



Family Justice Review

Evidence by Family Rights Group

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Family Rights Group

Family Rights Group is the charity that advises and supports parents and wider family members in England and Wales who are involved with local authority children's services about the needs, care and protection of their children.

Summary of key recommendations

1. Early intervention/family support

That Ministers ring fence budgets for early intervention/family support services.

2. Family Group Conferences (FGC):

a) That an FGC is routinely offered to families to develop a plan to safeguard their child, when an initial child protection conference has determined a plan is required. If the family agree to the FGC, it would replace the professionally driven core group.

b) That all families are offered an FGC prior to care proceedings (or in an emergency immediately afterwards).

c) The court should also have the power to direct the local authority to offer the family a Family Group Conference after the threshold criteria have been established in care proceedings.

d) That a feasibility study is funded to consider the introduction of an independent accreditation system for FGC projects and/or co-ordinators, comparable to the system of accreditation for family mediators.

3. Advice and advocacy for families

a) That Government funds Family Rights Group's advice service and that information about the advice line is provided by local authorities to all families whose children are subject to an initial assessment/child protection enquiries.

b) That local authorities are required to commission specialist independent family advocacy services for parents and carers whose children are subject to child protection enquiries. That such advocates need to have expertise both in supporting adults with their particular vulnerability and child care law and practice .

4. Letter before proceedings

That government guidance be revised so that local authorities are encouraged to send the letter before proceedings to parents at least 3 months before proceedings are likely to be initiated unless there is an emergency.

That LSC level 2 advice (triggered by the letter before proceedings) is available not just to parents and others with parental responsibility, but also to family members with significant involvement with the child, who are considering taking on the care of the child.

5. Family and friends care

a) In order to enable more children to safely live within their extended family, instead of going into care, there needs to be:

- a coherent family and friends care framework, addressing assessment and support;

- a new duty on local authorities to provide a support framework for all family and friends carers, including help with managing contact and support groups for such carers, irrespective of their legal status;
- a right to assessment to support for children being raised in family and friends care arrangements;
- a national financial allowance when there is judicial or professional evidence that the children cannot live with their parents; and
- non means and non merits tested public funding to enable family and friends carers to apply for special guardianship or residence orders where children cannot return home.

b) To enable family and friends carers to obtain parental responsibility without necessarily having to bring a case to court, there should be a provision for parents (with parental responsibility) to enter into a parental responsibility agreement with a relative (as defined in S105 CA 1989), as has already been extended to step parents.

c) FRG/BAAF/Fostering Network have developed and are piloting an assessment tool specifically designed for assessing family and friends carers. The approach could be extended nationally.

6. Split hearing in care proceedings with early threshold finding of fact.

That the local authority should present evidence as expeditiously as possible in an early threshold hearing, unless the parents seek a legitimate delay to obtain expert evidence to challenge the local authority's case.

7. Judicial continuity

That further attempts to achieve judicial continuity should be made, particularly in care centres and the High Court, involving a review of the working conditions for magistrates and District Judges and consideration being given to the recruitment of specialist Family District Judges.

8. Family mediation services

The court should be given the power to direct parties to public law proceedings to attend an assessment meeting with a mediator, similar to contact activity directions in private law. All those involved in the family justice system should be trained as potential referrers to mediation and family group conferences so that referrals are appropriate and timely.

9. Parents and relatives' access to justice

The Legal Services Commission contracting process must be reviewed urgently to prevent the impending dramatic reduction in the number of solicitors firms, including specialist firms, awarded contracts by the Legal Services Commission to do family work including care work.

10. 10-15 year olds in the youth justice and child welfare system. That consideration is given to transferring cases from the Youth Court into care proceedings if the offending behaviour is rooted in neglectful or abusive parenting.

1. About Family Rights Group

Family Rights Group advises and supports parents and wider family members in England and Wales who are involved with local authority children's services about the needs, care and protection of their children. The Charity was founded in 1974.

