It’s Just Not Fair!
Support, need and legal status in family and friends care

By Joan Hunt
and Suzette Waterhouse
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Authors

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Family Rights Group is the Charity in England and Wales which advises families whose children are involved with or need children’s services because of welfare needs or concerns. The Charity runs a free confidential advice service, undertakes research and promotes policies and practices, including family group conferences, that help children to be raised safely and securely within their families. Family Rights Group campaigns for effective support to assist family and friends carers who are raising children that cannot live at home.
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Joan Hunt and Suzette Waterhouse, April 2013
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I Introduction

This is the third and final report of a Big Lottery funded project, undertaken by Family Rights Group (FRG) in partnership with the University of Oxford, on the topic of kinship care, also known as family and friends care. These terms (which are used interchangeably in this report) refer to children who are being brought up by members of their extended families or social networks. The study explores the links between the support provided to kinship care arrangements by local authority Children’s Services, the legal status of the arrangement, and the needs of children and their carers.

The first two reports, published in March 2012, documented the views of family and friends carers, based on a) in-depth interviews with carers in 95 households and b) an on-line survey of 493 carers. This final report focuses on the perspectives of key professionals and the extent to which their views validate or contradict the picture presented by carers.

Background

Analysis of census data (Nandy et al, 2011) indicates that in 2001 173,200 children in the UK were being raised by members of their extended family. Since this data does not cover carers who were connected to the child in some way – such as family friends, neighbours or those with a professional relationship such as teachers or childminders - the true numbers of children in kinship care are undoubtedly larger. The numbers are reported to have doubled since the 1991 Census (Nandy et al, 2011) and are likely to be still rising. This is partly because of the social problems which trigger such care arrangements – our survey of carers showed that most children who are living with kin because they cannot remain with their birth parents are there because of abuse or neglect; parental substance abuse or mental illness; or domestic violence (Aziz et al, 2012). The prevalence of such problems is also highlighted in other U.K. research (Farmer and Moyers, 2008; Hunt et al, 2008; Selwyn et al, 2013).

Another contributory factor is that, where children require full-time substitute care and come to the notice of local authority Children’s Services, law and government policy strongly promote the use of family and friends care wherever possible. While this has been the position in law since the Children Act 1989, which sought to reverse the previous neglect of this valuable resource, there was a widespread view among academics, practitioners and voluntary agencies that much more needed to be done to realise the objectives of the legislation (Hunt, 2009). Two government working groups (Laming, 2006; Narey, 2006) reached the same conclusion, which was endorsed in the government White Paper, Care Matters: Time for Change (DfES, 2007), which promised a ‘new framework’ for family and friends care’ which would ‘set out the expectations of an effective service’, addressing concerns about variation across the country in the extent to which family and friends care is used, the absence of policies or the inconsistent application of those policies, lack of transparency about services and entitlements and inequitable treatment of carers.

The need for such a framework was further highlighted in research by Family Rights Group (Roth, 2009) which found that the majority of local authorities did not have a written coherent approach to family and friends care. Apart from a few ‘beacons of excellence’ in

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general there was an absence of written policies, procedures or guidance either on the
assessment of carers or the financial and practical support available. Two government-funded
studies (Farmer and Moyers, 2008; Hunt et al, 2008) also urged the government to develop a
clearer policy framework.

This ‘new framework’ finally emerged in April 2011, as Family and Friends Care: Statutory
Guidance for Local Authorities, (the guidance), having been issued in draft form for
consultation the previous year. The guidance – which it should be noted only applies to
English local authorities) makes significant demands on local authorities, requiring each to
publish a family and friends’ policy by September 2011 and stipulating what policies should
cover and the principles on which they should be based. Thus, for example, policies should

- Promote permanence for children by enabling those who cannot live with their
  parents to remain with members of their extended family or friends, where this is
  a better alternative to growing up in the care of the local authority. (Para 4.5)
- Be underpinned by the principle that support should be based on the needs of the
  child rather than merely their legal status. (Para 4.6)
- Be clearly expressed, regularly updated and made freely and widely available with
  publicity, via web-sites and leaflets. (Para 4.2)
- Be evidence-based, drawing upon information about the number of family and
  friends foster carers and the special guardians and adopters the local authority is
  supporting. (Para 4.10)

Local authorities are also required to appoint a senior manager\(^3\) with overall responsibility for
the policy (para 4.9); to ensure that staff understand the policy and operate within its
framework so that it is applied in a consistent and fair manner across the authority (para
4.11); and have the appropriate training and understanding of the issues which family and
friends carers face (para 4.12).

The guidance potentially marks a step-change in the approach to kinship care. It was
disappointing, therefore, that although it was issued under s.7 of the Local Authority Social
Services Act 1970 which means that local authorities should comply with it unless there are
exceptional local circumstances to justify not doing so, research conducted by FRG found
that only just over half (55%) had even published their policy five months after the deadline
for doing so had expired (Roth et al, 2012). Further, the quality of the policies produced was
very varied, with only 12 of the 52 analysed in detail being rated as outstandingly good, and
14 as outstandingly poor. Of particular concern is that fact that 42% made no reference to the
fundamental principle of the guidance that support should be based on the needs of the child
rather than merely their legal status (Roth et al, 2012).

It was, however, the first time that local authorities had been required to produce such a
policy and it is perhaps not unexpected that many should struggle to do so, particularly given
the current economic constraints. At the point the research took place some authorities
indicated that they were in the process of working on their policies. However over a year
after the deadline expired 30% of local authorities had still not produced a policy\(^4\). It is to be

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\(^3\) In this report this manager is termed the ‘designated manager’.

\(^4\) FRG maintains an up-to-date list of published policies http://www.frг.org.uk/involving-families/family-and-
friends-carers/local-policies-and-contacts
hoped that before too much time has elapsed all will step up to the mark and that the
government takes steps to ensure they do so.

One of the most challenging statements in the guidance is that policies should be underpinned
by the principle that children in kinship arrangements should receive the support they and
their carers need to safeguard and promote their welfare (para 1.2). Research has
demonstrated that many of the children in kinship arrangements are similar to those who go
into local authority care with unrelated (mainstream) foster carers in terms of their previous
experiences of poor parenting (Aldgate and Macintosh, 2006; Broad et al, 2001; Farmer and
Moyers, 2008; Hunt et al, 2008; Selwyn et al, 2013; Wade et al, 2010). Many need high
levels of support in order to overcome their early adversities and achieve optimal levels of
well-being.

Research produced before the guidance was issued, however, has consistently found that this
is not the case (Broad, 2007; Doolan et al, 2004; Family Rights Group, 2010; Family Rights
Group, 2011; Farmer and Moyers, 2008; Farmer and Pollock, 1998; Flynn, 1999;
Grandparents Plus, 2010; Flynn, 1999; Hunt and Macleod, 1999; Hunt et al, 2008; Laws,
2001; Laws and Broad, 2000; Murphy-Jack and Smethers, 2009; Pitcher, 1999; Richards,
2001; Templeton, 2010). Lack of support puts children at risk of poor outcomes and can have
adverse effects on carers’ physical and mental health (Hunt, 2006). Recent research by
Bristol University also concludes, starkly, that ‘Children’s Services are not providing
adequate support for kinship carers’ (Selwyn et al, 2013, p77).

Another challenge presented by the guidance is that support should not depend simply on the
legal status of the arrangement. As we set out below, children can live in kinship
arrangements under a range of legal statuses. However there is only one legal status under
which the local authority is required to provide support – where the child is a looked after
child. In all other circumstances, support is discretionary.

Deficiencies in local authority support for kinship arrangements has been a key concern of
the Kinship Care Alliance, a consortium of voluntary organisations and interested academics,
set up in 2006, to campaign for increased recognition and support for kinship care. Three
common themes emerged in their discussions. First, that local authority support appeared to
be more dependent on the child’s legal status than on their needs or those of their carers.
Second, that local authority practice in relation to whether a child becomes a looked after
child or the arrangement is regarded as a private one within the family seems arbitrary. Third,
that kinship carers are often unaware of alternative options or in a weak position to challenge
the local authority’s decisions but that information, advice and advocacy have sometimes
been able to change those decisions. However these were not issues which had ever been the
focus of research. Hence, when the opportunity arose to apply for funding from the Big
Lottery, Family Rights Group, a founding member of the Alliance, decided to put together a
proposal on the topic, working in partnership with the first author of this report, also a
founding member of the Alliance.

Legal statuses for children in family and friends care
The main legal statuses under which children are raised in family and friends care are:

- A private informal arrangement whereby the parents and the carer agree that the child
can live with the carer.
A court order obtained by the carers – typically either a residence order\(^5\) or a special guardianship order. Adoption, although possible, is unusual in kinship care.

- Kinship foster care.

Details about each of these statuses are set out below.

**Private informal care**

Where the carer is a close relative – a grandparent, aunt or uncle, sibling – kinship care can be an entirely private and informal arrangement with a parent. More distant relatives, and unrelated carers, must be registered by the local authority as private foster-carers. Neither of these statuses gives the child legal security. The carer does not have parental responsibility and a parent may remove the child at any time. This directly affects their ability to make decisions about the child’s care: they can make decisions on most day to day matters\(^6\) but they must refer back to the parents or others with parental responsibility for all important decisions about their care\(^7\). This can be very difficult when there are tensions between the carer and the parent (or others with parental responsibility) or if the person with parental responsibility is not available, since they will need their consent to important routine things like medical or dental treatment and school trips. Kinship carers can usually only acquire parental responsibility through a court order – residence, special guardianship, adoption – the only exception to this being testamentary guardianship\(^8\).

**Private law orders**

**Residence orders**

A residence order (RO) decides where a child shall live and gives the holder parental responsibility (PR) although this is shared with the parents. It lasts until the child is 18 unless revoked or the court directs otherwise. Unless a court order specifically says otherwise, the carer is entitled to make most important decisions about a child’s care. However they may not take the child outside the UK for longer than one month without the consent of everyone else with parental responsibility, cannot change the child’s surname or religion, and may not appoint a testamentary guardian. The child’s parents have a right to apply to the court to revoke a residence order, and can also apply for a prohibited steps or specific issue order - to decide how parental responsibility should be exercised by the carer in relation to a particular disputed issue - or a contact order.

Carers who wish to apply for a residence order must seek the permission of the court unless they have the consent of everyone with parental responsibility, or they are a sibling, grandparent, aunt/uncle or local authority foster carer who has had the child living with them for at least a year, or, in the case of all other carers, the child has lived with them for at least three of the preceding five years.

\(^5\) Under proposals in the Children and Families Bill, 2013, the residence order will be replaced by a child arrangements order. The existing terminology, however, will be used throughout this report.

\(^6\) S.3(5) Children Act 1989

\(^7\) S. 2 & 3 Children Act 1989

\(^8\) This only applies where there is no one alive with parental responsibility for the child, or one parent is dead and the other cannot be traced, is serving a prison sentence of two years or more, or is compulsorily detained in a psychiatric hospital. In those circumstances it is not necessary to seek a court order if there is written evidence that the carer has been appointed guardian.
**Special Guardianship**

A special guardianship order (SGO) is more secure legally than a residence order because a parent cannot apply to revoke it unless they have the permission of the court, for which they need evidence of a significant change in circumstances since the order was made. Special guardians can also appoint a testamentary guardian to care for the child if they die. An SGO puts carers in a more powerful position in terms of decision-making since although parents retain parental responsibility, the carer can exercise their parental responsibility to the exclusion of anyone else. Similarly, although parents can still apply for a prohibited steps or specific issue order to determine particular issues, the court is less likely to grant this than where a residence order is in force.

Parents, however, can still apply for a contact order and special guardians still need the permission of everyone with parental responsibility to change the child’s surname, to remove the child from the UK for more than three months, or to consent to their marriage. They also cannot override the parents’ rights in relation to adoption or placement for adoption.

A carer who wishes to apply for an SGO must obtain the permission of the court unless s/he already has a residence order, has the consent of everyone with parental responsibility, is a sibling, grandparent, aunt/uncle or local authority foster carer who has had the child living with them for at least 12 months, or, if someone else, has had the child living with them for three out of the past five years. The applicant must inform the local authority of their intention to seek an SGO three months before the application is made.

**Adoption**

Adoption legally transfers all the legal rights and duties to the child from the parents to the adopters. Once the order is made the birth parents are no longer the child’s legal parents and they lose parental responsibility, which becomes solely vested in the adopters. The child is legally treated as if s/he had been born to the adopters.

An adoption order can be sought by the carer if the child has been placed with them for adoption by the local authority and has lived with them for at least 10 weeks, or the carer has been fostering the child for the local authority for at least a year, or the child has been living with the carer under another arrangement for three of the past five years.

Unless the child was placed for adoption notice must be given to the local authority three months before the application is made.

**Kinship Foster Care**

In addition to these private legal statuses, children may also live with kin while they are looked after by the local authority, when the carer must be assessed and approved as a foster-carer. A looked after child is either one who is ‘accommodated’ under section 20 of the Children Act 1989, which is a voluntary arrangement made between the parent and Children’s Services, or ‘in care’ on an interim or full care order or an emergency protection order. Carers in such arrangements do not have parental responsibility, which remains with the parent where the child is accommodated and is shared between the parent and the local authority where there is a court order.

When a looked after child cannot be placed with someone with parental responsibility, the local authority is required, provided it is consistent with the child’s welfare, to place him/her with relatives, friends, or other connected people who are approved as local authority foster...
carers, in preference to other foster carers, children’s homes or other statutory placements\textsuperscript{9}. Such carers must be assessed under the Fostering Regulations 2011\textsuperscript{10} and the National Minimum Standards for Foster Care 2011.

The local authority is not required to wait until the carer has been fully approved. Placements can be made in an emergency, subject to certain essential checks\textsuperscript{11}. These emergency arrangements can last up to 16 weeks, (and, exceptionally, 24 weeks), during which time the carer needs to be fully assessed and approved as a foster carer if the placement is to continue. Approval should be reviewed every year. Even if the carer has been fully approved the local authority can decide the placement is no longer in the child’s best interests and move him/her to another placement, although if the child is accommodated rather than on a care order the permission of anyone with parental responsibility would be required. Kinship foster carers are able to make decisions about the day to day care of the child but all important decisions about a child’s upbringing must be referred to the local authority.

**Legal status and support**

Kinship care *per se* is not a legal status and does not carry any entitlement to support, financial or otherwise. The only arrangements the local authority is required to support are those involving a looked after child, where the placement should be treated like any other foster placement. This includes payment of a non-means-tested fostering allowance which, in England, must meet at least the national minimum set by the Department for Education. The local authority must provide support to meet the child’s needs, including a health plan, education plan and placement plan, and training and practical support for the carer. The carer should have their own worker and access to out of hours support.

Local authority support for all other legal statuses is discretionary. The local authority has the power, but no duty, to pay regular allowances to carers with residence, special guardianship or adoption orders, and to carers with other private arrangements where the child is assessed to be in need under section 17 of the Children Act 1989\textsuperscript{12}. All these allowances are means-tested. Carers with private arrangements may be able to obtain financial support through tax credits and benefits. However, the only non-means-tested assistance to which they are entitled has been child benefit, or, in the case of testamentary guardians, guardian’s allowance. Carers can also claim child maintenance from the parents either through a voluntary arrangement or through the Child Maintenance and Enforcement Commission, previously the Child Support Agency.

In terms of non-financial support, if a child in private kinship care is assessed as being in need the local authority has the same duties as it has to any child in need, i.e. it must provide practical and emotional support. Support is therefore dependent on the local authority determining that their eligibility criteria are met and their decisions as to what services would be appropriate. It could include: counselling and social work support for the child; day care; advice and guidance; help with contact; help with housing; respite care for the child; and support groups (DfE, 2010).

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\textsuperscript{9} Children Act 1989, s22(c) (5) (6) and (7)
\textsuperscript{10} Previously the Fostering Services Regulations 2002
\textsuperscript{11} Previously under Regulation 38 of the Fostering Services Regulations 2002, now Regulation 24 of the Care Planning, Placement and Review Regulations, 2010
\textsuperscript{12} The definition of a *child in need*, set out in section 17 (10) of the Children Act 1989, is a child who is under 18 and who is: unlikely to achieve or maintain a reasonable standard of health or development without the provision of appropriate services by the local authority; or whose health or development is likely to be significantly impaired without the provision of appropriate services by a local authority; or who is disabled.
The local authority does have a duty to establish special guardianship support services\(^\text{13}\). These could include help with contact, support groups, therapeutic help for the child, support for the carer, counselling, information and advice. However whether or not an individual carer is offered such help depends on an assessment of need. If the child was *looked after* immediately before the SGO was made, the carer and the child have a right to have their support needs assessed, but in all other cases this is discretionary.

**The Research Study: Aims and Methods**

**Aims**
The overall aim of the project was to elucidate the links between the support available to children and carers; the needs of those children and carers and the legal status of the arrangement. The study aimed to address the following questions:

1. How and why do children end up in kinship placements under different legal statuses?
2. Is decision-making child-centred and needs-based or influenced primarily by other factors, such as local authorities policies and practice or the child’s route to placement?
3. Are carers able to make informed decisions about the placement’s legal status?
4. How does placement support relate to a) legal status and b) need?
5. How difficult is it for carers to obtain appropriate support?
6. What is the impact of support or its absence on the placement?
7. What changes in law, policy and practice are needed?

The focus of the project was on arrangements with which the local authority had had some involvement.

**Methods**
There were three main elements in the research

1. Face to face interviews with carers in 95 households
2. A national on-line survey of 493 carers
3. Interviews with key professionals supplemented by an on-line survey

*In-depth interviews with kinship carers*

Our carer interview sample was recruited in two ways. First, through contacting people who had rung the FRG Advice Line between December 2008 and October 2010 and had agreed to be re-contacted for the purposes of research. From 219 callers who were either currently kinship carers, had been so in the past, or were actively considering it at the point their last call was made, we identified 127 arrangements which started no more than three years before the start of our interviewing period. This was thought to be important if our findings were not to be dismissed as purely historical. Given the focus of the project we also decided to exclude those who had had no involvement at all with Children’s Services, which further reduced our potential sample to 122. Of these 92 were contacted and agreed to be sent written information about the research. The process yielded 64 completed interviews, representing 52% of those eligible.

\(^{13}\) As set out in the Children Act 1989, s14 F(a) and Regulations 3,4, and 5 of the Special Guardianship Regulations 2005 (England) and Special Guardianship Guidance 2005
The remaining interviewees were recruited via other organisations in the Kinship Care Alliance (27) or the FRG on-line forum. In order to achieve sufficient numbers we did have to slightly relax the selection criteria for this group, which included 10 placements which started earlier than 2008 (9 in 2007, 1 in 2006).

Full details of the sample can be found in our first report of the study (Hunt and Waterhouse, 2012). In brief, however:

- All the carers lived in England or Wales and had had some contact with local authority Children’s Services.
- All but seven of the sample involved ongoing kinship arrangement; only 7 had entirely terminated although in 10 at least one child was now living elsewhere;
- In terms of legal status at the point the interview took place/the arrangement ended, the sample was almost evenly divided between four groups: the child was a *looked-after child* (23%); there was a residence order (25%) or special guardianship order (27%); the arrangements were informal (21%). In 39% the carers had been treated as kinship foster carers at some point.
- In most cases (80%) the local authority had been involved in some way in the decision that the child should come to live with the carer.

Clearly the sample cannot claim to be representative and there may well be an inbuilt bias towards carers who have had unsatisfactory experiences with Children’s Services. (It should be noted, however, that the picture obtained from our sample of carers is mirrored by research conducted by the University of Bristol, which used different sampling methods and sources, suggesting that our sample was not a-typical).

There was, in any case, no feasible alternative way of obtaining a more representative sample. There was no existing data set we could use, nor a large recent cohort, and, since kinship carers make up only a small proportion of the adult population, a survey – whether specifically commissioned or a module in an existing vehicle – would be prohibitively expensive. However, since the study was conceived as an essentially qualitative study, whose objective was to illuminate issues rather than measure their prevalence, we considered that the effects of sample bias, while important, were less crucial. We also considered identifying a sample through Children’s Services, which, although unlikely to generate a large number, might at least enable us to assess how representative those agreeing to be interviewed are. However, this would have required the active co-operation of several local authorities and, since children in kinship placements other than those fostered are not systematically identified as a defined group in the vast majority of local authority data management systems, would probably have yielded a very limited range of cases.

Interviews were conducted using a semi-structured format which allowed us to capture responses to specific questions but also gave carers opportunities to tell their story in their own way. Where two or more children were being cared for, one was selected as the index child and the most detailed data collected on their legal status, support and needs. The selection of the index child was done alphabetically, using first names. Where the index child had spent more than one period living with these carers we also decided to focus on the most recent episode.

All interviews, with the permission of the interviewee, were taped and most were subsequently transcribed. The data was analysed using a combination of SPSS, NVivo and manual methods.
The findings of this stage of the study are reported in Hunt and Waterhouse, 2012.

**The on-line survey of carers**

The purpose of this stage of the study was two-fold. First, to check out the findings of our in-depth interviews on a much larger sample of carers, and second, to provide the most accurate picture to date of the lives and circumstances of kinship carers and the children they are caring for. Previous studies, although providing invaluable information, have been relatively small scale and typically limited to kinship care arrangements in a small number of areas, or who have been identified by one particular means, such as those known to local authorities or placed through care proceedings or under a special guardianship order. By using a web-based survey we hoped to reach a diverse sample not limited by geographical location, legal status or links with local authorities.

The survey was designed by the research team and conducted using the web-based research tool Survey Monkey. It consisted of both straightforward multiple choice questions, where participants were asked to provide factual data plus ample opportunities for respondents to write about their experiences and views. Several of the closed questions also allowed respondents to expand their answers.

The questionnaire was accessed via the FRG web-site but publicised as widely as possible through other organisations who work with and support kinship carers. Full details of the sample are reported in Aziz et al, 2012. In brief:

- Carers responded from across the UK but 87% (384 of 389) came from England (322) or Wales (18).
- All were currently caring for at least one kin-placed child.
- Most carers were grandparents (70%), the next largest group being aunts and uncles. Although analysis of the 2001 Census (Nandy et al, 2011) indicates that 38% of children in kinship care are being raised by siblings, such carers accounted for only 2% of our respondents.
- The survey also somewhat under-represents arrangements involving children from minority ethnic groups (15% compared to 32% in the Census) although it does reflect the proportion in the general population (Office for National Statistics, 2012)
- Almost half (48%) had been raising the child for more than four years.
- 68% had a private law order (SGO, 26%; RO, 35%; interim RO, 3%). 20% were approved as (17%) or being assessed as kinship foster carers (3%). Very few (8%) were still caring informally and only one person had adopted.
- 32% had been kinship foster carers at some point.
- 86% of carers reported both that the local authority had had concerns about the child before the arrangement started and had been involved in placing the child with the carers.

The quantitative data was analysed using SPSS and the statistical tools available in Survey Monkey. Qualitative data was analysed using NVivo and tools available with Survey Monkey.

A full account of this stage of the study can be found in Aziz et al, 2012.

**Professional perspectives**

Data from professionals was obtained in two ways.
First: face to face or telephone interviews with a range of practitioners, either individually or in groups. Participants were recruited using a range of methods – approaches to professional organisations; posting requests for participation on web-sites; and direct approaches to individuals or groups it was considered would have something to contribute. Interviews were loosely structured using a topic guide. With the permission of the interviewee all were taped and subsequently transcribed in full. The data was analysed using NVivo.

Second: an on-line survey, again using Survey Monkey. This consisted largely of closed questions, although usually giving informants an opportunity to amplify their answers. The quantitative data was analysed using SPSS; the qualitative using NVivo.

A total of 249 professionals took part in this third stage of the research. One hundred of these responded to the on-line survey, of whom seven were also subsequently interviewed by telephone. A further 149 professional were interviewed either individually (31) - on the telephone or face to face – or with one or more colleagues (118).

The interview sample was made up as follows:

- Practitioners and managers from local authority Children’s Services
  - Managers with lead responsibility for family and friends care (6)
  - Managers (21) or social workers (20) in family placement or kinship services
  - Managers (8) or social workers (19) in child protection, family support, looked after children or emergency duty teams

- Family Group conference coordinators and managers (21)

- Independent Reviewing Officers (1)

- Local authority solicitors (5)

- Solicitors in private practice (11)

- Judges (10)

- Children’s guardians and independent social workers (29)

- FRG case advisers (5)

The on-line survey was completed, in full (85) or in part (15), by 100 professionals, 84 of whom were Childrens’ Services staff. This group comprised:

- 26 managers (8 from frontline services; 16 from family placement/kinship services and 2 where this was unclear)
- 58 social workers/senior social workers (24 from frontline services; 27 family placement/kinship services; 7 unclear)

Of the remaining 16 informants eight were independent social workers/children’s guardians; three independent reviewing officers; two family group conference coordinators; one solicitor and two social workers not working for Children’s Services.

While the data cannot claim to be representative it gives a good overall national picture. Informants provided data relating to a total of 54 local authorities in England and Wales, with all regions of the country covered and all types of authority with responsibility for children’s services.

Structure of the report
Most of this report focuses on the material from the third stage of the research, weaving in material from the carer interviews and the carer survey as appropriate. To set the scene,
therefore, in the next chapter we summarise the key findings from the first two parts of the study. We also introduce some of the key themes from the professional data.

Chapters 3 to 5 focus on professional perspectives on the question of the support available to kinship arrangements under different legal statuses. Chapter 3 looks at kinship foster care; chapter 4 support under special guardianship and residence orders and chapter 5 support for informal arrangements.

Chapters 6-9 look at how decisions are made about legal status. Chapter 6 looks at initial decisions about the legal status of the arrangement and in particular the question of when an informal arrangement is deemed to be a private one made within the family and when it should properly be regarded as accommodation under section 20 of the Children Act 1989. Chapter 7 covers private applications for residence and special guardianship orders and chapter 8 interim orders in care proceedings. Chapter 9 deals with decision-making about longer term legal status.

Chapter 10 focuses on information, advice and advocacy for carers and chapter 11 specialisation in the delivery of kinship care services. Chapter 12 draws the threads together and makes recommendations for central and local government.

A glossary is provided in Appendix A and details of key decisions in case law in Appendix B.
2 Carer and professional perspectives: an overview

Key findings from the carer data

The children were typically very needy

- Most children, irrespective of their legal status, had been exposed to substantial and potentially damaging adversities prior to entering the kinship arrangement and presented significant difficulties to their carers:
  - 92% of children had come to live with their carer for one or more of the following reasons: parental substance abuse (60%); abuse or neglect (59%); parental mental illness (28%); domestic violence (27%).
  - 67% had had a child protection plan
  - 17% moved to their carer from local authority care.
  - 85% were manifesting difficulties at the point they went to live with their carer
  - 59% of children were categorised, by the researchers, as being ‘challenging children’ at some point, i.e. they presented their carers with substantial problems. 29% of children were challenging throughout the placement.

In the national survey 46% of carers said that one or more of the kin children they were caring for had a disability or special need, such as emotional and behaviour problems (38%), special educational needs (21%), chronic health conditions (5%). It also confirmed that deficiencies in parenting were the main reason for the care arrangements starting with again four main factors predominating: neglect (cited by 51%); abuse of drugs (41%) or alcohol (27%); mental illness (21%) and domestic violence (21%). 12% cited parental death, the importance of which has been recently highlighted in the Bristol University study of informal kinship care (Selwyn et al, 2013)

Many carers were highly stressed, isolated and lacked social support

- It’s wearying and worrying.
- All my friends have disappeared.
- I don’t recognise myself anymore. I sometimes don’t know how I get through the day. I’m very worried about the future and what happens if anything happens to me.
Caring for children with such a poor start in life, and watching them progress, was a rewarding experience for most carers. However taking on care demanded huge sacrifices and often caused considerable stress.

While this was particularly evident in the early stages of the placement, for many carers it remained an issue. Sixty-five per cent of carers in continuing placements had raised stress levels on a standardised measure of well-being (twice that expected in the general population) and 38% were exhibiting high levels of stress.

There was a statistically significant correlation between carer stress and the level of difficulty the child was presenting.

Being a kinship carer can limit carers’ access to social support, which can act as a buffer against stress. 60% of carers said they felt isolated and unsupported and less than a third were judged to have high emotional support.

Those with the highest emotional support reported the lowest levels of stress.

In 57% of households at least one carer was reported to have a disability or serious health problem.

Over half the sample either still had their own children living at home (29%) or had other caring responsibilities (38%).

The national survey found that 26% of carers had a long-term illness or disability, of whom 24% also had a partner with such a condition. 39% said that taking on care had negatively affected their health and well-being. 52% expressed a need for more emotional support.

Taking on care had a dramatic impact on the financial position of carers

I’ve got no savings left. They should have lasted well into old age.

I ran into debt. I’m constantly overdrawn. I have to borrow to pay the mortgage.

We can only afford a very basic lifestyle.

The child doesn’t go without. I do

Finance was a major worry for many carers. 79% said that taking on care had led to financial difficulties.

Expenditure substantially increased. In addition to money spent directly on the child gas and electricity bills went up; money laid out on adapting or extending the house, buying a bigger car or child care. Additionally carers often had to spend money on taking the child to contact with parents or medical appointments and on legal costs.

At the same time as demand increased, many carers were either living on fixed incomes or often reduced incomes. In many instances at least one carer (and often the sole carer) had had to give up work completely or reduce their hours in order to care for the child.

As a result carers eroded their savings, borrowed from friends and relatives, got into debt and deprived themselves in order not to deprive the child.
In the carer survey only 1 in 8 said that they had continued to work as before. 11% of carers had a total income after tax of less than £200 a week. Many were struggling to pay the bills. Most were receiving no regular help from the local authority.

There was considerable evidence of unmet need and many carers were dissatisfied with the support available from Children’s Services

| Not good at all. Bloody useless I would call it. |
| Disgraceful, shocking really. |
| Woeful. Inadequate. |

- 95% of carers identified at least one form of support they had needed, but not received. Most mentioned several.
- 72% rated the support they had received from Children’s Services as poor or very poor. Only 54% were able to think of anything helpful (other than sometimes financial assistance) in their contact with Children’s Services.
- Only 31% of those still providing care were satisfied with the support they were receiving from Children’s Services.

In the national survey, when asked how satisfied they were with the support received from Children’s Services 54% of carers (213 of 391) gave the lowest rating possible (1). Only 19 (5%) gave the highest (5).

Support was not related to need

- There was no correlation between the support provided by Children’s Services and either the level of difficulty the child was presenting or the needs of the carers.
- Only 18% of those caring for the most challenging children – those whose scores on a standardised measure of well-being indicated abnormal functioning – were satisfied with the support they were receiving.
- Carers for children categorised as challenging were more likely than those caring for easier children to be receiving no help from Children’s Services because their case was closed. Even where the case was still open, these carers were less satisfied than other carers with the support they were receiving.
- Only 10% of carers with high stress levels were satisfied with the support they were receiving.

Support WAS linked to whether or not carers were treated as kinship foster carers

- Foster care status put carers in a more advantageous position financially:
  o All current kinship foster carers were in receipt of a regular allowance, compared to 70% of other carers. Allowances for the latter were typically lower.
  o While 65% of foster carers said the total money they were receiving for the child was sufficient, only between 28% and 35% of those with other legal statuses said this, even taking into account money received from child benefit/child tax credit.
Carers with special guardianship or residence orders typically received higher allowances from Children’s Services if they had previously cared for the child as a kinship foster carer.

Those treated as kinship foster carers from the early stages of the arrangement were more likely than other carers to receive an allowance quickly, to receive a higher amount, to experience less difficulty getting it and to receive assistance with initial costs.

Only 37% of those treated as kinship foster carers in the early stages of the arrangement said it had been difficult to cope financially, compared to 74% of other carers, even when Children’s Services had been involved in making the arrangements.

In terms of other forms of support the differences, although less marked, were still evident:

Those who had been kinship foster carers throughout the placement rated the support they had received from Children’s Service more highly than other carers (giving an average score of 2.3 out of 5 compared to 1.6). They were also more likely to identify something which had been helpful in their contact with Children’s Services (73% compared to 51%).

Those who had ever acted as kinship foster carers were more likely to have received services other than contact with the child’s social worker (84% compared to 63%) and to have received a higher number of services (1.65 compared to 1.1).

Those treated as kinship foster carers in the early stages of the placement were marginally less likely to identify an unmet need for support (90% compared to 96%).

In the national survey 65% of those who had never been treated as a kinship foster carer gave the lowest rating for the help they had received from Children’s Services (132 of 203) compared to 35% of those who had (43 of 124) and only 1% the highest (3) compared to 10% (13). The mean rating for those who had ever been treated as kinship foster carers was 2.39, compared to 1.5 for those who had not).

56% of those who said they had never been treated as kinship foster carers (114 of 203) said they would have liked to be, typically because they would have been better off financially and would have received better support.

Local authorities appeared reluctant to make kinship carers foster carers. This decision seemed to depend on the circumstances in which the placement came about rather than the needs of the child or the carer.

Even where Children’s Services were plainly involved in making the arrangements, only 26% (20 of 76) were treated as foster placements from the start. Carers who took in the children themselves, even if they informed Children’s Services immediately this happened, were never made foster carers.

Almost all arrangements which were treated as foster care from the start involved either children who had been looked after by the local authority immediately prior to being placed with kin or were subject to care proceedings. Those taking on children in other circumstances – even when there were clearly child protection concerns - were extremely unlikely to be treated as foster carers, although case law, which clarifies the
circumstances in which such children should be treated as looked after, suggests that many should have been.

- There was no correlation between foster care status and the child’s level of difficulty. The majority of children who were categorised as challenging (33 of 56; 59%) were never treated as looked after children while with their kinship carer.

At the point they took on the child, carers were rarely in a position to make an informed decision about the legal status of the arrangement

- Placements were typically treated by the local authority as a private arrangement between the carer and the parents. However this was rarely made apparent to the carer, in contravention of case law.
- Of 61 carers who said Children’s Services had been involved in making the arrangements, only 10 said they had been given any information about the different legal statuses available.
- Most carers took on the children in an emergency and therefore had no time to do their own research and few realised that at the time this would have been advisable.
- Carers were not usually signposted to independent sources of information and advice.
- When carers did obtain independent advice some were able to use it to argue successfully that they should be assessed as foster carers, others to increase the support they had received.
- One of the key messages interviewees had for potential kinship carers was to get independent information and advice and not to rely solely on what they are told by Children’s Services.

In the national survey, where the local authority were said to have been involved in making the arrangements, 76% of carers (289 of 380) said they did not have enough understanding of the legal situation to make an informed decision.

Messages from carers to local and central government

Sort out the money. Carers wanted a funding system that is clear, transparent and consistent across the country. It should be based on entitlement, not discretion, should not be dependent on the legal status of the child, should not be means-tested and should be based on the allowances paid to mainstream foster carers.

We should be entitled to an allowance. Why should grandparents be means-tested when foster-carers are not? We aren’t asking for much; we’re saving the government money.

There should be consistency across the country. Some people get no help; others lots.

The financial aspects need to be clear and fair. Grandparents are effectively fostering and need help.

Ensure information and advice is available. Carers wanted to be given information about local authority policies; about the financial and non-financial support available; about all the legal options, including fostering and their implications; about local services and resources. Several argued that this should be set out in the form of a clearly written information pack which should be given to carers at the outset of the placement. A few suggested that using experienced carers to talk things over with prospective or new carers could be helpful:

There’s got to be a package which tells us what’s on offer.
Provide a lot more information about our rights. If we hadn’t been on the internet we’d still be in the same boat.

We definitely need some basic practical information booklet with advice and local information. It should come with the children.

We need information in plain English. We need to know our entitlements from the beginning. We need to know more about different options.

Carers also wanted local authorities to signpost them to independent sources of information and advice, while some suggested carers needed external help to guide them through the system or act as advocates:

They should give people information. If we hadn’t been on the internet we wouldn’t have known about Family Rights Group. How do people know where to go?

Social Services should be told they must refer people to an agency like FRG to advise on the issues and their rights.

We need an independent advocacy service not paid for by the local authority.

*Improve non-financial support and make it more accessible:*

Surely there should be some help. If people can’t cope the children will go into foster care which would cost a fortune.

Carers should be offered the support they need. They shouldn’t think it’s OK because they’re family. Support should be given without having to go through battles.

Somebody has to stand up and give help.

Local authorities should have *transparent policies and procedures* which accord with the Children Act and should ensure they are followed:

Do what you’re supposed to be doing.

Look at the Children Act and do it.

Local authorities should implement their procedures as stated.

Social Services should do their job.

*Ensure social workers are knowledgeable about kinship care:*

Social workers need to understand kinship care.

Social workers need to be more aware of the family dynamics in kinship care.

Social workers need to understand the impact of kinship care.

Social workers are not adequately trained and supervised. It’s not rocket science; just do your job.
Value carers, listen to them, work with them. Be honest, open and trustworthy:

Don’t belittle us or treat us as novice carers. Treat us with respect and respect our knowledge and experience.

Treat people as individuals.

Don’t make people feel they are doing it for the money.

Be straight.

Make good on promises.

While carers typically addressed their ‘messages’ to Children’s Services, some also spoke of the need for government action:

To provide a consistent national framework for financial support.

To audit how local authorities are interpreting the Children Act.

To require local authorities to provide adequate information, signpost carers to independent sources of information and advice and provide support on a par with foster-carers.

The government needs to get it sorted. Foster carers get so much support and advice. Kinship carers should have the same.

The government should validate carers. Understand why we don’t want to be foster-carers but should have the same rights financially. Have clear legislation on where we stand.

Make local authorities give us support without fighting for it.

The government needs to look at how councils interpret the Children Act.

In addition carers also wanted government to provide easier access to legal advice; funding for legal costs and less delay in the legal process. One carer also urged government to give ‘real recognition to carers’ by creating a specific status of kinship care and challenging the assumption that kinship carers could ‘do it all for love’:

Kinship carers should be carers in their own right, not foster carers, not private arrangements. We shouldn’t be penalised. More should be done to change public opinion about ‘well it’s your family, you should do it’ because in our hearts we all want to do it but we also need to put food on the table.

These messages were beautifully encapsulated by one carer who, when asked for her messages to local and central government, asked for time to think and subsequently sent the following letter.
My message to the Government and Social Services is that none of the officials involved have any regard, understanding or empathy for what grandparents go through and give up for the stability, love, happiness, and safety of their grandchildren. Support for grandparents is vital and key, initially the authorities should put the carers involved in touch immediately with people that have already gone through the motions or people that are going through the same emotional breakdown that occurs to many that find themselves in this situation. Support is vital.

Family means so much, as it does to any grandparent that finds themselves in this situation. We struggle on without the support we deserve doing all we can to keep positive and suppress negative feelings, pushing onwards/upwards but always getting knocked backwards by the actions of the Social Services/Government officials, trying to keep strong for our grandchildren. Feelings and emotions are running high and are very overwhelming at times while grieving the loss of a life that we once lived and may never have again.

Foster allowances are paid only for a short term period; authorities are not prepared to pay grandparents a foster allowance until the children reach the age of 16 years old. Once the short term period has expired grandparents are expected to sign a binding contract to either accept residency/special guardianship. This is so unjust especially knowing the situation and emotional involvement for kinship carers. You love and adore the children and want to keep them part of the family unit. The authorities involved, knowing these bonds, ties and attachments have been cemented, make available one get out option ‘give the children up to be fostered out to strangers’. Many grandparents are not prepared to negotiate and take the risk of losing the children and as a consequence will end up signing these binding contracts accepting residency/special guardianship. I consider this to be emotional blackmail.

What gives the government officials the right to expect grandparents to offer up full parental responsibility and free child care for their grandchildren? This traumatic experience was not brought about out of choice. They know it would be inconceivable for any grandparent in this position to contemplate losing the children. Emotionally trapped into signing binding contracts where the carers have to carry all financial burden during the unpredictable times ahead, officials determine their outcome for the duration based on ‘means testing’.

Grandparents go through enough and should be paid accordingly with a regular foster carer’s allowance. Grandparents’ working hours are not the normal 8 hours a day but around the clock. We, like all grandparents in the same situation, are committed to caring for these children without having to be means tested or the need to be fortunate enough to live in the correct local authority as policy/ruling on kinship carers differs; it’s a postcode lottery. All the local authorities systems/policies and procedures should be the same no matter where you live.

We had a care free life until all this devastation hit us. None of this is a result of our actions but officials make you feel partly to blame, why, because the person involved is a member of your family.

My husband and I, like many other grandparents in the same situation, have worked hard struggling at times bringing up our own children without state assistance. Paid taxes and most importantly saved our money for our future retirement, not to be expected to use it towards bringing up our grandchildren.

Professional perspectives

The need for more support for kinship care
In general the professionals taking part in this research underlined the views expressed by carers (and by previous research) that kinship care arrangements need greater support. The following question was posed in the on-line survey:
The government guidance on family and friends care emphasises that children living with family and friends carers, and their carers, should receive the support they need to promote children's well-being. To what extent is your local authority meeting this requirement?

Twenty-three per cent (26 of the 89 responding selected the response option ‘completely achieving this’ and 39 (45%) ‘some way to go but getting there’. However 16 (18%) chose ‘a long way to go but taking steps’ and 10 (11%) ‘nowhere near’. (Table 2.1) Children’s Services’ staff tended to be a lot more positive than other professionals. Nonetheless only just under a third considered that their department was completely achieving this target, while 12% said there was a long way to go and 4% that they were ‘nowhere near’. This suggests – what will be a common theme in this report – a good deal of variation across the country.

Table 2.1: To what extent is your local authority meeting the requirement to meet support needs

<table>
<thead>
<tr>
<th>Service Type</th>
<th>Completely</th>
<th>Some way to go</th>
<th>Long way</th>
<th>Nowhere near</th>
</tr>
</thead>
<tbody>
<tr>
<td>Children’s Services staff</td>
<td>23% (31%)</td>
<td>39% (53%)</td>
<td>9% (12%)</td>
<td>3% (4%)</td>
</tr>
<tr>
<td>Other professionals</td>
<td>0% (0%)</td>
<td>1% (7%)</td>
<td>7% (47%)</td>
<td>7% (47%)</td>
</tr>
<tr>
<td>All</td>
<td>23% (31%)</td>
<td>40% (45%)</td>
<td>16% (18%)</td>
<td>10% (11%)</td>
</tr>
</tbody>
</table>

Many of those who answered this question identified specific support gaps. This was explored by two further questions:

What help would you like to offer to family and friends carers and the children they are looking after which cannot currently be provided or which it is difficult to provide?

What, if anything, do you feel needs to be improved in your local authority?

In all, 53% (53 of 100) of those taking part in the on-line survey referred to at least one support gap, with several giving long lists.

Finance. Housing. Food. Educational support. Therapeutic support for all the family. Support with contact issues and understanding of the complexities of this. Groups for young people. Access to holiday play-schemes. Trained and checked sitters to enable carers to have time to recuperate and to access training. Specific training for friends and family carers. (Adoption and fostering social worker, voluntary agency)

Direct work with the children as (they) mature is required for the children to understand appropriately the reasons for placement. Supervising social workers for carers so they can input much sooner into system and support. Support accessing (and an organised) peer support. Acknowledgement that a child with a family care arrangement should in itself be recognised within s17 (as a child in need) should difficulties emerge. (Social worker)

Although the proportion was much higher among the few informants who were not employed directly by Children’s Services (11 of 16; 69%); it was striking that half of those who were directly employed (42 of 84; 50%) also identified support gaps. Indeed one social worker simply wrote: ‘Where do I start?’

Inadequacies in support and/or carer difficulties in obtaining support also emerged strongly from the interview material.
Kinship care may be being used a great deal more but, in spite of existing case law, they are still having to battle for everything. (Solicitor)

(On my wish list would be) a bit more help and not so much of a battle to get this help really would be nice. (Kinship social worker)

Many practitioners emphasised that the children in kinship placements had high levels of need because of their experiences before coming to live with their carers which needed to be reflected in the support available.

I think we need to listen to families that ask for help, they're actually saying what they need, and these are children who have had very difficult pasts and they may need extra support, and I think if they get that support that can make things so much easier for them and the placement can work really well. But often there are some children with many, many additional needs that don't get the services they need and that can lead to the placement breaking down sadly, when it should be the place they should be in. And that’s regardless of whatever the status of the placement is. (FGC co-ordinator)

They have got significant needs, the children in permanent placements are not actually that different than the children who are looked after. They’ve got that history. And it does need to be, the kids need proper support (Kinship social worker)

There’s often issues because of what the children have been through, the support they need. I often think about these children when they hit adolescence.

Yes it's over time isn't it?
The issues that then come out. And that could be five or six years away from where you are, Or just that it closes fairly soon after an order is granted and you know, with any child there’s a settling in period and then...
And then the child playing up. (FGC co-ordinators group)

A lot of the children come already damaged and they need support, they need support with schooling, with their mental health, their wellbeing and everything. And, you know, if you've got a stressed kinship carer managing a child with difficulty... (FRG case advisers)

My way of seeing it is, and I've actually given evidence on the stand in relation to this, is that they are children in need by the fact of what they will have experienced. It comes up in kinship assessments, they're getting children who are really damaged and they're coming with emotional baggage. Even though they're in a kinship placement those experience can kick back and it can be manifested later on or sometime down the line, to be quite frank about it.
But that's a personal view, that's not necessarily anyone’s else’s view
That's not necessarily (this local authority’s) view is it?
I don't think it's any local authority’s view to be quite frank. (Frontline social worker group)

Aspects of good practice
The professional data does not present a picture of unrelieved gloom. In response to the question in the on-line survey ‘what do you feel your local authority does well?’ almost half the respondents (49%) identified something positive, although Children’s Services staff, again, presented a rather rosier picture (53%) than other respondents. The examples given were very wide-ranging.

Some stressed the prioritisation of kinship placements when children required substitute care:

We always look at the wider family or friends before bringing into care (Designated manager)
We make every effort to keep the child within their family. (Frontline social worker)

Others highlighted *aspects of process* such as forward planning, family group conferences and having good procedures, ensuring carers understood their options and engaging children:

Assessing early when a family may not be able to stay permanently with a parent. Family group conference at early stage to identify the possible alternatives for family placement and having assessed these prior to a 'crisis' occurring. (Frontline social worker)

Well established family group conferencing. (Service manager)

Good procedure/paperwork. Good local sharing of policy/procedure e.g. with the courts. Our revised internal procedures will hopefully provide clarity to all parties at the outset of any placement and greater consistency across teams. (Designated manager)

(The local authority) is very good at explaining the role of the family and friend carer, to both the prospective carer and the child and all possible options for family and friends wanting to be considered as carers. (It) is very good at gaining the view of the child re their wishes and feelings about living with a family member or friend and acting on this. All children are given the Children’s Guide, which is fully explained to them. (Manager, family placement)

Several responses related to the *support* the local authority provided to kinship carers or having a specialist kinship team.

I think we are very good at providing the same level of support in all areas. (Social worker)

Provision of support, social workers and access to other services. (Social worker, family placement)

Formal and informal support to kinship carers (Designated manager)

We pay special guardianship and residence order allowances that are on par with the fostering rates. We have active children’s centres which offer services to family and friends. (Service manager, family placement).

I feel we are excellent with regard to having the dedicated Family Plus Team, we do our best to support carers. (Frontline social worker)

Dedicated Family Plus team that supports stability. We have very few disruptions and the outcomes for children in these arrangements are good in terms of family stability, education outcomes etc (Designated manager)

What was very striking, however, was that well over half the positive responses referred, often exclusively, to the support provided to kinship foster care arrangements, highlighting a core theme in this report, the privileging of kinship foster care over all over legal statuses.

*The importance of legal status*

The professional data very much supports our hypothesis that support for kinship care arrangements is closely linked to their legal status. Although other factors are at play – such as variation between and within local authorities and the impact of carer assertiveness or independent advocacy - the most important determinant is whether the child is a *looked after child*. Indeed the professional data demonstrates this *more clearly* than the carer interviews, where the differences tended to be somewhat obscured by our sample’s perception that
support was inadequate across all legal statuses and only somewhat less inadequate in kinship foster care. Typical comments from professionals include:

I think those that are approved as foster carers get good support. However those with residence orders, SGOs, etc are not offered and cannot access the same level of support. Due to limited resources and the increasing number of family and friends carers those carers that are not approved as foster carers do not get offered the same support. (Manager, family placement service)

A fundamental problem is that the level of support is not based on the needs of the child but on the order the child is under and/or the way the case is categorised by the local authority. (Independent social worker/FGC coordinator)

Support is key if we want these placements to last and we want these children to do well. I don’t see why the needs of these children should be so marginalised and everything is so geared towards being a looked after child. I just wish it was ‘children not living with their birth parents’, a broader group. (Kinship social worker)

It should be based on need, not legal status? I don’t think so, I don’t think so at all. It’s all about the legal status. You don’t get anything unless you’ve got the status. (Solicitor)

When I go to meetings and so on, I can see that the only way you could get ongoing money and support in many local authorities is to remain a kinship carer. (Designated manager)

In addition to requiring local authorities to ensure that children and carers should receive the support they need, government guidance emphasises that support should be based on need, not simply the legal status of the arrangements. Some local authority policies on family and friends care, in line with the guidance, make reference to this principle or even express it in terms of a commitment:

The principle underlying the policy is that support should be based on the needs of the child and their carers rather than their legal status and that family and friends carers (whether or not they are approved foster carers of children in care) are provided with support to ensure that children do not come into care or remain in care longer than is needed.

We believe that children who are unable to live with their parents and who are being brought up by people who know them, should receive support to safeguard and promote their welfare irrespective of their legal status.

Support and access to services will be based on the needs of the child rather than just their legal status in order to ensure that family and friends carers are provided with the support they need.

We will provide support for any such arrangements based on the assessed needs of the child, not simply on his or her legal status, and will seek to ensure that family and friends carers are provided with support to ensure that children do not become looked after by the local authority, or do not have to remain looked after longer than is needed.

To enable family and friends to offer appropriate care for children and young people who cannot live with their parents, access to a range of high quality universal and targeted services will be needed. Support services should not be withheld because a child is living with a carer in a private / informal arrangement.
Respondents to the on-line survey were asked to what extent they thought their local authorities were meeting the requirement that support should be based on need, not legal status. As can be seen from table 2.2, only a fifth of Children’s Services staff thought this was being completely achieved, while none of the other participants who did not work for Children’s Services thought this was the case.

Table 2.2: To what extent is your local authority meeting the requirement that support should be based on need not legal status

<table>
<thead>
<tr>
<th></th>
<th>Completely</th>
<th>Some way to go</th>
<th>Long way</th>
<th>Nowhere near</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No %</td>
<td>No %</td>
<td>No %</td>
<td>No %</td>
</tr>
<tr>
<td>Children’s Services staff</td>
<td>15 20</td>
<td>44 60</td>
<td>13 18</td>
<td>2 3</td>
</tr>
<tr>
<td>Other professionals</td>
<td>0 0</td>
<td>1 7</td>
<td>8 53</td>
<td>6 40</td>
</tr>
<tr>
<td>All</td>
<td>15 17</td>
<td>45 51</td>
<td>21 24</td>
<td>8 9</td>
</tr>
</tbody>
</table>

Indeed some doubted that the target was achievable without additional resources:

Of course the statutory guidance needs to be followed...Greater access to support for all carers (is needed) regardless of legal status and based on need. Unfortunately there is a disparity between want/need, available services, priorities and funding. It is very cynical of central government to increase statutory guidance whilst continuing to create financial restrictions on local authorities and reduce central government services. The reality is that it is quite easy to assess need, but resources need to be available to meet those needs. (Social worker)

This is unlikely to be possible without compromising the support already offered to approved foster carers due to the lack of finances, staff, etc. (Manager, family placement service).

They’re aspirations really, aren’t there. It’s all very well saying that but the underlying legal structure doesn’t support that being the case. So I’m not sure what the weight of the guidance is intended to be. (Solicitor)

We’re told the principle we should be working to is that support should be based on the child’s needs, not the legal status. But the reality is that the two are very closely linked. Support comes under different legal frameworks, so legal status is the passport to different forms and levels of support. And as long as that is the case you won’t be able to completely divorce the two other than by harmonising everybody at the looked after level, because that level is mandatory, which would be prohibitively costly. So you have these differential responses. It requires a lot of very firm clear leadership to separate them at all; it's nigh on impossible to separate them altogether, and for the government to say in guidance they should be treated separately is aspiration that can't be delivered. It requires leadership and somebody with an exceptional commitment to that particular field for us to get close to it, and you're not going to replicate that in 150 local authorities and where that kind of vision and leadership doesn't exist it's going to fall some way short. You have legislation that drives you to tie the two together and guidance that says you should treat them separately. That's quite a challenge and there are a lot of other challenges senior managers find more pressing. (Local authority solicitor)

On the basis of what informants told us, however, it seems some authorities are closer to realising this ‘impossible’ aspiration than others, again reflecting the extent of variation across the country.

Our starting point is the level of need of the child and the ability of the carers to meet the child’s needs. For all kinship carers, foster carers and SGO/RO carers we provide access to a
named social worker and where a child’s needs indicate additional support is needed the children have their own support plan. So if you're becoming the legal carer then we treat you the same as we would treat a foster carer. If it's a private arrangement then we will deal with that child as a child in need and we would do the family assessment around that and then we would make the decision based on the needs of that child. The only difference it makes is which budget we code it to. (Designated manager)

My former local authority used to take the view that children were inherently better off outside the looked after system and they would make commitments and offer levels of support, for example special guardians, that were well above what was required. The idea being if we didn't do that they would be in the looked after system, so they would be providing the same level of support anyway. So it is possible to be creative about that, but it requires a level of discretionary spend that in present times managers aren't always in a position to commit to. (Local authority solicitor)

Researcher: In your questionnaire when it asked how far you feel your local authority is meeting the requirements of the guidance that support is provided irrespective of legal status, you said you felt they were doing so completely?

I think we are compared with many other places, yes. We have quite an active CAMHS in this area, so if children have emotional problems they can access that. We have the special guardianship support team which is more than most places, and also the children in need team, which is the frontline so irrespective of their status they can get support from a social worker because the support officers would treat the case as children in need and so they have considerable support. We also have what is called a Gateway Service which is a multi agency team for children and families who don't meet the threshold to be open to a social worker but nevertheless need some support in order to maintain children with families. So maybe I was being a bit boastful saying completely but I think it's a better service than many of our neighbouring councils have. (Designated manager)

I think (this local authority) is quite a long way along, we're not there yet...We've got quite clear policies, a policy regarding kinship care and we've got a policy regarding finances and of course all that information you can access, I think there's a website that you can access. I think we do a pretty good job at supporting our carers, we still need some additional... I think we've gone a long way to...we've got our support group which is well attended, the resilience group that ran for a while and our training now that we’re offering for carers, I think we do a lot to support carers and I think we are almost there but not quite. (Designated manager)

Some informants working within Children’s Services also suggested that practice was changing/ had recently changed in their local authorities with some referring to ‘Action plans’ or ‘Kinship Strategies’.

We’ve very much at the starting off stage. I’m trying to write my annual report and sitting down to do it I realise how much (the kinship team) have achieved in the last 12-18 months, we have a family and friends care strategy, payment for skills, the independent support group looks as if it will take off, support services there that weren’t there a year ago. Although we aren’t there yet and have a lot to do, we have made a lot of progress, driven by (X) and her team, heading in the right direction. (Manager)

There's stacks of stuff that we're still working on, all the things I've been speaking about really. Researcher: So this is work in progress, rather than achieved as yet. Oh yes, absolutely, yes. (Designated manager)

I think it's all a bit of a journey really. We're on the way I would say. (Designated manager)
I think we're getting there slowly but it's been a learning curve. (Designated manager)

I think the policy is great, I think it's the reality is how you actually put it in place and follow through on that. (Designated manager)

I feel very positive about it, we've not cracked it by any stretch of the imagination, there are always, you know, and I suppose that's why I like doing this work you just learn, you're learning things every single day and you can, it’s an ongoing process of developing a service isn’t it, which makes it so interesting really. (Manager, kinship team)

Alongside these positive indications there are also concerns, however, that what has been achieved to date could be set back because of financial pressures on local authorities.

