

Cooperation or coercion?

Children coming into the care system under voluntary arrangements

Findings and recommendations of the Your Family, Your Voice Knowledge Inquiry

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Cooperation or coercion: **A good practice guide**

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Foreword

We are delighted to welcome this Knowledge Inquiry into the current use of Section 20 of the Children Act 1989, which is the route by which a child can come into the care system without court proceedings. As joint chairs of the Your Family, Your Voice Alliance we bring very different personal experiences of Section 20. Angela now realises that her two sons were accommodated under Section 20 before being made subject to care orders and later adopted. Angela did not know that this was a voluntary arrangement. The whole process was coercive and Angela felt powerless. Robert experienced Section 20 from the perspective of a social work practitioner and then manager.

The Your Family, Your Voice Alliance, developed by Family Rights Group, brings together families, practitioners and academics and is working to counter the stigma and negative presumptions about families subject to, or at risk of, state intervention. The Alliance seeks to influence law, policy and practice to improve families' lives including safeguarding children. We became concerned about the use, or potential misuse, of Section 20, as families were telling us that their rights and abilities to exercise their responsibilities were being curtailed even though their children were voluntarily accommodated under Section 20. A number of court judgments also raised concerns about how Section 20 was being used in individual situations.

This Knowledge Inquiry throws a light on how Section 20 is currently being used. We urge the relevant authorities at national and local level to consider the recommendations and how the findings of the Inquiry can be used to improve practice.

We are grateful to Lankelly Chase Foundation for funding the work of the Your Family, Your Voice Alliance and we would like to record particular thanks to Caroline Lynch, Principal Legal Adviser at Family Rights Group for leading and undertaking the Knowledge Inquiry. Thanks also to the families, social work practitioners and lawyers who completed the online survey or contributed to one of the focus groups or challenge events that formed part of this work.



Robert Tapsfield and Angela Frazer-Wicks

Co-Chairs Your Family, Your Voice

Acknowledgements

Our thanks go to the many parents, wider family members and young people who shared their experiences, views and insights through the Inquiry's online consultation, in interviews and focus group discussions and at Inquiry events. Our thanks also to the members of Family Rights Group's parents and kinship care panels for their guidance and contributions throughout the Inquiry.

Thanks, too, to the social work & legal practitioners, academics and voluntary organisations that participated in the Knowledge Inquiry activities including the consultation and Challenge Event, and to Just for Kids Law who shared case study material which is included in this report.

The Knowledge Inquiry has been supported and assisted by the input of members of the Your Family, Your Voice Alliance Steering Group. The Inquiry has also benefitted from an expert Reference Group whose members include: Her Honour Isobel Plumstead, Professor June Thoburn (University of East Anglia), Maria Young (Swindon Borough Council), Cathy Ashley (Family Rights Group), Sophie Conway (Just for Kids Law), Emma Kendall (St Philips Chambers) and Robert Tapsfield & Angela Frazer-Wicks (Your Family, Your Voice Alliance Co-Chairs).

Our thanks are due to Professor Janet Boddy for preparing an original scoping review of voluntary placement arrangements in five European countries. Thanks similarly, go to Professor June Thoburn for her paper which significantly informed Chapter three's consideration of the original intention behind section 20 and the Inquiry's consideration of relevant research.

We are grateful too to Birkbeck College and Professor Daniel Monk for hosting the Inquiry's legal roundtable, to the lawyers and judges who contributed to the roundtable discussion and to those lawyers and students who gave their time to assist with data inputting tasks and the review of individual local authority policy and practice documentation. Our thanks also go to the members of Family Rights Group's Legal Practice Reference Group and to the Working Together with Parents Network for providing practical ideas and resources.

The Knowledge Inquiry was possible because of funding provided by Lankelly Chase Foundation and the support of Cathy Stancer, Director of Equalities and Rights, at the Foundation.

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Chapter 1: Introduction

1.1 Family Rights Group

Established in 1974, Family Rights Group (FRG) is the charity that works with parents in England and Wales whose children are in need, are system and with members of the wider family who are raising children who are unable to remain at home. FRG's expert advisers, who are child welfare lawyers, social workers, or advocates with equivalent experience, provide advice to 6000 families a year via a free and confidential telephone and digital advice service. FRG advises parents and other family members about their rights and options when social workers or courts make decisions about their children's welfare.

FRG campaigns for families to have their voice heard, to be treated fairly and get help early, in order to prevent problems escalating. FRG leads the policy work of the Kinship Care Alliance and the Your Family, Your Voice Alliance. FRG champions family group conferences and other policies and practices that keep children safe in their family network. FRG's parents' and kinship carer panels inform all such work.

Drawing upon the recommendations of the 2013 Care Inquiry,¹ FRG has worked with children in care, carers, social workers, parents and the statutory and voluntary sectors, to create a Lifelong Links operational model, designed to build lasting, supportive relationships for children in the care system. A three year trial of Lifelong Links is now taking place initially in seven local authorities in England and two in Scotland. It is being independently evaluated.

Family Rights Group is currently scoping a sector-led review into what Sir James Munby, President of the Family Division of the High Court of England & Wales has described as the 'clear and imminent crisis' facing the care system.² The goal of the review is to identify a small number of key changes that have the potential both to address the immediate crisis of increasing numbers of care cases and to provide sustainable approaches to managing demand for social care support, in order to achieve the best outcomes for children.

1.2 Your Family, Your Voice

Your Family, Your Voice³ is an alliance of families, practitioners and academics serviced by FRG. The Alliance works to transform the systems with which families whose children are subject to, or at risk of, state intervention come into contact. It seeks to:

- Counter the stigma, negative presumptions and judgemental approaches to families whose children are subject to, or at risk of, state intervention, by influencing how families are perceived by the public and portrayed by the media and politicians;
- Influence law, policy, practice and service design and delivery so that the child welfare, child mental health, youth justice and education systems promote effective human functioning and healthy relationships;
- Enable families to have a voice in policy and decision-making circles.

