



The role of the state in supporting relatives raising children who cannot live with their parents

**A submission to the House of Commons
Children, Schools and Families Select Committee –
Looked-after Children Enquiry
by
Family Rights Group**

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1. WHO ARE WE?

This response has been developed by Family Rights Group in consultation with the Kinship Care Alliance

Family Rights Group is the charity in England and Wales that advises parents and other family members whose children are involved with, or require, social care services. We run a confidential telephone advice service for families.

Established as a registered charity in 1974, we work to increase the voice children and families have in the services they use. We promote policies and practices that assist children to be raised safely and securely within their families, and campaign to ensure that support is available to assist grandparents and other relatives who are raising children who cannot live with their parents.

Since 2006 Family Rights Group has been meeting regularly with a number of voluntary organisations working with family and friends carers, local authorities and academics in the field, under the auspices of the *Kinship Care Alliance*. The *Alliance* meetings are Chaired by The Fostering Network and serviced by Family Rights Group. Members of the *Alliance* include Barnardo's, BAAF, Family Welfare Association, National Children's Bureau, NCH, The Grandparents' Association and Voice. Initially brought together to influence the Green Paper: *Care Matters: Transforming the lives of children and young people in care*, this *Alliance* has proved an important vehicle for developing a joint policy agenda designed to:

- prevent children from being unnecessarily raised outside their family; and
- enhance outcomes for children who cannot live with their parents and who are living with relatives.

Since the *Alliance* was formed there have been some significant welcome developments:

- The Review of Child Care Proceedings¹ encourages the use of Family Group Conferences and recommends that all family and friends care options should have been explored before care proceedings are started.
- The inclusion of provisions in the Children and Young Persons Bill to ensure that *looked after* children, who cannot return home, are, wherever possible, placed with relatives who are approved as local authority foster carers, and hence are paid accordingly.
- The government's pledge to introduce a new framework for family and friends care as part of revised Children Act guidance to be completed in 2009.

¹ *Review of the Child Care Proceedings System in England and Wales (2006)* Department of Constitutional Affairs and Department for Education and Skills and Welsh Assembly Government

Nevertheless we have significant concerns about:

- The notable absence in the Bill of provisions to ensure effective support for those caring for children who are *not looked after* but who are on the edge of care.
- The lack of detail as to what the family and friends care framework will entail.

This submission, drawn up by Family Rights Group following consultation with the Kinship Care Alliance, describes what we are seeking to achieve, summarises findings from research on family and friends care and sets out detailed recommendations.

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2. WHAT WE ARE SEEKING TO ACHIEVE

SUMMARY OF KEY RECOMMENDATIONS

Consistent with the proposals in Care Matters and the Children and Young Persons Bill (CYP Bill) these recommendations seek to:

- enable more vulnerable children who cannot live with their parents to be raised by relatives rather than being taken into, or remaining in, the care system;
- ensure that children being raised by relatives and friends are recognised as *children in need* and are thus entitled to an assessment by the local authority of their specific needs;
- require local authorities to provide suitable support services, including assistance with contact arrangements, to children being raised by family and friends carers;
- enable family and friends to get public funding to secure as necessary a legal order to safeguard a child;
- ensure that family and friends carers who are raising children who cannot live with their parents are entitled to a national financial allowance, so as to avoid being plunged into financial hardship as a result of becoming carers.

3. THE CONTEXT FOR FAMILY AND FRIENDS CARE

Introduction

There are no official statistics of the total number of children living with relatives but the estimated figure is between 200,000-300,000² children, only a small proportion of which are *looked-after*³ children.

The agencies involved in the *Kinship Care Alliance* are also aware of many more relatives who, with the right support and assistance, could and would wish to care for children who cannot live with their parents.

Often family members start to look after a child because there is a crisis in the parental home. For example, there may have been incidents of violence, alcohol or drug misuse, mental or physical illness, disability, a death,

² Richards A and Tapsfield R (2003) *Funding Family and Friends Care: The Way Forward* (Family Rights Group)

³ A child is looked after when s/he is in care under a care or emergency protection order or when s/he is accommodated by agreement with the parents or others with parental responsibility (s.22 (1) Children Act 1989).

separation, divorce, domestic abuse, imprisonment, or any combination of these. The children concerned are likely to have experienced trauma and possibly inadequate or inappropriate parenting as a result of being exposed to any of these circumstances. Some relatives and friends who step in to care for the child in an emergency may be dealing with a situation that starts as a short term arrangement but becomes open ended with no clear indication as to how long it will continue. In many cases it becomes clear later that the children are with them indefinitely.