Practice has improved and we have been encouraged to support these arrangements though I wonder for how long with diminishing budgets. (Frontline social worker)

It's certainly the area that we have had to look at some challenge around whether or not the affordability of it, you know, as we've been going through, as most authorities have, looking at the budget pressure stuff and saying ‘okay, what's statutory, what's discretionary’ and it doesn't matter which way you look at it, as things stand at the moment, whilst of course there's case law around it, a lot of the activity that we provide would be seen as discretionary. (Designated manager)

All these themes, variation in practice, improvement in practice and fears about sustainability, will re-emerge throughout this report.

Summary
Chapter 2 has provided an overview of the key findings from the three stages of this study.

Data from the interviews with 95 carers and the on-line survey of almost 500, which have been reported in full in two earlier reports, reveals that:

- The children were typically very needy, having been exposed to many potentially damaging adversities prior to coming to live with their carers, and many presented their carers with substantial problems.
- Many carers were highly stressed, isolated and lacking in social support.
- There was considerable evidence of unmet need and many carers were dissatisfied with the support available from Children’s Services.
- The support available was not related to need.
- Support was linked to whether or not carers were ever treated as kinship foster carers.
- Local authorities appeared reluctant to make kinship carers foster carers. This decision seemed to be related to the circumstances in which the placement came about rather than the needs of the child or the carer.
- At the point they took on the child, carers were rarely in a position to make an informed decision about the legal status of the arrangement.
- Carers identified a number of key messages for Children’s Services:
  - Establish a transparent and consistent funding system based on entitlement, not means-tested and aligned with the basic fostering rate.
  - Ensure adequate information and advice is available; signpost to independent advice services.
  - Improve the non-financial support available and make it more accessible.
• Have transparent policies and procedures and act in accordance with them.
• Ensure social workers are knowledgeable about kinship care
• Value carers, listen to them and work with them.

• They had three key messages for central government:
  o Provide a consistent national framework for financial support.
  o Audit how local authorities are interpreting the Children Act.
  o Require local authorities to provide information; signpost carers to independent sources of information and advice and provide support on a par with mainstream foster carers.

Our findings from interviews with professionals, and the on-line survey, are set out in detail in the rest of this report. In this chapter, however, we noted that:

• In general professionals underlined the views expressed by carers that kinship arrangements needed greater support.
  o Only 23% thought that their local authority was ‘completely’ meeting the requirement in the statutory guidance that such arrangements should receive the support they need to promote children’s well-being.
  o 53% identified at least one gap in support and several gave long lists.
  o Many emphasised that children in kinship care had high levels of need which needed to be reflected in the support available.

• There was evidence of considerable variation across the country in the support available to kinship arrangements and 49% identified something they thought their authority did well. It was striking, however, that over half of the examples given referred, often exclusively, to support for kinship foster care.

• The professional data supports our hypothesis that support for kinship care arrangements is closely linked to their legal status. Indeed it demonstrates this more clearly than our data from carers.

• Only 17% of those responding to our on-line survey thought that their local authority was ‘completely’ meeting the requirement in statutory guidance that support should be based on need, not legal status.

• It was clear, however, that some authorities were closer to realising this aspiration than others and there was also some evidence of policy and practice moving in this direction.
3 Kinship foster care: an increasingly reliable passport to support

In my experience it’s the kinship foster carers who definitely get a service. And, I would say, a very good service. (Social worker, family placement)

Following approval Family and Friends foster carers will be supervised and supported according to the Fostering Services Regulations and Minimum Standards to enable them to meet the needs of the child/ren for which they are caring. They will be entitled to the same support and allowances as non related foster carers. (Local authority policy)

As noted in chapter 2, although our interviews with carers demonstrated that being accepted as a kinship foster carer did confer an advantage in terms of access to both financial and material support, the differences were somewhat muted by the fact that most of the carers, whatever the legal status of the arrangement, were dissatisfied with the level of support they had received from Children’s Services.

The data from professionals highlights even more the difference foster care status makes. Moreover, it also suggests that support for kinship foster care arrangements has improved and is now more likely to be equivalent to that available to mainstream foster carers. Some informants attributed this to the local authority producing its policy on family and friends care or to the government guidance.

(The policy) means we now offer them what we offer mainstream carers. (Social worker, family placement)

There is greater clarity about the allocation of fostering support to family and friends carers. (Manager, family placement)

I’ve seen a difference (since the guidance) it seems much, much clearer. I think it was a bit woolly before. I’ve seen a huge shift. I think with all the changing regulations and the guidance around that...Just looking at the whole package, the sort of service. They’re given what other foster carers are, there’s not a great distinction there. We put them on the same footing as regulated foster carers would be. (Designated manager)

Here we do treat family and friends foster carers the same as mainstream foster carers. We provide training, for example, and pay the same allowances. It has taken time for this to be developed. (Social worker, family placement)

Others stressed that this had been their approach for some time:

I don't think we've just done it because of the new guidance that came in last year, I think that we've tried very hard to treat kinship carers as link partners and put them on the same footing as regulated foster carers would be. (Designated manager)

We didn't have a specific policy on kinship but for as long as I can remember we've always treated family and friends foster carers the same as other foster carers. It was our policy to pay them the same, train them the same, supervise them the same. So we had that as a pre-existing policy. (Designated manager)

Whether a long-standing practice or a recent change, many professional informants thought that kinship foster carers now generally received the same level of service as mainstream foster carers. Typical comments included:
Once the child is *a looked after child* and with a family member we would pay the foster rate and treat that carer the same as if they had walked off the street to be a foster carer. (Manager, kinship team)

We treat our kinship carers the same as we would treat foster carers, they are foster carers, they are professionals in that sense, they’ve been through the same process of assessment. (Designated manager)

Family and friends foster carers are offered and can access the same support as mainstream foster carers. They are entitled to and receive the same financial and material support. They are given information outlining the support that is available and an induction training course which covers the support available. (Social worker, family placement).

The numerical data also supports these views. The on-line survey posed two specific questions about this, viz:

In your local authority, when family and friends carers are fully approved, by panel, as foster carers for the particular child, are they entitled to the same financial and material assistance as unrelated foster carers (i.e. basic allowance, holiday and birthday money, any additional element, for example child’s special needs or skills/training)?

In your local authority, when family and friends carers are fully approved, by panel, as foster carers for the particular child, do they have the same entitlement to other forms of support as unrelated foster carers (e.g. supervising social worker, training, support groups, respite care, access to therapeutic help)?

### Table 3.1: Equal financial and material support for kinship and mainstream foster carers?

<table>
<thead>
<tr>
<th></th>
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<th>%</th>
<th>No</th>
<th>%</th>
<th>(N=)</th>
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<tbody>
<tr>
<td>Children’s Services staff</td>
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<td>78</td>
<td>14</td>
<td>22</td>
<td>(65)</td>
</tr>
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<td>6</td>
<td>55</td>
<td>5</td>
<td>45</td>
<td>(11)</td>
</tr>
<tr>
<td>All</td>
<td>57</td>
<td>75</td>
<td>19</td>
<td>25</td>
<td>(76)</td>
</tr>
</tbody>
</table>

### Table 3.2: Equal other forms of support for kinship and mainstream foster carers?

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>%</th>
<th>No</th>
<th>%</th>
<th>(N=)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Children’s Services staff</td>
<td>67</td>
<td>83</td>
<td>14</td>
<td>17</td>
<td>(81)</td>
</tr>
<tr>
<td>Other professionals</td>
<td>7</td>
<td>44</td>
<td>9</td>
<td>56</td>
<td>(16)</td>
</tr>
<tr>
<td>All</td>
<td>74</td>
<td>76</td>
<td>23</td>
<td>24</td>
<td>(97)</td>
</tr>
</tbody>
</table>

As can be seen from tables 3.1 and 3.2, over three-quarters of Children’s Services staff said that in their authority kinship foster carers were entitled to the same support as other foster carers. It was also considered by most of those responding to the on-line survey that carers who were temporarily approved but still going through the assessment process, would receive the same level of financial and material support as they would when they were fully approved by panel, although a sizeable number, just under a third (23 of 76; 30%) said they would not. This is in breach of government guidance and the Manchester judgement

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14 Reg 24 and Schedule 4 Care Planning, Placement and Review Regulations 2010
15 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] (See Appendix B)
has been reiterated in the recent Court of Appeal judgement against Tower Hamlets\textsuperscript{16}.

The on-line questionnaire also put the following question:

\begin{quote}
In our research with kinship carers we found that even those who had been approved as foster carers were not very satisfied with the support they had had and often compared this unfavourably with the support provided to unrelated foster carers. If we asked kinship foster carers in your authority, do you think they would say the same?
\end{quote}

Not surprisingly, in view of the data already presented, most Children’s Services staff who felt able to answer this question (37 of 61; 61\%) said no.

\begin{quote}
I think they’re quite pleased that we’re giving them the same opportunities as we give our general foster carers, because at the beginning when we start the assessment they don't think that they're on the same line, they think that they're not going to be given as much support as the general foster carers and they're quite pleasantly surprised when we tell them yes you will. (Social worker, family placement)
\end{quote}

Kinship foster care, of course, is not a cast-iron guarantee of support. It was notable that informants responding to the on-line survey to be less sanguine about the support kinship foster carers could access. Thus only six of 11 (55\%) thought that financial and material support was equivalent to that available to other foster carers, and only seven of 16 (44\%) that other forms of support were equally available (tables 3.1 and 3.2). Several commented on differences between local authorities in this respect:

\begin{quote}
The theory of treating kinship foster carers the same as unrelated carers above does not always meet the aspiration when resources are tight (Independent reviewing officer)
\end{quote}

\begin{quote}
Some local authorities provide more support than others. (Independent social worker)
\end{quote}

\begin{quote}
This varies from area to area. Some local authorities do pay friends and family foster carers the same or similar to unrelated foster carers, others do not. The attitude seems to be 'you’re family, get on with it'. This is particularly relevant when it comes to children needing therapy. (Independent social worker)
\end{quote}

Some Children’s Services informants were also aware of ways in which the service for kinship foster carers fell short. Thus 22\% did not think that kinship foster carers received the same financial and material support as other foster carers (table 3.1) and 17\% said the same in relation to other forms of support (table 3.2). Thirty per cent thought carers received poorer support before they were fully approved, or said that this had only recently changed.

\begin{quote}
For the first 16 weeks a lower rate of financial support applies. (Social worker)
\end{quote}

\begin{quote}
They are provided with material and emotional and practical support, they are reimbursed for expenses and 'paid' approx £40 per week. The local authority will not fund them to the same level as if they were approved. This is also not backdated to when the child is placed with them but only from the date the viability assessment is 'signed off' by a service manager. It is down to the field work social worker for the child to then put a reasoned argument together to a separate service manager to enable the funds to be back dated and paid from the section 17
\end{quote}

\textsuperscript{16} R (on the application of X) v London Borough of Tower Hamlets [2013] EWHC 480 (Admin)

(See Appendix B)
budget from time of placement to time of the assessment being 'signed off'. (Manager, child care team)

Even where equivalent services are offered – such as support groups - they are not necessarily suitable for kinship foster carers, and therefore may not be accessed:

They need to provide the support that the carers identify that they need. The regular support services to other foster carers is made available to them but they do not meet the sort of support services that are specific to kinship carers. Kinship carers know this and are reluctant to access existing support services. (Chair of fostering panel/independent social worker/independent reviewing officer)

It is hard to include family and friends carers with general foster carers. We want to encourage them to be open to learning and not put them down. Resources are so tight in every area of social work that although many people believe there should be family and friends training separate and groups for young people there are not enough staff/hours/finance/venues etc to do this regularly (where it is done something else isn't done). (Social worker, family placement)

We have support groups they can access. I think they tend to access them less because usually they are a foster carer for a specific child. So I think their intentions are often different to the intentions of professional foster carers. (Designated manager).

Children’s Services informants also commented on variation in practice between local authorities, often in the context of creating problems when foster carers lived in a different area:

In my experience in several authorities support is routinely less substantial for family and friends than for unrelated foster carers. (Social worker)

I think overall we are doing quite a good job especially when I hear of disparities in other local authorities. Our challenge is that some of our kinship carers aren’t in the locality so we have to support them from a distance; other local authorities don’t always want to set up a reciprocal arrangement and a lot of local authorities aren’t offering the same level of payment or training we are providing to our kinship foster carers. I think overall we are providing quite a good level of service. (Manager, kinship team)

Financial support
Variation in practice between local authorities was most evident in terms of financial support. As kinship foster carers, whether temporarily or fully approved, carers are entitled to receive regular, non-means-tested maintenance payments for the child. This confers an advantage over all other legal statuses, where financial support is discretionary and means-tested.

Case law and government guidance have also made it clear that these allowances must be the same for all foster carers and that it is unlawful to discriminate against kinship foster carers on the grounds that they are related to the child. A few respondents reported that this was still happening.

They are paid less than foster carers taking on any child from the local authority (Independent social worker)

They should be but they aren’t. Unfortunately the local authority sees family and friends carers as a ‘cheap’ option. (Senior social worker)
(Local authority X) always ignored the Manchester case. They did it deliberately because not everyone goes to a lawyer. They just try it on. (Solicitor)

On the whole, however, the data presented earlier suggests that local authorities are increasingly complying with the law on this.

I think we had a case where the local authority was taken to court, where previously kinship carers were being paid a lesser allowance. That isn't the case here now, they are getting the same as our standard carers. (Social worker, family placement)

This does not mean, however, that kinship foster carers across the country will receive the same amounts: some local authorities, for instance, pay The Fostering Network recommended rates, others only the minimum required by the Department of Education, which are less generous.

Nor does it mean that kinship foster carers necessarily receive the same total remuneration as mainstream foster carers, who will typically receive additional monies, in the form of a fee, for skills, experience and undertaking training.

I am still experiencing approved kinship foster carers being paid at lower rates than approved foster carers… I'm not finding local authorities so much relying on kinship policies per se but they are separating out their allowance into a core allowance and then a training part…and then an additional part of the allowance relating to experience…so kinship carers only ever get offered the core basic allowance…they are not in my experience ever offered training…even though they….absolutely should be offered training but it's very difficult to get the reward, the professional element for them because obviously they're not professional foster carers. (Solicitor)

Local authorities appear to take different approaches to such payments where kinship foster carers are concerned, as is evident from comparing these two local authority policies:

Following approval family and friends carers will continue to be paid an allowance in line with the Fostering Network recommendations. The allowance covers the cost of caring for the child or children in their care. Family and friend carers do not receive a fee, which is a reward element paid to career foster carers in recognition of specific skills, qualifications or experience. (Local authority policy)

Financial support arrangements for approved connected carers are no different to other (local authority) approved foster carers. (The) Fostering Service pays all carers an allowance based on the age of the child or young person. This allowance is equivalent to the minimum set annually by the Department of Education. In addition all foster carers are paid a fee which recognises that caring for somebody else’s child requires skill and understanding, as well as working with the social workers and other professionals who may be involved. (Local authority policy)

Some informants told us that there was a blanket exclusion in their local authority - kinship foster carers were not eligible for the fee element or could only progress so far:

They get the same allowance as general carers minus the level 1 money. Our general carers come in as level 1 and I think it's about £53 on level 1. Level 2 gets £200, level 3 they get something like £275 per week. But family and friends don't get the level 1 money, they just get the allowance that all the other carers would get for a child….The reason they don't, is
because they don't do the other bit that the foster carers are doing. Our foster carers will come in and do training. (Social worker, family placement)

They get the same, as they have to in law, the same maintenance rate as a stranger foster carer. The challenge we get here sometimes from carers is why aren't we paying them the full amount, the amount that a stranger foster carer gets.

Researcher: What do you say to them?

Ah we say that (stranger foster carers) are being paid to care for any child, that they have to attend training and so on, that that's the professional fees, what they're being paid is what it costs to care for a child, not those additional bits. Some of them, you know, feel annoyed about that and others accept it. We haven't had any judicial reviews though. (Designated manager)

They are unable to progress past the level 2 payment band. Unrelated foster carers can achieve level 5. (Kinship social worker)

Others said that although kinship foster carers would be eligible for a fee, and were offered training, few were willing to undertake it.

What they don't get is obviously all the skill levels etc. because there's expectations to go through Skills to Foster training and also the CWDC\textsuperscript{17} etc. which is there now with it. (Designated manager)

Yet others explained the policy not just in terms of training but other differences in the expectations of kinship foster carers and mainstream foster carers:

They receive the child care element of the allowance but not the reward element. They don't have to attend training and they are not approached to go on the EDT\textsuperscript{18} rota for emergency placements nor are they approached to take any unrelated children as a placement. (Social worker)

In terms of the payment structure for our family and friends foster carers, because they haven’t done the full preparation and they don’t offer care to a range of different children coming in and out of their homes and all of that sort of stuff, we offer The Fostering Network care element as our basic. (Kinship social worker)

Carers do not receive fostering fee payments as they only care for specific child/children known to them. (Social worker)

They receive the same basic allowance and the same holiday and birthday money etc and they receive a payment for skills sum in recognition of training but to expand their allowance to the higher levels they need to take into their home unrelated children. We have family and friends carers who have done this successfully. (Manager, family placement)

In view of the recent judgement against the London Borough of Tower Hamlets\textsuperscript{19}, local authorities are likely to have to review their policies on the payment of fees.

\textsuperscript{17} This refers to the Children’s Workforce Development Council (CWDC). Training, Support and Development Standards

\textsuperscript{18} Emergency Duty Team

\textsuperscript{19} The Queen on the application of X and London Borough of Tower Hamlets [2013] EWHC 480 (Admin) (See Appendix B)
Exceptionally, a few local authorities were reported to pay fees.

We pay them the same as our mainstream foster carers when they are temporarily approved as foster carers. When they have been fully approved by panel they also receive the Carers Progression reward element. (Manager, family placement)

Family and friends carers are approved as level 1 carers on a basic rate, (plus additional payments, equipment, holiday allowance etc, same as general carers), but can quickly access skills to foster training, which then means they are on the same rate as general carers (Social worker, family placement)

We pay Fostering Network rates. And all our foster carers, including those with temporary approval, receive a fee. Now what we call our standard fee is very low and it's almost a token, it's £28 a week, but we do have some kinship carers who meet the criteria for higher fees, you know, and the next one up is £125 a week. It's a payment for skills. It's to do with training and what they can offer, which would be to do with the needs of the child and in particular if they were meeting the needs of a number of children who had different complex needs. There's a handful of kinship carers who are getting the bigger fee. (Manager, family placement)

We have a scaled system where carers, dependent on the amount of training etc. could achieve a higher level than the standard carer. So I think in all fairness the department has been quite proactive in ensuring our family and friends carers are treated equally, they have equal opportunity to attend any training, so yes I think (this local authority) has been really good in terms of trying to be equal. (Social worker, family placement)

One authority, which had recently changed its policy, had also adopted a very proactive approach, which had enabled a considerable number of kinship foster carers to qualify for a fee, by actively supporting them to complete the required training.

We changed last year…opened up our skills payments to family and friends foster carers. That wasn’t the case before. We made transitional arrangements for existing family and friends foster carers to complete the training standards. When writing it I had no idea how many would do it, but we had a tremendous take up and they got the fee of £73 a week per child. Other local authority colleagues have reported poor take up even when they’ve offered that. The difference was we put in quite a lot of support...we put in a lot of one to one and mentoring to help our carers do this. And it was backdated and people ended up with quite a big lump sum...that was a big incentive. It was recognising change and also how much family and friends carers did – similar to foster carers but even more as they supervise contact. If you had told me 12 months ago that this local authority would accept paying fees to our family and friends foster carers I’d have laughed about it. We talked about it but I didn’t think that would happen. (Manager, kinship team)

The advantages of foster care status
Notwithstanding these inequalities and deficiencies in the support available, our informants were very clear that being a kinship foster carer does confer considerable advantages over all other legal statuses, entitling children and carers, in theory at least, to a package of services.

Obviously foster carers get loads more support. (Solicitor)

If a child is placed with kinship carers as a looked after child in foster care they're automatically pass-ported into non means tested allowances, the allocation of the supervising social worker; the child gets more closely scrutinised by health, it gets extra support in education. So by having looked after status a child instantly gets a whole package of things
automatically. If in any other status, support is discretionary and usually means tested. (Local authority solicitor)

How impressive that package is can be seen from the list set out below, which is taken from the policy of one particular local authority:

(Where) the child is looked after by the local authority

- the child will have a care plan (including health plan and personal education plan) which will be reviewed by an independent reviewing officer
- a social worker will visit the child and carers and oversee the child’s welfare
- the child will be offered access to an advocacy service where they make or intend to make representations under section 26 of the 1989 Act
- a supervising social worker will be appointed for the foster carers
- training and support must be offered to the foster carers
- on leaving care the young person may be eligible for ongoing support under the 1989 Act (as amended by the Children (Leaving Care) Act 2000)

Family and Friends Foster Carers are eligible for the range of non-financial support available to non-related foster carers. This includes the following:

- Children’s Workforce Development Training Standards Induction: The National Minimum Standards require that all foster carers complete mandatory training on approval with the support and guidance of their fostering social worker. There is a specially adapted set of induction standards for family and friends carers. (This LA) will support family and friends carers to achieve these standards.
- Training: Further training provision is planned for family and friends carers according to their needs and the profile of the children they care for.
- Personal Development Plan: As part of the National Minimum Standards each family and friends carer has a personal development plan to guide their training and development.
- Allocated Fostering Social Worker: to provide support and supervision (via regular visits and telephone contact) for carers of children who are ‘looked after’.
- Support worker: These support the Allocated Social Worker, undertaking specific tasks to support family and friends foster carers. Examples of such tasks include transporting children and assisting with the development plan.
- Foster Carer handbook: This handbook outlines all key guidance and information required by foster carers, including family and friends foster carers, to function effectively.
- Fostering Network membership: (the LA) funds every foster carer to be a member of Fostering Network, the national advisory body for foster carers. This allows them to be registered as a foster carer and receive information and support as part of the children’s workforce. Family and friends carers are eligible to join Fostering Network and (the LA) will fund them to do so.
- Out of hours support: This service allows family and friends carers to access support via telephone or, if necessary, through an in-person out of hours visit.
- Invitation to support groups and social events: Foster carers benefit from sharing social events with others undertaking the same role, and family and friends carers are welcome to participate in these events.
- Child and Adolescent Mental Health Service consultation: This is available when it has been agreed that the child or young person’s psychological needs or behaviour indicate specialist input is required.
- Newsletter: This helps family and friends’ foster carers feel part of a group of committed volunteers and connect them to (the LA).
- Access to foster carer library: Family and friends foster carers are able to access books and publications to help them learn and explore topics that support them in developing positive parenting and addressing any areas of difficulty.
Consultation events: Family and friends foster carers are invited to relevant key consultation events about how to develop the fostering service as appropriate.

Annual conferences: (the LA) holds annual foster carer conferences to which family and friends carers are invited. These events provide an opportunity for foster carers to get together and benefit from keynote speakers, presentations and workshops.

Reviews of children’s placement: These meetings review how well the child’s placement is developing and makes further plans for the care of the child.

Visits from Child’s social worker: Children who are cared for formally by friends and family foster carers will receive visits from the child’s social worker. This will provide an opportunity for the foster carer to report any concerns, take advice and plan around the needs of the child. It also ensures the child’s views are shared with someone outside the foster placement.

Input from Education Looked After Children (ELAC) team Personal Educational Plan (PEP) and health plan: The ELAC team holds an overview of the child’s PEP. The child’s health plan lays out clearly any actions required to ensure their health needs are met involving key people from the health service.

Respite care (if required): If required to meet the needs of the child periods of respite foster care may be arranged. This assistance can be very supportive in assisting the foster carer to maintain a particularly demanding placement.

Access to children who foster group: Foster caring families sometimes find their birth children benefit from meeting other children who help their families foster. Groups are run within (the LA) Fostering Service to bring these children together for mutual support.

One would not expect interviewees, of course, to be able to produce such a comprehensive list. Rather they highlighted particular elements. The overall message, however, was clear - being a kinship foster carer for a looked after child confers many privileges in terms of support.

The level of support carries much more weight behind kinship foster carers. I think now in light of the difficult financial climate it would be harder to get a resource for any family unless they're approved as a kinship foster carer. (Social worker, family placement)

Foster carers get more money and access to CAMHS, respite, activities for children - panto tickets etc (Kinship social worker)

If you are a foster carer you have your own support worker and you have a supervising social worker who would visit you every six weeks and you'd have other visits in-between. You have an out of hours support service which is manned by the support workers in the fostering team and you have a childcare worker working with the child. Then you have a personal education plan at school and you have a care plan and our kinship foster carers have access to all the training etc. It's quite comprehensive. (Designated manager)

There are real benefits in looked after child status. e.g. better allowances, reports by school governors regarding LAC, preferential CAMHS access, access to the best schools.(Solicitor)

If the child is looked after then there's promise of a support plan, which would include finances, it would include a supervising social worker, it would be resources from our Placement Support Team. It definitely facilitates a lot more support and sort of focus, the assessments should look at what they need to support the child. (Social worker, family placement)

When you've got situations set up as fostering situations there's a whole package of services around. There's an out of hours support line for foster carers, they've got their own separate social worker who visits them. If it wasn't on a fostering basis but on a different sort of
arrangement you don't have the same, yes you can always ring the out of hours social work
line, anybody can do that, but you don't have a dedicated out of hours support line, as you
would do for foster carers. So there are services there but there are some things which are
again under the foster care standards and stuff we've set up for foster carers, so when these
relatives move out of being foster carers, you know, they can access services but they'll be
more of the mainstream services rather than being specific. (Designated manager)

Once children are looked after then they're into a whole other system in terms of, for example,
being tracked by education and the involvement of our team that works on achievements of
children in care and so on. (Designated manager)

As noted earlier, when respondents to the on-line survey were asked whether they thought
kinship foster carers in their authority would feel dissatisfied with the support they were
receiving, the majority of Children’s Services informants (61%) said no. In contrast, when we
put a similar question about those caring under other legal statuses - ‘Most of the kinship
carers in our study who had not been foster carers felt very poorly supported or felt they had
had to fight for the support they got. If we interviewed such carers in your authority, do you
think they would say the same? - half of those responding, (26 of 50) said they thought carers
would give the same response.

The on-line survey put three further questions specifically on this:

1. In your authority, would you say that more financial and material help is usually available
when the carers are approved as family and friends foster carers than when they are caring
under other legal statuses (e.g.: informal placement, private fostering, residence or special
guardianship order; adoption)?

2. In terms of other forms of support, would you say that family and friends foster carers have
been able to access greater help for the children than those caring under other legal statuses
(eg informal placement, private fostering, residence or special guardianship order, adoption)?

3. In terms of other forms of support, would you say that family and friends foster carers have
been able to access greater help for themselves than carers with other legal statuses

As can be seen from table 3.3, the greatest differential was perceived in terms of financial and
material support, with 65% of Children’s Services staff saying that more financial and
material help was usually available to kinship foster carers than to those caring under
different legal statuses. A further 27% said this was sometimes the case.

Table 3.3: Is more financial and material help usually available to kinship foster carers than carers
with other legal statuses?

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<tr>
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<tr>
<td>Other professionals</td>
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</tr>
<tr>
<td>All</td>
<td>42</td>
<td>66</td>
<td>16</td>
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</table>

Rather fewer thought that kinship foster carers would usually be able to access more help for
the child (43%) with a further 25% saying this was the case, while only 37% thought that
kinship foster carers would be able to access more help for themselves. (Tables 3.4 and 3.5).
While this might suggest there is not an enormous gap between foster carers and those with
other legal statuses, what this probably means is that support is equally deficient rather than
that both are well served.
Table 3.4: Are kinship foster carers able to access greater help for the child than carers with other legal statuses?

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<td>50</td>
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<td>20</td>
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<tr>
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<td>41</td>
<td>19</td>
<td>29</td>
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</tbody>
</table>

Table 3.5: Are kinship foster carers able to access greater help for themselves than carers with other legal statuses?

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</tr>
<tr>
<td>Childrens’ Services staff</td>
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<td>Other professionals</td>
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In the next chapter we explore how kinship foster care status not only confers advantages in terms of support while the child is looked after but also privileges children and carers subsequently, if they move into other, permanent legal statuses.

Summary

- The professional data reveals, much more strongly than our carer interviews had done, the advantages of foster care status for kinship carers.

- It also indicates that support for kinship foster care arrangements have improved and are now more likely to be equivalent to that for mainstream foster carers. Over three-quarters of Children’s Services staff responding to the on-line survey said that in their authority kinship foster carer status meant entitlement to the same support as mainstream foster carers. Many thought this greater entitlement was a recent result of the impact of policy and guidance.

- Some gaps still remained, particularly in terms of financial support. Some authorities still appear to be flouting case law with respect to the payment of basic allowances and many more discriminate against kinship foster carers by not making them eligible for incremental professional ‘fees’. Very recent case law, however, means that local authorities are likely to have to review their policies on this.

- Although there remain some inequalities and deficiencies in the support available to kinship foster care arrangements, our professional informants were clear that such status was a passport to a comprehensive package of services throughout a child’s minority which is not available to those with other legal statuses.
Special guardianship: A variable second best

During the time that they're actually treated as foster carers I think they're treated pretty well. It's after, when things move on. (Kinship social worker)

There aren't the same sort of resources within the service that there are within the fostering service. (Designated manager)

Special guardianship orders are seen as the cheap option with less support offered. (Children’s guardian/Independent social worker)

For carers who move into special guardianship having previously cared for the child informally or under a residence order, the order potentially offers the prospect of more support. They are required to give notice of their intention to apply to Children’s Services, which must provide a report to the court on their suitability. As part of this process carers can ask for an assessment of their support needs. Local authorities also have a duty to establish special guardianship support services and the power to pay a regular allowance, which must be aligned with fostering rates. Whether or not an assessment of support needs is carried out, however, and whether the local authority decides to provide support services to a particular family, is entirely discretionary.

Carers who have previously acted as kinship foster carers for the child are in a more privileged position (Wade et al, 2010). First, because the local authority is required to carry out an assessment of support needs, if one is requested. Second, since special guardianship orders are intended to be used by mainstream foster carers as well as kin, there are provisions to make them more attractive. Thus, for example, whatever money was being paid for the child by the local authority, including any fee, can be protected for two years after the order is made.

Support under special guardianship compared to kinship foster care

Even with their more privileged status, however, kinship foster carers who become special guardians are likely to notice a significant reduction in support, as they move from a status where support is an entitlement to one where it is largely discretionary and highly variable (see also Wade et al, 2010).

A care order provides a statutory requirement for services... we know they're going to be monitored and there's going to be a good plan. Support with an SGO is variable, some authorities are very good, others that's it... they close the case (or) plan to offer services but the reality of escalating numbers of cases is that they just don't get the attention and drop down the priority order. (Children’s Guardian/independent social worker)

If (a child is placed) under Section 20/s31 (of the Children Act 1989) children and families receive good support. Not so much for those encouraged to take special guardianship. They tend to get pushed to the bottom and are not regularly reviewed. (Social worker)

Informants identified a myriad of ways in which support for special guardianship arrangements was less than that routinely available where the child had looked after status. These include the following:
Kinship foster carers are entitled to non-means tested maintenance allowances for the child for as long as the child is with them; the special guardianship allowance is discretionary, means-tested, reviewable, and its duration determined by the local authority.

In kinship foster care both the child and the carer have their own social workers, who are required to visit them at specified intervals. Under special guardianship there is no requirement for a social worker to be allocated at all. Typically the child’s social worker will close the case fairly soon after the order is made. Even if the family then goes on the books of a special guardianship support section, this is likely to be nominal. They will probably have a contact number, even a name, but this person is not responsible for contacting them or monitoring their needs. Issues arising will normally be dealt with reactively and on a duty basis.

All looked after children have regular reviews, chaired by an independent reviewing officer (IRO) which affords an ongoing opportunity to assess support needs. Under special guardianship there should be annual reviews, but these are primarily used to check whether the carer’s financial position is unchanged and are often only paper exercises.

Services for looked-after children and their carers are available for as long as the child remains looked-after; services for special guardianship arrangements cannot be guaranteed.

Unlike kinship foster carers special guardians will not usually have access to an out-of-hours helpline, privileged access to therapeutic service or respite care.

Children under special guardianship orders do not have Personal Education Plans or access to virtual schools.

Leaving care provisions only apply to older children who were looked after immediately before the order was made.

The fact that services for looked-after children are based on entitlement, while services for children on special guardianship orders are discretionary, does not have to mean, of course, that the service provided to the latter will be inferior. Local authorities have the power to provide a wide variety of services where needed and many of our informants mentioned special guardianship services which were available in their authority. Although no-one indicated that a complete array of services was available in their area, those identified included:

- Support for contact.
  - One authority commonly provided supervised contact for the first 12 months. Another was developing workshops on contact and negotiating for the contact service to be extended to SGOs.
- Help with managing the children.
  - In one authority special guardians were eligible to attend a behaviour management programme designed for foster carers and training on attachment.
- Respite care.
- Life story work for the child.
- Direct work with the child.
- Counselling.
- Privileged access to therapeutic help for the child.
- Privileged access to an educational psychologist.
- Assistance with referrals to other services, such as CAMHS\textsuperscript{20}.
- Advocacy – with children in need services; housing.
- Training.
- Peer group contact such as support groups and family events.
- Regular communication with carers through a newsletter.

\textsuperscript{20} Child and Adolescent Mental Health Services
Dedicated access to information and advice so that carers do not have to go through the usual referral process.

Access to an out of hours service.

Nor is it a necessary corollary that, because support is discretionary and not equivalent to that on tap where children are *looked after*, children and carers in special guardianship arrangements are not having their needs met. As one informant put it, special guardianship is intended to be a ‘step-down’ with services ‘tapering off’ until families can manage on their own, or utilising community services available to all families, as needed.

**Support gaps**

However, as in our carer interviews, the data from professionals strongly indicated that there were indeed many gaps in support.

Most (SG/RO) carers in my experience have no support and limited access to support. Once a child is placed and orders made, the LA closes the case. (Children’s guardian/independent social worker)

Often the granting of an SGO is seen as an opportunity for the local authority to withdraw almost completely. Levels of support vary greatly and are rarely adequate. (Chair of fostering panel/independent social worker)

As a foster carer you get your visits, get your reviews. Get all of that which could be seen as interfering and checking but can also be seen as supportive, whereas special guardianship is ‘bye, bye, if you need help come and tell us’. (Kinship social worker)

There are carers who do need far more support in maintaining a child within their family than the local authority can provide (under special guardianship). (Social worker, family placement)

I think the gap for me is obviously when there are ongoing issues, difficulties with contact and things like that, when you don't have an allocated social worker, so it's on duty in the child’s team or then after the first year it's in my team but it's on duty, you know, you're dealing with different people every time you contact so it's not a seamless service in that respect. And I don't think it could ever be, you know, in terms of resources, but that is a difference between a LAC21 service and a non LAC service. (Manager, kinship team)

My team manage all the post-SGO and RO cases. I have over 150 carers on that system and they can't be allocated, they're on a duty system and obviously the service is not the same, compared to having an allocated social worker who supervises the placement. So it's about resource at the end of the day and I know that, which is why I think sometimes even though people say ‘oh it can be put in a support plan’ I know that actually the service you get is less. (Manager, kinship team)

The gaps are special guardianship support. I think this needs more resources, post order, because although we’ve got some very committed people, given the number of orders there are I think they need to put more resources into that. I think it’s just one person does all the post-order support. We’ve got 100-odd SGOs. There are some which go back to the social work teams as well, but there certainly could be more support. (Local authority solicitor)

You hardly ever see respite care in a package of support for a special guardian. (Solicitor)

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21 i.e. a service for *looked after children*. 
There’s no budget for contact; no budget for therapy. (Children’s guardian/independent social worker)

Many informants identified ways in which they felt support for special guardianship arrangements needed to be strengthened:

- Creating a dedicated special guardianship support team.
- Being able to offer on-going support.
- Being able to offer more time to carers.
- Making a dedicated support service open to special guardians who have not previously been kinship foster carers.
- The opportunity to reach out to carers rather than waiting for them to identify difficulties, sometimes when the situation has reached crisis point and it is too late.
- Providing more support for contact.
- Life story work for children.
- Groups for children.
- Developing training for special guardians, for example about attachment and behaviour management.
- Providing peer group support through groups specifically for kinship carers and/or mentoring.
- Availability of respite care.
- Having access to virtual education; priority for choice of school.
- Dedicated access to CAMHS.
- Prioritisation for social housing/help with housing.
- Providing financial support for post-16 education and training.
- Being able to negotiate support for carers in their home authority.

Some adversely compared the support available under special guardianship to post-adoption support and argued the two should be aligned, since there is a clear parallel between adopters and family members who also provide permanency for damaged children.

The parallels between these situations and adoption are strong ones really. It’s the treatment that’s inconsistent. (Children’s guardian/independent social worker)

Support for special guardianship needs to be properly set up like post adoption support with a dedicated team with a ring-fenced level of support on the same level as adoption, particularly in relation to contact. (Children’s guardian/independent social worker)

(You need) a dedicated support team in the same way that post adoption teams now provide on-going support to carers. (Children’s guardian/independent social worker)

They’re talking\textsuperscript{22} about children who are adopted, adopters having a passport so they can readily access services without having to wait…perhaps we ought to be considering that for SGOs because these are permanent placements…It’s a permanent placement and if the government say that they regard that as a way of enhancing placement stability with adopters…we’re talking about relatives who may for whatever reason, be more disadvantaged

\textsuperscript{22} This respondent was referring to a Department of Education paper published in 2011 (An Action Plan for adoption, http://publications.education.gov.uk) which proposed an ‘adoption passport’ i.e. a transparent guarantee of minimum and consistent support adoptive families will receive. This could include priority access to CAMHS, entitlement to parenting skills programmes, eligibility for child benefit payments regardless of their income, and tax credits.
than your average adopter, they're less skilled so they need the services more. (Children’s guardian/independent social worker)

Specific differences mentioned included: lack of a dedicated team; no privileged access to a psychologist; less support for contact; lack of attention to life story work; more basic reviews; and simply fewer resources.

Think about all the adoption support. They’ve got the same children but we’ve got less trained people with less skills and we don’t offer them a psychologist. (Children’s guardian/independent social worker)

Adopters can end up with enormous packages of support, very complex support, high level therapy. But if you need a slightly bigger car... It’s much harder to get that stuff if you’re a special guardian. (Children’s guardian/independent social worker)

There’s this dichotomy between adoption and what is offered to special guardians. The local authority is quite happy to supervise post-adoption contact with the full panoply of resources. (Children’s guardian/independent social worker)

At the moment what is happening with special guardianship is that once the order is granted the case goes to the adoption support team and they offer support but it is limited in terms of contact and post order support. There is a difference between what special guardians receive and what adopters receive. (Kinship worker)

For adoption, if you're asking the difference, we are routinely reviewing, not just financially the adoption support plans and at the end of the three years referring it on if that's what the adoptive parent wants. For special guardianship we're just bringing that in. We’ve started in a small way but we're not as developed as we are with the adoption support. (Designated manager)

One of the things you asked earlier was about what's the difference between special guardianship and adoption support. One of the big differences I think is life story work. We often assume that relatives, because they're part of the family, know the story and can help the child. I expect to be shot down by this lot (ie other social workers participating in a group discussion) thinking they might have to do another whole load of life story work, but it is a big difference, and relatives often don't know. (Social worker, looked after children team)

I always think we're just, we're the afterthought a lot of the time. We straddle both Permanence and Fostering, we sit on both sides of the service, but the other teams have loads more support than we do, we don't have any additional support services like Adoption has the post adoption support team. I would love it if we could have a post order support service like adoption has. We manage all of that on top of doing all the assessments. A couple of additional posts would be great. I think we do the very best that we can with limited resources really. (Kinship social worker)

Children’s guardians and independent social workers were particularly concerned about local authorities who seemed very ready to withdraw from supporting any parental contact arrangements as soon as possible, leaving carers to cope with this themselves.

One grandmother had come to court and told the magistrates she had had a lot to do with her grandchildren and would give up her job to care for them. The local authority had not previously identified her but did not oppose her having the children but did not agree any allowance and she had to abide by and supervise a lot of contact arrangements which were set
up when the local authority thought the children were going into foster care. She’s literally been left high and dry. (Children’s guardian/independent social worker)

The family were expected to supervise contact with a high risk paedophile. (Children’s guardian/independent social worker)

One specialist family and friends team didn’t see any role in supporting the carer with contact arrangements, which was quite crucial in terms of placement success…ultimately they agreed to give way on that but they said it was their policy not to provide that in special guardianship…there’s no budget for contact. (Children’s guardian/independent social worker)

Some kinship carers with special guardianship children in cases where there are challenging parents would really welcome more support and don’t get it. My local authority will, on rare occasions, offer one year supervised contact in a contact centre. (Children’s guardian/independent social worker)

There were concerns that lack of support will lead to breakdowns or is actually already doing so, with some informants arguing for the need for a more proactive approach, since carers may be reluctant to ask for help:

Where placements don't survive, a huge amount of it will be not getting enough support. (Judge)

I feel sorry for the families, I see what they're going through. It affects the stability of the placement in the end if there's too much stress. There's loads of breakdowns. Lots of our families are under a lot of stress and a lot of pressure. In the end you get these people thinking ‘I wish I hadn’t taken this on in the first place’, especially when they're going on to have their own families. Which is such a shame, because if they're actually supported properly. They're taking on damaged children in lots of cases and they need more support. They don't understand about the child needing therapeutic help, so they need a helper to help them through that and do referrals to CAMHS. It's such a minefield. I do really feel for these people. (Manager, post-order support team)

I've got one case where I didn't do the assessment but I did help this child move into her placement seven years ago and this placement is now breaking down and I've got it back and that's awful and very sad, and if we had provided more support to these carers earlier on...I think it might have made a difference. That's not strictly speaking our fault because aunty didn't tell us really that she needed that help until it was too late really. But if we had the resources available we could make more contact with people and phone up and say ‘how are things going’, because I think people are willing to hear from us, but we can't actively go out and seek that work, we are just waiting for people to contact us. (Kinship social worker)

Informants in kinship teams spoke of their own growing recognition that special guardians were likely to need more support than they had previously thought or require it over a longer period.

I used to just accept people going off into the distance and not worry about them and now I do worry about them more and I want them to feel able to come back whenever they need to. (Kinship social worker)

I think that's what we've realised over time with doing this work. I think when we started, with the SGO support plans, we used to look at them and we didn't have very much support we could offer these people at that point, so a lot of the time we'd be saying things like ‘universal services’ or ‘they can come back to the family and friends team, we'll advise them...
and refer them on’ and things like that, but I think now we’re getting a much stronger idea of what sort of support people are going to need long term. (Kinship social worker)

At the same time informants were also all too aware of the pressure on their teams already. In teams which were responsible for both assessment (of kinship foster carers and special guardians) and support, the demands of the former, particularly where there were court proceedings, could all too easily squeeze out the latter.

We are a small team and there’s this constant press if you’ve got a Regulation 24 placement. It’s so intense when you’re doing it and you’ve sometimes got two or three assessments on the go and they quite often all finish at around the same time as well, that’s just the nature of the beast really, so that does take priority obviously because you’ve got such a short amount of time to do it and it is a very stringent process really. So that feels like it takes up the bulk of our work. (Manager, kinship team)

It’s a very under resourced area. And I’m not just talking about my local authority, I’m talking about across the country. I know local authorities that have one person to manage all of the assessments plus all the post (order) stuff, and it’s just impossible. (Manager, kinship team)

When I say we’re a dedicated team we are dedicated. Individually and collectively we really all are committed to kinship care, we really believe in it and we really believe in the importance of supporting it. It’s just a struggle sometimes to manage all of it, to manage all of those different responsibilities. Juggling people’s support needs. (Kinship social worker)

In foster care, of course, the two roles are separated, with family placement sections often providing support to the foster carer.

Teams dealing with special guardianship were typically described as ‘over-stretched’ and ‘under-resourced’, facing rising demands as the use of special guardianship increases, and struggling to maintain their current level of service within existing resources.

(If I had a magic wand) I would clone my team and double it. (Manager, kinship team)

I think if any (additional) resources do come our way then that’s going to be really mopped up in terms of the expanding group of SGO holders that we have to support. There’s been a doubling of SGOs in the last year and I don’t see that changing, so in order to keep standing, to keep providing the support that we currently do offer, the team will need to expand. (Kinship social worker)

There are the challenges around capacity. I’m sure that if I was to put you onto a social worker from the team they would probably say they’re meeting themselves coming back, because they are. (Designated manager)

We are taking quite a proactive support role. I don’t know whether that will continue, just because there are more and more carers. (Designated manager)

An area that’s of concern for me is that the caseloads for the social workers and the pressure on them has become quite onerous really and I don’t see any end in sight because there’s another round of local authority cuts. We haven’t been cut, the special guardianship team, but I can’t see any prospect of it expanding and it should do. What has happened in the last 12 months is that the only way that you can expand your team is by finding money elsewhere, there’s no new money. (Designated manager)
Authorities providing or developing a higher level of service

Amidst this abundant evidence of support gaps, it also seemed that some local authorities were offering a better service to special guardians and the children they care for, a point also highlighted in the York University study of special guardianship (Wade et al, 210). In one, for instance, where special guardianship and post-adoption support were in the same unit, the services were said to be equivalent. A small team, two practitioners and a social work assistant, do ‘day to day support work with families’, including life story work with children, while more specialist support is provided through a service level contract with a family support team and a contract with an independent agency:

(X service) offer therapy and counselling; they have outreach therapists that go into the home to work with children and carers and families...Then we’ve got the Family Advice and Support team, who can go out 24/7, even on Christmas Day or Sundays, to support any SGO family. We can put them in to do protective behaviours work, with a therapist/counsellor, you can put them in to do parenting capacity stuff to see if there are any weak areas we need to look at. You can put them in for monitoring and support, they do really good groups for children. So in a high end case there could be about six workers involved with the family, with me coordinating it. I could be doing all the multi-agency work and one of my colleagues could be doing the contact side, and the social work assistant could be going in, and then (X agency) and (Y service). (Manager, post-order support)

In addition, in this particular local authority, carers have access to two support groups and a nascent mentoring scheme. Training is provided by an ex-social worker who is also a special guardian. The service is available to all special guardians, irrespective of whether they were previously kinship foster carers. While the team only do assessments on carers who have not been kinship foster carers, they go out to meet all prospective special guardians to explain what special guardianship involves and what support would be available.

Not unreasonably, this team was very proud of the service they were able to provide and aware that it was not the same everywhere and that they were lucky to be ‘so heavily resourced’.

We’re doing brilliantly, I’d say, because of all the types of support you can access. It’s much better than anywhere I’ve worked with special guardians, fantastic. In (a neighbouring authority) they don’t have it like we have here, after the SGO it just lies within the adoption team, and it’s duty who deals with them. (Kinship social worker)

In a few authorities children and/or carers are routinely able to have the continued support of a social worker for a period, although only if the child was previously looked after. In one local authority we were told that the supervising social worker held on to the case for at least a year, after which it is transferred to the post-adoption support team. In another the child’s social worker remained involved:

There's a window of 12 months for us because the child’s social worker doesn't lose the case after the order is granted. I think that works quite well because often things aren't tied up properly, so my team do the assessment but at the point the order is granted it still remains with the children’s social work team for 12 months. And they obviously will do all the contact stuff and iron out all the bits and pieces, so there is a bit of a safeguard there. I don't think it's offered in many places. (Manager, kinship team)
Similarly, some local authorities are using the annual reviews proactively and holistically, visiting each family to assess whether there are any additional needs for support. Indeed in one authority the practice was to start off contacting the carer every six months, unless they indicated this was not wanted/needed.

When we do the annual review I've got a really brief assessment template that the social workers fill out in terms of contact, how are things going, are there any other needs for the family. We've done things like housing applications, we're constantly doing bits and pieces like that, where the family may need support in other areas. That's where my students come in handy. I often have two or three students at a time in my team so some of the advocacy work that needs to be done, I find that's quite a useful thing for a student to get involved in.

(Manager, kinship team)

There were also signs that, in some areas at least, local authorities are seeking to develop their services for special guardianship families. This might just be at the stage of exploring what needed to be done:

We're going to be looking a bit more at our special guardianship over the next two to three months because we've had quite an upsurge in numbers. (Designated manager)

Researcher: You said in your questionnaire that one of the things you wanted to improve was the support to special guardianship. What were you thinking of?

Because we're seeing a bit of an increase in special guardianship it's just I suppose about making sure that everybody who is a special guardian knows what services are around and what support they can expect. I think what I need to do is get a bit of a handle on what are the issues that special guardians may feel they have issues with, but it's about connecting. I can see whether there needs to be any other services required for them or just signposting to what services are already available. (Designated manager)

One manager with designated responsibility for kinship care said that his/her local authority had just decided to set up a dedicated special guardianship support service.

Traditionally what's happened is that we only keep them open for the payment and will review the payments annually and write to them if there's any change. What we've found over the last two to three years is that some families need us involved. And that has put an extra drain really on the children in care team so I've been advocating for a special team where we can actually do more in a proactive way for special guardians and that's what's just been agreed. That hopefully will be a really good service because my concern is that what we might start to see is the same as adoption, the breakdown of the arrangement. And so what I've been articulating is actually to prevent that happening, that we end up with lots of teenagers coming into care. We have got active support plans in a number of cases, but if we had a dedicated team we could do more of that and where those arrangements perhaps have started to look a bit problematic we could proactively do something. We have a very healthy post adoption service so looking at mirroring the groups for children, groups for carers and so on. (Designated manager)

Others referred to plans to expand existing teams:

The service we have is really ever so well received but I do really want to get another, either social worker or social work resource officer to work alongside the existing team that we've got so that we can continue to offer and expand that support function to more people. (Designated manager)
What we have noticed is that we've probably had a 300% increase in special guardianship and it's been flagged up as part of our sufficiency agenda with regards to support, and that is what's just been developed within our adoption service. I think it's an additional five staff. To be able to offer that service for existing SGOs and new orders that come in. (Designated manager)

One was trying to negotiate more support for contact:

What I’m trying to do, is for the contact service, who offer contact supervision and arrange contact with families within care proceedings, what I’m hoping is that we can negotiate for them to actually take on the post order contacts. It will have to be run in a different way, it won’t be quite the same as the contact supervisor collecting or the carers bringing the child to the contact centre or the child being collected, and it being supervised the way of the care proceedings and the note taking and all that’s associated with that. I’m in the early stages of negotiating that. What I hope will happen is that we can write into special guardianship support plans that the dedicated contact service will be responsible for supporting, negotiating changes and facilitating the actual contact in future for these cases. So that’s something that I’m hoping that we will get sorted towards the end of the year. (Designated manager)

**Special guardianship support plans**

In principle, special guardianship support plans provide a mechanism to ensure that the particular support needs of the child and carer, and how those needs are to be met, are identified. This was seen by some as a considerable advance on residence orders:

The residence order seems to be classed as suck it and see, yes get one before you're entitled to apply for any support and that was one of the things that was really being sold about the SGO, you could see what the package was, you could actually then apply to the local authority to amend it, provide proof of exactly how much it costs to care for these children especially if they were already with you, and lots of local authorities if you provided them with proper breakdowns were then willing to change that and have that placed in the order. And lots of judges were saying that they wouldn't be prepared to make the order until the local authority had had that in place. (FRG case adviser)

Many professionals, however, both within and outside the local authority, commented that the quality of plans varied:

They're very variable and that's not just in the authorities that I've worked in, I've seen the documents from other places as well. The best are very, very good, there's an assessment of need and an identification of how those needs should be met and then a plan for meeting them. On the other hand sometimes they're very woolly and they just talk about 'support will be provided', or there might just be a list of services that will be provided without saying what needs they're addressing or... 'it will be kept under review' without saying when, by whom and how. So yes I think it's very variable. (Local authority solicitor)

In a lot of cases I’ve seen very poor plans, or no support plan being prepared, in other areas where we’ve been contacted. I think we are fairly good, because we’ve spent a lot of time, we’ve always given a high priority to special guardianship. But even some of our support plans, sometimes they’re not as good as they should be. (Local authority solicitor)

You can sometimes get a 16 page plan which sets out exactly what they plan to do and the support they plan to give and another time you'll get a two or three page plan which is quite vague. (Judge)
Some plans, and the support packages they promised, were described as excellent:

I’ve seen some really great support plans from local authorities, particularly in respect of older children …consideration for the same kind of support that the children would have received had they remained looked after under leaving care provisions. They lose their full whammy sort of access to leaving care (provision) unless they’re 16 already by the time the SGO is made, which is rare. But for children who are maybe 13, 14, I have seen local authorities factor into their support plans some provision which would be equivalent. Which is excellent, and very rare, I have to say. (Solicitor)

I'm just looking at a support plan … financial support per week of £146 based on the national fostering allowance to assist in meeting X’s care needs until X reaches the age of 18 years. That was to be reviewed annually subject to a means test. Sibling contact with the carer flying with the child to (X) three times year to see the brother, other contact will be supervised through the contact centre and life story work, on-going support for the duration of the order. (Solicitor)

I had a case last year in (LA X). My goodness me, the support package for those grandparents was phenomenal…the financial support was fantastic and really good support in relation to contact. I don't know why it was so much better than elsewhere. (Solicitor)

The support plans that I see provide for, depending on the needs of the child, quite extensive support and we often commit to ongoing funding of therapy and so on, that you wouldn’t get through other routes. So my experience is that we provide a lot of support and it is needs-led, because there’s real recognition of the needs of the child. (Local authority solicitor)

Too often, however, it was said plans were ‘vague’, ‘airy-fairy’, ‘formulaic’, ‘hardly worth the paper they are written on’. Specific criticisms included: being generalised rather than specific to a specific child in the particular family; too brief; considering only short term needs; signposting to other services rather than specifying the services to be provided by the local authority; and limited in scope.

I’ve had a one liner…there was a great big form and only one part of it was filled in…we challenged it and got them to amend it and sort it out. It’s extremely variable, it depends which authority you’re with. (Solicitor)

The support plan is filled in but with what I’d call weasel words, not a substantive offer of help over and above what you’d get from normal services…they say absolutely nothing. (Children’s guardian/independent social worker)

Often plans are short term in nature and do not look to the needs of the placement in relation to contact, therapy or further proceedings. (Kinship social worker)

There’s often not a great deal about what support they will offer. Sometimes if it's a child with some sort of special needs they'll put something in. It might be that contact needs to be supervised and the local authority might then be trying to find a way of contact continuing in the future without it being supervised by the local authority. (Solicitor)

Some professionals also complained that the focus of the plan tended to be on the expectations of the special guardian, not the local authority:

The ones I’ve seen tend to be ‘these are all the things that need doing. Who is going to do it?’ The carers. Mostly the carers. (Solicitor)
I was in court last week and I asked for the support package and it listed all the expectations of the special guardian and the expectations of the local authority were that they would pay a special guardianship allowance. So I said ‘where the support package? ’That’s it. Nothing else?’ (Children’s guardian)

Interestingly, some of the most trenchant criticism came from professionals within local authorities:

I think a lot of cut and pasting is going on because they all sound the same. It's always the same wording and it's not individual to the child and then it's almost done as an, ‘oh we've got to do one as a little add on’, but if you did some really good work on that plan it would really help. I always ask for a copy of the plan and sometimes it's very slow coming through because actually there isn't anything of substance in it. (Manager, post-order support)

My view has always been that the support plan should form part of the assessment. I don’t think that happens all the time, I think that it becomes a tag on, at the end. And I think it would be quite useful to embed some ways of making sure the support plan is actually part of the assessment, for example requirements around respite care, or what’s needed. I think the assessment needs to be a lot more focussed around what the child needs in that placement as part of the assessment tool and not as an afterthought and negotiation tool. (Local authority solicitor)

Since special guardianship orders can only be made in court proceedings, support plans are subject to external scrutiny – by the carer’s solicitor if they are represented; by the children’s guardian if the application is made in care proceedings; and in all cases by the judge/bench. The court’s power is, of course, limited, in that they cannot direct a local authority to provide a particular resource. As one solicitor put it ‘all they can do is lean on the local authority a bit’. However under current legislation, they can refuse to make an order until they are satisfied with what the local authority is proposing. Thus any inadequacies in the plan should, in principle, be spotted and, ideally, addressed. And our professional informants confirmed reports from the carer interviews that this did indeed happen, referring to the part played by lawyers, children’s guardians and judges, both individually, or often, acting in concert.

