



**Munro Review**

**Submission from:**

**Family Rights Group**

**Professor Brigid Featherstone**

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**For further information contact  
Cathy Ashley ([cashley@frg.org.uk](mailto:cashley@frg.org.uk)) or  
Bridget Lindley ([blindley@frg.org.uk](mailto:blindley@frg.org.uk))  
Family Rights Group  
The Print House  
18 Ashwin Street  
London E8 3DL  
Tel: 0207 9232628  
Advice line: 0808 801 0366  
[www.frg.org.uk](http://www.frg.org.uk)**

## **1. About Family Rights Group**

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

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

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](http://www.frg.org.uk/advice_sheets.html);
- Run a web-based electronic discussion board and set up support groups for family and friends carers, including grandparents, who are raising children unable to live with their parents;
- Convene the Kinship Care Alliance and national Family Group Conference Network;
- Run training courses on a regular basis for child care professionals including Independent Reviewing Officers;
- Run action research programmes, for example on how social care services work with domestically abusive fathers and lobby for improvements in childcare law and practice.
- Run a professional advocacy service for families in 3 London boroughs whose children are subject to child protection enquiries and have published national advocacy standards and a code of practice.<sup>1</sup>

This submission is informed by our extensive experience of advising parents, carers and wider family members who are involved with children's services about child protection concerns and processes.

**Brigid Featherstone** is professor of social work at NUI, Galway. She worked for six years at the Centre of Applied Childhood Studies, Huddersfield with Professor Nigel Parton and was NSPCC Reader. She has conducted an evaluation of the parental advocacy scheme for FRG and been involved with FRG in Fathers Matter 1, 2 and 3.

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<sup>1</sup> Family Rights Group has produced a policy, action research, campaign documents and guidance in relation to parental advocacy in child protection, family and friends care, family group conferences and working with fathers, which provide further substance to the statements and recommendations in this submission. Please contact [cashley@frg.org.uk](mailto:cashley@frg.org.uk) if you wish to receive a copy of any of these documents.

## 2. Executive Summary

The Munro Review Interim report 'A Child's journey' is extremely welcome in:

- i) highlighting many of the systems changes within children's services that are necessary to release social workers from unnecessary bureaucratic constraints, thereby freeing up time to enable them to undertake direct work with children and their families and to be supported and supervised to utilise their competent professional judgement in front line social work; and
- ii) emphasising the importance of focussing on the child rather than on meeting targets or managing the demands of a risk averse culture.

However, we are concerned that these key points may inadvertently signal a mistaken premise that children can or, more worryingly, should, be understood and considered in isolation from their families. The reality is they can't. The engagement of families is key to keeping children safe when they are subject to child protection plans.<sup>2</sup> It is therefore important that the final report of the Munro Review recognises that protecting children must involve putting in place a support structure that enables families to be able to take responsibility for their children's safety, including:

- preventative steps and services to stop problems escalating into child protecting concerns; and
- assisting families to recognise and take ownership of the plans necessary to keep a child safe, in order to avoid unnecessary proceedings.

Moreover, the recommendations of the Munro review need to be consistent and seamless with the recommendations of the Family Justice Review, particularly in relation to engaging families in effective partnership working.

### Summary of proposals:

1. That Government ring fence funding for early intervention projects/family support that have a demonstrable impact. Further, that support is given to the development of integrated targeted provision within universal services, building capacity and developing practice models that recognise and support the central role of the family in protecting children (rec 5.1).
2. That all families are encouraged and supported to take the lead in making a safe plan for their child, when concerns are identified (consistent with new Dutch legislation). Consistent with this proposal is that a family group conference (FGC) is routinely offered to families to develop a plan to safeguard the child (recs 5.2.1 a) and b))

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<sup>2</sup> DoH (1995) *Child Protection: Messages from Research*