We promote the involvement and support of family members in making safe plans for their children which will enhance their welfare. We campaign to challenge injustice, to improve access to effective services, and to increase the voice children and families have over decisions affecting their lives. Our free telephone and email advice service advises 6,500 parents and relatives per year about their legal rights and the options open to them:

- Within the local authority decision-making processes for supporting and safeguarding vulnerable children, particularly before care proceedings are issued and when children are looked after in the care system; and
- When a court application is made by the local authority for an emergency protection order, care order or placement order.

We also:

- Publish a wide range of advice sheets on all aspects of child care law and practice which can be downloaded from our website at www.frg.org.uk/advice_sheets.html;
- Run a web-based electronic discussion board and set up support groups for family and friends carers, including grandparents who are raising children unable to live with their parents;
- Convene the Kinship Care Alliance and national Family Group Conference Network;
- Run training courses on a regular basis for child care professionals including Independent Reviewing Officers;
- Run action research programmes, for example on how social care services work with domestically abusive fathers and lobby for improvements in childcare law and practice.

2. Context

In the last two years there has been a significant rise in referrals to children's social care services, and an even greater increase in numbers of children subject to child protection plans. Despite partnership working being core to the safeguarding of children, the current child protection process is poor at engaging with families. The system often feels overwhelming for parents whose fears can easily erupt into hostility and anger. Social workers' attention is rarely spent engaging with non-resident fathers or the wider family, failing to assess them as a risk and/or resource; instead our child protection system is predominantly focused upon on the ability of the mother to protect the child.

Too often, reforms aimed at improving outcomes for children have instead ended up with authorities and agencies placing too much emphasis on doing things right (efficiently) instead of doing the right

things (effectively). Too much social work time is spent on administration rather than working directly with families.

Since the death of Baby Peter Connelly there has been a clear shift towards local authority social workers, managers and even legal teams veering towards risk adversity rather than risk management. The financial climate is exacerbating the situation because many non-statutory services are being closed, making it much harder for families to access the specialist, non-stigmatised support they need when problems first emerge. Many of the families we deal with on our advice service are those who then reach crisis point and whose children become subject to compulsory state intervention through the child protection (or youth justice) systems.

The consequence is that care proceeding applications are at record levels, although there is some local variation across the country. There are currently long, expensive delays within the court process, children not being allocated guardians until late into proceedings, a shortage of foster carers and children facing insecurity whilst awaiting decisions about their futures.

Despite this gloomy analysis, we are also very aware that it would be an error to cast the entire system as broken or to downplay the extraordinary efforts and work of many practitioners including social workers, senior social care managers, lawyers and judges. There are some excellent models of practice and inspiring examples of leadership.

The proposals we are putting forward seek to draw upon what works to:

- Support partnership working between families and the local authority, in order to ensure children who are at risk of harm are kept safe; and
- Enable more children to remain safely living within the wider family network, if they are unable to live with their parents.

The impact of the proposals is primarily to improve outcomes for children and it is critical that this is the driving force behind any reform. But they have the added benefit of reducing avoidable care proceedings and thus addressing court delays (and the shortage of unrelated foster placements for children in care). The proposals are cost effective – generating savings in the court system, the legal aid budget and local authority budgets. For example:

- Every unnecessary care case avoided, saves more than £25,000¹ associated with the court process alone.
- Even a reduction of 5% in the care population, could reduce expenditure on the care system in England and Wales by around £100 million per annum, which could be more effectively redirected to promoting children's welfare.

3. A way forward

The principles upon which our proposals are based:

¹ DfES/DCA/Welsh Assembly (2006) *Review of the Child Care Proceedings System in England and Wales* p13

- The welfare of the child is the paramount consideration.
- The system should be child-centred and family-focused, strengths-based and culturally sensitive.
- The right to fair process and involvement in decision making for children and families (at all stages of state intervention).
- The right to respect for family life (including that of the child), unless intervention is necessary to safeguard the child.
- That children and families have access to support and advice to enable children to remain within their families, where safe to do so, and so families are empowered to have responsibility for their lives.

