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

Summary

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Thousands of children in the UK are being brought up by members of their extended families or social networks because their parents are unable to care for them safely. A tiny proportion – around 5% - of these ‘kinship’ or ‘family and friends’ carers are approved by the local authority as foster carers. Of the remainder some have obtained special guardianship, adoption or residence orders through the courts, others are caring informally or are privately fostering.

Children’s Services can provide financial and other support for such arrangements. However they are only legally obliged to do so where the child is a looked after child, when the carer must be assessed as a kinship foster carer. In all other circumstances support is discretionary. The aim of this study was to examine the links between the legal status of the arrangements, the support provided and the needs of the children and their carers.

In 2011 the government issued statutory guidance to local authorities on family and friends care, which makes it a requirement to publish a policy setting out their approach towards promoting the needs of all children living with kinship carers, whatever their legal status. Crucially, the guidance emphasises that policies should be underpinned by the twin principles that support should be based on the needs of the child rather than merely their legal status, and that children should receive the support that they and their carers need to safeguard and promote their welfare, regardless of whether or not they are looked after.

The findings from this study indicate that there is a very long way to go before such aspirations are realised.
Key findings

- Children in kinship care have typically experienced multiple adversities, similar to those in unrelated care. Many kinship carers experience considerable stress in caring for these children and feel isolated and unsupported.

- Although government guidance states that support should be needs-led and not dependent on the legal status of the arrangements, only a minority of professionals thought that local authorities were achieving this. Both carers and professionals identified many ways in which children and their carers are being failed.

- The critical dependence of support on legal status was abundantly clear, particularly evidenced in the professional data. Looked after status, the only one which provides entitlement to support, is an increasingly reliable passport to a comprehensive package of services for both carers and children. The statutory framework for special guardianship means that it is usually a better option than a residence order, but since support is discretionary, very much inferior to kinship foster care. Informal arrangements are the least well supported. Carers who act on their own initiative to protect children are often discriminated against in terms of accessing support.

- There was a strong perception that local authorities actively resist the use of kinship foster care, with many professionals arguing that this is a deliberate strategy to keep the number of looked after children down and minimise the costs rather than reflecting the child’s best interests. Most professionals had experience of local authorities not complying with case law about the criteria for looked after status and some are said to be still acting unlawfully.

- Carers are in a weak position in relation to local authorities, often lacking the information and independent advice needed to make informed decisions and access support. The court process provides a potential safety net, protecting the interests of carers and children, but its operation is variable and there is a risk that it will be further weakened by changes to legal aid and care proceedings and diminishing input from children’s guardians.

- Variation in practice within and between local authorities was a persistent theme, pervading all the data.

- Although the research findings, on the whole, present a gloomy picture, some local authorities appear to be providing an above average level of service and there is also evidence that others are seeking to improve the support they provide. There are concerns, however, about the impact of current financial constraints on the support which can be provided to kinship care arrangements. This is a pivotal point in the development of kinship services.
The Study

The project was funded by the Big Lottery and undertaken by Family Rights Group (FRG) in partnership with the University of Oxford.

The research had three stages. The findings from the first two stages (interviews with kinship carers in 95 households in England and Wales, followed by an on-line survey of 493 carers across the U.K.) were reported in 2012. The final report on the study, summarised here, focuses on the perspectives of professionals and how their views compare with those of these carers. In all 249 professionals participated, 100 responding to an on-line survey and a further 149 being interviewed either individually (31) or with one or more colleagues (118).

The largest professional group in the sample (158) consisted of Children’s Services staff - social workers and managers in front-line, children in care, family placement and specialist kinship teams. Six of these were senior managers with responsibility for their authority’s family and friends care policy. Other groups included children’s guardians and independent social workers (37); family group conference coordinators/service managers (23); lawyers (5 local authority solicitors and 12 in private practice); members of the professional judiciary (10); Family Rights Group case advisers (5) and independent reviewing officers (4). While the data cannot claim to be representative it gives a good overall picture of practice covering at least 54 local authorities in England and Wales, with all regions covered and all types of authority with responsibility for Children’s Services.
Findings

Challenging children, stressed carers

The children have got significant needs. (They are) not actually that different from children who are looked after. They've got that history. (Kinship social worker)

Data from practitioners confirmed the findings from our carer interviews that children in kinship care have typically experienced multiple adversities before coming to live with kin and are very similar in this respect to children in mainstream foster care. 85% of the children in the study were reported to be presenting difficulties at the point the arrangement started, while 59% were categorised by the researchers as ‘challenging’ i.e. presenting significant problems to their carers. A third were still deemed challenging at the point the research was conducted and only a third were problem-free. Prima facie, therefore, such children should be regarded as children in need and supported accordingly.