¹ FRG was one of eight voluntary organisations that ran the 2013 Care Inquiry which concluded that too often the care system breaks rather than builds relationships. Care Inquiry final report available at: <http://www.nuffieldfoundation.org/sites/default/files/files/Care%20Inquiry%20-%20Full%20Report%20April%202013.pdf>

² Sir James Munby, President of the Family Division. (September 2016). [View from the President's Chamber: Care Cases - The Looming Crisis](https://www.judiciary.gov.uk/wp-content/uploads/2014/08/pfd-view-15-care-cases-looming-crisis.pdf). Available at: <https://www.judiciary.gov.uk/wp-content/uploads/2014/08/pfd-view-15-care-cases-looming-crisis.pdf>

³ Further information about Your Family, Your Voice is available at: <http://www.frg.org.uk/involving-families/your-family-your-voice>

1.3 The Knowledge Inquiry

In summer 2016 the Your Family, Your Voice Alliance Steering Group considered a proposal to carry out a Knowledge Inquiry to examine in detail one aspect of the child welfare system in England and Wales. Against a background of the highest number of children in the care system in England since 1985 (70,440 as at 31 March 2016) and rising numbers of care proceedings before the family courts – a situation soon after described as a ‘looming crisis’ by the President of the Family Division, Sir James Munby⁴ – there was much to commend an Inquiry which would focus upon section 20 voluntary arrangements, which have become an increasingly controversial aspect of law, policy and practice concerning children entering the care system.

Most children enter the care system under a section 20 voluntary arrangement. The percentage has remained broadly stable over the last fifteen years, ranging from 59% of new entrants to care, to 68%. In the year ending 31 March 2016,⁵ 61% of children who entered the care system that year were under a section 20 voluntary arrangement.

A steady stream of Family Court and higher court decisions (‘case law’) have raised and continue to raise concerns about the use and misuse of local authority powers and duties to bring children into the care system by way of voluntary arrangements under section 20 of the Children Act 1989 (see section 1.6 below for an introduction to the nature and scope of section 20). There has been keen interest within the Alliance, and beyond, about how these provisions are being used by local authorities. Questions arising from case law and expressed in wider commentary and discussion are whether, far from being a voluntary arrangement, coercive practices are sometimes used; and whether section 20 has been used at times with either the intent or effect of avoiding court scrutiny of local authority intervention with struggling families and children viewed as being at risk by social workers. Further, these cases reflect a wider lack of clarity about the national picture regarding how section 20 is being used; how children and families experience its use; and what the associated challenges are for local authorities, children and families, where section 20 powers are exercised.

1.4 Structure of this report

The balance of this introductory chapter sets out in detail what section 20 of the Children Act 1989 is about and aims to provide an accessible review of the key features of the text of section 20. It highlights some differences with the legal framework in Wales. Chapter two explains the Inquiry methods – what activities were undertaken and the questions the Knowledge Inquiry has aimed to address. Chapter three asks what were the original intentions behind section 20 of the Children Act 1989 and provides a review of material that may help to shed light on that. Chapter four asks whether those original intentions are still relevant today. It considers some key developments in policy and practice together with relevant wider sector and societal trends. Chapter five presents the data from the Knowledge Inquiry and begins to reveal how section 20 voluntary arrangements are being used at present. The final chapter, Chapter six, sets out recommendations for change.

⁴ Sir James Munby, President of the Family Division. (September 2016). View from the President’s Chamber: Care Cases - The Looming Crisis. Available at: <https://www.judiciary.gov.uk/wp-content/uploads/2014/08/pfd-view-15-care-cases-looming-crisis.pdf>

⁵ Department for Education (2016) Children Looked After in England including adoption: 2015 to 2016 Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/556331/SFR41_2016_Text.pdf
Note also that the number of children who started to be looked after in England each year, has been increasing since 2012

1.5 What is Section 20 of the Children Act 1989 about?

1.5.1 Looked after children & ‘accommodation’

The Children Act 1989 is the leading piece of child welfare legislation in England and introduced the concept of the child who is ‘looked after’ by a local authority. A ‘looked after’ child is any child who is in local authority ‘accommodation’.

‘Accommodation’ here can mean a place to live with a carer that is provided by the local authority (for example, an unrelated foster carer; a place in residential care). Alternatively, it can refer to a place to live and a carer that is arranged and supported but not provided by the local authority. An example is a looked after child who is cared for by a grandparent, who has been assessed and approved as a foster carer for that child by the local authority. Both kinds of situations are known as ‘the provision of accommodation for children’.

The Children Act 1989 drew a distinction between two different groups of ‘looked after children’. These are:

- Children ‘looked after’ under a care order and for whom the local authority shares parental responsibility (the rights and responsibilities associated with being a parent). These children are looked after because a court has decided it is in their best interests for that to happen; and
- Children for whom the local authority provides ‘accommodation’ but does not share parental responsibility (s.22 CA 1989). These looked after children will often have become looked after without any court scrutiny or oversight.

It is section 20 of the Children Act 1989 that contains the powers and duties about this second group of looked after children.

1.5.2 When can a child become ‘looked after’ under section 20?

There are circumstances in which a child in England who is ‘in need’ must be provided with accommodation by a local authority, thereby becoming a looked after child under section 20.⁶ There are different circumstances in which a local authority may provide a child with accommodation that would lead to the child becoming looked after.⁷ Children’s services must provide accommodation for a child in four specific situations.⁸ These are where:

- There is no one who has parental responsibility for the child;
- The child has been abandoned;
- The person who has been caring for the child is prevented (for whatever reason) from providing suitable accommodation or care;⁹
- Where a child has reached the age of sixteen and children’s services consider that the child’s welfare is likely to be ‘seriously prejudiced if they do not provide him or her with accommodation’.¹⁰

A local authority children’s services department may also provide accommodation where they ‘consider that to do so would safeguard or promote the child’s welfare’.¹¹ They can provide accommodation for this reason even where a parent is able to provide accommodation for the child. In England, this provision is one way for local authorities to provide short term care (‘short breaks’) for children with disabilities. There is nothing in the drafting of section 20(4) itself which precludes its use in other situations.

All of these powers and duties are set out within section 20 itself and are, together with the arrangements that they can lead to, often individually, collectively and interchangeably referred to as ‘voluntary accommodation’, ‘section 20 agreements’, ‘section 20 arrangement’, or just ‘section 20’. Throughout the Inquiry and in this report we use the term ‘section 20 voluntary arrangement’.

