Work, Oxford University**

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1. WHO ARE WE?

This collaborative response has been developed by the Kinship Care Alliance, which includes the following agencies:

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This brief describes what we are seeking to achieve, summarises findings from research on family and friends care and sets out detailed recommendations. These complement the proposals in *Care Matters* and are designed to prevent children being raised outside their family unnecessarily, and to improve the outcomes for children who cannot live with their parents and who are living with relatives. We recognise that family and friends care is unique. It is neither foster care nor family support and needs to be identified and supported as a distinct care arrangement that is underpinned by specific policy, guidance and regulation.

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2. WHAT WE ARE SEEKING TO ACHIEVE

The recommendations in this paper aim to achieve the following:

- To enable more children who cannot live with their parents to be raised by relatives.
- To recognise that children being raised by family and friends are a unique group of children in need, requiring tailored policies and provision of support services at local and national level. The latter should be taken forward by a ministerially-led taskforce.
- That family and friends carers are entitled to emergency financial support and a national financial allowance if they are caring for a child for over 28 days, so as to avoid being plunged into financial hardship as a result of becoming carers.
- That all local authorities provide support services for children and their families, including assistance with contact.
- That children being raised by relatives and friends, are recognised as children in need, and are thus entitled to an assessment by the local authority of their specific needs.
- Assessment procedures that recognise the uniqueness of family and friends care and ensure that placements suit the needs of each individual child, enabling them to feel safe, loved and secure.
- That family and friends are able to get legal aid to secure as necessary a legal order to safeguard a child.

3. CONTEXT

Introduction

There are no official statistics of the total number of children living with relatives but the estimated figure is between 200,000-300,000¹ children. The agencies involved in this document are also aware of many more relatives who with the right support and assistance could and would wish to care for children who cannot live with their parents.

¹ Richards A and Tapsfield R (2003) *Funding Family and Friends Care: The Way Forward* (Family Rights Group)

Often family members start to look after a child because there is a crisis in the parental home. For example, there may have been incidents of violence, alcohol or drug misuse, mental or physical illness, disability, a death, separation, divorce, domestic abuse, imprisonment, or any combination of these. The children concerned are likely to have experienced trauma and inadequate or inappropriate parenting as a result of being exposed to any of these. They may therefore be particularly vulnerable. Some relatives and friends who step in to care for the child in an emergency may be dealing with a situation that starts as though it will be short term but becomes open ended with no clear indication as to how long it will continue. In many cases it becomes clear later that the children are with them indefinitely.

What do we know about family and friends care?

The research findings on family and friends care (also known as kinship care) to date suggest that “*carers’ commitment and willingness to continue against the odds benefits the children they are looking after, but the good outcomes for these children are sometimes achieved at the expense of the kin carers themselves.*”² Many family and friends carers are struggling to survive financially, emotionally and socially, receiving little, if anything, from the state to meet the child’s needs, despite having no financial liability for them in law³.

There are well evidenced advantages⁴ for children who cannot live with their parents to being raised by family and friends:

- Children in family and friends care tend to be in more stable placements than those placed with unrelated foster carers.
- Children feel loved and report high levels of satisfaction.
- Children appear to be as safe and their behaviour is perceived to be less of a problem when compared to children with unrelated foster carers.
- Children placed within their family can more easily maintain a sense of family and cultural identity.
- Contact with family members is more likely to be maintained.

² Farmer E and Moyers S (2005) ‘*Children Placed with Family and Friends: Placement, Patterns and Outcomes*’, Report to the DfES, School for Policy Studies, University of Bristol

³ Parents are liable to support their children (s.1 Child Support Act 1991); relatives and friends are not unless they adopt the child and hence become the legal parents. It is therefore the responsibility of the state to support family and friends caring for children when the parents cannot, yet such support is not forthcoming.