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. (Kinship carer)

As the result of taking on care many kinship carers experienced considerable stress. Indeed, at the point we interviewed them, tests using a standardised measure of well-being revealed that the proportion with raised stress levels was twice that exhibited in the general population. Carers also felt isolated and unsupported, with most expressing the need for more emotional, as well as practical and financial support.

Support is not based on need

We need to listen to families that ask for help. These are children who have had very difficult pasts and they need extra support, and if they get that support the placement can work really well. But often there are 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. (Family group conference co-ordinator)

Despite the evident needs of children and carers, both carers and professionals identified many deficiencies in support. Almost three-quarters of the carers interviewed rated the support they had received from Children’s Services as poor or very poor and all but a handful (5%) identified specific support gaps. Similarly, 53% of the professionals surveyed referred to at least one support gap, with several giving long lists. The carer data demonstrated that support was not determined by the needs of either the child or the carer – only 18% of those caring for the most challenging children, and 10% of those with high stress levels, were satisfied with the support they were receiving. Similarly, only a quarter of all professionals surveyed – and less than a third of Children’s Services staff - thought their local authority was ‘completely’ meeting the government’s requirement that support should be based on need.
The importance of legal status

A fundamental problem is that the level of support is not based on the needs of the child but on the (legal) order the child is under and/or the way the case is categorised by the local authority. (Independent social worker/family group conference co-ordinator)

It’s all about the legal status. You don’t get anything unless you’ve got the status. (Solicitor)

The importance of legal status to support emerged even more strongly from the professional data than from the carer material. Only a fifth of Children’s Services’ staff surveyed – and none of the other professionals - thought that their local authority was ‘completely’ meeting the government requirement that support should not be based simply on 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. This has become an increasingly reliable passport to a comprehensive package of services as seminal decisions in the court are forcing local authorities to treat kinship foster carers like all other foster carers.

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

The statutory framework surrounding special guardianship means that, in terms of support, this is the next best option, but very much a second best, since such support is discretionary. Professionals identified many ways in which special guardianship support needed to be improved, comparing this unfavourably with both foster care and adoption.

Kinship arrangements where the child is on a residence order come lower down the support ‘pecking order’, unless the child was previously looked after.

Informal arrangements (where there is no order and the child is not looked after) are at the bottom of the heap, particularly where the carer acted on their own initiative to protect the child. In theory those caring informally can be adequately supported through services available to any family, 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 considered that this structure ensured that the right services could be provided at the right time. The reality, in many local authorities, appears to be very different.

Local authority reluctance to use kinship foster care

There’s a push that you go from kinship care to special guardianship without (care) proceedings in the middle so they don’t have to be fostered...because of the financial pressures...and in proceedings but no order or an interim residence order. (Kinship social worker)

Local authorities of course are desperate to get these kids off their books. (Judge)

Closing the support gap between kinship arrangements where the child is looked after and those with other legal statuses is imperative because the data from this study, both from carers and professionals, indicates that although the children have similar levels of difficulties some local authorities are very reluctant to approve kinship carers as foster carers, or to allow them to remain so for very long. This local authority reluctance was manifest in disputes about whether the initial arrangement had been made by the local authority or the family; ‘encouragement’ to kinship carers to protect the child by bringing a private application for a residence order rather than the local authority instituting care proceedings; the avoidance of interim care orders during care proceedings and the rarity of full care orders at the end of such proceedings. While such apparent ‘avoidance’ of looked after status was attributed to a number of reasons – including the interests of the child - a persistent theme was that it was a deliberate strategy to keep the number of looked after children down and minimise the concomitant cost to the local authority.
A key theme in the carer material was the imbalance of power between carers and local authorities – 76% of carers responding to our survey, for example, said that at the start of the arrangement they did not have enough understanding of the legal situation to make an informed decision. The professional data reinforces this theme of carers being disempowered by lack of knowledge about the legal options and their implications for support, not just in the early stages of the arrangement but in long-term decision-making about the future. Both groups also highlighted that not only do carers not know the questions to ask, but they may be afraid to ask them, for fear of appearing difficult, losing the child, or, in the case of financial support, being seen as only in it for the money. Ensuring that local authorities provide adequate information and are open and honest with carers was seen as a key imperative.

Carers and professionals also emphasised the importance of independent information, advice and advocacy and the need for signposting to appropriate sources. Only just over a third of Children’s Services staff surveyed, however, said that their local authority routinely referred carers to specialist advice organisations. Just under half said that carers would be routinely advised to consult a lawyer.

