The Kinship Care Alliance Submission to

The House of Lords Select Committee on Adoption Legislation

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

Endorsed by
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The Fostering Network
The Grandparents' Association
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Summary of key recommendations

1. There should be a new duty on local authorities to identify and consider wider family placements for a child, whenever they are considering removing a child from their parents because they may be at risk. This would allow contingency planning
   - at the same time as a parent is being assessed and
   - in parallel to unrelated carers who would meet the child's needs being identified

   before proceeding with a 'foster before adoption' placement, except in emergencies. This would be best achieved by a family group conference being convened.
2. A Family Group Conference[1] should be offered wherever a local authority is considering removing a child at risk from their parents or as soon as the first child protection review has occurred and before any plan for adoption or 'foster before adoption' is embarked upon. If necessary, this can happen ***in parallel with developing other permanence plans in order to minimise delay for the child***.
3. There needs to be more effective support delivered in special guardianship cases, mirroring that which the government intends to provide in adoption cases
4. There needs to be a new statutory right to support for family and friends carers raising children who cannot live with their parents in order to optimise the outcomes for children in family and friends care arrangements.
5. There needs to be a corresponding duty on local authorities to provide a family and friends care support service modeled on the support service provided for children under special guardianship and adoption cases and also a national financial allowance for family and friends carers to cover the costs of raising a child for whom they are not legally liable to support.
6. The definition of parent in the Adoption and Children Act 2002 should be amended to include birth fathers, regardless of whether or not they have parental responsibility. This would lead to more routine involvement of fathers and the paternal family in planning for permanence.

[1] Further details about FGCs can be found in Appendix 1.

What is the Kinship Care Alliance?

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

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

2. Family Rights Group is the charity in England and Wales that advises families whose children are involved with or need local authority children's services because of welfare needs or concerns. We provide direct advice to 7000 such parents and wider family members per year, so that they understand their situation, including their rights, and the options available to them. We also promote policies and practices that help children to be raised safely and thrive within their families wherever possible, for example we:
    - campaign for effective support to assist family and friends carers, including grandparents who are raising children who cannot live at home;
    - run the national Family Group Conference network and have developed national standards and are now trialing an accreditation system for family group conferences services. Family group conferences are an approach which are proven to help families engage in making safe plans for their children when the local authority is concerned about their welfare.

3. We have responded to the questions listed in the call for evidence under themes rather than by reference to specific questions, as many of these cover similar issues.

Adoption is not the only permanence option

4. We are concerned that the government's drive to secure permanence for looked after children is focusing on adoption as the only, or most desirable, option. Although it is held up as the gold standard for permanence, in reality adoption is suitable for only a small minority of looked after children. How permanence is best achieved is different for different children, depending on their age and circumstances. For example, a very positive permanence option for many children is family and friends care which is discussed further at paras 8-15 below.

5. We are concerned that the introduction of adoption scorecards[2] may well compound this over-emphasis on adoption by distracting local authority focus away from considering the best option for the child, towards reaching externally-set targets at the expense of the individual child's welfare. Moreover we consider that scorecards are inconsistent with the thrust of Government child welfare policy following Munro, which has acknowledged, and started to address the distortions that can be caused by nationally-driven performance targets.

6. Whilst we agree that children should not wait longer than is necessary to move to an adoptive placement once the due legal process is completed, we do not feel that these scorecards will encourage local authorities to consider the range of options for permanency that best ***meets the individual child's needs***, within the overarching context of their right to respect for family life. Indeed, there is a real danger that the pressure on local authorities to meet these targets, combined with the proposed 6 month time limit in care proceedings, will mean they will not have the time, resources or flexibility to work with the birth parents and the wider birth family to consider whether living with family or friends might be the best option for the child.

7. Our submission is that rather than focusing primarily upon one legal solution, planning for children must take account of each child's identified needs, their right to respect for family life and the range of available options that may apply in each particular case. To further this aim we are collaborating with other stakeholder organisations to undertake ***A Care Inquiry – building futures for our most vulnerable children***, to explore in depth the range of permanence options and their outcomes for children, which will report in Spring 2013.

