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Family Welfare Association

**Response to Care Matters: Transforming
the Lives of
Children and Young People in Care**

Family Policy Alliance

January 2007

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Family Policy Alliance

The Family Policy Alliance was formed in February 2004 by three leading family support organisations: Family Rights Group, Family Welfare Association and Parentline Plus, who, together, support a wide range of service users receiving universal and targeted family support services. Its purpose is to influence current policy debate about the role of the state to support families to safely care for their children.

Drawing on the extensive collective expertise of the three partners in providing information, advice and support services to families about the care and protection of their children, the Alliance aims to:

- highlight the central connection between the well being of children and the need for sustained support and investment in parents and family members
- promote the involvement of parents and families, as well as children, in the planning, delivery and monitoring of services and
- focus attention on the benefits for children, their families and society of taking effective action to tackle discrimination and social exclusion.

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1. INTRODUCTION

1.1 Our approach to the Green Paper

The Green Paper proposes a number of policies and practice changes that offer the possibility of improving the lives of children who are in the care system and, as significantly, preventing children on the brink of care, from unnecessarily becoming looked after.

The Green Paper rightly recognises that most looked after children don't spend their whole childhood in care, and that "*support for birth families and managing a successful return home for the majority who go back to their families is crucial.*" It also places value on family and friends as alternative carers when a child cannot live with the parents.

However, whilst these comments and proposals are welcome, we also believe that the Green Paper could be significantly strengthened. Our response focuses upon two areas:

- supporting children to live safely within their family networks so that they avoid entering the care system unnecessarily; and
- supporting looked after children to have a positive relationship with their families.

We have also made some additional suggestions about how the role of the IRO could be enhanced.

2. CHILDREN ON THE BRINK OF CARE: PREVENTING CHILDREN UNNECESSARILY BECOMING LOOKED AFTER

There are two key ways in which government could support families to care safely for their children and thus reduce the numbers of children entering the care system:

- Provision of appropriate, and if necessary continuous support to vulnerable parents to address concerns thus preventing problems escalating to the point that children are unable to remain safely at home with their parents; and
- Supporting wider family members to raise children who cannot remain at home with their parents.

2.1 Early support for vulnerable families

“Basically they didn’t make much effort, Social Services (to help), and then one day I lost my temper with Rick – flew off the handle and gave him a good hiding. And the minute I did that they were on me like a ton of bricks. ‘We’re putting the kids on the child protection register for abuse.’ It was unbelievable...just this one day with everything else that was going on...I was at the end of my tether and I was screaming out at these people, ‘Give me some help, give me some help.’” (father of 2 teenagers, whose ex wife had severe mental health problems)

Currently many children and families in need don’t have access to appropriate services when problems first become apparent, despite families often crying out for help.

This is not just borne out by research¹ but is also collectively evidenced through the advice and support work of our respective organisations.

Yet appropriate and effective support is essential in social, economic and financial terms – with the price of failing to provide the right support and intervention paid by children and their families and also by wider society.

¹ Cleaver H and Walker S (2004) *Assessing Children’s Needs and Circumstances*

NEW RECOMMENDATIONS

The following recommendations aim to improve access to appropriate preventative and specialist services:

- 1) Good quality information should be published by statutory services and made easily accessible to parents and carers about any entitlements to, and availability of, local services including eligibility criteria for accessing specialist services.
- 2) There should be a statutory assessment for support services if a father, mother, carer or agency with which the child is involved believes the child is 'in need' as defined in Section 17 Children Act 1989. The assessment process needs to be clear and informed by the views of parents and those looking after the child if s/he is being raised away from home.
- 3) Children's Services recognise and address, in partnership with the voluntary sector, the lack of services designed for fathers and for specific groups of fathers.

2.1.1 Building on what works – national centre for excellence

We welcome the statement in the Green Paper that *“we must improve our approach to interventions directed at children at risk of needing to come into care and their families by building on approaches that have proven successful at local level. (p17)”*

However, we believe that the recommendations in the Green Paper need to be improved upon if this objective is to be realised.

