

## **Briefing to the House of Lords Children and Social Work Bill**

Submitted by Family Rights Group on behalf of the Kinship Care Alliance

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June 2016

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## 1. Introduction

- 1.1 The Kinship Care Alliance is an informal network of organisations working with family and friends carers (also known as kinship carers) who subscribe to a set of shared aims and beliefs about family and friends care. Since 2006, members have been meeting regularly to develop a joint policy agenda and agree strategies to promote shared aims which are:
- a) to prevent children from being unnecessarily raised outside their family,
  - b) to enhance outcomes for children who cannot live with their parents and who are living with relatives and
  - c) to secure improved recognition and support for family and friends carers.

The Kinship Care Alliance is serviced by the charity Family Rights Group.

- 1.2 Family Rights Group, which has drafted this briefing, is the charity in England and Wales that works with parents whose children are in need, at risk or are in the care system and with members of the wider family who are raising children who are unable to remain at home. Our expert advisers, who are child welfare lawyers, social workers, or advocates with equivalent experience, provide advice to over 6000 families a year via our free and confidential telephone and digital advice service. We advise callers about their rights and options when social workers or the courts make decisions about their children's welfare. We also campaign for families to have a

voice, be treated fairly and get help early to prevent problems escalating. We lead the policy work of the Kinship Care Alliance and champion Family Group Conferences and other policies and practices that keep children safe in their family network.

1.3 The Children and Social Work Bill is an important opportunity to improve outcomes for children who cannot live with their parents. We therefore welcome measures, such as those on educational achievement to place new duties on local authorities, maintained schools and academies in respect of looked after and previously looked after children. However, as drafted the Bill overlooks the majority of children raised in kinship care, whose relatives stepped in to prevent them ever having to enter the care system. Some of these children have acute needs having suffered tragedy or trauma, they may be living under a permanent legal order such as a Special Guardianship Order but neither they nor their kinship carers get the help they desperately need. We therefore set out a series of amendments to the Bill which would address this.

1.4 We also propose a new duty on local authorities which would require them to explore wider family as a suitable potential placement for a child who may not be able to remain safely with their parents, **prior** to a child becoming looked after. This makes sense for the child, the family and the public purse.

1.5 The Bill has many different components including a desire to give greater freedoms and flexibilities to individual local authorities to innovate. We understand the motivation but are extremely concerned about the extensive powers that the Bill appears to give to the Secretary of State, at the request of a local authority, to override primary child welfare legislation and regulations.

## 2. The background to kinship care

2.1 There are an estimated 200,000 children being raised by kinship carers across the UK. Kinship carers are grandparents, older siblings and other relatives and friends who step in to care for children, many of whom would otherwise be in the care system. These children typically are unable to live safely with their parents due to bereavement,

abuse or neglect, alcohol or drug misuse, domestic violence, mental ill health or imprisonment.

2.2 95% of children living in kinship care arrangements are not 'looked after' by the local authority. They may be raised under a special guardianship order, child arrangements order (previously known as residence order) or no legal order. Even amongst those on a special guardianship order, around 30% have **not** been previously looked after in the care system. By keeping children out of the care system these kinship carers save the taxpayer billions of pounds each year in care costs. However, the financial and emotional cost of raising the child typically falls directly on the carers themselves.

2.3 Most children in kinship care are doing significantly better than children in unrelated care, despite having suffered similar earlier adverse experiences<sup>1</sup> – in particular they feel more secure and have fewer emotional and behavioural problems and are also doing better academically. This is despite them receiving little or no support.<sup>2</sup> Research shows that the main determinant of access to support is the child's legal status, in particular whether the child is in or out the care system, rather than their needs.<sup>3</sup>

2.4 By becoming the full-time carer of a child, often in an emergency, kinship carers face significant additional costs both in terms of equipment needed (e.g. beds, school uniform, larger car) and maintenance costs. Their family size increases and can even double overnight. Unlike adopters, they are not entitled to a period of paid leave for the children to settle in. Many carers end up in severe financial hardship as a result of taking on the children.<sup>4</sup> A recent survey of kinship carers found 49% of kinship carers had to give up work permanently to take on the children, thus becoming reliant on benefits.<sup>5</sup>

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<sup>1</sup> Selwyn et al (2013) The Poor Relations? Children & Informal Kinship Cares Speak Out (University of Bristol)