You have to play a few games with making things difficult (for the local authority), threatening endless adjournments, getting the judge to back you up - that’s often good - and the guardian. The judge will say things like …’I want the Director of Social Services or the Assistant Director of Social Services to come to court and explain why they won’t do x, y and z’, and of course at that point the local authority usually back down because it’s got the backing of the court. (Solicitor)

Very often, at the Issues Resolution Hearing the guardian will say ‘where’s the support plan, I haven’t seen a support plan, I’m not signing off on this SGO’. Because again it will often be a case where people are taking things on, they may need to make alterations to their homes, they’re having to organise contact, all these kind of things. I have a look at the plans and I get the guardian to look at the plans and we rummage around and very often the final hearing is set up for two hours or half a day because we still haven’t got the plans organised. But they come along on the day and more often than not they sort it out and it’s done, and again as far as my powers are concerned there’s very little I can do apart from not approve an SGO, I haven’t got any other powers. But once you get people focusing. (Judge)

I don't think a children’s guardian would allow a child’s needs to not be catered for in any final plan. I have known some guardians, very good guardians, who will scrutinise SGO plans and say ‘well what about this, what about that’, and actually speak to (the proposed special
guardian…. Relatives I think are all too ready to say ‘oh yes it's fine, it's fine’, they're so happy that it's been said that they can care and the guardian, this particular guardian that I'm thinking of would say to them ‘well (the support package) doesn't really look at this does it?’ (Solicitor)

The guardians, if they find anything in them, usually ask for them to be amended or re-jigged and I have had occasion to ask the local authority to do a better support plan. But again mostly that's been at the behest of the guardian who has wanted particular things addressed in the support plan. (Judge)

I’ve had quite a lot of cases where almost behind the scenes the real issue has been negotiating the deal, and with switched on solicitors they’re going to get it in black and white and almost into some form of contractual relationship. That’s the impression I get, ‘we’ll adjourn please for a period so we can get the financial package sorted’. Then they get it sorted and they get the local authority to commit themselves for an awfully long time into the future - 10, 15 years. Which I find quite extraordinary on the ones I’ve seen. (Judge)

The important role of the children’s guardian was also confirmed by local authority informants:

I don't know how many times I've been to court and the guardian is kicking up a stink because ‘well I don't see the support package’, and it is partly, unfortunately, because they don't trust local authorities and I don't blame them, I sometimes don't trust them either because the budgetary restraints that managers are under is huge. (Social worker, children in care team)

Guardians won't agree to agree to final orders being made until they've seen the support package.

Researcher: Do they ever challenge them and send them back?

They do. (Local authority solicitor)

However this safety net is already far from perfect. In the experience of FRG case advisors who took part in a group interview.

It's hit and miss, if you don't have a solicitor who gets it and you don't have a guardian or you're not a party and the judge ain't interested, having the pressure of 26 weeks, boom, boom. You've got the child but you've got nothing else.

Yes exactly.

I find there's a real trend, I don't know if it's a growing trend, but with SGOs people don't even get the offer until the day of the hearing. It's hardly ever in accordance with the regulations that (carers) can actually take some independent advice and go back to them on it. And often it's after the order is made.

Yes. So the courts are signing off SGOs when the report is not compliant with (Special Guardianship Regulations). Because FRG struggled hard to get that bit in the Regulations, that the support package had to be spelt out. (FRG advisers group)

Where the application is made in private law proceedings, there will be no children’s guardian. The carers themselves may not be represented and lack the knowledge or the confidence to challenge the local authority position, and even if they are represented, some solicitors are said to be more knowledgeable/combative than others.

If you're on the ball - and I think the majority of solicitors should be now but there's still unfortunately some that aren't - you would use that as an opportunity to negotiate with the local authority far more than we ever did with residence orders or anything before. I had a
caller last week who got an SGO for two great nieces and nephews in December and the
financial assessment is only now being completed (February), so there was no package, there
was no support and nobody raised that on his behalf. (FRG case adviser)

The judiciary too were seen to vary in their willingness to challenge or even scrutinise the
local authority plan and were said to be usually reliant on issues being flagged up by the
guardian or solicitor.

Some judges run with (an argument that carers need support) more than others…you've got
judges that will take (arguments for support) very, very seriously, and you've got other
judges, unfortunately, who will basically say there's nothing this court can do about
it…(Solicitor)

It's a document we would always have available should the judge want to see it.
Researcher: But judges wouldn't routinely see it?
Hmm, they wouldn't routinely see the support plan although the parent representatives will.
And frequently the judge does say yes. I mean I've had a judge say 'yes I'd like to look at it'.
(Local authority solicitor)

Like lots of things in family law it depends a bit on the judge or the magistrate…I wouldn't
say that judges are particularly proactive in picking that up, it really needs to be one of the
other parties, which is often the (children’s) guardian…if the guardian picks it up then the
judge will then take an interest and be on to the local authority. (Solicitor)

If you have a bench, that's no good at all, a bench will never have the guts to lean on a local
authority and if you're higher up the hierarchy the more you can lean on them basically.
(Solicitor)

There was also anxiety that the court’s ability to scrutinise and challenge the local authority
may be diminished in future because of the combined impact of legal aid cuts; the planned 26
week limit for care proceedings; the narrowing of the scrutiny of care plans and reduction in
the role and capacity of children’s guardians, which, some highlighted, was already
constrained by Cafcass.

I generally worry about the 26 week pressure now on court…currently the right judge will
look the local authority in the eye and say, ‘no I’m not going to make this order until you've
explained what the package is’. (With the new rule) how much pressure is there going to be
for them to just say ‘look you must sort this out outside the court?’ (Solicitor)

One of our major worries about the recommendations (of the Family Justice Review) is ‘don’t
interfere with care plans, let the local authority get on with them. Local authorities know
completely that what a court process does is ensure that families get some support. One of the
things we do best on children’s behalf is try and get them and their families support. It’s not
just financial, it’s the support for education, getting CAMHS input, all the things that troubled
children need. We’re doing what they should be doing anyway but they don’t do and they
don’t want us to do it. And the local authorities are happy that they won that argument in front
of Norgrove, I’m afraid. But if a family placement doesn’t receive the support it needs you
can’t say that it’s a proper care plan. (Solicitor)

Guardians are going to be trained not to look at (care plans), of course. I’m really worried
about that. I will say openly that in Norgrove I recognised the terminology of (the head of

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23 The Children and Family Courts Advisory and Support Service which provides children’s guardians.
24 Chair of the Family Justice Review.
Cafcass). He should be fighting for children’s needs, not local authority needs. I’m really worried about what’s happening and what has happened over the last decade with (children’s guardians) because I come from a time when guardians were the eyes and ears of the court. It’s frightening to see the difference with the new intake of guardians...Their training is all in house and it’s all about what they are allowed and not allowed to do. They could well be only two years qualified and we realise that when they don’t know about social work structure, how to write a report, what their function is, can’t give instructions. I think people would be horrified if they knew how much (children’s solicitors) protect guardians. (Solicitor)

As noted above, judges and solicitors typically saw the children’s guardian as a vital part in the court’s ability to scrutinise the support plan. It was notable, however, that while a few guardians did refer to cases where they had been able to make a difference to the support plan - ‘by just saying this support package isn’t good enough’ - a much more dominant theme in their interviews was the gradual erosion of the guardian’s role through larger caseloads and ‘proportionate’ working, which now limits the impact guardians can have on cases.

Children’s guardians now don’t have time to talk to kinship carers. They are expected to turn round cases very quickly because of proportionate working.

There is just too much work for us to do and you cut corners and hope you won’t have to give evidence on one of those cases.

I don’t feel I am adding as much to a case as I used to as I just spend less time with families and children and I don’t feel comfortable with that and I don’t know anyone who is. That’s weakened the guardian’s role. I manage because I’ve been a guardian for so long and am confident enough to criticise local authority practice. It’s more difficult at a final hearing to oppose the local authority if your enquiries are less rigorous. Guardians have always been open to that criticism but it’s a far stronger argument now.

The difference the guardian can make to the case, some thought, would be further diminished in the future if the court’s role in scrutinising the plans for the child is reduced, as proposed by the Family Justice Review (Norgrove, 2012) and carried forward into in legislation currently before Parliament25. One guardian, having related how s/he had got a contact plan changed so that contact took place at a neutral venue, then went on:

It needed a lot of my intervention to trim the plan. That’s going to be different in the future when we stop scrutinising plans and our job is cut back. (Children’s guardian)

The use of independent social workers by hard-pressed local authorities to carry out assessments of prospective special guardians potentially injects a level of independent scrutiny. However all they can usually do is to make recommendations, which the local authority can choose to disregard. Moreover some local authorities carry out all assessments in-house or have a panel of independent social workers who regularly carry out work for them. While this is understandable in terms of wanting to control the quality of the work it potentially limits the capacity of the independent social worker to challenge local authority decisions.

As an ISW you can recommend all you like (in terms of support) but what is in the plan is down to the local authority. (Independent social worker)

25 Children and Families Bill, 2013
They know that if you’re independent you’re quite likely to make recommendations that are going to be consistent with what the child and the family need and they’re worried because they’re not going to be able to meet it and so they’re trying to control it which is why they wanted their own in-house teams so they could control what goes in the plan. (Independent social worker)

**Special Guardianship allowances**

One dominant theme pervades the professional interview material on special guardianship allowances - variation between local authorities. This applies to eligibility criteria, the amounts payable, and the period for which allowances will be paid. As several people put it ‘it’s a post-code lottery’. Little seems to have changed since the York University study, which concluded that ‘inconsistency was the norm’ (Wade et al, p7).

**Eligibility**

The Special Guardianship Regulations (2005) are enabling rather than prescriptive, empowering, but not requiring, local authorities to provide financial support to facilitate a person becoming a special guardian and to support the continuation of such arrangements when the local authority considers that it is necessary to ensure the special guardian can raise the child. Information about eligibility criteria is not readily available in local authority policies— a study by FRG (Roth et al, 2012) found that half the local authority family and friends care policies scrutinised did not cover this at all and only 35% covered it fully. Nonetheless it seems evident that different criteria are operating across the country. Some appear to confine eligibility to cases where the child has been a *looked after child* immediately before the SGO was made. Others are somewhat less restrictive, but stipulate that there must have been significant local authority involvement or the local authority must have played a major role in making the arrangements. Yet others appear to take a more case – by - case approach and do not rule out private arrangements made within the family.

Prospective residence order holders or special guardianship orders holders will be eligible for an assessment for financial support, in line with the county council’s policy and approved scheme, where the child/young person is *looked after* immediately prior to their application where this is necessary to secure the arrangement. (Local authority policy)

The local authority can pay a Special Guardianship Allowance to family and friends carers, but this will be at the local authority’s discretion and will generally be paid only where Children’s Social Work Service has had a substantial role in placing the child away from their parents

Children’s Social Work Service has requested that they care for the child as a direct alternative to the child becoming looked after.

The child was made subject to a special guardianship order as part of care proceedings. (Local authority policy)

There’s a blanket view – *looked after child* only we would consider giving financial assistance. (Social worker, family placement)

In terms of financial support once again it becomes a case – by - case basis. If a child is *looked after* automatically there will be financial assistance in terms of special guardianship. If the child is not *looked after* then it’s the criteria that they need to meet, so in terms of this whole thing of whether the local authority enabled the placement or not, whether the child has
any special needs, you look at whether the person is on benefits, the carers who are caring for the children, and any other circumstances around that. (Frontline social worker)

Usually if people haven't already come to us for support and they're literally just going into court and it's a family arrangement, they're often the ones that don't require any financial support because the finances have already been sorted out within the family. So we don't find that we get a lot where there's a request for financial support where it's not been ones we've been involved in. That's just the way it works out but there's nothing to say that we wouldn't if the requirement came through. In my previous local authority we certainly did have some families completely unknown to us when we did the special guardianship assessment, it was clear that there was a need for financial support and that was put in place. There's nothing to stop that happening but in my experience it doesn't happen that often. (Designated manager)

The following exchange, during a group interview with kinship care social workers and managers, illustrates both the very restrictive approach taken by one local authority and the fact that other authorities would handle the same issue differently.

I've got a case at the moment where it's in proceedings and there are four children, one going for adoption, two with one family member and one with another. Two of them have been placed with aunt and uncle during proceedings and therefore they are now under Reg 24. They're getting financial assistance, everything, the other aunt I've assessed and it's been decided because she came forward a bit late we're going to do introductions but the child will be placed post proceedings, and just for that reason given six weeks difference, she won't get any financial help. And I think gosh, you know, those family members, if they talk together. It just seems wrong.

What is the child’s status, what was the child’s status prior to being placed with this aunt?
At the moment the child is in (unrelated) foster care.
In my opinion therefore (my local authority) certainly would have placed that child with the same support.
And we would.
If a child is a looked after child and someone steps in then they're eligible for the same level of support as... (Kinship care workers group)

The amount payable
Case law has established that individual local authorities, in determining the level to be paid as a special guardianship allowance, should refer to their fostering allowances rather than adoption allowances (B v London Borough of Lewisham [2008] EWHC 738 (Admin). A later case (Barrett v Kirklees Metropolitan Council [2010] EWHC 467 (Admin) also ruled unlawful the local authority’s policy of paying the allowance at two-thirds of the core fostering allowance. Some of the solicitors we spoke to, however, reported that not all local authorities were acting in accordance with these judgements.

Even if local authorities were all to comply it does not mean that the maximum allowances payable will be the same, since, as noted in an earlier chapter, some pay fostering allowances at the minimum set by the Department for Education while others use the more generous rates recommended by The Fostering Network.

What we have to do under the case law is align it to our fostering rates. Well if you pay a high fostering rate what you're paying as a special guardianship allowance is proportionately higher as well. Whereas if you're a local authority that doesn't pay such a high rate or pays the government recommended rate, as long as you've aligned it to your fostering amount, whether that's a high or low amount, you're fulfilling your legal requirement. And that's why it just
seems really, really unfair, and we're going to have to start thinking about that. (Designated manager)

Since allowances are supposed to be means-tested the amount carers receive may also depend on their financial circumstances. Again, however, local authorities seem to take different approaches with some not means-testing at all, some using the DfE calculation and others using their own system.

We moved a long way in a particular direction, which was that we would say to special guardians we will pay you the fostering allowance minus child benefit, we'll find a way of not means testing it and we'll make a commitment that, bar you winning the lottery, we'll carry on doing it. It's debateable whether that's legally permissible. We did it on the basis that somebody who is getting money isn't going to challenge it. (Local authority solicitor)

It's a DfE means test, which looks at both their income and outgoings, it's not like an Income Support level of means testing, it's relatively generous and includes anything that can be counted as sort of child care related. So if you've got a car loan in order that you can drive the child around then that will be counted as an outgoing. And obviously the house, the mortgage payments, all of those sorts of things. So actually a very high proportion of our carers get the full amount anyway. In general they're not very well off. And even with younger carers who have a reasonable income, they've also got very high outgoings, generally. The people who don't do so well are people who have got good healthy pensions and have paid off a big mortgage already and that sort of thing, the middle class ex-professional grandparent doesn't do so well, but actually, they're probably less in need. (Manager, kinship team)

Regulatory requirements mean that the council has to consider the special guardian's resources but the local authority can set the level of income that is disregarded. The local authority proposes that the level at which income is disregarded is aligned to the household income exceeding the level at which the higher tax rate would be applied (£38,000), not including income specifically for the child. (Local authority policy)

What we have with our scheme is a non-means-tested element, so you get it without doing the financial assessment. So for example, this is an actual case where the relative took on three children, they qualified for a percentage of the SGA which was calculated from The Fostering Network rate, then they got a non means-tested bit because they took a sibling group. And if there's very high contact levels we pay an additional amount outside of whatever the financial assessment comes up with. (Designated manager)

**Whether the total remuneration paid to foster carers will be protected when they become special guardians and for how long**

Where guardians had previously been approved as foster carers they will continue to receive the equivalent of a fee in recognition that the needs of the children they are caring for are similar to those that are looked after and are likely to make demands on carers that are above the norm. The fee will be based on (our) Payment for Skills Scheme. (Local authority policy)

If foster carers have gone for SGOs they can now get the fees (professional fee element). We are now saying – with annual review - we will guarantee it for the lifetime of the placement, not for the two years we did previously. (Manager, kinship team)

Some local authorities will pay the same rate (as fostering) when there is an SGO. That’s not what we do here. Currently the child has to be placed with the relative for two-plus years before we can protect that allowance. That rules out quite a lot of care proceedings children especially if the carer has a younger child. Carers are reluctant to apply for an SGO as they
feel they are going to be penalised. It is an age related payment but it depends on income and if income is low. If the child is not with them for two years something would be paid but it depends on income and savings. (Manager, kinship team)

The duration of any allowance
Special guardianship allowances are reviewable annually, which can create uncertainty for carers and can act as a disincentive to foster carers to make an application for special guardianship (Wade et al, 2010). Accordingly, one local authority, we were told, guarantees to all their kinship foster carers who became special guardians that they would honour the fostering rate until the child was 18 unless there is a significant change of circumstance. Others do so in practice. Elsewhere, however, it appears to be customary to pay for only a limited period:

When I meet up with people (from other authorities) clearly quite a lot of authorities are just paying for the three years post order, which is the statutory minimum. (Manager, kinship team)

Current foster carers who go on to become special guardians will continue to receive the long-term fostering allowance for a period of two years post order. (Local authority policy)

I think at the beginning of the process (carers) are lulled into a false sense of security because they are given more kudos at the moment and so they're paid all the allowances the same as any other foster carer. They're thinking ‘this is okay, this is fine’ and then two years down the line, the allowances stop because it's only guaranteed for two years if they've gone on an order. (The plans might say) ‘allowances to continue until the age of 18’ or something but we can't do that, that doesn't happen, it goes and then it's means tested and they're absolutely slaughtered after two years and we're saying ‘well I'm sorry, you're not able to get anything’ and they say ‘we were never told that’. (Manager, post-order support)

Not surprisingly, given this variation, some of the more generous local authorities were questioning whether they could sustain their position.

(This local authority) doesn't operate a means test, they currently pay special guardians the full fostering rate. That's the position currently, I think it's going to change. It's not widely known but they've never worked out a means test, so at the moment every special guardian gets an SGA which is equivalent to a fostering allowance less child benefit. On each and every case. But I think they will be bringing in a means test. It's all linked to the policy about family and friends care. I think it will be approved shortly. (Local authority solicitor)

We tend not to make (the SGA) time limited although to be honest it's something we've been looking at because lots of local authorities do time limit them. Obviously with the possibility of extending it. We would never have a blanket that they were all time limited but some families actually don't really necessarily need a special guardianship allowance long term but they might need one to get them over the next few years with the possibility of coming back. If we were time limiting them we would put the option in that people could come back and say ‘look actually I need this allowance to continue’. You wouldn't have a cut off because that could potentially jeopardise the security of that child’s living arrangements, and you wouldn't want to do that. We don't do that with adoption, we put an end date on but that's really like a review date and we say ‘look, come back to us if you need that to continue’. Some do and some don't. (Designated manager)
Some also argued the need for greater standardisation, though this was not restricted to special guardianship allowances. Indeed in a couple of areas there were active moves to achieve a more consistent approach across several authorities. In London, for instance:

I've been involved in working towards a pan London SGO protocol which would be a baseline for all authorities in terms of some standardisation of how you will be paid, what you will be paid, what you will be paid for. We've suggested guide benchmarking in terms of legal fees and setting up allowances and holidays and a standard allowance. We were talking about financial assessments - if you're over a certain income you wouldn't get anything but otherwise you would be means tested but all on the same basis. (Kinship social worker)

Others, such as the social workers taking part in a group interview, argued that there should be a national allowance, centrally administered, partly to introduce some consistency into the system but also to separate the question of financial support from the other issues about supporting kinship arrangements.

I would like to see special guardianship allowances as a central government benefit. I do think that would help for a start. It makes it much clearer why it's being paid, because if it's left to the discretion of the local authority then in these times you can't be unrealistic, the local authority is always going to be looking to not paying it on some level. Or looking to stop it or making it time limited. Whereas there's clear evidence that families do better if well financially supported.

And that is transparent, and the same all around the country. Across the board and not means tested. Because it gets quite complicated, means testing, depending on the property you own and everything, so it's just one clear amount, this is how much you get, maybe a little more for London so that everybody knows exactly what it is that they're getting into and that there's no messing around with that element of things.

I absolutely agree. I don't think it should be a postcode lottery and at the discretion of each local authority. In New Zealand when they re-jigged their entire childcare system, introduced FGCs, looked at kinship care, they've got an allowance that goes with the child. And it's not about whether you live here or somewhere else or whatever, you're looking after somebody else's child so you get the allowance.

I don't think it should be with the local authorities really. That would divorce that kind of aspect of things from the issues about other aspects of support or applicability of care. The (children’s) guardians are so much caught into the ins and outs of the SGO packages and the money and the rest of it, that we need to just be clearer, transparent and get all of that out of the court arena so that we can move quicker for our children, and that's just another one of those barriers in terms of how much they're getting paid. (Frontline social worker group)

The neglected older sibling? Support for residence orders

Before the introduction of special guardianship orders in 2005 (with the implementation of the Adoption and Children Act, 2002) a kinship carer could acquire parental responsibility for the child through a residence order. Unlike special guardianship, no specific statutory framework was created for the support of such arrangements apart from the power for the local authority to provide a residence order allowance (ROA). Carers have no statutory right to ask for an assessment of need, even if the child was previously looked after and there is no duty on the local authority to produce a support plan or to establish residence order support services. Hence support for holders of residence orders is even more dependent on the discretion of the local authority than for special guardians.

If they're on a residence order then there's no entitlement even to an assessment, the local authority can pay them an allowance but everything else is under the Section 17 child in need process. (Local authority solicitor)
If you're dealing with special guardianship you've got to ensure that the support plan is filed, whereas with residence order the law doesn't provide for as much support. They're still entitled to apply for a residence order allowance and you make sure that that's done. (Solicitor)

This absence of obligation is emphasised in a number of local authority policies. For instance:

In the case of a child who was looked after by the same carer immediately prior to the making of a residence order, there is currently no specific statutory guidance regarding any assessment which should be undertaken by the council for support services, which may include financial support. (Local authority policy)

Although residence orders appear to have been largely superseded by SGOs, at least as a permanency option for younger children when children’s services are involved, they are still made. Indeed in the year ending March 2012, 5% of children who ceased to be looked after did so because a residence order had been made. (DfE, 2012). There will be also a residue of historic orders in the population. However our reading of local authority policies, and interviews with children’s services staff, suggest that they are not usually central to professional thinking. Indeed some statements in local authority policies omit them altogether:

In exceptional circumstances, we may make an arrangement to provide advice, support and, if necessary, facilitate contact for a time limited period. We may be involved in supporting contact when it has been assessed and agreed as part of a specific plan to meet the needs of the child as part of a care plan for a child in care, or as part of a post adoption support plan, or special guardianship support plan. (Local authority policy)

Children will continue to have a named social worker from the Care Planning Team for 12 months following the granting of a Special Guardianship Order if they were looked after prior to the order being granted. After 12 months, these children and their carers will be transferred to the Kinship Team for annual financial reviews. (Local authority policy)

While this does not necessarily mean that residence order holders would not be treated in the same way as those with SGOs, this would not be apparent to kinship carers looking to policies to find out what help is available, nor necessarily to practitioners. Similarly, the FRG study of local authority policies (Roth et al, 2012) found that only 44% provided any information about eligibility for a residence order allowance, even fewer than for special guardianship allowances.

As noted earlier in this chapter, some of the local authorities were spoke to were planning to set up a dedicated special guardianship service. However there was no reference to residence order holders in this:

At the moment we seem to be looking at a post order team for adoption and special guardians. Hold all the support plans and have a dedicated support service. (Manager, kinship team)

A number of informants compared the way residence order holders were treated before the advent of special guardianship:
The local authority said ‘oh granny you've got your residence order, thank you and we're off’. So there was no support there. When SGOs first came in there was a bit of resistance from local authorities who were doing that ‘oh well why should we be paying for all these long term’, because they were comparing it with their responsibilities under a residence order. Once the penny dropped that the alternative to special guardianship is these people are foster carers, then it's worth spending money on it. (Judge)

Since the introduction of SGOs things have changed because a part of the SGO assessment form is specifically about the package that the local authority is going to provide including financial support. And so we all had to do SGO training when it all came out so you get your extra CPD points and whatever, so you know now far more than in regards to residence order allowances that you are supposed to be looking at your client’s financial needs. If you're on the ball you would use that as an opportunity to negotiate with the local authority far more than we ever did with residence orders before. So it brought a lot of us more into that area of expertise, because you knew that you had to do something that had to be completed before they agreed for the SGO to be granted. (Solicitor in FRG advisers group)

There was also evidence of some disparities in treatment continuing, or only changing very recently. Thus residence order holders might be outside the remit of the post-order support service:

*Researcher: The support is for people with SGOs. Do you cover residence orders as well?*
No. They are not covered. They may be getting financial support.

*Researcher: So if they needed support where would that go?*
I guess it would go to intake, would it?

As a child in need. But if they went to intake the referral would be about the child. So it would be about, ‘I'm not coping with this child because of his bedwetting or because of A, B, C’, so the focus would be particularly on an assessment of that child’s needs. (Social worker group)

One local authority had only recently opened up its special guardianship support group to residence order holders, who had become aware that greater support was available on an SGO:

We have some people who have got a residence order and they've come and said ‘we would like to go for special guardianship because we'll get more support, we know we've got an allowance but we need more than that’ because of problems usually to do with contact. So what we did is we asked the support group which is made up of special guardians, would they object to some people with residence orders coming to the support group and they said no they wouldn't, so we do have some people who have got residence orders who are having exactly the same, because it seemed a bit silly to us to force people to go to court for something that we could provide anyway.

*Researcher: Would they be able to access the other support from your team?*
Well those who have already joined the support group also can have the mediation work and the work on life story work and they're also invited to the Christmas party. They're drawn in because we didn't see it as a necessary piece of work for people to force them to go back to court to change the order when we could actually provide (support), we felt it was a little bit churlish to say that. So as long as it's manageable and it is. We have got special guardians and a few others. (Designated manager)

Inequitable treatment was also evident in relation to residence order allowances, both in the maximum length of time for which the ROA would be paid in and the amounts payable.
I think that’s an anomaly for us because we pay it at a different rate and I think most other people do too.
We pay the same as special guardianship when a child has been a *looked after child*
If I get a residence order because that’s the best plan for the child I'll probably argue for a payment at the SG rate.
We have a very different rate. We have a basic rate and an enhanced rate. All special guardians get the enhanced rate but everyone on a residence order gets the basic rate.
(Kinship care workers’ group)
In spite of existing case law carers are still having to battle for everything. (X local authority) pays a residence allowance at 57% of the fostering allowance…After the Kirklees case\(^\text{26}\) they increased their special guardianship allowances to the same level as their fostering allowance, but they kept the residence order allowance the same. They say (the case law) doesn’t apply to residence orders. (Solicitor)

Residence order allowance is minimal so it’s a big commitment for families.
Oh yes, I’d echo that, I’d echo that. (Frontline managers’ group)

Information from carers also suggests that those with residence orders were treated less favourably than those with special guardianship orders. Thus less than half (11 of 24) were receiving a regular allowance, compared to 88% (23 of 26) of special guardians. The national survey also found that those with an SGO were almost twice as likely to be receiving an allowance (57% compared to 29%) (Aziz et al, 2012).

Some local authorities, however, have taken steps to equalise the treatment of the two groups, whether in terms of allowances or access to a dedicated support service.

*Allowances*
We do it the same for residence, special guardianship, adoption so that there is no financial incentive to go for one order rather than the other because, you know, it didn't make sense not to. It is fairly generous because it's aligned with Fostering Network rates which are very high. (Designated manager)

Residence order financial support continues to be assessed in the same way as Special Guardianship Order financial support. The authority will consider only the allowances that the carers receive in respect of the child. After the carers has claimed any benefits to which they may be entitled for the child the Local Authority "tops up" so that income they receive for the child or young person is equivalent to the age related foster care allowance, with the provision that the maximum the authority would pay for is until the child was 16 or 18 if in fulltime education. (Local authority policy)

We have been fairly generous here in terms of support to carers, partly because it’s in our interest for children not to be *looked after* if possible because it’s costly and bureaucratic, so we wanted to make the decision so that kinship carers felt they didn’t have to be foster carers in order to get the same financial support, and they would get the same support financially under a special guardianship order for example, or even a residence order allowance. So that’s the system that we set up, which I think has worked. (Local authority solicitor)

Some of the historic residence orders finished at 16 and so we felt that some of the people who had residence orders for 16 year olds would then apply for an SGO in order to get it up to 18, so we agreed that although the residence order finished at 16 we would again pay until 18. (Designated manager)

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\(^{26}\) Barrett v Kirklees Metropolitan Council [2010] 2 FLR 405 (See Appendix B)
Other forms of support

In law there is the adoption support plan and there’s now the special guardianship support plan, but there’s nothing for residence. But here, just to institutionalise it, we have permanence support plans. Adoption, special guardianship or residence order, it should make no difference what the legal route is to permanence. They will get the same service from us. (Kinship social worker)

My team manage all the post SGO and RO cases. I don't have issues in terms of therapeutic intervention because we have a CAMHS in-house service here. So even my residence order kids and my special guardianship kids, if they need a therapeutic service, it's easy for us to get that to them. (Manager, kinship team)

Children will continue to have a named social worker from the Permanency and Adoption Support team for 12 months following the granting of a Special Guardianship Order or a Residence Order if they were looked after prior to the order being granted. After 12 months a formal review will be held to determine whether a named social worker needs to remain allocated to the child. ...The Permanency and Adoption Support team is able to provide support, information and guidance via its duty service. (Local authority policy)

Children in SGO or RO arrangements should receive education and health support from their schools and local health provisions. If carers are having difficulty in accessing support in these areas, the Kinship Team is available to advocate and support families to be able to access the community supports which should be available to them. (Local authority policy)

Privileging of previous looked after status

Even where there is parity of treatment between SGOs and ROs, as will be evident from the data already presented in this chapter, greater support is likely to be available where the arrangement involves a previously looked after child. Thus in some authorities carers are only - or less rigidly, ‘generally’ - eligible for an assessment of their financial needs if the child was previously a looked-after child.

One particular example, the department hasn’t supported financially but we know this child, we know this grandmother, because the birth parent has psychotic episodes, and I don't know how the arrangement came about but I think it could be argued that it was a Section 20 placement. However it was treated as a section 17 and it was felt that the best plan at that time was if this grandmother claimed this child and took out a legal order so that there would be that legal security. So the social worker made a case and I know that that wasn't supported and the grandmother felt that she really couldn't take out a legal order unless she had the finances to back her up and see this child through, right through. But yes I think grandmother was put in a different position there. (Social worker, family placement)

Those who have acted as kinship foster carers can have their allowances protected for at least two years and in some local authorities for considerably longer. They will also usually have automatic access to dedicated support services, whereas other carers may be excluded. Indeed in some authorities either the child’s social worker or the supervising social worker will remain involved in order to ease the transition to a private law order.

Clearly these privileges could be important in terms in incentivising foster carers to take out private law orders. One questions, however, what this has to do with meeting the needs of children and their carers who are not so fortunate but whose needs are almost certainly equally great.
It is therefore important to note that some local authorities are striving to deliver a more equitable service. Thus one post-order service explicitly offers support to any carer who holds a residence order or an SGO, irrespective of whether the child was previously looked after or whether the order was made in public or private proceedings, while another deals with ‘any kinship arrangement where there have been child protection concerns’. Another authority commits itself to offer an assessment of support needs ‘if the child or young person would otherwise have been looked after if not cared for by the prospective special guardian’, noting that:

In offering assessments in these circumstances the authority is going further than the regulations require as they state that a child who is not looked after may be offered an assessment. (Local authority Strategy document)

These are, however, exceptions.

Summary

- Special guardianship offers certain benefits to carers and children in terms of support in that local authorities have a duty to establish special guardianship support services and carers can ask for an assessment of support needs. However there is no entitlement to support.

- Where a child has been previously looked after, special guardians are privileged, in that the local authority must, if requested, carry out an assessment of support needs and, where the special guardian has previously been the child’s foster carer, any monies they have been receiving can be protected for up to two years. Nevertheless even for this group, support remains largely discretionary and highly variable.

- Although overall a wide range of services could be made available, professionals identified many ways in which support for special guardianship arrangements needed to be strengthened. There was a growing awareness of a need for on-going support and that better and more proactive support could prevent placement breakdown. Teams supporting special guardianship were typically seen as stretched and under-resourced.

- Respondents suggested that special guardianship support should be aligned with post-adoption support.

- There was evidence of variation in provision with some local authorities offering or developing a higher level of service, although sometimes this was limited to children who had previously been looked after.

- Policy in relation to special guardianship allowances varied in terms of the eligibility criteria, whether the allowance was means-tested, the amounts payable, the length of time for which an allowance would be paid, and whether, and for how long, previous foster carers would have their allowances protected.
• Special guardianship support plans were of variable quality. While some were excellent, others were brief or formulaic, not geared to the specific needs of the particular child.

• Since an SGO can only be made by a court, the support to be made available is subject to external scrutiny – by the judiciary, by the carer’s solicitor if they are represented, by the children’s guardian if the order is made in care proceedings. It was evident from both our carer and professional interviews that this does provide an important safety net.

• It is, however, a safety net whose effectiveness is already variable, limited by the type of proceedings, whether the carer is represented, the approach of children’s guardians, solicitors and the court.

• There was also anxiety that the effectiveness of the safety net will be further reduced by the combined impact of legal aid cuts; the planned 26 week limit for care proceedings; the narrowing of the scrutiny of care plans and reduction in the role and capacity of children’s guardians.

• Prior to the introduction of special guardianship, a kinship carer could acquire parental responsibility for the child through a residence order. These carers are in a weaker position because there has never been a specific statutory framework for the support of such arrangements although local authorities have a discretionary power to pay an allowance.

• Some local authorities have equalised the treatment of ROs and SGOs in terms of allowances and access to dedicated support services. Elsewhere allowances may be lower, and they may be outside the remit of special guardianship support services.

• Even where there is parity of treatment between SGOs and ROs, greater support is likely to be available for those arrangements involving a previously looked after child. Some local authorities are striving to deliver a more equitable support service to any kinship carer whatever order the child is placed on, irrespective of whether the child was previously looked after or not, but this unfortunately seems rare.
5 Doubly disadvantaged: informal kinship care

What's wrong is that we have a three tier class system. We have these lucky people who are treated as foster carers and even people on orders are sort of lucky that they've got somewhere that they can go. If you've got an order there's a legislative part of it because we have to provide post order support. It's not right on any level. The privileged ones are still on your fostering allowance and get a link worker and then you get the others, the grandparents that are struggling looking after little Timmy on benefits and not being able to access services. It’s really, really wrong. (Manager, post-order support)

If you've got applications outside of care proceedings that's different because I think there's even more confusion around the nature and the level of support that will and should be provided. I think people are a bit clearer when the child is being looked after or is in some sort of process that there needs to be an agreed package. (Local authority solicitor)

I am aware of examples of good practice and poor practice in relation to informal/private arrangements. I think that the lack of clarity leads to variation. (Senior social worker)

Those caring informally (i.e. the child is not looked after and no private law order is in place) suffer from two major handicaps. First, there are no statutory requirements to provide support services specifically for kinship arrangements, and second, they lack the safety net afforded by court proceedings, particularly care proceedings. Hence they are totally dependent on the discretion of the local authority. Local authority policies frequently stress this lack of statutory obligation, often combined with an emphasis on minimum intervention in family life. There is generally little sense that the message local authorities want to convey is ‘we will try to help if we can’. Indeed, it would be entirely understandable if carers felt that what they were being told was ‘Please don’t come to us for help’. One policy stands out because it is so exceptional:

(X) Council will make best endeavours to support these arrangements within the context of constrained resources. (X) Council supports the view that no child should have to become a looked after child in order to access support when cared for by family or a friend.....Support services should not be withheld because a child is living with a carer in a private/informal arrangement. (Local authority policy)

Informants described three levels of service available to informal kinship arrangements. First, carers can access universal services. Second, if additional services are thought to be necessary, as with every other family with children, an assessment can be carried out under the Common Assessment Framework (CAF) and services provided by means of a Team Around the Child (TAC), coordinated by a lead professional. Third, again like any other family, the child can be assessed as a child in need (CIN) and services provided by Children’s Services. Although the statutory guidance does say that children in kinship care should be included in the local authority eligibility criteria for section 17 support27, unlike disabled children, they are not regarded as children in need by definition.

In principle, therefore, a framework exists whereby the needs of children in informal kinship care, although not necessarily their carers, can be met because carers can draw on the services available to any family with children. Indeed some professionals were confident that this tri-

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27 DfE, Statutory Guidance on Family and Friends Care, 2011 para 3.7
partite structure provided a ‘continuum of services’ which meant that the appropriate level of support could be provided, as and when it was needed:

It’s looking at what is the right service for the right family, really. (Designated manager)

If families do have additional needs or want an assessment, we can make sure that that's accessed through the right avenue depending on what the circumstances are. That might be through CIN but if they're lower down the threshold it's more likely to be through a CAF process. (Designated manager)

Some also emphasised that families could move through this structure, ‘stepping down’ for instance, from CIN services to early intervention and family support services or vice versa:

There’s the whole range of different services out there. We’ve got family intervention projects, CAF, services within the voluntary sector and that sort of thing. We have very good links with each other and protocols around how CAF can refer a family into Safeguarding and how Safeguarding can refer a family into like a CAF network. A family isn’t in one sort of box forever, it depends on the situation. (Designated manager)

We have what is called a ‘gateway service’ which is a multi agency team for families who don’t meet the threshold to be open to Social Services but nevertheless need some support in order to maintain children with families. So families which need ongoing support can move upwards into social work and they can go down again into the Gateway Service. (Designated manager)

(When a child has been a child in need before moving to kin) they’ll continue to receive that support from (the CIN) team until we feel that support is no longer needed directly from us, there’s the right family, really. (Designated manager)

We try in most cases when we close the case to do what we call a step down to (X) service) or (Y) agency. So they're not left on their own, they’ve still got a link worker from that project that can go in and see them and help them with emotional or practical things that need to be done. But in terms of meeting the child in need statutory threshold they don’t meet it anymore, their level of need is much, much lower. And we are fortunate that we still have quite a few, shall we say, partners, third sector that we work with. (Manager, child in need team)

This last informant went on to say, however, that ‘I know for a fact that other local authorities are not as fortunate’.

Our carer interviews certainly did not suggest that a seamless, needs-led, service for informal carers was the norm. All those who had only ever cared informally (including private foster carers) identified unmet needs for support, higher than any other group and also specified a higher number of unmet needs (Hunt and Waterhouse, 2012). Similarly, the Bristol University research into informal care (Selwyn et al, 2013) found that 90% of informal carers said they needed more support. (It should be noted, moreover, that since the definition of informal care in that study included carers with residence or special guardianship orders, that is likely to be an under-estimate).

Signposting to universal services
Government guidance on family and friends care, highlighting the fact that carers often struggle to find out where they can get help, requires local authorities to set out accessible information about local services available to them. Research has found, however, that 56% of policies failed to provide any information, while only 21% were judged to provide full
information (Roth et al, 2012). One of the exceptions cited in that study signposts carers to the local authority web-site and to other sources of information such as district councils and libraries. Another local authority directs carers to Family Information Services.

Some of the Children’s Services practitioners interviewed in the current study also referred to the importance of harnessing the resources available in the community and ensuring the carers are ‘signposted to them.

It’s about making sure that those families get or are aware of the services that are already there. (Designated manager)

I think one of the issues that has struck me is some of these family and friends arrangements or kinship arrangements don’t actually want the intrusion of the local authority. I think what they need is information about what support and services are there. It's about people knowing what help is there and how they can actually access it. (Designated manager)

Families would be able to access services as any other family would, and that's something I always say, that we can get you into the children’s centre where they've got specialist playgroups with kids who have got grandparents looking after them, health services. I think it's just about promoting that they've got access to every other service that is available to any other child, just because they're a kinship carer doesn't mean that they're excluded from that. (Frontline social worker)

It's not just about the local authority providing, because everyone seems to think the local authority must provide everything and that's not correct. You have universal services out there that carers can access and the support could also be support in terms of saying where they should go to access those services and providing that kind of information, because families don't always want the local authority to be there, sometimes they just want advice and that in itself is support. (Frontline social worker)

We’ve got a lot of early intervention. And the idea of the Initial Response Team is that even if they don’t meet our threshold then we signpost into the appropriate services in their area. (Frontline manager)

Some informants explicitly linked the importance of directing carers to community resources with the need to make best use of limited resources within their departments. While this is understandable, it is vital that it is not used as a way of fobbing off families who need more support. Additionally, some carers may need more than signposting. As one informant emphasised:

Relative carers are not the most skilled and confident in negotiating with…the complexity of the services that may be relevant to that child…it's bad enough for professionals to try and understand the lack of joined up-ness of these services but it's all the more difficult I think for relative carers. (Children’s guardian/independent social worker)

It is also critical that universal services are aware of the particular needs of kinship families. Interviews with kinship carers in the first part of this study indicated that, for many, schools and community health professionals provided an invaluable source of assistance. Thus in our earlier report we noted that:

There were some very complimentary comments about health visitors: ‘super’; ‘very good’; ‘excellent’; ‘very helpful; ‘saved our sanity’. In addition to advice about caring for the child, some health visitors were clearly a source of emotional support and, on occasion, gave carers
information about their legal options or signposted them to sources of information....Schools also generally came out well: ‘excellent’; ‘brilliant’; ‘fantastic’; ‘went the extra mile’; ‘we were impressed’; ‘we felt we were working as a team’. They provided extra help for the child: counselling, extra tuition, mentoring; art therapy and, sometimes, information, advice and moral support to the carer. (Hunt and Waterhouse, 2013, p68)

Indeed 80% of carers reported receiving some form of non-financial help from a source other than Children’s Services, and those who had ever been kinship foster carers were only marginally more likely to report receiving such help than other carers. Further, most people did not report that Children’s Services had been instrumental in securing this help.

This suggests that some professionals in community services are sensitive to the needs of kinship families and that the notion, voiced by some professionals in this study, that kinship carers can draw on a ‘continuum of services’ is not entirely fanciful. The evidence from both this study and the Bristol study indicates, however, that more needs to be done to make it a reality for all informal kinship carers. Services themselves need to ensure that they are alert to the needs of such families and can respond by providing assistance themselves or, where appropriate, referring on. Children’s Services, we suggest, need to play a role in this by making links with community services and encouraging the development of provision for children in kinship arrangements and their carers.

Support through the Common Assessment Framework and the Team around the child

In some circumstances professionals may recognise that the child and their family require additional services and support but they don’t meet the threshold for social care involvement, in which case they may suggest that a common assessment is completed. A common assessment (CAF) involves obtaining information from the child and family, which should lead to decisions about whether additional services are required, proposed solutions and an action plan outlining who will do what, when, and review dates. Arrangements will be made for a team around the child and a lead professional. (Local authority policy)

Children and young people living in an informal family and friends arrangement can access the full range of universal services and targeted services through the CAF processes. Services and support in the agreed plan will be coordinated and reviewed via the lead professional. ...

(X) County Council with its partner agencies will...promote the use of the Common Assessment Framework (CAF) as a means of assessing the needs of family and friends placements and drawing services together. (Local authority policy)

As explained in the policies quoted above, kinship families can also be assisted through the CAF/TAC framework and this approach is sometimes explicitly promoted in policies.

The CAF framework potentially provides a useful safety net for families who do not wish to be involved with Children’s Services or would not meet current thresholds for section 17 assistance as a child in need. It is a means by which services with which most carers will be in contact – schools, health services, housing departments – could identify families who might be in need of more help, coordinate information and put together a support plan. A range of services can be provided through the CAF process. Informants mentioned early intervention services; behavioural support programmes; short breaks; a nursery place; referral to CAMHS. How effectively the process operates, of course, is another matter. It depends, first, on referral agents being sensitised to the needs of kinship families, a point emphasised in the Bristol study (Selwyn et al, 2013), which is also highlighted in some local authority policies:
The majority of private/informal arrangements work well and meet the needs of the child with the support of universal agencies such as Health and Education services. It is important, however, that any difficulties are responded to early. Partner agencies have a key role to play in identifying and supporting children who are living with family and friends carers. Services need to be aware of and sensitive to the needs of these children and their families. (Local authority policy)

Second, it depends on the availability of appropriate services. Several informants in our study identified a particular problem with CAMHS:

The CAMHS element is a little bit of a gap, well, probably not just a gap for these children. (Designated manager)

Researcher: Do you feel that whatever route you go down, that you're able to provide the services that the children and the carers need?

It depends on the purse strings. Sometimes community resources, they've got a big waiting list now. It takes at least six months to get counselling through CAMHS. (Frontline social worker group)

This particular resource issue is also highlighted in Bristol study (Selwyn et al, 2013) which found that less than half the children with serious emotional and behavioural problems had been seen by CAMHS. We concur with their conclusion that there is a strong argument to make children in kinship care a priority group for support, as already happens in some areas. As noted in chapter 3, children in foster care already have priority for CAMHS services. Given that the needs of the children have been shown to be indistinguishable, it is hard to justify different arrangements.

The Bristol study did not specifically examine whether any of the families in their sample had received support through CAF. Such research would help to establish the effectiveness of the process in identifying and meeting the additional needs of kin-placed children. Each local authority also needs to collect data on children being supported under these arrangements.

**Support through the Children in Need provisions**

The highest level of service is likely to be available through the CIN provisions. Indeed it is the only way to get any regular financial support from the local authority where universal benefits are insufficient. It is also the only way that a family providing informal kinship care will have an allocated social worker.

Our informants, however, including professionals working within Children’s Services, commonly highlighted deficiencies in service provision.

We don't get involved in the informal placements, those are managed by the children’s social workers. They provide support out of section 17 and I think that varies and I don't think that's always necessarily based on the needs of the child. (When it comes to me) sometimes people have been doing this on an informal basis for six or seven months. And then something goes wrong, parents relapse or don't make the progress that's expected, so then the local authority goes into care proceedings and suddenly (you find) these people have been doing this job for six months with very little support. (Manager, family placement)

We get to know about them through the locality children’s teams. They've not accommodated the children (under s20), they're viewing it as a private family arrangement and they support
the carers to go for an SGO and then make the referral to us. (We find that) the carer is not getting any financial support, they're eligible for Section 17 money but they often don't get any. They have to fight tooth and nail for everything they get. Often they'll be getting a bit, like to provide contact transport money, bits and pieces, but you're talking about grandmas who are on a pension, the kids come to them with nothing, so often we're having conversations with social work teams around ‘this grandma needs a coat and some new shoes for the kids, you need to help them out’. (Kinship team manager)

The Bristol study (Selwyn et al, 2013) found that 71% of informal carers had contacted Children’s Services to ask for help at some point but only 23% of these had received the help they requested. (And, as noted earlier, since that study defines informal care arrangements as those where the child is not treated as looked after, and therefore includes carers with residence or special guardianship orders, the proportion of informal carers, as we would define them, not receiving help is likely to be even higher).

To access section 17 support carers will first need to know that they can ask for an assessment of need. Few of the carers in our study were aware of this. Although the statutory guidance for England stipulates that local authority policies must ‘identify how family and friends carers are made aware of the eligibility criteria’ (DfE, 2011, para 4.23) research indicates that only 38% of policies even partly described the eligibility criteria and some of these were ‘obtuse or overly restrictive’ (Roth et al, 2012, p33).

Carers also have to get through the filter operated by intake and assessment teams in order to reach the relevant part of Children’s Services, and as some professionals commented, this could be quite tough:

I suspect not many of them get through to Child In Need really, I think there’s probably quite a robust screening in the duty system. (Manager, kinship team)

If it doesn’t get through IRT (the initial response team) and into a team you never do an assessment. It has to meet threshold to get through IRT. They take all the referrals, if it meets criteria it goes out into the locality. As a frontline manager I don't make a decision about that. It could come into my team and then I could still close it down, but what comes into my team is regulated by our Initial Response Team.

You'd only be picking up very complex or acute cases wouldn't you, you're only picking up 3's and 4's28 as far as I understand it?

Yes, yes.

Researcher: So a referral might have been made...And it might just be dealt with in the Initial Response Team and that might be where they're advising, go and get a Residence Order?

Yes. Or signpost them to other agencies.

Researcher: Right okay so there's an even earlier filter?

Yes. (Frontline managers group)

Then carers will have to meet the children in need criteria, which are not entirely consistent between local authorities. A few local authorities seem to go beyond the statutory criteria and in effect take the position that children in informal kinship care arrangements are regarded, as a group, as children in need, at least provided the local authority considers the arrangement meets the child’s welfare needs.

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28 We understand this refers to Children’s Services’ categorisation of the case which determines whether it will be deemed an appropriate case to allocate to a social work team or should be dealt with in other ways.
When (X) Council supports private/informal arrangements made by parents, the child will be treated as a child in need and appropriate assessments will be made under the Framework for Assessment for Children in Need and their Families to inform a Child in Need plan or Child Protection plan if required. (Local authority policy)

(X) County Council with its partner agencies will recognise that children and young people who are living with relatives, friends or other connected people fall within the ambit of (the local authority’s) definition of a ‘child in need.’ (Local authority policy)

Before where we were closing cases if we'd got a child placed with a family member it's no longer the case. When the child has a family member we're being advised to do a child in need plan so it goes on to family support for continued work to be done. (Frontline social worker)

In contrast, some appear to put a gloss on the criteria. It may be said, for example, that there has to be ‘significant impairment’, or that the child is at risk of being looked after, or even that the local authority has been involved in setting up the arrangement. According to government guidance, however, the definition of a child in need in section 17(10) (of the Children Act) is ‘broad’:

A child in need is a child whose vulnerability is such that they are unlikely to reach or maintain a reasonable level of health, or development, or their health or development would be significantly impaired, without the provision of services by the local authority, or they are disabled (para 3.4).

The dominant, if not universal, perception among the professionals taking part in the research was also that CIN thresholds were high and getting more difficult to cross. Teams are under pressure, and the policy thrust is to minimise recourse to social care services, signposting, wherever possible, to other services:

What I'm finding more and more is that the thresholds for these teams are so high that often they don't reach that threshold and so again they're scrabbling about trying to get things maybe through the school or their GP. Just like any child in the community really. We've got some people who are absolutely desperate, but they're not reaching the criteria for the community based social work teams because they're dealing still with the safeguarding of things, as far as they're concerned these children are safe. So they don't meet the criteria to go in all guns blazing to give a piece of work. (Manager, post-order support)

I think our threshold is quite clear in terms of what we would feel is an appropriate referral to Children’s Social Care and I think we're much tighter on that threshold now than we were previously. What happens is, if it doesn’t meet our threshold, we redirect to an appropriate service. (Manager, frontline service)

I think it will probably be harder now to argue a case. That's where I see this going. In the good old days 10 years ago I remember ‘oh they're a child in need we can give them a service’ - it might just be counselling or it might just be a social worker. Now I think it's much harder to even get social workers allocated and the service provided. Unless there are significant concerns. (Frontline social worker)

This is very much the picture portrayed by carers. In our study few of those who had cared informally recalled any discussion with social workers about the support they might need – ‘they just dumped the child and walked off’; ‘we were left to support ourselves’. Although a
few said they had asked for an assessment of their support needs, none got anywhere. One person had an outright refusal, others said they were fobbed off:

There were various excuses. The social worker was ill; there was no money; there was no-one to do the assessment.

They’d get around to it in due course, there was no-one available, there weren’t enough bodies.

Similarly, the Bristol study reports that 42% of carers who had approached Children’s Services for help were refused:

Often, it appeared, without an assessment of whether the child qualified for support as a child in need. Some carers were told that social work help was unavailable because the kinship arrangement had been made privately or that their problems were not serious enough to warrant support. (Selwyn et al, p58)

If a child in informal kinship care is accepted as a child in need then an impressive range of services can, in theory, be provided, in addition to input from an allocated social worker (although this will rarely be a specialist kinship worker). Some local authority policies on family and friends care set these out in detail.

A range of targeted and specialist support services may be provided by the local authority under Section 17 of the Children Act 1989 if it is appropriate. Family and friends carers who are caring for a ‘child in need’ may also be eligible for these services, which can include: specialist advice, guidance and counselling; parenting support and training programmes; child and adolescent mental health services; assistance to organise family holidays and days out; domiciliary care; respite care; overnight short breaks for young disabled people aged 8 to 18; accommodation services; referral to other agencies where appropriate....A social worker will visit the child and carers. (Local authority policy)

Following an assessment of the child's needs by Safeguarding and Services to Children and Young People a range of support services may be provided. These include counselling, advice and information; help to maintain the relationship between the child and the carer through training, respite and mediation; help with contact arrangements, direct work with the child, financial support dependent on a financial assessment for equipment, activities or other expenses relating to the needs of the child. (Local authority policy)

Some Children’s Services informants were very proud of the support their local authority could offer: ‘We’ve got so many services I don’t know where to list them from’ (CIN manager); ‘I'm struggling to remember them all’ (frontline social worker). Notably, however, both these informants also commented that they worked in a well-resourced department; it was not clear that other local authorities were as fortunate. Some commented that a ‘very good case’ needed to be made to the resource panels which controlled section 17 expenditure.

(It’s) look in the community for it, don't look on our doorstep, because section 17 budgets are so tight that the culture is ‘find it elsewhere’. You move your priorities all the time don’t you, whereas if money was a little bit freer we'd help more freely. But we now, when we absorb that culture, we know there's not a lot of money and we're part of that reality, so it's only the desperate, a need often goes unmet...You’ve got a tension between a worker and senior management where the worker knows that this client’s needs are not being met and the management who won't budge in their position, and it's an awful place to be. So we do live in this culture where if we can meet need outside the organisation we meet it, and we can come
up with all these great rationales and often they do fit: best within the family, families resolve themselves, give minimal at the beginning, tap into everything in the community that’s there, share whatever information, knowledge you’ve got about the Benefits Agency - which often a 50 or 60 year old grandmother won’t have a clue about the Benefits Agency -, so you can try and help them, and that’s what we do. It’s meeting need in a way that doesn't incur what we haven’t got. (Frontline social worker)

Even where support is provided under section 17 it is likely to be short-term. This particularly applies to financial help.

**Financial assistance under section 17**

Financial support for informal kinship placements is expected to come from parents or the benefits system. Local authorities, however, can provide some assistance. Until April 2011 cash help under this section could only be provided in exceptional circumstances, which may explain why only a third of the carers in our study (14 of 41; 34%) said that they had received a regular allowance from Children’s Services at any point while they were caring for the child informally and that all but two of these said it had been a struggle to get the allowance. This restriction has now been removed so that both one-off and ongoing cash help can be given to family and friends carers provided the child is deemed to be in need.

