Children and Families Bill 2013

Briefing on working with families before child goes into care (new clause)

House of Commons Committee stage

Prepared by

Family Rights Group on behalf of the Kinship Care Alliance

Endorsed by the following organisations in the Kinship Care Alliance:

British Association for Adoption and Fostering
The Fostering Network
The Grandparents’ Association
Grandparents Plus
Nagalro
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Also supported by:
Action for Children
A National Voice
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Work with families before a child enters care

The aim of this amendment is to ensure effective work is undertaken with the family so that all safe family options are explored at an early stage.

The combined impact of the family justice reforms (including Clauses 1, 14 and 15) and the new guidance to courts on case management will mean that it will effectively be too late for potentially suitable family carers to be considered once care proceedings start.

This new clause will:

- maximise the child’s chances of being raised in their family network
- will avert the need for some children to become looked after in the care system and/or be raised by unrelated carers,
- help reduce unnecessary delay, if cases do end up in proceedings,

The above is not only consistent with the child’s human rights but will also save the costs of legal proceedings and the child being unnecessarily in care.

This briefing should be read in conjunction with our briefings on clauses 1 & 14.

Proposed amendment:

Insert new clause into Children Act 1989

s.47(8A) Pre-proceedings work with families:
Where, as a result of complying with this section, a local authority conclude that a child may need to become looked after in order to safeguard and promote their welfare, the local authority must, unless emergency action is required, first

1) Identify, and consider the willingness and suitability of any relative, friend or other person connected with the child, to care for them as an alternative to them becoming looked after by unrelated carers;
2) Offer the child’s parents or other person with parental responsibility a family group conference to develop a plan which will safeguard and promote the child’s welfare

The background

There are a number of likely consequences of the proposed reforms in clauses 1 & 14 to place looked after children in a fostering for adoption placement and to reduce delay in care proceedings. However as we have set out in other briefings on those clauses, we are particularly concerned that they will lead to:

- parents having little time or opportunity to address identified safeguarding concerns and
- relatives being overlooked or not assessed as potential carers, until it is too late.
This is because there will simply not be enough time for either once care proceedings have started; and in accommodation cases (i.e. where parents voluntarily agree to their child becoming looked after in the care system) there is no external scrutiny of what work is done with families before a child could be placed with foster for adoption carers.

To mitigate this, it is critical that families are effectively engaged and supported to find safe solutions for the child within the family network in the pre-proceedings stage/before the child becomes looked after. This work could be undertaken in appropriate cases in parallel to the task of identifying suitable adopters for the child if adoption is considered to be highly likely but before the child is matched or placed with prospective adopters. This family work is essential if the right balance is to be struck between ensuring that the child’s short and long term welfare needs are met and that they and their family’s human rights to respect for family life are respected. This has been acknowledged by the House of Lords Select Committee on Adoption and the Justice Committee pre-legislative scrutiny on the Children and Families Bill.¹

Existing statutory guidance² on pre-proceedings is now inadequate and no longer fit for purpose in the context of the forthcoming reforms because it does not address what should happen regarding work with families when adoption is considered. Furthermore,

- there is no statutory duty on local authorities to work with parents or relatives to explore suitable family care for the child unless the child is looked after;
- the requirement in previous child protection guidance³ that social workers should work in partnership with families in a child protection context has been removed in recent statutory guidance;⁴ and
- recent guidance to courts on case management effectively indicates that any family member who wishes to be considered as a potential carer for a child who cannot remain safely with their parents must make their case to be assessed to the court by day 12 otherwise they may well be ruled out in order for the case to be completed within 26 weeks.⁵

Hence the extent to which families are engaged before court proceedings start, will depend largely on individual social work practice. Both Parliamentary Committees

¹ See for example para 52 HL Select Committee Adoption: pre-legislative scrutiny report Dec 2012 and para 35, House of Commons Justice Committee Pre-Legislative Scrutiny of the Children & Families Bill Fourth Report of session 2012-13
² Children Act 1989 Regulations and Guidance Volume 1 Court Orders issued in April 2008
⁴ Working Together to Safeguard Children 2013 http://www.education.gov.uk/aboutdfe/statutory/g00213160/working-together-to-safeguard-children
⁵ Practice Directions 36C and 12A modify the Family Proceedings Rules 2010 to the effect that social work evidence considered at the case management hearing on Day 12 must include details of assessments, undertaken and proposed, including of potential family and friends carers. This is also the last real opportunity for any party to apply for permission to instruct an expert including an independent social worker who might conduct such an assessment. See http://www.justice.gov.uk/downloads/protecting-the-vulnerable/care-proceeding-reform/practice-direction-36c.pdf and http://www.justice.gov.uk/downloads/protecting-the-vulnerable/care-proceeding-reform/practice-direction-36c-annex.pdf
have asked the government to consider the need for further regulation and guidance on this area of work.\(^6\)

