



Family Rights Group Submission

to

All Party Parliamentary Group on

Child Protection Inquiry into Family Justice Reforms

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Summary of key recommendations

1. Independent advice and advocacy for families to help them engage:

- a. That parents whose children are subject to s.47 child protection enquiries have a right to independent advice and advocacy about their case;
- b. That there is a corresponding duty on local authorities to commission these specialist parental advocacy services; and
- c. That Government continues to fund a national advice service for families whose children .

2. Involving and supporting wider family to protect the child at early stage

- a. That there is 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 be best achieved by a Family Group Conference being convened.
- b. That a Family Group Conference is routinely offered to families to develop a plan to safeguard the child:
 - when an initial child protection conference has determined that a plan is required to protect the child, or at the very least
 - whenever there is a possibility the child may be removed or a local authority is considering removing a child at risk from their parents and, crucially, 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.***
- c. That there is 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.
- d. That there is a corresponding duty on local authorities to provide a family and friends care support service modelled on the support service provided for children under special guardianship and adoption cases
- e. That Government should introduce a national financial allowance for family and friends carers who are raising children who cannot live with their parents, to cover the costs of raising a child for whom they are not legally liable to support.

3. Consultation about, and scrutiny of, care plans

- a. That the proposal to remove contact and the placement of siblings from court scrutiny should be opposed on the basis that it is not consistent with promoting children's long term well-being.

- b. That social workers should be required to actively consult parents, young people and other significant family members about the content of, and any proposed changes to, the care plan and Independent Reviewing Officers should ensure they are directly involved in or contribute to any planning meetings before a final decision about the permanent plan for the child is made unless this would place the child at risk of harm.
- c. That the existing principle, established by Human Rights Act case law, that local authorities should consult with parents and other significant family members if there is a fundamental change to the care plan after a care order is made, be enshrined in primary legislation;
- d. That parents and other significant family members should be given an associated right to apply to court for further scrutiny of the care plan where there is a fundamental disagreement about the proposed change;
- e. That there should be a new duty on Independent Reviewing Officers to apply to court for further scrutiny where they consider that the proposed care plan does not promote the child's welfare.;

4. Extending 6 month time limit for care proceedings

That guidance to judges as to what could constitute reasons for an 'exceptional extension' to the six month time limit of care proceedings include the following circumstances:

- a. where essential pre-proceedings work with the family to explore safe family options has not been done; or
- b. where circumstances have changed such that a family member needs to be considered as a potential carer after proceedings have started. This would allow time for an expedited assessment of the proposed carer to take place. There should also be an associated mechanism developed within the local authority to ensure a fast track, yet thorough, assessment in these circumstances.

5. Co-operative parenting:

- a. That a principle, rather than a presumption, of co-operative parenting be included as a freestanding section (s.1(A) in the Children Act 1989, to apply generally when arrangements are made for a child, for example by the parents or others with parental responsibility, whether or not there is litigation, rather than being included in the welfare checklist which is only applied by the court (s.1(3) CA)
- b. That specific attention should be given to how the principle of co-operative parenting should apply when children are living in family and friends care without a legal order to secure the arrangement.

What is Family Rights Group?

Family Rights Group is the charity in England and Wales that advises families whose children are involved with, or require, local authority children's services because of child welfare needs or concerns. We promote policies and practices, including family group conferences, that help children to be raised safely and securely within their families, and give families a voice when decisions are made about their lives. We also campaign for effective support to assist family and friends carers, including grandparents who are raising children that cannot live at home.

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, under the auspices of the Kinship Care Alliance. The Alliance has successfully developed and promoted a joint policy agenda designed to prevent children from being unnecessarily raised outside their family and to secure improved support for family and friends carers to enhance outcomes for children in such arrangements who cannot live with their parents. The Alliance is serviced by Family Rights Group.