The primary objective of some local authority policies in relation to section 17 payments, however, appears to be to manage expectations and dissuade carers from applying rather than make them aware of a potential source of help. Thus reference is made to ‘occasional’ or ‘one-off payments’ for specific purposes and (despite change in the law) regular payments only being made ‘in exceptional circumstances’, for a short period, and subject to frequent review. Criteria are strict, e.g. ‘required to meet the child’s needs and promote/safeguard their well-being’ and ‘if payment is not made the local authority would have to accommodate the child’; and ‘the parents are unable to finance and the arrangement cannot be funded through the benefits system’. For example:

In exceptional circumstances the local authority can provide minimal, one off or very time limited financial assistance under Section 17 of the Children Act 1989 to support extended family members and family friends to care for children at a time of crisis or to meet a special need on the part of the child and as such prevent the child or young person from becoming Looked After by the Local Authority. All financial support is given with the aim of setting up an arrangement that is self sustaining in the longer term. The Local Authority must be the last resort after all other efforts to obtain financial assistance have failed. Friends and family carers will be encouraged to seek assistance from established mechanisms such as crisis loans through the benefits agency, charitable trusts / organisations and the wider network of family for assistance. Almost all financial arrangements made by the Local Authority under section 17 are occasional (one off payments) or cease once child benefits are received by the applicant, for example. In exceptional cases where an agreement is made to provide regular financial support to prevent a child becoming Looked After, frequent reviews will take place to re-assess the child’s needs and eligibility for financial support. (Local authority policy)

It must be remembered that the local authority is not an income support or maintenance agency and the parents continue to have prime responsibility for their child’s maintenance. (Local authority policy)

Some of the professionals we interviewed also highlighted the fact that income maintenance is the responsibility of central, not local, government and/or that the limits of financial support needed to be made absolutely clear to carers from the start.
We wouldn’t make payments as in, regular payment. No. Because the benefit system would cater for that. They would get whatever that parent was getting to look after the child. I think we do have to ensure that we’re clear with the kinship people what we mean by informal and are they accepting of that. Because generally when we say informal we’re basically really saying ‘we’re not taking responsibility of supporting your every need for this child. So you’re going to provide its food; you’re not going to be asking’ - we don’t go into that kind of detail - but ‘we’re not going to pay for food for this child, we’re not going to pay this, we’re not going to pay that. If you said “oh I need a bag of shopping this week because it’s a surprise guest to the house” then obviously we’re going to provide that. But we’re not going to provide it on a weekly basis to you. (Manager, CIN team)

Indeed some practitioners actually seemed unaware that the local authority could make regular section 17 payments to maintain the child. Others stressed that while this was possible, it could never provide the on-going financial support which would be available if the child was looked after. Indeed – and entirely contrary to the statutory guidance - sometimes children had to become looked after in order to secure ongoing financial support:

Under section 17, we can support a family placement. But not an allowance. We could certainly buy things, which we have done under section 17, we can support in that way but it's not a regular allowance as you would get if the child was looked after.
We had a grandmother who had given up work to look after her grandchild and we did agree to support her long term. Because she couldn’t afford it.
Researcher: Was that under section 17?
No, we couldn't afford it under Section 17, we made it looked after.
It would be good to have the resources so there wouldn't have to be Section 20’s, the families could be supported under Section 17 long term because this is the right placement, they're safe, they're going to be looked after and if they need support they get the support without that bit of stigma. (Frontline managers’ group)

In contrast, some local authorities appeared to be making more use of the more relaxed rules for the use of section 17 money.

Section 17, got much in the bank for Section 17?
It's more flexible these days, I don't know that there's more of it but you can be much more flexible.
You can, yes absolutely.
You can pay it indefinitely more or less.
You can pay it on a regular basis. (Kinship workers’ group)

In fact in one local authority it was deliberate policy to support kinship arrangements under section 17 rather than making children looked after.

Similar variation was evident in terms of the amount of money which might be paid on a regular basis. Some informants referred to allowances being ‘meagre’, of the order of £30-40 a week; and ‘nothing like the fostering allowance’. One local authority policy specifies that ‘the allowance will be based on the income support rates minus any relevant deductions’; another that it will be paid at residence order allowance rates; yet another it will be ‘equivalent to the age-related fostering allowance minus benefits and any parental contribution’.
The cost of caring for someone else’s child agreed by the national fostering network is used by the council to determine how much it is able to support you. It will ensure that the same amount to cover these costs is available to you as if the child were fostered. (Local authority policy)

Our approach was around no financial detriment so that it didn't matter whether or not a child was *looked after* with kinship foster carers or whether they were cared for on a long term basis by their extended family members, the children’s needs were the same and that actually there shouldn’t be any financial detriment to go one way or another, and so that was the underpinning principle really. (Designated manager)

**Discrimination against carers for stepping in to protect the child?**

The earlier you step forward and the more willing you are to help the more penalised you are. (FRG case adviser)

The terms private and informal were often used interchangeably by professionals and sometimes in policies. Hence it was not always clear whether what was being referred to was any arrangement where the child was being cared for informally (ie where there was no order and the child was not a *looked after child*) or specifically those which could be described as private since the arrangement was made within the family without the involvement of Children’s Services.

From the information which was available, however, it seems that at least some local authorities differentiated between the two groups, emphasising the lack of legal obligation where the local authority had clearly no involvement in making the arrangements:

You might give them some advice about benefits, give them advice about housing, but ‘get on with it’, and it's a culture that says families work things out themselves and we don't get involved. (Frontline social worker)

The ones that may not get the same package are the ones where it is totally a private arrangement and Children’s Services have had no involvement with them. They would then be signposted to where they could get the support via the Benefit Agency. I wouldn't know what happens to them then because Children’s Services have no further involvement with them. (FGC co-ordinator)

The lack of support - and this is generally, there's always exceptions - but it's usually when the children are already with grandparents or an aunty and they've been there for a while and they haven't been placed there but (the carer) has stepped in to prevent them being removed or whatever. Usually that's when I would say the support seems less. (FGC co-ordinator)

Those private cases will be dealt with potentially via referrals to (X) and if there are support issues then they may well move into *child in need*, but they don’t come to us. (Manager, kinship team)

Some local authority policies also seem to differentiate, at least implicitly:

Where children and young people are living with family and friends as an alternative to initiating care proceedings, or where the local authority have placed the child/young person in the arrangement, the local authority will support the carers (subject to an assessment of need). (Local authority policy)
Where, in a child’s best interests, a private arrangement by the parents is facilitated by the Council, as a safe alternative to public care, the child will be subject to a child in need plan or, where appropriate, a child protection plan. This will ensure the coordinated provision of support to meet the child’s needs, that the arrangements are still in the best interests of the child, and that the child’s needs for permanence is being met. (Local authority policy)

The Bristol study also reports that:

When kin carers stepped in quickly to care for children [frequently in the middle of a crisis] Children’s Services viewed these as private arrangements and turned down later requests for help, often apparently without any assessment of need. (Selwyn et al, 2013, p67)

Discrimination was not, however, universal, either in policy or practice:

Birth parents or those with parental responsibility may ask a relative to care for their child, either temporarily, or on a more permanent basis..... If there are no concerns for the child’s safety or welfare the local authority will have no involvement in the arrangement, but relatives who need help or advice, including financial assistance, can contact the local authority for support under section 17 of the Children Act 1989. (Local authority policy)

Friends and family who are caring for children subject to private arrangements may apply for financial assistance by contacting the child’s social worker or the Children in Need service if there is no allocated social worker. (Local authority policy)

Some financial support can be provided to any family and friends carer in cases where the child is assessed as being a ‘child in need’ under Section 17 of the 1989 Children Act. (Local authority policy)

If it’s a private arrangement we will deal with that child as a child in need and we would do the family assessment around that and then we would make the decision based on the needs of that child. (Designated manager)

Indeed, occasionally, examples were given of very high levels of support to arrangements which had been made without local authority involvement.

We’ve got one where grandmother took over the care of her six grandchildren. Their father died and mother wasn’t able to cope so she had them live with her. We got involved at the point she took them. And we were offering support. We offered CAMHS, in the beginning, a lot of support. Two under 5’s so before she got the residence order we were helping her with childminding and a cleaner or somebody to do the ironing. And also somebody helping her to work on boundaries with the little ones. A family care worker going in to help with routines. And we had an organisation called (X) that used to go in and help her with some practical support. That’s saved those children being split. (Manager, frontline team)

The big question, of course, is why it should ever make any difference to the support on offer whether Children’s Services were involved in making the arrangements or not. In a needs-based service surely the question would be irrelevant.

Summary

- Informal kinship care suffers from two disadvantages. There is no statutory framework for support nor the safety net provided by court proceedings.
Support can be provided in three ways: through universal services, through the Common Assessment Framework and the Team Around the Child, through services provided to *children in need*. Some professionals were confident that this structure meant that support could be provided according to need.

The evidence from our carer interviews - and recent research from Bristol University - does not suggest that this is the norm. All those who had only ever cared informally identified unmet needs for support and also identified a higher number of unmet needs than any other group.

80% of informal carers reported receiving non-financial support from universal services, and many were very complimentary about schools and health visitors. It is important that community services are alert to the needs of kinship families and knowledgeable about how they might obtain any additional help needed. Children’s Services have a role to play in facilitating this.

Research is needed into the use and effectiveness of the Common Assessment Framework and the Team Around the Child in supporting kinship families.

Being accepted as a *child in need* would open the door to more substantial support. However being a child in kinship care, *per se*, is not a passport and carers may struggle to get help from this route. Most local authority policies do not set out the eligibility criteria, those which do vary in their interpretation, and professionals considered that thresholds were high and getting higher.

Until 2011, local authorities could only provide cash help under the *children in need* provisions in exceptional circumstances, which may explain why only 34% of carers said they had received a regular allowance while they were caring informally and all but two said it had been a struggle to get this. Although the restriction has now been removed many local authority policies still adopt a restrictive approach and some practitioners seem unaware that the law has changed.

The level at which any allowance payable under the *child in need* provisions was set seemed to be very variable, and it was evident that some payments were very meagre.

Variation was also apparent in whether local authorities discriminated against informal arrangements which arose because the carer had acted on their own initiative to protect the child compared to those where the local authority had been involved.
6 Deciding on initial legal status: private or local authority placement?

It should be clear from the material presented in previous sections that legal status plays a critical - if not totally determinative, - part in the support available to kinship care arrangements. The most crucial issue is whether the child is ever deemed to be a *looked after child* and the carer approved as a kinship foster carer, even on a temporary basis, since this is a key factor in the support available both while the child is *looked after*, and subsequently.

Where a child is made subject to police protection, an emergency protection order or an interim care order the issue is relatively, if not completely, uncontroversial (the latter is covered in chapter 8). In these circumstances the child becomes a *looked after child* and the carer must be assessed as a kinship foster carer. The problems arise largely where the arrangements are made informally, with the consent of parents, where the question is ‘when can an arrangement legitimately be treated as a private arrangement and when is it actually a local authority placement under section 20 of the Children Act 1989, when the child becomes a *looked after child* and the carer must be approved as a foster carer?’

**Case example**

Mr and Mrs N were finally acknowledged as foster carers eight months after their grandchild came to live with them at the age of two following maternal neglect associated with substance abuse. As far as the carers were concerned Children’s Services had placed the child with them, albeit with mother’s agreement – the social worker had told the mother they were planning to remove, and rang the carers, who had taken the child out for the day, to ask if they were willing to keep him. The carers were therefore astonished to be told, a week later, that Children’s Services regarded the placement as a private arrangement. Having sought advice from FRG they wrote to argue their case for being treated as foster carers, only to receive the response that kinship foster care did not exist in this particular local authority. They then went to Citizen’s Advice, who referred them to the Fostering Network, who told them about a solicitor with expertise in this area. Once this solicitor contacted the local authority ‘*everything changed*’. Eight months on they received a fostering allowance, backdated to the day the child moved in.

**Disputes and uncertainty about legal status**

Local authorities will stare you in the eyes and say ‘this is a private placement’. (Solicitor)

We’ve had right royal battles over section 20. (Solicitor)

You have to get very heavy with local authorities. You just have to force them, under threat of judicial review. (Solicitor)

Our carer interviews indicated that the initial legal status of the arrangements was rarely clear to carers, who often assumed that because the local authority had been involved in making the arrangements, they were thereby assuming responsibility for supporting them, only to be told subsequently that this was not the case and that Children’s Services had merely facilitated the placement.

Of 61 cases where the local authority had been involved at the time the arrangements started (but the courts were not involved) 46 (75%) said they had assumed the child was being placed with them officially. Only five said they thought it was a private arrangement while 10 were unsure. However almost two-fifths (38%) said they were not clear how Children’s Services
saw it and there was a clearly understood, shared position in less than a quarter (21%). (Hunt
and Waterhouse, 2012, p40)

This confusion was confirmed by the solicitors we interviewed:

There are lots of people who are caring for children where the status is completely unknown,
everyone is confused about the status of the children. They come to us because they’ve been
told to get one-off legal advice about a residence order and, of course, in order to properly
advise them we have to look at the legal status of the current placement. (Solicitor)

Often relatives come to us because they've been looking after a child for months or even
years. And the local authority have suggested to them for the very first time, ’why don't you
get a residence order, go and get some legal advice, we'll pay for a one off meeting with a
lawyer. And it's really only at that point that a lot of carers realise that the legal status of the
placement is unclear. Lots of local authorities in our experience argue that it’s is a private
arrangement, where it's quite clear it's not because of the level of involvement the local
authority have had with regard to the actual physical placement of the children, and also with
their continued involvement in relation to regulating contact and it is quite clear, to us, that
they are looked after children. (Solicitor)

Over half the professionals responding to the on-line survey said they had had experience of
such disputes.

Table 6.1: Experience of disputes about initial legal status

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<tr>
<td>Children’s Services staff</td>
<td>53</td>
<td>47</td>
</tr>
<tr>
<td>Other professionals</td>
<td>80</td>
<td>20</td>
</tr>
<tr>
<td>All</td>
<td>57</td>
<td>43</td>
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A number of explanations for these disputes were proffered by professionals. It was said that
social workers might not be sufficiently clear with carers at the outset – the need for clarity
was stressed by interviewees and was also evident in a number of local authority policies.

I think we should be much clearer and I think we're looking at the moment at doing some
work around being very clear with carers and parents to what actually the position is and what
you can expect, so we're looking at what we can do upfront about giving that information
clearly. (Local authority solicitor)

One needs to be very clear (about the legal status of the arrangement) even in the wording that
you use, because the layperson will take, if a child is to stay with you, do you agree with that,
yes okay I become a foster carer. And we do not want them thinking that because that is not
the true case. We must be clear about the words we’re using and the terminology. And to be
very clear to the receiving...kinship person, on what the situation is because the layperson will
take a child living with me who is not mine and they've got Children Services involvement ‘I
am a foster carer now....the local authority have an obligation to support the child’. It’s what
the layperson thinks. And we’ve got to be very clear to explain that that isn't the case whether
they've said it or not, because most people won't say it they just think it. Yes that has to be
made clear, straightaway. (Manager, CIN team)

(We need) clarity about whether it's a private arrangement or kinship carers are being assessed
as foster carers. There is a lack of consistency across the authority. (Area team manager, child
care)
In all cases, it is essential that the parents and the carers have a clear understanding of the status of the arrangements i.e. this is a private arrangement made by the parents supported by (the local authority) and that the child is not a looked after child. Parents and carers, the child, the social worker and other services will need to be clear about the level of support that will be provided. (Local authority policy)

It is important to be clear from the outset (in writing for the family) about the legal status of the placement. The child’s social worker should seek legal advice if there is any scope for misunderstanding. (Local authority policy)

Even if the social worker considers that they have explained things clearly, however, it was said that, in the stress of events, carers may not hear or understand what is being said.

In intake and assessment environments we are often working with families in crisis who are not really hearing what is being said at the time and are not asking questions as they are otherwise focused on the family issues. (Frontline social worker)

I will explain the situation but many find it difficult to understand or are so upset they cannot take in the advice even when spoken to several times. If written information is provided, families will very often not read the material given in my experience. Families usually ignore my advice to speak to a solicitor until formal care proceedings are initiated and they feel they have no choice. (Frontline social worker)

It was also reported that carers may agree at the time that the arrangement is private but then later deny that they have done so or simply argue that since, if they had not taken on care of the child, s/he would have had to go into local authority care, they should be entitled to support.

Many of our cases involve this, despite it having been made clear to the family and friends carers that it was a private arrangement. Some of it has also been where the family member clearly fetched the child from their parents, without the involvement of the local authority, but still wanted it to be considered as the local authority having placed the child there. (Manager, family placement)

We had an instance where because the social worker had allowed the birth mother the use of her phone and gave a lift to the grandmother, this was then argued that we had made the placement. (Service manager, family placement)

I have experienced exactly as described above and am always extremely clear with the family at the time of change for the child or young person that I have not brokered the arrangement. However, I find that despite being clear at this point in time family members continue to dispute this and state frequently that if they hadn't stepped forward the child would be in care and costing the local authority a fortune so they feel they have a right to financial assistance. (Frontline social worker)

Solicitors for family members at a later date trying to get back payment, and change what social care has already agreed with the extended family members. (Area team manager, child care)

Finally, sometimes the team handling the case initially may take one view of the case, while a subsequent team thinks it is incorrect.
Legally faulty decisions
Nonetheless, such explanations were in the minority. Many of the respondents to our on-line survey, as well as professionals taking part in the in-depth interviews, acknowledged that there were times when the local authority had made decisions which were not in accordance with the law.

This is my experience. Sometimes they are private arrangements and the local authority wasn't involved but other times it was a local authority that arranged them and they still maintain that they're not. (Kinship team manager)

Yes. We were aware that social workers were making such placements but once we had such information then maintenance payments were made similar to our foster carers’ allowances. (Manager, family placement).

As an IRO I challenged this as the local authority were clearly saying they would contact legal if the children were removed from grandmother and therefore to me this means this was not a voluntary placement. (Independent reviewing officer)

If they can get away with it not being section 20 they will, because they have less obligations then…I think there's lots of cases where arrangements are supposedly private but I would argue that (the placements) are more section 20, especially when I’m acting for the parent (Solicitor)

Our big area of dispute tends to be around section 20, is the child a looked after child… these are the areas that …we find ourselves in a battle over. (Solicitor)

I think local authorities are wrong in law a lot of the time and they’re just trying it on with everybody and if they get challenged they back down. I'd say it's very widespread. I think, yes, a lot of the local authorities are still like ‘well it's your responsibility, you're the grandparents, just get on and do it and if we can wipe our hands and not have to sort of financially sort anything else’. (FRG case advisers group)

I did have a care case where the local authority argued that it was a private placement and I just said ‘no plainly not, because here is the agreement that you entered into with them saying this child must be here. And once you’ve said this child must be here you're exercising your powers as a child protection agency and you can't say that was a private arrangement’. And they just went belly-up they said ‘yes of course, of course, we're only just trying, you know’, but of course it has big financial consequences for them. (Judge A) Absolutely, yes. (Judge B)

And regulatory consequences because if it's a private arrangement they're relieved of all sorts of scrutiny, which is actually very dangerous for the children concerned. They have no duties, that's the real problem. (Judge A)

Views varied as to the frequency of such occurrences from ‘occasionally’, ‘a handful’, ‘not mega-numbers’, to ‘a common complaint’. One social worker simply said ‘my local authority needs to abide by the regulations’. Similarly there were differences of opinion as to whether such faulty decisions were largely historic, diminishing, or very much a live issue.

Largely historic
We have had some cases referred, less recently I would say. (Designated manager)

I believe the statutory guidance has helped a bit with this. (Social worker)
These are usually historical arrangements made before we had a dedicated family and friends’ service. (Designated manager)

I have heard of families complaining about this in the past, over three years ago now. Since then I have written a policy on the department’s responsibility to family and friends and have held training sessions for child care teams. (Manager, fostering team).

**Changing practice**

Some informants reported being aware of change:

My experience is that people do not know the legal position and I have inherited cases where it is obvious the local authority placed children, even with written agreements. This is changing in my authority (Family support worker)

Previously we would always encourage parents to ask for support within the family first and would not consider this under the fostering regulations - this was open to challenge on a number of occasions. Practice has now changed. (Manager, family placement)

To be honest, a year ago there were a lot of families who were in that situation and it came to (Fostering Panel and we did do a lot of back payment. Researcher: So historically the sort of things we talked about in our research you were aware of here?

Yes. But we’ve moved on from there. The decision making I think is, it's clearer, it's far more transparent. (Frontline manager)

I think in the past (local authorities) have done that quite a lot. I think we're doing it less now because I think the case law is much clearer. I think that people are more geared up now to actually think about that ‘is it a looked after situation or isn’t it?’ Whereas I think in the past probably people didn't really ask the question they just said ‘well this is families looking after their own’. And that is very confusing for families, I can see that, and obviously that's what carers have told us as well. It's very ambiguous if we're saying ‘can you take them’, but then we're having nothing to do with it. I mean what kind of double message is that giving people? (Designated manager)

Other local authorities were reviewing/considering reviewing their procedures:

I did ask our legal advisor, I said just do a double check for me will you about whether or not our arrangements, whether, you know, they're ‘Munby proof’²⁹, as I put it. Came back with a nine page report which I thought ‘oh my goodness me’ and I think that there are some, certainly our internal stuff we just need to still tighten up to catch up with case law and regulations. I think fundamentally, you know, the principle is there and, touch wood, we haven't been judicially challenged around it because I think our intent is there and if we find some anomaly that comes out of the woodwork we tend to put it right. (Designated manager)

That might be something that we do need to refine a bit further, that might be one of the bits we're reviewing, the question is have we actually facilitated that placement, have we been involved in saying ‘look unless you make arrangements for, you know, Johnny to go and live with his grandma or his aunty then he's going to need to come into care because he can't stay at home’. (Designated manager)

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²⁹ The interviewee here is referring to the judge - now President of the Family Division - who delivered the seminal decision (popularly known as the Munby judgement) in the case of 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 4 (See Appendix B)
There were even faint glimmers of change in the cases reaching Family Rights Group

One of the things I think I might have seen is the local authorities changing their policies and I think it's the family and friends care stuff, statutory guidance stuff, and sometimes I think they're making it more lawful but leaving the old cohort on very more unfavourable conditions. I'm not really sure if that's true but I think I had a couple that suggested that. I think there's just a slightly raised awareness in local authorities that they have to deal with this maybe when you bring it to their attention (FRG case adviser).

Current issue
The issue, however, has by no means disappeared:

I think there is, yes, absolutely there's still issues around carers not being treated as family and friends foster carers, not receiving the correct entitlement and needing to be supported to make that, to formalise that, yes. (FRG case adviser)

An example that we recently had was that a family member was approached to take a youngster which they agreed to and the social worker said it was private fostering and it came in to us and I oversee private fostering as well, and we started to just dig a little bit deeper and we had to say to the social worker 'if the mother turned up and said “I want my child, I'm taking my child back”', which obviously is the right to do in private fostering, ‘what would the authority do’, and they said ‘we'd seek a court order’. I said 'that's not private fostering then, you actually placed that child and there's a safeguarding plan around that child that would actually say if somebody comes to remove the child then we would take action, so therefore it is a Reg 24 arrangement, so we need to look at it from that perspective'.
(Manager, family placement)

I have been a social worker for 14 months. I have experienced this directly on two occasions. Where indeed I have been advised by management to 'facilitate' a placement rather than proceed through official levels that may provide ongoing funding. I have also experienced families that have contacted me where the family had understood they were being placed and enquired about funding to be told the very scenario you describe. If I also add the family have been in my experience told this is being facilitated by us rather than formally placed.
(Frontline social worker)

I think there's some confusion around private fostering and connected persons, which seems to be becoming more common. I'd say, we've probably had a couple of cases in our team where there's certainly been issues around that and some of that's around that kind of fine line about whether in a crisis is a child placed by a social worker or are they placed, you know, because mum said I think this is kind of... There's certainly a grey area there. Because often a family member might say well ‘I had no choice, you told me if I didn't find somewhere for my child to go you were going to remove her’ so they come up with grandma and then sometimes social services say ‘well no that's your arrangement, we didn't place the child’.
(FGC co-ordinator)

Indeed some solicitors reported that they were having to repeat the same arguments with the same local authorities over different cases but each time the local authority backed down on the individual case, without practice overall changing.

You run the same arguments and query the same cases over and over again…the Birmingham, Manchester, Southwark judgements…but when you start challenging it, … suddenly we get the agreement and then we can't take it any further…so next time, (with the) same local authority we run the same argument again. You secure public funding for a
judicial review and write the letter before action and that's usually when local authorities say 'oh okay yes fine and we'll pay them the back payments'. (Solicitor)

We have had a couple of situations where it hasn’t gone to judicial review only as the local authority has backed down, agreed section 20 and they’ve backdated payments in one situation. You get a couple of those and management try and get their heads round it a bit more but we still have quite a lot of embedding to do…that’s why we did the management improvement last week and a couple of other things around Reg 24 placements. (Manager, kinship team)

The Bristol study (Selwyn et al, 2013) also refers to cases where social workers had asked kinship carers to take the child or orchestrated the move but still claimed it was a private arrangement.

**Why are legally flawed decisions made?**

Professionals suggested a range of reasons for faulty decision-making.  

There is sometimes ambiguity in terms of the meaning of a placement being brokered. Sometimes the confusion is exacerbated by case responsibility subsequently transferring to another team or even another social worker. Sometimes the procedures of the local authority may be lacking clarity about this area. Sometimes, while the policy is clear, individual social workers may be uncertain about its contents. Sometimes there seems to have been a financial motivation for senior managers encouraging the placement to be regarded as an informal one made between family members. (Principal social worker, family placement).

**Lack of clarity in law or policy**

Some people thought the law and/or local authority policy were insufficiently clear or that it could be difficult to apply them to complex and changing situations, using words and phrases such as ‘a fine line’, ‘a judgement call’, ‘a grey area’; ‘a bit of a minefield’; and even ‘a bit of a nightmare’.

It would be nice to sort out that section 20 thing, when is a placement a placement? I think that's quite ambiguous. The law is really complicated. I think most placements you can argue are made with the local authority and that puts a difficult position on many people. Actually I think you're making the placement not at the point you place with the carer but the point you're with the parent deciding to remove the child, which makes it all very difficult because you're not even there with the carer yet so their views aren't being ascertained, and I just think it's really difficult. So some clarity around that would help everybody. That would be good. Or just something that could be provided to people that would say 'look this is the type of placement it is, if you disagree, you need to let us know, so we can manage it'. It would be really helpful to have some sort of clarity around all that, or even just clearer guidance, like statutory guidance would be useful wouldn't it, just on that. (Local authority solicitor)

I think this is an area of law that needs unravelling a little bit more about what's a private arrangement and what's a public arrangement. (Solicitor)

As a lawyer even I am not clear about either the law (I probably should be!) or policy. (Solicitor)

I just think the whole area is, you know, very complex, which is why making or writing any procedure was actually very, very difficult because cases don't neatly fit into a certain pathway. (Designated manager)
It’s clear on paper. When you try applying it in practice it's not always so clear. (Kinship social worker)

In the more obvious cases I am clear. However there is such a variety of ways children can come to live with family or friends, it is not always obvious. (Social worker, family placement)

I think the fostering regulations and all the guidance associated with that and the standards, it's a bit of a blur there, a big mush of everything. (Social worker, family placement)

I would probably say that our policy isn't clear on that...there are family and friends policies, I think they're wishy washy. The terminology used is a bit vague and it's a bit ambiguous, and it's actually confusing, to tell you the honest truth. And if I was to present that to a family and friends carer I think I'd probably have many more questions than I would be able to give answers to in terms of providing information that's relevant and clear, I would certainly question that. So I think first the policy needs to be clearer. I know there's been four or five pieces of case law over the last 10 years, but I still think the section 20/section 17 thing is very, very vague still. When I read (our policy) a number of months ago I remember thinking ‘oh I'm not very clear about that, I don't know what that means’, and it was this word ‘facilitating’. That was vague to me and I thought ‘what does that mean?’ And I think for me that statement wasn't very helpful because you can facilitate a move from one house to another if you give somebody a lift in a car. And I think that probably would be helpful if that was clarified. (Social worker, family placement)

It should be noted, however, that not all informants thought that the law was unclear. In the memorable words of one judge:

It’s the duck judgement, isn’t it - if it looks like a duck and quacks like a duck...! (Judge)

I think (the law) is quite clear, very clear. The judgement in Southwark is very, very, clear - if there is involvement from the local authority in the placement. You have to look at the involvement at the time of the placement in terms of the arrangements and then the involvement subsequently in terms of regulating. The degree to which the local authority policies the arrangement. And often you find that even if a parent has made a telephone call to a relative to say ‘can you please have (the child)?’ it’s because of the threat of proceedings. What is the alternative? But for this placement where would the child be? Those kinds of issues. (Solicitor)

It’s a really simple area of law. There are basically two controlling cases, it's not like you have to be a lawyer to understand it, it's really basic. (FRG case adviser)

One lawyer made the point that although the law itself might be clear, it needed to be brought together in one coherent document, setting out all the relevant judgements:

Somebody needs to get the various authorities that have come through, things like, you know, Southwark, Merton, Kent, into some coherent, I mean it's the sort of thing the Law Commission should be doing isn't it, saying ‘well look they've got these strands and people are wasting a lot of time having to interpret the previous judgements, let's just get some guidance notes’. (Solicitor)

30 Southwark LBC –v- D [2007] 1 FLR 2181 (See Appendix B)
Social workers' lack of understanding of the law

Such a coherent document might be of great value to social workers, because for many, perhaps most, informants, the key issue was not the law itself but social workers’ imperfect grasp of what the law said.

I don't think they understand the guidance, I don't think they know anything about the case law. I think one thing I would say is there is a huge training need for all social workers, from the newly qualified right through to the most qualified and I don't think just because they're 20, 30 years qualified that they're any more knowledgeable. I think they've probably just got a bit sharper about how actually you work the system or you understand the processes, but I think with all these changes now I think there's an even greater need. (Social worker, family placement)

Cynical me says that it's about money, the other, the non cynical part of me, says that sometimes it's about ignorance, so like social workers don't understand what needs to be a looked after child and what doesn't and I don't like to admit that because I just think actually that's your bread and butter, social workers should understand those things. But I do think that often, from some of the conversations I have...The social work teams call me to say ‘what do you think, what is the situation?’ Even from managers sometimes I think there is a lot of ignorance when it comes to kinship arrangements. I've put together a training programme for all social work staff which is on the calendar for this year’s training, because you need to address the front door. It's the front door that's the real problem. Frontline training should be compulsory. I think people should have much clearer training about the legalities, you know, particularly with all the new case law that comes in and that affects the way decisions are made, I think that needs to be a priority for local government. (Manager, kinship team)

I have worked in the field of kinship care for many years. In my experience this is still an area of confusion among practitioners. I have advised social workers on a number of occasions when I did not feel that it had been clear to carers that it was a private arrangement. (Kinship social worker)

Some questioned what guidance social workers were given on the law either in general or in relation to individual cases.

I'd like to know how often or do they receive legal updates from their legal department on the various bits of case law that determine their decisions in their particular areas of expertise. Because you talk to some people about the various court judgements and all the rest of it and as social workers they don't seem to have had a grasp of it. I appreciate they're not lawyers, but it's got a major effect on the people that they're working with and I want to know ‘has your legal department disseminated even a summary of this to say we're going to have to change our policies because of this case, from now on this is what you need to tell people’. When I've told people about it they've gone back and spoken to the social worker and they've said ‘oh no they told me that I'm talking rubbish’. It's extremely insulting to tell somebody what the law of the land is to be told by a social worker ‘no that's not the case’. (FRG case adviser)

In lots of cases they haven’t even issued the pre-proceedings letter to the parents so there won’t be a lawyer allocated. There’s not even minimum legal input. (Solicitor)

The following interchange during an interview with a group of frontline social workers illustrates the lack of shared understanding about the issue.
So we’re saying the child can’t stay at home. But why is seeking a family member that’s prepared to take on that support then incurring responsibility of the local authority to foster them, I don’t...

Because it’s our reason for them not being able to stay at home, we’ve said they can’t stay at home.

Researcher: would that be regarded as a private placement?

I think that would be.

Must be, yes.

It is a private placement.

No. It would be Section 20.

No it would be a private placement.

You see I don’t agree. We’re on tricky ground if we come in and ask for safeguarding conditions on top of that, that’s...

I don’t think there is such a thing as private and informal. I think you either have private fostering, a different thing.

That’s away from the family.

Well no within the family.

Or you have fostering. I think you’re right, I think that when we are involved in placing with family we enter into a contract with that family, however limited that may be. I think once we’ve been involved in that kind of assessment we have come unstuck, local authorities have really come unstuck when they say okay over to you now, because it’s not (a private arrangement. (Frontline social worker group)

Local authority policy documents, where they contain any information about the criteria for differentiating between section 20 and informal placements, are not consistent. One policy, for example, only refers to an informal placement not being possible when a child has been removed under statutory powers: interim care order, care order, emergency protection order or taken into police protection. Another is vague:

If the support provided means that the Council assumes a level of responsibility for the placement that is akin to the level of responsibility that it would have if the child were looked after, consideration needs to be given as to whether the child needs to be looked after and the carer assessed under fostering regulations. (Local authority policy)

Another, while unusually, setting out the criteria in some detail, seems to suggest two different considerations: the degree of local authority involvement and whether the child would otherwise need to be in local authority care.

Where the Local Authority have played a major role in the making of a placement with family and friends, the child should be treated as being provided with accommodation by the Authority, unless they have come to a different agreement with the carers.

Practice Managers must consider the status of the placement:

Does the child meet the threshold for accommodation? E.g: if this family/friend being considered were not available, would you be seeking an order/foster placement to safeguard the child? Is there a significant harm issue? If not, CYPS are facilitating a family arrangement and not making a S20 placement... If yes, this is a S20 placement. (Local authority policy)

Yet another appears to be legally incorrect in that it suggests the criterion is whether the local authority needs to share parental responsibility (which section 20 does not confer) and that legal advice may be necessary to determine whether the arrangement should be section 20 or whether care proceedings should be instituted.
Social workers, of course, will not necessarily be dependent on such policies for guidance about the correct approach. There may be procedural handbooks and/or training. Our on-line survey asked respondents whether they had had any guidance on the law surrounding section 20. Just under half of the informants working directly for Children’s Services (41; 48%) said that such guidance or training had been available for some time. A fifth (17; 20%) said that this had only happened recently while almost a third (27; 32%) said this had not been made available to them.

Respondents were also asked ‘Are you clear about the law and the local authority policy on this?’ The majority of Children’s Services staff (66 of 85; 78%) said they were. This applied to all but two of those who had had some training/guidance from their local authority (56 of 58), although one person admitted that it had only become clear recently:

Through internal training on the law. Previously I was confused and think some of the arrangements made in the past should have been counted as section 20 when they were not. (Social worker)

A further 10 informants who had not had such input also said they were clear on the matter, often commenting that information was available elsewhere, either through basic training, attending conferences, discussions with colleagues, or the internet.

Nonetheless, over a fifth (19; 22%) admitted to some confusion. One social worker, for instance, said there had recently been some ‘training’ but it was only ‘a brief meeting between legal and a handful of social workers (which) left many social workers still unclear of any of the arrangements’. As a result it ‘still remains a bit hazy’. This person also commented that ‘supervisors or managers are themselves not fully sure’, a perception borne out by one team manager who said s/he would welcome further training so as to be ‘absolutely clear about when a child becomes section 20 instead of section 17’.

Another referred to difficulties obtaining advice from their manager:

I still feel that there are grey areas, for example due to the complexity of the case I am currently involved with. It is only after the fact that I have been given a document to read, and had to seek advice from our legal department. My manager has not provided adequate information even though I have sought her out in this regard on numerous occasions during the process of my involvement with this particular case. (Frontline social worker)

Not just ignorance

Nonetheless, despite the popularity of the ‘mistake through ignorance’ interpretation and the very evident need for comprehensive training for frontline social workers, some informants thought this wasn’t the entire explanation. These professionals tended to attribute responsibility partly, or solely, to a deliberate strategy, instigated by managers, not to make children looked after, in order to keep LAC numbers and local authority costs down.

I think a lot of it is ignorance. Well, either that or management taking decisions and social workers who are working directly with families realising that actually this poor woman has been dumped on. They’re often very sympathetic, but they don’t make decisions, do they? (Solicitor)

I think what we’re seeing now is that social workers and their managers are under so much pressure to reduce the numbers of LAC, get everything out of the system, so when they’re
faced with the real power imbalance…kinship carers are powerless, aren’t they, and they’re kept in ignorance. (Children’s guardian/independent social worker)

If they can get away with it not being section 20 they will, because they have less obligations then…. (Solicitor)

Local authorities try it on. I think they expect families and solicitors not to be aware of the case law. It’s all about money. They don’t want to pay. Local authorities are heavily squeezed, so it’s not a surprise. (Solicitor)

Strikingly, this interpretation was not confined to practitioners outside the local authority:

Sadly this seems to be a direct result of ignorance—or budget restraints. Ignorance in the sense of not knowing when a child is in fact a looked after child and budget restraints in the sense of not making a child a looked after child and trying to secure a placement more cheaply. (Manager, kinship team)

Sometimes social workers aren’t clear it’s a Reg 24, they don’t deliberately set out to do this, they don’t recognise it as such. There are other times when we feel it is pushed as a private arrangement by social workers and their managers and it clearly is not. (Kinship social worker)

It’s very dependent on who manages (the social worker) and then if they’re getting a steer from above saying ‘we want fewer looked after children’ they’re not going to put children in these processes are they? (Kinship care worker)

It’s paperwork, it’s money, it’s visits…All the social workers that I deal with, it’s ‘oh we need to save money we don’t want to bring this child into care because we want to reduce our number of looked after children’. (Kinship social worker)

Indeed some of the social workers interviewed also admitted to acting under pressure not to admit children to care, as indeed did one manager.

I have been advised by management to ‘facilitate’ a placement rather than proceed through official levels that may provide ongoing funding. (Frontline social worker)

I have worked in authorities where it’s just we are not taking children into care, we do not do that. (Frontline social worker)

There’s a culture that says you look within the family. The culture that says coming into care can potentially be abusive. The culture that says I’m not going to go to my line manager and say I want foster care. Because ultimately that’s pushed back because of the implications for the department and the costs and whatever. (Social worker)

There is a financial implication and I’m not going to sit here and say there isn’t, and it’s huge pressure because there is no money. (Social worker)

Social workers probably feel quite confused about it as well, because obviously you have got the case law and then you’ve got the general feel from the money aspect and then their own line managers and how that’s managed? Because they’re the most difficult ones. (Frontline manager)

Faulty decisions, some informants suggested, are most likely to happen when arrangements...
are made in a crisis, when it is not possible to undertake the enquiries necessary for a Regulation 24 assessment. Indeed one suggested that the number of dubiously legal ‘private’ placements had increased since the new, stricter, regulations had come in.

This is very common out of hours when a child goes to Gran as an alternative to being looked after and where it is not possible to undertake a Reg 24 assessment. It can be at the suggestion of a parent. In many instances the child returns to the parent the next day. The problem arises where this does not happen and the local authority puts restrictions on the contact. Then it is a question whether the child is in effect fostered. (Service Manager, family placement)

I think the private arrangements have probably increased since the new Fostering Regulations. Because it is almost impossible to do a Reg 24 assessment out of hours. These emergency placements that can happen over the weekend, it’s almost impossible to get the information. And there is always a shortage of foster carers who are prepared to undertake out of hours work. So I think that where in the main these private arrangements take place is over the weekend when the out of hours worker sort of goes to the relatives and or asks the parent, ‘who would you have, and we could put them into care or do you know somebody who you would like to place them with’. And they say ‘I think my mum will do it’. So I think it’s the parents made the arrangement but what I suppose would be that if they hadn’t we might have taken an Emergency Protection Order. And then you find what happens the following week or the week after is that the social worker goes around and makes a few conditions about the contact and then it becomes a bit like a section 20 but it's not. And that's how they happen. And once you start on a process it's actually quite difficult to sometimes change it. They're the ones that happen. They're not the planned ones they're the very, very emergency unplanned ones. Researcher: In that scenario, would the social worker then go along and change the status of the placement or would it be left as a private one?

Well difficult you see again, if it's working they tend to leave well alone. If it's not working and there’s a threat of the children being returned to the parents then it is possible that we would try to legitimise the placement by taking out proceedings and approving the family as foster carers. (Designated manager)

While the regulations may be playing a part, however, it is abundantly evident from the data presented earlier that the issue has not been created by them, since disputes about the legal status of the arrangements were occurring well before the regulations changed. Nor does it only arise where arrangements are made in an emergency. Family group conference coordinators spoke of similar scenarios arising at conferences convened while the child was still at home:

We try and insist the referring social worker provides the information (about the legal status of the arrangement) before the family have their private time (in a family group conference) but the quality of this varies. A major gap is in all the placements not resulting from care proceedings, where local authorities are reluctant to offer much and do not want to admit facilitating a placement. But how can you organise a family group conference following a social worker referral to prevent care and then claim no responsibility for a resulting placement? (FGC co-ordinator)

Take the one I've got currently going on at the minute. There was initially a private arrangement between the mother and her brother for him to take care of the child, who has severe ADHD. That arrangement has broken down but the social worker was going back to the brother to see if he could continue, resume the role that he had and to look at the reasons why it broke down, but when I mentioned that actually if the brother said yes again the local authority would need to then assess him to determine what they could provide in terms of financial assistance, she told me that her manager would be saying ‘no we're not going to pay any money, we won't be meeting that, that's a private arrangement’. And I said, ‘no, it was a
private arrangement, the local authority are now involved, there are child protection issues, you're talking about if things deteriorate you're going to court, it is no longer a private arrangement between mother and brother, you're in the mix’. And (the social worker) was just saying ‘but what am I supposed to do, I know if I go back to my managers they're going to just say no to pay any kind of money’. And then I asked her to speak to the kinship team to find out what the local authority’s policy was if the brother came back and said yes he would take care of the boy. So yes, it still goes on. (FGC co-ordinator)

Some social workers referred to being advised what words to use when they were involved in making arrangements, while one spoke of ‘engineering’ private placements.

Due to the responsibility being placed on local authorities when having a hand in placing a child with friends and family carers, we had previously been advised not to use the words 'place' or to take part in the transportation of the child or their belongings so if a family challenged the local authority responsibility we worded it that we did not place but instead this was a decision made by family members. (Frontline social worker)

I have experienced in the past that there will be a certain degree of planning to engineer families to make their own arrangements to avoid Regulation 24 placements. (Frontline social worker)

While both the above informants indicated that practice in their local authorities had now changed, a recent example of such 'stage management’ was related in a group discussion with FRG case advisers.

The one that I had last week where they invited my caller to a meeting, which she thought it was just a family meeting and it was actually the initial child protection conference for her granddaughter, and then they kept saying all these dreadful things about her daughter and then they said to her daughter ‘look we're going to provide foster care for your child unless you can find somebody else to take her’ So the daughter starts crying, grabs hold of her mother and said ‘will you take my daughter’, and she said ‘well okay’ and then the local authority said ‘well that's fine, it's a private arrangement and that's it’. But it took place in the child protection conference. So I drafted a letter for grandmother and sent it off and we're waiting for a response.

Researcher: So how do you argue that one?
Well it was a placement. They invited her to the meeting, they said that the child couldn't go home with mum, they've said that they're going to initiate care proceedings. They had a duty.
Exactly. And grandmother is not backwards in coming forwards, so she's decided to fight them on the beaches, because she says that she feels it was actually stage managed. Of course it was.
Because they sat in front of her daughter and said ‘well is there anybody else that could have this child or this child will go into care’. Grandmother knew nothing about it until they invited her just to a family meeting. So they completely manoeuvred that family into getting what they wanted, yes, they still made her subject to a plan because mum is going to have contact with her, but she's living at gran's.
They over exceeded their authority really in that, you know. (FRG case adviser)

Determining the direction of travel
All our data indicates that, in many local authorities, the law in regard to the use of section 20 has been incorrectly applied. While the issue has by no means disappeared, there is also evidence that practice is changing, so that arrangements which would previously have been
regarded as an informal arrangement made within the family, which the local authority merely ‘brokered’, are now being treated as section 20.

There will be carers that will end up being foster carers because of the new legislation that's come in, that I think in the past would have remained outside that system. I think recent changes in legislation...have meant the child gets labelled.

Researcher: What changes are you talking about in particular?
Children that are cared for by family members that now become foster carers, so the child becomes looked after.
It's Care Planning Regulations. The children we're talking about previously wouldn't have had the LAC statement, whereas now they do. (FGC co-ordinators’ group)

If this trend continues it seems likely that in an increasing proportion of kinship care arrangements with which the local authority has been involved the child will be acknowledged as ‘looked after’ from the outset and the carers will be required to be assessed as foster carers.

In one sense this is to be welcomed since it should result in families receiving support services as of right rather than at the discretion of the local authority. It was notable that in our national survey of carers 57% of those who had never been kinship foster carers said that they would have liked to have been. The reasons most commonly given for this were that they would have been better off financially or they would have been better supported (Aziz et al, 2012)

Nonetheless it also raises a number of questions as to whether this is the right way to proceed. It draws families into an alien system designed for the assessment and regulation of mainstream foster care, which makes only minor adjustments for the very different circumstances of kinship arrangements. Thus carers who are already stressed by the events leading to them taking on care have to cope with the additional stress of being assessed and monitored, with the ever present fear that the child will be removed/will not be placed. Moreover, since, as we shall see in chapter 9, foster care status for kinship carers is typically a transitory one, a staging post to a special guardianship or, less commonly, a residence order, it could be seen as somewhat excessive and wasteful. The assessment process for kinship foster care absorbs a considerable amount of local authority resource, which might be better spent on supporting a wider range of kinship families. It also creates dilemmas for local authorities when carers do not meet the standards for approval as foster carers but the arrangement is still considered to be in the child’s interests, typically resolved by making a private law order (chapter 7).

I think that there is not enough recognition that most family and friends carers do not want to be foster carers for the child. They want to care for the child, they want to receive appropriate practical and financial support but they do not want to be foster carers....There are times when the fostering service is asked to complete fostering assessments when there is no intention for the carer to become a long term foster carer for the child. This is hugely time consuming and detracts from the real issue about the needs of the child...The vast majority of our temporarily approved carers go on to apply for SGOs or ROs, they do not want to be foster carers. (Social worker, family placement)

I'd like children to be placed within families and that there be a way in which they're not Section 20 but we can still support them.
Yes.
Because there isn't a Section 17 budget, long term that's difficult. Residence order allowance is minimal so it's a big commitment for families.

Oh yes, I'd echo that, I'd echo that.

Because we know it's best, but then how can we really support, it's difficult, because otherwise you've got that whole framework of a child looked after which is very intrusive.

Researcher: So it’s an inappropriate framework but it also is a way of getting support to families that need it?

Yes, it's getting support but it's getting support in an intrusive way, which I don't think is the right way for the child.

(Frontline managers group)

This direction of travel also appears to be in conflict with the emphasis in local authority policies on avoiding making children *looked after* unnecessarily. For example

> It is a priority of (the local authority) to reduce the number of children who are in care. As a result, wherever possible, the service will seek to prevent children and young people entering care, provided that to do so is both safe and demonstrably in the best interest of the child or young person. (Local authority policy)

> Children should only become *looked after* if there is no other way to safeguard them or promote their welfare. (Local authority policy)

> (The local authority) will...facilitate and support families to make their own arrangements to care for children and to avoid the need for children and young people to be looked after by the local authority. (Local authority policy)

> The family and friends policy supports processes for children, who need to be cared for away from home, to be cared for by carers from within the family and friends network, and for the child not to become a *looked after child* unless legal proceedings are essential to safeguard the welfare of the child....Where it is safe to do so, arrangements made by the parents for a child to live with, or continue to live with, a relative or friend on a private / informal basis as a child in need will be rigorously explored and supported, before consideration is given to taking a child into public care. (Local authority policy)

As one local authority solicitor pointed out, case law is running counter to these imperatives:

> I think judges are looking at individual cases based on the best interest of the child before them and I think inevitably with the system as it is it's creating an incentive for the courts to look for children to be *looked after* because that ensures the highest level of safeguarding for that child and it also ensures the highest level of material provision. So to some extent the way the system works it creates incentives for courts to push children in one particular direction, where a lot of these children on welfare grounds, taking out everything except the support out of the equation if you like, probably don't need to be in the *looked after* system. (Local authority solicitor)

Another consideration is that if the trend continues there will be an increasingly large gulf in the support provided between cases where the local authority was involved in making the arrangements and those where the carers stepped in to protect the child. While, as documented earlier, there were different understandings among our social work interviewees as to when an arrangement *should* be regarded as a local authority placement, there seemed to be a fairly common view that where the child was already with the carer before the local authority became involved, then it was a private placement, summed up in this succinct comment by one social worker ‘*If they find it first then we don't kinship place*’.
The following interchange during an interview with a group of frontline social workers demonstrates this interpretation of the law.

Young man of 11, neglected by his birth mother and father, picked up by grandparents under a residence order. Both grandparents die within two months of each other. Uncle comes on the scene and says I'll look after this boy. A mini assessment of sorts and it's family and this culture comes in that says let the family sort it out, if you haven't got any child protection concerns let the family sort it out. You'll need to go down the Child Benefit access route, you'll need to go down the Family Working Tax or Family Tax Credit route, and you want this then do it and we're going to close (the case), it's a family matter. But do we, going back to the conversation five minutes ago, do we turn around and say we'll assess you as a kinship foster carer... And back him up with all the support? We haven't placed him there? Did he put himself forward first or did you contact the uncle and say can he live with you? No, no, he's still in the house where his grandmother died and the uncle’s moved in. So we didn't place him.

Researcher: Is that the key point then?
That's the difference, that's the difference, yes.
That's crucial, that's crucial.
Who came first, whether Social Care stood back long enough for somebody... Then that's a private. But if you'd moved him and said we need to find him a carer and then placed him with the uncle, then that would be us placing. Or if no one had put themselves forward and then you'd contacted family.
Yes. (Frontline social worker group)

Yet the question of who acted first is surely irrelevant to the question of the needs of the child or the carers for support.

Not all local authorities are going down this road of using section 20 more extensively. And, at the risk of being judged naive, we do not think that all those who resist this trend are doing so merely to keep their numbers of looked after children down or to control their budgets. The manager with designated responsibility for kinship care in one local authority, which has long had a very clear policy of trying to use section 17 (children in need) wherever possible, rather than making children looked after under section 20 (accommodation), convincingly explained their approach partly in terms of family empowerment, partly in terms of the disadvantages to the child, but also, significantly, that the arrangement could be adequately supported through their well-resourced kinship team, whose services were available to all kinship arrangements which came about because of child protection concerns. Unusually, this service, which is located within family support, was first set up to support informal arrangements. Responsibility for kinship foster care and private law orders, which are also now within their remit, was a later accretion.

We have very few section 20. I think I've had two in the last year where they've had to give me a really good reason of why does this need to be section 20 and why aren't we doing it as family support. (As an authority) we've chosen not to go down that route....I personally don't feel it is proportionate. It's right for some children but it doesn't sit with the philosophy of empowering and enabling families to be able to care for their children, in my view....Do these children, you know, really want to have looked after children reviews?

The authority decided (several years ago) that they wanted to really embrace the support to family and friends carers and what seemed to be happening was that it was all sort of all
drifting around the old Reg 38\textsuperscript{31}, and therefore the decision actually for children to become *looked after* was starting to be a resource led decision as the only way that you could provide financial support to families. And it was just felt that we shouldn’t really need to stick a *looked after child* label on a child in order to be able to access services. So our approach was around sort of no financial detriment and so that it didn't matter whether or not a child was *looked after* with kinship foster carers the children’s needs were the same and that actually there shouldn’t be any financial detriment to go one way or another, and so that was the underpinning principle. (Designated manager)

This informant was a little concerned as to whether their approach was case law compliant but said they had never been challenged because of the level of support they were able to offer.

I do get a little bit twitchy every now and then about the stuff around the case law, but my experience when I've looked in detail at the authorities where there have been issues around case law is that they're often authorities that haven't devised any other way of actually supporting these families. It seems to me that in general the push from carers and pressure groups about that issue is because people lose out by not having the children in care. Whereas we've got quite a structure around support of the section 17 arrangement so it's the same regardless, so that's the difference. (Designated manager)

S/he was also aware that since support for informal carers was discretionary the budget for the service could be slashed. However so far this has not happened.

The problem with that is that wherever you've got discretion, you know, there is the discretion to do less rather than more. We've been going through this last round of looking at where potential savings are and we've had to think the unpalatable thought - 'well actually you could look at these levels of allowances, you could look at some reduction around that, it's the discretionary bit, you could look at doing those things'. But our advice to members is 'okay you could do this and this is what your savings would be, but the likelihood is that if you start to mess with what we do under section 17 they will come in through section 20 because we will get the legal challenge, you will still end up with your *looked after children* rising, which means that actually, you know, the costs will be higher. And also, it's actually not best for children if you look at the equalities impact that it would have on some of our most vulnerable families, then you know, why would you go there'. So we did put that as a proposal for our senior managers to consider when they were looking at those options, we gave it as an option, not as a recommendation, and I have to say they didn't take it, they didn't go anywhere near it. Now whether or not in two years time they'll go anywhere near it, because we did have a bit of a wobbly time where I said oh my goodness me. I've been really proud of the fact we've got, because I do think it is, quite a Rolls Royce service that we've got at the moment, I mean it's not perfect and it certainly does give some headaches, but I do think it's right for children and families and I do think without it we would have a lot more *looked after children*. (Designated manager)

**Carer understanding and choice**

One of the reasons that local authority decisions with respect to the legal basis of a kinship arrangement are not challenged more often is that new kinship carers are extremely unlikely to be aware of the niceties of the law. In the carer survey (Aziz et al, 2012), where the local authority had been involved at the time the kinship arrangement came about, 76% of carers

\textsuperscript{31} A regulation governing emergency placements of looked after children with kinship carers, now replaced by Regulation 24 of the Care Planning, Placement and Review Regulations 2010
(346 of 448) said that they did not have enough understanding of the legal position to make an informed decision. Few of the carers we interviewed face to face reported being given any information about the legal position or the implications of that for support and almost no-one said this had been set down in writing. Worse, some carers who did ask about being foster carers reported being given inaccurate information.

They said it was unnecessary because we already had the children

We were told if we were approved we might not get our grandchild but might have to take other children instead.

We were told grandparents couldn’t be foster parents.

Examples of such misinformation (which are also reported in the Bristol study [Selwyn et al, 2013]) are still being reported to Family Rights Group.

I had a grandmother who said that her social worker said to her that you couldn't be assessed as a family and friends carer because you're a grandmother and so you're outside the category, it's got to be up to grandparents, they're expected to look after their grandchildren, you apply for a residence order. (FRG case adviser, February 2013)

The few carers we interviewed who said they had been signposted to independent sources of information and advice were typically directed to solicitors who, as we discuss in chapter 10, may vary in their understanding of the issues.

The government guidance on family and friends care specifies that:

Information should be provided about the meaning and implications of different legal situations, the rights of carers and of the children’s parents, and the nature of decisions which family and friends carers will be able to make in relation to the child. (DfE, 2011, para 4.13)

FRG’s analysis of local authority policies, however, found a mixed picture. Although the majority of policies provided some information about key legal statuses, there was ‘a substantial failure by some policies to take full account of and explain relevant case law’. Hence, it was concluded:

Unless policies improve in this respect many carers or potential carers are likely to remain confused and unaware of the legal implications of their arrangement. (Roth et al, p28)

Similarly, while 40% of policies gave full information about sources of independent advice 56% did not cover this at all.

Our on-line survey of professionals therefore posed three questions:

1) Are carers routinely given any verbal or written information about the legal status of the arrangement?

2) Does that information explain the implications of that legal status for the support they might receive?

3) Are carers routinely advised to seek independent advice?
In relation to the first question, the vast majority of Children’s Services staff indicated that carers were supplied with information about the legal status of the placement, with 63% saying that they would receive written information, although a further third said that this would only be verbal and 5% neither (table 6.2).

Table 6.2: Are carers routinely given information about the legal status of the arrangement?

<table>
<thead>
<tr>
<th>No</th>
<th>%</th>
<th>No</th>
<th>%</th>
<th>No</th>
<th>%</th>
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<td>4</td>
<td>5</td>
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</table>

A somewhat larger proportion (12%) said that the information would not explain the implications of legal status for support, while 7% said it would not explain the implications for both financial and non-financial support. Nonetheless the majority said it explained both (table 6.3).

Table 6.3: Does the information explain the implications of legal status for support?

<table>
<thead>
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<th>Financial support only</th>
<th>Neither</th>
<th>DK</th>
<th>(N=)</th>
</tr>
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<tr>
<td>No</td>
<td>%</td>
<td>No</td>
<td>%</td>
</tr>
<tr>
<td>Children’s Services staff</td>
<td>3</td>
<td>4</td>
<td>2</td>
</tr>
</tbody>
</table>

Finally, over two-thirds of Children’s Services informants (58 of 85; 68%) also said that carers are routinely advised to seek independent advice, most commonly from a lawyer (cited by 42 of 85, 49%) followed by an organisation advising kinship carers such as Family Rights Group or one of the grandparents’ organisations (32; 38%). Seventeen per cent selected a generic advice organisation such as the Citizen’s advice Bureau. However 17 (20%) said this was not the case. A further 10 (12%) said they did not know.