Yet there are time efficient and cost effective interventions which are proven to work in helping families engage in making safe plans, including identifying suitable alternative family care arrangements, if the child can’t remain with their parents. This includes family group conferences and specialist advice and advocacy for parents in child protection cases.

Research has found that children in family and friends care arrangements, despite having suffered similar adversities to those raised in the care system and receiving less state support, do as well if not better. Moreover, family and friends care offers the same attachment advantages as ‘fostering for adoption’ in that a close relative may provide short and/or long term care. Further information about this is set out in Appendix A.

Our proposed new clause aims to:
   i) maximise effective work with the whole family before irrevocable steps have been taken to remove the child from the family;
   ii) allow for contingency plans to be made for alternative family care if the parents are unable to address the safeguarding concerns satisfactorily;
   iii) avert the need for costly care proceedings and the significant cost of keeping children unnecessarily in the care system
   iv) reduce the number of family and friends carers only coming forward late in the day after a fact finding in proceedings, thus eliminating a major source of delay.

This new clause should also be further strengthened by government \textit{issuing a pre proceedings protocol} under s.7 Local Authority Social Services Act 1970,\(^7\) setting out \textit{how} local authorities should engage families in making safe plans for their children before the proceedings start, drawing on best practice of \textit{what works}. Suggested contents list is set out in Appendix B.


\(^7\) Guidance issued under this section must be complied with by local authorities unless there are exceptional circumstances to justify local variation.
Appendix A: Engaging families pre-proceedings – what works

1. When Children’s Services become concerned about the safety and welfare of a child, the typical experience of parents is that they find it difficult to work with the local authority because they are frightened, angry and bewildered. They are often overwhelmed by continuous assessments and meetings in which they are under the spotlight of a large numbers of professionals. They are often unclear about the totality of the concerns and the reasons for them and they fear that their child may be removed by the local authority. Yet research demonstrates that when a child is at risk, an effective partnership working between the family and local authority is key to keeping them safe. This makes practical sense because 93% of children subject to a child protection plan live at home, hence it is their parents who are responsible for their day to day care and the plan’s implementation. Indeed parental non-cooperation is the key trigger for local authorities issuing care proceedings.

2. An estimated 200-300,000 children who cannot live safely with their parents are being raised by family and friends (typically grandparents, older siblings, aunts and uncles), often as an alternative to being brought up in the care system. Enabling children to live safely within their family network is consistent with the child’s right to respect for family and also results in positive outcomes for the children involved. Research shows, for example, that in comparison to children in unrelated foster care, children in family and friends care are as safe, and are doing as well if not better in relation to their health, school attendance and performance, self-esteem and social and personal relationships. Moreover, there is a marked improvement in their emotional health and behaviour following placement and their carers are more likely to match their ethnicity and be highly committed to them, leading to more stable placements. This is despite these children suffering from similar adversities to children in the care system and their carers often having multiple problems of their own including suffering from severe financial hardship and isolation, yet receiving little or no support.

3. Family and friends care arrangements for children who would otherwise be in the care system also result in huge cost savings to the State: it is estimated that the average costs of a child being in care are over £25,000 per year and the average