⁶ The term ‘child in need’ is a reference to section 17 Children Act 1989. Local authorities have a duty to ‘safeguard and promote the welfare of children within their area who are in need’. The definition of a child in need is in section 17(10) Children Act 1989: a child is in need if he is (a) unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part; (b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or (c) he is disabled

⁷ For circumstances in which a local authority may provide accommodation to a child (s.20(2), (4) & (5))

⁸ For circumstances in which a local authority must provide accommodation to a child s.20(1)(a)-(c) and s.20(3)

⁹ Section 20(3) Children Act 1989

¹⁰ Section 20(5) Children Act 1989

¹¹ Section 20(4) Children Act 1989

1.5.3 How can section 20 voluntary arrangements be used?

Children who are in care under section 20 voluntary arrangements may be facing different circumstances and may be looked after in different types of placements. For example, section 20 voluntary arrangements can be used to provide care for abandoned children and for children separated from their parents or carers (such as relinquished babies or an unaccompanied refugee child). Section 20 might be used to provide a voluntary arrangement for young people who are homeless and need supported or semi-independent living accommodation.¹²

Section 20 voluntary arrangements can also be used to provide a short-term placement for children when families are struggling to prevent problems escalating or at a point of crisis. Section 20 voluntary arrangements are sometimes also used to provide regular short term breaks ('short breaks') for children with disabilities.

The range of different placements that children who are in section 20 voluntary arrangements may live in, is broad. It includes:

- being cared for by unrelated foster carers, including foster carers who could go on to adopt the child;
- in a residential placement;
- with a wider family member such as a grandparent or sibling who has been assessed as a foster carer; or,
- in a placement in which the parent is also present (e.g. a mother and baby foster placement; a residential assessment unit or with a family member who supervises the care provided by the parent).

Section 20 attracts much interest and attention, in part because it is the mechanism through which a child can become looked after through a voluntary arrangement which has been entered into with the child's parent (or other person with rights and responsibilities for the child) and without any court scrutiny or court decision-making.¹³

1.5.4 Use of section 20 with foster for adoption

The Government's foster for adoption policy as enacted in the Children and Families Act 2014 means that children who are looked after either under a care order or a section 20 voluntary arrangement, can be placed with potential adopters who are also approved as foster carers. In the case of children who are, or who it is proposed should be, looked after under a section 20 voluntary arrangement, they may be placed in a foster for adoption placement without the parents (or their family network) having had a right to free, independent legal advice prior to the arrangement being put in place.¹⁴ If care proceedings have not been initiated then there will have been no court oversight of the process nor will a court have made any decision that the child should be permanently removed from the care of the family. Recent legislative changes and Court of Appeal decision-making has served to reiterate the importance of minimising placement disruption for a child.

¹² See R (on the application of G) (FC) (Appellant) v London Borough of Southwark [2009] UKHL 26

¹³ This is known as 'Parental Responsibility' (PR) and is all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.

¹⁴ Where such placement is proposed or realised as part of pre-proceedings work under the Public Law Outline, those with parental responsibility will have the right to some limited legal advice and representation - see regulation 5(1)(e) of Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013

The 'status quo' argument, makes it much harder, once the child is living with the potential adopter, for the parent or the wider family to argue successfully in court that the child should move to their care.¹⁵

Family Rights Group raised significant concerns with Government ministers prior to the introduction of foster for adoption and expressly cited concerns in relation to its use for voluntarily accommodated children. In particular the charity expressed fears that children could be placed with a potential adopter (who is an approved foster carer) without parents, including those who have just given birth, having had free, independent legal advice about their rights and options. The Department for Education responded by stating in guidance that foster for adoption with children under voluntary arrangements "is likely to be unusual"¹⁶. A Freedom of Information survey of English local authorities in summer 2015 by FRG, found that within less than a year of the new provision being in place, at least 58 children who were in section 20 voluntary arrangements had been placed with a potential adopter in a foster for adoption placement. Freedom of Information requests made as part of this Knowledge Inquiry, provide an updated picture (see Chapter five).

1.5.5 The involvement and rights of parents and children

Section 20 specifies how parental rights and responsibilities shall interact, and are to be balanced with, the duties and powers that section 20 gives to local authority children's services departments.¹⁷ Section 20 also sets out when, and how, the age and views of a child are significant for determining a plan for a child to be accommodated.¹⁸

Children's services 'may not provide accommodation' for a child if a parent (or other person with parental responsibility) who is able to provide or arrange accommodation for the child objects to this.¹⁹ Once a child is in a section 20 voluntary arrangement and has become 'looked after', a parent may remove the child at any time.²⁰ This is because the arrangement is a voluntary one and neither the local authority nor the person caring for the child, acquires parental responsibility (PR). There is significant and continuing interest, however, about what information a parent may need in order to be in a position to object to a voluntary arrangement; what role 'agreement' and 'consent' have in relation to these arrangements²¹ and how far parents are clear about their ability to remove a child from a voluntary arrangement at any time.²²

¹⁵ See amendment to section 1(4)(f) Adoption and Children Act by section 9 Children & Social Work Act 2017) and also *Re W (A child)* 2016 EWCA Civ 793 where the Court of Appeal recently ruled that where a child had already been placed with prospective adopters (under a placement order) it was right to consider both the relationship between the child and the prospective adopters and the impact of moving the child, when considering competing applications from grandparents (for a special guardianship order) and the prospective adopters (for an adoption order).

¹⁶ Original guidance: Department for Education (July 2014) Early permanence placement and approval of prospective adopters as foster carers: Statutory guidance for local authorities and adoption agencies. Available at: http://dera.ioe.ac.uk/20575/1/Stat_guidance_FFA_8_July_2014.pdf, since incorporated into Department of Education. (June 2015). The Children Act 1989 guidance and regulations Volume 2: care planning, placement and case review. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/441643/Children_Act_Guidance_2015.pdf

¹⁷ Section 20(7)-(9)

¹⁸ Section 20(5) and 20(6)(a)-(b)

¹⁹ See s.20(7) CA 1989, but note that someone who is caring for the child and who has a Child Arrangements Order, Special

²⁰ Guardianship Order or an Order from the High Court can override such an objection and children's services can continue to provide accommodation with the agreement of that person

Section 20(8) CA 1989. The exception detailed at footnote 19 above also applies here

²¹ See for example, disparate commentary upon the significance of the Court of Appeal decision in *LB Hackney –and- Williams* [2017] EWCA Civ 26. Available at: <http://www.communitycare.co.uk/2017/03/02/what-does-this-latest-section-20-judgment-mean-for-social-workers/> and <http://www.communitycare.co.uk/2017/03/02/what-does-this-latest-section-20-judgment-mean-for-social-workers/>

²² See further discussion in Chapter four in relation to the use of foster for adoption arrangements in the context of section 20

Local authorities are required to ascertain the wishes and feelings of children about the provision of accommodation under a voluntary arrangement beforehand (so far as is reasonably practicable and consistent with the child's welfare).²³ Children who have reached the age of 16 years can themselves agree to be accommodated, even if a parent objects to this.²⁴ Case law and commentary have reflected concerns that young people aged 16 or 17 cannot easily or without undue complexity or resistance from local authority processes, access accommodation and support under section 20.²⁵

1.5.6 Voluntary arrangements in Wales

From April 2016 section 20 of the Children Act 1989 has been replaced by section 76 of the Social Services and Wellbeing (Wales) Act 2014. In Wales, a child does not need to be a 'child in need' in order to be in a section 76 voluntary arrangement.