3. That all families are offered an FGC prior to care proceedings (or in an emergency, immediately afterwards). When a family has previously turned down the option of an FGC, they should still be offered an FGC at this stage since circumstances may have changed and they may be willing to engage. (rec 5.2.1 c))
4. That all families subject to child protection enquiries have access to independent specialist advice. That this could be achieved by government funding of Family Rights Group's advice service and information about the advice line being provided routinely by local authorities to all such families. (rec 5.2.2)
5. That all parents/carers whose children are subject to child protection enquiries have access to an independent advocate, with expertise in supporting adults with their particular vulnerability and in child care law and practice. That Government places a duty on (and provides relevant funding to) local authorities to commission such specialist independent family advocacy services. (rec 5.2.3)
6. That other approaches consistent with strengthening families' effective engagement, such as the Signs of Safety, be widely promoted.<sup>3</sup> (rec 5.2.4)
7. That government guidance be revised so as to encourage local authorities to send the letter to parents **before** proceedings, either after the first review child protection conference or 3 months before proceedings are likely to be initiated (unless there is an emergency), whichever is earlier. This would maximise the opportunity for parents and wider family to have a last chance to address concerns and, where necessary, to identify options within family placements, prior to court proceedings. (rec 5.2.5 a))
8. That Legal Services Commission **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. (rec 5.2.5 b))
9. That Family Mediation providers are encouraged to raise awareness both amongst mediation services and social workers of the potential role of mediation to support partnership working, assist parties to resolve disputes and agree a plan in child protection work. (rec 5.2.6)
10. That a coherent family and friends care framework be developed, so as to enable more children to safely live within their family, instead of going into care. A legislative lead including:
  - a new duty on local authorities to provide a support framework for all family and friends carers, including help with managing contact and support groups for such carers, irrespective of their legal status;
  - a right to an assessment to support for children being raised in family and friends care arrangements;
  - a national financial allowance when there is judicial or professional evidence that the children cannot live with their parents; and

<sup>3</sup> Turnell, A & Edwards S (1999) *Signs of Safety: A Solution and Safety orientated Approach to Child Protection Casework*, see <http://www.signsofsafety.net/>

- non means and non merits tested public funding to enable family and friends carers to apply for special guardianship or residence orders where children cannot return home. (see rec 5.2.7 a) and b))
11. To enable family and friends carers to obtain parental responsibility without necessarily having to bring a case to court, we propose that there should be a provision for parents (with parental responsibility) to enter into **a parental responsibility agreement with a relative** (as defined in S105 CA 1989). (see rec 5.2.7 c))
  12. That the local authority should present evidence as expeditiously as possible in an early threshold hearing to determine whether the child suffering or likely to suffer harm. The parents may well seek a legitimate delay if they need to obtain expert evidence to challenge the local authority's case but it should be exceptional for the local authority to need further evidence to establish the threshold. The court should have the power to direct the local authority to offer the family a Family Group Conference after the threshold criteria have been established. (see rec 5.2.8)
  13. That the courts retain their role in scrutinising the 'detail' of care plans in respect of the placement, sibling arrangements, contingency planning and contact, because the judge's authority is often key at the point the care order is made, in ensuring the plan is coherent and consistent with the child's welfare. (see rec 5.2.9)

### **3. The importance of engaging families to secure the safety and well-being of children at risk**

#### **3.1 Context**

All of us are born into and live our lives through relationships and those with our families of origin are of central and enduring significance. We may not be able to keep all such families intact but the removal of a child from their family of origin is one, if not the, most draconian actions that the state can take. There is ample evidence that such children have to make sense of that throughout their lives and relationships endure in memory long after they have ceased in practice.

As the review acknowledges, most children live within their families. 92% of children who are subject to a child protection plan live at home<sup>4</sup> hence it is their families who are responsible for their day to day care. Hence unsurprisingly research confirms, the engagement of families is key to keeping children safe when they are subject to child protection plans.<sup>5</sup>

Whilst the Baby Peter case demonstrates that seeming maternal co-operation isn't sufficient on its own, for children's social care services to be confident that a child is protected, the absence of partnership working between the family and the social care agency is an important indicator of serious concern. A lack of parental cooperation is a key factor as to why cases end up in proceedings. Yet, our current child protection process is poor at engaging with families.

In our view, it would not only be unwise but also potentially dangerous, to propose changes to the safeguarding system without a key focus being the importance of working effectively with families to secure the safety and well-being of children at risk. This is particularly crucial given that, although the FJR interim report places heavy emphasis on pre proceedings work in private law when dealing with couple separation in order to avert proceedings, it is also almost silent on the importance of engaging and working with families in the pre-proceedings stage of a public law case. The report appears to make an assumption that this will be addressed by the Munro review, thus it is key that the Munro review does just that. It is however, a pity that to date the Munro Review hasn't consulted directly with families engaged with children's social care services, and we would happily facilitate such consultation, if there was still scope in the Review's timescale to do so.