While these figures do not disprove what the carers told us, they do present a more positive picture. With hindsight we think we probably did not make it sufficiently clear in the survey that we were asking specifically about information given in the early stages of the arrangement. Certainly some fostering workers answering this question were clearly only referring to information being supplied when the case was referred to the fostering team.

I will tell them all their rights and say to them if we have been involved in any shape or form you have the right to apply to be a family and friends carer. What I’m checking with them is, was Social Care involved with that child and if they were then I’d give them this pack. We use the BAAF Options for Kinship Carers and then we’ve got the Kinship Care Some Questions Answered. (Manager, family placement)

Other possible explanation for the discrepancy are that, as we acknowledged at the beginning of this report, the carers we interviewed probably had particularly unfortunate experiences while professionals sufficiently interested in the topic of kinship care to complete an on-line survey may not be typical. Or that, (as we reported was suggested by some informants) that carers are given information but are unable to take it in. Finally, local authorities may be getting better at providing information, perhaps encouraged to do so by the clear statements in court judgements that a placement cannot be deemed to be private if the carer has not
given informed consent\(^{32}\). As noted earlier, many of our informants, as well as local authority policies, stressed the importance of being clear with carers about the legal status of the arrangement.

Taking the data at face value would suggest that the message that social workers need to ensure carers are given information has been heard. However it is not certain what that information would consist of, and particularly, whether it would include an explanation of the different legal options, and the possibility of becoming a kinship foster carer, or simply a statement of how the local authority views the legal status of the placement. This point emerged clearly from an interview with one group of social workers:

It’s not always about a choice either, it’s not about saying to a family ‘now you could go down this route and you get this much money’. That isn't how it's put, you know, it isn't done like that.
No.
No.
That's exactly what your report says.
Yes.
Yes.
That's it exactly, it wasn't a shock to me at all.
We don't volunteer – ‘well actually we're offering you foster because we've asked for you to help’. I've never known that in 12 years. (Frontline social worker group)

There is still evidence of some carers being kept in ignorance:

It needs to be treated as important at the time you're placing that child with that family, it's got to be right there, plans have got to be right there and they've got to be approved and the person has got to be given as much information as possible. And there’s no point keeping quiet about the fact that they could go on to fostering rates because ‘oh that's going to cost a lot of money for the local authority. And so we shouldn't have said that because, you know, now we're going to have to be paying more'. I'm sorry but for the stability of the placement and supporting these people that have come forward as carers for their relatives or friends or whoever...I think they keep quiet with some people. (Manager, post-order support)

I've had a couple of calls where they've said, ‘we had a social worker and when they were leaving they said “you need to go and make a complaint, contact the Family Rights Group because (the local authority) should have been giving you money from the beginning”’, but they've just told them that when they were actually leaving that authority. (FRG case adviser)

It is also concerning that 20% of Children’s Services informants said that carers were not routinely signposted to any independent source of information and advice, while only 38% said they were told about organisations specialising in advice to kinship carers. Yet both our carer data, and that from professionals, demonstrates the need for such advice and the impact it can have.

Researcher: What would help to improve the service to kinship care families?
Trained advocates who will proactively contact/support a family (independent of the local authority). Someone to give unbiased advice to the family about their options. Local authority social workers cannot be independent of management decisions and their advice will reflect the local authority’s formal managerial position. (Social worker)

\(^{32}\) Southwark LBC v D [2007] 1 FLR 2181; A v Kent Local Authority [2011] EWCA 1303 (See Appendix B)
One of my foster carers had her younger sisters for a year before I came to know about the case. I met her at a family group conference review and she was livid because she just couldn't get any support, she'd just been dumped with these kids. I spoke to legal and then went back to the localities and said ‘you guys are really out of order, this should have been a looked after situation from 12 months ago’. And so we had a professionals meeting, I brought Legal33 to the meeting and we literally said ‘you need to actually change the legal status of these children’. And we did and we ended up backdating her payments for a year. We had to do it because she had gotten advice from Family Rights Group, so she was a little bit empowered and I think the minute they start to get some sort of advocacy or someone independent who is telling them what they can or what they may be entitled to, then that can create problems for local authorities because often the situations that led to the children not being looked after don't actually stand up legally. (Manager, kinship team)

Since we started in the self advocacy, we've certainly had a few cases where we’ve helped callers complete a self advocacy letter, set out their circumstances and within two weeks they've had a positive response. We've had others where they haven't, the local authority have come back and continued to insist it was a private arrangement, continued to dispute it, so it's had to go to a complaint, but there's certainly been some local authorities who, once the information has been put before them, have immediately conceded. (FRG case adviser)

In our report on the carer interviews (Hunt and Waterhouse, 2012) we argued that local authorities must ensure that carers and potential carers are in a position to make an informed and carefully considered decision about the legal status of the arrangements. This required, we considered, not only information and explanations about the full range of legal statuses available to them and the implications of each in terms of support, but also signposting carers to independent sources of information and advice. We also recommended that the government should stipulate that carers cannot be asked to give their agreement to a placement being treated as private until they have had an opportunity to consider this information.

We would now go further and recommend that local authorities should establish a clear process for scrutinising all new kinship arrangements where Children’s Services have had any involvement. Many of the Children’s Services staff taking part in this research said that all requests to make a child looked after had to go before a gate-keeping panel. While we would not necessarily suggest setting up a panel, partly because of the delay this would incur, scrutiny by someone separate from the frontline teams, perhaps the manager with lead responsibility or the manager of the kinship team, where this exists, would help to ensure both consistency and compliance with the law. It would also pinpoint if there are continuing problems for social workers in acting in compliance with the law and what needs to be done to address these in terms of training and guidance.

**Summary**

- The most crucial decision, in terms of support of a kinship arrangement, is whether the child is ever deemed to be a looked after child and the carer approved as a kinship foster carer, even on a temporary basis.

- Lack of clarity or disputes about the status of a placement was a major theme in our carer interviews.

33 i.e. a local authority solicitor
• Over half the professionals responding to the on-line survey said they had had experience of such disputes. Explanations for this varied: social workers not being sufficiently clear, carers not taking in what was being said or denying what they had agreed to.

• Most informants, however, said that at times, local authorities had acted unlawfully by maintaining that an arrangement was a private one within the family when it should properly have been treated as the placement of a looked after child. Views differed as to the prevalence of such flawed decisions and whether they were largely a thing of the past. However some were clear it was still very much a current problem.

• Some suggested that the reason for such faulty decisions was lack of clarity in the law and/or local authority policies while for many it was not the law but social workers’ lack of understanding of the law that was at fault. Others, while sometimes conceding this point, suggested it was not just a matter of ‘mistakes through ignorance’ but flowed from a managerial strategy to minimise the numbers of looked after children and keep local authority costs down. Although some suggested that faulty decisions were most likely to be made in a crisis, and were partly attributable to the difficulty of satisfying the regulations for immediate placements, other informants also referred to ‘stage-managing’ situations in order to avoid having to acknowledge that the arrangement was properly a local authority placement.

• There was evidence that kinship arrangements which in the past would have been treated as ‘private’ are now being acknowledged as section 20 accommodation, with the carer being assessed as a foster carer.

• While this is positive in that it opens the door to support, it also raises questions as to whether this is necessarily the right way forward. It means that carers are subject to all the stress of the assessment while local authorities have to commit substantial resources to approve carers who are likely to move on, fairly swiftly, to a private law order. It also risks widening the gap in support between arrangements made by families and those where the local authority played a substantial role.

• An alternative approach espoused by some local authorities is to provide generous section 17 support for all kinship placements where the arrangement arose because of child protection concerns. Whether this complies with case law is uncertain.

• Our carer interviews indicated that one reason why flawed decisions are not challenged more by carers is that, at the outset, they are unlikely to be aware of the legalities of their situation. Few were given any information by the social worker or told how they might get independent advice.

• In contrast most Children’s Services practitioners responding to the on-line survey said that carers were given information. However, there was still evidence of carers being kept in ignorance, or even misinformed, while only just over a third of Children’s Services informants said that carers would be routinely directed to specialist sources of independent advice.
Our earlier study emphasised that local authorities must ensure that potential kinship carers are in a position to make an informed and carefully considered decision about the legal status of the arrangements, preferably being signposted to independent sources of information and advice.

We in addition recommend that local authorities should establish a clear process, separate from frontline teams, whereby someone with the appropriate knowledge scrutinises all new kinship arrangements where Children’s Services have had any involvement to ensure both consistency and compliance with the law.
7 Private law orders as a diversion from care proceedings

Where a kinship care arrangement is informal (i.e. there is neither a special guardianship nor residence order in place) carers do not have parental responsibility for the child. This means that the parents can remove the child at any time and parental consent needs to be sought whenever decisions have to be made about the child. Currently there is no mechanism whereby the carer can acquire parental responsibility other than by making an application for either a residence or special guardianship order.

One of the issues which emerged from the carer interviews concerned the encouragement, by local authorities, for carers to apply for private law orders in circumstances where a) there were child protection concerns; b) Children’s Services had played a significant role in the children going to live with kin carers; and, c) social workers had stipulated that the parents should not be allowed to remove the child. i.e. circumstances which suggested that the arrangement should have been treated as section 20 accommodation. In some cases this happened at a very early stage in the placement, with relatives, it was said, being told to apply to the courts for an emergency residence order. The Bristol study refers to carers reporting being ‘bullied or coerced’ into taking out a private law order, with the threat that otherwise the child would be taken into care (Selwyn et al, 2013, p9).

Case example
The child, a baby, was subject to a supervision order, made on condition that the parents agreed to his grandmother living with them. These arrangements broke down, with first the mother leaving and then the father telling the grandmother to ‘...off and take the child with you’. When grandmother contacted Children’s Services she said she was told that in order to take the child she had to apply for an emergency residence order. ‘I asked why they couldn’t do something and the social worker said “no, it’s got to be you”. Social Services were “we don’t want to know” sort of thing.

Prevalence
This scenario was confirmed by judges, lawyers and children’s guardians participating in the research. Indeed only one judge (a circuit judge) said s/he had never encountered it and this may have been because such applications are largely handled by district judges.

Emergency application for residence orders. Certainly I would say we have had experience and I know colleagues have as well. And in a lot of those cases it would have been more appropriate I think for the proceedings to have been under an interim care order, I’ve no doubt about that. The grandparents would come in, or an aunt would come in and say ‘I have been told by the local authority that I’ve got to apply for a residence order ex-parte. Otherwise this child is going to be taken into care’ and we would just have the grandparents there, sometimes with a supporting social worker, or some type of letter from the local authority saying mother’s inability to protect, a drug addict etc., father’s not on the scene, if something isn’t done and if it’s not the subject of a residence order they will initiate proceedings. They were told to come in because of the love and affection they had for the child in question and because they didn’t want any harm to come to the child. (Judge)

I have one case of a child under the pre proceedings process who was then placed with grandparents and it’s now only private law proceedings….the local authority had concerns

34 A Private Members Bill introduced by Kerry McCarthy MP under the Ten Minute Rule, the Kinship Carers (Parental Responsibility Agreements) Bill 2010-12, would have enabled kinship carers to obtain parental responsibility for a child they are raising without having to bring a case to court.
substantial enough for a pre proceedings process but didn't then go on to issue saying they didn't need to because the child was placed with the grandparents, but the mother was saying she wanted to care and the most the local authority have done is a Section 7 report. Now that arguably is a section 20 placement. (Solicitor)

There was a perception that local authorities actively seek to divert cases from care proceedings and direct carers down a private law route. References were made to local authorities ‘running/working the case from behind’; ‘being in the wings’; being ‘vaguely there on the sidelines’ and ‘pulling the strings in the background’.

Certainly we do come across those without a doubt where grandparents or relatives are approached and in inverted commas ‘persuaded’ to apply for an ex-parte residence order. We quite often see in the statement accompanying the ex-parte from the solicitors under a section 8 application, you know, ‘my clients are the grandparents. They were approached by the social worker, who said the children have got to be removed and they're willing to take them’, and there certainly are those within the spectrum as well, without a doubt. (Judge)

The local authority places a child and then advises this is a private arrangement and the family should seek a private law order. This either occurs due to ignorance of the legal framework by social workers but more recently deliberate actions by senior managers to reduce care applications and costs. (Children’s guardian/independent social worker)

I’ve had a case where the grandparents were almost duped into paying for a residence order off their own bat - the local authority were involved and they didn’t have to pay an allowance. (Children’s guardian/independent social worker)

It’s a very familiar scenario. We have a lot of that here. (Solicitor)

Some informants said that such cases seemed to be less common now. It was suggested that when the fees local authorities had to pay for care proceedings went up dramatically the use of care proceedings dropped.

When the fees went up to £4000 it inhibited local authorities from issuing care cases for some time and we found that the local authority was funding kinship carers on residence cases…I think that was common experience wasn’t it? I certainly found that; they had sought a route out of having to be directly involved. (Judge A)

But we have had a lot of care cases issued in the last couple of years, so sending grandparents in to make applications, I think that’s probably disappeared now, I don’t personally get the impression they’re reluctant to issue because of the fee in issuing. (Judge B)

It was also suggested, however, that such cases might simply be less visible now, since private applications are now typically handled by the family proceedings courts, or by district judges, they might simply not be coming to the attention of circuit judges. Others said, however, that they knew it was still happening and for some it was a major issue.

There will be cases where the family have sorted it out for themselves and Children’s Services aren’t involved but I can’t remember the last case of those. The cases I see are those where the local authority are running it from behind. From the time I was in practice, which is many years ago now, local authorities in cases where they did not want to start care proceedings and there appeared to be family carers who could do the job, would essentially say to families ‘we’re going to start care proceedings unless aunty or grandma takes over the care’. And I can’t go behind the advice that was given, but I suspect it was in fairly robust terms and they never went into the legal niceties of it and they weren’t challenged because
very often families don’t have their own solicitors, they don’t have somebody they can ring up immediately and so they go along with it. And in due course they would be sent down to our firm because they knew us and told ask (X) to apply for a residence order for us. That still goes on. (Judge)

Reasons for the use of private proceedings

Family justice professionals tended to explain such practices in terms of local authorities seeking to avoid their responsibilities. By directing carers down the private law route, local authorities did not incur the costs involved in bringing care proceedings and by avoiding an interim care order kept their numbers of looked after children down and avoided the need for a thorough assessment of the family.

Local authorities persuading granny to come to court and seek a private order. Oh yes. That's local authorities trying to avoid having to take responsibility. And so they advise the grandparent to come and seek a private law order so that they don't have to take responsibility. I've seen that. (Judge)

From the local authority point of view it's quite cost effective... when you bear in mind all the court fees and social work time and everything that goes to care proceedings it is quite cost effective. (Local authority solicitor)

When the idea of a SGO is floated by the social worker, it takes away the expensive court process, it’s a done deal, half a day in court and out. (Children’s guardian/independent social worker)

I think there's a reluctance to issue public law proceedings. I mean there's the cost of issue. I know that there's been a specific recommendation that those fees shouldn’t exist and the Family Justice Review endorsed that, but they've maintained them. You're talking about £6000... I think it's impossible to say that that doesn't factor in (the decision not to bring proceedings). (Solicitor)

It's mainly money. It's also I think some of them are just so overworked that they just are looking for the easier solution and if a solution presents itself as okay then they don't ask any questions. (Judge A)

Obviously there's now a huge fee to start issuing care proceedings but also once they're in court they're kind of jumping through hoops, they're having to do all these assessments, they aren't in control of the situation anymore. (Judge B)

I think they would like to keep cases out of court when they can, which means I think that if they've got a half way decent kinship alternative they will try and go down that route. But I think that reluctance may be coupled with their huge workload of absolutely classic public law cases. (Judge)

Some local authority informants did acknowledge that it was their policy to use a private law route wherever possible. However this was seen as principled, rather than expedient: it tallies with the principles of minimum intervention in family life and families taking their own decisions and also avoids the trauma of care proceedings:

It must be recognised that even on the front line we operate to a ‘no order’ principle and attempt to resolve issues and support families without the need to progress to court. (Frontline social worker)
It's always been a case of as long as we're happy with the care that the family member is providing, we would advise them to apply for a residence order for the child. If you can avoid going to (care) proceedings at whatever stage then I think that's the thinking behind it (Frontline social worker)

There is a social work argument that says that you should empower families to find their own solutions, which is a valid view, that the state should only be imposing solutions, intervening, where there's a clear need to do so, and if the family can sort it out between them then that's to be encouraged. So I mean there's a financial issue but there is a practice consideration as well to be fair. (Local authority solicitor)

If everybody is in agreement and consenting around granny or aunty or whatever being the carer, then under the no order principle we will support families to apply for an order without a need to go through care proceedings. (Designated manager)

One group of workers interviewed denied that the private law route would ever be used as an alternative to care proceedings:

If for example the child, we weren't saying that they couldn't go home but actually mum’s continuous mental health kept meaning that they were staying with grandma for example, then we might say to grandma ‘well maybe you need to consider a long term arrangement and look at a residence order’. But it wouldn't be that we're at the threshold where we're going to remove the child and I think that's the difference. So if there's a family member, for example lots of grandparents step in, we get involved at the point they've already stepped in, you may have a mother that's a drug user or, and/or parents and we say maybe we should, maybe to secure this we would advise them about a residence order. (Social worker)

It was, however, acknowledged by some that a carer might be encouraged to apply for a residence order under threat of care proceedings.

There have been times where it's kind of got to the point where it's sort of like ‘if you don't do this we will go to care proceedings’, which is actually a really difficult position to be putting a family member in, or a friend. (Frontline social worker)

Concerns

Many concerns were expressed, particularly by the judiciary, about the use of private law proceedings as an alternative to care proceedings.

First, it represents state intervention in families by the back door: parents are coerced into agreeing arrangements under threat of care proceedings and there was no requirement to prove the threshold for a public law order:

There are a number of occasions where we acted up just because it was quite clear that the parents were under quite a degree of coercion. It was either ‘you agree that granny takes over the kids or we're starting care proceedings’ and they thought it was a better option. (Judge A) And one or two of the local solicitors came to us and said ‘this isn't right, it isn't fair’. There are a number of disadvantages, because there's a coercion on the parents, there seemed to be a background of cost cutting on the part of the local authority. (Judge B) And nobody is actually proving the threshold criteria. (Judge A)

So parents are actually having their children removed from them but by a back door. (Judge B)
Sometimes they will end up going down the private law route. It’s very questionable about the legal background to which they do it, it’s simply really the threat of worse if you don’t do this. That’s the cases that worry you. There’s carers who don’t have parental responsibility, parents who do have PR being told ‘if you do something we will remove’ but there’s no legal basis for that, there’s no EPO, there’s no section 20, there’s nothing, it’s a legal limbo.

(Judge)

**Second**, there is less protection for the child than in care proceedings. The court is not made fully aware of the history: the local authority is not usually in court; at most there might be a letter in support from a social worker. Many cases are dealt with by district judges, some of whom may not deal with care cases and therefore might not be sensitised to the child protection issues. The case, therefore, might go through ‘on the nod’, without a proper assessment of the suitability of the arrangement or the child’s needs.

It’s sometimes frustrating because they come down and really they don’t bring any information with them at all, they’ll tell you a little bit about it, they may have gone to a solicitor, these days because it’s means tested they may be representing themselves, and what would be really helpful is if they came armed with at least half a sheet from a social worker saying ‘we’ve approved this placement’. (Judge)

I had one where mother died. The local authority had been dealing with the care of her little boy because she was a chronic alcoholic. Their first response was to place with aunt. We had to go through a form of quasi care proceedings in the private law and have fact findings about dad who popped up, who had been previously charged with an assault on mother’s other child. It should have been a care case. And the local authority never came near us. They weren’t in court, they didn't give any information, they did a Section 7 report but under extreme...(Judge)

Placements are being made without a proper assessment of whether it meets the child’s needs at all. It's not an assessed process so the local authority is saved by that but the child is not placed under any order that places any obligation on the local authority. The best interests haven't been assessed. The child is just put with granny and that’s it. If it's a private arrangement they're relieved of all sorts of scrutiny which is actually very dangerous for the children concerned.

Researcher: *Yes, the local authority can still be involved but they have no powers.*

No, and they have no duties either, that's the real problem. (Judge)

It all depends on who the judge is, a lot of these private law ones end up with a first hearing before a District Judge...or in the Family Proceedings Court. With the DJ’s two thirds of them I would trust to suss out, but we do have a small group of what I would call complacent judges who just see what's on the surface and don't ask any questions. I think anybody who does public law cases, a little alarm bell would ring and they’d be thinking ‘right I'll just have a report from the local authority about this’. Or even a report as to why they aren't taking care proceedings. Section 37. But if you're a judge with little familiarity with care cases, you've only got a section 8 ticket, then they're the ones where these slip by. They're not sensitised to this sort of thing. So I suspect that some do go through on the nod. (Judge A)

Yes I've seen them. Because one will go wrong and then we see that in such and such a court a residence order was made, really after a first appearance when nothing was asked. (Judge B)

**Third**, there are concerns about what support the local authority are providing or will provide if an order is made. The local authority has no obligations under a residence order and the court cannot make a supervision order in private proceedings.
It’s being run...at the lowest possible level of intervention, the local authority would no doubt say that’s merited, sometimes when I come to look at it I’m less convinced that it is, that it doesn’t need more input...My concern is a) what support is going in, what level, how are they being treated within the local authority, how is that placement viewed, whether it’s subject to any proper reviews and things like that, maybe not, and of course there’s the financial support situation. The thing that concerns me most is what the financial arrangements are for that child and how exactly the family are managing. Once they come within the court system, those are the questions one is then asking straightaway. (Judge)

(One of mine) the local authority had made a decision the aunt should care for the child but then just backed out of it. She’d got a child with learning difficulties, he had delayed development, he’d been in the care of his mum un-stimulated, and he had physical difficulties and they have to (help him) deal with the death of his mum and the fact that his sister had gone to live with her father. So a lot of upheaval and the local authority were sort of there vaguely in the sidelines but they didn't come to court and tell me what they were going to do about any of this, I was just assured by everybody that they were doing something. (Judge) A residence order has no inroads into social care, there’s no obligation on the local authority to provide any assistance of any kind. Whereas if you went down the route of care proceedings, there might still be a residence order but they might have a supervision order where they’d be supported and assisted and there would be work that potentially they could access or services for the child. (Solicitor)

Fourth, carers are put in the invidious position of taking action against the parents.

It’s quite a hostile action taking a private law application with the family. (Solicitor)

My personal view is that if everybody is in agreement then that's just simply giving legal status to an agreed arrangement. That's fair enough, it's a lot less costly and generally quicker than care proceedings. If there is dispute between the family members, if mother is wanting the child back and the local authority are saying the child should stay with grandma or aunty or whoever, then my view is the local authority should be the one taking the flak and should put up or shut up. I think in that, personally my view is they should take care proceedings. Views differ. I mean I know some local authorities will support family members to take private law proceedings that become contested. I think to put granny and mother in competition over the child to me is not good practice, but you know, it does happen. (Local authority solicitor)

We see cases that really the local authority should have taken the lead in the care proceedings to take all of that legal hassle, but they're avoiding care proceedings… pushing relatives to go an SGO route. (Children’s guardian/independent social worker)

In some cases it was very clear that it was setting the relative against the parents and whereas before it had been a very supportive relationship it was being soured by this compulsion and they were breaking down very rapidly after. (Judge)

Fifth, while some carers will be legally represented or at least have the benefit of legal advice, sometimes funded by the local authority, others may not have either.

In one case the social work manager and the social worker accompanied a grandmother to court to file her residence order application … without any legal representation, and in the end the grandmother suddenly realised that was an enormous trap looming and sought our advice, we adjourned the residence order application and made the local authority accept that the child was a looked after child whom they should be properly supporting… we actually had to issue a Judicial Review. (Solicitor)
The response of the court  
Where the court does have concerns about a particular case, of course, it is not impotent. Thus judges reported directing the local authority to file a statement, a section 7 report, or even a section 37 report.

I make a direction to the local authority to file in 14 days a statement of where we are now, not necessarily a Section 7 report but a statement saying ‘this is where we are now’. (Judge)

If you feel that the suggestion that grandma should do it is just not enough and that she can't cope for instance with contact issues or that sort of thing, you might say ‘well let's have another hearing and I want the local authority here’, and if the local authority are not cooperating you might start thinking about whether it's a case for a section 37 direction. (Judge)

If we think a section 8 case is really a quasi care case you can make an ICO under a section 37 Direction, which we do, which drags them in kicking and screaming, even if they say ‘no we're not going to start proceedings’ at the end of it. (Judge)

The judge may also adjourn the case and ‘direct’ the local authority to fund legal advice for the carer.

Carer information and choice  
Simply having legal advice, of course, may not be sufficient to enable a carer to make an informed decision. In the first part of the research a numbers of carers who had obtained residence orders in private law proceedings, often in an emergency, said they had been to see a solicitor but alternative options had not been discussed with them, nor had the circumstances in which the arrangements came about been thoroughly explored. Hence cases in which the arrangement should properly have been treated as section 20 were not identified.

Whilst most of the solicitors who took part in the research said that this was something they would definitely look at, a few acknowledged that, when a client came to see them about making a private application for a residence or special guardianship order, they would not necessarily explore whether the local authority should have been treating the arrangement as a foster placement.

The local authority will say yes we’ve got huge concerns, we’ll do a letter now for you for the judge so you can go off and get your residence order quickly and of course you're grateful for that evidence there and then, and then they do a section 7 report that was favourable, so you felt that they were with you every step of the way in terms of providing the right evidence to support your clients. But I don't know if we ever sat down and said ‘this could have been section 20, this could have been care proceedings’, I don't think we ever, even though I suppose we all knew that. (Solicitor)

I would always talk about the different types of orders and so on. I suppose the only thing I might not unpick is if they said that they wanted a residence or a special guardianship order, I wouldn't necessarily question whether they might be better off doing it as a kinship foster carer. Unless it was really, you know, bells on. I went to the FRG seminar recently (training for solicitors on kinship care) and I did kind of think actually - and this was only last week as well - that I might question it a bit more really now. I think I'm going to be a bit more wise to it. And I've certainly fed back to some of my colleagues to question things a bit more. (Solicitor)
We look further at legal advice and representation in chapter 10.

Summary

- One of the issues which emerged from the first part of our study was the encouragement – or even direction – by local authorities for carers to apply for residence orders in cases where there were child protection concerns and Children’s Services had played a major role in the arrangements coming about.

- Judges, lawyers and children’s guardians confirmed this use of private law proceedings – with the local authority ‘pulling the strings’. Although some thought that such cases were now less common others indicated that they were still very much occurring.

- Some solicitors said that if a kinship carer came to them seeking a residence order they would not necessarily explore whether the local authority should have been treating the arrangement as a foster placement.

- Many concerns were expressed about this use of private law proceedings, particularly by the judiciary. These included: parents coerced into agreeing arrangements under threat of care proceedings; intervention in family life by the back door; less protection for the child; lack of proper assessment of the suitability of the arrangement or the child’s needs; concerns about what support the local authority would provide; carers put in the invidious position of taking action against the parents; carers sometimes not having the benefit of legal advice regarding what they are taking on.

- Typically, family justice professionals attributed the use of the private law route to local authorities seeking to avoid their responsibilities. Local authority informants, however, tended to explain it as a principled policy, reflecting the principle of minimal intervention in family life and avoiding the trauma of care proceedings.
Interim orders in care proceedings

The perception that some local authorities seek to avoid making kinship carers foster carers also emerges in the data on cases which do go through care proceedings. Our carer interviews indicated that interim care orders (ICOs) were rarely used either where children were already with their kinship carers at the point the proceedings started, or moved to them in the course of proceedings. This, of course, has a major implication for the support the arrangements may receive, not only during the proceedings but afterwards, if a private law order is made. As noted in a previous chapter, having been a kinship carer prior to an SGO being made confers certain privileges.

Case example

The family came to the notice of Children’s Services following the birth of a child with serious medical problems and concerns about suspected parental drug abuse. At Children’s Services’ request grandmother agreed she would provide short time care for the two older children when mother and baby went into a residential placement. The plan then changed, grandmother was asked to take the children for an indefinite period and told, on a Friday, that she needed to be in court the following Tuesday to apply for a residence order in care proceedings,. The alternative, she was told, was that the children would go into unrelated foster care and because it was urgent they might not be placed together. Despite being unable to get legal advice in time she duly complied and an interim residence order was made.

The carer now bitterly regrets that she went along with this and wishes the children had been put on interim care orders, but at the time ‘you just take your lead from Social Services. I trusted them completely, absolutely….I should have said no, I’ll look after them but you’ll be responsible for them. Which would have meant they would have had to pay an amount for the children’.

Instead, the only financial help from Children’s Services while the residence order was in force was assistance towards initial costs. She got no help with the cost of regularly taking the children to see their mother and new sibling in the residential placement, a round-trip of over 100 miles. A special guardianship allowance was refused.

The judge hearing the special guardianship application, however, was not prepared to accept this and according to the carer said it was clear that she had been acting as a foster-carer and put pressure on the local authority to provide some financial support. He also gave the carer permission to seek judicial review if this was not forthcoming. The local authority then made an offer, which the carer has accepted, of a lump sum in lieu of a special guardianship allowance, to cover their expenses for the next two years. The amount works out at just under £50 per week per child and there is no back payment.

The professional interviews reveal considerable variation in practice, even in neighbouring authorities, over the use of interim care orders where children were placed in the course of proceedings:

You’ve got three authorities that (this county) spans….you will find a different approach between the three. One manager….had an absolute policy that there were to be no wider family member placements on any type of care order, be it interim care order or care order. Absolute blanket on it. (Solicitor)

Some local authority informants, solicitors, and judges said placements would usually be made on an ICO, even where the intention was for a private law order to be made at the end of the proceedings. Others indicated that this was case dependent.

I’m not sure I would agree with your research on that one. Locally we quite often see cases where children are in the family with an interim care order. (Judge)
I think that \textit{(placement with relatives on interim care orders)} happens a lot. Because you won’t have finalised the placement with relatives and the concerns in relation to the parents are still there and the local authority needs that control so interim care orders are often appropriate. (Solicitor)

Sometimes children are in stranger foster care placements at the beginning of proceedings while we assess the carers and then they get moved to kinship carers during the proceedings. In those instances the children are usually on ICOs while they’re with the foster parents. So they get moved to the kinship carers on an ICO. (Manager, kinship team)

Children are sometimes placed temporarily under ICO’s so we can monitor the placement. We're often fairly confident that these people will manage it but we just want to see, are they managing it, are there any issues, are parents descending on them and trying to have contact outside of agreed arrangements and things, do we need to put in extra support to help them manage the children’s behaviour. It's usually only a few months of monitoring. (Kinship social worker)

However some local authorities were said to be very resistant to the idea of placing children in kinship care on an interim care order:

The local authority are very, very, and this is one of your key concerns, very, very chary of having interim care orders, which they ought to have for protection purposes and for which the grounds are clearly laid out and then place with a family member. (Judge)

There are several cases in my team where the local authority has placed children with relatives during care proceedings but in spite of the regulations have declined to consider the children \textit{looked after} or the carers as foster carers. Limited financial support has been given if asked for by the carers. My local authority needs to abide by the regulations. Despite being given the training senior managers ignore the regulations. Family and friends are not assessed as foster carers in this authority. (Frontline social worker)

Local authorities…have been reluctant for years to place with parents under an interim care order…they’re now getting increasingly reluctant to place with family members under ICOs, which is nuts, actually, but to me that’s to do with money and support and targets about reducing the number of \textit{looked after children}. (Solicitor)

Four main reasons were suggested for this resistance: money, pressure to keep numbers of \textit{looked after children} down, problems with the carers being approved as kinship foster carers, and the delay such approval would involve.

Everything that you look at about the legal process and about placement with families, you have to look at from the point of view of cost… to me it’s to do with money and support…and targets about reducing the number of children on care orders. (Solicitor)

There’s a push that you go from kinship care to SGO without (care) proceedings in the middle so they don’t have to be fostered, I think because of the financial pressures... and in proceedings but no order or an interim residence order. (Kinship social worker)

In certain cases they’ll say ‘this will not get through the fostering panel, they’ve got convictions, they’ve got this, that, they’re not ideal’ and of course they’re not, the close family members very often are inextricably tied up in why the parents are not able to care, so they won’t get through fostering panel, or ‘we haven’t done the fostering’, so I say ‘well you can place on an emergency basis’. ‘Well...’ You can see they’re thinking ‘this is going to cost us £200 a week’ or whatever it is. (Judge)
Where the court considers an interim care order is necessary but the local authority does not wish to proceed down that route, although they agree that the child should be placed, sometimes the court will prevail. On other occasions, we were told, an interim residence order will be made, sometimes with an interim supervision order or some guarantee of support.

I can think of one case, two, three years ago, where we were having real difficulties, we couldn’t get it through the (fostering) regulations and (the fostering) panel and it was a high risk case, but everyone really wanted to try this. The judge just blew a gasket really, just said ‘I’m the judge, I’m making an interim care order and I’m saying that this is where this child should be placed’. (LA solicitor)

We have some children where the court has insisted that they be placed as a looked after child for three to six months before granting an order. I have to say we have mixed feelings about this as it delays a final decision for the child and means that the carers have to be assessed as foster carers. (Manager, kinship team)

I have no power, I can’t force an ICO, because they’ll say ‘well this won’t get through fostering, it will be an unregulated, it will be an illegal placement’, that kind of thing. So we’ll make a residence order with interim supervision order. (Judge)

We have suggested a couple of times that the child is placed on an interim residence order, which still delays the final decision but at least the carers don’t have to go through the fostering assessment and panel. When the court has done this they want to be clear that the families are getting appropriate levels of support and we don’t have a problem with this. (Manager, kinship team)

One way to deal with this clash, where the court wants an interim care order and the local authority does not, was opened up by the case of Re A35. In this case the local authority appealed, unsuccessfully, against a direction of the family proceedings court that the child should be placed with kinship carers for the purpose of assessment under an ICO under section 38(6) of the Children Act 1989 rather than the interim residence order and supervision order sought by the local authority. Everyone agreed that the placement should be made and be subject to a period of monitoring, but one of the proposed carers could not be approved as a foster carer because of a criminal record.

This case, according to one local authority solicitor ‘caused a flurry of interest, some from social workers who thought it got them off the hook of doing assessments’ before it ‘sort of fizzled away again’. In at least two areas of the country, however, it is reported to be going strong, but now actually proposed by local authorities to avoid assessing kinship carers as foster carers where the court wants an interim care order.

In care proceedings an assessment under section 38(6) is used as a way of getting around the regulations when the child is looked after (Frontline social worker)

The sophistication on this...and they do it more and more regularly before me, is to use the case of Re A....I’m not sure that having this form of status isn’t undermining what it should be...You should try and place within the family; if it needs an ICO then they should be placed on an ICO and the carers should be paid fostering allowances. If you can’t do that it seems to me you go down the IRO route, but you pay proper residence allowances, although it’s

35 Re A (A child) sub nom City and County of Cardiff v (1) K (2) S (3) C (S) 4 (S) (5) A (2009) EWHC 865 (Fam); 2FLR 443
discretionary. Here we’ve got this hybrid. It’s allowing the local authority not to assume full responsibility under an ICO. The trouble is, you want to achieve the end result but equally one’s concerned about exactly what the support is and whether we are using this case more widely than it should be being used. I have thought about it quite a lot. I was very resistant and argued it through and I’ve read the case more than once and I don’t see that it fetters the court’s discretion at all. And I worry that it’s being used at an early stage and it’s very open-ended. (Judge)

Similar concerns were expressed by a local authority solicitor:

Parliament have put a system in place where, once the state assumes responsibility for a child under an ICO there are safeguards surrounding where that child lives, we have Fostering Regs, we have Assessment of Parents Regulations, they’re now rolled into the other regulations, Private Fostering and so on and essentially it was circumventing that scheme. I can see why (the appeal judge) did what he did but I think it’s concerning that people are finding ways around the system. If the system is that broken then it’s a system that should be looked at. (Local authority solicitor)

One advantage of an interim residence order made in care proceedings, some informants pointed out, is that it entitles the holder, because they acquire parental responsibility, to non-merit/non-means tested legal aid. This can be an advantage in terms of negotiating a support package under a special guardianship order since the carer will then be able to afford legal representation. However it also means that the carer is no longer eligible to be assessed as a kinship foster carer and therefore that route to more reliable support is closed off.

One solicitor reported that it was common practice to make an interim residence order where children were already living with kinship carers at the start of care proceedings. Indeed s/he said, this had happened even when the carer was not at court. This can create complications if, at the end of the proceedings, it is decided that a care order is needed:

Right across the country it is a standard procedure, to make an interim residence order when the child is already with the carer. Why is that important? Because once the grandparent becomes a parent (because they then have parental responsibility), you can't become a foster parent. An interim residence order isn’t a holding order, an interim care order is recognised as the holding order because it doesn’t change status. I have a case where relatives took on responsibility for two children, an interim residence order was made, then, when it came to the final hearing, the guardian felt very strongly that because of the parents and the threats that they posed that there should be a care order, so one was made. So the children are looked after children, but because the carers had had a residence order they couldn’t be foster carers per se and so the local authority determined to pay them the residence order rate as a discretion and (in that local authority) that is two thirds of the fostering allowance. Then they decided to means-test them and stopped the allowance. (Solicitor)

It is therefore vital that professionals involved in care proceedings, notably the guardian and the child’s solicitor, are alive to the implications of making an interim residence order and, a key theme in this report, that carers have access to independent advice from the earliest possible stage. This topic is dealt with in detail in chapter 10.

Summary

- Professional interviews revealed considerable variation in the use of interim care orders in care proceedings, either when children were already living with their carers
when proceedings started or when they were placed during the proceedings. Some said interim care orders were the norm, others that it was case dependent, others that local authorities avoided such orders wherever possible.

- The reasons given for this resistance were keeping the numbers of looked after children down, with the concomitant costs; difficulties in getting the carers approved as kinship foster carers and delay.

- Sometimes interim care orders are made at the insistence of the court, sometimes an interim residence order will be made perhaps with an interim supervision order.

- In some areas, however, it appears that disputes over the use of interim care orders are being resolved by the use of section 28(6) of the Children Act, whereby the child is made subject to an interim care order but placed with the carer for the purposes of assessment. Although legal, concerns were expressed about the use of this device, which circumvents the regulations designed to protect looked after children.

- Sometimes it can be an advantage to have an interim residence order because it entitles the holder to legal aid which is not means or merit tested. The disadvantage, of which practitioners need to be aware, is that once the order is made, the carer then cannot become a kinship foster carer.
9 Deciding on long term legal status

Kinship foster care: rarely a long term arrangement
There was a general consensus among professionals that even if children did become looked after and kinship carers assessed as foster carers, this was usually a transitory status, which would, typically quite quickly, be converted into a either a special guardianship or residence order. Indeed in one local authority it was said that, as a matter of policy, temporary foster care placements under Regulation 24 were not finalised, in the expectation that an SGO would be made before the time limits for approval (initial plus extensions) were reached. More generally, it was widely reported that care proceedings rarely end with the child in kinship care on a full care order.

It's a last resort basically. You would always be looking or nearly always be looking for a private law solution - residence, special guardianship. (Local authority solicitor)

In general we don't get a care order with kinship carers. If it becomes clear in the course of proceedings that the children are likely to go to kinship carers then basically the departmental care plan becomes placement with the kinship carers and support for an SGO or residence order at the end of the care proceedings. (Kinship social worker)

A lot of the kinship stuff moves on to special guardianship now, so a lot of the kids who come in via the LAC processes end up leaving on SGO’s. They're not remaining in the system. (Manager, kinship team)

It’s only in very exceptional circumstances, when the child is very, very disturbed or disabled, that you could argue for long term foster care. Generally, because of how foster care is perceived. I think both the court and the (children’s) guardian would have real problems with endorsing a long term care plan for foster care. (Solicitor)

Local authority informants tended to explain this in terms of carer/child preferences and/or a local authority view that looked after status is not a good permanency option, particularly for young children, because it does not provide sufficient security or normality, it is intrusive, and it stigmatises children.

For the child, the benefit is they haven't got the stigma of being looked after, they haven't got looked after reviews, they haven't got to have an annual health assessment, a personal education plan when they're at school. A lot of kids much prefer not to be looked after, not all, but most, an awful lot would prefer not to be looked after, they just want to get on with their lives don't they? From the carers’ point of view I think it's about the regulations, about the annual review, the visits from the fostering officer, the fact that they've got to complete the CWDC36, and tell anybody if anyone moves into the house and if anyone moves out. There's all of that stuff, so yes some family and friends carers are quite happy to live with all of that but others actually are quite keen, if there's an opportunity, to get away from what they see as bureaucracy and red tape. (Designated manager)

Unless there are significant difficulties, with the little ones we are looking for these children to be permanently placed with somebody, to have that security. (Kinship social worker)

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36 This refers to the requirement for foster carers to complete the Children’s Workforce Development Council’s (CWDC) Training, Support and Development Standards.
The aim is to have them living with their family, with the family in control of decision making and care, i.e. as normal a life as they can have in the circumstances. (Kinship social worker)

External informants suggested that the avoidance of care orders was principally driven by local authorities, motivated not just by the pursuit of permanency but the desire to ‘get children off their books’, thus reducing their numbers of looked after children and saving money:

My own view is that most of our local authorities have taken a policy decision that they're going to promote special guardianship orders. And I was just doing a little list. From their perspective the child in foster care versus child in special guardianship to the same carers, it's an obvious deal in that the SGO means their responsibilities other than financial support are over, they don't have to have statutory reviews, they don't have to allocate a social worker, they don't have to supervise contact, which is a huge bugbear, they pay about the same amount in terms of cash week by week support. So it's a no brainer. (Judge)

There is a clear policy of not supporting family and friends care if a child has to be retained on a care order. The local authority is usually looking for a family and friends carer to do as much of the global care as possible e.g. organising contact, long term health appointments, with minimal local authority involvement. (Children’s guardian/independent social worker)

Anything to get them off the hook of having kids in care. And this is pressure from central government to get the LAC statistics looking better. Get kids moved into permanent placements, which don’t include foster care, even if it’s kinship foster care. (Solicitor)

One solicitor also argued that the dominant paradigm that being in foster care was bad for children needed to be challenged:

Regularly still you go to court and I’m arguing for a care order and the children’s guardian particularly will say that the child is going to be stigmatised by being a looked after child, that comes up again and again and judges will say it. But one grandparent said to me ‘the stigmatising is not being a looked after child, the stigmatising is that they’re being brought up by grandparents’. So there’s got to be a change of attitude and for judges to understand that there can be real benefits in being a looked after child, bizarre as it may sound. (Solicitor)

The fact that children living with kin can still feel stigmatised and bullied by other children has now been pointed out in a number of studies (Aldgate and McIntosh, 2006; Hunt et al, 2008; Selwyn et al, 2013).

**Reasons for making care orders for kinship placements**

Although generally perceived to be rare, care orders for children in kinship care are not unheard of and appear to be less exceptional in some authorities than others. The interview data suggests that a care order is likely to be made when at least one of the following conditions applies:

- The local authority needs to have parental responsibility because it needs to be in the driving seat, at least for a period.
- There are some concerns about the viability of the placement.
- The local authority needs to retain more control than could be achieved by use of a supervision order alongside a private law order.
The carer wishes to remain a foster carer because they want the local authority to be in the driving seat, particularly in relation to contact.

The arrangement needs time to ‘bed down’.

The child has particular needs or high levels of need which are best met within the looked after system or the placement requires more support than is likely to be available outside that system.

The carer wants to remain a foster carer because they are not confident they will receive the support they need under a private law order.

You put a care order in place when maybe there is a child with additional needs where you want to keep the child in the looked after system because getting the support that that brings is important because of their additional need. Or on other occasions you may have a grandparent who can provide a very good level of care but isn't very robust at managing, for example, contact. Or protecting the child from approaches by the parent. And they need the local authority to do the nasty stuff while they do the stuff they can cope with. If that gets to a certain point you have to question whether you should be placing the child there, but there is a grey area where you might say ‘well this child is better off with them, but the issue of dealing with the parents needs to be done by the local authority, not by the kin carer’. The carers have maybe got issues of their own or doesn't have a very robust relationship with the parent or maybe has a very toxic relationship with the parent. (Local authority solicitor)

The first five conditions all seem to be perfectly legitimate, rooted in the need for the local authority to retain parental responsibility. The last two, however, go to the heart of this research, indicating that looked-after status is the best guarantor of support and running counter to the government’s stipulation in the guidance on family and friends care that a child should not have to become or remain looked after simply in order to obtain support.

Very often, of course, the child’s high needs will be combined with other factors, as the two quotes below make clear.

The case I've just told you about, the seven year old boy, the very clear recommendation is he is made subject to a care order because they’re going to need a lot of support. Perhaps two or three years down the line the carers might want to apply for an SGO but it's a very clear recommendation in the report that landed on my desk yesterday that this is a disturbed little boy with a huge amount of therapeutic needs and carers will need some really quite specialist ongoing social work input and they’ll need us to be in the driving seat because it's quite difficult familial relationships in the network. (Local authority solicitor)

Not infrequently we might be in proceedings with children who are 7, 8, 9, 10, and if they've been suffering harm that may well have been for some time, or there's been all sorts of attempts to try and hold the family together and it's failed. So by the time they're with that kinship carer, they've got quite high needs.

I'm thinking of one carer in particular, a granny, who had the eldest of a sibling group of four. That little girl had a lot of issues, lots of eating difficulties, lots of emotional issues and she was a child that we've kept under a care order. Granny was very willing but a person that needed a lot of education from her support worker about how to think beyond the concrete, she thought in a very sort of concrete day-to-day black and white way and how to sort of be more psychologically minded about how the child might be experiencing separation from her sisters and mother and so on. We had to continue providing input to this granny on how to manage the child; we had some work from psychotherapists to help her understand the child’s needs. And so that support package was enormous but it was very much focused on the child’s needs. Granny could do all the usual parenting stuff and she could be lovely and warm
and delightful with this child, but actually this child needed a huge amount of authoritative parenting and granny at the beginning of the process didn't know what authoritative parenting was and why on earth should she?

Researcher: The sort of support that little girl was having, could that have been done under an SGO?

I don't see why not, but I think a lot of the support was about confidence levels as well. Granny was really clear that she wanted the local authority to make those decisions and really have a very tight framework around what was happening. She wanted it to be driven by the local authority and she wanted to defer to the local authority to make difficult decisions. So there was a tie up if you like between the needs of both the carer and the child and the legal status. (Local authority solicitor)

Nonetheless a number of other informants indicated that sometimes care orders were made largely because of the children’s high needs and the greater support available when a child was looked after:

I think it is mostly, it's more the older children where the children have got more difficulties, have been more significantly harmed over longer periods of time. (Kinship social worker)

We had a case recently where the court directed an SGO assessment of this uncle. He was a single carer, he'd never parented before, he was in a new relationship, and this kid was involved in criminal activity, drug use, gangs. It was a pretty high risk placement and my position was ‘we can't agree to an SGO for this one, this child needs a social worker, he needs a support system around him and the carer needs a support system, we need to be able to provide respite, all those sorts of things’. And I do understand that technically we can provide those things in a special guardianship support plan but the reality is different, and I know that because I deal with it all the time and obviously it’s what other people don't understand. (Manager, kinship team)

Where we have some concerns or worries about long term sustainability we prefer to keep it as a fostering. Because there's a lot more support you get. We have special guardianship support, but it's nowhere near as comprehensive as our fostering service. (Designated manager)

It was also said that some family justice professionals pushed care orders because they were seen to provide a more secure route to support:

I think that people don't accept that the local authority will stay onboard so much with an SGO. I think there's a misunderstanding among private law solicitors because they push for foster care because they see foster carers having more financial packages, which I don't think is the case. I think if you had say an aunt came forward they would recommend that she goes down the foster care route as opposed to going down an SGO route...There does seem to be a fear amongst solicitors about letting their clients accept the different type of order. There seems to be this thing ‘you should take foster care’ and it's not always the best option, but I think that is a real culture thing that needs to change. ...If the local authority had issued care proceedings, but want to look at an interim residence order solicitors will encourage them to say ‘no don't accept that, have an ICO. Because you will be paid fostering’. And then when the final order comes and we're saying ‘actually this will be a perfect opportunity for an SGO’ they're saying ‘no you should accept this as a fostering only because you'll be given more support and more allowances and more funding that way’. (Local authority solicitor)

Certainly I've dealt with cases where the social work analysis was that we can work with this family on an SGO but they've ended up either going into the looked after system at a final order stage, or staying in the looked after system for a long time because it isn't possible to
provide or to guarantee that level of support if you don't do that. And that can be, as you can imagine, quite frustrating.

**Researcher:** so the children are ending up *looked after* who don't need to be in terms of the safeguarding, the child protection issues?

Absolutely, yes, absolutely. (Local authority solicitor)

**Both these points illustrate the very clear perception that being looked after is seen as the most reliable way of accessing support for children in kinship care and their carers.**

Further confirmation is provided by the concerns expressed by many informants about the premature use of special guardianship orders as the conclusion to care proceedings.

**Concerns about the premature use of special guardianship orders**

Informants from both within, as well as outside, the local authority, raised issues about the ‘premature’ use of special guardianship orders and argued for a more cautious approach in some cases, keeping the local authority involved by means of a care order, at least for a period:

> We have got into arguments with local authorities (where) we've been commissioned to do assessments and said ‘no you shouldn’t be going for a SGO here, it's too early’. The key issue is often about contact with the parents and that interface that is so troublesome and we often argue very strongly that for a period of time what's needed is a buffer zone in the form of a social worker. We may well be recommending that this should be a care order and continuing with fostering. (Children’s guardian/independent social worker)

> We’d be saying ‘hang on a minute. This father has taken two social workers to supervise (his contact) through the proceedings and they now expect aunt to take on this on her own. What sort of support are you offering to help aunt?’ They may offer a bit of support at the beginning but there are real issues there as it’s time limited’. (Children’s guardian/independent social worker)

> I prefer a situation where the local authority is closely involved at the time of placement and for a number of months afterwards; once a placement is secure that’s the time to look at other orders. That’s my general approach. I’ve had situations where placements have come under severe pressure as the assumption is made that it’ll be relatively smooth and straightforward with no need for a care order and it’s come under severe pressure and may even have broken down…I prefer to err on side of caution in those situations and maybe a care order should be made and other options looked at 12 months later. (Children’s guardian/independent social worker)

> I think sometimes we step over our mandate. Our mandate (as the kinship team) is really just to say whether these carers can do the task and not what order it should be under or whether it should be under fostering. But we are starting to say to people ‘I think you should stay as foster carers for a while. And you know, let's see how this goes and you can apply privately’. (Kinship social worker)

> The situation I had yesterday. We have a sibling group of four. The older two have been placed with grandparents and the younger two are with stranger foster carers, there were no other family members. We're providing a court update to say whether we think they can manage all four together. Basically, in that situation, ‘upstairs’ are pushing the SGO route and care planning are pushing the SGO route because they want to finalise the proceedings. But my position is ‘yes these two children with grandparents are thriving, there are no concerns about the care, but adding two more children to that mix could create other dynamics’. From
the grandparents’ perspective they feel like they're being pressured to go for an SGO when they don't understand the implications and they're not confident. (Manager, kinship team)

Courts clearly sometimes make care orders where it is felt it is too soon to make a special guardianship order but they want to bring the proceedings to a close. Indeed one judge said s/he was increasingly making care orders in these circumstances.

To think of one quite recently. Mum was being extremely difficult but the child needed to have some contact with her and everybody agreed in the end, even the local authority, that it was too soon to make a special guardianship order, although they'd had a very positive assessment. There was actually quite a big disincentive to having a care order, because the child lived (a considerable distance away) but nevertheless it had to be. Because somebody had got to control the contact and it wasn't fair on the carer. Because I think what carers find hard is managing contact without support. In that case the local authority was proposing a special guardianship order and the carer was saying 'yes alright I suppose so', and the guardian was saying ‘no’. Sometimes, and this is increasingly so because of pressures of trying to get cases concluded relatively quickly, I have asked the local authority to put in its care plan that the plan for the children is that in maybe 12 or 18 months time if all goes well the carers will apply for SGO or discharge and that providing all has gone well (this) is likely to find favour. So it's a way, if you like, of making almost a short term care order which the court envisages will last for maybe 12 months. Everybody wants to make a special guardianship order and I don't think it's appropriate so we have a care order but we all agree it's going to be effectively time limited. In cases where I think it's inappropriate to make it straightaway, I'm inclined to push them and say 'right, we're ready to finalise this case'. (Judge)

The local authority approach to the use of full care orders as a short term measure seemed to vary. Some Children’s Services informants seemed quite comfortable with the idea. If there's significant support needs then we would probably say 'stay as foster carers, you know, stay for a year, couple of years', we've got some like that, definitely. (Kinship social worker)

If birth parents have got complex mental health problems and are very unpredictable or there are lots of difficulties around contact, then I think our carers might stay as foster carers for a while until they've had some time, and the birth parents have had time to adjust. It takes time for birth parents to accept their children aren't coming back and to stop blaming the carers, because they do see them as siding with the local authority and they of course are then the ones who are saying ‘no you can't come around every Sunday for tea’ and so they then start to get blamed as well. (Kinship social worker)

Indeed one designated manager said that this was general practice in his/her local authority, partially fuelled by concerns about potential high breakdown rates:

We certainly wouldn't delay an SGO if the family are competent and capable and the child wants it. But most cases end up with a care order. What frequently happens is they want to become special guardians at some time in the future. 

Researcher: I've interviewed people from other authorities where they're very reluctant to do that, they want it all over in the same set of proceedings

Well yes, we don't. Sometimes the social worker does but then they have to come to the Permanency Panel which I chair and then they have to change their report, because the Permanency Panel makes the decision and we have reports from the social worker for the kinship foster carers who may well be saying 'yes it's all very good and proper that you are wanting an outcome but at the moment these carers are saying they're worried about this area
and we don't think that they are able to, that they need the support for a bit longer. During the proceedings there's often been too much animosity between them and perhaps the birth family or they've got conflicting loyalties between their loyalties to their children and their loyalties to the grandchildren they're looking after, and so they want a period to be foster carers in order for things to settle down and then they apply. We need to make sure it's right because we're starting to have quite a lot of SGO disruptions. And it's no surprise because of course if you have proceedings that start and end in six months, which is now legal protocol, you don't really know these grandparents very well, you are only assessing what you see and what they present to you. So if you're not sure about them and the sustainability then it is far, far better to have a period of fostering at the end of proceedings and an SGO in a year or so. I think we've got it right here but I would, wouldn't I. (Designated manager)

Elsewhere, there appeared to be more resistance to this idea. One informant said that the experience in his/her local authority had been that once the care order was made it was then difficult to move kinship carers on to special guardianship:

What the children's team get worried about is if we let's get a care order and keep the fostering for a 12 month period', what happens if they never apply? Because the onus is then on the carers to apply privately. So they want it done and dusted, they want it finished with the proceedings.

Researcher: But there are reviews aren't there? So presumably somebody would be asking questions about, you know, when are you going to apply for special guardianship?
Yes. The problem is we've had a few actually since I've been here, where we have had the conversation ongoing in reviews, in LAC reviews, the foster carer annual reviews, and three years, four years down the track and still they haven't done it. (Manager, kinship team)

Again this would seem to reflect carers’ awareness that if they become special guardians less support is likely to be available.

Special guardianship orders – the default option
As the previous section suggested, wherever possible, local authorities seek to secure permanency for looked after children through the carer obtaining a private law order. Typically, this will be through special guardianship, whose use has increased, particularly recently, – ‘blossomed in magnitude’; ‘a rash of them’. These have, in general, supplanted residence orders as the order of choice, while adoption remains rare. Indeed special guardianship can be categorised as the default option, to be pursued unless there are strong reasons for retaining a child in care.