Like parents of children who are in the care system in England under section 20, the parents of children 'looked after' under section 76 voluntary arrangements in Wales, retain their parental rights and the ability to remove their child or children from that arrangement, at any time. As is the case in England, young people in Wales aged 16 years can themselves agree to be provided with accommodation and become looked after.²⁶

An important difference in relation to the legal position in Wales as compared to England, is that section 76 does not contain a provision that mirrors section 20(4) of the Children Act 1989. This means that there is no power for a local authority in Wales to provide accommodation for a child if the local authority 'consider that to do so would safeguard or promote the child's welfare' even if the parent (or other person with parental responsibility) is willing and able to provide accommodation.

²³ Section 20(6)(a)

²⁴ Section 20(11))

²⁵ R (on the application of G) (FC) (Appellant) v London Borough of Southwark (Respondents) [2009] UKHL 26; and R (M) v Hammersmith and Fulham [2008] UKHL 14 and R (TG) v London Borough of Lambeth [2011] EWCA Civ 526

²⁶ See section 76(8)

Chapter 2: The Inquiry methods

2.1 Why a Knowledge Inquiry?

The Knowledge Inquiry was designed to take a collaborative approach to examining section 20 of the Children Act 1989. The Inquiry was premised upon facilitating a discussion with a wide range of stakeholders with direct experience of, or particular interest in, section 20 voluntary arrangements. The approach enabled a range of voices to be heard and for families, practitioners and others to contribute in the way they wished, by incorporating a range of different engagement activities. The Inquiry model allowed for a range of material to be drawn together, reviewed and discussed with a view to developing an informed set of conclusions and recommendations.

2.2 Knowledge Inquiry activities

There were seven main elements to the Knowledge Inquiry. These were:

- Discussion and workshop sessions held at a Your Family, Your Voice Alliance members' meeting in December 2016. These canvassed initial views and ideas to inform the priority areas of focus for the Inquiry.
- An online consultation using a series of tailored questionnaires, piloted before launch and hosted on the FRG website. Parents, kinship carers, young people, social care practitioners, lawyers, voluntary organisations, policy-makers and academics, were invited to contribute their experiences, views and insights about section 20 voluntary arrangements to the Inquiry. A short, online briefing note provided accessible background information about section 20 voluntary arrangements, about the Knowledge Inquiry itself, and addressed important ethical considerations relating to participation (consent, anonymity, privacy and data protection). A separate leaflet was prepared for children and young people.
- Freedom of Information requests made to all children's services departments in local authorities in England and Wales posed questions about individual local authority section 20/section 76 looked after child populations and associated local level policy and practice materials.
- A series of individual and focus group discussions which took place with: parents; parents and wider family members with learning disabilities and difficulties; and with social work practitioners and managers. This allowed themes emerging at different stages of the Inquiry to be considered in more detail with different audiences. Information leaflets and consent forms were used to address issues of informed consent to participation.
- A one day Challenge Event, bringing together parents, wider family members, practitioners and managers, policy makers and academics to discuss the information and ideas arising from the consultation and to assist with the process of developing the Inquiry's conclusions and recommendations.
- A legal roundtable bringing together solicitors, barristers, academics and judges with specialist interest and expertise of relevance to the Inquiry. Topics for discussion were informed by the findings from the online consultation and from the Freedom of Information responses. Discussion was designed to focus upon the existing legal framework, including its perceived strengths, as well as how the law and legal practice might respond to identifiable limitations, gaps and tensions.
- A scoping review of policy approaches to voluntary placement arrangements in five European countries, prepared by Professor Janet Boddy, Centre for Innovation and Research in Childhood and Youth, University of Sussex.

2.3 Purpose and areas of interest

2.3.1 The four Inquiry questions

The Inquiry has aimed to address the following four questions:

- What was the original purpose and intention behind section 20 of the Children Act 1989?
- Is that original purpose and intent still valid and relevant today?
- How is section 20 presently being used in England (and, in Wales, section 76 of the Social Services and Wellbeing (Wales) Act 2014)?
- What needs to change and what are the priorities?

2.3.2 Examining use and misuse

The powers and duties in section 20 have come under judicial scrutiny in the higher courts on a number of occasions since the Children Act 1989 was enacted in 1991. A review of some such cases reveals concerns about use and misuse of the powers and duties in a number of different contexts, including (but not limited to):

- The limits of the authority in decision making and the exercise of parental responsibility;²⁷
- Section 20 powers and duties as they apply to homeless young people aged 16-17, how these relate to child in need duties under section 17 of the Children Act 1989 and duties upon housing authorities;²⁸
- When children in the care of a relative or friend will be deemed to be residing in a private arrangement and when they are in fact 'looked after' within the meaning of section 20.²⁹

Case law: Section 20 and parental responsibility

Nearly ten years after enactment of the Children Act 1989, the High Court in the case of *R v Tameside MBC ex parte J* [2000] 1 FLR 942 examined the legal position regarding the effect of section 20 of the Children Act 1989 on parental responsibility and local authority decision-making powers. The case confirmed that a section 20 voluntary arrangement was a matter of cooperation between parents and the local authority. The court determined that the general duties on local authorities to safeguard and promote the welfare of a child in need (s.22(3) Children Act 1989) or to do what is reasonable to promote the child's welfare (s.3(5) Children Act 1989) did not entitle the local authority's views to trump those of parents (or others) with parental responsibility. As such, the local authority was not entitled to change the placement of a child looked after in a voluntary arrangement, against the wishes of the parents.

Case law: section 20 and homeless 16/17 year olds

In May 2009 the House of Lords in the case of *R (on the application of G) (FC) (Appellant) v London Borough of Southwark (Respondents)* [2009] UKHL 26 examined the duties arising under section 20 as they apply to homeless young people aged 16-17; how they relate to child in need duties under section 17 Children Act 1989 and further, how they relate to duties of housing authorities. The decision considered whether such a young person could come within the scope of section 20 duties and become an 'eligible child'³⁰ entitled to services from children's services. The Court found that they could and confirmed the questions that a local authority should address in order to determine whether a duty to provide accommodation under section 20 was owed in any given case.