Family Rights Group runs a free, confidential telephone and email advice service assisting over 7000 families a year, who are involved or require children's services, with their legal rights and realistic options. 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 moderated web-based electronic discussion board for parents;
- Help to set up support groups and run an electronic discussion board for family and friends carers, including grandparents who are raising children unable to live with their parents;
- Convene the national Family Group Conference Network. FGCs are described further in paragraph 4;
- Run training courses on a regular basis for child care professionals including Independent Reviewing Officers, lawyers, social workers and judges;
- 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.

Introduction:

1. We have considerable experience of advising and supporting thousands of families in England and Wales every year whose children are involved with local authority children's services because their child is at risk of harm. We draw upon our extensive experience of advising such parents and wider family members in making the following submission.
2. The engagement of families is key to keeping children safe when they are subject to child protection plans¹. This is demonstrated by research and also makes practical sense because 93% of children subject to a child protection plan live at home², hence it is families who are responsible for the day to day care of children at risk. Therefore our advice typically involves advising
 - parents of their legal position and helping them to understand the child protection concerns and work with the local authority to ***make, and implement, safe plans for their child;*** and
 - relatives and friends about what they need to do to take on the care of a child and seek related support from the local authority.
3. An estimated 200-300,000 children who cannot live safely with their parents are being raised by family and friends,³ often as an alternative to being brought up in the care system. Enabling children to live safely within their family network is consistent with the child's right to respect for family life under the European Convention on Human Rights (Article 8) and also results in huge savings to the state⁴, as well as generally positive outcomes for the children involved. Indeed, despite these children suffering from similar adversities to children in the care system and their carers having multiple problems of their own and inadequate support, research⁵ shows that in comparison to children in unrelated foster care, children in family and friends care are as safe⁶, 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 following placement

¹ DoH (1995) *Child Protection: Messages from Research*

² DCSF: Referrals, assessment and children and young people who are the subject of a child protection plan, England - Year ending 31 March 2009

³ 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, or imprisonment or bereavement.

⁴ The cost of an independent foster care placement averages £40,000 a year; and the average cost to the state of care proceedings exceeds £25,000

⁵ Farmer E and Moyers S (2008) *Kinship Care: Fostering Effective Family and Friends Placements* (Jessica Kingsley); and Hunt, J., Waterhouse, S., and Lutman, E (2008) *Keeping them in the Family: Outcomes for children placed in kinship care through care proceedings*. London: BAAF

⁶ This research shows that only 6% of family and friends carers failed to protect the children in their care which is the same figure as for unrelated foster carers

and their carers are more likely to match their ethnicity and be highly committed to them, leading to more stable placements.

4. Research suggests that one of the most effective tools for identifying and engaging wider family members in protecting a child at risk of harm is a family group conference (FGC). FGCs originate from New Zealand and are family led, decision making meetings in which a plan for the child is made by the family (including extended family members and friends) which must address the local authority's concerns to ensure the child's future safety and well-being.⁷ They are convened by an independent co-ordinator 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. They can also signpost them to sources of independent advice at the outset. Importantly children are supported to be involved in their own FGC. With the help of an advocate where appropriate, they participate in the FGC to express their wishes, which in turn inform the development of the family plan. Further information about how FGCs operate can be found in Family Group Conferences in the Court Arena 2011⁸.
5. FGCs have the advantage of giving the whole family the opportunity of making contingency plans, without undermining the parent, including identifying whether there are family members who would wish to raise the child, if the parents cannot.

Context

6. The specific reforms being addressed by this inquiry are part of a much more extensive programme of reforms to many aspects of the local authority and judicial decision-making processes. We are concerned that some of these may have unintended, negative consequences for vulnerable children and families, for example:
 - a. changes to the process of assessment of, and a refocus of support towards, children at risk of harm, as outlined in the revised statutory safeguarding currently out for consultation,⁹ may be potentially at the expense of children in need;
 - b. the proposed new special educational needs provisions to support children who are assessed as needing support via an Education Health Care Plan¹⁰ overlooks children on

⁷ Further details about FGCs can be found in Appendix 1.