The push for special guardianship
Local authorities were widely perceived to be strongly encouraging or even ‘pushing’ special guardianship:

My own view is that most of our local authorities have taken a sort of policy decision that they're going to promote special guardianship orders. (Judge)

As you explore it more with family members I think it becomes more obvious that it's a real policy, it's a real push from a particular local authority to get everybody on special guardianship. I don't know if a lot of other people feel the same but I know it's something I've definitely come across quite regularly.
I think it's a policy to try, not necessarily to do it at all costs, but to go through the books and see if we can get everybody on. (FRG case advisers)
We get lots of special guardianship orders because they're being pushed a lot at the moment. It used to be residence orders, now it's special guardianship. (Manager, kinship team)

Some informants expressed reservations about this scenario. As noted earlier in this chapter, some informants were concerned about the premature use of special guardianship orders. Other concerns were that SGOs are being used too much; they are used in circumstances for which they were not designed; they are being pushed for the wrong reasons; and families are not always in a position to make an informed choice:

Local authorities tend to oversell SGO’s. (Judge A)
How wonderful SGO’s will be. (Judge B)

I’m not saying it's in every case but they’re the flavour of the month, again because of government pressure I believe on local authorities not to have care orders. You get nearly to the end of a care case and you get told ‘oh we can't finalise this case because the grandparents have now said they want a special guardianship order’. So I say ‘who’s put that idea in their head?’ Social workers, surprise, surprise. Under instruction from their managers. (Judge)

It's not that I don't like SGO’s. But I think they're being used for cases where they were never envisaged to be used. I don't think they were ever envisaged as a direct alternative to a care order. And I think that's where they're being used. (Judge)

There’s a knee jerk reaction to (opt for) special guardianship. They don’t look at the needs of the child, the circumstances of the family and they don’t advise the families. (Children’s guardian/independent social worker)

**Carer choice, information and pressure**

Special guardianship of course, does not only have advantages for local authorities. It can be an attractive option to carers for a number of reasons. First, because it gives them parental responsibility, which has previously resided either solely with the parents or (if there was an interim care order) jointly with the parents and the local authority. Second, kinship foster carers moving to special guardianship will no longer be required to comply with regulatory requirements which may have been perceived as burdensome. Indeed, unless there is a supervision order, they can, if they wish, sever all contact with the local authority.

I guess (carers’’) reasons for going for an SGO can be mixed sometimes, so it's maybe to get the local authority out of their hair, and I can understand that. (Manager, family placement)

We’re working with one foster carer, an aunt, who didn’t want an SGO. So the court made a care order. She's now become so frustrated with annual reviews and all the rest and doesn't want to do training and doesn't want to... so actually now she's beginning to think ‘okay give me an SGO’, and we're working out a support package that would meet her needs and the child’s needs and move it across. (Social worker, looked after children team)

Nonetheless there are also potential disadvantages compared to kinship foster care. As one informant succinctly put it: *’When you consult with kinship carers, you get (flagged up) contact, support and finance’*. (Manager, kinship team)

*Exercising parental responsibility*, especially in relation to parental contact, can be a challenge for carers to manage and can be more extensive than in foster care or adoption.
They want to be confident that they can manage the contacts that are being asked of them, all that sort of stuff, whereas the local authority from my perspective often thinks ‘oh that can be dealt with in a support plan with an SGO’, but the reality is people need support and yes it’s a support plan but the onus is on the carers when they have PR. Sometimes they need help to manage it. Sometimes it’s easier with someone that is not related to you. In those situations I think sometimes it’s nice to have a period where you actually have a supervising social worker. (Manager, kinship team)

Researcher. You said earlier that as a children’s social worker you wouldn't have advised your kinship foster carers to go for an order. Why was that?
Not unless it was a very tiny child. And there wasn't going to be too much interference from birth parents. It's so difficult because adopters can move away from all of the legislative stuff and the birth family, they don't have to bother with all of that, there's letterbox contact and occasional indirect contact maybe with sibs and things, but they don't have the stress that the kinship carer does. Something came out interestingly when we had a seminar recently, at a BAAF Legal Group...the expectations on people of using special guardianship orders because they wanted to encourage high levels of contact, which probably wasn't always in the child’s best interest, probably wasn't always in the carer’s best interest, but was something that the parents’ solicitors would say ‘yes we'll support an SGO if we can have this high level of contact’ and social workers were pushing for high levels, quite unrealistic contacts. Which I didn't realise was something that was becoming quite an issue really. People using the orders to ensure a high level of contact, which probably you wouldn't have had if you'd gone for a different permanency option like adoption. (Local authority solicitor)

The extent and reliability of future support is another key consideration.

Researcher. What would they lose on an SGO? It may seem obvious to you but if you could just spell it out
They won't have their regular supervising social worker coming to visit them. They won't have the child review, they won't have their annual review. Child social worker supporting. The child won't have a personal education plan, access to virtual school. It's virtually ‘don't call us we'll call you’. (Kinship workers group)

The system as it is set up does in some ways support children who are looked after more so than special guardianship. With an SGO there is much more which is discretionary and it is a case of having to negotiate a lot more in terms of agreeing allowances…a lot of foster carers don’t necessarily see it as an attractive offer to go for an SGO as they lose out on finances. It’s an area to develop further and government needs to look at it more. (Manager, Kinship team)

Hence carers may need to carry out a careful balancing exercise:
Carers have to weigh up the whole thing around what support they would gain from the child remaining within the care system and if there’s an advantage of them being out of the system. Because some families don't want to be involved with the local authority and so therefore their push would be to go for an SGO, the support package that's appropriate and that's the way they go. Other families feel that actually they need the support of the local authority for a variety of different reasons. Sometimes it's financial, sometimes they want help in managing, maybe there are health issues that the child may have, issues around long term therapeutic
needs. Contact is often the one that's very prominent in terms of people’s reasons for wanting to have the child remain within the care system, so it can vary. (Social worker)

I think if you've got lots of complex contact issues or a child with complex needs, carers actually feel that they would prefer to remain as foster carers, for all the intrusion that brings, because let's be fair, under the Fostering Regulations we have to ensure they meet the National Minimum Standards, the same as any approved foster carer, so as a consequence we undertake the same level of supervision and support. (Social worker, family placement)

Carers, of course, cannot be forced to take out a special guardianship order, nor can one be imposed on them. However local authorities, it was reported, do seek to encourage them to apply. This may simply take the form of arguing the benefits and/or removing the disincentives in terms of support:

The local authority’s argument is they don’t want children on care orders until they're 18, they don't think that's an appropriate way forward. They try and put a child focused route on it…then sometimes a tiny bit of guilt (placed on the carers by the local authority), I would say - ‘if you're serious about providing an alternative permanent home for these children, we think that you need to have parental responsibility’. ‘If you'd like them to go and stay overnight with a school friend, you don't want to be ringing us do you and getting approval for 24 hours, you would much rather have parental responsibility’. And so that's the sort of arguments that you see coming and I think sometimes the wider family members are quite enthused by that. And sometimes the local authority will couple that with ‘we’ll always be here, we’ll have a supervision order’, or ‘you’ll be an open case you can always come to us’. (Solicitor)

Often the conditions that are offered (to foster carers) are very good and it's difficult, isn't it, because with a special guardianship order we can only guarantee the arrangements for two years. Although unofficially for children that have been in care we will agree those arrangements until they are 18. You're taping this aren't you? I mean it does come through a proper process in terms of panel...Because of course we're not going to destabilise those arrangements for those children. (Designated manager)

We decided that special guardians can keep the money they received as foster carers. It was to make SGOs a viable option. The cabinet accepted that argument in the end. If we wanted people to exercise parental responsibility for the child and only finance was stopping that we needed to deal with this. These are children who would be looked after if they weren’t on SGOs. (Manager, kinship team)

What we try to do - which is something that's actually starting to sort of bite back a little bit - is to say to some of our foster carers that there would be no prejudice on a financial basis. So from the child’s long term perspective it's really good, but financially it's a little bit sort of absorbing for us and it's about how we can do it on a more financially aware basis but actually not to be taking advantage of carers. So we're having a lengthy discussion about that and other authorities are as well, about how we can actually support carers to take out special guardianship orders. (Manager, family placement)

Part of the strategy is to reassure carers that we are not going to pull out as soon as an SGO is made. That we will be there if they need us and it they are going through a more settled period then we will fade into the background until they need us again. (Manager, kinship team)

However there was also evidence from some informants that ‘encouragement’ was not always so benign and that carers could also be put under pressure to move to special guardianship (see also Wade et al, 2010). This ranged from local authorities continually
stressing the disadvantages of foster care for the child, through questioning the carer’s commitment, to veiled threats to remove the child. Such pressure was reported by informants within as well as outside the local authority, with several kinship/family placement workers finding themselves at odds with their frontline colleagues:

Special guardianship applications should not be forced onto kinship carers who do not want to have them. (Kinship social worker)

I have a case of an uncle caring for a teenager where the local authority are putting pressure on him to go for an SGO. He feels uncomfortable about that ... he’d prefer to stay as a foster carer because he’d get more support, there will be issues around contact, his sister has got mental health problems ... lots of advantages in being a foster carer. The local authority go on and on at great lengths about the stigma of being in care and the complications and so on and so forth, which he says ‘well frankly I’m prepared to live with it’, but the sort of barrage of propaganda from the local authority can sometimes be quite extraordinary. (Solicitor)

Very often the field social worker and the manager, who are under pressure from on high to keep the looked after figures down, will be saying ‘no, no we want you to take an SGO’. It’s about people feeling under pressure to take permanent orders and then their commitment to these children being questioned if they won’t, or if they say ‘hmm not sure’, and I think that’s very unfair, quite shabby actually. We tell people ‘actually you know, it’s your decision whether you take this order or not, you can apply privately, if you’re not ready don’t do it’. So we do do that and I don’t think we always make ourselves very popular for saying that. (Kinship social worker)

Researcher: You said earlier that as a children’s social worker you would advise kinship foster carers not to go for an order. Would that be being pushed higher up in your authority, is there a sort of drive to get...?

Oh yes, yes, all the time, all the time and IROs do as well. It’s often brought up at reviews, sometimes the very early reviews. And it’s put in the mind then and sometimes I think (kinship carers) feel they need to say yes to keep it going at that stage without having a full understanding about the whole package, the whole thing to do with looking after this little person or people. (Manager, post-order support team)

The problem is I think is once a local authority has made a decision about permanency for a child they’re only really looking at options for permanency, and so we have had cases where our client’s position has been they don’t want an SGO, they want to continue to foster and the local authority’s attitude to that has been ‘well we’ll find a permanent placement then’. So it is very difficult. (Solicitor)

It was also apparent that carers are not always given adequate explanations of what special guardianship involves, so that they are not in position to make informed decisions.

We did find social workers pushing kinship foster carers down the SGO route without them fully knowing what they are letting themselves into and we are trying to address this. We want to be sure it’s the right solution for them. (Manager, kinship team)

They come along and I say ‘now I understand you’d like to be a special guardian’ and they go, ‘what?’ ‘Where did you come across this idea?’ ‘The social worker told me, you know’. (Judge A)

Yes, if you speak to them directly, because mostly they’re not represented. (Judge B)

I now have a policy of saying to the local authority ‘as you’re compiling your assessment, please, you will pay for one session of legal advice for these people won’t you, to set out the alternatives and the pros and cons’. And I’ve actually had a family recently where they said,
having taken legal advice, ‘thank you very much, we want to remain local authority foster carers’. (Judge A)

I just think sometimes it doesn't get explained properly, we're all busy doing what we need to do and the carers sort of get dragged along. (Manager, kinship team)

Not enough explanation is given to carers about the ‘permanency’ of an SGO. I worry how far they are informed about what lies ahead, given how very damaged some of the children are. (Children’s guardian/independent social worker)

The difference between special guardianship, residence, fostering. I'm sure it can be sometimes discussed properly but what I think is very clear is it's reliant on the social worker and if you get a good one, great, but if you don't then it's pot luck. (Solicitor)

Some informants told us how they were trying to ensure that carers were better informed. One designated manager said they were producing their own information leaflet for carers.

One of the things that family and friends carers tell us is that they don't get enough information, they don't understand the difference between a residence order and special guardianship, they don't understand why it might be better or not as good for a child to remain looked after, they don't understand what they might get in terms of financial support in any of those different routes. So trying to kind of unravel some of that. Family Rights Group leaflets we use a lot for those families, but that's quite a lot of in-depth information. What we wanted to develop, and what the families thought would be quite useful, was just a very basic leaflet, just when children are first placed or they first take children in or when they first come into contact with us. (Designated manager)

A manager of a post-order support team was trying to negotiate being able to meet, routinely, with prospective special guardians to ensure they fully understood what they were taking on. However ‘they (i.e. the social work team) won't like that because we'd put people off I think’. Kinship workers, as noted earlier, were often those counselling against premature use of special guardianship orders. One kinship worker, however, acknowledged being in something of a dilemma about being completely open with kinship foster carers about what they would lose if they changed to special guardianship.

It's very difficult sometimes because I think we do have a duty to spell out the differences to people about what you get when you're a foster carer and what you get when you've got a permanent order, there are areas where it's hard for us to spell that out sometimes because it's going to have cost implications for our authority. CWDC37, the mandatory training that all foster carers have to do. And they get that extra £140 a week. Now I think it's difficult for us sometimes to say ‘if you stay a foster carer we'll do CWDC with you and you'll get an extra £140 per child’. It's difficult to be open and transparent about that and I feel very uncomfortable about that sometimes. Because I think we aren't always able to be entirely open and transparent and sometimes for good reason because actually we don't really want people to stay foster carers, we don't really want kids to have social workers in their lives and to be marked out as different, to be pulled out of their class to go to their LAC review, so it's a tension and it's not always an easy one to resolve. (Kinship social worker)

It is important, however, not to give the impression that keeping carers in ignorance and pressuring them to become special guardians were universal practices. Some social workers stressed their duty to ensure carers were fully informed:

37 This refers to the requirement for foster carers to complete the Children’s Workforce Development Council’s (CWDC) Training, Support and Development Standards
Part of our role is to make sure that carers get full advice and information outside of what we would be wanting to recommend as the local authority. (Frontline social worker)

FRG case advisers also reported that kinship foster carers were often better informed than other kinship carers:

The lucky ones are the ones that have been (kinship foster carers), because quite often they can be ready to go onto an SGO, by no means always, but at least they often do get advice. And I think there's increasing numbers of people asking about rates and discrimination and the Manchester judgement and things because of that. (FRG advisers)

Local authorities may also pay for prospective special guardians to obtain legal advice.

Sometimes we do have to, we do get asked and we do fund a one off legal consultation, well not sometimes, more often than not we fund a one off legal consultation for our carers wanting to move to an SGO so they’re fully aware of the legal consequences of this. (Designated manager)

We look further at this in chapter 10.

Residence orders
As noted in earlier chapters, interim residence orders are not uncommon as a stop-gap, either in private proceedings in order to secure an informal arrangement made in a crisis (chapter 7) or in care proceedings as an alternative to an interim care order (chapter 8). In some circumstances a residence order may also be made as a final order. Government statistics indicate that in 2011-12, while 8% children ceased to be looked after as the result of their carer being granted a special guardianship order, 5% did so because a residence order was made (DfE, 2012).

Sometimes this is because it is seen as the most appropriate order.

It depends on the needs of the child; it depends on the circumstances. I don’t think one shoe fits all. (Frontline social worker)

This might be where the case concerns an older child or where the family are all working together and all that is needed is to give the carer parental responsibility:

Much older children who are having a lot of contact. Well essentially it could almost be a shared care arrangement going on. So you’ve got the younger children who aren’t going for adoption, they’ll tend to look at SGO’s, older children they’ll look at residence. And there will be cases where the hoped for outcome is that in due course they may go back, or you just know they’ll vote with their feet or they’re all working together but you need somebody who’s got parental responsibility to make some decisions, or you need something if there was to be a blow up. (Judge)

There are cases where family members just want to get on with things, they are able to manage cases and we’ve done assessments where we’ve said ‘actually a residence order will suffice in this case’. If there aren't other issues like parents could potentially disrupt

38 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] (See Appendix B)

39 Not all these orders, however, will necessarily have been made to kinship carers since they can be made to a parent. Government statistics do not record the identity of the person obtaining the order.
placements or where the child has been in that placement for a very long time we might think ‘well this placement has been stable, we know the threat to the placement’ so the residence order actually does suffice. (Frontline social worker)

Residence orders are also sometimes made where the local authority is opposing the placement or cannot approve the carer as a foster carer:

We get quite a lot of residence orders as an outcome of public law proceedings. Where the kinship carers have been assessed and are felt not to be suitable as foster carers. The court will on some occasions award residence orders to ensure the child can remain with grandparents. (Designated manager)

In the main, however, the perception of most professionals was that the private order of choice was typically a special guardianship order. Two main reasons were cited for this: the greater legal protection an SGO provides to the placement and the potential to obtain greater support because of the statutory framework around support.

I think it's largely because it does afford our carers some level of greater protection, there is a support plan that's enforceable in law and also they've got a greater share of parental responsibility and they can make decisions about the children. (Kinship care social worker)

There can be no quarrel with the first reason. SGOs are intended to be permanent orders. Hence, although both an SGO and a residence order are a means whereby a carer can acquire parental responsibility, under an SGO the carer may exercise that responsibility to the exclusion of everyone else 40. This means that the special guardian can make most decisions about the child without referring back to the parents. Although the parent retains the right to apply to the court for a prohibited steps order or specific issue order to ask the court to determine how parental responsibility is exercised in relation to a particular issue which is in dispute, the court is less likely to grant such an order than under a residence order because of the exclusive nature of the special guardian’s parental responsibility. Further, whereas the child’s parents have a right to apply to court to revoke a residence order, parents seeking to have an SGO discharged first have to seek the leave of the court, and they will not get this permission unless they have evidence of a significant change in circumstances since the order was made. Finally, special guardians can also appoint a testamentary guardian to look after the child if they die 41.

The second reason, however, the perceived greater availability of support under an SGO, is of concern, and goes to the heart of this research. Thus we were told of carers deciding/or being advised to apply for special guardianship purely because they thought it would give them greater support:

It's a bit of a contentious issue. I know even some carers who get told by lawyers first get the residence order because it's the quickest way to get some sort of order on the child, then go for the SGO because they're looking more at the finances than anything else. (Frontline social worker)

40 s.14C(1)(b) Children Act 1989
41 s.5 Children Act 1989 as amended by s.115(4) Adoption and Children Act 2002. The person appointed would be a testamentary guardian, not a special guardian. If the testamentary guardian wanted to have long term security for the arrangement, over any parents who are still living, they would need to apply for a special guardianship order themselves.
Under a residence order you could get exactly the same support but it’s discretionary, so it’s not legally binding on the local authority. So sometimes you have to advise the client to go for an SGO purely because they need the support. (Solicitor)

I certainly had one last year. I had little doubt the real motivation for getting the order was to get the financial package and support, you know, that was the strongest motivation. (Judge)

**Hence a decision which should be based on what level of legal protection a kinship arrangement needs is being distorted by differences in the framework for providing support.** It is also means that carers who do apply for an SGO for this reason being seen as money-grabbing. As we highlighted earlier in this report (chapter 2) underpinning and undermining the whole issue of what support the state should provide to kinship carers is a view that relatives should be prepared to care and should assume financial responsibility where they can. This view was also expressed in relation to applications for special guardianship orders:

If you go back 20 years, grandparents stepped up and looked after grandchildren, uncles and aunts stepped up. Now I accept that a lot of those people are financially in difficulty looking after those kids but quite a lot of the people I see step up now who would have said ‘I'll take a residence order, I'll look after these kids, thank you so much, goodbye’, now see an opportunity to get paid for the privilege of looking after their grandchildren, so they're after a special guardianship order. There are some grandparents who in the old days would have said ‘I would love to look after these children but I can't afford it’ and would let them go. So I'm delighted that some children are enabled to remain within the extended birth family by the introduction of special guardianship. That's good, but I do see some grandparents who I think in the old days would have done it without being paid who are rubbing their hands with glee and saying ‘goodie goodie’. And local authorities have to pay for that. And in some cases I'm delighted because that's what's needed but in other cases I just feel a bit sorry for the local authorities that they're being asked to pay for something that 10 years ago they wouldn't have been. (Judge)

Many carers, of course, will have obtained their residence orders prior to the introduction of special guardianship in 2005, and if the arrangement is working well may not need to change the child’s legal status, or be reluctant to risk ‘rocking the boat’ with parents. Some may not be able to afford the costs of bringing an application or may worry that they will, indeed, be seen to be only after the money.

The use of supervision orders and family assistance orders alongside residence or special guardianship orders

The only way in which the court can require the local authority to remain involved with a kinship arrangement where there is a residence or special guardianship order is to make a supervision order or a family assistance order. A supervision order is a public law order and cannot be made in private law proceedings. It puts the child under the supervision of a designated local authority. The supervisor’s duty is to ‘advise, assist and befriend the child’ and ‘to take such steps as are reasonably necessary to give effect to the order’. It normally lasts for one year, although it can be made for a shorter period, and can be extended up to three years. A family assistance order may be made in any family proceedings. It requires the local authority to make an officer available ‘to advise, assist and befriend’ any person

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42 Children Act 1989, Section 31(1) (b)
43 Children Act 1989 section 16(1)
named in the order. That person can be the child or the child’s carer, a parent or anyone who has a contact order in relation to the child.

Some of the special guardians taking part in our in-depth interviews said that the court had made either a supervision order or a family assistance order alongside the special guardianship order/residence order.

The professional interviews revealed a wide variation in practice on this, from those who said it never happened, to those who reported it was ‘normal’ or ‘quite common’.

Normally we’ll have a supervision order with an SGO. (Judge)

I’ve never heard of it with a special guardianship order. I couldn’t even say whether it’s legitimate to do it, without looking it up. (Judge)

Two reasons were suggested for the use of such orders. Sometimes it could be a degree of uncertainty about the viability of the placement:

You give them for two things, concerns over the capacity to protect or to place the local authority under an obligation, I think a bit of both quite often. Where you're not absolutely, convinced that this is going to work and you think ‘right well I think I'll just at least put the local authority under a duty for the next 12 months’. (Judge)

I guess where the local authority has ongoing concerns about a kinship carer then they'll make a supervision order just to monitor it for a bit longer. And the way people word that will be sometimes we want to make sure that we're giving these people the proper sort of support. So it's a bit more palatable for people to hear that than to say we've got ongoing concerns about you. (Manager, kinship team)

If you know the carers are going to fail an SGO assessment, but the child is settled with them and it’s a good practical solution then you look at options and a residence order with a supervision order is one of them. (Solicitor)

Indeed occasionally a supervision order might be sought where the local authority were concerned that the carers would close the door on them but social workers were very aware that the family would need support:

It often is when we've got huge concerns or I guess like a case I had in (another local authority) where the aunt and uncle had been assessed positively but they were being asked to take on such a huge task that it was felt that we really needed additional support in there to check that it wasn't going to go tits up pretty quickly. It was going to be so stressful for the aunt and uncle and they wouldn't have had to have had the special guardianship support going in; they were always ‘we can manage this you can go away, we can do this’, and actually they were right I think, largely, but we knew the enormity of what we were asking them to do but feeling that we did need to be checking on how they were coping with it all. Because without a supervision order, once the SGO was granted the case would be closed if they hadn’t wanted us to be involved. So a supervision order is about a way of monitoring, supporting children in placement. (Social worker, looked after children team)

We have got a case at the moment where we are not happy about the placement, but it's a placement that's the best of a worst option, if you know what I mean. So I think there is a concern that we won't be allowed to get in and see the children so we do want a supervision order for that. I think that sort of thing, it's an unusual one. (Local authority solicitor)
Much more commonly, however, there were no concerns about the carer’s parenting abilities or the authority’s ability to get into the family, but the order was made in an effort to ensure that the local authority remained involved in order to provide support:

It may be that in some cases it's doing nothing more than sticking a flag in the ground and saying, you know, this is a family that needs more than the usual support. ...Local authorities of course are desperate to get these kids off their books. And that's one of the problems. (Judge)

The support plan is very lacking in detail. If accompanied by a supervision order you’ve still got that little hook… More and more I’ve recommended a supervision order with an SGO in order to make sure that the support package is in place at least for the first 12 months. But you really have to push. (Children’s guardian/independent social worker)

I don't think it would be an active open case (after an SGO) unless there was a supervision order and I think that's why we make them sometimes together with the SGO because that's the only way to have active involvement by the local authority, otherwise you're not really going to get anything, they're not going to be checking up. (Solicitor)

You use whatever mechanism you can to get the support. (Solicitor)

One solicitor suggested that if there was more structure about special guardianship plans, particularly a requirement for how long the local authority would remain actively involved, then supervision orders would not be necessary:

Maybe the support plan can be given a bit more bite and there could be a defined amount of time when the local authorities stay actively involved, rather than having these supervision orders, which you shouldn’t really need. Because (with a supervision order) the local authority is being told to do much more than they probably need to do, whereas if the plan came with an amount of time they had to be involved and what they needed to do, you wouldn't need to go for supervision orders, because it's probably an abuse of that type of order. (Solicitor)

Sometimes supervision orders were used, it was said, in cases where the local authority had opposed the placement and there were concerns that they would back out altogether:

(There was one where) we had to move hell and high water in order to get the children placed with the grandfather anyway. I did a five day family hearing and the local authority only rolled over on the last day. They didn't want the children in there at all. (Judge)

(Where the court has made an order against our recommendation) what the courts have done is actually put in a supervision order to ensure that the local authority remains supportive of that family, that we don't just disappear. (Social worker, family placement)

The local authority doesn't always agree with the decision that's made. I've had cases where we argued against the SGO and said this carer isn't able to meet these children’s needs and we didn't support the placement, but the court has overridden our assessment. So the child is then placed with a family member who we don't think can protect the child. So in those kind of situations there might be a supervision order. (Frontline social worker)

We wouldn’t ask for a supervision order. Generally we have been landed with it where it was felt that (the court) wasn’t too sure that the families could necessarily meet the children’s
needs effectively and they just wondered if the local authority wants to kind of keep an eye on the families. (Frontline social worker)

Typically, although not invariably, it appears that such orders are not instigated by the local authority, but by the court, the carers’ solicitor, or, particularly, children’s guardians:

(Children’s) guardians like them because it gives them and the court the reassurance that the local authority will remain involved for 12 months. Because you can't close the file whilst there's a supervision order in force. It varies a lot from place to place but some local authorities will probably look to close the file quite quickly once the child is settled in a permanent placement with the special guardian. You know, they may keep the financial support ongoing but you don't need an allocated social worker and an open file to pay an allowance, that's done by the financial people. So I think sometimes (children’s) guardians recommend supervision orders to force the local authority to stay involved for the length of the order. I know sometimes there's a tension that the guardians at court, and where the kinship carers have their own legal representing them as well, want an assurance that the local authority will stay actively involved until things have settled down and that's their mechanism for doing it. (Local authority solicitor).

Researcher: Why do you think it happens, is that the local authority wanting it or the carers or the court?

I think it's probably carers and then the courts also like to know that there's going to be support there to prevent a long term breakdown. If there were issues arising they're probably going to arise in the first year of the placement. So the local authority is there to support in that timeframe rather than four, five years down the line something cropping up and there needing to be a significant upheaval of the children again because the carers didn't have support from the local authority from the outset (Frontline social worker)

Local authorities, of course, might not accept this perception that supervision orders are necessary in order to prevent them closing the case. In the view of one group of social workers:

I think, to be honest about it, sometimes guardians like the supervision order because their fantasy is that the case will just be closed, so I think it reassures a lot of guardians as well. They don't trust our support plans do they? We say we're going to offer support for six months but they don't think we are. (Social workers, looked after children team)

It was interesting, nonetheless, that this same group also thought that supervision orders were useful because they were a passport to *children in need* status and hence could unlock support:

A supervision order lets you access other services which the family who aren't involved with Social Services might struggle to get. They're statutory *children in need*, they're Section 17 children. Which does make them eligible to certain services. They're sort of in the system. Whereas if they're not you have to evidence that they are *children in need*.

Anticipated difficulties with the child’s parents was the main reason informants thought a guaranteed period of local authority involvement would be sought by means of a supervision order or family assistance order.

It’s usually issues around contact, (with) Children’s Services providing the building venue and supervisors, and we can do that under a supervision order. So it's usually issues about contact, that's certainly what the family assistance orders have been for. So we’d get their care
plan first of all and that would suggest maybe a residence order and a supervision order (Solicitor)

I think the usual reason would be to monitor contact until things settle down. Particularly with parents who are likely to be a bit difficult over it, whose contact may be reduced, for example, because you’re saying ‘look this child’s got to settle in now with the special guardian’ and the parents are going to be told instead of having weekly contact they’re only going to have it monthly or whatever, so it needs to be sometimes controlled’. And of course a year goes past awfully quickly and I suspect they could benefit from having more local authority support, but as it can only be a year that’s all that’s ever on offer. I don’t think I see any made where it’s just to keep an eye on things, because they’re so toothless you see. (The local authority) don’t like toothless orders. (Judge)

We would apply for a supervision order more as a support for the placement where birth parents might be very close, where we might be working through a transition year, are transferring contact arrangements over to the kinship carers, just as a belt and braces and a support mechanism really. If we didn't think that they could do it then we wouldn't be supporting the SGO. It's a handholding exercise. (Local authority solicitor)

Supervision orders can also be valuable where carers live in a different local authority. In those circumstances the SGO is made to the child’s home authority, which remains responsible for support for three years. A supervision order, however, is made to the authority in which the carer lives. Although that local authority may resist having such an order made, it does provides a means of obtaining local support, something which has emerged as an issue both in this research and in an earlier study (Hunt et al, 2008).

Opinion differed about the legitimacy of using supervision orders alongside residence or special guardianship orders. Some informants were opposed to the idea entirely.

I know from our team we do sometimes have an issue with a supervision order and SGO together. Because the whole idea of being a special guardian is to take over the role of caring for the child, providing for the child’s needs and being able to do it as a family member. If the person can’t do it then they shouldn’t be special guardians. (Frontline social worker)

Differing views among social workers are illustrated by this interchange in a group interview with kinship care social workers and managers, with some considering supervision orders could be useful, others arguing that where there were concerns about the arrangement, the placement should remain as kinship foster care; where the issue was parental contact, that was more appropriately covered with a contact order; where there was a need for support, that could be covered in the support plan, or with a child in need plan.

I think if you do a supervision order the threshold of fear has been met and you shouldn’t have that. I've got a case where I fought long and hard to not have a supervision order attached to an SGO. If you have concerns then you shouldn’t place a child there. In terms of (my LA) we've had some discussions and talks on it. I would be reluctant to have a blanket approach. If you feel that child has that need you can have a child in need plan, but we know that child in need cases are much lower than some of the other... that's an issue that we need to think about. We had one where the child was in a placement that we didn't really think was suitable at the beginning. But because this child had an established relationship, they've proved to be able to care for his basic needs but we need a longer period of guidance, of monitoring, of supporting them for the best. So, keep them as kinship foster carers.
It's not a simple thing.
That's where we come up with the challenges in court. I think sometimes I agree with (supervision orders). I can think of one we've got at the moment. The special guardian is absolutely fine, I don't think we've got any concerns but there's real difficulties around the parents and the risks from the parents and I think she needs some support with managing the parents, not necessarily the child. Now you may argue that should be kinship foster care, but actually there's no concern about her care of the child in all of that. I think I would have said well possibly an SGO with a supervision order may reflect better.

Contact order or support plan.
You could, but you're likely to get more, the social worker will remain involved in a supervision order.
Not always though do they?
Well they need some telling, but then you will have the social worker and the special guardianship support team, so you've potentially got a range of different support. It's debateable I agree.
(Kinship workers group)

Similar differences of opinion were evident in interviews with judges and local authority solicitors.

Judges
There's not much point. If there's a proper special guardianship support plan. If you're saying they're good enough to be special guardians, why would you be having a supervision order except to manage contact, which you can kind of at least get the principles straight in the special guardianship support package. (Judge)

Very often the reason for having a supervision order is because they've had contact supervised by the local authority and the local authority want to dib out as soon as possible, but that process hasn't really started. I'm quite keen to have supervision orders in for that, if no other reason, and at least you get the review process and everything else, so it gives another 12 months of keeping an eye on things. And the special guardians often want it, they still want a social worker in to broker with the parents, some of whom can be quite difficult, not necessarily about contact but generally you can get a father who's a bit off the wall or something. They like to have that support. I don't see it as terribly intrusive...and although it could be said to be belt and braces then if the child needs belt and braces give this child belt and braces after all it's been through. (Judge)

Local authority solicitors
It's an interesting issue this isn't it because I know there's a lot of people who can't understand how you can have the two. I personally don't see what the problem is. I suppose they're normally the cases where there are no concerns in relation to the special guardian's parenting, but perhaps it's felt that in terms of contact there just needs to be some involvement from the local authority just to help out and help manage the relationships, you know, expecting the special guardian to take the lead but just to provide that support. It's about providing support to the special guardians to help them out for a time limited basis and I think that's better than having a care order. (Local authority solicitor)

I think the issue there, if you're placing the child with carers that you're content are able to offer good enough care, so if the child is going to be permanently with the kinship carers then that implies that you've done an assessment that they're good carers, better than good enough usually, and that they're working with you otherwise you wouldn't be placing the child with them. So what is the purpose of a supervision order, you're not going to need it to get into the household to see the child because by definition the carers are working with you. (Local authority solicitor)
I can't see the point myself I think if you've completed an assessment for an SGO and you're there anyway to offer support, why would you want a supervision order. I suppose maybe social workers on occasion might feel comfortable but I would have thought if you've got a good assessment and you were confident in this placement and you're giving the support it needs, why would you want a supervision order. (Local authority solicitor)

Most of the interview data on this issue related to supervision orders. Family assistance orders appear to be relatively unusual and some people considered they were of little use. However one local authority solicitor argued that it was a more appropriate order:

We take the view in the local authority that having a public child protection order runs against the special guardianship order; it's totally wrong. So what we suggest is that if there are any problems, and the problems are usually issues about parental contact and whether or not the special guardians need some support in that area, we'd recommend a family assistance order which is a private law order but does the same in many senses. The aim of a family assistance order is to advise and assist. And that's the aim of a supervision order. The only difference between the two is that the supervision order is a child protection order and the family assistance order is not. We take the view that it is a better order in these circumstances. That's what I do on all my cases. I try to persuade (children’s) guardians and social workers to go for a family assistance order. (Local authority solicitor)

This approach would seem to have merit, provided that the local authority takes a family assistance order at least as seriously as a supervision order.

The fundamental issue, of course, is why, if it is considered necessary for the stability of the placement that the child’s social worker should remained involved, it should be necessary to have an order to secure that. This serves as yet another demonstration of the fact that support for kinship arrangements is strongly linked to their legal status.

Summary

- Kinship foster care was seen usually as a transitory status until a private law order could be made.

- There was a general perception that care proceedings rarely ended in a full care order with the child in a kinship care arrangement.

- Local authority informants put forward a welfare rationale for avoiding care orders or the preferences of the child or carer. Other professionals saw it as driven also by a desire to keep down LAC numbers and costs.

- Care orders are made for a variety of reasons, and often more than one will apply. In many instances it will be because the local authority needs to retain parental responsibility, at least for a period. Sometimes, however, it is because the child has particularly high needs and it is considered that retaining looked after status is the best way those needs can be met.

- Considerable concern was raised by a range of informants about the premature use of special guardianship orders rather than making a care order with a view to an SGO at a later stage. Local authorities seemed to vary in their willingness to have care orders in these circumstances.
- Special guardianship orders appeared almost to be a default option to secure kinship placements, supplanting residence orders and with adoption remaining rare. Special guardianship can be an attractive option to carers but they need to be able to weigh the pros and cons.

- Local authorities were widely perceived to be ‘pushing’ special guardianship. Other respondents were concerned about this with some saying that carers were not necessarily in a position to make a free and informed choice. Some authorities, however, were making efforts to ensure carers had proper information and advice.

- Residence orders are still used, sometimes as the order of choice, sometimes because the local authority is not approving the placement.

- SGOs, however, were largely seen to be superseding residence orders, partly for the greater legal protection they provide but also because of the statutory framework around support. This issue of support may well drive and distort decisions about the level of legal protection a kinship arrangement needs.

- There seemed to be wide variation in the use of supervision orders or family assistance orders alongside SGOs and residence orders and there were contrasting views about the appropriateness of making such orders. These orders were mainly made where there was perceived to be a need to ensure that the local authority was kept on board to provide support, often regarding parental contact.

- Often the making of such orders was not instigated by the local authority, but by the court, the carers’ solicitor, or, particularly, children’s guardians. Supervision orders did provide a passport to *children in need* status and hence could unlock additional section 17 support. This is further evidence that support for kinship arrangements is strongly linked to their legal status.
Levelling the playing field: information, advice and advocacy

They’re powerless, aren’t they, and they’re kept in ignorance. (Children’s guardian/independent social worker)

I think what we’re seeing now is that social workers and their managers are under so much pressure to reduce the numbers of looked after children, get everything out of the system, so when they’re faced with the real power imbalance and being instructed to do things they’re not comfortable with, what we see is workers reasserting that power over service users. And this is just what they can do with kin carers. (Children’s guardian/independent social worker)

I’m not sure that the issue is around choice and informed choice, we’re probably quite a long way off that being a reality for every family we work with. (Designated manager)

At several points in this report we have highlighted professional concerns about carers being disadvantaged by lack of information about their position. This emerged in relation to the support available for informal carers and how to access it (chapter 5); the initial legal status of the arrangement (chapter 6); the use of private law proceedings (chapter 7); and decisions about applying for a special guardianship (chapter 9). The research thus amply confirms the picture painted by the carers we interviewed in the first part of the study, summed up in the memorable words of one carer:

We’re like mushrooms – kept in the dark and fed a load of shit. (Kinship carer)

Professionals also referred to carers not knowing what questions to ask, or being afraid to ask questions in case it might jeopardise their position, or, in relation to asking about financial support, because they did not want to be seen as ‘money-grubbing’. Again, all points made by the carers we interviewed.

Some professionals even referred to Children’s Services deliberately keeping people in ignorance or taking advantage of that ignorance, and the imbalance of power. A key issue, therefore, was seen as getting the right information to carers at the right time, not just because it enabled the carer to make an informed decision, but because it removed an unnecessary source of stress for people who were already typically highly stressed.

Having access to the right advice. It’s going to be very difficult to wave a magic wand and make everybody’s situation better obviously, but knowing where you can go, knowing who you can talk to, knowing what kind of information you need, whether it be legal advice or emotional support would make a huge difference to a lot of the people that we see. I mean lots of people we see who say if only I’d have known that. (Solicitor)

I think a lot of kinship carers find these proceedings really stressful and they don’t obviously understand all the ins and outs of the law and the policies and various bits and pieces but they do find it really stressful and an additional stress that they don’t need. (Solicitor)

Not all carers, of course, will want, or need, to turn to Children’s Services for information and advice, although the Bristol study (Selwyn et al, 2013) found that most carers had been in touch at some stage. Hence it is important that there are alternative sources of information and that community services, which may be the first port of call for carers/potential carers, are aware of these. Our concern in this research, however, was with people who did come
into contact with Children’s Services but all too often did not find that their needs for information and advice were adequately met, or that they had to struggle to access it.

The requirement for local authorities to publish their policy on family and friends care should have been an important step forward. The intention in the government guidance was that such policies should be a source of information for carers and some local authorities have clearly taken this on board. One local authority policy, for instance, not only emphasises the importance of carers being able to make informed decisions but makes a commitment to this. It was notable that this local authority had been able to draw on research conducted with carers in their area and was actively seeking to respond to the needs identified in that research, which included the need for information.

Having accurate and clear information...at the beginning and throughout the family and friends care arrangements is a critical issue and one which is addressed within this policy. Informed decisions about the most appropriate course of action a carer should take is dependent upon the quality of the information available....Where children and young people live in the care of family and friends, Children’s Social Work Service will provide support, information, advice, guidance and signposting to relevant agencies, to carers and children to ensure that they are able to make an informed decision about the options available to them and that the child(ren)’s needs are understood and met...In response to the information and support issues highlighted by family and friends carers in (the local authority) the following key messages have informed the Council’s Family and Friends Care Policy and subsequent delivery plan:

- Provision of accurate information, which is easily understood, avoids using jargon and is available in print as well as online and verbally, should not be difficult to find, and is essential before carers enter into the formal system.
- Information will need to cover the different legal options available, access to support, family group conferences, specialist services, and financial support.
- Information needs to be consistent across services and practitioners when dealing with children, families and kinship carers. (Local authority policy)

However, as noted earlier, even where authorities have complied with the guidance in publishing a policy, research indicates that many are deficient either in content - including not giving adequate information about the implications of different legal options or available services, - or clarity (only 58% were judged to be clearly written and jargon-free; 26% being only understandable with some effort and 16% containing too much jargon or technical language) (Roth et al, 2012). Clearly, much improvement is needed.

It is doubtful, however, that many carers will turn to local authority policies at the outset, or even that they will know how to access them. Certainly, trying to find such policies, or indeed any information about kinship care, directly from local authority web-sites can be a frustrating experience, as the authors of this report can attest. Thus it is vital that at the outset carers can obtain the information they need – but may not be aware that they need - from frontline social workers, who are most likely to be their first point of contact within Children’s Services. As one local authority policy emphasises ‘the local authority must ensure that social workers have the right information and are able to explain it clearly to others’.

The data from this research, however, indicates that this is far from the case for all social workers. Chapter 5 highlighted this issue in relation to the critical issue of whether a kinship arrangement is regarded as an informal arrangement made within the family or as section 20
accommodation, which, as we have shown, is so pivotal for the support likely to be made available. As we noted, social workers’ poor understanding of the law was seen as a key reason why cases were sometimes wrongly classified. We were also aware that some of the social workers we interviewed seemed to be somewhat hazy on the subject. Indeed at the end of one group interview, in which this topic had been discussed at some length, when we asked whether the participants felt they needed any training about kinship care one said, ruefully, ‘I do now!’ Some local authorities are addressing this issue through training or guidance. Nonetheless it is concerning that almost a third of Children’s Services’ staff participating in our on-line survey said they had never had any training or guidance on the question and just over a fifth said they were not clear about it.

In an ideal world, of course, one would want all social workers likely to be dealing with kinship care arrangements to be sufficiently familiar with the law and the implications of different legal options to be able to judge a situation correctly themselves and to enable carers to make informed choices. This may, however, be unrealistic: frontline social workers have to deal with a wide range of family problems and making arrangements for children to live with kin is unlikely to be a regular feature of their workload. Thus while we consider all frontline social workers should have training on the law and local authority policy, this needs to be supplemented with clear procedural guidance, probably in the form of a decision-making flow-chart, setting out the basis on what decisions should be made and when expert advice should be sought.

Chapter 5 also, however, revealed a strong perception that it was not just a question of ‘the blind leading the blind’ but a rather more sinister picture of carers being deliberately kept in ignorance by local authorities in order to keep the numbers of looked after children down, thus complying with government directives and reducing the pressure on already stretched local authority resources. Such a strategy of rationing by ignorance is, of course, unacceptable and Directors of Children’s Services need to make this crystal clear throughout their departments.

Nor is it enough to ensure that, where the local authority takes the view that a kinship arrangement is ‘private’, that they state this, both verbally and in writing, to the carer. While this would result in carers being less confused about the legal status of the arrangement, and therefore having false expectations – which was a major issue for the carers we interviewed – it does not equate with enabling carers to make informed decisions – other than to decide whether or not to take the child on. Carers need to be given information about the implications of legal status for support, what the alternatives might be, how they can get independent advice and how they can challenge the decision. Social workers therefore need to be able to give carers something like an information pack covering these issues, with perhaps a list of Frequently Asked Questions. While written information is vital, alternative formats, such as a DVD, or a link to an interactive web-based programme, might also be more accessible. We are aware that some local authorities have developed or are developing such packs but some only appear to cover kinship foster care.

Several of the carers we interviewed argued for such an information pack:

There’s got to be a package which tells us what’s on offer.

We definitely need some basic practical information booklet with advice and local information. It should come with the children.
The Bristol University research on informal kinship care (Selwyn et al, 2013) similarly highlights the need for readily accessible information and suggests that each country in the UK should fund the development of a comprehensive national resource pack for kinship carers, which should be widely available and underpinned by a national information campaign. This is vital, they consider, to reach the 28% of carers who do not have legal parental responsibility, and the great difficulties carers have in accessing the information they require. It could, of course, also be valuable to the many more carers who start off caring informally and only subsequently acquire parental responsibility through a special guardianship or residence order. As the researchers note, many voluntary agencies already provide a range of information leaflets and on-line resources so if this recommendation is adopted it will be important to draw on that experience and consider how existing products can be utilised, rather than re-inventing the wheel. Local authorities will still need, we consider, to produce their own local information to supplement any nationally produced package.

It needs to be recognised, moreover, that it may not be sufficient simply to give out this type of generalised information. Carers may also need to be able to explore how it applies to their individual situation. Indeed they may need to do this on more than one occasion. We recognise that this is a challenge for overworked child protection social workers who, once the child is perceived to be safe with kinship carers, will have other, more pressing, demands on their time. Although the comment below was made in relation to new kinship foster carers, we consider the points made apply equally to the generality of kinship carers, indeed perhaps more so:

Mainstream foster carers are coming to it from a period of training and preparation. Often with kinship foster carers it's sudden and you've got to take in the court process, the children, the system. It's a lot to take in and I think it is sometimes the ability for a professional to go slowly, you know, sometimes we'll say 'well actually we have discussed it but they can't remember it or take it in' and you sometimes have to do that several times or provide it in writing as well as verbally. And I guess a lot of ours may not have, or be very familiar with accessing information on the internet or things like that so they may need more handholding. And yes it's a busy department, resources are limited, so I think it is patchy. If they can search out a bit on their own and actually ask the relevant questions, but sometimes they don't even know what to ask and I think it is often a time of so many things happening that I think they probably need more handholding through the process and there isn't always time to do that, particularly from the child's social worker. (Kinship social worker)

It would therefore be helpful if a social worker with expertise in kinship care, and no direct connection to the child's case, could be allocated to all new kinship arrangements with which the local authority is involved, with a view to ensuring carers understand their position, what help they can access and how they can access it. We know that in some local authorities, where a kinship foster placement is being considered, a social worker from the kinship team will make a joint visit to the carer with the child’s social worker. However this is unlikely to happen where the arrangement comes about in an emergency or where it is deemed to be informal. Similarly, where a placement is made under regulation 24, there will be significant input from a social worker responsible for assessing the carers as kinship foster carers. As noted in chapter 11, this may be done by a specialist kinship team and even if it is not, it is likely that family placement workers will have more expertise in kinship care than the child’s social worker. Thus in terms of the provision of information, and ensuring carers understand their position, as in so many other respects, carers who are acknowledged as kinship foster carers are in a more privileged position than other carers.
If a child becomes looked after, an independent reviewing officer will be involved, which brings an element of independence into the process. Although there is no parallel system for children who are not looked after, the family group conference process can play a role in checking whether carers have the information they need and ensuring information is provided.

I think that information is power basically, so that they can actually make a decision. And I can't think of any other process where that would happen with the whole family at the same time, I think the fact that it happens at the same time is that everyone is on a level playing field and able to discuss. (FGC co-ordinator)

Our interviews with FGC co-ordinators and FGC service managers suggest this may be done in a number of ways: priming the social worker beforehand about the information they will need to provide at the conference; inviting someone from the kinship team to attend; signposting carers to independent information and advice.

When we go around as part of preparation with the families we will be talking about them making a plan for the child. That plan talks about the support that's needed to make that work and I always say 'if there's anything you can think of now let me know or between now and the conference let me know and I can either bring the information or let the social worker know that they're going to want answers to this'. We have a meeting with the social worker before we run a conference to talk that through and it's our job really to make sure that as much of that information if not all of it is there at the meeting, so that the family get what they need from it really. (FGC co-ordinator)

If the social worker is experienced and feels that they can do that well that's fine, if not we might decide that it needs somebody else, you know, from the Family Plus Team because their knowledge is better about all the different orders, the support you get or don't get, what the options are, the process, what the costs are etc. so we would do that. (FGC service manager)

I think certainly in terms of the training that our co-ordinators get, they're not lawyers and they're not equipped to give that sort of information, but they do get training on what the different orders are and what support goes with each, so I would think most people would be able to recognise a situation where they felt that a family was not getting the right information and therefore be able to signpost them to get that advice. (FGC service manager)

Not all local authorities, of course, embed family group conferences in their processes. Moreover, where a child is placed in an emergency, unless this is part of a contingency plan already made at an FGC, this particular safety net is not going to be effective.

Nor is it the role of the FGC co-ordinator to give advice; our interviewees were very clear on this score. However they did recognise the need for carers to have advice and argued that this should be available from a source independent of the local authority. Perhaps not surprisingly, because FRG have played such an important role in promoting family group conferences, this was usually the source mentioned.

They need to have an independent person who can advise about what they need to do and also the resources to be thinking about that they need to be asking the local authority to provide. We always signpost to Family Rights Group, I always say to them go on-line...

We always signpost to Family Rights Group leaflets.
Give them a ring, speak to somebody independent about it, because I feel sometimes that the social work teams maybe are leading them the way that maybe benefits the local authority more. (FGC co-ordinator group)

Only just over a third of Children’s Services informants responding to our on-line survey, however, (32 of 85) said that in their authority carers were routinely referred to specialist advice organisations such as Family Rights Group or one of the grandparents’ organisations. Rather more (42; 49%) said they would be advised to consult a lawyer.

Whatever the source of independent advice, as we noted in our earlier report, its value was indisputable for our carers.

A few were able to use the information they obtained to insist that they became foster carers from the start; rather more to persuade the local authority to convert an informal placement into a foster placement; others to obtain financial support or more financial support, which could make a difference of many thousands of pounds. (Hunt and Waterhouse, 2012, p 83)

Indeed, when carers were asked what advice they would give to prospective kinship carers one key theme was that they should not rely on what they were told by Children’s Services but do their own research and get independent advice:

Get advice first, a lot. Social Services want to get child care on the cheap.

Social Services only tell their side of it.

It is absolutely vital to get independent information and advice – from the internet, from a lawyer, from advice agencies such as FRG, the Grandparents’ Association, The Grandparents’ Plus, The Fostering Network, Citizen’s Advice.

Call Family Rights Group first or one of the grandparents’ associations and get as much information as you can about the different options. If somebody had told me that at the beginning, it would have made such a difference.

Carers also argued that Children’s Services should be required to signpost carers and prospective carers to sources of independent information and advice:

Social Services should be told they must refer people to an agency like FRG to advise on the issues and their rights.

If we hadn’t been on the internet we wouldn’t have known about FRG. How do people know where to go?

Indeed some argued that carers needed external help to guide them through the system or to act as advocates – an independent advocacy service not paid for by the local authority.

At the risk of appearing biased, since this research was undertaken at the request of, and in partnership with, Family Rights Group, it would be remiss not to highlight the invaluable service which FRG offer through their Advice and Advocacy Service. Funded by government for the next two years, this provides information and advice through a free telephone advice line as well as on-line; information leaflets about various aspects of kinship care and advocacy in individual cases. The value of FRG’s Advice Line has recently been documented by other researchers (Featherstone et al, 2012). Small amounts of time-limited funding have
also been secured from charitable trusts to do some limited self/indirect advocacy work. However demand for the service outstrips resources.

The following extract from an interview with a group of FRG case advisers explains the advocacy work they do, but also the pressure on the service and the insecurity of funding, which meant that they had only recently been able to resume direct advocacy.

We would write to the local authority on behalf of kinship carers and prospective kinship carers and negotiate for them, or we would support kinship carers and prospective kinship carers by assisting them to advocate for themselves – self advocacy.

Researcher: A lot of people who talked to us mentioned using a template letter. What exactly is that?

We have a few proforma letters to give to carers or potential carers that they can use themselves. We sort of set out the legal arrangements and what arguments they should make and then they're expected to fill in their own facts.

We would maybe do it for them, perhaps if we felt that they really needed our help more, whereas if it felt like they could like research and they could do it themselves then we'd just talk them through it.

We’ve only recently regained funding to do that, because we had no funding.

Researcher: How often do you think you need to be doing it rather than them? Do you think most people can, once they're given the information?

I think it's almost a difference between who needs it and how much time we have. The service is so busy that typically anybody who seems even vaguely articulate I’ll tell them that they can do it themselves, but that's different from whether I actually think they can do it effectively or as effectively.

What I usually do is send it out to them and tell them to add their details and send it back to me and then I'll top and tail it, just so I can check that they're not making any blatant errors when they go.

The actual template letter is so carefully worded that it covers all the main points really and all the person needs to add if they are doing it themselves is specific details about their own family and the exact circumstances. (FRG case advisers group)

It is disappointing, therefore, that the Bristol University research on informal kinship care (Selwyn et al, 2013) found that half had never heard of Family Rights Group. Similarly, half were not aware of The Grandparents’ Association and two thirds had not heard of Grandparents’ Plus. Clearly, more needs to be done to publicise the services which already exist to provide information and advice to carers. In order to do so, however, funding needs to be secure and extended so these advice agencies can reach out to a wider group of carers.

Requiring Children’s Services to make carers and prospective carers aware of independent these services is a vital step in ensuring that carers do have access to independent information and advice. It is also important that carers are reassured that seeking independent advice will not be held against them, as, according to one of the solicitors in the study, some feared.

I have seen, and certainly clients will report to me that they are frightened of getting independent advice because they fear that if they stir things up with the local authority the child will be removed. (Solicitor)

Legal advice and representation

Many carers will need to be able to access the services of a solicitor, whether for advice, advocacy/negotiation with the local authority or representation in court proceedings. All serve to empower carers and ensure that their interests, and therefore that of the children they
care for, are protected and promoted. Indeed the succinct advice from one of the carers we interviewed was ‘get a good lawyer or you’ll get trampled on’. Similarly, some lawyers referred to carers being ‘taken for a ride’ because of the absence of early legal advice:

Sometimes I see people having been taken advantage of for the last X years, paying out of their own pockets for travel arrangements, paying the travel costs of the parents to come and see the kid, even when there’s a duty on the local authority to do exactly that, and you just think, ‘this person has been totally taken for a ride and they need a sharp lawyer on their side arguing for them’. (Solicitor)

These people never get any independent legal advice at all and come along years later saying ‘I’ve run out of money and I can’t look after this kid anymore’ and you just go to the social workers and they say ‘it’s a private arrangement, nothing to do with us’. Of course it wasn’t a bloody private arrangement, but you can’t prove it now, no one has got any paperwork. (Solicitor)

The professional data indicates that the involvement of a knowledgeable and assertive lawyer can make a difference in a number of ways, many of which have been referred to in preceding chapters. First, in checking whether an arrangement which the carers have been told is private should really be re-categorised as section 20 accommodation, whereby the child becomes a looked after child, with all the rights that entails for both the child and the carer. This issue may only come to light when the carer approaches a solicitor in order to make a private application for a residence order or special guardianship order (chapters 5 and 6). Second, in arguing for an appropriate order, either in the course of proceedings or as a final order (chapters 7 and 8). Third, in securing support. This might be in the course of proceedings:

Sometimes you can argue for support during proceedings, even if there isn’t an interim care order. You can often negotiate a foster care rate within proceedings, or something like it, that provides people with a lot of support and you can often negotiate other supports because you’re in the court process you can get support relating to contact and those sort of things. So much depends on what you can do outside the court door really. (Solicitor)

Commonly, however, solicitors saw themselves influencing the support available under a final order, particularly the special guardianship support plan, or protecting carers from inappropriate contact order:

An awful lot of our time in court is spent arguing about support for placements, financial and other support for placements. (Solicitor)

The starting point for some of these cases is...the least ongoing support possible. It's only when you start embarrassing (the local authority) by ventilating it in court or getting higher up the hierarchy that you get a better quality decision-making, and to be cynical you maybe think ‘well that's one way of rationing the resources. Get to court, get higher up hierarchy, get a better service but we'll give a less good service to the ones who don't complain’, and that's what worries me. (Solicitor)

We ended up going to court with concerns and we were made a party, we got funding and so suddenly our grandma was just as important, if not more important, than mother… (we were) protecting grandma…so when they said ‘oh grandma can manage that contact’ I’d turn to my client and say ‘how do you think you're going to manage if you've got to get them to school’ and she says ‘I can't do that, no’.(Solicitor)
One solicitor gave an example of a carer who sought legal advice at a late stage, at the instigation of the judge:

The judge said ‘you go and see (X)... he'll get you a decent package’. The local authority were not prepared to give her anything and Judge (X) said ‘no, I'm not happy with this, this woman needs legal advice and I direct the local authority to involve (X)… I'll adjourn this case for a fortnight for this person to get some independent legal advice’. So it gives you a fortnight to get the act together and screw some money out of the local authority, to put it crudely. And I screwed what they considered to be grotesquely huge sums of money out of them. The judges were on my side and I ended up getting a £1500 moving in grant for this woman, who was actually just a neighbour looking after a child, sort of honorary godmother type figure who had had the child off and on and they were offering something derisory, no moving in grant and certain sums of money a month not guaranteed for very long, and I managed to push it up to £1500 moving in and full payment guaranteed until 18. (Solicitor)

The same solicitor also referred to sometimes having to encourage carers to press for support, as in this case.