What do we know about family and friends care?

The research findings on family and friends care (also known as kinship care) suggest that “*carers’ commitment and willingness to continue against the odds benefits the children they are looking after, but the good outcomes for these children are sometimes achieved at the expense of the kin carers themselves.*”⁴ Many family and friends carers are struggling to survive financially, emotionally and socially, receiving little, if anything, from the state to meet the child’s needs, despite having no financial liability for them in law⁵.

There are well evidenced advantages⁶ for children who cannot live with their parents to being raised by family and friends:

- Children in family and friends care tend to be in more stable placements than those placed with unrelated foster carers.
- Children feel loved and report high levels of satisfaction.
- Children appear to be as safe and their behaviour is perceived to be less of a problem when compared to children with unrelated foster carers.
- Children placed within their family can more easily maintain a sense of family and cultural identity.
- Contact with family members is more likely to be maintained.

However the difficulties children and carers encounter are also well evidenced:

⁴ Farmer E and Moyers S (2005) ‘*Children Placed with Family and Friends: Placement, Patterns and Outcomes*’, Report to the DfES, School for Policy Studies, University of Bristol

⁵ Parents are liable to support their children (s.1 Child Support ct 1991); relatives and friends are not unless they adopt the child and hence become the legal parents. It is therefore the responsibility of the state to support family and friends caring for children when the parents cannot, yet such support is not forthcoming.

⁶ Roskill C (2007 forthcoming) *Wider Family Matters* (Family Rights Group); Doolan et al (2004) *Growing up in the Care of Relatives and Friends* (Family Rights Group); Hunt J (2003) *Family and Friends Care*; Scoping Paper for Dept of Health; Broad, B (ed) (2001) *Kinship Care: the placement of choice for children and young people* (Russell House)

- Family and friends carers are more likely to be older, in poorer health and in more disadvantaged circumstances when compared to unrelated foster carers, yet receive significantly less support.
- Some family and friends carers incur large legal costs in securing the care of children at risk of ill treatment.
- There are wide variations between local authorities in policies, support, finance and attitudes towards family and friends care and in numbers of children placed with family and friends.
- Access and entitlement to support, including financial support is based on legal status and not on need, resulting in some carers suffering significant financial hardship.
- Assessment of the placement depends on legal status rather than need, thus risking inconsistent and inappropriate assessments. Some family and friends carers are subject to full fostering assessments that are essentially geared to non relatives while others have no assessment.
- Some children are taken to relatives in an emergency by local authorities, who then deny responsibility for the placement. This can leave the child and relatives without support and confused as to their rights and responsibilities (please see Appendix B for examples from Family Rights Group's advice and advocacy service of such cases).
- Despite the benefits to children of maintaining contact with their parents, siblings and other significant people in their lives, managing contact arrangements can cause significant difficulties for family and friends carers yet support is rarely available. Family and friends carers receive significantly less support in managing such arrangements than non-related foster carers.⁷
- Family and friends foster carers are still facing discrimination by some local authorities, despite the legal ruling that they should be paid the same rate of fostering allowance whether they are a family and friends carer or a 'stranger' foster carer.⁸ A recent survey found that 25 authorities admitted to paying their family and friends foster carers at a lower rate than their other foster carers⁹.

We share the views expressed in *Care Matters* that family and friends care needs to be the option of first resort for children coming into state care (which

⁷ Farmer and Moyers (2005), *ibid*

⁸ *The Queen on the application of L and others v Manchester City Council; the Queen on the application of R and another v Manchester City Council* [2001] Family Law Reports 43

⁹ The Fostering Network Survey of allowances and fee payment schemes 2007-08: recommended minimum allowances

often is not the case) and that more children could be placed in family and friends care.

However it is crucial that the needs of family and friends carers are addressed if these children are to reach their full potential. The overwhelming evidence from our advice work is that the more informal the arrangement the less likely the family member who takes on the care of the child is to receive support¹⁰. This lack of support is likely to have a detrimental effect on the child, and sometimes causes the placement to break down and the children to end up in the state care system after all.

How can family and friends carers access support services?