⁴ Roskill C (2007 forthcoming) *Wider Family Matters* (Family Rights Group); Doolan et al (2004) *Growing up in the Care of Relatives and Friends* (Family Rights Group); Hunt J (2003) *Family and Friends Care*; Scoping Paper for Dept of Health; Broad, B (ed) (2001) *Kinship Care: the placement of choice for children and young people* (Russell House)

However the difficulties children and carers encounter are also well evidenced:

- Family and friends carers are more likely to be older, in poorer health and in more disadvantaged circumstances when compared to unrelated foster carers, yet receive significantly less support.
- Some family and friends carers incur large legal costs in securing the care of children at risk of ill treatment.
- There are wide variations between local authorities in policies, support, finance and attitudes towards family and friends care and in numbers of children placed with family and friends – it is very much a postcode lottery.
- Access and entitlement to support, including financial support is based on legal status and not on need, resulting in some carers suffering significant financial hardship.
- A report by the Advisory Council on the Misuse of Drugs⁵ estimated that there are between 250,000 and 350,000 children of problem drug users in the UK where it has been shown that effective treatment for the parent can have major benefits for the child. Currently adult substance misuse services look at the needs of the parent but rarely take into account the needs of the family as a whole, whilst children's services fail to address substance misuse related need. Often family and friends step in to look after the child for fear of immediate removal if the substance misusing becomes known by the authorities but they themselves remain unsupported. Children as well as families need to be more formally supported to tackle substance misuse issues: one cannot be seen in isolation of the other.
- Assessment depends on legal status rather than need, thus risking inconsistent and inappropriate assessments. Some family and friends carers are subject to full fostering assessments that are essentially geared to non relatives while others have no assessment.
- In what is known as the 'midnight granny scenario' some children are taken to relatives in an emergency by local authorities, who then deny responsibility for the placement. The lack of clarity about the legal status of such placements leaves the child and relatives without support.
- Despite the benefits to children of maintaining contact with their parents, siblings and other significant people in their lives, managing

⁵ Advisory Council on the Misuse of Drugs (2003) *Hidden Harm: Responding to the needs of the children of problem drug users* available at http://www.drugmisuse.isdscotland.org/publications/local/hharm_full.pdf

contact arrangements can cause significant difficulties for family and friends carers yet support is rarely available.

- Family and friends foster carers are still facing discrimination by some local authorities, despite the legal ruling that they should be paid the same rate of fostering allowance whether they are a family and friends carer or a 'stranger' foster carer.⁶ Even where family and friends carers are entitled to the basic fostering allowance they may be denied additional allowances such as skills, holiday and birthday allowances, which can make a substantial difference.
- There is no agreed definition of family and friends care which contributes to the policy vacuum.

We share the views expressed in *Care Matters* that family and friends care needs to be the option of first resort for children coming into state care (which it is often not at the moment) and that more children could be placed in family and friends care.

However it is crucial that the support needs of family and friends carers are addressed if these children are to reach their full potential. The overwhelming evidence from the advice work of our respective organisations is that the more informal the arrangement the less likely the family member who takes on the care of the child is to receive support⁷. This lack of support is likely to have a detrimental effect on the child, and sometimes causes the placement to break down and the children to end up in the state care system after all.

4. NEW DETAILED RECOMMENDATIONS

The rest of the briefing sets out detailed recommendations

4.1 Recognition of family and friends care as unique

The potential for family and friends care to be provided to meet children's needs when they cannot remain at home arises in a wide range of circumstances – from respite arrangements which support parents who are under stress and in need of a break, to permanent care when children cannot remain at home with their parents. In almost all cases the children concerned have particular needs for which the carers need support. There is mounting evidence that the children going into family and friends care are as needy and

⁶ The Queen on the application of L and others v Manchester City Council; the Queen on the application of R and another v Manchester City Council [2001] Family Law Reports 43

⁷ A family and friends carer's ability to access to support is determined by their legal status as carers (as set out in Appendix A). If they are approved local authority foster carers they should have access to equivalent support to unrelated foster carers, but in all other cases, where the arrangement is either informal or is secured by a special guardianship or residence order, the provision of support is discretionary and the exercise of this discretion varies hugely between authorities .

challenging as children being cared for by non-related foster carers⁸. Most have already had their life chances significantly impaired by abuse and neglect, the effects of parental incapacity due to psychiatric illness and drug and alcohol abuse, or exposure to domestic violence. A substantial proportion are already displaying emotional and behavioural problems at the point of placement and many will continue to present their carers with major challenges for many years.