A. Early intervention and family support

As stated we are deeply concerned about the impact that current funding pressures are having upon children and families' access to non-stigmatised, effective support services. The combination of a rise in referrals and funding cuts is putting unsustainable pressures on children's services' budgets, and we are therefore witnessing local authorities closing family support services, on the basis that they aren't statutory, despite their demonstrable beneficial impact.

Recommendation: We support the ADCS proposal that Ministers ring fence funding for early intervention projects/family support that have a demonstrable impact.

B. Pre-proceedings support for families that will assist partnership working

It is well established that the engagement of families is key to keeping children safe when they are subject to child protection plans²This makes sense practically because 93% children who are subject to a child protection plan live at home³ hence their families need to engage with and commit to implementing the plan if the child is to be safe. Whilst the Baby Peter case demonstrates that seeming maternal co-operation isn't sufficient on its own for children's social care services to be confident that a child is protected, the absence of partnership working between the family and the social care agency is an important indicator of serious concern. A lack of parental cooperation is a key factor as to why cases end up in proceedings.

Yet it is often difficult for families to understand local authority concerns and to engage during s.47 child protection enquiries because:

- They are often unclear about the totality of the concerns and the reasons for them – they may be given information in a series of different conversations and/or local authority social workers are often unclear themselves about the nature of the underlying problems that need to be addressed and at times may give contradictory views.
- They are frightened, angry and confused which prevents them from hearing what is being said by the local authority, and they often don't know who to turn to for advice.
- They often don't understand the process and are overwhelmed by continuous assessments and meetings in which they are under the spot light of a large numbers of professionals.

² DoH (1995) *Child Protection: Messages from Research*

³ DCSF: Referrals, assessment and children and young people who are the subject of a child protection plan, England - Year ending 31 March 2009

- The fear that the child may be removed by the local authority makes it hard for them to trust and work openly with the social workers to reach agreement about how their child should be kept safe. The system doesn't support families to take responsibility, instead parents often feel decisions and actions are done to rather than with them, thus encouraging a sense of dependency and resentment. Only a minority of fathers involved with their children are invited to a meeting when Children's Services are undertaking a core assessment (Roskill, 2008)⁴

So what works?

1. Family Group Conferences (FGCs) - FGCs originate from New Zealand. It is a decision making meeting in which a plan is constructed by the family (including extended family members and friends) but must address the local authority's concerns to ensure the child's future safety and well-being⁵.

The FGC is convened by an independent co-ordinator who visits and prepares family members in advance of the FGC. The meeting itself consists of three stages: the information giving stage during which the social worker and other key agencies set out the concerns that must be addressed within the plan. The second stage is private time when the family (the agencies and co-ordinator should not be present) construct the plan. The third stage is when the local authority/key agencies agree to the support plan as long as it is safe.. The child normally participates in the FGC and should be offered an advocate to help ensure their voice is heard.

FGCs are proven to:

- a. Result in extended family members stepping in to support struggling parents and when necessary to take on the care of the child if s/he cannot remain with their parents;
- b. Engage fathers and paternal relatives;
- c. Give children a voice;
- d. Improve outcomes for children at risk; and
- e. Be cost effective in preventing children being unnecessarily subject to care proceedings or removed into care. For example a survey by Family Rights Group of six FGC projects reported that they have prevented 206 children becoming looked after in the last year, including avoidance of proceedings for 100 children, and that FGCs had led to 56 children returning to their family from local authority care at a total saving of approximately £9.899 million (see appendix A). The FGC project costs amounted to £1,239,000 in 2009/10 and whilst costs to public agencies of supporting the family plan must also be taken into account, nevertheless the savings are clear.

Despite there having been an expansion in the number of child welfare FGC services in recent years:

- Around a third of local authorities in England do not have any FGC service and even in authorities that do, whether or not families are offered an FGC largely depends upon the social worker. It is only a small minority of authorities which have a policy to offer an FGC to all families prior to proceedings being taken.