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9 DCSF: Referrals, assessment and children and young people who are the subject of a child protection plan, England - Year ending 31 March 2009
10 They usually step in because of parental difficulties, such as mental or physical ill health, domestic abuse, alcohol or substance misuse, or imprisonment or bereavement.
11 European Convention on Human Rights (Article 8).
13 This research shows that only 6% of family and friends carers failed to protect the children in their care which is the same figure as for unrelated foster carers
14 Based on child being in care for 12 months costing £28,241. See table Costing care episodes of looked after children: standard costs to social services of case management processes (foster care) (Loughborough University cost calculator)
costs to the State of care proceedings are a further £25,000 or more.\textsuperscript{15} Yet potential wider family placements are frequently identified late in care proceedings\textsuperscript{16} because: i) social workers focus too often exclusively on the mother, and do not routinely seek our potential carers in the wider family, particularly paternal relatives, before proceedings start,\textsuperscript{17} and ii) many family and friends carers refrain from offering to care for the child whilst there is still a chance that the parents may be able to raise the child long term. In some cases, this is because they are unaware of the depth or totality of concerns; in others it is because they don’t want to undermine the parents or are fearful of reprisals from the parents if they step forward. Therefore, many wait until there is a finding of fact against the parent(s), before putting themselves forward as alternative carers. This will be far too late under the 26 week time limit, with the result that many children may be denied the chance of living in an otherwise suitable family and friends care arrangement.

4. The following interventions maximise the chances of early family engagement: Independent advice for parents and relatives:

4.1 Research has found that when parents and family members are able to discuss with an independent specialist adviser how the system works and the options open to them, it can significantly impact on their ability to work constructively with the local authority in this pre-proceedings stage. This has important implications for the child and family, but also results in significant costs saved in avoiding children unnecessary entering the care system. An independent evaluation found that for every £1 invested in Family Rights Group advice service, the impact was that it saved £10.80 in costs to the public purse.\textsuperscript{18} However Family Rights Group is the only national organisation that gives this specialist advice on legal and social work aspects of the case, including the need for parents to face home truths and be realistic when making plans for their child. In the last nine months (April-December 2012) the numbers of families contacting our service has risen by 50% compared to the same period a year ago.

Professional family advocacy:

4.2 Since 2003 Family Rights Group has also led the development of professional advocacy for parents involved in child protection processes. Using highly qualified child care solicitors, social workers or advocates with equivalent expertise, we advocate for parents at different stages of the child protection process, including accompanying them and where necessary speaking on their behalf at local authority meetings and helping them to get the support they need for their children to thrive. A key finding from independent evaluations of

\textsuperscript{16}Hunt, J (2001) Scoping paper prepared for the Department of Health London: DoH
\textsuperscript{17}Ibid
this service\textsuperscript{19} is that both families and social work professionals feel that our independent advocates play an important role in aiding communication between them and helping them to work in partnership to an agreed plan. However this is a very small scale venture, currently dependent on spot purchasing by London local authorities. There are only a very few other advocacy services across the country with expertise in this area.

Family Group Conferences:

4.3 FGCs originate from New Zealand and are family led, decision making meetings in which a plan for the child is made by the family (including extended family members and friends) which addresses the local authority’s concerns to ensure the child’s future safety and well-being. They are convened by an independent co-ordinator who visits all relevant family members to prepare them for the FGC. Importantly, with the help of an advocate where appropriate, children are supported to participate and express their wishes as part of the FGC.\textsuperscript{20} FGCs have the advantage of ensuring that wider family members understand early the seriousness of the situation. They provide family members with the opportunity to make a plan to support the child to remain safely with their parents, if feasible, but also to draw up temporary or long term contingency plans about the child’s future care including identifying whether there are family members who would be willing and able to raise the child, if they cannot remain at home.

There have been a considerable number of research studies on FGCs which, collectively, suggest that they are a very effective way of engaging families to make and implement safe plans for their children. Specifically these studies confirm that FGCs:

- result in extended family members supporting struggling parents and when necessary taking on the care of the child if they cannot remain with their parents;
- engage fathers and paternal relatives;
- give children a voice;
- improve outcomes for children at risk; and
- are cost effective in preventing children being unnecessarily subject to care proceedings or removed into care. This is supported by a survey by Family Rights Group (2010)\textsuperscript{21} which shows that for every £1 spent on delivering FGCs, the savings to the state could be as much as £11: nine FGC projects which provided relevant data reported that they prevented 229 children becoming looked after in the previous year, including avoidance of proceedings for 116 children and in 58 children returning to their family from local authority care.

There has been a significant expansion in the number of child welfare FGC services in recent years. However,

\textsuperscript{20} Further information about how FGCs operate can be found in Family Group Conferences in the Court Arena 2011 http://www.frg.org.uk/images/Policy_Papers/fgc-revised-practice-guidance-sept-2011-final.pdf
\textsuperscript{21} Family Rights Group survey of members of the National FGC network July 2010 (unpublished).
- Around 23% of local authorities in England still do not have any FGC service or commission FGCs.
- Even in those that do have an FGC service, the decision to offer families an FGC often largely depends upon the social worker. Only a small minority of authorities have a policy to offer an FGC to all families prior to proceedings.
- A number are now closing or being scaled down, or the principles upon which they work are being compromised as a result of funding cuts.