Some will say ‘I'm not doing it for the money’ and you have to say ‘yes that's fine and dandy but at the moment you're being paid a fostering allowance because it's just a temporary form of kinship arrangement, do you realise x, y and z and you know, at the moment the child is of this age but the child will become more demanding and more expensive’. And at some level you do have to bully people. I mean the woman I got £1500 for was happy to have none at all and she'd say ‘oh I'll just go short in other ways’. Well that's fine and obviously it's actually not for me to bully people into being greedier than they are...But you've got to overcome some people’s…the fact that they've been exposed to social workers for probably two years by the time you get to see them. I say to them ‘don't worry I'll take the blame’. I've actually said it in court, I've even incorporated it into a statement saying ‘my solicitor has pointed out that I will need a, b and c in order to give a decent service to this child and my solicitor has persuaded me to ask for it’. (Solicitor)

Some carers, however, it was also said, did not want their lawyers to press for support, either because they were too exhausted by the process, afraid they might lose the child or worried that they might be seen as only after the money:

The other thing that I have come across is carers who are in such a desperate place they've given up, they can't be bothered to fight their local authority anymore and so they don't want you to ask for anything, it's like ‘oh I can't be bothered, we've survived this long’. And that's a really sad place. Or they might lose the child or somebody might think that they're only in it for the money. We do definitely come across that. And I’ve had people say ‘oh thank god you said that I'm entitled to this rather than it's being a hand out from the local authority’, where suddenly it was okay to ask for the money but previously they were left to feel that it wouldn't really be appropriate to ask for more money. But they didn't want to come across that they didn't love their grandchildren. (Solicitor)

Finally, one solicitor also emphasised that the solicitor can also protect the carer’s privacy:

The special guardianship report (is a) very personal assessment and (if there is no solicitor) nobody is there to guard the interests of the grandparents, so very often these get filed and served on everyone, which means every single bit of personal information about these grandparents is going to be available to everyone in the proceedings including the parents. …We ask (the grandparents if they want this information disclosed) and liaise with the parties saying a redacted copy should be served on the parents. But until that point there is no one in
the proceedings looking out for the grandparents’ privacy… that's overlooked quite a lot, because the regulations are very clear that the special guardianship report, like the adoption report is confidential. (Solicitor)

These benefits can only be realised, of course, if carers find their way to a lawyer in the first place and can either fund the legal costs from their own resources, or have assistance with this.

**Legal costs**

Research by FRG (Ashley, 2010) shows that legal costs can be a major expense for kinship carers, who spent, on average, £3640. Our carer interviews in this study found that the majority of carers (76 of 95; 80%) had been involved in court proceedings. Well over a third of those who provided details of funding (21 of 56) said that they had had to meet all (12) or some (9) of the costs themselves. Thirty-five were fully funded by legal aid (15) and/or Children’s Services (18). In half (28) Children’s Services met all or some of the costs. In the carer survey (Aziz et al, 2012) only 29% of those who received some help with legal costs were fully funded through legal aid, with 28% getting some assistance. Forty-three per cent either had all (26%) or some (17%) of their costs met by the local authority (26%).

This raises several questions. The first two are theoretical. First, why should carers, who are making enormous sacrifices to provide permanent care for needy children, have to pay for the legal costs of securing their futures? Second, is it right in principle that local authorities should have to step in to make good shortcomings in legal aid provision? Others are empirical: what determines whether the local authority will make a contribution to costs and how does local authority funding affect the ability of the solicitor, on behalf of the carer, to challenge the paymaster?

**Legal aid**

The difficulties carers experienced in securing legal aid were a common concern among the solicitors we interviewed. Often this was because carers were working or had some capital which made them ineligible, but there were also reports of legal aid being refused because the parents were agreeing the order, and lengthy delays or even disputes between the local authority and the Legal Services Commission (LSC) over who should be responsible for meeting legal costs:

There needs to be some pressure on the LSC about the means and merit testing issue in private law. Because I do think that that's a concern, that people aren't being funded. Either you can't ever get a certificate in some instances for people to bring applications, or alternatively it takes an age for it to be processed. And of course that's all going to change anyway isn't it. Nobody is going to get anything. (Solicitor)

People will often be outside the means test if they're working but on low incomes, they may well not be eligible. If they've got a big mortgage they may not be eligible because the LSC only will take into account… £100,000 worth of mortgage and after that they assume you've got capital even though you haven't, so yes so the means test. (Solicitor)

If the parents are in agreement then they (kinship carers) won't get legal aid to apply for a residence order anyway, because the LSC will say well there's no contest. That's difficult for people because they don't even know how to apply for a residence order… if they've got somebody like Family Rights Group who can help them then that's great but not everybody has that or even knows about that. (Solicitor)
I did a case last year where an older boy had been discharged from child protection procedures because the aunt and uncle were going to make an application, but nonetheless he had been placed with them by the social worker. They weren't even offered the court fee to issue proceedings, we had a horrendous difficulty getting public funding for them … the LSC kept chucking it back saying ‘no, why isn't the local authority providing legal assistance?’ Eventually we got a certificate but it took seven or eight months to get public funding certificates sorted. I was saying to the social worker ‘can you not at least pay the £300 court fee?’ The LA was happy to wash its hands, the boy had been placed and was no longer an issue. (Solicitor)

In care proceedings, one way round the problem, it was said, is for the carer to obtain an interim residence order. Since they thereby acquire parental responsibility, this means that, like parents, they are automatically entitled to non-means, non-merits tested legal aid.

Even in care proceedings it’s …merit tested and I've certainly on one occasion fairly recently had to apply for an interim residence order for grandparents and of course as soon as they get it they're then entitled to non means and non merit tested public funding within the care proceedings because they then have parental responsibility. That does mean the child must be placed. But the guardian and the parents eventually persuaded the local authority and it was then agreed at a hearing that the child would be placed with them under an IRO and that then got the legal funding. (Solicitor)

You're getting them an interim residence order so they've got that element of PR so they can get legal aid to get the SGO…there's no obvious funding for them otherwise. (Solicitor)

The potential disadvantage of this strategy, however, is that once they have PR, carers can no longer become kinship foster carers, with all that implies for the support which may be available to them during the proceedings and in the future.

In future, with the severe restrictions on legal aid in family cases (introduced by the Legal Aid, Sentencing and Punishment of Offenders Act, 2012), legal aid for kinship carers may become even more difficult to secure (a concern also raised by the Bristol University research (Selwyn et al, 2013)). Hence even more carers are likely to have to rely on local authority funding.

Local authority assistance with legal costs
Government guidance does not specify that the question of local authority assistance with legal costs should be covered in local authority policies on kinship care. It is therefore not surprising, but disappointing given how important it is to families, that only a minority of policies make any mention of this (Roth et al, 2012). Of those which did cover the topic:

- 11 (of 15) said they would consider paying legal fees and expenses; four said they would not.
- 9 said they would pay for some SGO and RO applications; 3 would not.
- Only 4 said they would pay for adoption applications; 4 would not.
- 3 said they would pay for legal representation in care proceedings; 4 would not.
- 6 said they would pay where the carer did not qualify for legal aid; 3 would not.
- 4 would pay if the child was previously looked after by the local authority; 3 would not.
- No policy indicated the local authority would pay the full amount.

The picture which emerged from our professional interviews was also very varied, both in terms of what the local authority will pay for – court fees, legal advice, representation – and
whether they will pay ‘most of the time’, ‘sometimes’ or even not at all.

If it’s appropriate to have legal advice sometimes the child’s team will offer a one-off payment to seek legal advice. (Manager, kinship team)

If it’s going to be a long-term agreement then we can formalise it by supporting the family member to get a residence order or SGO. Most of the time we end up paying for the legal cost in obtaining that. (Social worker)

We’ve certainly paid for them to go and see a solicitor to take legal advice about what special guardianship means. But we wouldn’t necessarily pay for them to be represented. (Local authority solicitor)

If it’s opposed by the parents and we very much support the kinship carers and they need to be represented and they’re not going to get legal aid then that will be one where it will have to fall to the local authority to consider whether we fund their representation. It has budget implications for us. (Local authority solicitor)

If the local authority suggested to a carer that they should apply to the court for a private law order then we’ll pay £1500 towards their costs for a solicitor to make the application and obtain the order. If it’s a straightforward matter there really only need to be two hearings. If it becomes complicated, as these things often do, then we’ll obviously consider giving more than that. (Local authority solicitor)

It varies from local authority to local authority, they certainly often won’t pay for legal representation at court. It’s more likely an hour’s advice in the office and it’s often limited to quite a low hourly rate as well. (Solicitor)

In general it seemed more common for local authorities to pay for a one-off session of legal advice than for legal representation. One local authority was said to pay for two sessions where an SGO was being considered, one at an early stage, so the prospective special guardian can explore whether this is an appropriate order for them, another later in proceedings, to consider the support plan. Another local authority states in its policy that where there are court proceedings, it will pay for two hours legal advice, before the carer has even tried to secure public funding. However some local authorities were said to be reluctant to contribute at all.

That’s another thing that’s very unfair. Usually, if you’re acting for the child in care proceedings you try and negotiate that any potential carers have payment of one-off legal advice, so that they know, independently of the local authority, what they’re letting themselves in for, the sort of support they can get and all the rest. On the whole you can negotiate that. But I’ve got a number of cases with (X local authority) at the moment and they’re very reluctant. (Solicitor)

I’d like it to be less of a struggle for relative carers to have free legal advice, initial advice, from the local authority. Because even though there’s a policy you often have to sort of beg, plead, chase it up. (Solicitor)

Hence, in some cases, as noted earlier, judges have found it necessary to intervene and adjourn the proceedings so that the carer can get legal advice:

In public law if you’ve got a kinship carer I will bully local authorities into paying their legal costs. To make sure they get proper advice.
Researcher: Do you normally have to do that?
No not normally, some you do. In some the local authority say, ‘cousin Jenny has stepped up, we're going to arrange for her to have two to three hours of good legal advice and we'll come back in two weeks time and we'll tell you what she's looking for’. In other cases they'll tell me, ‘aunt Sally has come up, grandmother’s come up and we're going to run with them’ and I say to them, ‘well you know, what are we going to run with, adoption, long term foster care, what are we talking about, special guardianship’ – ‘oh we don't know’. I say ‘well more important they need to know are you going to pay for their legal costs’. ‘Hadn’t thought about it judge’ ‘Well go away and think about it’. (Judge)

Variation was also apparent in the criteria used. For instance whether it was limited to applications relating to looked after children or extended to those where the carer had stepped in to prevent the child having to become looked after. The one common factor, however, was that the local authority had to be in agreement with the arrangement.

Finally, variation was apparent in the ceiling local authorities put on their contribution to legal costs.

Issues with local authority funding
The solicitors interviewed raised two main concerns about local authority funding. First, that carers were often referred to them at a very late stage:

Usually...they've been told by Social Services to make the application (and the child has been there some time). You get a grandma or an aunty coming in saying, ‘my local authority will pay me to have two hours of independent legal advice. I'm being told I should apply for a special guardianship order’. (Solicitor)

I think what would make a huge difference would be if the social worker - as of policy - as they become involved, …said ‘go and see a lawyer, we're going to pay for two hours of legal advice’…people coming in here much earlier on or going anywhere else much earlier on and getting the information that they need would make a huge difference. (Solicitor)

What would assist would be better funding of advice for all those involved at an earlier stage rather than it being when the proceedings are much further down the line. (Solicitor)

Lots of clients come to us (late) and only really at that point for the very first time realise that they are looking after children on behalf of a local authority and entitled to a fostering allowance, a fostering assessment, and all the other benefits that go along with looked after children status. (Solicitor)

Second, that the funding provided was inadequate:

The local authority may pay £500…that’s not really enough when often there’s quite a complex bundle of papers to read, a meeting to attend and to give some advice. (Solicitor)

What you get is a complete conspiracy… the local authorities will say ‘we’ll give you say £200 to £300 for some legal advice on an SGO…we have a list of solicitors to whom we are prepared to pay this’. This amount gets you nowhere. (Solicitor)

I’ve been involved in quite a few cases where the local authority has offered to pay for some derisory amount of legal advice – three hours or £500, something like that. (Solicitor)
While cynics may be inclined to respond – solicitors would always say that, wouldn’t they? – this has serious implications for carers, since it may mean that the consultation does not cover proper consideration of the issues or, where problems are identified, enable the carer to challenge the local authority on the legal status of the placement or support:

Local authorities will often agree to fund an initial consultation…but as soon as you raise an issue or something you run out of funding…if you start raising issues about challenging the status, the legal status of the placement, of course the local authority is not prepared to pay for that. (Solicitor)

Local authorities say to me, ‘we're going to pay these very limited costs and we're not prepared to pay you to challenge our support package or anything else’. …I am there for my clients, making sure that my clients’ interests are protected, looking at the support package and looking at whether that's adequate in respect of the children’s needs and the carer’s needs, and …what the local authority pays for legal costs does not cover that. (Solicitor)

It's a bit difficult because, you know, they're paying and you might be wanting to argue with them about what they're offering…and they might only pay for an hour’s advice, you see the client and you do a letter and then you can't really do any follow up work because you don't get paid for it, and the local authority don't want to pay you if you're going to be arguing against them. (Solicitor)

Interestingly, one of the kinship social workers we interviewed also made the same point.

We will pay for our carers to have a one off session with a solicitor to get advice about permanent orders but that's all. Obviously the solicitor is not going to get heavily embroiled in backing these people for more support if he's not being paid to do that, we're not going to pay that, because you know, if somebody is being assessed for an allowance and it's come out at nought, we're not going to pay for them to have legal advice to battle it out. It's a conflict of interest. (Kinship social worker)

The solicitors interviewed were all on the Law Society Children Panel and typically very committed to kinship care. Several said that in some cases they finished up working for virtually no recompense:

We tend to do a lot of pro bono work in those cases… because we can't stop working half way through… we can't say I'm sorry we're not going to look at the support package for you because we can't allow the court to make an order in those circumstances. (Solicitor)

I recently wrote a 40 page appeal to the Director of Children Services about the decision-making, I don't get paid to do that, you know. (Solicitor)

It cannot be assumed, however, and should not be expected, that all solicitors will be prepared to do this.

One final point to emerge about local authority funding is that it appears that some local authorities restrict funding to particular solicitors:

We run a scheme here whereby if they choose a solicitor on a panel that we keep here, and I think there's three or four solicitors on it, we'll pay £1500 contribution towards their legal costs. That's for both residence orders and SGOs. The solicitors on the panel are local solicitors who we know very well obviously and they’ve agreed to do this work for that figure….We've had this protocol that we've sent out to solicitors who were instructed by
grandparents setting out what was expected of them in this arrangement between us, their client and themselves in what we’d expect. (Local authority solicitor)

While this may be for quite legitimate reasons, such as the solicitor’s competence and expertise in this area of law, or controlling the use of local authority resources, it could also be interpreted as an attempt to freeze out solicitors who are more likely to challenge the local authority’s position. One issue which emerged in our carer interviews was that some carers felt that the solicitor they had used had been too cosy with the local authority, warning prospective carers not to use the solicitor who had been recommended by the local authority, or even to go outside their local area. Restricting funding to particular solicitors, therefore, may exacerbate that suspicion.

The quality of legal advice and representation

I think solicitors should get more training on the way Children’s Services look at kinship carers and the financial packages that are available. (FRG case adviser)

Often you see that they've come to you and you're the second solicitors and the first ones haven't really got enough experience in this area or understanding to be able to fully help them, which is a disadvantage. (Solicitor)

There’s a raft of solicitors who are trying very hard to maintain standards and then there are some who simply don't and who don't have the knowledge and they don't have the experience of the system, they don't even understand. (Solicitor)

The value of legal advice and representation for the carer, of course, depends on the solicitors’ knowledge and expertise. As noted in previous chapters, however, there is a perception that this is variable. In chapter 3 we reported concerns that some solicitors did not appear to have advised carers properly about special guardianship allowances. In chapter 6 the issue was whether solicitors, when approached by a carer about applying for a private law order, would necessarily explore the background to the arrangement, and in particular, the extent of local authority involvement. In the report of the carer interviews we also noted that:

While emphasising the importance of legal advice, carers also cautioned that solicitors varied in their knowledge about kinship care. Hence prospective carers needed to get ‘good’, ‘solid’, ‘proper’ or even the ‘best possible legal advice’ and should not ‘assume that solicitors know all the options’. (Hunt and Waterhouse, 2012, p 73)

Practitioners suggested a number of reasons for this variability. First, carers might not necessarily go to a family lawyer:

People can go to any lawyer, somebody who does crime. (Solicitor)

Carers don’t know. They might go to the only lawyer they know. That might be a criminal lawyer.

Researcher: Would that make a difference, do you think, to the quality of the advice they got? Yes usually, because they just would not be alert to those issues if that's not their expertise, yes. (Solicitor)

Second, because of the low level of fees, whether from legal aid or the local authority, or their own restricted financial circumstances, they may not see a fully qualified solicitor:
They'll have an appointment with someone in the firm but it's unlikely to be a fully qualified solicitor. It's likely to be a legal exec or a trainee or somebody very junior because this kind of work, if they're on legal aid it pays buttons and if they're not on legal aid these are not the kind of people who can afford to pay. (Judge)

£200 to £300 (from the local authority) gets you nowhere, so the danger is you end up with the lowest person in the food chain. (Solicitor)

(They may see) someone newly qualified. Firms where, all the casework is done by paralegals and you have solicitors allegedly supervising 10 paralegals sort of doing their own case, which of course is absolute nonsense. (Solicitor)

Fixed fees, it was suggested, had contributed to the problem:

Since fixed fees came in for solicitors and cuts to rates some solicitors are doing less and there's a new breed of solicitor that has come in because for relatives and for parents you don't need to be on the Children Panel to act for these people so you've got people who know that if they take on a fixed fee case they get a tranche of money. My experience has been with some firms that you don't get...any active work done on some cases. In some firms there is the sort of factory element. (Solicitor)

Third, this is a specialist and developing area of law with which even some family lawyers may not be sufficiently familiar, so they may not ask the right questions – about, for example, the legal status of the arrangement - or give wrong advice about negotiating a special guardianship support plan:

It’s quite a fascinating area but incredibly specialist...I'm not saying I'm the world’s expert on it but I know enough to know that you've got to make sure that the social workers are seriously compromised or involved in these placements, they can't back off later and say it was just a private job.

Researcher: So you feel solicitors don’t ask about this or they don’t know...? They don't know enough to ask, it's obscure isn't it, you have to know about these relatively obscure cases. (Solicitor)

The client can go to a firm who are not going to be particularly proactive, maybe don't have the expertise in it because it's a relatively new area, …and are not going to push it in the way that we do. (Solicitor)

The danger is that too many law firms don't think. Because they don't know, they don't understand about what the uses of a local authority are to kinship carers. Obviously the guidance that came out last year is fantastic. But how many solicitors or legal execs know about it, probably a tiny handful. And then the other thing that happens is that people say, ‘get the SGO and argue about the support package later’. But that's just absolute crap. (Solicitor)

Indeed some also suggested that even some lawyers on the Children Panel might not be sufficiently knowledgeable or pro-active:

I think it helps that this firm has a franchise in judicial review. (You need) a kind of holistic approach to cases…particularly with SGO’s, because often you're looking at a community care aspect or a housing aspect. So you can pull on those other departments (of your firm of solicitors) and other expertise…I'm not in any way blowing our trumpet but I think it does
depend on how narrow the firm is focused on family and how proactive the people are within in. (Solicitor)

I think a lot of lawyers that do family law are quite frightened of financial …if you're a care lawyer you've usually made the decision that you don't want to really be involved in financial negotiation. And often when you get to court you're negotiating over an SGO. You've got an SGO package given to you by the local authority and you're going through it nit-picking…I think that lots of lawyers that just do care work are not up to that really. (Solicitor)

All this suggests that a) carers are likely to need information about how to choose a solicitor and b) that family law solicitors need to become more aware of the issues involved in cases involving kinship carers if the undoubted potential advantages of legal advice and representation are to be reliably delivered.

**Participation and legal representation in court proceedings**

Many kinship carers will be involved to some degree in court proceedings. In private law proceedings, of course, carers will be the applicants, and are therefore parties with full rights of participation and the right to be legally represented, if they wish to and can afford it, or to act as litigants in person. As noted earlier, however, some carers may not be legally represented or even have had the benefit of legal advice. In contrast some may have both legal advice and representation paid for by the local authority.

Government needs to take step to ensure that changes in the eligibility criteria for legal aid in private law cases do not result in kinship carers being unable to apply for special guardianship and residence orders to secure legal permanency for the children they care for.

In care proceedings, the only automatic parties are the child, the local authority and the parents. Carers may or may not be made parties and if they are parties may or may not be represented. While the data on this is very limited, what there is suggests, as has been a consistent theme throughout this report, variation in practice.

Our carers are often not legally represented. Well no, they're very rarely legally represented. (Kinship social worker)

If it's in care proceedings then they will be, they will be represented because they'll be party to proceedings so that's fine. (Designated manager)

They often wouldn't be made parties if they didn't need to be. If someone strongly felt that they ought to be represented but the guardian didn't support them and the local authority did perhaps, then, which is an unlikely scenario but might happen, I think everyone would agree that they should become a party in those circumstances. (Local authority solicitor)

They're often not parties because if one of the parents shares their viewpoint they don't need to be made separate parties necessarily….On the whole I haven’t found it difficult to get them party status but sometimes it’s been refused by the courts. Like a lot of things in family law it depends on the judge or the magistrates. Some will say we don’t need a multiplicity of parties, their views can be represented by the parents and others will say I think they should be made a party, so it does vary. (Solicitor)

The importance of party status was emphasised by some practitioners:

Even judges or magistrates will question why they should be parties and we will say the
reason is they need to be able to comment on the type of order that is made and the support package that goes with it. (Solicitor)

I will try and get them party status within the proceedings because I think it’s very important for them to have access to all the papers because often the type of order or the type of placement is linked to the issues in the case and unless they can see all the papers and the reports, psychological reports and social worker statements, they’re not going to be fully aware of what the issues are or what the analysis of those issues is. (Solicitor)

If carers are not parties they may be allowed to participate in proceedings, at the discretion of the court.

I’ve had a number of cases where judges have allowed the bundle of documents to be released to them without them becoming parties or allowed some of the documents to be released and allowed them to sit in court. (Local authority solicitor)

If we're at one with the kinship carers we would normally invite the court, for kinship carers to come into court should they wish to do so. Sometimes that's too difficult because they're then feet away from the birth parent, so sometimes just the local authority dealing with this is a better buffer really. (Local authority solicitor)

A solicitor acting for a carer who is not a party can also do useful work behind the scenes:

Even if your client isn’t a party to the proceedings you can raise certain issues through letters to the court. And depending on the judge and what all the parties think you might actually get somewhere in terms of the local authority setting out their position in terms of support and writing statements, justifying to the court when the kinship carer says we actually do need that. (Solicitor)

None of this, however, can be said to put carers on an equal footing with those who are parties to the case. Withholding party status is understandable when the only issue before the court is whether a child should be removed from parental care. But where the issue is also whether that child should live with kinship carers, or whether that is going to be under a care order or a private law order, what the contact arrangements should be, or what the support package should be under an SGO, then surely carers should have the right to be made parties and have a lawyer to protect their interests.

Those who are parties but unrepresented may feel able to represent themselves and should receive assistance from the court to put their case. Indeed it was reported that they would also receive help from the child’s solicitor and/or the children’s guardian:

Some of the kinship carers that I've dealt with have felt sufficiently confident to represent themselves and come to court and certainly the judges in our court have been very receptive to that. (Local authority solicitor)

In a case that wasn't contested by anyone and really there was support from the (children’s) guardian and where the local authority didn't strongly object to family carers, then we’d probably say to them that they don't need representation. But that would be on the basis that the (children’s) guardian would go around and advise them of their legal position, and of course guardians do that. (Local authority solicitor)

The solicitors for the child, I can't think of an example of one who wouldn't be willing to sit down with and they frequently do, it's much more appropriate for them to do that than me as a
local authority lawyer, they'll sit down with the kinship carers and sort of take them through what they can expect to happen and what the process is and what the options are. (Local authority solicitor)

It’s certainly harder (for litigants in person) because they can’t argue their case as well; they might not be able to write a statement. I think often the child’s solicitor gives a lot of support and gives them a bit of guidance ‘these are the kind of things you need to address in your statement, that kind of thing.’ (Solicitor)

Again, however, one has to question whether carers should be dependent on the support of professionals who are not there primarily to protect their interests but are, as one solicitor put it ‘falsely representing them as well’. Even those who have had the benefit of legal advice may be disadvantaged, particularly at the final hearing, when, as some of our informants stressed, so much might be sorted out by negotiation outside the courtroom, particularly about contact. We would argue, therefore, that in care proceedings kinship carers or potential kinship carers should be made parties and automatically entitled to non-merits, non-means-tested legal aid.

Summary

- The professional data confirms the picture presented in the carer interviews of an imbalance of power between kinship carers and the local authority, with carers often disadvantaged by lack of information and even being deliberately kept in ignorance.

- Professionals referred to carers not knowing what questions to ask, or worried that if they did ask they might jeopardise their position or be seen as money-grabbing. A key issue to emerge was how to ensure carers can easily access the right information to make an informed decision for themselves and the child.

- The requirement for local authorities to publish their policy on family and friends care should have made a difference but even where policies have been produced not all give adequate information or and some lack clarity. Furthermore it is not a document easily accessible to carers at the outset of placement.

- Although kinship carers should be able to obtain reliable information from social workers it is evident that many do not themselves understand the law. Clearly there is a need for further training and guidance.

- Social workers also need to be able to give carers a basic information pack covering the key issues, which could be supplemented by information in other formats such as a DVD or an interactive web-based programme. A visit by a social worker with expertise in kinship care and no direct connection to the child’s case would also be helpful.

- Where a child is looked after, an independent reviewing officer brings an element of independence into the process. In other cases the family group conference process can play a role in checking whether carers have the information they need/ensuring information is provided.
Good independent advice serves to empower carers in relation to decision-making about the legal status of a placement, arguing for an appropriate legal order and in securing support often under the special guardianship support plan.

It is of concern that less than two-thirds of Children’s Services informants taking part in our on-line survey said that carers were routinely signposted to specialist sources of independent information and advice.

Rather more were signposted to solicitors. However carers can only do this if they can either fund the legal costs themselves or have assistance. Difficulties in securing legal aid were a common concern among the solicitors we interviewed. Some local authorities will make a contribution but typically this is for a one-off session of advice rather than representation.

The solicitors interviewed raised two main concerns about this local authority funding. First, carers were often referred to them at a very late stage and second that the funding provided was inadequate to provide a good service.

The value of legal advice and representation for the carer depends on the solicitors’ knowledge and expertise in quite a specialist area and was perceived as variable. Lack of expertise by the solicitor, allocation to a junior staff member because of low fees or fixed fees were seen to contribute to this variability.

If the potential advantages of legal advice and representation are to be reliably delivered, it is important that family law solicitors become more aware of the issues involved when advising kinship carers and that carers are also advised how to choose a solicitor.

Kinship carers were involved in very varying degrees in actual court proceedings. The importance of party status was emphasised by some practitioners and went some way to put carers on a more equal footing with other parties although many with party status were not fully represented by lawyers there to protect their specific interests. Others found even party status difficult to achieve.

We consider that carers and potential carers involved in care proceedings should be parties and entitled to non-means and merits-tested legal aid. Government needs to take step to ensure that changes in the eligibility criteria for legal aid in private law cases do not result in kinship carers being unable to apply for special guardianship and residence orders to secure legal permanency for the children they care for.


**11 Specialisation in the delivery of kinship care services**

There is a kinship team now. When I’ve done assessments (with them) I’ve felt they are much more focused on the specific needs of kinship carers and much more aware of the issues.

(Manager, frontline team)

There is some good practice out there but it is inconsistent and having specialist teams seems a way of providing the consistency that isn’t there at the moment. (Children’s guardian/independent social worker)

This project was not set up to examine the ways local authorities organise their services for kinship care arrangements. That would have required a very different research design – and is a topic we consider worthy of focused research. Nonetheless, since, in the course of the study many informants referred to the need for, and value of, specialisation, we considered it was worth devoting a little space to the topic.

**The advantages of specialisation**

Professionals who worked in, or who had experience of, specialist kinship care teams, identified a number of reasons for going down this route.

**First,** kinship care is a complex and unique area of work which requires practitioners to have particular knowledge, skills, understanding, sensitivity and commitment. The value of such expertise was emphasised in relation to both the assessment of kinship foster carers and the support of any kinship carer:

I can’t put enough emphasis on the way that this work is managed. You’re not talking about people who ring up and say ‘I want to be a foster carer, come and assess me and do all this stuff to me and it will be fine’. We're dealing with complex families who have often historical issues and relationship difficulties and it's just so much more complex than your mainstream fostering and you need the expertise, you need people who are passionate about it. (Manager, kinship team)

It has fostering components, it has permanence components, it has *child in need* components. I've certainly found there to be a real benefit in developing a team with real knowledge around the specific issues that face kinship carers. And there are specific issues, they’re different to those that face adopters and they are different to those that face stranger foster carers. (Designated manager)

It's very important to have a dedicated kinship care team that really does understand what the conflicts are for these people. I think our carers are a very distinct group and it's often hard for people who don't do this work to know and understand what their difficulties are. Our carers make mistakes, they relax their guard about contact and then find that they’ve got problems. We really understand that, we understand the conflict that goes on for people and how they're trying to manage family relationships and meet these children’s needs and we have to allow people to make mistakes and come back to us and then help them see where it's gone wrong and work out a way that they can claw it back. (Social worker, kinship team)

I think it's helpful to retain a specialism in understanding that people are coming from a very different place (from mainstream foster carers) and that their agenda is different. But also the sensitivity to them being often in a state of crisis and shock and quite traumatised by what has been happening within their family, and often what people are alleging their own children have done. (Manager, family placement)
It's a very sensitive bit of work actually, forming a relationship where they can trust you and you can have some understanding of where they're coming from. That's a very skilled bit of work and if you can get over that initial bit and get to the point where ‘it is awful and I am struggling and I do want to go on but how am I...’, you can work with it, but it's quite often a difficult point to get to. (Kinship social worker)

Specialist teams facilitate the development of that expertise by bringing together a group of people who are committed to the work and by practising exclusively, or primarily, in kinship care, have the opportunities to develop and pool their knowledge and experience:

We have regular team meetings. We have group supervision where we talk about the issues a lot and we share our knowledge and our understanding of what's going on. (Manager, kinship team)

I think I am in a very different place to where I was when I started working in the team. I came in with a little bit of knowledge but a belief that (kinship care) was important. I've learned so much just by being in this team for the last eight years about what it really means to be a kinship carer. (Social worker, kinship team)

We’ve done a lot of work in the team around reading the research available and really getting a good research knowledge base around kinship work. (Manager, kinship team)

My team have become experts in this area and know what they can do, what they can't do, how to work the system. It's quite a technical area. We go to court often, we have to give evidence on our assessments. (Manager, kinship team)

Although the statutory guidance does not specifically recommend the formation of specialist teams it does note that ‘dedicated workers or teams may be an appropriate way of ensuring that the local authority meets the requirement that:

Staff who are responsible for implementing the policy (on family and friends care) should have appropriate training and understanding of the issues which family and friends carers face, and of their obligations, powers and responsibilities, including the contents of the local policy (DfE, 2011, para 4.12)

The second argument proponents put forward for establishing specialist teams is that it has important benefits for carers, both direct and indirect.

Directly, carers benefit because they are dealing with social workers who understand, and can empathise with, the position the carers are in and, because they are familiar with the legal and support framework, can provide reliable information, advice and support. They can also help carers to think through the implications of taking on care:

In terms of advice, guidance, talking about it. We'll provide support around carers being part of care proceedings if necessary, we'll be supporting them in their decision, because I think it's really important that carers actually have somebody outside of the child’s social worker that can help them to think about the long term plan. (Social worker, kinship team)

Many of the carers we interviewed in the first part of the study would have given their eye teeth for such a social worker, particularly in making the transition to becoming a kinship carer. As we noted in chapter 2, the need for social workers to know what they are doing and to be empathic were among the key messages carers wanted to convey to Children’s Services. All too often, it was reported, they encountered frontline social workers who were
inexperienced or unfamiliar with kinship care and/or policies and procedures in their own authorities; inconsiderate and insensitive; negative in their attitudes towards the carer, and who did not listen to the carer. Some commented on how things had changed when another worker became involved to undertake a fostering or special guardianship assessment. One carer, for instance, said that, unlike the child protection team, which had dealt with her at the outset, the worker undertaking the special guardianship was both supportive and child-focused:

At that point I really felt I had someone who was looking at all our needs and making sure this was best for all of us, but primarily for the child.

Where the child in a kinship placement is acknowledged as a looked after child, a family placement worker, who will have at least some specialist knowledge of kinship foster care, or may even work in a dedicated team, will usually become involved relatively quickly. Indeed some practitioners social worker to carry out viability assessments of prospective kinship foster carers.

However elsewhere there could be a hiatus, and more significantly, of course, most carers are not treated as foster carers and therefore will not have their own worker. Making a specialist kinship worker available to all new kinship carers, from the outset, would, we consider, make a huge difference to carers.

Carers are also likely to benefit from the support specialist teams can provide. Once the child is safe, and particularly when a residence or special guardianship order is made, child protection teams will often bow out. Carers may then struggle to get support. Specialist teams provide a dedicated contact point through which carers can more readily access help from workers who understand why support is needed and what services can be provided:

We've all in our team come to understand, through longitudinally working with kinship carers, that they do have ongoing needs. I think field work for the children’s social workers...they've got this constant barrage of cases coming through their doors that they're then monitoring, so for them it's ‘okay sort this out, it's permanent, this child is no longer a child in need of protection, no longer a child in need, they're in their family, they're safe’, they're ‘okay, we'll close the case and we move on to the next piece of work’. And I think that's one of the important reasons why you need a kinship care team because the thresholds are so high that those kids are not likely to meet the criteria for being a child in need again. So then we are the only people that are working with them. (Social worker, kinship team)

If I was having a problem, (as a kinship carer) rather than having to go through the Duty and Assessment Team (for the whole of Children’s Services) and work my way through all of that, I could pick the phone up to somebody in (the kinship team) and they could steer me through that journey to getting the appropriate help. That ease of access I do think is actually quite an important part (of our service). The idea that you have to explain it all to somebody who is a duty worker that you might never speak to again. So having the dedicated team and the dedicated route through (this team) there. (Designated manager)

We had one recently. It was terribly sad. An SGO, or probably a residence order, it was made so long ago. One of the grandparents was dying and it was (the kinship service) that knew that child and family really well that provided all that support. We didn't have to introduce somebody new into that family to support them. We’ve got a separate Section 17 budget (for the team) so we agreed what additional support to put in. And we didn't need to pull new people in or go through some referral through to Duty and Assessment to see whether they
were eligible, the fact that they were in that situation they're quite clearly children in need and they need that tailored support to that family unit. (Designated manager)

Such access to support when problems first arise can prevent difficulties escalating to crisis point and even placement breakdown:

If we didn't exist it would all have to be dealt with within general teams, so in a way we're doing work that somebody else would have to do anyhow, in the end, because it would eventually get to crisis and they would reach that threshold. But what a shame, why not deal with it earlier, when the child is less damaged. (Manager, kinship team)

Finally, specialist teams which deal with both assessment and support provide carers with continuity:

I can provide consistency for carers, you know, whether they're being assessed as a foster carer initially and then the court directs an SGO, we can make that happen very quickly, very easily with no issues for them, no changes of people for them. There's no more transfer at the end of an assessment. (Manager, kinship team)

In addition to these direct benefits, having a specialist team can also benefit carers indirectly. This may be by raising the profile of kinship care in the local authority, challenging negative views held by colleagues in other parts of Children’s Services and promoting the development of services and procedures:

My team are just passionate about children staying in their family, and they love the work they do. I need people that are going to like working with kinship carers because we're battling all the time with social workers who hold stupid stereotypes of family. (Manager, kinship team)

I’m trying to write my annual report and sitting down to do it I realise how much (the kinship team manager) and her team have achieved in the last 12-18 months. We have a family and friends’ strategy, payment for skills, the independent support group (for carers) looks as if it will take off, we have support services that weren’t there a year ago. Although we aren’t there yet and have a lot to do, we have made a lot of progress, driven by (the kinship manager) and her team, heading in the right direction. (Designated manager)

Specialist teams, it was said, also have organisational benefits, the third main argument put forward for their introduction. They coordinate the work and make for a more streamlined service, reducing duplication and making processes more efficient:

I don’t know how people do without a dedicated team...It’s consistent, it’s altogether, it’s coordinated. I worked in a generic fostering team before (this local authority) started the kinship team. All the kinship assessments were being done by the fostering assessment team, all of the supervision short term was done by the short term fostering team and then we had a long term fostering team where they had a kinship social worker in there as well. It was very bitty, all over the place. (Manager, kinship team)

All of the work that we’ve done around the referral forms, the viability assessments that field workers complete and the referral form to our service and our assessment of carers as family and friends foster carers, I think we’ve done a lot of really useful work around that and so whilst the assessment format never feels like you’re quite there, you’ve never quite cracked it, we’ve got some useful working documents there which are fairly well established so that initial bit of the process works quite well I think. (Manager, kinship team)
Rather than having 30 fostering social workers all having to be experts on kinship issues, we're down to about half a dozen, which means I think they can be more effective and more efficient in terms of how they practice. (Designated manager)

(The team) have worked very hard on their own assessment framework. They wanted a streamlined approach that started right at the very beginning with an emergency placement - the basic checks and ‘this is what I found on the day that we placed this child with them’ - all the way through to full-blown assessment, and the format they’ve come up with I find very helpful. It really takes the assessor through absolutely every aspect they need to think about, which I think is helpful further on for panel because I think a real difficulty is that kinship carers, in terms of the law and the regulations, are all kind of thrown into the mix with other foster carers. And they’re not other foster carers. (Local authority solicitor)

We're very lucky because we've got such a good standalone team. When they come to us for advice they know what they're asking advice about because they’re very up to date with what's going on and they attend various meetings and seminars organised around the country and when new regulations come in they're up to speed very quickly. I think we're very fortunate in that way. (Local authority solicitor)

I think we’re lucky because we now have a dedicated team. So they’re more au fait. They’re much more on the ball and they know what they’re doing a lot more. (Local authority solicitor)

A specialist team provides a readily accessible source of expert advice to other colleagues and, through offering consultation and training, can skill up front-line workers:

There are some real benefits to be had by having a discrete team. We are able to offer some real meaningful consultation to field workers around planning and issues to do with the challenges and strengths of family and friends care. It’s fair to say that some of these placements are very high risk. There are some families where it’s fairly finely balanced and having the knowledge and expertise about the kind of issues that are most stressful for kinship carers and being able to factor that into the field work planning I think is a really useful thing to do. (Manager, kinship team)

As noted in chapter 10, specialist workers may be called on to provide information to carers at family group conferences.

Having a specialist team was also said to relieve pressure on other parts of the department whether this be family placement teams struggling to manage the pressure of assessing kinship carers within a set time frame, often, to a court timetable, or locality teams dealing with kinship placements on the verge of breakdown. Indeed, this could be, as we discuss below, an important motivation for an authority setting up a specialist team.

Finally, although none of our informants specifically made this point, we consider that having a specialist team would be of benefit to designated managers. This role is likely to be critical in the development of services for kinship care arrangements and is a very welcome innovation. As noted in chapter 1, the statutory guidance requires all local authorities to appoint a senior manager with overall responsibility for their family and friends policy. This person must ensure that:

- the policy meets the statutory requirements, and is responsive to the identified needs of children and carers.
- local authority staff understand the policy and operate within its framework so that it is applied in a consistent and fair manner across the authority;

- local partners are aware of their responsibilities towards children living in family and friends care and are proactive in meeting those needs.

- the policy is publicised sufficiently to ensure that anyone who may be considering becoming a family and friends carer can be aware of its content and be clear about how to contact the local authority and other agencies for further information about relevant services. (DfE, 2011, paras 4.9-4.12)

Since local authorities are not required to make this a dedicated post, this formidable list of tasks is likely to be simply added to the existing responsibilities. Managers given this brief need to be sufficiently senior in the organisation to be able to influence policy and practice throughout Children’s Services and beyond, while having a good understanding of the nature of kinship care work. Being able to call on the services of a specialist team, we would suggest, would be an effective way to meet these requirements.

**Factors driving specialisation**

It took us a long time to make that decision about ‘do we go for a dedicated service or not?’ We humm-ed and hah-ed. I think the thing that finally pushed it was the guidance. We just felt ‘we are going to have to have a policy, we might be inspected specifically around this, it's easier just to have something to say “this is our kinship practice and these are our standards, this is how we do things” and let's look at better tailored support for the family and friends foster carers’. So it was about wanting to provide better more tailored support to our kinship foster carers. But the other thing was to make sure the rest of our fostering service wasn't being adversely affected. What was happening was that the performance of our mainstream fostering was actually slipping because of the volume of kinship assessments and initial viabilities that we were being asked to do. Because you had that shorter timescale everything else was slipping because kinship had to take precedence. And in a lot of cases it didn't go anywhere, you were assessing four families and a lot of resources were going on to that. So we thought if we had a dedicated team who got really slick on dealing with the various kinship applications, really knowing when they could cancel somebody out very quickly and to home in very quickly to what the issues were. It wasn't exactly a financial decision but it was a logical decision. Because you've got finite resources. So it was a dual thing, one was about improving efficiency and the other thing was to enhance support to the kinship carers. (Designated manager)

As this informant suggests, the establishment of a specialist team could be driven by more than one factor. Local authorities which had only recently taken this decision – or were actively considering it, might be given a push in this direction by the statutory guidance, or by the rapid growth in kinship arrangements and the impact of this on their other services:

When we made the decision it was based on the raft of legislation and guidance coming in...and the growth in the numbers of assessments being undertaken. (Manager, kinship team)

I think we've promoted (kinship care) more and more and the courts have as well. So it's inevitable that there's going to be more coming through and that has had an impact on our capacity and therefore we've made changes to our internal process with regards to who should be doing it rather than what should be done. That has accelerated the thoughts about kinship teams. (Designated manager)
What we’ve found over the last two to three years is that some special guardians need us (to remain) involved. And that has put an extra drain on the children in care team. (Designated manager)

Recognition that support for kinship carers needed to be improved, however, was also considered to be an important driver.

We knew we wanted training and better support for carers. We felt we could do that with a dedicated service. (Manager, kinship team)

We really set that up (a specialist kinship fostering assessment team) because of our concern that we weren’t getting a proper grip on these assessments in terms of letting them drift, they were sitting out in other teams. We really wanted to develop the specialism, develop the service to give them what they needed. (Designated manager)

What we hope to do through (setting up a dedicated special guardianship team) is provide a more robust service in terms of the actual support plans that we’ve got.... so I’ve been advocating for a special team, where we can do more in a proactive way for special guardians and that's just been agreed. Hopefully that will be a really good service because my concern is that what we might start to see is the breakdown of the special guardianship arrangement. (Designated manager)

Specialisation in what and for whom?
It will be apparent from what has been said so far that specialisation takes different forms and that teams vary as to which kinship arrangements come within their remit. This means that while the team itself may be doing excellent work with their particular client group, other carers could well be being dealt with by social workers less attuned to their particular needs. Sometimes the only specialisation will be in the assessment of kinship foster carers. This was the case in one local authority where the supervision of those carers was currently undertaken by non-specialist family placement workers, while, if they wished to become special guardians, that assessment would be undertaken by the child care team, as would post-order support. Some authorities had dedicated post-order support for special guardians, though this was often alongside adoption support. Support for residence orders, as mentioned in chapter 4, might or might not be included in the remit of such a team. Similarly, some teams might confine their services to holders of residence and special guardianship orders who had previously been kinship foster carers while others extended them, explicitly or de facto, to informal carers. Exceptionally, some local authorities had two specialist teams: one for the assessment and support of kinship foster carers, another offering post-order support.

What appeared to be very unusual, however, was for specialist kinship care teams to include support for informal carers (i.e. those who were not kinship foster carers and did not have either a residence or special guardianship order), although in some instances, arrangements involving carers who were not close relatives - who therefore came under private fostering regulations - might be covered. Indeed, although we are aware of at least one other such team (Saunders and Selwyn, 2008), our research interviews included only one which appeared to cover all the bases. Unusually, this team was established, several years ago, explicitly to provide support for informal carers, and has subsequently accrued other functions:

I think at the point at which the team was set up it was anticipated that we were largely going to deal with the ‘care by agreement’ situations and then gradually people started to think ‘oh what about if it goes into proceedings? Oh we’ll give them that as well’, and then people thought ‘oh what about kinship foster carers?’ And so once the team was there everybody
started to realise that it made more sense to locate the entire kinship function within one team.
(Designated manager)

Even this team, however, did not cover the assessment of special guardianship applications
where the local authority had never been involved because of child protection concerns.

Specialisation, in the form of a dedicated team, is not an essential pre-requisite for providing
a good service to carers. One of the authorities of which we have knowledge does not even
have a discrete team undertaking kinship fostering assessments, although two workers take
lead responsibility and have a developmental role. They have only recently appointed a
worker to provide post-adoption and special guardianship support; hitherto this has been
provided through the family placement and children’s teams. However the authority has a
long-standing commitment to kinship care, operationalised through a county-wide Kinship
Group. Many of this authority’s services for kinship foster carers are open to all kinship
carers. These services include the KEEP\textsuperscript{44} behavioural management programme, kinship
carer support groups and activity days, and a telephone help-line. The authority is also
actively seeking to reach out to informal carers through developing links with community
services and publicising their services, e.g. through a widely distributed newsletter, and say
that they encourage carers to ask for an assessment of need.

Nonetheless, while, as we acknowledged at the beginning of this chapter, our research data
on the question of specialisation is limited, we consider that there are strong arguments for
local authorities to move in this direction. Such teams potentially provide a dynamic nucleus
of expertise and commitment in a department which can be built on to improve the way
kinship care arrangements are dealt with, within the department, within the wider local
authority and more generally within the local area. We would like to see the remit of such
teams expanded so that they reach out beyond kinship care arrangements with which
Children’s Services have been involved.

Such teams, however, have to be adequately resourced. The social workers we spoke to in
such teams, and their managers, commonly spoke of the pressures they were under to meet
rising demands for their services. As noted earlier, in relation to special guardianship, teams
responsible for both assessment and support could find the former squeezing out the latter,
while even dedicated support teams referred to having to limit what they could do.

It is also essential that the work of the kinship team is supported by senior management, a
point made by several of our informants. Indeed, sadly, a change of management or
management decisions, could result in the dissolution of an established team or a reduction in
the level of service it was able to provide.

Summary

- Professionals argued that specialist teams facilitate the development of the expertise
  necessary to work effectively in a complex and unique area of professional practice.

- Kinship carers benefit directly because they are dealing with social workers who are
  familiar and empathetic with their unique position and the implications for them in
  taking on care. Specialist workers are knowledgeable about the legal and support

\textsuperscript{44} KEEP (Keeping Foster and Kinship Parents Trained and Supported)
framework and their early involvement can be of great assistance. At a later stage specialist teams provide a dedicated contact point to access support, which can be an important factor in preventing placement breakdown. Specialist teams which deal with both assessment and support provide carers with continuity.

- Indirectly carers benefit because having a specialist team means that the profile of kinship care in the local authority is raised, negative views held by other professionals can be challenged and services and procedures developed.

- There are also organisational benefits in that specialist teams provide a more efficient, coordinated and streamlined service and provide a readily accessible source of expertise for colleagues and family group conferences.

- We would also suggest that specialist teams are likely to be of great assistance to designated managers.

- The drive towards creating specialist teams has been multi-factorial. The statutory guidance, rapid growth in kinship arrangements and awareness of the impact this has had on mainstream services, e.g. the assessment of unrelated foster carers - have all had an impact. Another important driver has been the growing recognition that support for kinship carers was inadequate and required improvement.

- The remit of specialist teams is very varied and few cover kinship care arrangements across the range of legal statuses, which means that although their particular client group may be well served, others will have to take their chances with social workers who may be less familiar with kinship care.

- We would like to see the remit of such teams expanded so that they reach out beyond only those kinship care arrangements with which Children’s Services have been involved and can offer support for informal carers.

- The organisation of kinship care services and the value of specialisation are topics worthy of detailed research. A dedicated team is not an essential pre-requisite for providing a good service to carers. However although our research data on this topic is limited, we consider that there are strong arguments for local authorities moving in this direction.

- It must be emphasised, however, that dedicated teams need adequate resources and strong support from management.
Conclusions and recommendations

The purpose of this project was to examine the relationship between the needs of children and their carers in kinship arrangements, the support available to them and the legal status of the arrangement. The experience of organisations working with, and for, kinship carers, notably those in the Kinship Care Alliance, suggested that legal status was a vitally important determinant of support. However the issue had never been the focus of systematic research. The aim of this study was to address this gap in the knowledge base.

The first two stages of the study involved face to face interviews with carers in 95 households followed by an on-line survey of 493 carers. The third stage of the study, on which this report has focused, involved collecting data from a wide range of professionals both within and outside local authorities.

Key findings

The needs of children and their carers

Data from both practitioners and carers confirmed the findings from other research that children in kinship care who are known to local authorities have typically experienced many adversities before coming to live with kin and are very similar in this respect to children in unrelated foster care. Indeed a comparison of the children in this study, based on information from carers, with that of our previous study into children placed with kin through care proceedings (Hunt et al, 2008) revealed few differences between the two groups in the levels of adversities they had experienced (Hunt and Waterhouse, 2012). Not surprisingly, given their backgrounds, 85% of the children in the current study were reported to be presenting difficulties at the point they went to live with their carers, while 59% were categorised by the researchers as ‘challenging’ - i.e. presenting significant problems to their carers. Prima facie, therefore, such children are likely to meet the statutory definition of children in need.

The carer interviews also indicated that, as the result of taking on care many kinship carers experienced considerable stress. Indeed, at the point we interviewed them, often several years after the arrangement had begun, tests using a standardised measure of well-being revealed that the proportion with raised stress levels was twice that exhibited in the general population. In itself this indicates a major health issue. Carers also felt isolated and unsupported, with most expressing the need for more emotional support. Recent research by Bristol University (Selwyn et al, 2013) also supports this picture of children with high levels of need and stressed carers.

Support is not based on need

The carer data also strongly endorsed previous research in highlighting gaps in support across all legal statuses and demonstrated that support is not related to need. As noted in chapter 2, on the basis of the data obtained from carers we could find no correlation between the support provided by Children’s Services and the needs of either the child or the carers. The Bristol study (Selwyn et al, 2013) has also concluded that support was not based on need.

Not unexpectedly, the views of Children’s Services staff about the support available to kinship arrangements, are not as bleak as that presented by carers. Thus, as reported in chapter 2, when those responding to our on-line practitioner survey were asked to what extent they thought their local authority was meeting the stipulation in government guidance that
children and carers should receive the support they needed to promote children’s well-being, almost a third (23 of 74; 31%) thought they were doing this ‘completely’ and most of the rest (39 of 51) thought that although there was ‘some way to go’ they were ‘getting there’. Nonetheless, half identified at least one support gap and often several.

It should also be noted that professionals who did not work directly for Children’s Services were less sanguine. None of this group who responded to the on-line survey thought that the local authorities they dealt with were ‘completely’ meeting the requirement of the guidance, with all but one person saying that either they were ‘nowhere near’ or ‘had a long way to go’. Over two-thirds of these informants identified specific support gaps.

**The importance of legal status**

Somewhat to our surprise, the importance of legal status to support emerged even more strongly from the professional data than it had done from the carer material. In chapter 2 it was reported that only a fifth of Children’s Services staff responding to our on-line survey thought that their local authority was ‘completely’ meeting the requirement in government guidance that support should be based on need, not legal status., while 21% thought they either had ‘a long way to go’ or were ‘nowhere near’. Again, informants not working for Children’s Services took a more pessimistic view, with no-one responding that the local authorities they dealt with were completely achieving this and all but one person saying they were nowhere near or had a long way to go. The Bristol University study (Selwyn et al, 2013), albeit based only on interviews with children and carers, has also concluded that:

There is clearly a long road to travel before the current complex system delivers what children and their kinship carers need rather than what follows from the happenstance of their legal status (Selwyn et al, 2013, p78).

The detailed data presented in chapters 3 to 5 very much bears out this headline finding about the importance of legal status. Whether or not the child is a looked after child, and therefore the carer becomes a kinship foster carer, remains the key differentiating factor in the support available. Indeed, on the basis of the professional interviews, we suspect that this has become more, rather than less important, over time, as seminal decisions in the courts have ruled unlawful any discrimination against kinship foster carers on the basis of their relationship to the child and kinship foster care has therefore become a more reliable route to support than hitherto. Thus, in chapter 3, we reported that although support gaps were still evident, professionals taking part in the research were very clear that foster care status was a passport to a comprehensive package of services. Over three-quarters of Children’s Services staff responding to our on-line survey said that kinship foster carers in their authority were entitled to the same support as unrelated foster carers. Many informants also commented that this equalisation of support had come about relatively recently, driven by policy, guidance and case law. The most notable inequality reported was in the entitlement to fees on top of the maintenance allowance, where there was evidence of considerable variation between local authorities. Even this, however, may become a thing of the past, following the recent judgement against Tower Hamlets.

**Special guardianship** emerged as the next best option for obtaining support, though very much as a second best (chapter 4). It has a number of strengths over alternative options such as a residence order or informal care. Local authorities are required to establish special

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45 R (on the application of X) v London Borough of Tower Hamlets [2013] EWHC 480 (Admin) (See Appendix B)
guardianship support services and carers may ask for an assessment of their support needs. If services are to be provided, these must be set out in a special guardianship plan, which carers have the right to comment on before the plan is finalised. Support may include payment of a special guardianship allowance, and if this is paid the rate must be aligned with local authority fostering allowances. It is also a potential advantage that, unlike residence orders, any carer who wishes to apply for a special guardianship order must give notice to the local authority, which then must prepare a report for the court hearing the application. Thus there is an opportunity for local authorities to assess what support may be needed and to give carers information about what support is available. Similarly, there will also be some external scrutiny of the issues by the court, particularly when the SGO is made in care proceedings, where, by law, there will be a children’s guardian and a solicitor acting for the child. We found clear evidence that such external scrutiny could result in changes to the special guardianship support plan being put forward by the local authority and, on occasion, supervision orders being made to ensure the local authority did not close the case immediately the special guardianship order was made.

The fundamental weakness in relation to special guardianship, however, is that what support is provided in an individual case, or indeed whether any support is provided at all, is entirely at the discretion of the local authority and is therefore likely to be highly variable. Special guardians caring for a child who was previously looked after are in a slightly more privileged position because, if they ask for an assessment of their support needs, the local authority is obliged to do this. In addition, whatever money they were receiving as kinship foster carers can be protected for two years after the order is made. Nonetheless, professionals identified a huge number of ways in which the support for special guardianship arrangements, even where carers had previously been foster carers, was less than that routinely available for foster carers. While it might be possible to argue that this is appropriate, since special guardianship is a permanent order which gives carers parental responsibility, informants also gave many examples of support gaps and ways in which support for special guardianship needed to be strengthened. Some highlighted that support for special guardianship was not only less than that for foster care but less than for adoption. Finally, not all authorities have established dedicated special guardianship support services and those which have been set up are typically overstretched because of the growing numbers of special guardians, and the increasing recognition of their needs for support.