⁸ http://www.frg.org.uk/images/Policy_Papers/fgc-revised-practice-guidance-sept-2011-final.pdf

⁹ <http://www.education.gov.uk/a00211065/revised-safeguarding-guidance>

¹⁰ <https://www.education.gov.uk/publications/standard/publicationDetail/Page1/DFE-00046-2012>.

school action and school action plus and fails to dovetail coherently with the framework for support for children in need;

- c. the reduction in national standardised child protection guidance and the failure to refer to the importance of partnership working with parents when children are subject to s.47 child protection enquires in the revised statutory safeguarding guidance may place children at greater risk;¹¹
 - d. changes to the legal aid system,¹² which will result in many family and friends carers having to represent themselves in court and navigate the administrative and judicial decision-making processes alone without legal advice or assistance, may deter them from seeking a residence or special guardianship order to secure a child's future with them, leaving the child vulnerable;
 - e. the proposal to introduce a new legal duty on local authorities to consider placing children with approved adopters who will **foster first** creates a fast track to adoption which may not only breach the right to respect for family life of the child, their parents and wider family but may also substantially reduce the chances of a child being able to live within their wider family where it is otherwise in their interests to do so, because the child will have formed attachments with the foster carers which it may be harmful to subsequently break;
 - f. the removal of the requirement that adoption panels scrutinise the plan for adoption before an application is made for a placement order from 01.09.12 further reduces external scrutiny of permanence plans which may remove a child from their family forever;¹³ and
 - g. some of the proposals in the recent DfE discussion papers on the separation of siblings for adoption placements and the removal or presumption of contact for looked after children to speed up the adoption process,¹⁴ would, if implemented, undermine further the child and family's right to respect for family life.
7. When combined, these and other reforms to streamline and accelerate the decision-making processes will have significant impact on parents and wider family members when their child is being removed from their care and even more critically will substantially reduce the

¹¹ <http://www.education.gov.uk/a00211065/revised-safeguarding-guidance>. This is a worrying omission because most children on a child protection plan live at home so the family must engage with the child protection plan and processes for the child to be kept safe –see para 2 above.

¹² Schedule 1 para 13, Legal Aid Sentencing and Punishment of Offenders Act 2012
<http://www.legislation.gov.uk/ukpga/2012/10/schedule/1/enacted>

¹³ Adoption Agencies (Panel and Consequential Amendments) Regulations 2012 and revised statutory guidance
<http://www.legislation.gov.uk/uksi/2012/1410/made>

¹⁴ <http://www.legislation.gov.uk/ukpga/2012/10/schedule/1/enacted>

chances of children being able to be raised by their families which may otherwise be the optimal arrangement for them. It is therefore critical that this inquiry considers the wider context when addressing the particular questions posed.

Six month time limit for care cases

8. 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 cases¹⁵, will reduce the time available for parents to demonstrate their parenting abilities and will also potentially squeeze 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. Therefore, if the 6 month timescale is implemented, it will become absolutely critical that families are effectively supported and engaged to address the identified concerns before care proceedings start.

9. When children's services become concerned about the safety and welfare of a child, the typical experience of parents is that they find it difficult to work openly and in partnership with the local authority because
 - a. 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.
 - b. They are frightened, angry and confused which prevents them from hearing what is being said by the local authority.
 - c. 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.
 - d. They fear that their child may be removed by the local authority which 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.
 - e. 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.
 - f. Non-resident fathers are not routinely assessed either as a risk and/or resource. Instead our child protection system is predominantly focused on the ability of the mother

¹⁵ in the forthcoming Children and Families Bill

to protect the child. For example, a file audit of children in need and child protection cases involving domestic violence found that there was a lack of assessment and information about the parenting capacity of 61% of the fathers, in families where there was domestic abuse, although 90% of these fathers had some contact with their children (Ashley, 2011)¹⁶