Mediation to help resolve disputes before, during and after proceedings

4.4 Publicly funded mediation, provided by an accredited family mediator, is available to help parties to private law proceedings resolve disputes. Indeed it is now a requirement that before private law applications are issued parties must meet with a mediator to discuss whether mediation may be a more suitable means of resolving the dispute than going to court. There is also a requirement that it is available to help resolve disputes between parents and the Education Authority (as an alternative to the Tribunal) regarding the provision of special educational needs support. However it is as yet under-used in public law cases. In our view it would be very useful to resolve disputes with the local authority regarding child protection plans, contact arrangements and both long and short term care planning. The skills required of the mediator would be very similar to mediation in SEN cases where there is also a lay party (i.e. the parents/carers) and a professional party (i.e. the social worker).

Letter before proceedings

4.5 In our experience families find that it is helpful when the child protection concerns are clearly set out for them. Typically this happens for the first time in the ‘Letter before Proceedings’ which also invites them to a meeting to discuss how they must address the concerns in order to avert proceedings. However, our advice work suggests that its use is patchy and it is often sent far too late for families to have any real chance of making the necessary changes within the child’s timetable. If the letter before proceedings was amended to be sent much earlier in the process setting out the concerns, the opportunity for families to address their problems to the satisfaction of children’s services would be maximised.

CAFCASS involvement in the pre-proceedings stage

4.6 An ongoing pilot project being run by CAFCASS in the West Midlands involves Family Court Advisers participating in preproceedings social work in 27 cases. A key aim is to contribute to the quality of assessments, the safe diversion of cases from care proceedings and to provide a head start to the work of the CAFCASS officer if the case proceeds to court. The interim evaluation found that the involvement of the Family Court Advisers had a positive impact on parental engagement pre-proceedings, not least because of their independence from the local authority; in some cases they had been able to modify plans at the pre-proceedings meetings so that they were more realistic and therefore more

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22 SEN Code of Practice http://www.education.gov.uk/aboutdfe/statutory/g00213170/special-educational-needs-code-of-practice
achievable for the parents. The project is still ongoing, but current case information suggests that cases fully diverted in the Cafcass Plus sample have remained diverted. Cases that have progressed to court in the Coventry area have evidenced shorter case duration when measured against the annual performance court statistics. Both outcomes suggest that support, assessment and decision-making has been made more robust, such that cases only come before the court, when alternatives for permanence at home or within the extended family have been fully explored.
Appendix B: Proposed contents of the pre-proceedings protocol for local authorities to maximise family engagement:

The following is a suggested list of contents. We would be more than willing to develop this further with relevant stakeholders, following feedback and discussion.

a) Context and status of protocol
b) Research evidence on the importance of partnership working to support the protocol
c) Legal and practice framework including working with families during the child protection and pre-proceedings processes. This would include a letter of concerns, triggering access to non-means and merits tested legal advice under Legal Services Commission Level 2 arrangements, which should be sent much earlier than the current letter before proceedings to give families a real opportunity to address the identified concerns before proceedings commence; and
d) Approaches to engaging families to work in partnership including having a voice in planning pre proceedings including:
   i. Independent specialist advice for all families
   ii. Independent specialist advocacy from section 47 (child protection) enquiries
   iii. Family group conferences including offering all families a family group conference before a child become looked after (except in emergencies)
   iv. Family mediation
   v. Other good practice innovations e.g. Cafcass pre proceedings pilot
e) Good practice in service delivery for families e.g. Westminster’s family recovery project, Hackney’s reclaiming social work model, Strengthening families/signs of safety, Multisystemic Therapy, Family Intervention Projects, intensive family support for children on the edge of care as being offered in Wales, implementation of recommendations from Family Rights Group’s Fathers Matter research on working with fathers & paternal family,
f) Family and friends care including:
   i. Assessment approaches suitable for family members
   ii. Policies, practice and support (summarising statutory family and friends care guidance requirements)
g) Working with parents who may lack mental capacity