Drawing on our practice experience, we therefore set out below our analysis of the challenges and opportunities for effectively engaging families in child protection work.

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<sup>4</sup> DCSF: Referrals, assessment and children and young people who are the subject of a child protection plan, England - Year ending 31 March 2009

<sup>5</sup> DoH (1995) *Child Protection: Messages from Research*

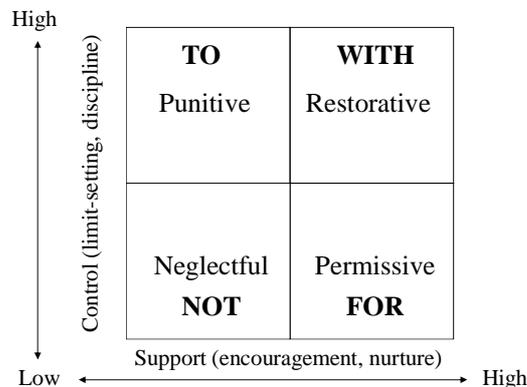
### **3.2 The obstacles to family engagement in keeping children safe:**

Lack of parental engagement is complex –and linked to many factors.

It is often difficult for parents, carers and wider family members to understand local authority concerns and to engage during s.47 child protection enquiries because:

- They are often unclear about the totality of the concerns and the reasons for them – they may be given information in a series of different conversations and/or local authority social workers are often unclear themselves about the nature of the underlying problems that need to be addressed and at times may give contradictory views. This has been a particular difficulty in the climate of targets and time pressures, described so well in ‘A Child’s Journey’;
- They are frightened, angry and confused which prevents them from hearing what is being said by the local authority, and they often don’t know where to turn for advice.
- They often don’t understand the processes and are overwhelmed by continuous assessments and meetings in which they are under the spot light of a large numbers of professionals.
- The fear that the child may be removed by the local authority makes it hard for them to trust and to work openly with social workers, to reach agreement about how their child should be kept safe.
- The system doesn’t support families to take responsibility; instead parents often feel decisions and actions are done ‘to’ rather than ‘with’ them, thus encouraging a sense of dependency and resentment. Practitioners need to be managed, supported and equipped to work with families in ways that are high in support and high in challenge. This is widely recognised in a Youth Justice context but is equally applicable in a child protection context – see diagram A:

## Diagram A - The principle of Restorative Practice



From Wachtell & McCold IIRP

- Social workers' attention is rarely spent engaging with non-resident fathers to assess them as a risk and/or resource; instead our child protection system is predominantly focused upon on the ability of the mother to protect the child. 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 (Ashley, 2011)<sup>6</sup>
- Social workers' focus too often is on a narrow view of family, thus, the 'capital', in terms of care and support to the child from the extended family is overlooked. This is done without effective challenge within the system (until a case reaches proceedings). There is clear evidence of the protective impact of wider family, yet current practice frequently fails to recognise this

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

Whilst there is no published research into how this recession affects incidents of child abuse, a number of prevalence and incidence studies have highlighted the link between poverty and forms of child maltreatment, especially neglect, emotional and physical abuse. Explanations centre on the stress factors associated with poverty and social deprivation, including unemployment and debt, which are compounded if drug

<sup>6</sup> Ashley (ed), (2011) *Working with Risky Fathers*, Family Rights Group

misuse and mental health issues come into play (Dawson, 2008)<sup>7</sup>. The consequence is that children's services teams are overwhelmed by referrals and, unsurprisingly, care proceeding applications are at record levels, although there is some local variation across the country.

The interim Munro report recognises that early intervention can prevent problems reaching 3<sup>rd</sup> and 4<sup>th</sup> tier services, thus ensuring fewer and more appropriate referrals. However, the tide at the moment appears to be in the opposite direction. What we currently face are: long, expensive delays within the court process; children not being allocated guardians until late into proceedings; a shortage of foster carers and children facing insecurity whilst awaiting decisions about their futures. Arguably the biggest casualties of such failings have been vulnerable children and families.