The Green Paper draws attention to the impact that the National Institute for Clinical Excellence (NICE) has achieved in health *“giving a nationally recognised seal of approval to what works”* and recommends exploring the merits of creating a national centre of excellence in children's and family services to deliver a systematic approach to sharing best practice across children's services. However, there are two important factors which distinguish NICE from the Green Paper proposal:

- NICE's guidance is developed by independent advisory groups which comprise both service users (patients and carers) and professionals; and
- NICE's remit goes beyond merely recommending best practice: since January 2002 *“the NHS has been legally obliged to provide funding and resources in England and Wales for medicines and treatments recommended by NICE's technology appraisal guidance. This means that when NICE recommends a technology, the NHS must ensure it is*

*available to those people it could help, normally within 3 months of the guidance being issued.*²

NEW RECOMMENDATIONS

In order to have a meaningful impact **we recommend that:**

- 1) Any such proposal to set up a national centre of excellence must:
 - 1.1 Involve children and families in determining recommendations and guidance.
 - 1.2) Be supported by s. 7 guidance on family support services (including treatment) which outlines the need for:
 - service users to be involved in the planning, design, delivery and monitoring of services at a strategic level so that services provided are appropriate to meet children and families' needs in the local community;
 - vulnerable children and families requiring such support/intervention to have an assessment of their need on request; and
 - government to adequately fund such services at local level.
- 2) There is government funding for the piloting of new services, so that new or adapted treatments and interventions can continue to be tested.
- 3) Inspection frameworks consider how children and families' voices are being heard and how their needs are being served, including access to treatments recommended by the national centre of excellence.

2.1.2 Research – addressing lack of research on fathers' engagement

Together with partner organisations involved in a recent project entitled Fathers Matter, Family Rights Group has drawn up recommendations to improve the safe engagement of fathers and paternal relatives in their children's lives. These recommendations address gaps in research knowledge, and draw on examples of good local policy and practice that could be replicated elsewhere.

² NHS National Institute for Health and Clinical Excellence *About NICE guidance: what does it mean for me? Information for patients, carers and the public – an interim guide*

There is currently a dearth of research in the UK on fathers and children's welfare and the social care system. We therefore recommend that a research programme is commissioned by the DfES in conjunction with other key research commissioning bodies that addresses the following areas:

- Whether and how social work and social care services engage fathers.
- The impact of involving fathers in children's social care services and in specific treatment programmes.
- The perspective of fathers from different minority ethnic groups; their experiences of fatherhood; and their interaction with social care services.
- Risk or resource? – the impact of fathers on outcomes for children in vulnerable families.
- The impact of fathers in families where children are at significant risk of neglect.
- Children living in troubled families – their perspective on their fathers.
- Whether men who are violent to their partners can be or become good fathers? If so, how? What are children's perspectives?

NEW RECOMMENDATIONS

We recommend that a **research programme is commissioned** by the DfES in conjunction with other key research commissioning bodies to explore the under-researched area of the engagement of fathers by social care agencies and the impact and role of fathers in vulnerable families.

2.1.3 Changing attitudes, improving policies and practice to fathers' engagement

When Children's Services are involved with the family, how and whether fathers and father figures are engaged in planning and decision making for their children remains largely dependent on the skills, knowledge and attitudes of individual practitioners and their immediate line managers. The Fathers Matter project identified that as well as addressing education and training of social care practitioners, more could be done by public agencies, to engage fathers, particularly young dads.

We believe a more co-ordinated approach could be taken between health, education and social care services, including midwives, health visitors and doctors, in conjunction with voluntary sector services to identify young fathers and provide appropriate support in assisting them:

- to adjust to becoming a father;
- to be good fathers to their children; and
- to have a positive on-going relationship with their child's mother.

That promotion of fathers' engagement should include positive images of fathers, including young fathers being promoted in health, maternity, social care and other services that are potentially used by parents.

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In fulfilling their duties under equalities legislation, local authorities should be demonstrating that they are effectively engaging fathers (resident and non-resident) as well as mothers at child protection conferences, and that therefore as a minimum they should be monitoring and reporting on attendance rates of fathers at child protection conferences and at related meetings that plan and make decisions about children.