Family and friends care as a positive option for permanence

8. One increasingly popular route to permanence for many children is family and friends care, whereby relatives and friends take on the care of children who cannot remain safely at home with their parents. These carers are typically grandparents, aunts, uncles, or siblings, who care for a child because of parental difficulties, such as mental or physical ill health, domestic abuse, alcohol or substance misuse, imprisonment or bereavement. It is estimated that there are currently 200-300,000 children living in these arrangements and the number has risen dramatically in recent years[3]. This rise is expected to continue, as local authorities tackle record rates of child protection referrals, seek alternatives to costly care proceedings and grapple with a severe shortage of unrelated foster care placements.

9. The majority of children in family and friends care live with their carer either under a private agreement with the parents (but that means the carer does not

[2] http://www.education.gov.uk/inthenews/inthenews/a00208881/adoption-scorecards-show-the-serious-extent-of-delays-across-england

[3] Nandy, Selwyn, Farmer and Vaisey (2011) *Spotlight on Kinship Care: Using census microdata to examine the extent and nature of kinship care in the UK at the turn of the Twentieth century* (University of Bristol)

have parental responsibility[4]) or under a residence order or special guardianship order in favour of the family and friends carer. These carers often apply for such orders at the request of, or with the strong encouragement from, the child's social worker, in order that the child is safe and has a permanent home. Only 6% of children in family and friends care arrangements are looked after by the local authority,[5] with their carers approved as foster carers.[6]

What are the outcomes for family and friends care?

10. Research confirms that the outcomes for children in family and friends are generally successful. Despite children in these arrangements suffering from similar adversities to children in the care system and their carers having multiple problems of their own, when compared to children in unrelated foster care, children in family and friends care are as safe, and are doing as well if not better in relation to their health, school attendance and performance, self-esteem and social and personal relationships. Moreover, there is a marked improvement in their emotional health and behaviour and their carers are more likely to match their ethnicity and be highly committed to them, leading to more stable placements[7].

11. These arrangements also have the added advantage of the carer being able to provide short and long term care, hence they provide stable placements and can promote strong attachments for the child with minimal disruption. In that sense they are similar to concurrent planning foster care arrangements whereby foster carers are recruited to foster the child and support the parents/family to resume care of the child but where that fails they then go on to apply to adopt the child. This is discussed further under paras 24-28 below.

12. However, in order to optimise the outcomes for children in family and friends care, there is clearly a need for more effective support. Research confirms that many family and friends carers suffer financial hardship (75%), are in poor health/suffer from disability (31%), and live in overcrowded conditions (35%)[8]. Over a third (38%)[9] of carers have to give up work to raise the children. Few receive financial or practical support to address the child's emotional or practical needs or to address very challenging situations, such as managing contact arrangements with the child's parents, who may also be their own daughter/son/sibling or parent. Family and friends carers will often persist with placements despite the children's very significant difficulties.

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[4] This means they have to refer back to the parents about important decisions about the child and the child may also be removed from their care by the parents

[5] A child is looked after by the local authority when they are in care with the agreement of their parents or others with parental responsibility or if they are under an Emergency Protection Order or Care Order. In these circumstances the relative or friend must refer back to the social worker about all major decisions concerning the child's life.

[6] They must be approved in accordance with the Fostering Services Regulations 2011 and the national Minimum Standards on Fostering, unless the placement is made in an emergency in which case they must be approved in accordance with Regulation 24 Care Planning, Placement and Case Review Regulations 2010.

[7] Farmer & Moyers (2008) – *Kinship Care: Fostering Effective Family and Friends Placements*

[8] Farmer and Moyers (2008) ibid

[9] Ashley C (Ed) Authors: Aziz R, Roth D and Lindley B (2012) *Understanding family and friends care: The largest UK survey* (FRG)

13. One of the reasons for this lack of adequate support is that the majority of children in family and friends care are not looked after[10], which would give them a right to statutory support. For children who are not looked after, whether or not support is provided is at the discretion of the local authority[11].