**Residence orders** appear to come somewhat lower down the support ‘pecking order’. Unlike special guardianship there is no statutory framework for support, and although local authorities have power to pay a residence order allowance, there is no requirement to align the rate with the special guardianship rate. Although some authorities have equalised the treatment of the two orders, both in terms of financial and other support, elsewhere residence order holders may not have access to the same support services or may be paid lower allowances. Even where there was parity between the support available to residence order and special guardianship arrangements, greater support was likely to be available where the arrangements involved a previously looked after child, again demonstrating that this legal status confers a double privilege, giving these carers not only more support while they are foster carers but also afterwards, when they obtain a permanent order.
**Informal** care arrangements\(^{46}\), in contrast, are doubly disadvantaged. First, because there is no statutory framework specifically for kinship care. Second, since there is usually no court involvement, there is no external scrutineer who might question the level of support being offered (or not).

In theory, of course, such families can be adequately supported because they have access to the support available to any family in the community, whether this be universal services, services provided through the Common Assessment Framework and the Team Around the Child or local authority services provided to a *child in need*. Indeed some professionals participating in the research considered that this structure ensured that the right services could be provided, at the right time.

This perception would certainly be challenged by carers. In our study all of those who had only ever cared informally identified unmet support needs, higher than any other group. Similarly, the recent Bristol study of informal care\(^ {47}\) (Selwyn et al, 2013) found that 90% of such carers said they needed more support.

Being categorised as a *child in need* is likely to provide the highest level of service for children in informal kinship care. The research demonstrates, however, the difficulties carers face in accessing support under these provisions. *First*, in knowing they can ask to be assessed – most local authority policies do not cover the eligibility criteria for *children in need* (Roth et al, 2012). *Second*, in getting through the filter operated by intake and assessment teams. *Third*, in meeting the criteria operated by individual local authorities, which vary and sometimes appear to be more restrictive than those set down in the Children Act. Only a few local authorities appear to accept children in kinship care as, by definition, *children in need*. Thresholds for support under section 17 of the Children Act were generally perceived to be high and getting more difficult to cross and where support was provided, particularly financial support, it was likely to be short term.

It also seemed that support might vary according to whether the local authority had had any involvement in the arrangement coming about, which could mean that carers who had stepped in, on their own initiative, to protect a child, would find themselves discriminated against.

Again these finding receive support from the Bristol study (Selwyn et al, 2013) which reports that although 71% of informal carers said they had approached Children’s Services for help, 42% of them said help had been refused.

Closing the gap in support provision between kinship foster care arrangements and those with other legal statuses so that the needs of the child are paramount will be a huge challenge, particularly given the financial constraints on local authorities. A comprehensive needs-led service has significant resource issues and, like some of the professionals taking part in this study, we doubt that it can be achieved without the injection of additional funding. In the long-run, providing effective support to kinship arrangements could save money in reducing the numbers of children who need to come into, or remain in, local authority care. This

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\(^{46}\) i.e. where the child is not *looked after* and the carers do not have a court order (residence, special guardianship or adoption) giving them parental responsibility.

\(^{47}\) It should be noted that the definition of informal care in that study was broader than ours, including carers with residence or special guardianship orders. Hence the ‘true’ proportion of informal carers who did not receive help is likely to be higher.
certainly seemed to be the philosophy of local authorities which have most whole-heartedly embraced kinship care and made the greatest strides in equalising provision. Careful examination of how these local authorities have achieved this would be fruitful. However it is unlikely to be a simple matter of transferring funds. Rather some initial outlay would seem almost inevitable. Government initiatives such as Quality Protects and Choice Protects did make specific funding available to local authorities to develop placement provision and we know that some local authorities used this to develop kinship care services. Something similar may be needed if the intentions of the guidance are to be realised.

**Local authority reluctance to use kinship foster care**

The research data obtained in this study, both from carers and professionals, demonstrates that the support available to kinship care arrangements is strongly linked to their legal status. Most crucially, and indeed increasingly, it seems that caring for a *looked after child* is the key which unlocks the door to support. The research also shows, however, that some local authorities are reluctant to hand over this key, or, once they have done so, to let carers keep it for very long. Indeed at least one local authority, it was said, *never* made kinship carers foster carers.

Chapter 6 explored this issue in relation to initial decision-making as to whether a kinship arrangement was an informal one initiated by the family, which might be supported under section 17, or should properly be regarded as accommodation under section 20 of the Children Act. In the latter circumstances the child would become a *looked after child*, the carer would have to be assessed as a kinship foster carer, and both carer and child would be entitled to the services which accompany these statuses. Our carer interviews revealed a great deal of confusion about this, with carers often assuming that, because Children’s Services had been involved in making the arrangement, they were therefore placing the child and incurring obligations to support, discovering later that Children’s Services took the view that it was a private arrangement made by the family.

Over half the professionals taking part in our on-line survey said that they had had experience of such disputes. While a number of reasons were suggested – e.g. social workers not being sufficiently clear or carers not taking in what had been said to them at the outset – most respondents acknowledged that there were occasions when the local authority had made legally flawed decisions. Some regarded such instances as largely a thing of the past or believed that practice was changing. Others, however, said that it was still very much a live issue. Indeed some lawyers said that they found themselves making the same arguments to particular local authorities again and again, often making a difference in individual cases but not affecting overall practice.

Several factors were considered to produce legally wrong decisions. Some people considered that the law about the use of section 20 was not sufficiently clear and argued for more precise guidance. Many attributed the problem to social workers not being sufficiently familiar with the law and urged more training. There was also, however, a strongly argued perception that it was not just about ignorance, rather that social workers, and their managers, were actively seeking to avoid the use of section 20 in order to keep down the number of *looked after children* and their concomitant costs. Indeed some social workers spoke of being advised about the words to use to carers to ensure it could not be claimed the local authority had made the placement or even stage managing events to that end.
It should be noted, of course, that there are also good welfare reasons for seeking to avoid making children looked after and certainly one of our informants, from a local authority with a long-standing policy of using section 17 support wherever possible, argued that this was the primary motivation, an argument which was the more convincing because this authority also appeared to have a well-developed support service for kinship arrangements where the child was not looked after, which covered all arrangements where there had been child protection issues.

Welfare reasons could also explain the encouragement of the use of private law proceedings to obtain residence and special guardianship orders. Certainly this was the picture presented by our informants from Children’s Services, as noted in chapter 7. The issue raised by some of the carers in our study, however, was that they had been ‘told’ by the local authority to get a residence order, sometimes right at the beginning of the arrangement, in order to protect the child. The circumstances of such cases, in our view, suggested that these arrangements should have been section 20 accommodation or that the local authority should have brought care proceedings. The family justice professionals we interviewed were also very familiar with, and concerned about, supposedly private applications being ‘run from behind’ by the local authority and typically saw this as another example of local authorities seeking to avoid the significant resource costs involved in bringing care proceedings and making children looked after.

This perception also emerged in the data on the use of interim care orders (chapter 8). While some of the professionals interviewed reported that where children were placed with a kinship carer in the course of care proceedings this would usually be on an interim care order, some local authorities were said to be very resistant to the idea, even when the court considered such an order was necessary. Sometimes, it was said, the court will prevail. Sometimes the dispute is dealt with by making an interim residence order with a supervision order. On occasion section 38(6) of the Children Act is used, whereby the child is looked after but the carer does not have to be assessed as a foster carer, a practice which, although lawful, was questioned by some of our informants, because it effectively avoids the very careful rules governing the care of looked after children.

The view that local authorities seek to avoid making, or keeping, children looked after in a kinship care arrangement was expressed again, even more strongly, in relation to decisions about long term legal status (chapter 9). Care proceedings, most professionals said, rarely end with a full care order if the plan is for the child to live with a kinship carer. Hence, even if a child has been living in kinship foster care during proceedings, this is typically a transient status, en route to a private law order. This pattern tended to be explained by local authority informants either as a result of what the carer or the child wanted or in terms of the disadvantages of looked after status – lack of permanence, intrusiveness, stigma. Other informants suggested baser motives, a familiar theme by now. Local authorities were perceived to be strongly pushing special guardianship, an issue about which some Children’s Services informants, as well as family justice professionals, expressed concern. Indeed it was suggested by some informants that such ‘encouragement’ to take out special guardianship could result in carers feeling under pressure or even afraid of the consequences if they did not do so.

On occasion, of course, care orders are made in respect of kinship arrangements. This may be for a whole variety of reasons, including the need for the local authority to retain parental responsibility, at least for a period. Indeed in some local authorities care orders may be used
quite regularly, and appropriately, to allow a kinship placement to settle down and parents to adjust to the change. It was also evident, however, that they are sometimes used - or argued for - because they are perceived to be the best way to secure support for the child and carer. This brings us round full circle to the fundamental thesis of this report, that the support available to kinship care arrangements is fundamentally determined by their legal status. Further evidence for this proposition lies in the finding that where the court makes a supervision order alongside either a special guardianship order or a residence order, the main reason for this was not usually said to be uncertainty about the carer’s capacity to care but to ensure that the local authority would remain involved, which could only otherwise be guaranteed under a care order.

*The imbalance of power between carers and local authorities*

Woven through these twin themes of the importance of legal status to support and local authority avoidance of the only legal status which *entitles* kinship families to support is a third: the imbalance of power between carers and local authorities. This was a major theme in the carer data, particularly in relation to the early stages of the arrangement – as noted in chapter 2, 76% said they did not have enough understanding of the legal situation at this point to make an informed decision. One of the key messages the carers we interviewed wanted to convey was the need to ensure ready access to information and advice.

The professional data reinforces this theme of carers being disempowered by lack of knowledge about the legal options and their implications for support (chapter 10), not just in the early stages of the arrangement but when they have to make long-term decisions about the future. Informants also highlighted the fact that not only do carers not know the questions to ask, but they may be afraid to ask them, for fear of appearing difficult or, in the case of financial support, being seen as only in it for the money.

In cases where Children’s Services are involved at the outset – as they were in the majority of the families we interviewed - the primary source of information, certainly at the beginning, is likely to be the frontline social worker. However, as noted earlier, many informants considered that social workers’ inadequate grasp of the law was a major reason why arrangements which should properly have been classified as section 20 accommodation were wrongly treated as private. It was also considered that in some instances social workers were deliberately keeping carers in ignorance. These circumstances are less likely to occur where there is a family group conference. However not all local authorities have embedded FGCs in their processes.

Carers and professionals also emphasised the importance of independent information and advice and the need for signposting to such sources by Children’s Services. Only just over a third of Children’s Services staff taking part in our on-line survey, however, said that their local authority routinely referred carers to specialist advice organisations.

It was rather more common for carers to be advised to consult a lawyer (49%), although there were many complaints by the solicitors we interviewed that clients came to them at a very late stage in the decision-making process. Whether carers can obtain legal advice, however, depends on whether they have the means to do so, either through their own resources or supported by legal aid and/or the local authority. Such support is not always forthcoming – 27% of the carers we interviewed said they had had to pay all their legal costs and a further 16% had to meet some costs. Difficulties or delays in obtaining legal aid were common complaints among solicitors. So too were inadequacies in the contribution local authorities
are prepared to make – typically restricted to a couple of hours legal advice - which restricts the effectiveness of the assistance the solicitor is able to give.

The value of the solicitor’s input will also depend on his/her expertise in this area of law and, sometimes, willingness to challenge the local authority. Both our carer and professional interviews indicated a degree of variability on both counts. This clearly indicates a need for training if the undoubted potential advantages of legal advice and representation are to be reliably delivered. It also indicates that carers are likely to need information about how to choose a solicitor with the required expertise.

In private law proceedings carers who cannot afford a lawyer may be disadvantaged because, although, as applicants, they are automatically parties, they will have to act as litigants in person. In care proceedings, however, they may be further disadvantaged because they can only be made a party with the leave of the court, which may, or may not, be forthcoming.

The potentially crucial role played by professionals in the family justice system – lawyers, children’s guardians, the judiciary - has been a persistent theme in this report. Many of these professionals, however, expressed grave concerns about the potential effect of changes to legal aid, the planned 26 week limit for care proceedings, the narrowing of the scrutiny of care plans and reduction in the role and capacity of children’s guardians. It was thought that shorter proceedings may reduce the opportunities for potential carers to step forward and be assessed; or for family justice professionals to scrutinise the local authority’s proposals for supporting the arrangement. Restrictions on legal aid may mean that carers will be unable to get legal assistance to challenge the local authority on the legal status of the arrangement; to help them negotiate an appropriate support package; or to apply for an order to safeguard the child and provide permanency. While some local authorities have been prepared to make a contribution to legal costs for some carers who are ineligible for legal aid, it is unclear what will happen once the legal aid changes bite and if local authorities will be willing, or able, to meet the increased demand. It is also important to note that local authorities typically restrict assistance with legal costs to arrangements of which they approve and that they are unlikely to fund the legal costs of a carer who wishes to challenge their decisions, on, for example, the legal status of the arrangement.

**Variation in practice**

Another cross-cutting theme is variation in practice, which has featured in virtually every chapter in this report. In chapter 3, for instance, we reported variation in whether kinship foster carers received the same support, particularly financial support, as unrelated foster carers and the different rates at which foster care allowances were set. In chapter 4 we highlighted variation in the organisation and resourcing of special guardianship services, the quality of special guardianship support plans, and special guardianship allowances – the eligibility criteria, the amounts payable and the period for which allowances will be paid. Variation was also noted in whether residence order holders were eligible for the same support as special guardians. Differences in the eligibility criteria for support under section 17 for **children in need** was noted in chapter 5, as was the use of the power to pay regular allowances to informal carers and whether carers who stepped in early to protect the child before the local authority was involved were discriminated against. Differences in interpretation of the law on section 20 accommodation were evident in chapter 6, with some local authorities still apparently making legally flawed decisions, while for others this was said to be now a historic problem. Chapter 8 reported variation in the use of interim care orders and chapter 9 the use of care orders and supervision orders. Finally, in chapter 10, we
noted variation in whether carers were routinely given written information, whether they were signposted to independent sources of information and advice, and whether the local authority would make a contribution to carers’ legal costs, and if so, what they would fund. **Truly a post-code lottery.**

**A pivotal stage in the development of kinship care services?**

Within this swirling mass of variation, some authorities stand out as having comparatively well-developed, if not perfect, kinship care services. The enthusiasm and commitment displayed by informants who worked in such services was truly impressive. How these local authorities have managed to do this was beyond the scope of this research. Having a stable and committed specialist staff group is clearly part of the recipe. But such staff also need to have the backing of senior management up to director level. Several informants highlighted the crucial role of individual senior managers and directors in driving policy and practice in a particular direction. Indeed, if we were to draw a map of local authorities with good track records in the use and support of kinship care this would probably track, fairly accurately, the movement of such individuals across the country. Since it is unlikely, as one of our informants ruefully acknowledged (chapter 2) that every local authority can have someone in a senior management position with the same drive and vision as this caucus of pioneers, it will be important to find ways of harnessing their expertise so that other authorities may benefit from their experience. The Bristol study suggests, for example, that ADCS should

It was also possible to detect, in the research data, signs of change in the direction of improving services for kinship care arrangements, which may well have been generated by the family and friends care guidance issued by the government in 2011. As noted in chapter 2, when Children’s Services staff taking part in our on-line survey were asked to what extent they thought their local authority was meeting the requirement in government guidance that children and carers should receive the support they need to promote children’s well-being only 31% said ‘completely’. However 53% said that although they had some way to go their authority was ‘getting there’. A further 12% said that although there was ‘a long way to go’ they were ‘taking steps’. Similarly, when asked to what extent they were meeting the other key requirement in the guidance that support should be based on need, not legal status, although fewer (20%) said ‘completely’ 60% opted for ‘some way to go but getting there’ and 18% for ‘a long way to go but taking steps.

While such self-evaluations might be suspect, data from the interviews also indicated positive movement. In, for example, the support offered to kinship foster carers, in the direction of equality of treatment with unrelated foster carers; the development of special guardianship support services; improving practice in relation to the use of section 20 accommodation; and the provision of information for carers.

At the same time, given the difficult economic climate, local authority budgets are under pressure, which means that such embryonic developments may be strangled at birth, while even informants from some well-established services expressed fears that they would not be able to maintain their level of service or make the improvements they felt necessary.

The development of kinship care support, we suggest, has now reached a pivotal point. As noted in chapter 1, the fact that the long-awaited government guidance did eventually emerge marked a very significant step forward. It signals the importance that the government places on kinship care, recognises that such arrangements are likely to need support and crucially,
places local authorities under the dual obligation a) to ensure that children and carers are supported and b) that support is provided on the basis of need, not simply legal status. As the data presented in this report demonstrates, these are very radical requirements which demand substantial change in the way many local authorities deal with kinship care arrangements.

What needs to be done to ensure that the gains made so far are sustained and progress continues to be made?

**Recommendations**

**What should Children’s Services do?**

Our overarching recommendation is a very obvious one: that local authorities should implement the statutory guidance on family and friends care, ensuring they formulate, publish and act in accordance with policies which reflect the principles, set out in the guidance, that support is based on need, not simply legal status and that children and carers receive the **-being.**

Within that overall urgent imperative, we make the following recommendations:

**Produce policies which comply with the statutory guidance and are useful to carers**

- The fact that a substantial minority of local authorities have not yet even produced a policy is appalling, and should be addressed immediately, at director level, where a department is in default.

- Policy documents should explicitly refer to the principle that support should be based on need and the policy itself should reflect that principle.

- Local authorities should, in reviewing their policies, evaluate their usefulness and accessibility to kinship carers in explaining the legal options and their implications and also how support might be accessed. They should also consider the extent to which their tone and content communicates a helpful, rather than off-putting, attitude to kinship carers.

- Each local authority should set up a panel of kinship carers and young people with experience of kinship care and/or work with any existing groups so that their views can be fed back into the development of policy, practice and training.

- Policies should contain clear and legally correct information about:
  - the criteria for differentiating between arrangements which are made within the family and those which should be regarded as section 20 accommodation;
  - the eligibility criteria for support under the *children in need* provisions and how that support might be accessed;
  - the right for carers to ask for an assessment of need under the provisions both for *children in need* and special guardianship.

- Local authorities should also ensure that their policies can be easily accessed through their web-sites.
Ensure carers can make informed decisions at the outset of the arrangement where the local authority has been involved.

- Local authorities should ensure carers and potential carers are in a position to make an informed and carefully considered decision about the initial legal status of the arrangements. This requires written information as well as verbal explanations about the options and their implications, including for support. Consideration should be given to producing an introductory information pack, available in hard copy and online. In addition to information about legal options and support this should also includes details about local services and how they can be accessed.

- Steps should be taken, through training and procedural guidance, to ensure that practice is based on openness and honesty with carers. It should be made absolutely clear that taking advantage of carers’ ignorance is unacceptable.

- Frontline social workers may not be the best people to help carers understand their position. We therefore suggest that all new kinship carers coming to the attention of Children’s Services should be linked up with a specialist worker whose role includes ensuring carers have the correct information and helping them make a considered decision. More broadly, this worker could assist carers to make the transition to their new role.

- In addition to improving the information and explanations provided by Children’s Services, it is vital that carers are also signposted to independent, specialist sources of information and advice and advised to consult a solicitor.

- Children’s Services should offer to pay for a one-off session of legal advice. Carers and potential carers should be provided with a list of solicitors on the Law Society’s Children Panel or those who are known to have expertise in this area. It is important that, if local authorities make arrangements for particular local firms to provide such advice, this can be justified in terms of expertise in this area of work.

- Local authorities who have not already done so should establish a family group conference service and offer a conference in all cases where a child is at risk of needing to be cared for outside the family. Family group conferences, apart from their other merits, can play an important role in checking whether kinship carers or potential carers have the information they need and ensuring information is provided.

Ensure that legally flawed decisions are not made about the initial status of the arrangement

- All frontline social workers should have training on the law - including developing case law - and local authority policy in relation to the use of section 20 accommodation.

- This needs to be supplemented by clear procedural guidance, perhaps in the form of a decision-making flow-chart, setting out the basis on which decisions should be made and when, and from whom, expert advice should be sought.

- Procedures should stipulate that carers cannot agree with Children’s Services that the arrangement is a private one within the family unless they have had the opportunity
properly to digest the information they have been given and obtain independent advice.

- Local authorities should also establish procedures for scrutinising the legal status of all new kinship arrangements where they have been involved, to ensure their decisions are lawful. We suggest this could be the responsibility of the designated senior manager or, where it exists, delegated to the manager of the kinship team or a relevant panel.

**Deliver services which meet needs and are not determined by legal status**

- Offer an assessment of support needs to all known kinship carers and prospective carers, irrespective of the legal status of the arrangement.

- Equalise the allowances available to carers looking after children who would otherwise be in the care system, whether they are caring informally, under a special guardianship order or residence order and align them with the basic fostering rate.

- Establish universal and comprehensive kinship care support services, based on the special guardianship and post-adoption support services, and make them available to all kinship carers and the children they are caring for, on the basis of need.
  - These services should include – but not be restricted to – access to information, advice, support and advocacy from a specialist kinship care support worker; additional emotional support through a telephone help line, mentoring and dedicated support groups; access to behaviour management programmes; help with contact; counselling and therapeutic help; life-story work; advice on welfare benefits and other sources of financial help; assistance with child care including short breaks and baby-sitting.

- Set up a process to ensure that all kinship arrangements coming to the notice of Children’s Services are notified to the designated manager – or someone with delegated responsibility.

**Create an infrastructure to promote the development of a needs-based service available to all kinship arrangements**

- Define the responsibilities of the designated manager, to include the development of services for all kinship care arrangements, whatever their legal status and regardless of whether Children’s Services played any role in the arrangement. Ensure that this person is in an appropriate position within the organisation, and has the capacity, to fulfil the requirements of the role.

- Set-up a cross-departmental kinship care development group to support the work of the designated manager. This group should:
  - Coordinate existing data on all kinship arrangements currently known to Children’s Services.
  - Set up procedures for collecting data on all arrangements coming to the notice of Children’s Services and tracking the department’s response.
  - Work with other agencies to obtain information about kinship families being supported through the Common Assessment Framework.
  - Audit local performance in terms of what is being done well and what needs to improve, involving kinship carers in that process.
Consider commissioning local research.

Develop a kinship care improvement strategy, to include working with other agencies to provide effective assistance to children and carers by, for example, setting up protocols and systems with housing, education and CAMHS, to prioritise the needs of kinship families.

- Give serious consideration to establishing dedicated kinship care teams, where these do not already exist, to conduct all assessments, assess support needs and ensure that services are provided/or carers referred to appropriate services.

- Ensure that existing (as well as new) dedicated teams are adequately resourced to a) provide support directly b) to offer consultancy/training to other teams within Children’s Services and c) to work with external agencies to sensitise them to the needs of kinship families and make them aware of the services available for such arrangements within Children’s Services.

Ensure that all staff coming into contact with kinship arrangement have appropriate training in kinship care

- Training should cover the law and local authority responsibilities for the whole range of kinship care arrangements.

- It should also aim to increase understanding of the unique features and dynamics of this form of care and what carers and children say about what makes for a positive or negative experience of Children’s Services.

- Crucially it should address underlying beliefs about kinship care and ideological positions such as the belief that kinship carers should be expected to ‘do it out of love’ and be prepared to meet the financial costs of bringing up a child themselves.

What should ADCS do?
The Association of Directors of Children’s Services (ADCS) is potentially a significant player in the development of kinship care support services. It is a positive sign that they have signalled their interest in this form of care and recognised the importance of support to placement outcomes:

Kinship care, if adequately supported, has an extremely strong track record in providing continuity of placement, reinforcing key aspects of a child’s identity, and delivering positive outcomes into adulthood. (ADCS, 2012, p4)

We recommend that ADCS should consider:

- How best to draw on the commitment, vision and expertise of local authorities which already have well-established kinship support services to promote the development of services which meet the requirements of the statutory guidance for services based on need, not legal status.

- Promote the establishment of a network of designated managers to provide national and regional forums for discussion and the dissemination of good practice.

- Seek ways through such forums to reduce the postcode lottery in the levels of support provided to kinship arrangements and develop greater consistency in the criteria for the provision of services.
• Pool resources to develop training and encourage research into the effectiveness of different models of service provision.

**What should government do?**

*Ensure the statutory guidance is being implemented consistently and effectively across the country*

• The DfE should conduct a systematic audit of local authorities’ compliance with the statutory guidance to establish how it is being implemented across the country.

• Ofsted should conduct a thematic inspection of kinship care services, encompassing children in all legal statuses.

*Reduce discretion, equalising support across legal statuses*

The intention in the government guidance, that support for kinship care arrangements should be needs-led, is admirable. However the law as it stands works against this. It is inevitable in the current financial climate that priority will be given to statutory duties to support children who are looked after. Therefore what is needed is to strengthen the framework for providing support to children in kinship care who are not looked after, thereby reducing discretion and minimising variation in the support provided by different local authorities. To achieve this the government should:

• Align the statutory framework for providing non-financial support in special guardianship with post-adoption support, which the government is currently reinforcing;

• Place a duty on local authorities to establish a family and friends care support service for children in kinship care who are under residence order or where there is no order. This should be modelled on the duties on the local authority in special guardianship cases and should be available to any family where the child is living with a kinship carer because s/he cannot live with a parent.

• Introduce a ‘kinship passport’, modelled on the proposals for an ‘adoption passport’ providing a transparent guarantee of the minimum support that kinship families will receive. This would give carers, regardless of the legal status of the arrangements, greater clarity about what to expect, and ensure greater national consistency. The passport should guarantee carers the right to access a range of services, including support groups, parenting/training programmes, access to a specialist kinship worker, and, for children, services such as life story work, support groups and priority access to specialist services such as CAMHS.

• Introduce an amendment to the definition of who is a *child in need* in the Children Act, 1989, section 17(10), to include ‘children being cared for by family and friends carers because they cannot live with their parent/s’. This has long been the policy of the Kinship Care Alliance. It is also supported by the Bristol study (Selwyn et al, 2013).

• Make it mandatory to offer an assessment of the support needs of family and friends care arrangements known to the local authority, and, where such needs are identified,
to formulate a plan, in conjunction with the carers, as to how those needs should be addressed.

- Give kinship carers the same rights to paid employment leave and protection as adoptive parents. This would substantially reduce the number of carers who are forced to give up their jobs and face financial hardship in order to settle the child in, or because they are required to attend meetings with children’s services and other agencies because of the child’s significant needs.

**Accept responsibility for financial support**

- Introduce a national allowance to cover the real costs of bringing up a child where family and friends carers have been providing full time care for more than 28 days and the child cannot live with a parent. Again this has long been promoted by the KCA and is also strongly supported by the Bristol research (Selwyn et al, 2013). At one stroke this would provide a more equitable, consistent and reliable system than the current post-code lottery and remove a significant source of anxiety for carers, friction with Children’s Services and disputes in the courts. Clearly the rate at which any such allowance was set, whether it was means-tested, and whether it increased with the age of the child would be critical.

**Clarify the guidance on section 20 of the Children Act 1989**

- One of the weaker parts of the statutory guidance, in our view, was the section on the use of section 20 accommodation, which may partly explain why local authority policies are often deficient on this and some practitioners confused. At the point the guidance was produced, of course, the judgement against Kent County Council\(^\text{48}\) had not been delivered and it was acknowledged that the guidance might need to be amended to take account of it. We consider that it would help to either amend the guidance, or at least issue supplementary guidance, setting out all the relevant case law and giving clear and unambiguous advice – with worked case examples - on the criteria to be used in determining the issue.

**Improve the understanding of kinship care within Children’s Services and other services dealing with children**

- Ensure that kinship care is included in basic and post-professional training for social workers.

- Commission on-line training packages for practitioners both within and outside Children’s Services to raise awareness, change attitudes (where necessary) and develop competence.

- Work with organisations such as Research in Practice and Making Research Count to disseminate research and good practice.

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\(^{48}\) A—v- Kent Local Authority [2011] EWCA 1303 (see Appendix B)
Empower carers and potential carers by ensuring they can make informed decisions and have access to independent advice and advocacy

- Require local authorities to give carers and potential carers clear, written information about the legal status of the arrangement, the alternative options and their implications, and to signpost carers to sources of independent information and advice.

- Stipulate that carers cannot be asked to give their consent to an arrangement being treated as private until they have had an opportunity to consider this information and to seek independent information and advice.

- Provide adequate funding of specialist independent advice services for kinship carers and potential carers.

- Fund work on the production and effective distribution, of an information pack for all carers, as recommended by the Bristol study, which draws on the wealth of material already produced by voluntary agencies.

- Monitor the combined effect of legal aid cuts, the planned 26 week limit for care proceedings, the narrowing of the scrutiny of care plans and reduction in the role and capacity of children’s guardians to ensure they do not have an adverse effect on kinship care.

- In care proceedings existing kinship carers, or those seeking to become kinship carers, should be made parties and automatically entitled to non-merits, non-means-tested legal aid.

- Place local authorities under a duty to offer a family group conference wherever consideration is being given to removing a child from parental care, or, in an emergency, soon afterwards.

Differentiate more clearly between the implications for children of living in kinship foster care and unrelated foster care

- Amend the statutory guidance by clarifying that the need, wherever possible, to avoid children becoming looked after or remaining looked after means looked after in stranger care outside the child’s extended family or social network.

- Distinguish more clearly, in government statistics and objectives relating to minimising the numbers of looked after children, between those who are living in kinship foster care and those in other forms of placement.

- Clarify that living with a kinship carer in long term foster care can be an appropriate way of providing permanency, which does not carry the same risks of instability as other forms of placement for looked after children. Recognise, explicitly, that permanency and legal permanency are not the same thing.

Consider initiatives to support children being raised in kinship care

The variability in support provided to kinship carers of necessity means that the experiences of the children they are raising will be affected by such vagaries. Although research indicates
that the outcomes for children raised in kinship care are generally good, it is also apparent that the children do have significant needs.

- We therefore recommend that government should fund a network for children raised in kinship care, including on-line and local groups, with anticipated similar benefits to that which can be evidenced from children in care councils, and the All-Party Parliamentary Group for children in care.

**Endpiece – the role of the state and the law in supporting kinship care arrangements**

In its 2012 position statement on kinship care, the Association of Directors of Children’s Services stated that:

> We would welcome a debate on the role of the state in supporting (and paying) families, including the wider family network, to ‘look after their own’ (e.g. kinship care) (ADCS, 2012, p 4)

A more recent ADCS position statement on alternative models of care for adolescents includes the following statement:

> ADCS contends that there is a shared obligation between the state and the family to care for our children and our young people. A family (by which we mean the extended familial network, not just the parents, has an obligation to ‘look after its own’. This does not mean that the family should be left to cope without support...the focus of the state’s support, however, should be on building resilience and coping skills within familial networks to help them meet their familial responsibilities and ‘look after their own’. (ADCS, 2013, para 3.2)

These rather worrying words seem to make no distinction between the obligation of parents to support their children and that of the wider family. However while relatives certainly do feel a sense of moral obligation, and are stepping forward in their thousands to act on that, and making considerable sacrifices in the process, they have no legal obligation to care. Further, the statement seems to suggest that at present, the balance of responsibility has been weighted too much towards the state, as represented by the local authority. In fact, of course, there is powerful evidence, presented most recently by this study and that by Selwyn and colleagues, that this is far from the case and that it is the state which needs to shoulder far more of its fair share of responsibility.

The belief, however, that families should be responsible, is a powerful force and a theme which has surfaced at several points in this report. In our previous report we also documented the painful experiences of carers who had encountered such negative attitudes and were made to feel they were ‘only in it for the money’.

> You’re made to feel that because you’re family you shouldn’t expect any money... I am not a natural scrounger but I have had to be in order to maximise what is best for the boys. I want to give them as much as I can by any honest means. So I’ve swallowed my pride and asked for money. The hardest thing was having to go to Social Services and I was completely humiliated in a meeting as regards that. The chair of the meeting was quite rude and said something about it being my family. I said ‘I’m fully aware that they’re my family and I’m prepared to do what I have to do but I need to survive, I need to be practical’. And he said ‘we’re not a bottomless pit’. I just went quiet. There’s no need to humiliate me like that in a roomful of professionals.
It is now imperative, we consider, for such attitudes to be robustly challenged. One way to do so would be to promote a media awareness campaign, aimed at enhancing public awareness of the challenges faced by kinship carers and the children they are raising, and increasing their visibility in public policy development. Such a campaign could be led by a consortium of voluntary organisations who work with, or on behalf of, kinship carers and those set up by carers and draw on the powerful voices of carers themselves. All the research indicates that kinship carers are doing a remarkable job caring for children who have typically been failed by their parents and to whom they give a second chance. They do so, not by choice, but out of necessity. It needs to be recognised that the role of the state is to support them in the difficult task they have taken on.

The statutory guidance does seem to signal the government’s recognition that the state does have a responsibility to support kinship care arrangements. But all this responsibility was placed on local authorities while no new money was made available to enable them to do it, something we have suggested needs to be rectified. The strongest indicator the government could give, however, that it acknowledges a shared responsibility for children in kinship arrangements, is to commit to bringing in a national kinship care allowance, which is clearly desperately needed. This would also relieve the pressure on local authorities, which, we suspect, is the underlying motive for ADCS’s current emphasis on the responsibilities of families, and remove a significant source of friction with families.

The latest ADCS position statement, having noted that Census data indicates that 97% of children and young people in kinship care are living informally with relatives, goes on to state:

For many young people with more complex needs the shared obligation between the state and the family is brokered via legal intervention – which brings with it a level of regulation out of all proportion to the task of caring. Financial and practical support to families that provide kinship care has often become rule and eligibility based and is perceived by families to be episodic and highly restricted. Consequently, arrangements which in some countries would be seen as having a fluid boundary requiring the application of sophisticated social work discretion in order to navigate and understand the balance of obligation, become institutionalised and highly bureaucratic (ADCS, 2013, para 3.5)

We entirely agree with the fundamental point being made here, although we would probably phrase it differently. In a world in which support for kinship arrangements, whatever their legal status, is based on need, as the statutory guidance says it should be, there would be much less need for rules and regulations. As discussed in an earlier chapter, we are somewhat ambivalent about the direction of travel in case law relating to the criteria for section 20 placements. This is likely to result in more children becoming looked after and their carers, therefore, having to be assessed as kinship foster carers in an inappropriate process designed for mainstream foster carers and subject to inappropriate regulations. However at the moment, as we hope this research has amply demonstrated, kinship foster care is by far the most reliable way of getting support for both children and carers. Special guardianship, because of its statutory framework, is the next best option. Informal arrangements, where there is no legal order and the child is not looked after are usually at the bottom of the heap, particularly those which were made without local authority involvement, even where there the carers stepped in to protect the child. Hence we consider that in order for a needs-based service to become a reality, the legal framework in relation to support for kinship arrangements needs to be strengthened, not weakened. Our recommendations flow from this conclusion.
Bibliography

ADCS (2012) *Position Statement: What is Care For?* ADCS


Family Rights Group (2011) *Big Bruv Little Sis: Research findings on sibling carers raising their younger sisters and brothers.* FRG


Grandparents Plus (2010) *What if we said no?* Grandparents Plus


Nandy, S., Selwyn, J., Farmer, E. and Vaisey, P. (2011) *Spotlight on kinship care: Using Census microdata to examine the extent and nature of kinship care in the UK at the turn of the Twentieth century*. University of Bristol


Templeton, L. (2010) *The experiences and needs of grandparents in Birmingham who care for their grandchildren because of parental substance abuse*. Aquarius


Appendix A    Glossary

**Accommodated child.** A child or young person cared for by Children’s Services, under section 20 of the Children Act 1989, with the agreement of their parents or those with parental responsibility or the young person themselves if they are aged 16 or 17.

**ADHD.** Attention deficit hyperactivity disorder.

**Adoption order.** A court order which makes the child legally part of the adoptive family and legally ends a child’s relationship with their birth family. It is a permanent order, lasting for the child’s lifetime. It cannot be changed once it has been made.

**BAAF.** British Association for Adoption and Fostering.

**Cafcass.** The Children and Family Court Advisory and Support Service, an independent agency which advises the family courts in England on what it considers to be in the best interests of the child during family law cases.

**CAMHS.** Child and Adolescent Mental Health Services.

**Care proceedings.** The court process when Children’s Services seek a court order to protect a child. The court may make an emergency protection order (EPO), an interim care order (ICO), a care order or a supervision order. Residence orders and special guardianship orders may also be made through care proceedings and contact orders.

**Care order.** A court order which places a child in the legal care of Children’s Services, which then shares parental responsibility with the parent/s.

**Care Planning Regulations (2010).** These set out how local authorities should carry out their responsibilities in relation to care planning, placement and review for *looked after children*.

**Child in Need (CIN)** Under Section 17 of the Children Act 1989, every local authority has a general duty to safeguard and promote the welfare of children in their area who are ‘in need’ and, so far as it is consistent with that duty, to promote the upbringing of such children by their families by providing a range of and level of services appropriate to those children’s needs. The definition of a *child in need*, set out in section 17 (10) of the Children Act 1989, is a child who is under 18 and who is: unlikely to achieve or maintain a reasonable standard of health or development without the provision of appropriate services by the local authority; or whose health or development is likely to be significantly impaired without the provision of appropriate services by a local authority; or who is disabled.

**Children’s guardian.** An independent and experienced social worker whose role is to protect the interests of the child in care proceedings. Cafcass is responsible for providing children’s guardians.

**Children’s Panel solicitor.** A solicitor who has satisfied the requirements of the Law Society that they are competent to represent children in care proceedings.

**Children's Services.** The department of the council (local authority) which is responsible for children’s social care.
**Common Assessment Framework (CAF).** A standard way of looking at a child’s needs which is intended to be used by a range of agencies working with children and young people, such as schools and health visitors. It is used to find out if a child or young person has any additional needs and, if so, how they can be helped. The assessment is carried out by someone from the agency working with the child, who will discuss the situation with the child, their family and professionals involved in the child’s life.

**Connected person.** A recently coined legal term which means a relative or friend or someone else who is connected with a looked after child. It can include someone who knows the child in another role like a teacher, a childminder or a neighbour.

**Contact Order.** A court order which sets out who a child should see or keep in touch with. The order may also specify where the contact should take place, how often, and if it should be supervised.

**CPD (Continuing professional development) points.** All solicitors in legal practice or employment in England and Wales are required, by the Solicitors Regulation Authority to complete a minimum number of hours of continuing professional development.

**CWDC.** A reference to the Children’s Workforce Development Council’s Training, Support and Development Standards. The National Minimum Standards for foster care require that all approved foster carers complete mandatory training. There is a specially adapted set of induction standards for family and friends carers.

**Designated manager.** Our term for the senior manager local authorities are required to appoint, to oversee their family and friends care policies.

**DfE.** Department for Education.

**EDT.** Emergency duty team

**Emergency protection order (EPO).** If Children’s Services believe a child is in urgent need of protection, they can apply to court for an emergency protection order. This lasts for up to eight days and can be extended by the court for a further seven days. An EPO gives Children Services the power to remove a child from parental care and place in alternative care.

**Family Assistance order (FAO).** A court order requiring a local authority, or Cafcass, to make an officer available to advise, assist and (where appropriate) befriend, any person named in the order. The order can last up to 12 months.

**Family Group Conference (FGC.** A decision-making meeting in which the wider family makes plans for children who need support or protection. It is a voluntary process. Families are assisted by an independent coordinator to prepare for the meeting. They have the chance to get information from the social worker and other professionals about the child’s needs and what will keep them safe. The whole family then meet on their own to make a plan for the child/ren.

**Family Justice Review.** A review set up by government to examine the operation of the family justice system under the chairmanship of Sir David Norgrove. The report, published in 2012, is often known as the Norgrove report.
**Family proceedings court** (FPC). Part of the magistrates’ court which deals exclusively with family matters.

**Fostering Assessment.** Children’s Services must place *looked after children* with approved foster carers in order for the placement to be lawful. Relatives/friends/ or other connected persons may be approved as foster carers for a temporary period (e.g. where a *looked after child* needs to be placed quickly or long term.

Temporary approval as a kinship foster carer is known as a regulation 24 placement. The social worker must find out key information about the carer and their household before (or immediately after) the placement in order to give temporary approval. The approval, once given, will last for 16 weeks, although it can be extended to 24 weeks in exceptional circumstances. During that time the carer must be fully assessed and approved as a foster carer for the placement to continue beyond that time. If they are not approved within that time period the child must be moved to another placement.

Full fostering assessment and approval is a detailed process made up of four main parts which include criminal records checks, health checks, references and the carer’s family circumstances including their home environment and their ability to meet a child’s needs. Kinship carers will usually be assessed on how they can care for and protect a specific child. When the full fostering assessment is finished the information gathered will be presented to a fostering panel for a recommendation about approval.

**Fostering panel.** Following a fostering assessment a report must be presented to a fostering panel, which recommends whether a person should be approved as a foster carer. The final decision about approval rests with a Children’s Services decision maker who will consider the panel’s recommendation.

**Fostering Service Regulations, (England) 2011,** are made under the Children Act 1989 and the Care Standards Act 2000. They form the legal framework (along with associated statutory guidance) for the running of fostering services. They replace the Fostering Services Regulations 2002.

**Independent Reviewing Officer (IRO).** Every child who is *looked after* by Children’s Services must have an independent reviewing officer (IRO whose duties are to monitor whether Children’s Services are meeting the child’s needs and carrying out the care plan and to chair *Looked After Child* Review Meetings.

**Interim care order (ICO).** A temporary court order made in care proceedings which gives the local authority parental responsibility. The child becomes a *looked after child*.

**Interim residence order (IRO).** A temporary court order which can be made in either care proceedings or private law proceedings which says where a child will live until a permanent order is made. Any person who gets a residence order has *parental responsibility* for that child which they share with anyone else who has parental responsibility such as the parents.

**Issues resolution hearing.** A stage in care proceedings. Its purpose is for the court to establish what can be agreed upon by everyone involved in the case before the *final hearing*. 
**Independent social worker** (ISW). A qualified social worker in independent practice. They are sometimes engaged by Children’s Services to carry out assessments of prospective kinship carers.

**Judicial review.** A legal procedure in which a court decides whether a local authority has acted unlawfully either by omission or commission.

**Lead professional.** Where professionals from a number of agencies are involved in children’s lives usually one person is named as the lead professional. They will be the main contact person for the child and their family and coordinate the help the family is getting under the Common Assessment Framework.

**Legal Aid.** Public funding for legal advice and representation. All parents and other people with parental responsibility automatically get public funding to cover the costs of having a solicitor in care proceedings. Public funding is also available in some other situations.

**Letter Before Proceedings.** A formal procedure whereby a letter is sent to parents when a social worker is so concerned about a child’s safety and well-being that they are planning to ask the court to make an order to remove a child from a parent’s care. Parents are invited to a meeting to discuss what they need to do to prevent this. Legal aid is available so that parents can be represented by a solicitor at this meeting.

**Looked after child (LAC)** A child who is being cared for by Children’s Services. There are two main types of looked after children: those who are in care compulsorily under a court order and those who are accommodated, with parental agreement.

**Looked After Children (LAC) Review Meeting.** When a child is looked after, their situation is regularly reviewed at LAC review meetings. LAC review meetings are chaired by an Independent Reviewing Officer.

**National Minimum Standards** for Fostering Services. Part of the legal framework for the running of fostering services.

**No order principle.** A key principle in the Children Act 1989 which states says that the court should only make an order about a child if this would be better for the child than not making an order.

**Parental Responsibility (PR).** Parental responsibility is defined in law as all the rights, duties, powers, responsibilities and authority, which by law a parent has in relation to the child and the administration of his/her property. In practical terms, it means the responsibility to care for a child and the right to make important decisions about the child. All mothers

**Party status.** The right to play a full part in court proceedings and to be legally represented.

**Police Protection** The police may remove a child to a safe place for up to 72 hours if they have concerns about their safety.

**Private foster care.** A private foster carer is someone who is not a close relative or a foster carer working for Children’s Services who is (or plans to be) caring for a child under the age of 16 (or under 18 if disabled) for more than 28 days and the arrangement was made
privately, not through social workers. A close relative means a step parent, grandparent, aunt, uncle or older sibling. The parent and the private foster carer must inform Children’s Services about the arrangement. A social worker must visit at regular intervals.

**Private law proceedings.** Proceedings in the family courts which only directly involve family members and which have not been brought by the local authority.

**Regulation 24.** A section of the fostering Regulations which allows Children’s Services to place a child with a family member or friend in an emergency situation for up to 16 weeks (without doing a full fostering assessment) provided they have carried out certain basic checks about that person’s home circumstances and their ability to care for and protect the child. This should allow Children’s Services to be satisfied that the placement will keep the child safe and well

**Residence order.** A court order which stipulates who a child should live with and gives that person parental responsibility for the child. It does not take away parental responsibility from the child’s parents. A residence order can last until the age of 18, or can be ended earlier by the court. It is planned to replace residence orders with child arrangements orders.

**Residence order allowance (ROA).** Children’s Services have the power (but no duty) to give financial help to someone with a residence order (who is not a parent, or married to one) by paying them a residence order allowance. This allowance will be means tested and regularly reviewed.

**Section 7 report.** A welfare report ordered by the court from either Children’s Services or Cafcass.

**Section 8 application.** An application under Section 8 of the Children Act for a residence, contact, prohibited steps or specific issue order.

**Section 17.** The section of the Children Act 1989 which gives Children’s Services the power to help families of children in need.

**Section 20.** The section of the Children Act 1989 which gives Children’s Services the power to look after a child when there is no-one with parental responsibility for the child or when the person caring for the child is prevented from caring for them, for whatever reason. This is also called voluntary accommodation.

**Section 31.** The section of the Children Act 1989 under a court may make a care order, placing the child in the care of the local authority, or a supervision order.

**Section 37 report.** A report ordered by the court, from a local authority, where the court considers, in family proceedings not brought by the local authority, that it may be appropriate for a care or supervision order to be made.

**Special Guardianship Allowance (SGA).** Once a special guardianship order is made, Children’s Services have the power, but no duty, to pay a regular allowance. These payments are usually means-tested and subject to regular review. If a special guardian was previously a foster carer the allowance they received may be protected for up to two years.
Special Guardianship Order (SGO). A court order which says that a child will live with someone who is not their parent on a long-term basis. Unless revoked, it stays in force until the child is 18. The order gives the special guardian parental responsibility for the child. It does not remove PR from the child’s parents but there are very few decisions they can make while the order remains in place.

Supervision Order. A court order made in care proceedings which puts a child under the supervision of a designated local authority. The supervisor’s duty is to ‘advise, assist and befriend the child’ and ‘to take such steps as are reasonably necessary to give effect to the order’. It normally lasts for one year, although it can be made for a shorter period, and can be extended up to three years.

Supervising social worker. A family placement social worker who works with foster carers to ensure that they receive the right support and monitoring to care for any child who is placed with them.

Team Around The Child (TAC). A way of working with children and families which usually follows the Common Assessment Framework (CAF) process. The lead professional will bring together people from different agencies to develop a plan of action/support that will help with whatever difficulties the family may have. Each TAC will be different and will come together to meet the particular needs of the particular child/family. By working very cooperatively with the family and with good information sharing, the TAC tries to make sure the family get the right help.

Testamentary guardian. A carer can become a testamentary guardian if there is no one alive with parental responsibility for the child, or one parent is dead and the other cannot be traced, is serving a prison sentence of two years or more, or is compulsorily detained in a psychiatric hospital. In those circumstances it is not necessary to seek a court order if there is written evidence that the carer has been appointed guardian.
Appendix B  Key decisions in case law

Cases dealing with allowances for kinship foster carers

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

This case established the principle that where relatives/friends are foster carers for a child in their family network, they may not be discriminated against when determining the amount they receive from the local authority as a fostering allowance as compared with unrelated local authority foster carers.

This judicial review concerned two cases where relatives were approved as local authority foster carers for children in their care. Following emergency protection orders, the three L children had been placed with the maternal grandparents, first on a short-term and then on a long-term basis. While the arrangement was on a short-term basis, the grandparents were paid under one-fifth of the amount they later received as long-term foster carers, although the fostering task remained the same and the needs of the children did not change at all.

Meanwhile, also following emergency protection orders, the two R children had been placed with their elder half-sister, at her request, on a permanent basis. The half-sister claimed that she had not been approved as a long-term foster carer because a change in her status from short-term to long-term carer would have significantly increased the payments due to her. Instead, she was paid about half of the normal rate. The L children and the R children sought, by their litigation friends, their former guardians ad litem in the care proceedings, judicial review of the authority’s policy and decisions made under the policy.

The High Court declared the local authority policy unlawful and quashed the decisions made on the basis of that policy in both cases. Specifically the court held that:

- The local authority policy of paying short-term foster carers who were friends or relatives of the child at a much lower rate than that paid to other foster carers was unlawful, in that: it was irrational; it was discriminatory, discriminating against both the adults and the children concerned; the cash limit on the amounts that could be paid to relative foster carers was arbitrary and inflexible; the level of payments failed to meet the welfare requirements of the children; and the policy breached the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, failing to meet the key tests of necessity and proportionality.

- The children plainly had the necessary standing to bring the action, and there could be no possible objection in that case to their former guardians ad litem acting on their behalf as their litigation friends. The fact that the concerns which both litigation friends had about the local authority policy extended beyond their concerns as to the impact of that policy on these children in no way disqualified them from acting as litigation friends.

It was later established by the Ombudsman in another case that payments should be made from when the child is first cared for by them and can be backdated.49

49 See Complaint against Dudley Council Ombudsman ref no 06/B/09795 2007
This case extends the principle already set out in the Manchester case above by clarifying that additional fees payable to professional foster carers should also be available to family and friends foster carers.

The facts were that, at the request of the local authority, a paternal aunt gave up her professional job to care for her nephews and nieces aged 15, 14 and 7, all of whom had significant special needs, who were already in care and had had three separate placements which had failed. She became reliant on state benefits and received very little help in caring for the children. The fostering allowance that she received was significantly below that which the professional foster carers received. She became exhausted and was extremely concerned that she would not be able to continue caring for the children due to lack of support. She applied for judicial review of the local authority’s failure to provide her with practical support and the same allowance as unrelated foster carers.

The local authority then agreed to fund respite care (i.e. for someone else to look after the children over a weekend to give her a break) and some babysitting. However, they also issued a new foster care policy which clearly stated that they would pay family and friends foster carers £171 per week less than professional foster carers. Two subsequent policies clarified that:

- The £171 per week for professional foster carers was a fee/reward, for which family and friends foster carers were not eligible; and
- The extra expense of looking after children with special needs was covered by an enhancement to the fostering allowance, the fee/reward element of which was only payable to professional foster carers.

Mrs X was told she could not receive the fee/reward elements, even though she was succeeding in caring for three difficult children where professional foster carers had failed.

The High Court held that these policies were unlawful because they discriminated against family and friends carers and it required the local authority to reconsider its fostering payment policy.

Case law on special guardianship allowances

This case established that in determining the level of special guardianship financial support, the local authority should refer to their fostering allowance.

The case concerned a grandmother who was special guardian of her two yr old granddaughter. Despite making good progress in her grandmother’s care, the girl needed dedicated care as a result of continuing medical, sleep and developmental problems. The local authority offered to pay a special guardianship allowance which was allied to the authority's adoption allowances.
The grandmother applied for judicial review of the amount she received, referring to para.65 of the Special Guardianship Guidance which states that:

In determining the amount of any ongoing financial support, the local authority should have regard to the amount of fostering allowance which would have been payable if the child were fostered. The local authority's core allowance plus any enhancement that would be payable in respect of the particular child, will make up the maximum payment the local authority could consider paying the family. Any means test carried out as appropriate to the circumstances would use this maximum payment as a base.

The High Court held that the amount paid was unlawful on the basis that:

- Paragraph 65 of the Guidance indicated there should be a close association between fostering allowances and special guardianship allowances, yet the local authority had made a rigid link between special guardianship and adoption allowances, in breach of the Guidance.

- The intention of the legislation and regulations (Reg 6) about special guardians was that financial support should be made available to special guardians to ensure that financial obstacles did not prevent people from taking on that role.

- A local authority was not free to devise a scheme which failed to comply with regulation 6 SGR or which dictated that some types of placement for a child carried a significant financial disadvantage in comparison with others or, worse, would impose such a financial strain on a carer that he or she would be forced to choose another type of placement.

**Barrett v Kirklees Metropolitan Council [2010] 2 FLR 405**

This case involved a judicial review by a grandmother of a local authority policy to pay special guardianship allowances at two thirds of the fostering allowance. The grandmother put herself forward as a potential carer when the child was placed with foster carers during care proceedings. The grandmother argued that a care order should be made and that the child should be placed with her. The social worker, supported by the guardian, suggested that an SGO might be appropriate. The court then made an SGO to grandmother with a three year supervision order. The local authority had a policy that SGO allowances should be paid at support needs and refused to discuss the issue with her, so she applied for judicial review.

The court declared the local authority’s policy unlawful on the basis that it represented a substantial deviation from government guidance and had ignored the special costs of bringing up a child who might otherwise be fostered. Moreover, it required them to carry out a fresh assessment of the grandmother’s support needs and pay the sums found due as a result of that assessment.

**Cases where the local authority was involved in placing a child at risk with kinship carers**

**Southwark LBC –v- D [2007] EWCA Civ 182; [2007] 1 FLR 2181**

This case established the principle that if the local authority was substantially involved in making an arrangement for a child to live with a relative or friend it was likely that the child should be treated as being looked after by the local authority.

The case concerned child ‘S’ who alleged that she had been assaulted by her father. The local authority prevented the father from taking S home from school. Instead, they contacted the
father’s former partner, D, and asked her to care for S. A dispute arose as to whether this was a private fostering arrangement or whether the child had been placed with D by the local authority and hence whether or not the child was looked after. The Court of Appeal held that the child had been placed with D by the local authority and therefore that she was a looked after child. It clarified that:

- Where the local authority played a major role in making arrangements for a child to be fostered, it was more likely to be concluded that it was exercising its powers and duties to place a looked after child, than assisting in making a private arrangement.

- Further, if a local authority was facilitating a private arrangement (in which the foster carer would have to approach the parents for financial support) this should be made plain to all those involved. Only on full receipt of the proposed financial arrangements could the foster carer give informed consent to acceptance of the child under a private fostering arrangement.

In this case, the local authority had taken a central role in arranging for S to live with D, there had been no contact between D and either parent, and the local authority had led S to believe that it would arrange for financial support. S was therefore treated as being looked after.

**R (SA) v Kent County Council [2011] EWCA Civ 1303**

This case confirmed the principle set out in the Southwark case above that when the local authority was involved in arranging for a child to live with her grandmother, the child was to be treated as being looked after and supported accordingly.

The case concerned a child, S, who had lived with her mother until it became clear that, following an assessment by the local authority, mother was no longer able to care for her. The local authority approached S's grandmother and an agreement was drawn up between them, following which grandmother took on the care of S. The agreement was restrictive about how grandmother could care for S and grandmother's perception was that the local authority was in charge of the placement, and she looked to them for practical and financial support.

Neither the nature of the placement nor the question of financial support were ever addressed explicitly by the local authority. It did, however, make weekly kinship payments to grandmother, and for many months S's social worker had significant involvement in the day-to-day arrangements for S. However, the local authority complied with none of the formalities necessary for S to be considered a looked-after child, in accordance with s.22(1)(b) Children Act 1989, instead treating the arrangement as if S were a child in need for whom it was providing services pursuant to s.17 of the Children Act.

S applied for judicial review of the local authority’s decision to treat her as a child in need within the meaning of s17 of the Children Act, relying on D v Southwark above. The trial judge held at first instance that the child was accommodated and placed with grandmother as a looked after child because all discussions about S going to live with her grandmother were initiated by, and arose from, discussions with the social worker rather than with S's mother and the ongoing involvement of the local authority was consistent with it being a placement in which the local authority had taken the lead. Crucially, the local authority had never indicated to the grandmother that it would expect her to make financial provision for A without help from themselves.

The local authority appealed but this was dismissed, the Court of Appeal upholding the decision of the trial judge.