2.2 Advice and advocacy for families whose children are subject to s.47 enquiries

Even when problems escalate to the point that child protection enquiries are initiated under s.47 Children Act 1989, parents remain critical to children's safety: not only are 88% of children on the child protection living at home, hence parents' understanding of and agreement with the protection plan is critical to its successful implementation, but also there is a widespread body of research which shows that key to the successful protection of children at risk of harm is a positive working partnership between the family and the local authority³. As the official summary of a number of research studies on child protection carried out in the 1990s stated: "*A failure to achieve this level of co-operation helps to explain why some children remain safe at home when others do not*". Yet such partnership can be difficult to achieve where there is a divergence of views between the local authority and the parents about the risk to the child. Moreover families whose children are subject to child protection enquiries can often feel overwhelmed and powerless at statutory child protection meetings/reviews. The situation can feel particularly hopeless for unsupported mothers and fathers with learning difficulties and for those who have already lost a child to the care system. Family advocacy enables family members to understand what is happening and to have a voice at child protection reviews and related meetings and thus to influence the plan for the child. Research evidence demonstrates that early independent advice and advocacy for parents can enable families to understand the concerns of statutory services and assist them to work effectively in partnership⁴.

The DfES/DCA Review of Childcare Proceedings identified advice and advocacy, as well as family group conferences, as best practice in exploring safe and appropriate alternatives before court proceedings are started. Yet there are very limited specialist advice and advocacy services available for families at a local level and the Family Rights Group national advice lines' capacity is severely restricted due to funding constraints.

³ DoH *Child Protection: Messages from Research* (1995)

⁴ B. Lindley, M. Richards & P. Freeman, 'Advice and advocacy for parents in child protection cases – what's happening in current practice?' [2001] *Child and Family Law Quarterly* 13:2 at p.167; and B. Lindley, M. Richards and P. Freeman, 'Advice and Advocacy for parents in Child Protection Cases: an exploration of conceptual and policy issues, ethical dilemmas and future directions', *Child and Family Law Quarterly*, 13:3, p1

NEW RECOMMENDATIONS

We therefore recommend that:

- 1) Government funds the expansion of specialist independent telephone advice for families requiring support.
- 2) A new duty is placed upon children's services to ensure the provision of local independent advice and direct advocacy services for families whose children are subject to s.47 enquiries.
- 3) That local authorities and central government work with Family Rights Group and other relevant agencies to build upon the Protocol on Advice and Advocacy for Parents whose children are subject to s.47 enquiries to develop national family advocacy standards.

2.3 Family Group Conferences

Family group conferences are a successful mechanism in preventing young people from unnecessarily being accommodated and is an effective model for delivering a multi-agency response to specific 'risk factors' mentioned in the Green Paper as associated with neglect including parental drug use and mental health issues. We would welcome the new Centre for Excellence evaluating the specific impact of FGC in such situations.

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 reception into care
- As a means of planning for the child to return home from care and prior to permanent plans being made
- Prior to legal action being undertaken (unless emergency actions)
- As a means of engaging the family to identify and support alternative care arrangements
- Prior to 'pathways' planning for the child
- And prior to the young person leaving local authority care.

However, although the number of FGCs taking place in England and Wales is increasing, currently whether or not a family is offered an FGC is still very dependent upon where they live and who their social worker is. Moreover failure to look beyond short term budget savings means some authorities have compromised the integrity and therefore the impact of the model.

A very welcome step forward is the recent publication by the DfES with Family Rights Group and the National Assembly of the *Family Group Conference toolkit* that sets out the ethos, values and application of FGCs. The next step in developing consistent minimum quality standards is to pilot and evaluate a post qualification accredited diploma for new and existing FGC co-ordinators.

NEW RECOMMENDATIONS

In order to promote the development of effective family group conferences to reduce the risk of children entering the care system unnecessarily, **we recommend that:**

- 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 services and that this duty is properly funded by central government
- 3) That government provide funding to pilot an accredited diploma for FGC co-ordinators, including an evaluation of the pilot and a business assessment of the impact of accreditation on current and potential co-ordinators, FGC services, commissioning agencies and more importantly vulnerable children and families.