<sup>2</sup> Farmer, E and Moyers, S (2008) Kinship Care: Fostering Effective Family and Friends Placements (Jessica Kingsley Press)

<sup>3</sup> Hunt & Waterhouse 2013 It's Just Not Fair! Support, need and legal status in family and friends care (FRG/Oxford University Centre for Family Law and Policy)

<sup>4</sup> Hunt J and Waterhouse S (2012) Understanding family and friends care: the relationship between need, support and legal status (University of Oxford & FRG)

<sup>5</sup> Ashley C, Aziz R and Braun D, 2015, Doing the right thing: A report on the experiences of kinship carers (FRG)

2.5 A high proportion of carers also have limiting physical conditions or disabilities and often their own relationships come under severe strain as a result of taking on the children.

### 3. Amendments 1, 2 & 3 - Educational achievement in England for children who live in permanence placements with kinship carers.

- 3.1 The Children and Social Work Bill is an opportunity for the Government to provide a clearer framework of support for all children who cannot live with their parents and are living in alternative permanence arrangements. We welcome Clauses 4-6 of the Bill in making provision for promoting the educational achievement of all previously looked after children who are now in permanent placements, whether by way of an adoption order, special guardianship order or child arrangements order. However, we propose that these arrangements should be extended to all children who are unable to live at home with their parents and are now in permanent placements with kinship carers, whether or not they were formerly looked after children. We believe that these children are as much in need of additional help, they have simply come to their legal status by a different route, because family member or friends agreed to step in before the child entered the care system. Accordingly we would also propose amending the title of these clauses.
- 3.2 In addition, in clause 4, we note that the provision of information about education is only to be provided to the child's parents. However, clearly many of those children for whom that clause applies are not living with their parents. We therefore recommend that provision of information should also extend to any person with parental responsibility who is actually caring for the child.
- 3.3 Further we are proposing that all children who live in a kinship care arrangement should be entitled to priority admission at school, and their school should get the pupil premium plus. One of the policies for which the pupil premium grant provides funding is to raise the attainment of disadvantaged pupils and to close the gap between them and their peers. Children who live in a kinship care arrangement often have the same additional difficulties as a result of their early experiences of trauma,

abuse and neglect, as those who have been in the care system, and should be treated accordingly.

### **Amendment 1**

#### **Clause 4 Duty of local authority in relation to previously looked after children**

Page 5 line 21 after “Educational achievement of previously looked after children” insert

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“and children who are living permanently away from their parents”

line 28 after “the child’s parents” insert -

“and any other person with parental responsibility”

Page 6 line 1 omit the whole of subsection (6) and insert

“(6) In this section “relevant child” means

(a) a child who has previously been looked after by the local authority or another local authority but has ceased to be so looked after as a result of—

(aa) a child arrangements order which includes arrangements relating to—

(i) with whom the child is to live, or

(ii) when the child is to live with any person,

(bb) a special guardianship order, or

(cc) an adoption order within the meaning given by section 46(1) of the Adoption and Children Act 2002;

(b) a child who is being cared for by a relative, wider family member or friend (“F”) under a child arrangements order which includes arrangements relating to -

(i) with whom the child is to live, or

(ii) when the child is to live with any person.

(c) a child who is being cared for under a special guardianship order.

(d) a child who has been adopted under s46(1) ACA 2002 having been placed for

adoption with parental consent under either s19 or s20 of that Act.”

### **Amendment 2**

#### **Clause 5 Maintained schools: staff member for previously looked after pupils**

Page 6 line 30 omit subsection (2) and insert –

“(2) (a) A registered pupil is within this subsection if the pupil was looked after by a local authority but has ceased to be looked after by them as a result of –

(aa) a child arrangements order which includes arrangements relating to—

(i) with whom the child is to live, or

(ii) when the child is to live with any person,

(bb) a special guardianship order, or

(cc) an adoption order within the meaning given by section 46(1) of the Adoption and Children Act 2002;

(b) a child who is being cared for by a relative, wider family member or friend (“F”) under a child arrangements order which includes arrangements relating to -

(i) with whom the child is to live, or

(ii) when the child is to live with any person; or

(c) a child who is being cared for under a special guardianship order, or

(d) a child who has been adopted under s46(1) ACA 2002 having been placed for adoption with parental consent under either s19 or s20 of that Act.”