10. In addition, extended family placements are frequently not explored sufficiently early,¹⁷ despite there being clear evidence about the protective impact of the wider family,¹⁸ because:
 - a. social workers focus too often on a narrow view of family and do not routinely seek out potential carers in the wider family before proceedings start: for example, Farmers and Moyers,¹⁹ found that only 4% of family and friends care placements had been initiated by the social worker; and
 - b. many family and friends carers refrain from offering to care for the child whilst there is still a chance that the parents (who are typically their son, daughter, brother, sister or even own parent) may be able to look after the child long term. In some cases, this is because they are unaware of the depth or totality of concerns, in others because they don't want to undermine the parents or are fearful of reprisals from the parents if they step forward. Therefore, many wait until there is a finding of fact against the parent(s), before putting themselves forward as alternative carers.
11. However, 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 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 as a result of a process that is theoretically designed to meet their interests.

¹⁶ Ashley (ed), (2011) *Working with Risky Fathers*, Family Rights Group

¹⁷ Hunt, J (2001) *Scoping paper prepared for the Department of Health* London: DoH

¹⁸ Farmer, E and Moyers, S (2008) *Kinship Care: Fostering Effective Family and Friends Placements* London: Jessica Kingsley

¹⁹ Ibid

Case example from Family Rights Group'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 special guardianship order, 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.

12. In order to maximise the engagement of parental and wider family to work with the local authority to find safe solutions for the child in this pre-proceedings stage, we need to look at what works in terms of family engagement:

12.1 Independent advice for families: Research has found that parents and family members being able discuss with an independent adviser (who has specialist knowledge of the child welfare system) how the system works and the realistic options open to them, can have a very positive impact on their ability to work with the local authority in this pre-proceedings stage.²⁰ For example, it enables them to actually hear the concerns, engage in the child protection process including any child protection conference or meetings, and focus on the child's needs rather than being caught up in hostilities with the local authority (Featherstone, 2009). A recent independent evaluation of Family Rights Group's Advice Service²¹ found that:

- 88% of family members who had called the advice line felt it had helped them to cope with their situation;
- 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;

²⁰ Lindley B, Richards M & Freeman B, 'Advice and advocacy for parents in child protection cases – what's happening in current practice? (2001) *Child and Family Law Quarterly* 13:2; Lindley B, Richards N & Freeman P, 'Advice and Advocacy for parents in Child Protection Cases: an exploration of conceptual and policy issues, ethical dilemmas and future directions', *Child and Family Law Quarterly*, 13:3

²¹ Ritchie C (2010) *Evaluation of Family Rights Group's Advice Service*

- 90% felt more confident in their dealings with social workers/professionals;
- 60% reported that advice they received had helped the family to stay together; and
- 88% reported that as a result of their call they had acquired more understanding of their situation.

Access to such advice and advocacy is particularly important for vulnerable adults, for example, parents with severe mental health or learning difficulties have access to an advocate.

However Family Rights Group is the only national organisation that gives specialist legal and social care practice advice to families subject to child protection enquiries including the need to face home truths and be realistic when making plans for their child. Our national telephone/email advice service advises 7000 callers per year, with additional web-based advice also available. However, demand for the service has increased substantially in the last year and we are only able to advise 27% of callers based on our current resources. Moreover, Department for Education funding for this service under Family Support Services is due to end in April 2013 and no announcement has been made to date about any future funding regimes. In addition some legal advice agencies and some solicitors provide a very limited amount of advice.

Recommendations: In order to ensure this critical independent advice more widely available to families we recommend:

- a. Parents whose children are subject to s.47 child protection enquiries have a right to independent advice about their case;
- b. Government fund our national advice service for such families so they get independent advice when they need it, so they understand their rights, procedures they may be subject to and options, necessary to support effective partnership working with the local authority.