⁴ Roskill et al (2009) Fathers Matter Vol 2: Further findings on fathers and their involvement with social care services (Family Rights Group)

⁵ Further information about how they work can be found in a Protocol, endorsed by the Family Justice Council and CAF/CASS, on the use of FGCs for children who are or may become subject to care proceedings – see <http://www.frg.org.uk/pdfs/FINAL+FGCs+and+courts.pdf>

- Many FGC services are focused upon the 'high' end, in other words cases which are close to proceedings being issued, yet families often state that they wish they'd been offered an FGC early on when problems first emerged.
- FGC services are non-statutory and a number are now closing or being scaled down, or the principles upon which they work are being compromised as a result of funding cuts.
- There is no independent accreditation of FGC projects or individual co-ordinators, therefore there is some variation in practice, with some local authorities offering family consultation meetings that bear little resemblance to published FGC standards⁶.

Recommendations:

a) That an FGC is routinely offered to families to develop a plan to safeguard the child, when an initial child protection conference has determined a plan is required. If the family agree to the FGC, it would replace the professionally driven core group. The child protection conference would still have responsibility for determining whether a child is at risk and would develop an initial plan to avoid any drift whilst the FGC was being organised.

- The FGC would place responsibility on the family to take ownership of and address the concerns.
- The core assessment would inform what 'bottom line' is set by the local authority and what information is given by the professionals (social worker/plus other key agencies) at the first stage of the meeting.
- The FGC plan would specify what multi-agency support is required by the child and family and would be steered by their needs.
- The review child protection conference would be able to consider how the family plan is working including the provision of support by agencies.
- The local authority would retain its statutory responsibilities, so if the family doesn't wish to proceed with an FGC, then it could hold a core group as now, just as it could take legal steps if new information arose that the child was suffering or was likely to suffer significant harm.

We would welcome the opportunity to discuss this proposal further, including options as to how it could best be brought into practice. For example, it may be desirable for the FGC to be offered to the family just after the Strategy meeting so that preparation for the FGC can get underway prior to the child protection conference. If the conference determined a child protection plan wasn't necessary, then an FGC could still go ahead to create a family support plan, if required.

b) That all families are offered an FGC prior to care proceedings (or in an emergency immediately afterwards). When a family has previously turned down the option of an FGC, they should still be offered an FGC at this stage since circumstances may have changed as may have their willingness to engage.

c) That a feasibility study is funded to consider the introduction of an independent accreditation system for FGC projects and/or co-ordinators, comparable to the system of accreditation for family mediators.

⁶ Barnardos, NCH, FRG (2002) *Principles and Practice Standards*; Ashley et al (2006) *Family Group Conference Toolkit* (DfES, Welsh Assembly Government, FRG)

2. Independent advice

Even if child welfare processes were simplified, it is still critical that parents and family members are able to discuss with an independent adviser how the system works and the realistic options open to them. A recent independent evaluation of Family Rights Group's Advice Service⁷ found that 88% of family members who had called the advice line felt it had helped them to cope with their situation and 70% reported that it had led to improved service provision by the local authority. 100% of grandparents felt that their chances of contact with a grandchild had improved following their call, with 90% feeling more confident in their dealings with social workers/professionals and 60% reporting that the advice they received had helped the family to stay together. Respondents reported that as a result of their call they had acquired more understanding of their situation (88%). This was linked to a reduction in abnormal psychological functioning, that research suggests is linked to improved parental functioning. Family Rights Group's advice line is funded by the Department for Education until April 2011. If further government funding is not made available the line will close and families will lose access to this unique service.

Recommendation: that Government funds Family Rights Group's advice service including its expansion and that information about the advice line is provided by local authorities to all families whose children are subject to an initial assessment/child protection enquiries.

3. Independent advocacy for parents in child protection processes

This has been found to have a very positive impact, enabling the parent to hear the concerns, to engage in the child protection conference, and to focus upon the child's needs rather than be caught up in hostilities with the local authority (Featherstone, 2009). Research has found that what makes a difference is that the advocate has specialised knowledge of child care law and practice, is non-confrontational, works to a reporting threshold and is independent of the local authority (Lindley, 1999). It is particularly important that vulnerable adults, for example parents with severe mental health or learning difficulties have access to an advocate. However, there is no national provision of specialist advocacy for parents in local authority safeguarding processes.