The potentially crucial role played by family justice professionals - lawyers, children’s guardians, the judiciary – in redressing the imbalance in power was a strong theme in both the carer and professional interviews. This safety net already has a number of holes – carers unable to afford legal advice or representation; variable expertise among solicitors; lack of party status for carers in care proceedings; no children’s guardians in private law proceedings; reduction in the children’s guardian’s input. Many of these professionals were also concerned about the potential combined impact on carers and children of recent and further proposed changes to legal aid and care proceedings, including reduced judicial scrutiny and speeding up of the process.

Variation in practice – a post-code lottery

You’ve got three authorities that (this county) spans...you will find a different approach between the three. (Solicitor)

I think overall we are doing quite a good job, especially when I hear of disparities in other local authorities. A lot of local authorities aren’t offering the same level of payment or training we are providing to our kinship foster carers. (Manager, kinship team)

Variation in practice within and between local authorities was a persistent theme. This was evident in the organisation and resourcing of special guardianship services, special guardianship support plans and allowances. It was noted with respect to equity of treatment between residence orders and special guardianship orders. Authorities varied in their eligibility criteria for support under section 17 for children in need; the use of the power to pay regular allowances to informal carers and in discrimination against carers who stepped in early to protect the child. There were differences in interpretation of, and compliance with, the law in the use of section 20 accommodation and no consistency in the use of interim or full care orders. There was very varying provision of information to carers, signposting to independent advice or contributing to carers’ legal costs.

Finally, there was huge variation in the degree to which local authorities were reported to be meeting the requirements in government guidance that children and carers should receive the support they need and that support should be based on need, not simply on legal status.
A pivotal stage in the development of kinship care services?

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

It is very cynical of central government to increase statutory guidance whilst continuing to create financial restrictions on local authorities and reduce services. The reality is that it is quite easy to assess need, but resources need to be available to meet those needs. (Social worker)

Despite a largely gloomy picture, there were glimmers of light. Some authorities stood out as having comparatively well-developed kinship care services and there is much that could be learned from their experience. The enthusiasm and commitment displayed by informants who worked in, or had been responsible for developing, such services was truly impressive. It was also possible to detect signs of change in the direction of improving services for kinship care arrangements, which may well have been generated by the statutory guidance. The professional survey data indicated that although few local authorities were 'completely' meeting the target of a needs-led service, most of the rest were said to have 'some way to go but getting there'. It was unusual for an authority to be said to be 'nowhere near'. Interviews also suggested progress in, for example, the support offered to kinship 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. The statutory guidance marked a very significant step forward. It signalled the importance that the government places on kinship care, recognises that such arrangements need support and crucially, places local authorities under the dual obligation to ensure that children and carers are supported and that support is provided on the basis of need, not simply legal status. These are very radical requirements which demand substantial change in the way many local authorities operate. Children’s Services, however, were not given any additional money to make these changes and without this even the most motivated departments may struggle.

It cannot be over-emphasised that kin-placed children are not ‘ordinary’. They have usually been exposed to much disadvantage and present complex difficulties and needs. They and their carers need support. Progress towards achieving justice for kinship care depends critically on the acknowledgement that these families need and deserve support from the state, both at central and local government level. Underlying much of the discourse about kinship care is a view that ‘families should look after their own’. It is now imperative that such attitudes are robustly challenged. All the research indicates that kinship carers are doing a remarkable job caring for children who have typically been failed by their parents or orphaned 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 state has a responsibility to support them in the difficult task they have taken on, just as it supports other types of alternative carer for troubled children. The strongest indicator the government could give that it acknowledges that this is a shared responsibility would be to bring in a national kinship care allowance, for which both carers and professionals argued. This would relieve the pressure on local authorities and remove a significant source of distress for families.
Recommendations

Local authorities should:

1. Implement the statutory guidance, ensuring they formulate, publish and act in accordance with policies which explicitly refer to, and reflect, the principle that support should be based on need.

2. Ensure policies are accessible and useful to carers and convey a helpful, rather than off-putting attitude.

3. Set up a panel of kinship carers and children to inform policies and comment on local practice.

4. Ensure frontline teams are acting lawfully when determining whether the kinship arrangement is a private one within the family or a local authority placement by providing training, clear procedural guidance and a process for scrutinising the legal status of all new kinship arrangements. Procedures should stipulate that an arrangement cannot be designated as private until carers have been furnished with, and had the opportunity to digest information about their options and their various implications and taken independent advice.

5. Improve the information available to carers by producing an introductory information pack setting out legal options and their implications, support available from the local authority and other agencies, and how this might be accessed.

6. Signpost new carers to independent specialist sources of information and advice and to solicitors with relevant experience. Pay for a one-off session of legal advice.

7. 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.

8. Link all new kinship carers coming to the attention of Children’s Services with a specialist kinship worker, whose tasks include ensuring carers have relevant information and helping them make the transition to their new role.