Currently there is no government definition of who is a family and friends carer, and there are no official statistics collected of children being brought up in such arrangements, for example we do not even know how many relatives are raising children under a residence order. In fact, as appendix A demonstrates, there are a range of informal and formal legal arrangements under which children are being raised by relatives. We strongly believe that if there is a will to recognise and address the needs of these carers and the children they are raising, then finding an agreed definition as to who 'qualifies' as a family and friends carer will prove relatively straightforward.

Family and friends care as unique - new recommendations:

1. We recommend that the government:
 - a) establishes a time limited cross departmental working group, which is ministerially-led, involves the Treasury, DfES and Cabinet Office, and includes external experts including voluntary sector agencies and service users to develop an integrated and coherent family and friends care policy in all areas of social care practice;
 - b) issues guidance under s.7 Local Authority Social Services Act 1970 on promoting and supporting family and friends care in all aspects of social care service delivery; and
 - c) collects and publishes official statistics of children being raised by relatives and friends.

4.2 Enabling more children to live with family and friends rather than in the state care system

A recent study⁹ found that social workers initiated only 4% of family and friends placements, so if relatives do not put themselves forward, it is unlikely the child in the care system will be placed with them. Yet some relatives are providing a lot of support to the child's parents (who may be their own son,

⁸ Farmer and Moyers (2005) *ibid*; Hunt J, Waterhouse S, and Lutman E (forthcoming) *Keeping them in the family: abused and neglected children placed with family or friends carers through care proceedings* Report for DfES by Oxford Centre for Family Law and Policy

⁹ Farmer and Moyers (2005) *ibid*

daughter, sister or brother) and are fearful that presenting themselves as potential carers might be perceived by the parent as undermining them. Others may not have a full picture of what is going on and do not realise the situation is as serious as it is, and even if care proceedings are initiated, they may not be eligible for legal aid and may be very unclear as to their options.

Where a child is living with a relative with the consent of the parent but without a legal order, the carer may face continual problems because they do not have parental responsibility for the child, yet going to court might upset the fragile relationship that they have negotiated. Moreover such a carer may have to overcome more hurdles than an unrelated foster carer to obtain a legal order, such as residence or special guardianship order.

The proposals below are consistent with the recommendations of the Department for Constitutional Affairs, Department for Education and Skills and Welsh Assembly Government *Review of Child Care Proceedings* (2006) which we warmly welcome and hope will be implemented in full.

a) Family group conferences

An effective way of identifying and enabling family members to come forward as potential carers is the family group conference. Family group conferences are family-led decision making meetings, where, following significant preparation by an independent co-ordinator, those relatives and friends who are significant to the child develop a plan for the child's care which addresses identified child welfare or protection concerns. Indeed the family group conference is a proven mechanism to enable effective partnership between the state and families at all key decision making points for a child including:

- As a preventative measure to avoid a child being received into state care
- As a means of planning for the child to return home to their family network from state care wherever possible prior to permanent plans being made
- Prior to legal action being undertaken (other than in emergencies)
- Prior to 'pathways' planning for children leaving local authority care
- As a means of engaging the family to identify and support alternative care arrangements, including identifying necessary support packages required for such a plan to work.

However, although the number of family group conference taking place in England and Wales is increasing, whether or not a family is offered a family group conference is currently dependent upon where they live and who their social worker is. A policy lead is therefore required to achieve a more consistent national approach.

b) Independent advice and advocacy

To support family and friends in understanding their options and having their views taken into account, relatives, as well as parents, need access to

independent advice and advocacy once s.47 child protection enquiries are initiated and before care proceedings are issued¹⁰.

c) Split care proceedings

There are cases where there is clear evidential dispute between the parents and the local authority about the threshold of significant harm being proven in care proceedings. To assist family and friends to offer to care for a child without feeling they are undermining the child's parents in such cases, we suggest greater consideration should be given to the appropriateness of those hearings being split. The first stage would be heard as soon as possible after the application is issued so as to achieve an early ruling on whether the threshold of significant harm (s.31 Children Act 1989) is proven. Thereafter planning can take place as to the best option to promote the child's safety and well being without the decision-making both by family members and professionals being influenced by any continuing dispute about whether the s.31 threshold criteria had been met.

d) Removing requirement to apply for leave for relative carers who have cared for a child for one year

