The Children and Social Work Bill 2016:

Improving outcomes for children and families

Second Reading Debate, House of Commons, 5th December 2016

Child protection enquiries are increasing, the number of new care proceedings is at record levels and continuing to rise and as of 31 March 2016 there were more than 70,000 looked after children in England, the highest figure since 1985. As the President of the Family Division recently put it "*We are facing a crisis and, truth be told, we have no very clear strategy for meeting the crisis."*[1] 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 to improve the child welfare system so that it works better for children, parents, the wider family and society.

As alliances[2] we have produced a number of briefings about the Children and Social Work Bill which set out our thinking on different aspects of the Bill including our concerns as well as suggestions for amendments[3]. Some of these have been discussed at Committee and Report stage in the House of Lords and with Edward Timpson MP, Minister of State for Vulnerable Children and Families and Isabelle Trowler, Chief Social Worker for Children and Families (England).

This briefing focuses exclusively upon five key amendments that we would urge parliamentarians to consider at Second Reading in the House of Commons on the 5th December and during the subsequent passage of the Bill in the Commons. These amendments would:

1. Enable more children to be raised safely within their wider family network if they can't remain with their parents;
2. Assist more children who are in care to have contact with their siblings;
3. Ensure that all parents have access to independent legal advice where it is proposed their child is placed under foster for adoption with potential adopters who have been approved as foster carers; and

[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] Read more about Your Family, Your Voice Alliance http://www.frg.org.uk/involving-families/your-family,-your-voice; Read about the Kinship Care Alliance http://www.frg.org.uk/involving-families/kinship-care-alliance ; Read about agenda, Alliance for Women & Girls At Risk http://weareagenda.org/

[3] http://www.frg.org.uk/involving-families/reforming-law-and-practice/reform-of-child-welfare-systems-policies-and-practices-including-child-protection-and-the-care-system

4. Ensure access to free, independent legal advice and representation for parents whose children are subject to a placement order application (permission to place a child for adoption)
5. Enable any parent whose child has been permanently removed to get therapeutic support and counselling to help them deal with their difficulties and grief and to avoid cycles of recurrent pregnancies and repeat removals of children.

This briefing contains suggested text for these amendments and a summary of the reasons why they would improve outcomes for children and families.

In addition, we have produced more detailed briefings in relation to the following, which we can email to you on request:

- The Kinship Care Alliance has produced a briefing setting out additional amendments aimed at enabling more children to live in, and be supported to thrive in kinship care
- Your Family, Your Voice Alliance has produced a briefing setting out additional amendments in respect of young parents who are care leavers and on children returning home from care
- Family Rights Group has produced a briefing about clauses considered in the Lords which would have enabled the Secretary of State to exempt local authorities from primary legislation.

For further details on any of the amendments or briefings please contact:
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Amendment 1: Exploring potential kinship care placements to avoid a child unnecessarily entering the care system (a new clause).

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 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."

The aim of this amendment is to ensure that **as soon as** the local authority considers that a child may not be able to remain with their parents, effective work is undertaken to identify all potentially safe family placement options, including with paternal relatives. This is consistent with government guidance but is not currently required by legislation.

Research shows that children in family and friends care (known as kinship care) are doing significantly better than children in unrelated care[4] – in particular they feel more secure and have fewer emotional and behavioural problems and are also doing better academically, despite getting less support. Yet the largest survey of kinship carers in the UK reported that 27% of children in kinship care placements had been in unrelated foster care prior to living with the kinship carer (normally a grandparent or older sibling).[5] If more extensive, early work had been carried out or facilitated by children's services, such as offering a family group conference[6], some of these children may not have needed to be placed in unrelated foster care and/or have multiple placements prior to living with their kinship carer.

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. Hence early exploration of potential kinship carers is even more important.

The amendment, which is similar to legislation within the Netherlands, New Zealand and the US, would:-

- maximise the child's chances of being safely raised in their family network, consistent with their human rights;
- avert the need for some children to be in state funded care for some or all of their childhood, to the benefit of the child and the public purse; and
- in some cases, avert the need for care proceedings at all if the family and the local authority can agree that is appropriate and safe for the child to live permanently with a kinship carer.

[4] Selwyn et al (2013) The Poor Relations? Children & Informal Kinship Cares Speak Out (University of Bristol)
[5] Ashley et al (2015) 'Doing the right thing: A report on the experiences of kinship carers' http://www.frg.org.uk/images/Kinship_Care_Alliance/151013%20Report%20on%20kinship%20carers%20survey.pdf
[6] 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. http://www.frg.org.uk/involving-families/family-group-conferences

Amendment 2: Improving sibling contact for children in care (a new clause).

Insert the following new Clause— "Sibling contact for looked after children (1) In section 34(1) of the Children Act 1989, after paragraph (d) insert— "(e) his siblings (whether of the whole or half blood)." (2) In paragraph 15 of Schedule 2 to the Children Act 1989, after paragraph (c) insert— "(d) his siblings (whether of the whole or half blood).”"