### **Amendment 3**

#### **Clause 6 Academies: staff member for looked after and previously looked after pupils**

Page 8 line 7 after “so looked after as a result of a relevant order ” insert –

“or

(c) is being cared for by a relative, wider family member or friend (“F”) under a child arrangements order which includes arrangements relating to -

(i) with whom the child is to live, or

(ii) when the child is to live with any person; or

(d) is being cared for under a special guardianship order, or

(e) a child who has been adopted under s46(1) ACA 2002 having been placed for adoption with parental consent under either s19 or s20 of that Act.

#### **Questions for the Minister:**

1. Will the Minister confirm that the terms and conditions on which assistance is given in relation to the pupil premium grant (PPG) payable to schools and local authorities for the financial year beginning 1 April 2017 will include as eligible pupils those children and young people who live in kinship care placements, regardless of whether they are previously looked after children or not.

2. Will the Minister confirm that they will use their powers under section 84 of the School Standards and Framework Act 1988 to revise the Schools Admission Code to ensure that schools must, within their oversubscription criteria, give highest priority to all children who are living in kinship care placements, in addition to those who are looked after or previously looked after children.

## **4. Clauses 15 to 18**

4.1 The Kinship Care Alliance shares the concerns as expressed in the NCB briefing and the Children England briefing prepared for the second reading of the Bill in respect of these clauses. The Bill as drafted appears to give unprecedented powers



to the Secretary of State, albeit at the request of an individual authority, to dispense with primary child welfare legislation or regulations in a locality. This is particularly worrying in the light of proposals to weaken other safeguards to protect the human rights of children and families (e.g. Government plans to abolish the Human Rights Act and the argument put forward by some that Britain should withdraw from the European Convention of Human Rights). Whilst the Kinship Care Alliance supports the development of innovation in the field of children's social care to improve the experiences and outcomes for children and their families, we agree with Children England's conclusion that **"We challenge whether sections 15-19 should stand part of this Bill unless and until government can offer persuasive evidence of its necessity, and significantly improve on its transparency and safeguards."**

## 5. Amendment 4 - New clause pre proceedings work with families.

5.1 The aim of this amendment is to ensure effective work is undertaken with the family so that all safe family options are explored at an early stage of intervention. The introduction of a 26 week timetable for care proceedings and strict guidance to courts on case management means that it can effectively be too late for potentially suitable kinship carers to be considered and assessed once care proceedings are under way.

5.2 The largest survey undertaken of kinship carers in the UK<sup>6</sup> found that 27% had been in unrelated foster care prior to living with the kinship carer. This indicates that if more extensive, early work had been done by children's services, such as offering a family group conference<sup>7</sup>, some of these children may not have needed to be placed in unrelated foster care/have multiple placements prior to living with their kinship carer.

5.3 This new clause will:

- maximise the child's chances of being raised in their family network

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<sup>6</sup> Ashley et al (2015)

<sup>7</sup> Family group conferences are an approach in which the young person and their wider family are supported to take the lead in making a plan at a meeting which addresses local authority concerns about a child. To read more go to <http://www.frg.org.uk/involving-families/family-group-conferences>

- avert the need for some children to become looked after in the care system and/or be raised by unrelated carers,
- help reduce unnecessary delay, if cases do result in proceedings.

This is not only consistent with the child’s human rights but will also save the costs of legal proceedings and the child being in state-funded care for some or all of their childhood.

#### **Amendment 4**

Insert new clause 8A

#### **“8A Pre-proceedings work with families**

In section 47 of the Children Act 1989 (Local Authority’s duty to investigate) after subsection 47(8) insert -

‘(8A) Where, as a result of complying with this section, a local authority conclude that a child may need to become looked after in order to safeguard and promote their welfare, the local authority must, unless emergency action is required,

(a) identify, and consider the willingness and suitability of any relative, friend or other person connected with the child, to care for them as an alternative to them becoming looked after by unrelated carers; and

(b) offer the child’s parents or other person with parental responsibility a family group conference to develop a plan which will safeguard and promote the child’s welfare.