Currently, relatives and friends who are or have been caring for children, have to jump through several financial and emotional hoops before they can apply to obtain a court order to secure the legal basis of the child living with them. Unless they have been caring for the child for more than three years, they will normally have to apply for the court's leave to be able to apply for a residence or special guardianship order to enable them to acquire parental responsibility for the child without which they are unable to make important decisions about the child they are caring for (school trips, medical treatment etc.). This additional step of acquiring leave can be costly and emotionally difficult, especially in contested cases. Foster carers do not encounter equivalent obstacles because as a result of an amendment to the Children Act 1989 made by the Adoption and Children Act 2002, local authority foster carers may now make such applications for a residence order or special guardianship order without the consent of those with parental responsibility after one year of caring for the child. We consider the position of relative carers should be the same.

e) Enabling family and friends carers to acquire parental responsibility through agreement

A further potential legislative change would be to enable family and friends carers to acquire parental responsibility through agreement with the child's mother and any other adults with parental responsibility for the child (as has been extended to step-parents/civil partners in s.4A Children Act 1989). This would mean that where there is an agreement with the parents that the child

¹⁰ Adults with a significant connection to the child should have access to proposed level 2 pre-proceedings advice (on a non-means tested, non-merits tested basis) in the recent LSC review: [Legal Aid-A Sustainable Future](#)

will remain with the carer, the latter could acquire parental responsibility without having to issue legal proceedings against the parents.

Identifying and supporting relatives to come forward as carers - new recommendations:

1. All children with their families are offered a family group conference prior to care proceedings being initiated (or immediately afterwards in an emergency).
2. A new duty is placed upon children's services to ensure the provision of local family group conference service, and independent family advice and advocacy services and that this duty is properly funded by central government.
3. That adults with a significant relationship to the child have access to proposed level 2 pre-proceedings advice (on a non-means tested, non-merits tested basis).
4. That care proceedings could be split, if appropriate, with the first stage being heard as soon as possible after the application is issued so as to achieve an early ruling on whether the threshold of significant harm is proven.
5. S10(5) and (10) CA 1989 Children Act should be amended so that friends and relatives who wish to apply for a residence or special guardianship order without the consent of those with parental responsibility can do so after caring for the child for one year.
6. That relative carers can acquire parental responsibility through agreement of all those with parental responsibility for the child (by amending s.4A Children Act 1989).

4.3 Assessment of potential Family and Friends carers

Once a potential family placement is identified there are a range of different ways in which such placements are assessed depending on the current or potential legal status of the child. However the assessment process itself is primarily designed to assess potential carers for raising children with whom they have had no previous relationship, which means that many of the strengths and support needs of family and friends carers can be overlooked.

A new approach is required to the assessment of family and friends carers, one which is child-led, and recognises that what a family and friends placement should be assessed on is whether the adult(s) can provide the particular child(ren) with the safe, loving and suitable environment they need, and also considers what assistance is required to support the relative in that task.

Assessment – new recommendations

Building upon a pilot being currently led by Family Rights Group, the Government should develop models of assessment and service delivery, which draw upon the family's strengths by using participative models of practice. This should include

1. Assessments of family and friends carers to recognise the difference between this type of care and unrelated foster care, and incorporate key Children Act principles, including: potential impact of placement upon the child's welfare; ascertainable wishes and feelings of the child about placement; what will be the effect upon the child's physical, emotional and educational needs; what their capacity is to protect the child from harm;
2. Assessments of family and friends carers also to address: how well known the family/friend care applicants are to the child already; the level of continuity which these carers could provide for the child, in terms of continued contact with family and other people who are important to the child; how they would manage contact between the child and their parents; what support they would need in order to meet the child's needs;
3. That the current review of the Fostering Services National Minimum Standards and Fostering Services Regulations deals with family and friends foster care as a distinct form of foster care
4. Local panels approving family and friends carers being aware of the difference between family and friends care and stranger care, through e.g. setting up a panel specifically to deal with family and friends placements (see West Berkshire) and/or training.

4.4 Systems for providing support:

The system for supporting family and friends care needs to be fundamentally revised. Family and friends support needs fall into two categories which should be addressed in distinct ways:

- Immediate/short term needs where family and friends come forward to care for a child in an emergency to avert the need for the child to be taken into state care.
- Longer term needs where family and friends take on the care of a child on a long term or permanent basis

A. Meeting immediate short term needs of children and carers

These support needs are best met by such carers having a prima facie right to assessment of their needs under s.17 Children Act 1989, as is the case for disabled children. This would enable them to have better access to immediate support particularly where they have stepped in to care for a child or a group of siblings in a crisis without having the opportunity to reflect on the details of how they will manage and where the child(ren) has acute needs as a result of earlier abuse.