Children in state care are vulnerable to being separated from their siblings. Whilst the law requires local authorities to allow a looked after child reasonable contact with their parents[7], it does not extend to allowing a looked after child reasonable contact with their siblings. The aim of this amendment is to extend the duty to siblings.

A report by Family Rights Group found that half of all siblings groups in local authority care were split up and that those living in residential care were particularly unlikely to be living with their brothers or sisters.[8]

A body of recent research highlights the importance of sibling relationship for children in care. One 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.[9] A survey by Siblings Together 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 assisted them in their adult relationships.[10]

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, promoting self-esteem and a sense of identify at a time of change/unfamiliarity.[11] It emphasises the importance of sibling contact where children cannot be placed together.[12] However, despite guidance being in place, a report by the Centre for Social Justice highlights 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'.[13] Guidance is not a substitution for a clear duty upon local authorities, enshrined in primary legislation, to allow reasonable contact between siblings.

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[7] Section 34 (1) Children Act 1989

[8] Ashley, C. and Roth, D. (2015) What happens to siblings in the care system? http://www.frg.org.uk/images/PDFS/siblings-in-care-final-report-january-2015.pdf

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

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

[11] 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

[12] 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

[13] 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

Amendment 3: ensuring access to free, independent legal advice for parents in foster for adoption cases (a new clause).

Insert the following new Clause-

"Legal aid for parents whose children are in voluntary accommodation and are to be placed in foster for adoption placement

After regulation 5(1)(e) of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013, insert –

"(ea) family help (lower) in any matter described in paragraph 1(1)(b) (care, supervision and protection of children) or paragraph 1(1)(i) (placement orders, recovery orders or adoption orders) of Part 1 of Schedule 1 to the Act to the extent that the matter concerns a placement to be made or contemplated to be made under section 22C(9B)(c) of the Children Act 1989 (placement with a local authority foster parent who has been approved as a prospective adopter), where the child is being accommodated under section 20 of that Act, and the individual to whom the family help (lower) may be provided is—

(i) the parent of a child, or the person with parental responsibility for a child within the meaning of the Children Act 1989 in respect of whom a local authority has given notice of a placement or contemplated placement under s22C subsection (9B)(c) of that Act; or

(ii) in the case of an unborn child in respect of whom a local authority has given notice of a placement or contemplated placement under section 22C(9B)(c) of the Children Act 1989, the person who, following the birth of the child—

(aa) will be the parent of the child; and

(bb) will have parental responsibility for the child within the meaning of the Children Act 1989;"."

Provisions in the Children and Families Act 2014[14] mean that children who are looked after either under a care order or under section 20 of the Children Act 1989 by way of a voluntary agreement with the child's parent(s), can be placed with potential adopters (who are approved as foster carers). This is known as foster for adoption. Children who are looked after under Section 20 may be placed in a foster for adoption placement without their parents having had a right to independent legal advice. Once a child is living with a potential adopter, it is much harder for the parent or other relatives to persuade the court that the child should be in their care because of the status quo argument that aims to minimise disruption for the child[15].

A freedom of information survey[16] in summer 2015 found that within less than a year of the new provisions being in place, at least 58 children who were voluntary accommodated had been placed with a potential adopter in a foster for adoption placement. In these cases, at time of placement, there will have been no court scrutiny of the process nor any court decision that the child should be permanently removed from their parents.

This amendment aims to ensure that parents for an accommodated child for whom a foster for adoption placement is proposed, are entitled to non-means and non-merits tested public funding on par with that available to parents during the pre-care proceedings process[17]. Ensuring that legal advice is available is in keeping with the Judgment by Sir James Munby in a Court of Appeal Case[18] (Re N) in which he addresses the 'misuse and abuse of Section 20'.

[14] Sub-sections 22C(9A)-(9C) of the Children Act 1989

[15] See also Re W (A child) 2016 EWCA Civ 793 where the Court of Appeal recently ruled that where child had already been placed with prospective adopters (under a placement order) it was right to consider both the relationship between the child and the prospective adopters, and the impact of moving the child, when considering competing applications from grandparents (for a special guardianship order) and the prospective adopters (for an adoption order).

[16] Family Rights Group unpublished data

[17] Also referred to as the 'pre-proceedings' or Public Law Outline (PLO) process.

[18] Re N (Children) (Adoption: Jurisdiction) [2015] EWCA Civ 1112

Amendment 4: Ensuring access to free, independent legal advice and representation for parents whose children are subject to a placement order application (permission to place a child for adoption)

After regulation 5(1)(d) of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013, insert – "(da) legal representation in proceedings for a placement order under Chapter 3 of Part 1 of the 2002 Act where the individual to whom legal representation may be provided is— (i) the parent of a child, or (ii) a person with parental responsibility for the child within the meaning of the Children Act 1989 and would not otherwise be entitled to legal representation under paragraphs (c) or (d) of this regulation."