²⁷ *R v Tameside MBC ex parte J* [2000] 1 FLR 942

²⁸ *R (on the application of G) (FC) (Appellant) v London Borough of Southwark (Respondents)* [2009] UKHL 26; and *R (M) v Hammersmith and Fulham* [2008] UKHL 14

²⁹ *R. (on the application of CO) v Surrey CC* [2014] EWHC 3932 (Admin); *R (SA) v Kent County Council* [2011] EWCA Civ 1303; *R (D)-v-Southwark LBC* [2007] EWCA Civ 182

³⁰ An eligible child is a looked after child aged 16 or 17, who has been looked after for a total of at least 13 weeks which began after s/he reached the age of 14, and ends after s/he reaches the age of 16.

Case law: section 20 and kinship care & family and friends care

In *R (D)-v- Southwark LBC* [2007] EWCA Civ 182, in placing a child with the former partner of the child's father, the local authority had done more than simply assisting in arranging a private fostering arrangement. The authority had exercised powers and duties under section 20 of the Children Act 1989. The local authority had contacted the partner and asked if she would care for the child and had told her that financial assistance would be provided. The local authority had also sought, and obtained, the agreement of the child's mother to the arrangement. The Court of Appeal found that: where the local authority played a major role in making arrangements for a child to be fostered, the child was more likely to be treated as looked after by the local authority than being in a private arrangement; and that where the local authority had helped to make a private arrangement, in which the foster carer would have to ask the parents for financial support rather than Children's Services, this should be made clear to everyone involved.

In *R (CO) v Surrey County Council* [2014] EWHC 3932 (Admin) the absence of a clear explanation to a grandmother that an arrangement was a private family arrangement and the absence of any full explanation of the financial consequences of that arrangement, pointed to the child being accommodated by the local authority. The court stated: 'It is relevant to consider whether the local authority has given a clear explanation of the financial and other consequences of it being a private fostering arrangement. If the local authority wishes to shed the burden of its duty to provide accommodation and arrange for a private individual to shoulder that burden, it must give a clear, full and proper explanation that this is the effect of the arrangement it is making.'

Decisions in lower and appeal courts since 2012 particularly, have seemingly exposed deficits in practice or understanding about section 20 in individual cases. These cases have been specifically concerned with good and fair practice when social workers seek to enter into section 20 voluntary arrangements with parents (or others with parental responsibility). Decisions have also considered the use of section 20 as a protective tool, prior to matters coming before a family court. They have shone a light on timeliness and transparency of practice in both pre-birth assessment work and in cases concerned with care planning for older children and the understanding and relevance of parental consent and objection.³¹ The President of the Family Division in the Court of Appeal case of *Re N* provided guidance to aid future good practice in addressing some of these matters.³² Many practitioners feel that the picture has become somewhat further complicated following the Court of Appeal's 2017 decision in the case of *LB Hackney and Williams* which considered the question of consent and objection in the context of section 20 voluntary arrangements and which sought also to clarify/confirm the status of judicial good practice guidance.³³

Case law: *N (Children) (Adoption: Jurisdiction)* [2015] EWCA Civ 111

Sir James Munby, President of the Family Division stated that for the future good practice requires the following:

1. Wherever possible the agreement of a parent to the accommodation of their child under s.20 should be properly recorded in writing and evidenced by the parent's signature.
2. The written document should be clear and precise as to its terms and drafted in simple and straight-forward language that the particular parent can readily understand.
3. The written document should spell out, following the language of section 20(8), that the parent can 'remove the child' from the LA accommodation 'at any time'.
4. The written document should not seek to impose any fetters on the exercise of the parent's right under s.20(8).
5. Where the parent is not fluent in English, the written document should be translated into the parent's own language and the parent should sign the foreign language text, adding, in the parent's language, words to the effect that: 'I have read this document and I agree to its terms'.

³¹ Lower and appeal court decisions include: *Coventry City Council v C, B, CA and CH* [2012] EWCA Civ 2190 (Fam); *Re B (Looked After Child)* [2013] EWCA Civ 964; *Re W (Children)* [2014] EWCA Civ 1065; *N (Children) (Adoption: Jurisdiction)* [2015] EWCA Civ 111; *Northamptonshire County Council v AS and Others* [2015] EWHC 199; *LB Hackney –and- Williams* [2017] EWCA Civ 26

³² *N (Children) (Adoption: Jurisdiction)* [2015] EWCA Civ 111

³³ Full citation: *LB Hackney –and- Williams* [2017] EWCA Civ 26. For discussion of the questions arising in relation to consent and objection in that case see FRG's piece for Community Care. Available at: <http://www.communitycare.co.uk/2017/03/02/what-does-this-latest-section-20-judgment-mean-for-social-workers/> and <http://www.communitycare.co.uk/2017/03/02/what-does-this-latest-section-20-judgment-mean-for-social-workers/>

The body of Appeal Court decisions has made clear that there is room for effective challenge where section 20 is used without clear information and timely planning. More than this though, it has served to highlight a lack of clarity about the national picture regarding how section 20 is being used; how children and families experience its use; what the associated challenges are for local authorities, children and families where section 20 powers are exercised and how to begin to address this situation.

2.3.3 Reflecting upon guidance

Guidance issued at the time of the enactment of the Children Act 1989 included explicit comment about the use of voluntary arrangements (see Chapter three for citations and discussion). Today, there is relatively sparse reference to section 20 voluntary arrangements across a range of statutory guidance applicable in England, with evident focus on the restatement of the text section 20 itself and little concrete direction for practitioners, in respect of application and practice.³⁴

Government responded to the 2008 and 2009 House of Lords decisions concerning section 20 duties owed to homeless 16 and 17 year olds³⁵ by issuing dedicated guidance to children's services and local housing authorities, about their duties under Part III of the Children Act 1989 and under the Housing Act 1996 as they applied to that group of young people.³⁶ Though, as detailed above, there has been a steady stream of recent case law concerned with section 20 voluntary arrangements with parents and the use/misuse of section 20 in such circumstances, there has been no statutory guidance issued dealing with current issues of good practice in individual cases³⁷ nor how section 20 voluntary arrangements may be used throughout a local authority as part of a wider goal of providing a good service to children and families.³⁸

A brief review of Working Together 2015

Working Together 2015 is statutory guidance issued in March 2015. As statutory guidance, it is addressed to local authorities and their staff about their functions under legislation. Local authorities are required to follow statutory guidance unless local circumstances indicate exceptional reasons that justify a variation.