Family and friends care arrangements generally fall into certain key legal categories, with associated routes to support services:

- a) **Looked after children:** When Children's Services has concerns about a child's safety and well-being, and they decide it is unsafe for the child to remain at home, then, provided they have the necessary authority, they can place the child with a relative where this is consistent with the child's welfare. Such authority is derived from either the parents' agreeing to the plan (in which case the child is accommodated) or where such agreement is not forthcoming, they have been granted a care order (in which case the child is in care). Although there is some poor practice, with local authorities sometimes refusing to accept responsibility for such children¹¹, the local authority will normally approve the child's relatives as foster carers in these circumstances and thus is under a duty to support them accordingly¹². This is consistent with the existing provisions in s.23(6) Children Act 1989 (CA) and will be reinforced by the proposed amendments in the Children and Young Persons Bill –see s.22C CA in clause 9.

Children on the edge of care who are not looked after: Relatives will often take precipitate action to prevent children unnecessarily entering the care system. If, for example, a local authority suspects a child is at risk of harm, the local authority is required by s.47 CA to instigate child protection enquiries, and to take necessary action including drawing up a plan to ensure the child's safety and well-being. Sometimes arrangements will be made between the parents and relatives with the strong encouragement of the local authority that the child goes to live with relatives. Such children are clearly very vulnerable and as such are on the edge of care but

¹⁰ A family and friends carer's ability to access to support is determined by their legal status as carers (as set out in Appendix A). If they are approved local authority foster carers they should have access to equivalent support to unrelated foster carers, but in all other cases, where the arrangement is either informal or is secured by a special guardianship or residence order, the provision of support is discretionary and the exercise of this discretion varies hugely between authorities.

¹¹ See *Southwark LBC –v- D* [2007] EWCA Civ 182; [2007] 1 FLR 2181

. The government has indicated that it intends to issue strong guidance discouraging such poor practice in the forthcoming revised Children Act.

¹² S.23(2) CA

because the relative has stepped in, they do not become looked after. In these circumstances, whilst closely monitoring the care of the child with the relative, the local authority has the **power** to provide support services if the child is assessed as being a child *in need* under s.17 (as amended by the CYP Bill) and Part III CA generally, but it is not under a **duty** to support the arrangement and often fails to do so, as evidenced by the research above. As a result many such arrangements come under considerable strain and may even break down .

- b) **Other legal arrangements** can include the carer being granted a residence order in which case the local authority has a discretionary **power** but is not required to pay a residence order allowance (schedule 1, para 15 CA) or a special guardianship order in which case the local authority has the **power** to provide financial and other support under the statutory system created to provide special guardianship support (s.14F CA). Further information about the legal arrangements can be found in Appendix A.

4. NEW DETAILED RECOMMENDATIONS

The rest of the briefing sets out detailed recommendations to promote wider use of family and friends care for children on the edge of care and to improve their access to support services in such placements:

4.1 Enabling more children to live with family and friends rather than in the state care system

A recent study¹³ found that social workers initiated only 4% of family and friends placements, so if relatives do not put themselves forward, it is unlikely that the local authority will place the child with them. Yet some relatives are providing a lot of support to the child's parents (who may be their own son, daughter, sister or brother) and are fearful that presenting themselves as potential carers might be perceived by the parent as undermining them. Others may not have a full picture of what is going on and do not realise the situation is as serious as it is, and even if care proceedings are initiated, they may not be eligible for legal aid and may be very unclear as to their options.

The proposals below are consistent with the recommendations of the Department for Constitutional Affairs, Department for Education and Skills and Welsh Assembly Government *Review of Child Care Proceedings* (2006).

a) Family group conferences

Family group conferences are a proven effective way of identifying and enabling family members to come forward as potential carers.

Family group conferences are family-led decision making meetings. Parents, relatives and friends develop a plan for the child's care, following significant earlier preparation by an independent co-coordinator who explores the issues with each person attending the meeting. The family plan addresses child welfare and/or protection concerns including those identified and communicated to the family by the local authority. The child is supported to be involved in the meeting, with the use of an advocate where appropriate. The family plan is approved by the local authority *provided* it satisfactorily addresses the welfare and protection concerns.

FGCs are a proven mechanism to enable partnership between the state and families at all key decision making points for a child including:

- Ø As a means of engaging the family to identify and support care arrangements for vulnerable children and their parents;
- Ø As a way of identifying alternative care arrangements within the family when the parent cannot continue to look after the child, including identifying necessary support packages to avoid the child being received into state care;

¹³ Farmer and Moyers (2005) *ibid*

- Ø As a means of planning for the child to see members of their family and to return home safely to their family network from state care wherever possible;
- Ø Prior to 'pathways' planning for children leaving local authority care.