Recommendation:

That local authorities are required to commission specialist independent family advocacy service for parents and carers whose children are subject to child protection enquiries. That such advocates have expertise both in supporting adults with their particular vulnerability and child care law and practice so that they remain child-focused and don't raise unrealistic expectations on the part of the parent.

4. Child Protection conferences– signs of safety

Recommendation: That further good practice models which strengthen families' effective engagement within statutory planning meetings, such as the Signs of Safety approach, used in authorities such as Gateshead, are more widely promoted.⁸

5. Letter before proceedings:

As described in government guidance⁹ the letter should be sent by local authorities to parents when care proceedings are being considered. It can be very helpful in setting out clearly to parents

⁷ Ritchie C (forthcoming) *Evaluation of Family Rights Group's Advice Service*

⁸ Turnell, A & Edwards S (1999) *Signs of Safety: A Solution and Safety orientated Approach to Child Protection Casework*, see <http://www.signsofsafety.net/>

⁹ *Vol 1 Guidance: Children Act 1989 Regulations and Guidance, Volume 1 Court Orders* <http://www.justice.gov.uk/guidance/careproceedings.htm>

the local authority's concerns and what needs to change, in emphasising the seriousness of the situation and in enabling the parent(s) and others with parental responsibility to get free independent advice (Level 2 public funding) from a solicitor and assistance with negotiations. However, in reality its use is patchy and it is often sent so late in the day that there is no time for parents/wider family members to make the changes necessary to overcome the concerns before care proceedings commence.

Recommendations:

- That the guidance be revised so that local authorities are encouraged to send the letter at least 3 months before proceedings are likely to be initiated unless there is an emergency. This would maximise the opportunity for parents and wider family to have a last chance to address concerns and where necessary to identify alternative within family placements prior to court proceedings.
- That LSC level 2 advice (triggered by the letter before proceedings) should not just be available to parents and others with parental responsibility, but also to family members with significant involvement with the child, who are considering taking on the care of the child.

6. Family and friends care:

In the last few years, there has been an increase in the number of children living with relatives or friends (known as family and friends care) when they cannot remain safely at home with their parents, instead of being raised in the care system. This is consistent with the child's right to respect for family life (Article 8 ECHR) and with positive outcomes for such children: research shows that in spite of the fact that family and friends carers are often severely impoverished and support is often poor if non-existent, the outcomes for children living in family and friends carers are comparable to those of children in the care system who are living with unrelated foster carers¹⁰. Yet there are important ways in which the child welfare and family court systems are not working as well as they could do to support family and friends care:

1. *Failure to identify potential family and friends carers* by the local authority can lead to serial assessments of different relatives within existing proceedings at quite a late stage, which can lead to considerable delay. More over it can similarly also result in serial applications for residence order/special guardianship orders again leading to costly delays and processes. The requirement in the revised version of the Public Law Outline (April 2010) to ascertain if there are other potential family members who could care for the child at the first appointment should improve this but routine use of family group conferences pre proceedings would be more effective still in helping avoid such situations arising.
2. *Delay in family members offering to care for a child whilst the threshold is in dispute*. This may be because the parents do not tell them about the case, preferring to keep this information confidential in the belief that the allegations will not be proven or because family members, such as grandparents do not want to undermine the parents' case and therefore hold back until there is a finding of fact.

¹⁰ Farmer, E and Moyers, S. (2008) *Kinship Care: Fostering Effective Family and Friends Placements* (Jessica Kingsley)