#### **4. The underpinning values of an effective child welfare system**

Drawing upon our long experience of advising families involved in child protection processes, we set out below our proposals for the effective engagement of families in this context. These proposals are based upon a clear sets of principles which we suggest should underpin our child welfare system, namely that:

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

Our recommendations also:

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

The impact of the proposals is primarily to improve outcomes for children and it is critical that this is the driving force behind any reform. But they also have the added benefit of reducing avoidable care proceedings and saving social work and court costs in the process. The proposals are cost effective – generating savings in the court system, the legal aid budget and local authority budgets. For example:

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<sup>7</sup> Dyson, 2008 Child Protection Research Briefing Poverty and child maltreatment (NSPCC)

- Every unnecessary care case avoided, saves more than £25,000<sup>8</sup> associated with the court process alone.
- Even a reduction of 5% in the care population could reduce expenditure on the care system in England and Wales by around £100 million per annum, which could be more effectively redirected to promoting children's welfare.

## 5. Effective family engagement in child welfare: what works?

### Key recommendations

#### 5.1 Early intervention and family support

Changes in child protection need to be located within a wider child welfare framework that includes family support and early intervention. Lonne, Parton, Thomson and Harries (2009) have reviewed developments in a range of countries such as the UK, Canada and Australia and highlighted the financial and emotional costs to families, child protection workers and the wider society, of a risk averse child protection system that is not rooted in a strong value base, prioritising engagement with families, to care for their children safely. They also highlight the need for systemic change – encouraging community based and neighbourhood based work. They note a range of developments in a number of countries that are part of a paradigm shift: child and family well-being programmes; public health strategies that support and promote help-seeking around violence and parenting. We note the report (*A Child's Journey*) references some such strategies and welcome this but they must be at the heart of the system, not considered to be optional extras and the first things to be cut when there are financial pressures. The economic and ethical case for early intervention has been made (see Lonne et al, 2009) and needs to be a fundamental part of a child welfare and protection system.

We are deeply concerned about the impact that the combination of a rise in referrals and funding cuts is putting unsustainable pressures on children's services' budgets. We are therefore witnessing local authorities closing family support services, on the basis that they aren't statutory, despite their demonstrable, beneficial impact.

It is going to be increasingly critical that the resilience of our 'universal' services (some children's centres, schools, primary health) is bolstered through co-located specialist expertise (social work, Family Nurse Partnership, targeted family support workers etc), so that needs can be met and risks assessed at a point sufficiently early to avoid

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<sup>8</sup> DfES/DCA/Welsh Assembly (2006) *Review of the Child Care Proceedings System in England and Wales* p13

escalation into higher cost interventions. Success will depend upon the capacity in universal provision and professionals having greater expertise and increased confidence and; ensuring that practice is inclusive, collaborative and engaging of families.

**Recommendation:** We support the ADCS proposal that Ministers ring fence funding for early intervention projects/family support that have a demonstrable impact. Further, we support the development of integrated, targeted provision within universal services, building capacity and developing practice models that recognise and support the central role of the family in protecting children.

## **5.2 Family-centred decision making**

Giving families the lead in making decisions about their children, doesn't abdicate the state's role in protecting children. Quite the opposite. Rather, it is about supporting families, including the child's wider network, to take responsibility for and ownership of plans to safeguard the child.

In the Netherlands, this has just been enshrined into legislation, by giving families 6 weeks to develop or amend an action plan for the child. The provisions address where emergency action is required by the state. Although the legislation (see attached) doesn't specify how the family should construct such a plan, one clear route would be through a family group conference

### **5.2.1 Family Group Conferences (FGCs)**

FGCs originate from New Zealand. It is a decision making meeting in which a plan is constructed by the family (including extended family members and friends) but must address the local authority's concerns to ensure the child's future safety and well-being<sup>9</sup>.