## **6. Extend the Adoption Support Fund to all children living under Special Guardianship Orders**

6.1 In April 2016 this year the Government announced that access to the Adoption Support Fund would be extended to all special guardians who care for children who were previously looked after. Whilst we welcome the extension of the fund, in our view the distinction between children under a special guardianship order who were previously looked after and those that were not is entirely artificial and does not reflect the individual child’s needs. Children under special guardianship orders who are excluded by this criteria are either those whose relatives stepped

in early to avert them going into the care system or, those who were in fact in the care system but not immediately before the special guardianship order was made. This maybe because an intervening legal order was made such as an interim child arrangements order. In some cases, this intervening order may have been applied for on the recommendation of the local authority, without corresponding advice on the impact that it would have on support options available to the child and their carer. Furthermore, the special guardianship statutory guidance 2016 at states at paragraph 49, in relation to assessment for special guardianship support services:

“It is important that children who are not (or were not) looked after are not unfairly disadvantaged by this approach. In many cases the only reason that the child is not looked after is that relatives stepped in quickly to take on the responsibility for the child when a parent could no longer do so.”

#### **Question for the Minister**

1. Will the Minister confirm that access to the Adoption Support Fund will be extended to all special guardians?

## **7. Amendments 5 & 6 : New provision for support for Family and Friends Carers**

- 7.1 The first of these amendments is that every local authority should designate a lead person who has responsibility for family and friends carers
- 7.2 Current Department for Education statutory guidance on family and friends care at paragraph 4.9 states that  
“the Director of Children’s Services should identify a senior manager who holds overall responsibility for the family and friends care policy. He or she will need to ensure that the policy meets the statutory requirement and is responsible to the identified needs of children and carers.”

Unfortunately, many of local authorities are not complying with the statutory guidance and therefore we feel strongly that it needs to become a duty in primary legislation. For example, a 2015 study<sup>8</sup>which examined policies of 53 English local authority found that one third of the policies analysed made no reference to a senior manager with responsibility for implementation and ensuring that staff and partner agencies understood their responsibilities in relation to family and friends cares.

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<sup>8</sup> Mercer A, Lindley B, Hopskins A (2015) *Could do better...must do better: A study of family and friends care local authority policies*\_London: Family Rights Group

7.2 In our view, the introduction of a statutory duty to designate a lead person would not be particularly onerous on a local authority but would provide family and friends carers, council staff and other agencies with clarity as to who is the named senior manager with responsibility for family and friends care in the authority and for ensuring that the local authority complies with family and friends care guidance.

7.3 The second of these amendments addresses the lack of support for family and friends carers who are caring for children outside the care system. Despite the success of these placements, without adequate support, many are under huge strain. We know from our advice work that some even break down. In a recent study, 95% of family and friends carers identified at least one unmet need for support; most mentioned several. Even more worryingly, carers who were raising the most challenging children were the most likely to be receiving no support at all.<sup>9</sup>

7.4 The government responded to the evidence on the lack of support for family and friends care in April 2011, by issuing statutory guidance<sup>10</sup> which aimed to promote more effective help. It says:

*“No child or young person should have to become a looked after child, whether by agreement with those holding parental responsibility or by virtue of a court order, for the sole purpose of enabling financial, practical or other support to be provided to the child’s carer.”* (Paragraph 2.19)

However, the guidance does not change the fundamental legal position that:

- most children in a family and friends care arrangement do not have a right to support unless they are they amongst the 5% who are *looked after*.
- Whilst the local authority does have a general duty to provide special guardianship and adoption support services, no such general duty applies to provision of support services for children in other kinship care arrangements e.g. those under a child arrangements order or no legal order.

7.5 In the current financial climate, most local authorities are seeking to reduce service provision wherever they can, with the result that non-statutory services are being cut rather than developed. Our amendment, which mirrors the special guardianship support service required by s.14F Children Act 1989, seeks to redress this shortcoming by requiring local authorities to provide support to meet identified needs of children being raised in family and friends care under a private arrangement or child arrangements order.

7.6 The circumstances we have identified as to when it would apply, restrict this support to children who would otherwise be in the care system, because they are at risk or their parent is incapacitated, dead or in prison.