14. This documented lack of support is likely to get much worse in the future since, in the current economic climate, such non statutory support is typically being cut rather than developed, despite the aspirations and expectations of the Family and Friends Care statutory Guidance.[12]

15. In order to address this lack of support, **we recommend that** there is a new statutory right to support for family and friends carers raising children who cannot live with their patents. This right needs to be supported by:
    - a corresponding duty on local authorities to provide such a support service at least equivalent to, if not better than, the support service provided for children in special guardianship and adoption cases and
    - a national financial allowance to cover the costs of raising a child for whom they are not legally liable to support[13].

Special Guardianship and family and friends carers

16. The introduction of the Special Guardianship order (SGO) into the Children Act 1989 was a positive aspect of ACA 2002 that may in part explain the falling numbers of adopters. This new legal option for securing permanent arrangements not only coincided with a national rise in the number of children in family and friends care, but was also much better promoted by government and practitioners than its precursor, custodianship, and, as a result, has been more successful.

17. However, despite its take up, we are aware from our extensive advice work that there remain a number of difficulties facing carers who apply for, or are encouraged by the local authority to apply for an SGO. In particular, there is a lack of effective support for families once they lose their status as foster carers and move to being a special guardian. Despite provision in the legislation to assess and support such special guardians where the child has been *looked after*, a considerable number of callers to Family Rights Group's advice line are struggling to get the help they need. Some of these cases have reached the courts – and on each occasion local authorities have been forced to reassess their policy on support paid to special guardians[14].

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[10] Instead, they are either living with their carers either with no legal order or under a residence or special guardianship order as outlined under para 9 above.

[11] If the child is looked after and placed with a family and friends carer there is a right to support but in all cases where a child is not looked after (by far the majority of children in family and friends care) such support is at the discretion of the local authority.

[12] DfE, 2011, https://www.education.gov.uk/publications/eOrderingDownload/Family%20and%20Friends%20Care.pdf

[13] Under s.1 Child Support Act 1991 it is only parents who are responsible to support a qualifying child, not their de facto carer.

[14] B v Kirklees Metropolitan Council [2010] EWHC 467; R (B) v Lewisham LBC[2008] EWHC 738 (Admin) Fam Law July 2008 p.640

18. Special guardianship is rightly recognised by courts as a potential permanence order for a child who cannot live with their parents. There needs to be a clear statutory right to support, with clear guidance on the level of the SGO allowance, in line with the decision in B v Lewisham LBC[15]. This would then mirror the improved adoption support which the government has already committed to. It should never be the case that carers are given a perverse incentive to apply for a particular order (i.e. adoption) simply because it elicits better support for the placement than the alternatives. The child's welfare should always be the paramount consideration[16].

19. Furthermore, recent changes to legal aid will result in many relatives or friends, who wish to apply for a special guardianship order or residence order as an alternative to a child being adopted outside the family, not being entitled to legal aid. This may strangle the burgeoning rise in family and friends care as a key permanence option for children who cannot remain with their parents.

The potential impact of the 6 month time limit in care proceedings on family and friends carers

20. Although we support the government's intention to remove harmful delay for children from the system, we are concerned that the proposed new six month time limit for all care proceedings, save in exceptional cases[17], will have the unintended consequence of squeezing out wider family members who want to take on the care of a child who cannot live with their parents because there will simply not be enough time to consider their application.

21. Typically, many family and friends carers are concerned not to undermine the parents (who may be their son, daughter, brother, sister) whilst they think they still have a chance of having their child back to live with them. Therefore, many wait until there is a finding of fact against a parent, before putting themselves forward as alternative carers.

22. Under the new time limit for care proceedings, if they are late in offering themselves as carers for the child, there may well not be enough time for the relevant assessments to be carried out or for their applications to be fully explored because the six month time limit will only be extended in exceptional circumstances. The result is that many children may be denied the chance of living within their family network simply because the process has been speeded up.

[15] In B v Lewisham LBC Black J (as she was then) held that (1)Paragraph 65 of the Special Guardianship statutory guidance indicated there should be a close association between fostering allowances and special guardianship allowances. (2)The local authority had failed to have had regard to those allowances in the way in which it was required by that paragraph to do. Instead, it made a rigid link with adoption allowances which was not in accordance with the Guidance. It followed that the resulting scheme was unlawful. (3)The intention of the legislation and regulations (Reg 6) about special guardians was that financial support should be made available to special guardians to ensure that financial obstacles did not prevent people from taking on that role. (4) A local authority was not free to devise a scheme which failed to do what was required by reg.6 or which dictated that some types of placement for a child carried a significant financial disadvantage in comparison with others or, worse, would impose such a financial strain on a carer that he or she would be forced to choose another type of placement.