3. *Support for the child being linked to the child's legal status rather than their needs* Research¹¹ has found that children in family and friends care have generally suffered the same adversities as those in unrelated foster care and their carers are poorer and are living in far more disadvantaged circumstances than unrelated foster carers, yet family and friends carers receive little if any support to raise these vulnerable children as compared with unrelated carers. This is largely attributable to the fact that most children in family and friends care are deemed not to be 'looked after'. This is of importance because the local authority is under a *duty* to provide support to looked after children, including: assistance in managing contact with parents, other siblings etc; priority school placements; leaving care planning; allocation of a social worker and independent reviewing officer for the child; and their carers are foster carers who are paid and should have access to training, support groups etc. In contrast support for those outside the looked after system is basically discretionary and thus a postcode lottery. This lack of adequate support for family and friends carers and children they are raising outside the looked after system has led to significant problems:
- a) Disputes about whether the child is looked after or not have been the subject of repeated judicial review applications which are costly and take up a lot of court time – see *D-v-Southwark and SA –v-A Local Authority*¹² – yet the practice persists of local authorities placing children with relatives due to child protection concerns and then claiming that, because the relative accepted the child, it was in fact a private arrangement between the parents and the relative hence the child is not looked after and the local authorities have no responsibilities to support the placement. This often occurs even when the local authority is simultaneously placing heavy demands on the relative, for example, to ensure that the parent must not have unsupervised contact.;
 - b) Carers of children outside the looked after system are not entitled to financial support to compensate them for the often significant additional costs of taking on a child that is not theirs. For example a survey by Family Rights Group of 205 family and friends carers in January 2010 found that 35% had left their job, lost their job or taken early retirement to raise these children and over a third had spent more than £1000 making changes to their home and getting things the child needed, when the child(ren) came to live with them.
 - c) Contact – family and friends carers are often left alone to manage contact between the child and parents despite this being extremely fraught (it might be their own son or daughter whose access to their grandchild that they have to severely restrict) , costly and sometimes leading to further litigation.
 - d) Legal costs – public funding is means and merits tested (unless the applicant already has parental responsibility and is involved in care proceedings), hence any relatives with savings or more than a very modest income cannot get public funding. Moreover local authority support for legal costs is sparse. Some carers therefore use the free legal advice service provided by Family Rights Group (see www.frg.org.uk/advice) to understand their legal rights and the options open to them Many carers end up being

¹¹ Farmer & Moyers 2008 *ibid.*, Hunt, J., Waterhouse, S. and Lutman, E (2008) *Keeping them in the family: Outcomes for children placed in kinship care through care proceedings* (BAAF)

¹² *Southwark-v-D* [2007] EWCA Civ 182; [2007] 1 FLR 2181 and *SA –v- A Local Authority* [2010] EWHC 848 (Admin)

litigants in person when they make an application to court or end up in debt as a result of legal costs paid out. For example, the January 2010 survey of family and friends carers found that the average legal costs to secure the child's future - for example to be granted a residence order or special guardianship order- was £3,640, with the majority of carers receiving no financial help towards these costs. And 82% of carers who spent over £10,000 were self-funded.

Recommendations:

a) The proposals set out above in terms of FGCs should assist to identify wider family members at an earlier stage.

b) In order to enable more children to safely live within their family, instead of going into care, there needs to be a coherent family and friends care framework, addressing assessment and support. Whilst the anticipated family and friends care guidance is welcome and may go some way towards improving the situation for some children, what is needed is a legislative lead including:

- a new duty on local authorities to provide a support framework for all family and friends carers, including help with managing contact and support groups for such carers, irrespective of their legal status;
- a right to assessment to support for children being raised in family and friends care arrangements;
- a national financial allowance when there is judicial or professional evidence that the children cannot live with their parents; and
- non means and non merits tested public funding to enable family and friends carers to apply for special guardianship or residence orders where children cannot return home.

c) To enable family and friends carers to obtain parental responsibility without necessarily having to bring a case to court, we propose that there should be a provision for parents (with parental responsibility) to enter into a parental responsibility agreement with a relative (as defined in S105 CA 1989), as has already been extended to step parents.

d) FRG/BAAF/Fostering Network have developed and are piloting an assessment tool specifically designed for assessing family and friends carers. The approach could be extended nationally.

C. During proceedings:

1. Split hearing with early threshold finding of fact

The removal of a child from its parents is one of the most draconian steps that the state can take. It is therefore essential that there is a rigorous judicial process to determine that a child is suffering or likely to suffer harm such as to warrant state intervention. When the local authority makes an application for a care order it is effectively claiming to have that evidence, it should therefore not need to spend up to a year collecting further evidence to establish the threshold.