There are a currently a small numbers of cases where the parents are not entitled to non-means and merits tested legal aid when the court is considering whether their child should be placed for adoption. The local authority and the child will have a legal representative at court, but the parents may not, because:

- There has been no earlier care proceedings, for example where a voluntarily accommodated child has been in a foster for adoption placement. In this situation the parents may have had no legal aid (see amendment 3); or
- Care proceedings have concluded and a placement order application is subsequently made. An example is the case of Re D (A Child) [2014] EWFC 39

Re D is a case where there were care proceedings and the court's decision was to make a care order, with the plan being that the child should remain at home. After the proceedings had concluded, the local authority decided that the child was failing to thrive and should be removed into foster care with a plan for adoption. The local authority applied for a placement order. The parents were not entitled to non-means tested legal aid this being available to parents only in two classes of case – care proceedings pursuant to section 31 Children Act 1989 and proceedings "related to" care proceedings. Because the care proceedings had concluded before the start of the placement order proceedings, non-means tested legal aid was not available. The father's disposable income was assessed at £767.64 a month, just above the threshold income for legal aid.. On this income, they were unable to afford to pay for legal representation.

Sir James Munby, President of the Family Division who heard this application for a Placement Order stated in his judgment "The father's modest earnings disqualify him, and therefore the mother, from receiving legal aid. They cannot afford to fund private representation…These parents face the prospect of losing their son permanently."

Munby cited Baker J's observations that "If this prospect had arisen in the context of care proceedings, they would be entitled as of right to non-means tested legal aid. It is difficult to see why similar automatic public funding should not be available where the local authority proposes the removal of a child living at home under a care order… The justification for automatic public funding in care proceedings is the draconian nature of the order being claimed by the local authority. Where a local authority seeks to remove a child placed at home under a care order…This problem is compounded in this case because of the learning difficulties of the parties and in particular the father … A parent with learning difficulties who is not entitled to

legal aid is at a very great disadvantage when seeking to stop a local authority removing his child…".

Whilst there are only a small number of such cases, this loophole in access to legal advice and representation when the state is considering permanently separating a child from his/her parents, does need to be addressed to prevent serious miscarriages of justice.

Amendment 5: Ensuring that appropriate counselling and therapeutic support is offered to any parent whose child is permanently removed (a new clause).

Insert the following new Clause-
(1) The Children Act 1989 is amended as follows.
(2) After section 19 insert-
"19A Post-removal therapeutic support and counselling for parents and legal guardians
(1) Where a child is permanently removed from the care of a birth parent or a child's guardian further to the powers under section 31 Children Act 1989, a local authority must, so far as is reasonably practicable, provide a counselling service and commission therapeutic support for the parent or guardian of the child."

This new clause would enable any parent whose child has been permanently removed to get therapeutic support and counselling to help them deal with their difficulties and grief and to avoid cycles of recurrent pregnancies and repeat removals of children. This amendment has the potential to significantly reduce the number of new care proceedings as a result.

Many mothers who have a child permanently removed from their care do not receive support and therapy to deal with their loss or bring about changes to enable them to keep future children. In many cases court directed independent assessments during care proceedings will have recommended specific therapies necessary for the parents to undertake to be able to safely care for their child. Sadly, the length of such therapies exceeds what they court regards as being within the child's timescale. The parents are then left with neither their child nor access to such treatments.

Analysis of court data found that one in four mothers subject to care proceedings were subject to repeat care proceedings and that figure rose to one in three for those who became mothers in their teenage years.[19] Provisional results from further analysis shows that more than 6 out of 10 mothers who had children sequentially removed were teenagers when they had their first child. Of those mothers, 40% were in care or had been looked after in the care system during their own childhood.

Provisional analysis of the cases of 354 mothers who had recurrent care proceedings, found that approximately 65% had their mental health issues mentioned in their first set of proceedings; 75% had domestic abuse mentioned in their first set of proceedings; and approximately 90% had experienced some form of neglect or abuse (emotional, physical sexual) in their childhood.

Where a removed child is adopted, the Adoption Agency Regulations, paragraph 14 requires adoption agencies (including local authorities) to provide a counselling service to a parent or guardian of the child in relation to the adoption. This does not include a requirement to provide

[19] Study by Professor Broadhurst reported by the BBC on 14th December 2015. http://www.bbc.co.uk/news/uk-35088794

therapeutic support and no such requirements apply to those whose children are removed into long term foster care or cared for by family members under a special guardianship order.

There are some small scale programmes in specific localities that aim to provide therapeutic support to parents who have had a child removed[20]. The President of the Family Division has recognised the importance of the work that these programmes are doing, and the potential for considerable costs savings as a result[21]. However, such programmes are not available nationwide and are not underpinned by any statutory duty upon local authorities to offer support. Most vulnerable parents who have lost a child therefore are left unsupported emotionally and are not assisted to parent in the future.

[20] For example, the Breaking the Cycle programme, the Pause Programme and the Drugs and Alcohol Court early support initiative.
[21] See footnote 1 above.