[16] S. 1 Children Act 1989

[17] in the forthcoming Children and Families Bill

Case example from FRG's advice line:
The caller was an aunt who was positively assessed as a foster carer. However, she did not care for the child but instead supported the maternal grandmother who had the child placed with her at that time. The grandmother sought a SGO, and was supported by the local authority in this plan. However, the local authority subsequently changed their care plan to adoption as the grandmother was considered unable to protect the child from the mother. The mother supported adoption. The court refused the grandmother's application and made a placement order. The aunt felt that she had not had the opportunity to be considered as a long term carer because she had withdrawn herself in favour of the maternal grandmother. She said that she would have been willing to move away from the maternal family and the mother had she known that the care plan was going to change.

23. This case illustrates the importance of social workers being alert to the need to give consideration to family and friends care on a ***contingency basis*** throughout the local authority care planning process, including at the early stages. In particular, pre-proceedings processes and interventions which encourage and promote early engagement of wider family should be actively promoted (see paras 29-30 below for detailed proposals).

The potential impact of the proposed 'foster first before adoption' policy for family and friends care

24. We agree with the government that children who cannot live with their families should be placed with alternative permanent carers as quickly as possible with the minimal amount of disruption and changes to their placements, not least so as to maximise their chances of being able to form healthy attachments later in life. However, we have significant concerns about the government's announcement that it intends to legislate to introduce a new legal duty on local authorities to consider placing children with approved adopters who will foster the child first, as we fear that this over emphasis on adoption will compromise the chances of a child being able to live within their wider family where it is in their interests to do so.

25. The Charity Coram Families has pioneered concurrent planning, placing babies with specialist foster carers while their long-term future is being decided. The carers work with the birth parents to enable the child to return home if in their best interested, but if this cannot happen, the child can be adopted by their carers, avoiding unnecessary and often traumatic disruption. The success of this approach is largely dependent on highly trained teams
    - recruiting and supporting foster carers who have the ability to work toward two opposing goals of wholeheartedly helping the parents to resume care of their child and only when this is ruled out as a long term option do they take on the role of prospective adopter, subject to the decision of the court;

- supporting high levels of contact between the parents and child, up to 3 times per week, during which the parent(s) can receive or ask for help with particular aspects of caring for their child – such as play, suitable food, bathing, dressing etc.

26. We would support a roll out of concurrent planning provided it incorporates these principles and was underpinned by practice guidance explaining how the model works and National Minimum Standards. However it is becoming clear that the government's policy is not one of promoting concurrent planning whereby the adoptive parents/foster carers will be working with the birth parents to actively explore rehabilitation as an option. Annie Crombie, Director of Adoption Reform, stated in evidence to this House of Lords Select Committee on 2nd July 2012,

    "*We think there is probably greater potential in trying to place children earlier with their future potential adoptive parents on a foster care basis, so that we have a sort of fostering for adoption practice, where of course the court will still decide whether or not the child should be adopted. Just as in concurrent planning, the carers run the risk that the child will return to its birth parents but there is not the same sort of active rehabilitation going on as is the case in concurrent planning because that is not part of the child's care plan and is not appropriate.* "

27. This comment makes it clear that the proposal is to promote a 'foster first before adoption' policy which we consider is not only in contravention of the principle behind placement orders in the ACA 2002 but is also very likely to be challenged under the Human Rights Act 1998 for breaching both the child and parents' right to respect for family life. This is discussed further under paras 29-30 below.

28. If the government proceeds with this proposal, we feel strongly that, at the very least, the new duty on local authority should include a requirement to consider all potential family placements before proceeding with a foster first before adoption arrangement. Our detailed proposals on how this would be best achieved are set out in the next section.