9. Where children would otherwise be in the care system, offer an assessment of support needs and an allowance aligned to the basic fostering rate.

10. Establish comprehensive kinship care support services, based on special guardianship and post-adoption support, and make them available on the basis of need.

11. Create an infrastructure to deliver a needs-based service. Define the designated manager’s responsibilities to oversee and promote services for all kinship arrangements. Set up a kinship care group to collect data, audit performance and devise a kinship care improvement strategy involving other local agencies.

12. Give serious consideration to establishing dedicated kinship care teams to conduct all assessments, assess support needs and ensure that services are provided or carers referred to appropriate services.

13. Ensure that dedicated teams are adequately resourced to: directly support kinship arrangements; offer advice and training throughout Children’s Services; work with other agencies to sensitize them to the needs of kinship families and make them aware of the services available for such arrangements.

14. Provide training for all staff coming into contact with kinship arrangements. This should cover the law and local authority responsibilities and aim to increase understanding of this unique form of care as well as addressing underlying beliefs and ideological positions which impede good practice.
Association of Directors of Children’s Services should:

1. Consider how to draw on the experience of authorities with well-established kinship services to promote needs-based support in all local authorities.

2. Promote the establishment of a network of designated managers to provide forums for the dissemination of good practice.

3. Pool resources to develop training and encourage research into the effectiveness of different models of service provision.

Central Government should:

1. Audit local authorities’ compliance with statutory guidance. Ofsted should conduct a thematic inspection of kinship care services, encompassing all legal statuses.

2. Make specific funding available to local authorities to help them comply with the guidance.

3. Align the statutory framework for providing non-financial support in special guardianship with post-adoption support.

4. Place a duty on local authorities to establish a family and friends care support service for children in kinship care under a residence order and where there is no order, modelled on their duties in special guardianship and available to any family where the child is in kinship care because they cannot live with a parent.

5. Introduce a ‘kinship passport’, modelled on the proposed ‘adoption passport’, to provide a clear guarantee of the minimum support kinship families can access nationwide.

6. Amend the definition of a child in need to include ‘children being cared for by family and friends carers because they cannot live with their parent/s’. Make it mandatory to offer an assessment of support needs to such families.

7. Give kinship carers the same rights to paid employment leave and protection as adoptive parents.

8. Introduce a national allowance to cover the real costs of raising a child who cannot live with a parent.


10. Improve understanding of kinship care by ensuring that it is included in basic and post-professional training for social workers; by disseminating research and good practice; and commissioning on-line training packages for practitioners.

11. Require local authorities to give carers written information about the legal status of the arrangement, their options and their implications, and to signpost them to independent information and advice. Stipulate that carers cannot 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.

12. Adequately fund specialist independent advice services for kinship carers.

13. Fund work on the production and distribution of an information pack for all carers available in hard copy and on-line.

14. Monitor the combined effect of legal aid cuts, family justice reforms and reduction in the role and capacity of children’s guardians to ensure they do not adversely affect kinship care.

15. In care proceedings, change the law so that kinship carers, or those seeking to become kinship carers, are automatically parties and entitled to public funding.

16. 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.

17. Clarify that living with a kinship carer in long term foster care can be an appropriate way of providing permanency and that the policy direction to avoid children becoming looked after or remaining looked after refers primarily to care outside the child’s extended family or social network.

18. Fund a network for children raised in kinship care, including on-line and local groups.
The research was led by Joan Hunt with the assistance of a research team consisting of: Suzette Waterhouse, independent social worker and researcher; David Roth and Rachida Aziz, of Family Rights Group and three kinship carers: Sue Greenwell, Colin Leaves and Lorraine Riggs.

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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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1 Nandy, S., Selwyn, J., Farmer, E. and Vaisey, P. (2011) Spotlight on Kinship Care: Using Census data micro-data to examine the extent and nature of kinship care in the UK at the turn of the Twentieth century. University of Bristol.
2 Carers who are not close relatives of the child (grandparent, aunt/uncle, sibling) must notify the local authority and are monitored under the Private Fostering Regulations.
3 A formal designation indicating either that the child is voluntarily accommodated under section 20 of the Children Act, 1989, or is subject to a care order, interim care order or emergency protection order.
5 DfE, 2011, paras 1, 2, 4 and 6.
7 Hunt, J. and Waterhouse, S. (2013) It’s just not fair! Support, need and legal status in family and friends care. FRG.
8 Section 20 of the Children Act 1989 gives Children’s Services the power to look after a child when there is no-one available with parental responsibility or when the person with parental responsibility is prevented from caring for them and consents to the child being looked after.
9 The Association of Directors of Children’s Services.