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

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<sup>9</sup> Further information about how they work can be found in a Protocol, endorsed by the Family Justice Council and CAF/CASS, on the use of FGCs for children who are or may become subject to care proceedings – see <http://www.frg.org.uk/pdfs/FINAL+FGCs+and+courts.pdf>

FGCs have been successfully held in situations where there has been substantial abuse including domestic violence (AHA 2009<sup>10</sup>, Pennell and Burford 2000<sup>11</sup>) These positive outcomes are not just in the immediate period after the FGC; a longitudinal study by Kiely and Bussey (2001)<sup>12</sup> demonstrated a reduction in reports to child welfare statutory services post FGC conference. This finding was echoed by Titcomb and Lecroy (2003)<sup>13</sup> who found that 87% of children did not have a 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 an FGC (Pennell and Burford 2000).

Moreover, FGCs are proven to:

- a) Result in extended family members stepping in to support struggling parents and when necessary to take on the care of the child if s/he cannot remain with their parents;
- b) Engage fathers and paternal relatives;
- c) Give children a voice;
- d) Improve outcomes for children at risk; and

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 nine projects reported that they have prevented 229 children becoming looked after in the last year, including avoidance of proceedings for 116 children, and that FGCs had led to 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 – for further information see Appendix 1.

Since their inception, FGCs have been subject to considerable research and the evidence base for their impact is clear (clearer, in fact, than for traditional child protection conferences)

Despite 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.

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<sup>10</sup> op cit

<sup>11</sup> op cit

<sup>12</sup> op cit

<sup>13</sup> op cit

- FGC services are non-statutory and a number are now closing or being scaled down, or the principles upon which they work are being compromised, as a result of funding cuts.
- There is no independent accreditation of FGC projects or individual co-ordinators, therefore there is some variation in practice, with some local authorities offering family consultation meetings that bear little resemblance to published FGC standards<sup>14</sup>.

**Recommendations:**

a) That the law is amended in line with the Netherlands, so that families have the lead responsibility in creating a safe plan for the child within 6 weeks of concerns being identified, except in emergencies;

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

Our proposal would mean the FGC would place responsibility on the family to take ownership of and address the concerns.

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

We would welcome the opportunity to discuss this proposal further, including options as to how it could best be brought into practice.

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

## 5.2.2 Independent advice

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<sup>14</sup> Barnardos, NCH, FRG (2002) *Principles and Practice Standards*; Ashley et al (2006) *Family Group Conference Toolkit* (DfES, Welsh Assembly Government, FRG)

Even if child welfare processes were simplified, it is still critical that parents and family members are able to discuss with an independent adviser how the system works and the realistic options open to them and, indeed, how they can constructively challenge. Often it is the legal process that affords families the clearest opportunity to challenge professional judgement and assessment. Any system that seeks to rely less on the cumbersome legal process needs to provide sufficient assurance and safeguards through assumed and available access to independent advice

A recent independent evaluation of Family Rights Group's Advice Service<sup>15</sup> 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,
- 90% felt more confident in their dealings with social workers/professionals
- 60% reported that the advice they received had helped the family to stay together. 88% reported that as a result of their call, they had acquired more understanding of their situation. This was linked to a reduction in abnormal psychological functioning, that research suggests is linked to improved parental functioning.

Family Rights Group's advice line is funded by the Department for Education until June 2011. The DfE is currently in the process of a 20 month tendering process.

**Recommendation:** That all families subject to child protection enquiries have access to independent specialist advice. That this could be achieved by government funding Family Rights Group's advice service and that information about the advice line is provided routinely by local authorities to all such families.

### 5.2.3 Independent advocacy for parents in child protection processes

Independent parental advocacy has been found to have a very positive impact, enabling the parent to hear the concerns; to engage in the child protection conference, and to focus upon the child's needs rather than be caught up in hostilities with the local authority (Featherstone, 2011). The evaluation found that:

- 73% of clients reported advocacy had made it easier for them to communicate and work with the local authority;
- In 79% of cases, the conference chairperson felt that advocacy support had increased the level of parental engagement with the local authority. In 35% of cases, a different outcome for the child was linked to increased parental engagement.

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<sup>15</sup> Ritchie C (forthcoming) *Evaluation of Family Rights Group's Advice Service*

*“Without the advocate I do not feel we would have been able to draw up a child protection plan that involved the mother and had her agreement.”* (Conference chair)

Research has found that what makes a difference is that the advocate has specialised knowledge of child care law and practice, is non-confrontational, works to a reporting threshold and is independent of the local authority (Lindley, 1999). It is particularly important that vulnerable adults, for example parents with severe mental health or learning difficulties, have access to an advocate. However, there is no national provision of specialist advocacy for parents in local authority safeguarding processes.