Detailed proposals for ensuring that family options, which meet the child's needs, are explored at an early stage

29. Whenever there is a possibility that the child may need to be removed from their parents, it is essential that the process of identifying the appropriate future placement for the child balances:
    - different aspects of the child's welfare, including their need for stability, having their identified needs met, and developing and building attachments as well as their long term wellbeing including identity and welfare,
    - the need to avoid delay
    - the child's right to respect for family life
    - the child's views, wishes and feelings and

- the rights of the parents and wider family members including their right to fair process and respect for family life.

30. Combining all these considerations, we propose that planning for permanence should include:

i. a new duty on local authorities to identify and consider family and friends care placements alongside other permanence options as soon as there is a possibility of a child being removed from their parents. This can be done on a contingency (plan B) basis and can be done in parallel to other permanent options for the child being considered. The most effective mechanism for identifying such placements is a family group conference.

ii. A ***family group conference***[18] should be offered wherever there is a possibility the child may be removed or as soon as the first child protection review has occurred. This could happen ***in parallel with developing an adoption/foster to adopt plan in order to minimise delay for the child***. Family group conferences have the advantage of there being an independent coordinator who can help wider family members to understand the need to get involved early so as not to be ruled out at a later stage if they delay in offering to care for the child and can also signpost them to sources of independent advice at the outset. It also allows wider family draw up contingency plans, without undermining the parent, including identifying whether there are family members who would wish to raise the child, if the parents cannot.

iii. Steps should be taken to ensure more widespread implementation of the legal requirement[19] that when children are removed from their parents, the first choice of placement is with the other parent and then preference is given to wider family members who are approved as foster carers, before considering unrelated foster carers; and

iv. The government's proposals to roll out the 'principles of concurrent planning'[20] more widely should be supported by Practice Guidance as to how it should be conducted and for which children together with National Minimum Standards which spell out the key requirements to make this way of working effective.

Case example: the grandparents did not know the baby was in care and likely to be adopted, until the family group conference was convened. The result was initially for the grandparents to care for the child, and after a period of positive assessment the parents went to live with the baby and grandparents. Eventually they went on to have another child and they now live independently with support from grandparents and an uncle and aunt who have since the beginning provided respite and emotional support.

[18] Further details about FGCs can be found in Appendix 1.
[19] Section 22C Children Act 1989 and reg 24 Care Planning, Placement and Case Review (England) Regulations 2010
[20] Ref action plan for adoption

Amending the Adoption and Children Act 2002 to include fathers without parental responsibility in the definition of 'parent'

31. Under the Children Act 1989, the term parent is used irrespective of whether the parent has parental responsibility. In theory, at least, this results in both parents (and their wider families) being involved in local authority and judicial processes regarding making plans for children at risk of harm. However, under adoption legislation the term 'parent' is defined as 'a parent having parental responsibility' (Section 52(6) ACA 2002). This means that a child can be legally placed for adoption with the consent of the birth mother only, if the father does not have parental responsibility. Further, where a placement order is necessary, the birth father will not be involved in proceedings unless they are otherwise known to the local authority, or have been identified by the birth mother. In some cases, this has the effect of excluding fathers, and the wider paternal family from taking part in this fundamental decision about the future of their child.

32. The result is that some children are denied the possibility of being raised by their paternal family even though this might in every other way meet their short and long term needs.

33. We would therefore advocate ***amending the definition of parent in the Adoption and Children Act 2002 to include birth fathers, regardless of whether or not they have parental responsibility.*** This would result in fathers and paternal family being more routinely involved in all adoption agency and court processes regarding adoption, and would maximise the chances of a child having the option of living with or having some relationship with their paternal family where that was deemed to meet their needs. In our view, consideration of both the birth parents and their families as alternative options for permanence during the adoption process is an essential element of securing protection of the child's right to respect for family life.

Appendix 1: Family Group Conferences (FGCs)

FGCs originate from New Zealand. They are a decision making meeting in which a plan is constructed by the family (including extended family members and friends) which addresses the local authority's concerns (or bottom line) to ensure the child is safe and their welfare promote[2122]. FGCs are proven to:

- 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;
- Engage fathers and paternal relatives;
- Give children a voice;
- 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.
- 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.

[21] Further information about how they work can be found in a Protocol, endorsed by the Family Justice Council and CAFCASS, 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

[22] The FGC is convened by an independent co-ordinator who visits 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.