## **Amendment 5**

<sup>9</sup> Hunt, J. and Waterhouse, S. (2012) *Understanding family and friends care: the relationship between need, support and legal status* London: Family Rights Group

<sup>10</sup> DfE (2011) *ibid*

Insert new Clause 8B

**“8B Support for family & friends carers when children are not looked after**

After section 17ZI of the Children Act 1989, insert –

“ s17ZJ Each local authority must appoint at least once person as a designated lead for family and friends care, to co-ordinate the provision within their area of family and friends care support services”

**Amendment 6**

**Insert new clause 8C**

**“8C Support for family and friends carers when children are not looked after**

After section 17ZI of the Children Act 1989 (Direct payments), insert

**“17ZJ Support for family & friends carers when children are not looked after**

(1) Each local authority must make arrangements for the provision within their area of family and friends care support services, including

- (a) counselling, advice and information;
- (b) such other services as are prescribed, in relation to family and friends care; and
- (c) the appointment of at least one person as a designated lead for family and friends care, to co-ordinate the provision within their area of family and friends care support services

(2)The power to make regulations under subsection (1)(b) is to be exercised so as to secure that local authorities provide financial support.

(3) At the request of any of the following persons—

- (a) a relative, wider family member or friend caring for a child in any of the circumstances (hereinafter referred to as ‘C’) set out in subsection 4 below; (b) a parent or other person with parental responsibility; or
- (c) a child living with C in circumstances set out in subsection 4 below; or
- (d)any other person who falls within a prescribed description,

a local authority must carry out an assessment of that person's needs for family and friends care support services.

(4) The circumstances referred to in subsection (3)(a)&(c) are:

(a) the child comes to live with C as a result of enquiries or plans made under s.47 of this Act; or

(b) the child comes to live with C following an investigation under s. 37 of this Act; or

(c) C has been granted a Residence Order/Child Arrangements Order to avoid the child being looked after, within care proceedings on the child or following the accommodation of a child; or

d) there is professional evidence of the impairment of the parents' ability to care for the child; or

e) the parent is dead or in prison

(5) A local authority may, at the request of any other person, carry out an assessment of that person's needs for family and friends care support services.

(6) Where, as a result of an assessment, a local authority decide that a person has needs for family and friends care support services, they must consider whether to provide any such services to that person.

(7) If—

(a) a local authority decide to provide any family and friends care support services to a person, and

(b) the circumstances fall within a prescribed description, the local authority must prepare a plan in accordance with which family and friends care support services are to be provided to him, and keep the plan under review.

(8) The Secretary of State may by regulations make provision about assessments, preparing and reviewing plans, the provision of family and friends care support services in accordance with plans and reviewing the provision of family and friends care support services.

(9) The regulations may in particular make provision about —

(a) the type of assessment which is to be carried out, or the way in which an assessment is to be carried out;

- (b) the way in which a plan is to be prepared;
  - (c) the way in which, and the time at which, a plan or the provision of family and friends care support services is to be reviewed;
  - (d) the considerations to which a local authority are to have regard in carrying out an assessment or review or preparing a plan;
  - (e) the circumstances in which a local authority may provide family and friends care support services subject to conditions (including conditions as to payment for support or the repayment of financial support);
  - (f) the consequences of conditions imposed by virtue of paragraph (e) above (e) not being met (including the recovery of any financial support provided);
  - (g) the circumstances in which this section may apply to a local authority in respect of persons who are outside that local authority's area;
  - (h) the circumstances in which a local authority may recover from another local authority the expenses of providing family and friends care support services to any person.
- (10) A local authority may provide family and friends care support services (or any part of them) by securing their provision by—
- (a) another local authority; or
  - (b) a person within a description prescribed in regulations of persons who may provide family and friends care support services, and may also arrange with any such authority or person for that other authority or that person to carry out the local authority's functions in relation to assessments under this section.
- (11) A local authority may carry out an assessment of the needs of any person for the purposes of this section at the same time as an assessment of his needs is made under any other provision of this Act or under any other enactment.
- (12) Section 27 (co-operation between authorities) applies in relation to the exercise of functions of a local authority under this section as it applies in relation to the exercise of functions of a local authority under Part 3."

## 8 Amendment 7: New provision to improve sibling contact

8.1 The aim of this amendment is to require local authorities to allow children in care reasonable contact with their siblings. The law currently requires local authorities to allow a looked after child reasonable contact with their parents. This extends this duty to siblings. This step would reflect the important role of sibling relationships in the lives of children who are in care. The proposed amendment would also provide a sound foundation for ensuring the recognition of the importance of sibling relationships for young people who have left care. .