2.4 Family Mediation

Family mediation is beginning to be used in the public law arena to address differences in approaches between parties, including between parents and carers, and between carers and local authorities; for example, in managing contact arrangements and in resolving disputes between significant adults in the child's life about important decisions.

Some of the benefits of mediation are that the mediator is impartial, the parties engage with any proposed plan because it is an entirely voluntary process and, although mediators are subject to a reporting requirement in relation to any risk of harm to the child, the discussions are legally privileged. Thus it provides a safe place to consider different scenarios and options. Mediation, therefore, has an increasing role to play in helping those involved in the child's life to find solutions to tensions and disputes

NEW RECOMMENDATIONS

We recommend that the government funds the expansion of family mediation services to address public law related disputes, and commissions an evaluation study on the impact of family mediation in such circumstances

3 FAMILY AND FRIENDS CARE

3.1 Aims

The following recommendations 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.

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.

3.2 Introduction

3.2.1. Context

There are no official statistics of the total number of children living with relatives but the estimated figure is between 200,000-300,000⁵ children. The

⁵ Richards A and Tapsfield R (2003) *Funding Family and Friends Care: The Way Forward* (Family Rights Group)

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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.

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.

3.2.2. 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.*”⁶ 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 law⁷.

There are well evidenced advantages⁸ 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.

⁶ 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

⁷ 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.

⁸ 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)

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- Contact with family members is more likely to be maintained.

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 Drugs⁹ 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.

⁹ 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

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- Despite the benefits to children of maintaining contact with their parents, siblings and other significant people in their lives, managing 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.¹⁰ 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 support¹¹. 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.

3.3. New detailed recommendations on family and friends care

3.3.1 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

¹⁰ 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

¹¹ 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 carers¹². 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.

NEW RECOMMENDATIONS

Family and friends care as unique - new recommendations:

We recommend that the government:

1. 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;
2. 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
3. collects and publishes official statistics of children being raised by relatives and friends.

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

A recent study¹³ 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, 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

¹² Farmer and Moyers (2005) *ibid*; Hunt et al, forthcoming

¹³ Farmer and Moyers (2005) *ibid*

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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

As mentioned earlier are an effective way of identifying and enabling family members to come forward as potential carers is the family group conference

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 issued¹⁴.

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

¹⁴ 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](#)

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

NEW RECOMMENDATIONS

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).

3.3.3 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.

NEW RECOMMENDATIONS

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.

3.3.4 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.

NEW RECOMMENDATIONS

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 carers¹⁵. 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 carers¹⁶. 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 worker¹⁷.

¹⁵ Farmer and Moyers (2005) *ibid*

¹⁶ 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

¹⁷ Farmer and Moyers (2005)

NEW RECOMMENDATIONS

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

3.3.5 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. This could, for example, be through the tax credit or child benefit system. It should be one of the tasks of the Ministerial-led Task Force to recommend the optimum mechanism, rate and eligibility criteria.

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.

NEW RECOMMENDATIONS

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 it should be one of the tasks of the Ministerial-led Task Force to recommend to Government the optimal mechanism, rate and eligibility criteria for such an allowance.
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.

4. SUPPORTING CHILDREN IN THE CARE SYSTEM TO HAVE A POSITIVE RELATIONSHIP WITH THEIR FAMILIES

4.1 Contact

The principle of the 'corporate parent' as *providing the care and support that a natural parent would offer* is a good one and a desirable goal to aim for. However, public employees do not have the same blood ties that exist in families and the emotional commitment that accompanies them. Whilst accepting that there are situations when a child/young person cannot be cared for within their own family situation we need to also acknowledge that the child's relationship to their family is more than the specific care arrangements. Even when family care is not possible there may still be a relative who is able to exercise their care and commitment to the young person in other ways.

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 18¹⁸ and that contact is the key to early discharge from care¹⁹. There is also evidence that, although contact is important for children's well-being even where they will never return to the

¹⁸ Bullock R., Gooch D. and Little M. (1998) *Children Going Home: the reunification of families* (Aldershot, Ashgate)

¹⁹ Rowe J et al (1984) *Long Term Foster Care* (Batsford, London)

draft

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.