12.2 Professional family advocacy: Since 2003 Family Rights Group has led the development of professional advocacy for parents involved with child protection services. Using highly qualified child care solicitors, social workers or advocates with an equivalent level of expertise, we advocate for parents pre-proceedings at different stages of the child protection process. Our advocates provide a full range of support services to these parents including accompanying them to meetings; providing

information in relation to legal rights and local authority procedures; and speaking on behalf of clients at meetings in order to support and empower the client. They work in a range of situations, such as:

- where parents needed support to care for a child
- enabling understanding of local authority processes and
- supporting increased participation in child protection processes.

Independent evaluations (Featherstone and Fraser 2009, 2011) have shown that professional advocates are trusted as independent 'experts' who provide a voice for often vulnerable service users who might otherwise struggle to fully engage in making decisions about their children. The advocates' role is highly valued by service users - their independence and expertise is of crucial importance in ensuring confidence. Furthermore, the overwhelming majority of social workers, conference chairpersons and senior managers in the Local Authorities involved in the evaluations expressed a high degree of satisfaction with the way in which advocates performed and felt that the scheme had an impact upon process and outcome. ***A key finding was that advocates enabled partnership working and played an important role in aiding communication between service users and local authorities.*** There are clear examples of advocates being successful in helping service users to understand and act upon child protection concerns. One mother who received the service of a Family Rights Group advocate said: *"Yes I could [trust the advocate] because they train for many years and have years of experience. I put my life in their hands and they gave me strength and made me work as a better mother, which is what I hope to be with the right advice...they have put me on the right track so I can do the right thing for my children"* (Featherstone and Fraser 2009). At present this service is only available in London on a spot purchasing basis.

Recommendations: In order to ensure such advocacy is more widely available to parents in this context we recommend that:

- All parents whose children are subject to s.47 enquiries should have a right to have a professional advocate to support them through the process;
- There should be a corresponding duty on local authorities to commission specialist parental advocacy services.

12.3 Family Group Conferences : FGCs, described under paragraph 4 above, are family led meetings which are designed to enable the whole family to be involved in making a

safe plan for a child at risk. There have been a considerable number of research studies on FGCs which, collectively, suggest that they are a very effective way of engaging families to make and implement safe plans for their children.²² Specifically these studies confirm that FGCs

- result in extended family members supporting struggling parents and when necessary taking on the care of the child if they cannot remain with their parents;
- engage fathers and paternal relatives;
- give children a voice;
- improve outcomes for children at risk; and
- are 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 preceding 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.

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

- Around 30% 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.

²² The key findings are summarised in Appendix 1.

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 that a plan is required to protect the child.
- b) That in any event all families are offered an FGC wherever there is a possibility the child may be removed or as soon as the first child protection review has occurred or in any event before care proceedings are initiated. This could happen ***in parallel with developing an adoption/foster to adopt plan in order to minimise delay for the child where appropriate***. If 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.

12.4 Letter before proceedings: Government guidance currently states that local authorities should write to parents when they intend to apply for a care order²³. This letter can be very helpful in setting out clearly for parents the local authority's concerns about their child 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 and help with negotiations from a solicitor with Legal Services Commission (LSC) Level 2 non means tested public funding. 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 or make contingency plans within the family before care proceedings commence.

Recommendations:

- a) That the guidance be revised so that local authorities are encouraged to send the letter after the first child protection review conference or at the very 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.

²³ Para 3.25, Volume 1 Court Orders Children Act 1989 Regulations and Guidance
<http://media.education.gov.uk/assets/files/pdf/c/children%20act%201989%20guidance%20and%20regulations.pdf>

b) 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.

13. Our proposals outlined in paragraph 12 above (including the offer of an early FGC) should normally guard against family and friends carers coming forward to care for the child only once proceedings have started in the majority of cases, thus eliminating a major source of delay. However, there will be circumstances either where the pre-proceedings work with the family has not been done or where circumstances have changed at the last minute such that a family member needs to be considered late in the day. In these circumstances we suggest that there should be:

- a) an exceptional extension to the time limit of the proceedings so that an expedited assessment of the proposed carer can take place;
- b) an associated mechanism developed within the local authority to ensure that a fast track, yet thorough, assessment is conducted for example by an independent social worker to do the assessment.