8.2 In January 2015, Family Rights Group published its report investigating the current experience of siblings in the care system and whether some placement types are more likely than others to enable siblings to be raised together where it is assessed as being in their interests.<sup>11</sup> The report revealed that children in unrelated foster care and residential care are overrepresented amongst those separated from their siblings compared to their overall numbers in the care population; only 1% of sibling groups who were all placed together were living in residential care. In contrast, children in kinship foster care were less likely to be separated from their siblings.<sup>12</sup> The report highlighted research that has shown the benefits of sibling relationships for children who cannot live with their parents: for many, it is the closest relationship they ever experience, and they are able to share information and feelings, and develop a shared sense of identity.<sup>13</sup> A recent report by the Centre for Social Justice identified that ‘One of our greatest concerns is that the bonds between siblings in care, which can lead to greatly valued lifelong relationships, are being broken’.<sup>14</sup>

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<sup>11</sup> Ashley, C. and Roth, D (2015) Siblings in Care Available at: <http://www.frg.org.uk/images/PDFS/siblings-in-care-final-report-january-2015.pdf>. Family Rights Group wrote to all 152 English local authorities in August 2014, asking six questions relating to looked after siblings group. 122 local authorities responded. 64 % of authorities provided a full or near full response.

<sup>12</sup> Ashley, C. and Roth, D (2015) Siblings in Care Available at: <http://www.frg.org.uk/images/PDFS/siblings-in-care-final-report-january-2015.pdf>

<sup>13</sup> Ashley, C. and Roth, D (2015) Siblings in Care Available at: <http://www.frg.org.uk/images/PDFS/siblings-in-care-final-report-january-2015.pdf>; Lord J and Borthwick S (2009) Planning and placement for sibling groups; from Schofield G and Simmonds J eds The Child Placement Handbook: Research policy and practice (BAAF); Prynne B (1999) Looking back: Childhood separations revisited, from Mullender A ed (1999) We are family: Sibling relationships in placement and beyond (London: BAAF) .

<sup>14</sup> Centre for Social Justice (January 2015) Finding Their Feet, Equipping care leavers to reach their potential Available at: <http://www.centreforsocialjustice.org.uk/publications/finding-their-feet>



8.3 A recent study found that 86% of all children in care thought it important to keep siblings together in care and over three quarters thought that councils should help children and young people to keep in touch with their brothers and sisters.<sup>15</sup> The benefits of maintaining sibling relationships were identified in a survey by Siblings Together, which found that the majority of respondents thought that having a brother or sister helped prepare them better for life whilst 75% said that having a sibling helped them make friends with other people more easily; and 71% said it helped them in their adult relationships.<sup>16</sup> In parallel, government guidance recognises that maintaining contact with siblings is reported by children to be one of their highest priorities and acknowledges the value of sibling contact for continuity, stability, for promoting self-esteem and a sense of identify at a time of change/unfamiliarity.<sup>17</sup> Further guidance emphasises the importance of sibling contact where children cannot be placed together.<sup>18</sup>

#### **Amendment 7**

Insert new clause 8C

“8C sibling contact for looked after children

(1) In section 34(1) Children Act 1989 after subparagraph (d) insert - subparagraph

‘(e) his siblings (whether of the whole or half blood);’

(2) In schedule 2 paragraph 15 Children Act 1989, after subparagraph (c) insert a new subparagraph

‘(d) his siblings whether of the whole or half blood)’”

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<sup>15</sup> Morgan, R (2009) Keeping in touch: A report of children’s experience by the Children’s Rights Director for England Ofsted

<sup>16</sup> Siblings Together (2015) Torn Apart Available at: <http://siblingstogether.co.uk/wp-content/uploads/2015/12/Torn-Apart.pdf>

<sup>17</sup> Department for Education (2015) Children Act 1989 Guidance Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/441643/Children\\_Act\\_Guidance\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/441643/Children_Act_Guidance_2015.pdf)

<sup>18</sup> Department for Education (2014) Looked After Children: Contact with Siblings, Update to The Children Act 1989 guidance and regulations volume 2: care planning, placement and case review

## 9. Amendment 8-12 - Employment protection for special guardians

9.1 The aim of these amendments is to bring special guardian carers into employment protection with equivalent rights to adopters and prospective adopters. Both special guardianship and adoption are permanent forms of care for a child, who is unable to live with their parents. Currently half of kinship carers have to permanently give up work to raise the child. Such a measure would help to prevent special guardians unnecessarily losing their job in order to take on the care of the child/ren, it would allow time for the child/ren to settle in and it would avoid families falling into severe financial hardship and becoming dependent upon benefits.