It is therefore essential that any proposals to enhance the well-being of children in the care system addresses the issue of support for contact arrangements whether or not the child is to, or is likely to return home.

NEW RECOMMENDATION

We therefore recommend that there should be a duty on all local authorities to make provision for contact support for all looked after children equivalent to their duties in regard to Special Guardianship and adoption support services.

4.2 Involving families in decision-making for looked after children

The Green Paper addresses the needs of looked after children. This includes both children subject to a care order, for whom the state has taken over decision-making and also those who are accommodated, for whom parents/others with parental responsibility remain the people responsible for making all key decisions. Yet the Green Paper makes almost no reference to parents and other family members once a child is looked after. For example on page 33, in describing the 3 key individuals who between them exercise the parental advocacy role for the child, mention is made of the social worker, carer and independent advocate – but no mention is made of mothers or fathers! Nor is there any mention throughout the Green Paper of consulting parents/significant others re plans for children (s.22 (4)&(5)).

This exclusion of families in decision-making may be an inadvertent oversight at this stage but should be addressed in relation to any and all proposals made about children in care since the parents/others with parental responsibility retain parental responsibility throughout the time the child is looked after, even if a care order is in place. Moreover apart from being a legal requirement, it is in children's interests that they are involved, not least because the frequency with which social workers change (as discussed in the Green Paper) means that often parents/relatives are the only people who provide the continuity for children when they are in care.

4.3 Planned support for children returning home:

On page 25 of the Green Paper is a clear statement that "*children can find themselves moving in and out of care because the support given to them and their family is not sustained once they return home.*" We would endorse this

draft

statement. Yet when referring to children in care the Green Paper does not make any concrete proposals about how practice could be improved to support parents when their children return home.

NEW RECOMMENDATIONS

We recommend that the government produces practical guidance on supporting reunification, which in our view should encompass the same level of preparation planning and support as would be provided if a child was going to live with unrelated carers.

5. OTHER RECOMMENDATIONS – INDEPENDENT REVIEWING OFFICERS (IROs)

Family Rights Group has provided training to at least 150 IROs from across England and Wales since the scheme became statutory in 2004. The recurring issues which are identified by IROs are:

- The care plan, which IROs are asked to review at LAC reviews, is usually (but not always!) provided by the local authority. Yet they rarely receive a copy of the care plan approved by the court, hence there may be a divergence between the local authority and the court approved plan of which the IRO is unaware.. Given there is recent case law on the requirement on the local authority to consult with parents (and potentially children) about any fundamental changes to the care plan in order to avoid a fundamental breach of the care plan and that it is the task of the IRO to identify on the child's behalf any potential breach of statutory duty and/their human rights, this practice seems highly inappropriate.
- IROs lack any coherent provision of independent legal advice. Many turn to the legal department of the local authority they work for to get initial advice but this is inappropriate because the same legal team is responsible for advising and defending the interests of the local authority, hence the potential for a conflict of interests is enormous. Some use the CAFCASS legal advice line for more advanced legal queries on breaches of human rights but many would prefer to take legal advice in person.
- There is still a widespread misunderstanding of the role of IROs, which can make challenging poor practice difficult, unless they are experienced and have considerable confidence. Whether IROs are employed or self-employed it can be uncomfortable to take matters to a senior management level either because they are challenging their own employer or because those who are self employed risk losing further referrals if they are perceived as too adversarial.

NEW RECOMMENDATIONS

In order to address these difficulties and enhance the independence of IROs we recommend that

1. The care plan approved by the court should always be sent by CAFCASS to the IRO at the end of care proceedings so that this informs the work of the LAC review
2. Neighbouring local authority legal departments could provide reciprocal arrangements for the provision of legal advice;
3. Training is provided on the role of IROs to all staff in local authorities who are involved with looked after children;
4. That the annual performance assessment inspections should address the effectiveness of the local authority structure to take seriously and address concerns raised by IROs
5. Local authorities should co-operate to provide a regional forum to discuss issues, which affect IROs.
6. That Government continue to review whether IROs be employed by an independent body, drawing upon views of stakeholders including children and families, existing IROs, and also inspection findings.

- End-

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