Meeting short term needs - new recommendations

The definition of who is a child in need in s.17 (10) be amended to include
(d) children being cared for by family members or friends

In addition that the limiting of s.17 (6) support to 'exceptional circumstances' should be removed so that cash could be paid by authorities at their discretion, hence s.17 (6) would read:

(6)The services provided by a local authority in the exercise of functions conferred on them by this section may include giving assistance in kind or, at the discretion of the local authority, in cash.

B. Meeting needs where family and friends take on the care of a child on a long term or permanent basis

Currently, the only way in which such carers can be guaranteed access to the support they need is for the child to remain a 'looked after' child i.e. to remain formally in the state care system. Yet there may be no other good reason why the child needs to stay in care.

a) In order that children do not remain in state care unnecessarily, we recommend that a support system needs to be developed on a statutory basis for family and friends carers who have an established caring arrangement. This would entail:

- i. The local authority being under a duty to establish family and friends care support services, including commissioning services from the voluntary sector. This would be consistent with the duties introduced under the Adoption and Children Act 2002 in respect of adoption and special guardianship.
- ii. Such services to include support groups for carers, to combat the isolation many find themselves in when taking on a parenting role and dealing with the complex needs of vulnerable children which they had not planned for.

- iii. In recognition of the longer term and on-going support that may be entailed, a right for individual children and families to an assessment of their needs and access to such support services. These should reflect the services the family themselves views as necessary and should be available where the arrangement is or is intended to be for longer than 28 days.
- iv. Improved communication, co-ordination, understanding and prioritisation of the needs of these children and their birth families, including carers by public agencies including schools, CAMHS, and housing and between adults and children's services, for example in addressing the impact of parental alcohol and substance misuse.

b) Ending discrimination against family and friends carers

There will always be cases where children are placed with family and friends carers but remain looked after children because there are ongoing welfare or protection issues. These carers will access support through the fostering system like any other approved foster carers. However, currently some receive less support than unrelated foster carers¹¹. When this was challenged legally it was held that it was unlawful to discriminate against family and friends carers by paying them less than unrelated foster carers¹². Nevertheless from our advice services, the practice does appear to be continuing in various forms. Research evidence also indicates that family and friends carers are far less likely to have the support of an allocated family placements social worker¹³.

c) Support for contact arrangements

A key omission from *Care Matters* is the absence of virtually any mention of contact between children and their families when children do enter the state care system. It has long been established that by far the majority of children who are looked after return home to their families whether during their minorities or after they leave care at 18¹⁴ and that contact is the key to early discharge from care¹⁵. There is also evidence that, although contact is important for children's well-being even where they will never return to the parental home, it can be problematic in practice and requires support to work effectively. For example there may be tensions between the adults, or the children may experience confused emotions and display challenging behaviour, all of which needs to be worked through. Specific services should be available to promote positive relationships for such children.

¹¹ Farmer and Moyers (2005) *ibid*

¹² The Queen on the Application of L and others –v- Manchester City Council: The Queen on the Application of R and another –v- Manchester City Council [2002] 1 FLR 43

¹³ Farmer and Moyers (2005)

¹⁴ Bullock R., Gooch D. and Little M. (1998) *Children Going Home: the reunification of families* (Aldershot, Ashgate)

¹⁵ Rowe J et al (1984) *Long Term Foster Care* (Batsford, London)

Meeting longer term needs of carers and children – new recommendations

In order to ensure carers receive the support they need to meet the needs of these children, we recommend that

1. A new statutory framework is introduced that:
 - a) places local authorities under a statutory duty to provide children being raised by family and friends, their carers and birth parents with support services including support with contact and respite care; and
 - b) specifies that family and friends foster carers have the same entitlement as unrelated carers to financial support and support services, including social worker visits, support with contact, mediation services, therapeutic support for the child, counselling, advice and information.
2. That government provides local authorities with the funds to enable them to run and commission such support services, including sustainable support groups

4.5 Financial support

In law, at least, relatives and friends are not financially liable for the children they are raising. Therefore it follows that the core financial needs of caring for such children should be met by central government. Family and friends carers, who are caring for more than 28 days for children who cannot remain at home with their parents, should be entitled to a national financial allowance.