**Recommendation:** That all parents/carers whose children are subject to child protection enquiries, have access to an independent advocate, with expertise in supporting adults with their particular vulnerability and in child care law and practice. That Government places a duty on (and provides relevant funding to) local authorities to commission such specialist independent family advocacy services.

#### **5.2.4 Child Protection conferences– signs of safety**

The interim Munro review highlighted signs of safety as an illustration of an approach that involves professionals actively working alongside children and families in finding solutions that address risk.

**Recommendation:** That further good practice models which strengthen families’ effective engagement within statutory planning meetings, such as the Signs of Safety approach, are more widely promoted.<sup>16</sup>

#### **5.2.5 Letter before proceedings:**

As described in government guidance,<sup>17</sup> a letter should be sent by local authorities to parents when care proceedings are being considered, to inform them about the concerns and what needs to be done to address them, so as to avert care proceedings. In theory, they should have had all this information in the child protection planning process but families tell us that they are often having to piece together the totality of the concerns and what they are required to do, from many pieces of paper and conversations. . This letter typically invites them to a meeting to discuss the concerns and also entitles parent(s) and others with parental responsibility, to obtain free, independent advice (Level 2 public funding) from a solicitor and assistance with negotiations.

In our experience, parents generally find this letter very helpful. It is often the first time they can see clearly the extent of the concerns, how they must be addressed and the seriousness of the situation. However, in reality its use is patchy and it is often sent so

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<sup>16</sup> Turnell, A & Edwards S (1999) *Signs of Safety: A Solution and Safety orientated Approach to Child Protection Casework*, see <http://www.signsofsafety.net/>

<sup>17</sup> *Vol 1 Guidance: Children Act 1989 Regulations and Guidance, Volume 1 Court Orders* <http://www.justice.gov.uk/guidance/careproceedings.htm>

late in the day that there is no time for parents/wider family members to make the changes necessary to overcome the concerns before care proceedings commence.

**Recommendations:**

- a) That the guidance be revised so that local authorities are encouraged to send the letter either:
  - i) after the first review child protection conference; or
  - ii) 3 months before proceedings are likely to be initiated, unless there is an emergency, whichever is earlier.

This would maximise the opportunity for parents and wider family to have a last chance to address concerns and where necessary, to identify options within family placements, prior to court proceedings.

- 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.

### **5.2.6 Family mediation services**

As suggested in the Family Justice Review Interim report, greater use could be made of family mediation to resolve disputes between parties, whether it be between family members of the family and the local authority in public as well as private law proceedings, instead of resorting to court proceedings where agreement cannot be reached, for example, about aspects of the child protection plan. Although not yet widely used in this context, some Family Mediation Services (for example Cambridge) already have experience of mediation in child protection/public law cases.

Mediation in this context might have a similar role to FGCs and it is clear that there could be an overlap in terms of function of both models, in the child protection process but it is another potential resource available to help families and the local authority to work effectively in partnership to an agreed plan which will keep the child safe.

**Recommendation:** To maximise this approach, Family Mediation providers should be encouraged to raise awareness both amongst mediation services and social workers of this potential intervention which can support partnership working, so that referrals are appropriate and timely.

### **5.2.7 Family and friends care:**

In the last few years, there has been an increase in the number of children living with relatives or friends (known as family and friends care) when they cannot remain safely at home with their parents, instead of being raised in the care system.

This is consistent with the child's right to respect for family life (Article 8 ECHR) and with positive outcomes for such children: research shows that in spite of the fact that family and friends carers are often severely impoverished and support poor, or non-existent, the outcomes for children living in family and friends care are comparable to those of children in the care system who are living with unrelated foster carers<sup>18</sup>. Yet there are important ways in which the child welfare systems are not working as well as they could be to support family and friends care:

1. **Failure to identify potential family and friends carers** by the local authority can lead to serial assessments of different relatives within court proceedings, at quite a late stage, potentially leading to considerable delay. The requirement in the revised version of the Public Law Outline (April 2010) to ascertain if there are other potential family members who could care for the child at the first appointment should improve this but the routine use of family group conferences, pre proceedings, would be more effective still in helping avoid such situations arising.
2. **Delay in family members offering to care for a child** whilst the threshold is in dispute. This may be because the parents do not tell them about the case, preferring to keep this information confidential in the belief that the allegations will not be proven or because family members, such as grandparents, do not want to undermine the parents' case and therefore hold back until there is a finding of fact in the court process.
3. **Support for the child being linked to the child's legal status rather than their needs** Research<sup>19</sup> has found that children in family and friends care have generally suffered the same adversities as those in unrelated foster care and their carers are poorer and are living in far more disadvantaged circumstances than unrelated foster carers, yet family and friends carers receive little if any support to raise these vulnerable children, as compared with unrelated carers. This is largely attributable to the fact that most children in family and friends care are deemed not to be 'looked after'. This is of importance because the local authority is under a **duty** to provide support to looked after children, including: assistance in managing contact with parents, other siblings etc; priority school placements; leaving care planning; allocation of a social worker and independent reviewing officer for the child and, their carers are foster carers who are paid and should have access to training, support groups etc. In contrast, support for those outside the looked after system is basically discretionary and thus a postcode lottery. This lack of adequate support for family and friends carers and the children they are raising outside the looked after system, has led to significant problems:

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<sup>18</sup> Farmer, E and Moyers, S. (2008) *Kinship Care: Fostering Effective Family and Friends Placements* (Jessica Kingsley)

<sup>19</sup> Farmer & Moyers 2008 *ibid.*, Hunt, J., Waterhouse, S. and Lutman, E (2008) *Keeping them in the family: Outcomes for children placed in kinship care through care proceedings* (BAAF)

- a) Disputes about whether the child is looked after or not have been the subject of repeated judicial review applications which are costly and take up a lot of court time – see *D-v-Southwark and SA –v-A Local Authority*,<sup>20</sup> yet the practice persists of local authorities placing children with relatives due to child protection concerns and then claiming that, because the relative accepted the child, it was in fact a private arrangement between the parents and the relative, hence the child is not looked after and the local authorities have no responsibilities to support the placement. This often occurs even when the local authority is simultaneously placing heavy demands on the relative, for example, to ensure that the parent must not have unsupervised contact.;
- b) Carers of children outside the looked after system are not entitled to financial support to compensate them for the often significant additional costs of taking on a child who is not theirs. For example, a survey by Family Rights Group of 205 family and friends carers in January 2010 found that 35% had left their job, lost their job or taken early retirement to raise these children and over a third had spent more than £1000 making changes to their home and getting things the child needed, when the child(ren) came to live with them.
- c) Contact – family and friends carers are often left alone to manage contact between the child and parents, despite this being extremely fraught (it might be their own son or daughter whose access to their grandchild, they have to severely restrict) , costly and sometimes leading to further litigation.
- d) Legal costs: public funding is means and merits tested (unless the applicant already has parental responsibility and is involved in care proceedings), hence any relatives with savings of more than a very modest income cannot obtain public funding. Moreover, local authority support for legal costs is sparse. Some carers therefore use the free legal advice service provided by Family Rights Group (see [www.frg.org.uk/advice](http://www.frg.org.uk/advice)) to understand their legal rights and the options open to them Many carers end up being litigants in person when they make an application to court or end up in debt, as a result of legal costs paid out. For example, the January 2010 survey of family and friends carers found that the average legal costs to secure the child’s future, for example, to be granted a residence order or special guardianship order, was **£3,640**, with the majority of carers receiving no financial help towards these costs. 82% of carers who spent over £10,000, were self-funded.

### Recommendations:

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<sup>20</sup> *Southwark-v-D* [2007] EWCA Civ 182; [2007] 1 FLR 2181 and *SA –v- A Local Authority* [2010] EWHC 848 (Admin)

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

b) In order to enable more children to live safely within their family instead of going into care, there needs to be a **coherent family and friends care framework**, addressing assessment and support. The recent statutory guidance for family and friends care is welcome, in that it requires local authorities to have a family and friends care policy and to provide support to children in family and friends care, irrespective of legal status, and may go some way towards improving the situation for some children, what is needed is a legislative lead including:

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

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

### 5.2.8 Split hearing with early threshold finding of fact

Given the serious impact on both the child and their family in the short and longer term, of a decision by the state to remove the child from its parents, it is essential that there is a rigorous judicial process to determine that a child is suffering or likely to suffer harm, such as to warrant state intervention. When the local authority makes an application for a care order, it is effectively claiming to have that evidence. It should not, therefore, need to spend up to a year collecting further evidence to establish the threshold.