Working Together 2015 provides a guide to 'inter-agency working to safeguard and promote the welfare of children'. Section 20 voluntary arrangements are mentioned only to confirm that a 'child-centred approach' applies to children accommodated under that provision; that local children safeguarding boards should ensure that they have published thresholds for intervention and assessments including in relation to s.20 Children Act 1989 arrangements; and a brief re-statement of the law from section 20(1)(a)-(c) confirming when local authorities must provide accommodation for children.³⁹

³⁴ See Part 6 Code of Practice (Looked After and Accommodated Children) for the comparable position in Wales. Available at: <http://gov.wales/docs/phhs/publications/160106pt6en.pdf>

³⁵ R (on the application of G) (FC) (Appellant) v London Borough of Southwark (Respondents) [2009] UKHL 26; and R (M) v Hammersmith and Fulham [2008] UKHL 14

³⁶ Department for Children and Families (2010) Provision of Accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8260/Provision_20of_20accommodation.pdf

³⁷ Including explicitly addressing the different ways in which use of section 20 powers can impact upon different groups of parents and children and what appropriate practice may be in these different contexts such as parents with learning disabilities or difficulties; children with disabilities requiring short break overnight provision or ongoing residential care provision; voluntary arrangements as a precursor to care proceedings

³⁸ See for example the limited guidance within The CA 1989 guidance and regulations Volume 2: care planning, placement and case review at paragraphs 2.36 and 2.37

³⁹ Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/419595/Working_Together_to_Safeguard_Children.pdf

In the aftermath of the flurry of case law up to 2015/16, the Association of Directors of Children's Services together with Cafcass and ADCSS Cymru published its own document to provide the social work profession with some guidance in relation to the use of section 20 voluntary arrangements.⁴⁰ This was intended neither to be informed by a review of the experiences of children, families and social work practitioners nor by review of the policy and legal landscape (past and present) as relevant context for developing guidance. That it was prepared at short notice in response to developments in case law may reflect a perception that social care practitioners required some (renewed) assistance and direction in relation to the use of section 20 Children Act 1989 voluntary arrangements.

The voluntary sector has also taken steps to provide guidance to both practitioners and parents about section 20 voluntary arrangements: The Transparency Project prepared a detailed guidance note about 'making decisions to use s.20 and how it should be done' to assist both practitioners and families.⁴¹ In January 2017 the Council for Disabled Children (CDC) published a guide for local authorities on short breaks for disabled children to address CDC's concern that local authorities are 'significantly reducing expenditure on short breaks in response to growing pressures on budgets for children's services'. The guide considered the legal framework for provision of overnight short break accommodation under both section 20(1) and section 20(4) of the Children Act 1989.⁴²

Further, some individual Designated Family Judges have issued their own local protocols/guidance concerning section 20 as it relates to the subsequent issuing of care proceedings. Some individual local authorities have also prepared materials variously for use by practitioners and families regarding the law and good practice in relation to section 20 voluntary arrangements.

This patchwork of guidance, of which there is no comprehensive review, further supports the view that there is no clear national picture of how local authorities go about discharging their duties and exercising their powers under section 20. It raises many questions about the role of, and trigger for, guidance from central Government and whether at this time, guidance in relation to section 20 is needed or would be welcomed by families, practitioners and the courts.

2.3.4 Research and section 20⁴³

There is limited recent research focussing upon section 20 voluntary arrangements. This is a position which can be contrasted with the body of literature about voluntary arrangements which existed both prior to and immediately following enactment of the Children Act 1989 (see Chapter three for discussion of this).

⁴⁰ Practice Guidance for the use of s20 Provision in The Children Act 1989 In England and the equivalent s76 of the Social Services And Well-Being (Wales) Act 2014 In Wales. Available at: http://adcs.org.uk/assets/documentation/S20_Practice_Guidance_final_Apr_16.pdf

⁴¹ Transparency project (updated 2017). Section 20 Guidance note. Available at: <http://www.transparencyproject.org.uk/press/wp-content/uploads/Section20GuidanceNoteApr17.pdf>

⁴² Broach, S. (2017) Short Breaks for Disabled Children. Council for Disabled Children. Available at: <https://www.ncb.org.uk/sites/default/files/field/attachment/Shortbreaks%20legal%20duty%20guide%20for%20LAs.pdf>

⁴³ Our thanks to Professor June Thoburn for her paper which has significantly informed this section

Voluntary arrangements in the context of child protection concerns

Use of accommodation and care proceedings in 'significant harm' cases was explored in a research overview published by the Department for Health in 2001 (based on research that straddled the introduction of the Children Act 1989 and the period following its enactment and implementation in the 1990s)⁴⁴. The research⁴⁵ indicated that section 20 voluntary arrangements had begun to be used more in cases in which there were child protection concerns, though there were wide variations between local authorities.⁴⁶

Short term use of voluntary arrangements

Some research in the latter part of the 1990s and early 2000s focussed on short term uses of section 20 voluntary arrangements. A 1999 study by Aldgate and Bradley looked at a series of short term ('support care') section 20 placements for families under considerable stress.⁴⁷ Parents were found to be positive about the service and felt it had assisted them. Children had some concerns/reservations but these were resolved over the course of placement. The voluntary and community based aspects of the service made it more acceptable to parents. Subsequent Department of Health commissioned research in 2004 focussed upon the use of short-break services (also referred to as 'respite care' services and 'foster support schemes') for non-disabled children living within their families. This study reported that such short-term placement arrangements appeared to be little used and that formal short-break schemes for these children operated in only a dozen authorities. The majority of short break services were found to be located within local authority fostering services and the study suggested that the schemes may be better located within family support teams, thus viewed very clearly as part of family support provision, with strong links to fostering teams. The study suggested that the prioritisation of mainstream fostering provision was the main barrier to a wider and well-funded short-break service of this kind.⁴⁸

Some project based research data about short term accommodation provision under section 20 for children without disabilities is available from the Fostering Network Wales' three year project looking at 'Support Care' (2005-2008).⁴⁹ The project involved working with local authorities to develop and share information and resources about 'Support Care', a service described as straddling family support and fostering services. It aimed to provide assistance to families in the form of a series of time-limited short break placements for children away from home under section 20 of the Children Act 1989. This was combined with family support work to help avoid family breakdown and children becoming looked after in the longer term – see key findings from the project in Box 1 on the next page.