However, although the number of family group conferences taking place in England and Wales is increasing, whether or not a family is offered a family group conference is still adhoc, dependent upon where the family lives and who their social worker is. A legislative lead is therefore required to achieve a more consistent national approach.

b) Independent advice and advocacy

To support family and friends in understanding their options, having their views taken into account and to create a working partnership between family members and local authorities, relatives, as well as parents, need access to independent advice and advocacy once s.47 child protection enquiries are initiated.

Identifying and supporting relatives to come forward as carers - new recommendations:

1. All children with their families are offered a family group conference prior to care proceedings being initiated (or immediately afterwards in an emergency).
2. A new duty is placed upon children's services to ensure the provision of local family group conference service and independent family advice and advocacy services and that this duty is properly funded by central government.

4.3 Systems for providing support:

There is considerable research evidence that family and friends carers do not receive adequate support, particularly when they are raising vulnerable children outside the looked after system. The system for supporting family and friends care therefore needs to be fundamentally revised.

Family and friends support needs fall into two categories which should be addressed in distinct ways:

- Immediate/short term needs where family and friends come forward to care for a child in an emergency to avert the need for the child to be taken into state care.
- Longer term needs where family and friends take on the care of a child on a long term or permanent basis

4.3.1 Meeting immediate short term needs of children and carers where the child is not looked after:

The immediate support needs for carers of children who are not looked after are best met by services being provided under s.17 CA where the child is in need as defined in s.17(10). The support available under this section should be enhanced by the provisions in the CYP Bill to enable cash help to be provided (see clause 24). Yet evidence from our advice line suggests that some local authorities are refusing to even assess a child's need for support unless s/he is at risk of harm. By going to live with a relative the immediate risk of harm has normally been removed and in such circumstances neither the child or carer's acute needs are therefore assessed, let alone met. This could be overcome if the child/carer had a prima facie right to assessment of their needs under s.17 Children Act 1989, as is the case for disabled children. This would enable them to have better access to immediate support particularly where they have stepped in to care for a child or a group of siblings in a crisis without having the opportunity to reflect on the details of how they will manage and where the child(ren) has acute needs as a result of earlier abuse.

Meeting short term needs - new recommendations

1. The definition of who is a child in need in s.17 (10) be amended to include

(d) children being cared for by family members or friends

4.3.2 Meeting needs where family and friends take on the care of a child on a long term or permanent basis

Currently, the only way in which such carers can be guaranteed access to the support they need is for the child to be 'looked after' i.e. to be and remain formally in the state care system as described above. Yet there may be no other good reason why the child needs to be in care. We therefore recommend:

That a family and friends care support system needs to be developed on a statutory basis for family and friends carers who have an established caring arrangement of a child who is not, or does not need to remain, looked after. This would entail:

- i. The local authority being under a duty to establish family and friends care support services, including commissioning services from the voluntary sector. This would mirror the duties introduced under the Adoption and Children Act 2002 in respect of adoption and special guardianship.
- ii. Support groups being available for carers, to combat the isolation many find themselves in when taking on a parenting role and dealing with the complex needs of vulnerable children which they had not planned for.

- iii. Support for contact arrangements. It has long been established that by far the majority of children who are looked after return home to their families whether during their minorities or after they leave care at 18¹⁴ and that contact is the key to early discharge from care¹⁵. There is also evidence that, although contact is important for children's well-being even where they will never return to the parental home, it can be problematic in practice and requires support to work effectively. Yet family and friends carers are often left alone to manage difficult contact arrangements as compared with unrelated foster carers¹⁶. For example there may be tensions between the adults, or the children may experience confused emotions and display challenging behaviour, all of which needs to be worked through. Specific services, including mediation should be available to promote positive relationships for such children.
- iv. Children who are being raised by family and friends carers on a long terms basis (more than 28 days) and cannot live with their parents, having a right to an assessment of their needs and access to such support services.
- v. Improved communication, co-ordination, understanding and prioritisation of the needs of these children and their birth families, including carers, by public agencies including schools, CAMHS, and housing and between adults and children's services, for example in addressing the impact of parental alcohol and substance misuse.
- vi. Government funding being available to local authorities to fulfil such duties.

Meeting longer term needs of carers and children – new recommendations

In order to ensure carers receive the support they need to meet the needs of these children, we recommend that:

1. A new statutory framework is introduced that places local authorities under a statutory duty to provide children being raised by family and friends, their carers and birth parents with support services including support with contact and respite care.
2. Government provides local authorities with the funds to enable them to run and commission such support services, including sustainable support groups.