This would ensure that the opportunity of a suitable family placement was not lost whilst at the same time ensuring that undue delay was avoided.

Court scrutiny of care plans

14. We understand the rationale behind the Family Justice Review recommendation that the court should no longer scrutinise the “details” of the care plan, so as to reduce court time spent on a case and allow the local authority to get on with the job of promoting the child’s welfare. However, it is often only as a result of the court’s authority and scrutiny that key elements of the child’s plan such as sibling placements, contact and contingency planning in care proceedings, which are fundamental to the child’s future long term wellbeing, are effectively addressed by the local authority. The fact that the court can currently provide this scrutiny, has not only transformed the outcome of the quality of the plan in many cases which we know of, but means that the local authority knows it needs to produce a plan that can stand up to such scrutiny.

15. We are particularly concerned that this Family Justice Review recommendation comes on top of other proposals to reduce external scrutiny, specifically the significant reduction in national standards for child protection set out in guidance, the removal of adoption panel scrutiny when there is a plan for adoption and the ‘foster first’ proposals described in para 6(e) above.

There is a danger that the combined impact of these proposals will not only infringe the child and family's right to respect for family life but will also result in plans to permanently remove the child from their family, not being adequately tested.

16. Clearly Independent Reviewing Officers (IROs) will be key to ensuring that the details of the care plan meet the child's needs and indeed they are already tasked to challenge poor practice and any failure to implement plans on behalf of the child.²⁴ However, in some parts of the country their workload (up to 120 cases each) is such that they do not have the time or resources to challenge all aspects of the care plan which they feel do not meet the child's needs for all children they are responsible for. Moreover, the culture of local authorities varies, and some still attempt to minimise or sideline IRO's independence or authority. This is likely to get more rather than less difficult if the expectations on them increase.

17. Given the limited resources of IROs and the context of the current economic climate when local authorities are already under significant financial pressures affecting services provided to vulnerable children and families, it seems contrary to children's welfare to remove this key layer of scrutiny. ***We therefore think the proposal to reduce court scrutiny should be actively opposed*** on the basis that it may harm rather than promote the welfare of children at risk. However, ***we also suggest the following safeguards are put in place to try to ensure there are appropriate checks and balances in the system without causing damaging delay to children:***
 - a) That the proposal to remove contact and the placement of siblings from court scrutiny should be opposed on the basis that it is not consistent with promoting children's long term well-being.
 - b) 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.
 - c) As stated above, a family group conference 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

²⁴ S.26 CA 1989 as amended

adoption' is embarked upon. If necessary, this can happen *in parallel with developing other permanence plans in order to minimise delay for the child.*

- d) There should 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.
- e) There should also be a corresponding duty on local authorities to provide a family and friends care support service modelled on the support service provided for children under special guardianship and adoption cases
- f) Government should introduce a national financial allowance for family and friends carers raising children who are not able to live with their parents, to cover the costs of raising a child for whom they are not legally liable to support.
- g) Social workers should be required to actively consult parents and other family members about any proposed changes to the care plan and IROs should ensure they are directly involved in or contribute to any planning meetings before a final decision is made unless this would place the child at risk of harm
- h) The existing principle, established by Human Rights Act case law that local authorities should consult with parents and other significant family members if there is a fundamental change to the care plan after a care order is made,²⁵ should be enshrined in primary legislation and they should be given an associated right to apply to court for further scrutiny of the care plan where there is a fundamental disagreement about the proposed change;
- i) There should be a new duty on Independent Reviewing Officers to apply to court for further scrutiny where they consider that the proposed care plan does not promote the child's welfare. This would help to address some of the difficulties they experience in challenging poor local authority practice and would also guard against drift in the system by increasing accountability if they fail to comply;²⁶