### **New clause 8A**

#### **“8A Right to paid time off to attend special guardian appointments**

(1) Section 57ZJ of the Employment Rights Act 1996 (**right to paid time off to attend adoption appointments**), is amended as follows.

(2) After subsection 1 insert –

“(1A) An employee who has applied for a special guardianship order where the employee is the sole applicant is entitled to be permitted by his or her employer to take time off during the employee’s working hours in order that he or she may attend by appointment at any place for any purpose connected with the legal proceedings.”

(2) After subsection 2 insert -

“(2A) An employee who has applied for a special guardianship order where the employee

(a) is a joint applicant, and

(b) has elected to exercise the right to take time off under this section in connection with the special guardianship order,

is entitled to be permitted by his or her employer to take time off during the employee's working hours in order that he or she may attend by appointment at any place for any purpose connected with the special guardianship order."

(3 ) In subsection (3), after the words "subsection (2)(b)", insert the words "or subsection (2A)(b)".

(4) In subsection (3)(a), after the words "adoption", insert the words "or special guardianship order".

(5) In subsection (3)(b), after the words "placed for adoption", insert the words "or who has applied for a special guardianship order", and after the words "in connection with the adoption", insert the words "or special guardianship order".

(6) At the end of subsection (4), insert the words "or the date of the special guardianship order".

(7) In subsection (5), after the words "adoption", insert the words "or special guardianship order".

(8) At the end of subsection (7), insert the words "or at the request of the local authority preparing a report under section 14A of the Children Act 1989, or at the request of the court hearing an application for a special guardianship order".

(9) In subsection (9)(a), after the words "adoption", insert the words "or special guardianship order".

(10) In subsection (11), after the words "placed for adoption with an employee as part of the same arrangement", insert the words "or the employee has applied for a special guardianship order in respect of more than one child as part of the same arrangement".

(11) In subsection (11)(a), after the words "(1) or (2)", insert the words "or (1A) or (1B)" and after the words "adoptions", insert the words "or special guardianship orders".

(12) In subsection (11)(b), after the words "(2)(b)" insert the words "or (2A)(b)", after the word "adoption", insert the words "or special guardianship order", and after the word "adoptions", insert the words "or special guardianship orders".

(13) In subsection (11)(c), after the word “adoption”, insert the words “or special guardianship order”, and after the word “adoptions”, insert the words “or special guardianship orders”.

(14) At the end of subsection (11)(d), the words “and as if the reference to the date of the special guardianship order were a reference to the date of the first special guardianship order to be made as part of the arrangement”.

(15) In subsection (11)(e), after the word “adoption”, insert the words “or special guardianship order”, and after the word “adoptions”, insert the words “or special guardianship orders”.

## **New clause 8B**

### **8B right to unpaid time off to attend special guardianship appointments**

(1) Section 57ZL of the Employment Rights Act 1996 (**right to unpaid time off to attend adoption appointments**), is amended as follows.

(2) After subsection 1 insert -

“(1A) An employee who has applied for a special guardianship order where the employee

(a) is a joint applicant, and

(b) has elected to exercise the right to take time off under this section in connection with the special guardianship order,

is entitled to be permitted by his or her employer to take time off during the employee’s working hours in order that he or she may attend by appointment at any place for any purpose connected with the special guardianship order.”

(2) In subsection (2)(a), after the words “subsection (1)(b)”, insert the words “or subsection 1A(b)”

(3) In subsection (2)(b), after the words “placed for adoption”, insert the words “or who has jointly applied for a special guardianship order”, and after the words “in connection with the adoption”, insert the words “or special guardianship order”