Recommendation: That the local authority should present evidence as expeditiously as possible in an early threshold hearing so that this question can be 'got out of the way'. The parents may well seek a legitimate delay if they need to obtain expert evidence to challenge the local authority's

case, but it should be exceptional for the local authority to need further evidence to establish the threshold.

The impact of an early finding of fact hearing would be that the parents and wider family would fully understand the context in which they need to consider the child's future care sooner rather than later. It would mean the adversarial part of the proceedings will be relatively short and it will be clear who may not care of the child in future. This should inform both the family and the local authority's planning for the disposal or welfare stage of the proceedings.

Recommendation: The court should have the power to direct the local authority to offer the family a Family Group Conference after the threshold criteria have been established. Drawing upon evidence that over 90% of family plans are accepted by the local authority¹³, it is to be expected that the vast majority of family plans arising out of such FGCs would be confirmed. Where they are not, the local authority may offer the family a further opportunity to plan for the child by reconvening the FGC or it may make its own plan for the child's long term care. Either way, the case would then need to be referred back to the court with the parties being represented, so that an order can be made in the child's best interests. It would not be appropriate for such an order to be made in a local authority-based tribunal or panel because the child's long term plan and legal status needs to be scrutinised by a court which can apply judicial independence, knowledge and expertise in analysing legal argument and evidence as to the most appropriate order to secure the child's future well-being.

2. **Judicial continuity** has many advantages and is cost effective. It reduces the amount of preparation time needed by judges and legal representatives; the judge has a much better grasp of the case and its history; parents, children and family members and the local authority all feel more confident that the background history and any issues arising during the course of the proceedings has been taken into account in decision making; and court hearings are shorter, and often less antagonistic, because the whole history of the case does not need to be gone through on each occasion. The advantages of judicial continuity in a Family Proceedings Court are in evidence in the Family Drug and Alcohol Court, currently being piloted in the Inner London Family Proceedings Court.

Judicial continuity has been recognised as particularly important for care proceedings for many years now, but has proved very difficult to achieve even in Care Centres and the High Court.

Recommendation: That further attempts are made to achieve this at these levels of court. It has been seen as impossible to achieve in the Family Proceedings Court because of the working arrangements set out for magistrates and District Judges, who sit for limited periods of time in the FPC, and, in the case of District Judges, are required to spend a greater proportion of their time dealing with criminal cases. We therefore suggest a review of the working conditions for

¹³ Family Rights Group (with the University of Birmingham) (2009) *Report on the impact of the public law outline on family group conference services in England and Wales* (www.frg.org.uk)

magistrates and District Judges and consideration being given to the recruitment of specialist Family District Judges.

3. Family mediation services could be used to resolve more minor disputes between parties, such as contact, in public as well as private law proceedings. This would save on court time and would help to promote a more co-operative working relationship between families and the local authority and might help to reduce the parents' isolation during proceedings.

Recommendations: To maximise this approach the court be given the power to direct parties to public law proceedings to attend an assessment meeting with a mediator, similar to contact activity directions in private law. Further, as with FGCs, all those involved in the family justice system should be trained as potential referrers to mediation so that referrals are appropriate and timely.

4. Good legal representation helps parents in care proceedings to accept the reality of their situation including when they need to face up to what they need to do to explore alternative carers within the family rather than the child ending up in unrelated care. Parents and relatives' access to justice is likely to be seriously impaired by the dramatic reduction in the number of solicitors firms, including specialist firms, awarded contracts by the Legal Services Commission to do family work including care work which will be implemented in October 2010. It is often the case in care cases that the different parties such as the mother, father and grandparent need separate representation where there are conflicting interests (for example where domestic abuse is a factor). The effect of the significant reduction in solicitor firms with a LSC contract will be that in many localities it will be impossible for each of them, when relevant, to find a different legal firm to represent them in proceedings (and indeed to get advice when they receive a letter before proceedings from the local authority). The consequence will be that many parents and relatives will not be able to get the advice they need to understand the options open to them.