Co-operative parenting

18. We have two key concerns about the governments proposals to introduce the notion of co-operative parenting:

- 18.1 Encouraging litigation: They are likely to encourage rather than discourage litigation between parents about arrangements for their children. When considering the potential

²⁵ See for example, *Re M (Care: Challenging Local Authority Decisions)* [2001] 2FLR 1300; *Re L (Care: Assessment: Fair Trial) Proceedings: Disclosure of Local Authority Decision-Making Process* [2002] 2 FLR 730; *Re: G (Care: Challenge to local Authority's decisions)*[2003] EWHC 551 (Fam), Family Law June 2003, 389; *Re: C (A Child)* [2007] EWCA Civ 2 C/A

²⁶ This was evidenced in the case of *A and S (Children) v Lancashire CC* [2012] EWHC 1689

impact of the proposals, it is key to think about human behaviour. Despite the government's expressed intentions, we think that many parents are likely to interpret any principle/presumption of co-operative parenting as conferring a **right to equal time**, rather than focussing on making arrangements for their children in a co-operative way, particularly if their separation is recent and emotions are still running very high. Moreover, the fact that the proposed options guide the **courts** decision-making may make parents more likely to apply to court to 'enforce' this right, rather than trying to reach agreement between themselves.

However, if the Government is determined to go ahead with some reform in this arena, **it would be far better for a principle, rather than a presumption, of co-operative parenting to be included as a freestanding section** (s.1(A) Children Act 1989) to apply generally whenever arrangements are made for a child, for example by a parent or other person with parental responsibility, whether or not there is litigation, rather than being included in the welfare checklist which is only applied by the court (s.1(3) CA) This would provide an underpinning principle to support parents to make arrangements directly between themselves in a co-operative way, with or without the support of a family mediator, without having to resort to litigation in court.

We are also opposed to any presumptions being created for the reasons already expressed, namely that this is far more likely to be interpreted as conferring a right on the parent than a principle of co-operative parenting, and is therefore likely to encourage even more litigation.

- 18.2 Children in family and friends care: the proposals do not appear to take account of the increasing numbers of children living in family and friends care arrangements as discussed in para 3 above. The majority of children in these live with their carer either under a private agreement with the parents (but that means the carer does not have parental responsibility²⁷) or under a residence order or special guardianship order in favour of the family and friends carer. **We question how the co-operative parenting proposals would work especially where there is no legal order to secure the arrangement.**

²⁷ 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

Appendix 1: Key research findings on Family Group Conferences

Since their inception, there have been a considerable number of research studies on FGCs which, collectively, suggest that they are a very effective way of engaging families to make and implement safe plans for their children. The key research findings confirm that FGCs:

a) Are effective in engaging families

- They give children a voice and children view participation in their FGC very positively. Most felt they had their say and expressed a liking for this way of working as preferable to other types of meetings (Holland et al 2006).
- They are well received by families, young people and professionals (Holland et al 2007, Sandau-Beckler et al 2005), with family members expressing dissatisfaction in only 17% of responses compared with a dissatisfaction rate of 53% for traditional meetings (Walker 2005).
- They effectively engage fathers and paternal relatives with a reported higher rate of attendance by fathers and father figures at FGCs than at statutory meetings, such as child protection conferences (Ryan, 2000; Marsh and Crow, 1997; Holland et al, 2003). This means that there is a much greater chance of finding placements within the paternal family than in regular statutory processes.
- They are effective in engaging the wider network for the child in decision making, with an average of between 6-10 family members participating in each FGC (Marsh 2009, Holland et al 2007).

b) Result in greater support being available from within family:

FGC plans often involve drawing in a wide range of resources from the family, which social workers are often unaware of, ranging from babysitting to full time care (AHA 2009), Horwitz (2008) demonstrated that FGCs resulted in kin agreements to: help with children (88%), provide emotional support (75%), support with transport (44%) and emergency respite care of children (35%), and provide a home for the child (32%).