⁴⁴ Department of Health. (2001). *The Children Act Now: Messages from Research*. London: The Stationary Office

⁴⁵ Some of the research studies were exclusively focussed on voluntary arrangements bringing children into care and some on broader issues of family support or safeguarding

⁴⁶ Packman, J., & Hall, C. (1998). *From Care to Accommodation: Support, protection and control in child care services*. The Stationary Office; Brandon, M., Thoburn, J., Lewis, A., & Way, A. (1999). *Safeguarding children with the Children Act 1989*. The Stationary Office; and Thoburn, J., Wilding, J., & Watson, J. (2000). *Family support in cases of emotional maltreatment and neglect*. The Stationary Office.

⁴⁷ Aldgate, J., Bradley, M., & Hawley, D. (1999). *Supporting Families Through Short Term Accommodation*.

⁴⁸ Greenfields, M. & Statham, J. (2004). *Support Foster Care: Developing a short-break service for children in need*. Thomas Coram Research Unit, Institute of Education, University of London.

⁴⁹ Williams, P. (2008) *Support Care: The Preventative Face of Foster Care*. A report to disseminate the findings of The Foster Network Wales Support Care Project 2005-2008. The Fostering Network Wales. Available at: https://www.thefosteringnetwork.org.uk/sites/www.fostering.net/files/public/resources/reports/support_care_wales_end_of_project_report.pdf

Box 1

Support Care: The Preventative Face of Foster Care. A report to disseminate the findings of The Foster Network Wales Support Care Project 2005-2008

Findings from this project included that:

- The majority of referrals during the project were for overnight accommodation at weekends and that the most prevalent reasons for referral included: parental/adolescent conflict; ADHD; sibling conflict; statement of educational need and parental mental health difficulties. Significant factors recorded under the 'other category' were epilepsy, hyperactivity/not sleeping at night, family overcrowding, breakdown in parental relationship and violent behaviour within the family
- The majority of support care placements were for up to 6 months and only very few lasted longer than 12 months
- Care experienced young people (who had not been in support care themselves) when asked about their views about the support care model, emphasised the importance of an early offer of such a service and help generally, for struggling families and children and the tailoring of support care to the individual family rather than provision of a 'standard' support package
- During the project, most support care placements came to an end in a planned way and some early by agreement. Of those placements that were completed, all of the planned aims were achieved in full
- Support care was only part of a package of support and other relevant support services needed to be in place within the same timescale, in order to ensure that outcomes were achieved.

In 2016 Roberts carried out qualitative case study research about the use of support care as a service for families at risk of breakdown and long-term separation, an area of enquiry which she describes as having 'been subject of scant empirical attention'.⁵⁰ Roberts' research examined three support care schemes and followed ten placements through to conclusion. Data was collected through 82 individual interviews and 22 participant observation sessions. The study aimed to examine the experiences of stakeholders; aims and outcomes associated with the service; and attempts to bring about change with families. The research highlighted that support care was used to support both parents and children. Examples included: parents being supported to manage health conditions alongside caring responsibilities and lone parents who had been supported to maintain part-time employment and substance rehabilitation. The services were premised on forging a positive relationship with parents, providing short breaks for children over a time-limited period (6-12 months) and being responsive. Some parents were reluctant to engage due to mistrust of services while others felt that the ideal provision had been identified. Children's responses were similarly mixed, with some feeling nervous, scared or reluctant. The study showed that in order to facilitate change, support carers needed to follow a process of 'supportive engagement, demonstration of positive alternatives and parental reflection'.

Outcomes reported by stakeholders included tangible improvements in family circumstances, for example overcrowding issues being resolved, progress with substance-misuse issues and developmental improvements in speech and mobility for younger children. In some cases, families would be referred for additional support services when the support care offer ended. In one case, this included a shared care option being provided. Tensions in the provision of support care mirrored wider difficulties in provision of family support services: 'family support services on the one hand seeking to provide an effective, responsive service, whilst on the other adhere to resource and organisational pressures'.⁵¹

⁵⁰ Roberts, L. (2016). Using Part-Time Fostering as a Family Support Services: Advantages, Challenges and Contractions. *British Journal of Social Work*. 26 (7): 2120-2136. Available at: <https://academic.oup.com/bjsw/article-abstract/46/7/2120/2770715/Using-Part-Time-Fostering-as-a-Family-Support?redirectedFrom=PDF>

⁵¹ Ibid

Cross-national perspectives

Professor Janet Boddy's 2017 scoping review of voluntary placement in five European countries prepared to inform the Inquiry, provides a current cross-national perspective on the use of voluntary placements.⁵² The review analyses relevant European policy and academic research about voluntary child welfare arrangements and specifically discusses six European Countries – England, France, the Netherlands, Denmark, Norway and Finland. It aims to provide a 'resource for reflection on policy and practice development in England, a way of looking with 'fresh eyes', by illustrating how, and why, different countries understand and approach voluntary arrangements for child placements'.

Boddy highlights that, as in England, the majority of children in the care system in France and Norway were, on the relevant annual census day, in care as a result of 'court/judicial measures'. In contrast, the majority of children in the Netherlands and the three Nordic countries were in care through voluntary agreements entered into with parents or with older children. The review helpfully incorporates information about each country's approach to 'family involvement about decision-making regarding placement and to combined placement and family support approaches'.

Boddy highlights research that identifies work with birth families when children are in placement as a 'challenging and too often neglected area of practice'. Closely linked to that are questions about what consent, in the context of voluntary arrangements really means and what the risks are of 'soft' coercive practice. Significantly, Boddy reports that such questions are being posed in each of the countries discussed in the scoping review.

Three key differences in comparison to the English context are noted in the review:

- A growing policy emphasis on partnership and working with birth families in some other countries which is grounded in an emphasis and understanding of parental rights and duties or by an 'an understanding of children's rights and best interests, including the child's right to a family life';
- A difference in the approach taken to using adoption as a route to permanence including both the extent of the use of adoption domestically and the extent of the emphasis placed upon carer continuity;
- The differing extent to which voluntary placement arrangements also include intervention with families into the problems which led to voluntary placement being needed. For example, legislative models require care plans for child and parent in Denmark and there are established models of family-centred care in the Netherlands.