Recommendation: that the LSC contract process is reviewed urgently.

5. Addressing the support needs of litigants in person

The numbers of litigants in person is increasing and will continue to do so as a result of the imminent reduction in the number of solicitors firms authorised to do publicly funded work. This will place further pressure on the court system both in terms of admin staff and judges needing to spend longer guiding them through the stages of the court process.

Access to free specialist advice:

Recommendation:

It is important that court staff are trained and prepared in helping litigants in person to access and complete the correct documentation, and access free specialist advice if they wish.

The Family Justice Council Parents and Relatives Sub-group is currently developing a leaflet setting out sources of specialist advice; indeed, some of these organisations (for example FRG) produce DIY information sheets specifically designed to help litigants in person in children's cases through the court process. The aim is that this will be widely distributed in all courts.

However the current financial climate is such that these advice services delivered by the voluntary sector, including FRG's advice service, are vulnerable to closure if adequate funding is not made available. Clearly this needs addressing.

McKenzie friends: Some litigants in persons wish to bring a supporter with them to court. Their intervention can be beneficial if the supporter understands the remit of their role and the importance of keeping focussed on the child's welfare as the paramount consideration. Conversely their intervention can be counter-productive if they give unrealistic expectations to the litigant.

There has been a recent practice direction of the role of McKenzie friend setting out the expectations of the court and what they may or may not do.

Recommendation: a leaflet or guide is produced and that this information easily accessible to potential McKenzie friends.

6. We wish to make a link between this review and the forthcoming Green Paper on Youth Justice in which the Government wishes to consider how different approaches could be used in respect of 10-15 year olds in the youth justice system. Until the Children Act 1989, children who committed offences could be dealt with under child care law instead of criminal law. The Children Act 1989 split the two completely. The previous Government then removed the legal presumption that a child between 10 and 14 did not have the necessary understanding to commit an offence. As a result many more 10-15 year olds are caught up in Youth Justice System. A key factor in a large number of these children's offending behaviour is their home circumstances but the most that the Youth Court magistrates and judges can do about it is make a parenting order - they can't transfer the case over to the Family Proceedings Court to be treated as a care case.

Recommendation: That the option be considered of cases from the Youth Court being transferred into care proceedings if the offending behaviour is rooted in neglectful or abusive parenting. Whilst this may place further pressure on the family courts, nevertheless it doesn't mean it would not be the right thing to do.

TABLE REPRESENTING SAVINGS MADE TO COSTS OF CARE AND LEGAL PROCEEDING GROUP CONFERENCE²³

LOCAL AUTHORITY	No of children prevented from becoming looked after/ how evidenced		Cost saved ¹	No of children returned to family from local authority care/how evidenced			No of prevented evidence
LA1	82	Social work evaluation	£2,315,762	3	Evidenced by referrer	£84,723	No Data
LA2	38	Evidenced by referrer	£1,073,158	12	Evidenced by referrer	£338,892	38
LA3	30	Evidenced by referrer	£847,230	No Data			30
LA5	No Data			No Data			9
LA6	38	Evidenced by referrer	£1,073,158	26	Evidenced by referrer	£734,266	23
LA7	18	Evidenced by referrer	£508,338	15	Evidenced by referrer	£423,615	No data
TOTALS	206		£5,817,646	56		£1,581,496	100

¹ Based on child being in care for 12 months costing £28,241. See table Costing care episodes of looked after children: management processes (foster care) (Loughborough University cost calculator) in appendix

² These are estimates based largely on referrer information and don't reflect case complexity whereby there may be additional costs of supporting children living at home or in kinship placements where there may or may not be legal orders

³ The data has been provided to Family Rights Group by FGC projects, September 2010

TABLE REPRESENTING SAVINGS MADE TO COSTS OF CARE AND LEGAL PROCEEDING GROUP CONFERENCE²

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² These are loose estimates based largely on referrer information and don't reflect case complexity whereby there may wider savings that the project may make or the relative costs of running FGCs. More significantly the figures don't reflect in kinship placements where there may or may not be legal orders in place.