National financial allowance - detailed proposal

A national non-means tested financial allowance to cover the real costs of raising a child should be paid to relatives or other persons already connected to the child¹⁶, who takes on the care of a child for more than 28 days continuously in the following circumstances:

- a) Where the child comes to live with the carer as a result of plans made within a section 47 child protection enquiry¹⁷; or
- b) Where a child comes to live with the carer following a section 37 investigation;
- c) Where a carer has secured a Residence Order or Special Guardianship Order to avoid a child being looked after, and there is

¹⁶ This could include family friends

¹⁷ The status of the arrangement might be that the child is looked after if the local authority has made the arrangement (see R V Southwark) or it may be a private arrangement and the aunt under the auspices of section 47 planning

professional evidence of the impairment of the parents' ability to care for the child; and/or

- d) Where the carer has a Residence Order or Special Guardianship Order arising out of care proceedings; or
- e) Where the carer has a Residence Order, Special Guardianship Order following the accommodation of a child.

These criteria are designed to ensure that the financial allowance will only be received where:

- a) the carer is raising the child; and
- b) the parent is unable to care for the child and there is judicial or professional evidence of this.

Many family and friends carers are left with crippling legal bills when applying to court, for example for a residence or special guardianship to order to provide permanence and legal security for the child. Others find that without financial means, they have to represent themselves, which can be very traumatic, particularly in contested cases.

Financial support - New recommendations

1. That family and friends raising a child who cannot live with their parents for more than 28 days should be entitled to a national allowance to cover the core financial costs of caring for such children.
2. That there should be a national non-means tested financial allowance paid to relatives or other persons already connected to the child who take on the care of a child who cannot live with their parents for more than 28 days continuously
3. That guidance is issued to local authorities on the exercise of their discretion in making cash payments under s.17 of the Children Act 1989 in respect of short term support for family and friends carers, as part of the new statutory framework set out above; and
4. Relatives and friends should be entitled to receive public funding for legal proceedings which secure the child's future with them on a non-means and non-merits tested basis.

Appendix A

This briefing sets out the different arrangements by which family members raise children in England and Wales.

1. Children living with family carers under an informal arrangement made within the family.

This is a private arrangement, whereby relatives care for a child, with the agreement of the child's parent(s). Relative in this context is defined as a "grandparent, brother, sister, uncle or aunt (whether of the full blood or half blood or by affinity) or step-parent" (s.105 Children Act 1989). All other family members or friends caring for a child under a private agreement between the carer and the child's parents do so either under private fostering arrangements or, if authorised by the court (under a residence or special guardianship order – see below).

Few carers in this situation receive support from the local authority, although local authorities do have discretion to provide assistance under the provision of family support services. The problem for such carers is that they have no right to have their needs assessed let alone a right to receive services, and in practice it is rare for s.17 support to be available unless the child is subject to child protection enquiries.

Example: Mr & Mrs R were babysitting their two grandchildren overnight for their daughter. The children's father did not play any role in their lives and had no contact with the family. The children's mother failed to return home to collect the children. Enquiries by the grandparents proved that the mother was safe but had succumbed to drink and drugs. Although the mother has returned to her own home the children remain living with their grandparents as all agree that this is the safest and most stable environment.

2. Those children placed when there is no legal order but Children's Services or another statutory agency (e.g. Police) have facilitated the arrangement

This is a grey area of practice. Children's Services/police involvement arises out of s.47 child protection enquiries and subsequent plans by the local authority, who determine that the child cannot remain at home, at least in the short term. Children's Services response to such plans is sometimes to contact relevant family or friends to ask if they can take on the care of the child. Often such arrangements are very vague, in terms of the legal status and length of the placement, the role of statutory agencies and the support that will follow.