c) Identify family placements, so reducing the number of children in care:

- FGCs regularly result in family members stepping in to enable children on the edge of care to remain safely within their family network and children in care to be reunited with their families

(Laws & Kirby 2007, Titcombe & LeCroy 2003, Sawyer and Lohrbach 2008, Kiely and Bussey 2001, Edwards et al 2007); and

- FGCs have been assessed as having prevented children going into public care (31%) and preventing court proceedings (47%) (Smith and Hennessey, 1998). There was a corresponding significant reduction in the number of proceedings after FGCs (Morris 2007, Sawyer and Lohrbach 2008, Walker 2005).

d) Keep children safe:

There is now substantial evidence of the efficacy of the model when there are concerns about the risks to children within families. FGCs have been successfully held with young people who have been subject to sexual, physical and emotional abuse, neglect and domestic violence etc (AHA 2009, Pennell and Burford 2000).

Marsh and Crow (1998) found FGCs reduced the need for child protection processes and care proceedings because family plans successfully “protect and benefit the children”. A longitudinal study by Kiely and Bussey (2001) also demonstrated that the welfare and safety of children is not compromised by FGCs in the longer term. This finding was echoed by Titcomb and Lecroy (2003) who found that 87% of children did not have substantial report of abuse or neglect up to three years following the meeting, and by Pennell et al who found that families suffered less maltreatment following FGCs (Pennell and Burford 2000). There is also a corresponding significant reduction in the number of proceedings after FGCs (Morris 2007, Sawyer and Lohrbach 2008, Walker 2005)

Is there a need for more research into the FGC model?

The Family Justice Review says: “*The benefits of Family Group Conferences should be more widely recognised and their use should be considered before proceedings. [However] more research is needed on how they can best be used, their benefits and the cost.*”²⁸ Whilst further research as to its effectiveness would add to the knowledge base, it should also be noted that the FGC process and participants’ views of outcomes have been more researched than other more established models of decision-making (Marsh P, 2009). Moreover, although the option of using randomised controlled trials (RCT) to test the efficacy of FGCs would be welcome, it would also be fraught with practical and ethical difficulties, in particular:

²⁸ Family Justice review Final Report 2011. P132. <http://www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/fjc/family-justice-review#headingAnchor1>

- It would be impossible to isolate the FGC as the sole reason for a particular outcome, as opposed to other factors which may affect the child and family's life; and
- Since FGCs are currently unregulated, RCT research into FGCs would be hindered by the variation in standards of FGC practice across a number of services (although this would become easier once an accreditation system for FGC projects, currently being developed and trialled by Family Rights Group is introduced).

In the absence of a RCT, quantitative and qualitative methodology (which has been used in the FGC research studies referred to above and has also been used to research other similar areas such as adoption) continues to be the most appropriate and effective way of answering key questions about FGCs.

Are FGCs cost effective?

Research evidence suggests that FGCs result in substantial savings since they are likely to reduce the use and costs²⁹ of court proceedings (Morris 2007, Sawyer and Lohrbach 2008, Walker 2005). This is supported by a more recent survey by Family Rights Group (2010)³⁰ which shows that **for every £1 spent on delivering FGCs, the savings to the state could be as much as £11**: nine FGC projects which responded to the survey reported that they prevented 229 children becoming looked after in the previous year, including avoidance of proceedings for 116 children and resulted in 58 children returning to their family from local authority care. The combined savings from this amounted to an estimated £11,005,167. The combined FGC project budgets amounted to £1,467,700 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.

²⁹ The government's Review of Child Care Proceedings (2008) identified the costs of proceedings per child to be £25 000. They are likely to be significantly more expensive now.

³⁰ Family Rights Group survey of members of the National FGC network July 2010 (unpublished).