¹⁴ Bullock R., Gooch D. and Little M. (1998) *Children Going Home: the reunification of families* (Aldershot, Ashgate)

¹⁵ Rowe J et al (1984) *Long Term Foster Care* (Batsford, London)

¹⁶ Farmer and Moyers (2005) *ibid*

4.4 Financial support

In law, at least, relatives and friends are not financially liable for the children they are raising. Therefore it follows that, if the parents cannot provide, the core financial needs of caring for such children should be met by central government. Family and friends carers, who are caring for more than 28 days for children who cannot remain at home with their parents and are not looked after, should be entitled to a national financial allowance.

4.4.1 National financial allowance - detailed proposal

A national non-means tested financial allowance to cover the real costs of raising a child should be paid to relatives or other persons already connected to the child¹⁷, who take on the care of a child for more than 28 days continuously in the following circumstances:

- a) Where the child comes to live with the carer as a result of plans made within a section 47 child protection enquiry¹⁸; or
- b) Where a child comes to live with the carer following a section 37 investigation;
- c) Where a carer has secured a Residence Order or Special Guardianship Order to avoid a child being looked after, and there is professional evidence of the impairment of the parents' ability to care for the child; and/or
- d) Where the carer has a Residence Order or Special Guardianship Order arising out of care proceedings; or
- e) Where the carer has a Residence Order, Special Guardianship Order following the accommodation of a child.

These criteria are designed to ensure that the financial allowance will only be received where:

- a) the carer is raising the child; and
- b) the parent is unable to care for the child and there is judicial or professional evidence of this.

4.4.2 Legal costs:

Where a child is living with a relative with the consent of the parent but without a legal order, the carer may face continual problems because they do not have parental responsibility for the child, yet going to court might upset the fragile relationship that they have negotiated. Moreover such a carer may have to overcome more hurdles than an unrelated foster carer to obtain a legal order, such as residence or special guardianship order. That's why we

¹⁷ This could include family friends

welcome the provisions in the Children and Young Persons Bill to remove the leave requirement for relatives applying for a residence or special guardianship order after one year of caring for the child. However many family and friends carers are left with crippling legal bills when applying to court, for example for a residence or special guardianship order to provide permanence and legal security for the child. Others find that without financial means, they have to represent themselves, which can be very traumatic, particularly in contested cases.

4.4.3 Ending financial discrimination against family and friends carers

There will always be cases where children are placed with family and friends carers but remain looked after children because there are ongoing welfare or protection issues. These carers will access support through the fostering system like any other approved foster carers. However, currently some receive less support than unrelated foster carers¹⁹. When this was challenged legally it was held that it was unlawful to discriminate against family and friends carers by paying them less than unrelated foster carers²⁰. Nevertheless information from our advice services suggests that the practice does appear to be continuing in various forms. Research evidence also indicates that family and friends carers are far less likely to have the support of an allocated family placements social worker²¹. Government guidance needs to be issued to ensure that family and friends foster carers are no longer discriminate against in terms of the financial allowance they receive.

Financial support - New recommendations

1. Family and friends raising a child who cannot live with their parents for more than 28 days should be entitled to a national allowance to cover the core financial costs of caring for such children.
2. Relatives and friends should be entitled to receive public funding for legal proceedings which secure the child's future with them on a non-means and non-merits tested basis.
3. Government guidance needs to be issued to ensure that family and friends foster carers are no longer discriminate against in terms of the financial allowance they receive

¹⁹ Farmer and Moyers (2005) ibid

²⁰ The Queen on the Application of L and others –v- Manchester City Council; The Queen on the Application of R and another –v- Manchester City Council [2002] 1 FLR 43

²¹ Farmer and Moyers (2005) ibid

Appendix A

The legal status of family and friends care placements includes:

- A private, consensual arrangement between the parents and the carer which, if the latter is not a relative within the definition in s.105 CA, involves a private fostering arrangement. There is no support entitlement automatically associated with such arrangements although the child may receive services if deemed to be a child in need (s.17 CA).
- Residence orders which do not trigger any entitlement to support but may lead to a discretionary payment of a residence order allowance under schedule 1 paragraph 15 CA (the rate may vary over time and from one authority to another). The child may receive services if deemed to be a child in need (s.17 CA);
- Special guardianship orders which can entail financial and other support being provided (s.14F CA) if the child or special guardian is assessed as needing support, but again this is discretionary.
- Foster care which carries with it a right to receive payment and other support as required by s.23 (2) CA 1989 and the Fostering Services Regulations 2002.²²

²² The Fostering Services Regulations 2002, Regulations 17, Department of Health 2002