- (4) At the end of subsection (3), insert the words “or the date of the special guardianship order”.
- (5) In subsection (4), after the words “adoption”, insert the words “or special guardianship order”.
- (6) At the end of subsection (6), insert the words “or at the request of the local authority preparing a report under section 14A of the Children Act 1989, or at the request of the court hearing an application for a special guardianship order”
- (7) In subsection (7a), after the word “adoption”, insert the words “or special guardianship order”
- (8) In subsection (9), after the words “placed for adoption with an employee as part of the same arrangement”, insert the words “or the employee has applied for a special guardianship order in respect of more than one child as part of the same arrangement”
- (9) In subsection (9)(a), after the words “subsection (1)”, insert the words “or (1A)” and after the words “adoptions”, insert the words “or special guardianship orders”.
- (10) In subsection (9)(b), after the words “(1)(b)” insert the words “or (1A)(b)”, after the word “adoption”, insert the words “or special guardianship order”, and after the word “adoptions”, insert the words “or special guardianship orders”.
- (11) In subsection (9)(c), after the word “adoption”, insert the words “or special guardianship order”, and after the word “adoptions”, insert the words “or special guardianship orders”.
- (12) At the end of subsection (9)(d), insert the words “and as if the reference to the date of the special guardianship order were a reference to the date of the first special guardianship order to be made as part of the arrangement”.
- (13) In subsection (11)(e), after the word “adoption”, insert the words “or special guardianship order”, and after the word “adoptions”, insert the words “or special guardianship orders”.

**Right to paid and unpaid time off to attend adoption appointments : agency workers**

Sections 57ZN of the Employment Rights Act 1996 (**Right to paid time off to attend adoption appointments: agency workers**) and 57ZP of that Act (**Right to unpaid time off to attend adoption meetings: agency workers**) are to be amended in the same way as sections 572ZJ and 57ZL are amended in clause 8A and clause 8B above

New clause 8D

“Special Guardian leave

(1) In section 75A of the Employment Rights Act 1996 (**ordinary adoption leave**), after subsection (1A)(c) insert -

“(d) becoming a special guardian under section 14A of the Children Act 1989.”

(2) In section 75B of the Employment Rights Act 1996 (**additional adoption leave**), after subsection (1) insert—

“(1A)The conditions that may be prescribed under subsection (1) include conditions as to becoming a special guardian under section 14A of the Children Act 1989”.

(3) Section 75G of the Employment Rights Act (**shared parental leave: adoption**) is amended as follows —

(a) In subsection (1)(b) after the words “of the United Kingdom”, insert the words “or who has been appointed as a special guardian under section 14A of the Children Act 1989.”

(b) After the end of subsection (8), insert the words “or references to the appointment of a special guardian under section 14A of the Children Act 1989.”

(4) Section 80B of the Employment Rights Act 1996 (**entitlement to ordinary paternity leave: adoption**) is amended as follows -

(a) In subsection (1)(b) after the words “of the United Kingdom”, insert the words “or who has been appointed as a special guardian under section 14A of the Children Act 1989”

(b) After subsection (8) insert -

“(9) This section has effect as if references to being placed or placement for adoption were also references to the appointment of a special guardian under section 14A of the Children Act 1989.”

(5) Section 171ZV of the Employment Rights Act 1996 (**Shared parental pay, Entitlement: adoption**), is amended as follows –

(a) In subsection (1), after the words “any part of the United Kingdom” insert the words “or who has been appointed as a special guardian under section 14A of the Children Act 1989”.

(b) On the end of subsection (16), insert the words “or the appointment of the person as a special guardian under section 14A of the Children Act 1989.”

(6) Parts 12ZA (**Statutory Paternity Pay**), 12ZB (**Statutory Adoption Pay**) and 12ZC (**Statutory Shared Parental Pay**) of the Social Security Contributions and Benefits Act 1992 shall have effect as if references to adoption or being placed for adoption were also references to being made the subject of a special guardianship order under section 14A of the Children Act 1989, and references to adopters were also references to special guardians

(7) In the Shared Parental Leave Regulations 2014 after regulation 20 insert –

“(20A) In this Part and in regulation 3, references to being placed for adoption include being made the subject of a special guardianship order under section 14A of the Children Act 1989, and references to adopters include references to special guardians”.

(8) In the Statutory Shared Parental Pay (General) Regulations 2014 after regulation 17 insert -

“(17A ) In this Part and in regulation 2, references to being placed for adoption include being made the subject of a special guardianship order under section 14A of the Children Act 1989, and references to adopters include references to special guardians”.

(9) In the Maternity and Adoption Leave (Curtilment of Statutory Rights to Leave) Regulations 2014 after regulation 12 insert-

“(13) In this Part and in regulation 3, references to being placed for adoption include being made the subject of a special guardianship order under section 14A of the Children Act 1989, and references to adopters include references to special guardians”.

*And similar wording to be put in all other regulations concerned with leave and pay for adopters*