#### **Recommendation:**

- a) That the local authority should present evidence as expeditiously as possible in an early threshold hearing so that this question can be 'got out of the way'. The parents may well seek a legitimate delay if they need to obtain expert evidence to challenge the local authority's case but it should be exceptional for the local authority to need further evidence to establish the threshold.

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

b) The court should have the power to direct the local authority to offer the family a Family Group Conference after the threshold criteria have been established. Drawing upon evidence that over 90% of family plans are accepted by the local authority<sup>21</sup>, it is to be expected that the vast majority of family plans arising out of such FGCs would be confirmed. Where they are not, the local authority may offer the family a further opportunity to plan for the child by reconvening the FGC or it may make its own plan for the child's long term care. Either way, the case would then need to be referred back to the court with the parties being represented, so that an order can be made in the child's best interests. It would not be appropriate for such an order to be made in a local authority-based tribunal or panel because the child's long term plan and legal status needs to be scrutinised by a court which can apply judicial independence, knowledge and expertise in analysing legal argument and evidence, as to the most appropriate order to secure the child's future well-being.

### **5.2.9 Judicial scrutiny of care plans**

Currently the Family Justice Review interim report recommends that to reduce court delay, the courts should no longer scrutinise care order applications in relation to "details" such as sibling placements, contact or contingency planning. We have huge concerns about this recommendation – our experience is that it is often only as a result of the judge's authority and scrutiny that these key elements of the child's plan are effectively addressed by the local authority, yet they are fundamental to the child's welfare and children's experiences, as recognised in paragraph 3.24 of the Interim Munro review.

**Recommendation:** That judges continue to scrutinise care plans in terms of placement decisions, contact, sibling arrangements and contingency planning.

## Appendix 1:

TABLE A REPRESENTING SAVINGS MADE TO COSTS OF CARE AND LEGAL PROCEEDINGS RESULTING FROM THE FAMILY GROUP CONFERENCE

LOCAL AUTHORITY	No of children prevented from becoming looked after/ how evidenced		Cost saved <sup>22</sup>	No of children returned to family from local authority care/how evidenced			No of legal proceedings prevented / how evidenced <sup>23</sup>		Costs saved	Overall cost saved
LA1	82	Social work evaluation	£2,315,762	3	Evidence d by referrer	£84,723	No Data			£2,400,485
LA2	38	Evidenced by referrer	£1,073,158	12	Evidence d by referrer	£338,892	38	Evidence d by referrer	£950,000	£2,362,050
LA3	30	Evidenced by referrer	£847,230	No Data			30	Evidence d by referrer	£750,000	£1,597,230
LA4	No Data			No Data			9	Evidence d by referrer	£225,000	£225,000
LA5	38	Evidenced by referrer	£1,073,158	26	Evidence d by referrer	£734,266	23	Evidence d by referrer	£575,000	£2,382,424

<sup>22</sup> Based on child being in care for 12 months costing £28,241. See table Costing care episodes of looked after children: standard costs to social services of case management processes (foster care) (Loughborough University cost calculator) in appendix

<sup>23</sup> The figures take into account the estimate in the DfES/DCA/Welsh Assembly (2006) *Review of the Child Care Proceedings System in England and Wales* p13 that the cost of the court process alone in individual care cases amounts to £25,000.

LA6	18	Evidenced by referrer	£508,338	15	Evidence d by referrer	£423,615	No data			£931,953
LA7	14	Evidenced by referrer	£395374	No Data			7	Evidence d by referrer	£175000	£570374
LA8	No Data			No Data			6	Evidence d by referrer	£150000	£150000
LA9	9	Evidenced by referrer	£254169	2	Evidence d by referrer	£56482	3	Evidence d by the plan	£75000	£385651
<b>TOTAL S</b>	<b>229</b>		<b>£6,467189</b>	<b>58</b>		<b>£1,637978</b>	<b>116</b>		<b>£2,900,000</b>	<b>£11,005167</b>