The legal status would appear to be that the child is 'looked after' because the statutory authority has made the placement. In an emergency this would be under Regulation 38 of the Fostering Services Regulations 2002; subsequently it would become an approved foster placement, once a full fostering assessment has been completed, under the Fostering Services Regulations. However, the reality is that often the local authority denies responsibility for the placement. Instead, they regularly argue that they merely facilitated a private arrangement (for example by there being a taxi service to deliver the child to the grandmother's doorstep) and thus have no responsibility to provide ongoing financial or other forms of support¹⁸. Yet, this is disingenuous because the parents have not requested the placement and the relative carer has taken on the care in good faith in the expectation that, because statutory services made the arrangement, support will follow.

Example: Mrs T received a visit late one evening from a social worker who had with them Mrs T's two nieces, one of whom was still breast-feeding. The mother of the children has experienced a severe episode of bi-polar disorder which has rendered her incapable of looking after her children safely. The children's father also suffered from severe mental illness. Children's Services informed the aunt that unless they were able to look after the children overnight the children would have to be placed in care. Weeks later the aunt is still looking after the child and Children's Services shun responsibility, stating that they merely facilitated a private arrangement.

3. Placement by Children's Services where the assessment of the carers should be undertaken within 6 weeks

Where Children's Services does accept that the child is 'looked after' and makes the placement under Regulation 38 of the Fostering Services Regulations, the placement is only lawful for 6 weeks, during which time a full assessment should be carried out. In reality months often go by without such an assessment, with the result that the children are effectively in a legal limbo, without thorough planning to promote their welfare.

¹⁸ This practice has recently been challenged and held to be unlawful in the case of R (on the application of D) v Southwark London Borough Council [2006] All ER (D) 257 (Jun) Queen's Bench Division (Administrative Court) but persists.

Example: Mr & Mrs J are aware that Children's Services instituted child protection enquiries and that the children's parents agreed that the children should be voluntarily accommodated. The grandparents approached Children's Services as potential carers for the child and Children's Services agreed to the placement. Months later Children's Services still have not completed an assessment of the grandparents as foster carers for the children. The children and grandparents are left unclear as to the legal status of the placement.

4. Placements when the carers have been assessed as local authority foster carers

Relatives assessed as foster carers are entitled to be paid a fostering allowance under Section 23 (ii) Children Act 1989. Relatives caring for children as foster carers frequently find themselves under pressure to apply for a residence order or special guardianship order. Whilst this is attractive to some carers, because they will therefore gain parental responsibility and some independence from the local authority, it can also lead to withdrawal of financial support. This is because residence order allowance under schedule 1 paragraph 15 of Children Act 1989 and Special Guardianship financial support under the Special Guardianship Regulations 2005 are discretionary.

Example: Mr & Mrs X took on the care of their nephews aged 14 & 7, following allegations of sexual abuse by both parents. The children were placed with Mr and Mrs X on a care order and Mr and Mrs X were approved as foster carers. However, because Mr and Mrs X were entitled to financial support, the local Children's Services Department put pressure on Mr and Mrs X to take out a residence order (without financial support) by claiming that if they continued on a care order the children would be 'interrogated' at regular intervals to prove that they were happy with care being provided by their Mr and Mrs X.

5. Placements which lead to a residence order or special guardianship order

As stated above residence order allowances and special guardianship allowances are discretionary. Often relatives are encouraged by the local authority to apply for a residence order or special guardianship order, in order to prevent a child from going into the state care system. These relatives often assume that the local authority's encouragement will follow through into financial and practical support during the court case and once the residence order or special guardianship order has been made. Yet often their experience is that they are left entirely alone to fund the court case and the costs of raising the child.

Example 1: Following the death of both parents, L aged 14 went to live with her maternal grandparents, both in their 70's. The grandparents purchased essential equipment (i.e. bed) for their granddaughter through a catalogue, as they had no savings to pay for this equipment. Although Children's Services were aware of the placement and encouraged them to apply for a residence order they were denied financial support. On appeal, with other professional support, they are now in receipt of a discretionary residence allowance.

Example 2: Mr Y is a paternal uncle to a teenage boy who he is raising because of his brother and sister-in law's drug addiction. Children's Services encouraged Mr Y to apply for leave to apply for a special guardianship order. As Mr Y was employed he was not entitled to legal aid. Although the application for a special guardianship order was supported by Children's Services this process has cost him thousands of pounds and he has been refused discretionary special guardianship allowance to cover the cost of bringing up the child.