

Briefing on the Children and Social Work Bill

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

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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). Alliance members subscribe to a set of shared aims and beliefs about kinship care. Since 2006, members have been meeting regularly to develop a joint policy agenda and agree strategies to promote shared aims which are:

- to prevent children from being unnecessarily raised outside their family,
- to enhance outcomes for children who cannot live with their parents and who are living with relatives and
- 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 their voice heard, 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 Sir James Munby, the President of the Family Division recently described the care system as “*facing a crisis and, truth be told, we have no very clear strategy for meeting the crisis.*”¹ Child protection enquiries are increasing and the number of new care proceedings is at record levels and continuing to rise (with a 23% increase in new care applications during Apr-Sept 2016 compared to the same period in 2015). As of 31 March 2016 there were more than 70,000 looked after children in England, the highest figure since 1985. The Children and Social Work Bill currently passing through Parliament provides an opportunity to safely avert the need for some children to come into care and improve the child welfare system so that it works better for children, parents, the wider family and society.

1.4 We therefore welcome measures in the Bill, such as those which place new duties on local authorities, maintained schools and academies to promote the educational achievement 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 or a Child Arrangements 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.

1.5 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.

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.

¹ View from the President of Family Division (15): September 2016 <https://www.judiciary.gov.uk/wp-content/uploads/2014/08/pfd-view-15-care-cases-looming-crisis.pdf>

2.2 Some 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 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.² The largest survey undertaken of kinship carers in the UK found 49% of kinship carers had to give up work permanently to take on the children, thus becoming reliant on benefits.³ 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.

2.4 Even with this lack of support for kinship carers, most children in kinship care are doing significantly better than children in unrelated care, despite having suffered similar earlier adverse experiences⁴ – in particular they feel more secure and have fewer emotional and behavioural problems and are also doing better academically.⁵ 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.⁶

² Hunt J and Waterhouse S (2012) Understanding family and friends care: the relationship between need, support and legal status (University of Oxford & FRG)

³ Ashley C, Aziz R and Braun D, 2015, Doing the right thing: A report on the experiences of kinship carers (FRG)

⁴ Selwyn et al (2013) The Poor Relations? Children & Informal Kinship Cares Speak Out (University of Bristol)

⁵ Farmer, E and Moyers, S (2008) Kinship Care: Fostering Effective Family and Friends Placements (Jessica Kingsley Press) <http://www.frg.org.uk/involving-families/kinship-care-alliance/kinship-care-alliance%E2%80%99s-agenda-for-change-2015-one>

⁶ 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)

3. Amendments 1 & 2 - 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 the arrangements for a designated member of staff in schools, who is responsible for previously looked after children should be extended to all children who are unable to live at home with their parents and are being permanently raised by kinship carers.** We believe that these children are as much in need of additional help as those who had been in care, 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.

Amendment 1

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

Page 6 line 20 after "Maintained schools: staff member for previously looked after pupils" insert –

"and children who are living permanently away from their parents"

Page 6 line 22 after "Designated staff member for previously looked after pupils" insert -

"and children who are living permanently away from their parents"

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.

(e) was looked after by a local authority but has ceased to be so looked after as a result of returning home to the care of a parent.”

Amendment 2

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

Page 7 line 12 after "Academies: staff member for looked after and previously looked after children" insert -

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

Page 7 line 15 after "after pupils" insert –

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

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.

(f) was looked after by a local authority but has ceased to be so looked after as a result of returning home to the care of a parent.”

4. Amendment 3: New provision to improve sibling contact

4.1 The aim of amendment 3 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 reflects 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.

4.2 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.⁷ 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.⁸ 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.⁹ 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’.¹⁰

⁷ 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.

⁸ 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>

⁹ 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) .

¹⁰ 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>

4.3 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.¹¹ 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.¹² 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.¹³ Further guidance emphasises the importance of sibling contact where children cannot be placed together.¹⁴

Amendment 3 (Amendment 91 at Committee Stage)

Insert the following new Clause—

“Sibling contact for looked after children

(1) In section 34 of the Children Act 1989 (parental contact etc. with children in care), after subsection (1)(d) insert—

“(e) his siblings (whether of the whole or half blood).”

(2) In Schedule 2 to the Children Act 1989, after paragraph 15(c) insert—

“(d) his siblings (whether of the whole or half blood).”

[Note: it is not possible to state where the new clause will go in the bill]

¹¹ Morgan, R (2009) Keeping in touch: A report of children’s experience by the Children’s Rights Director for England Ofsted

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

¹³ 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

¹⁴ 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

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 UK¹⁵ 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 conference¹⁶, 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;
- avert the need for some children to become looked after in the care system and/or be raised by unrelated carers; and
- 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 the following new Clause—

“Pre-proceedings work with families

In section 47 of the Children Act 1989 (local authority's duty to investigate) after subsection (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

¹⁵ Ashley et al (2015)

¹⁶ 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>

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.””

[Note: it is not possible to say where the new clause will go in the Bill]

6. Amendment 5: New provision for designated lead in Family and Friends Care

6.1 This amendment provides that every local authority should designate a lead person who has responsibility for family and friends carers

6.2 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.”

6.3 Unfortunately, too many 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 study¹⁷ 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.

¹⁷ 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

6.4 In our view, the introduction of a statutory duty to designate a lead person would not be particularly onerous on a local authority. It would provide kinship 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 who has responsibility for ensuring that the local authority complies with family and friends care guidance. In our view this duty should mirror the statutory duty that exists under adoption support services legislation to appoint an ‘adoption support services adviser’ in each local authority, whose role is to give advice both to adopters and to the local authority about adoption support and services¹⁸.

Amendment 5

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”

[Note: it is not possible to state where the new clause will go in the bill]

¹⁸ Adoption Support Services Regulations 2005 - **Adoption support services adviser**

6.—(1) The local authority must appoint a person (an “adoption support services adviser”) to carry out the functions specified in paragraph (2).

(2) The functions of the adoption support services adviser are to—

(a) give advice and information to persons who may be affected by the adoption or proposed adoption of a child, including as to—

(i) services that may be appropriate to those persons; and

(ii) how those services may be made available to them;

(b) give advice, information and assistance to the local authority which appointed him, including as to—

(i) the assessment of needs for adoption support services in accordance with Part 4;

(ii) the availability of adoption support services;

(iii) the preparation of plans required under section 4(5) of the Act; and

(c) consult with, and give advice, information and assistance to, another local authority where appropriate.

(3) The local authority must not appoint a person as an adoption support services adviser unless they are satisfied that his knowledge and experience of—

(a) the process of adoption; and

(b) the effect of the adoption of a child on persons likely to be affected by the adoption, is sufficient for the purposes of the work that he is to perform.

Also - see 9.9 adoption guidance 2013 for duties and role