These differences and the scoping review in general, provide a chance for reflection upon the system for voluntary arrangements in England and in Wales. Boddy goes on to highlight that voluntary placement arrangements are a complex and under-researched area, with available studies indicating that both domestically and cross-nationally there is 'limited understanding of how the policy frameworks are experienced by children, families and professionals'.⁵³ This dearth of research is particularly problematic given the emphasis placed upon 'research informed practice' within social work training and statutory guidance in England and Wales.

Whilst the Knowledge Inquiry was not designed to be, nor indeed claims to be, a substitute for focussed academic research in this area, it is part of a process of redressing the lack of research focusing upon section 20 voluntary arrangements. It provides an opportunity to present an overview of available central and local Government data about the section 20 looked after child population in England (and section 76 population in Wales), to review the limitations of what is publicly available. So too is it an opportunity to review what other data local authorities collect and collate in respect of children looked after under voluntary arrangements and their families.

⁵² Boddy, J. (2017) Voluntary Placement Arrangements: A scoping review of policy approaches in five European countries. Centre for Innovation and Research in Childhood and Youth, University of Sussex. Available as an annex to this report

⁵³ Ibid

Chapter 3: What were the original intentions behind section 20 Children Act 1989?

3.1 Introduction

This Chapter presents a brief commentary, with reference to publications preceding and accompanying the enactment of the Children Act 1989, to aid understanding of the original intentions behind section 20. What is presented is not an exhaustive or systematic review of the original statutory guidance, regulations and other material related to the Children Act 1989. Rather, the aim is to provide an impression, from some of these key sources, of the original vision for section 20 and the intentions behind it with reference to the concepts and principles underpinning the Children Act 1989 itself.

The exercise of exploring the origins of section 20 is an important first step in coming to an understanding about the provision's ongoing relevance in the child welfare system maybe today. Relevant material considered in the course of this chapter includes:

- The 1987 White Paper - The Law on Child Care and Family Services published prior to, and leading to, the drafting of the Children Act 1989;⁵⁴
- The 1989 Department of Health publication - Care Of Children: Principles and Practice in Regulations and Guidance;
- The 1989 Department of Health publication - An introduction to the Children Act 1989;
- The 1991 Department of Health publication - Children Act 1989 Guidance and Regulations Volume 2, Family Support, Day Care and Educational Provision for Young Children; and,
- The Children Act 1989 Guidance and Regulations Volume 3 Family Placements published in 1991 (paragraphs 2.13; 2.14 and 2.16).

3.2 Underlying concepts and principles in the Children Act 1989

Review of the material mentioned above reflects that a cornerstone of the Children Act 1989 was a desire to realise a child welfare and related justice system premised on greater and more effective partnership working between local authorities, parents and children in order both to better support families and to protect children. The term 'partnership' was not included in the Act but it was explicitly used in related guidance and regulations. As an FRG publication of the time details:

'The word partnership does not appear in the Children Act 1989 itself. It did however appear in the White Paper that preceded the Act; in the Introduction to the Children Act publication, in the guidance and regulations issued at the time of the Act's enactment; and in the Department of Health publication on principles and practice when working under the Act.'⁵⁵

The principles and practice guide explicitly referred to the detriment to children and families where a partnership ethos was not actively applied and enacted:

'Measures which antagonise, alienate, undermine, or marginalise parents are counter-productive. For example, taking compulsory powers over children can all too easily have this effect though such action may be necessary in order to provide protection.'⁵⁶

⁵⁴ The Law on Child Care and Family Services (1987) (Cm 62)

⁵⁵ Family Rights Group (1991) The Children Act 1989 – an FRG briefing pack

⁵⁶ Department of Health. (1990). London: HMSO

The Children Act 1989's introduction of the concept of the child 'looked after' by a local authority drew a distinction between children for whom the local authority shared parental responsibility (those who are subject of a care order), and those for whom it did not (children for whom the local authority provided or arranged accommodation under section 20) (see Chapter one for fuller discussion). By determining within the Children Act 1989 that the local authority could not share parental responsibility for a child unless a care order had been made by a court, legislators removed previous powers from local authorities to assume control over children and supersede children's and parental rights, simply by virtue of a child being in local authority accommodation. The principles and practice guide published by the Department of Health made clear that parents were to be considered 'in their own right' and 'as individuals with their own needs'. From that starting point it was clear that the Children Act 1989 reflected a watershed in addressing questions about proportionality, rights and power in the context of social work intervention.

Looking across the material highlighted in the opening paragraphs of the Act, as well as research literature available prior to the enactment of the 1989 Act, five matters appear to particularly exemplify the Act's wider focus on partnership and parental responsibility and also more specifically the original intentions behind section 20 voluntary arrangements. These are discussed in turn below and are:

- Emphasising support for children and families;
- Establishing preference for using voluntary arrangements;
- Facilitating short and long term voluntary arrangements;
- Promoting the use of written agreements;
- Achieving proportionality and participation.

3.3 Emphasising & facilitating support for children and families

Section 20 sits within Part III of the Children Act 1989, the Part concerned with 'Support for Children and Families'. This places section 20 outside of the parts of the Act concerned with the care and supervision of children under court orders (dealt with in Part IV of the Act) and separately from Part V, in which the Act provides the legal framework for the 'Protection of children'. Guidance from 1991 made clear that the definition of 'need' within the Children Act 1989 had been left deliberately wide to 'reinforce the emphasis on preventative support and services to families'.⁵⁷ It is evident that, in being located within the scope of Part III of the Act, section 20, voluntary arrangements are one of a suite of measures designed to facilitate the provision of support for children in need and families. It was not a service intended to be confined to use with families in which a child is at risk of significant harm and, indeed, this is what was expressly stated in Volume 2 of the Children Act 1989 Guidance and Regulations in which guidance about 'Family Support, Day Care and Educational Provision for Young Children' was provided.

3.4 Establishing preference for voluntary arrangements

Briefing documentation from campaigning groups of the day indicated that at the time of the conception of the Act, local authorities had been reluctant to enter into voluntary arrangements with families, preferring instead to have compulsory control over children. In parallel, findings from social research carried out prior to the Children Act 1989 and recounted within the 1991 Department of Health Messages from Research publication⁵⁸, highlighted that the use of compulsory measures to bring children into the care system did not necessarily lead to improved planning, or fewer placements/ placement changes and that it impeded the possibility of working collaboratively with parents and relatives.

⁵⁷ The Children Act 1989 Guidance and Regulations: Volume 2 Family Support, Day Care and Educational Provision for Young Children. London: HMSO

⁵⁸ Department of Health. (1991). Patterns and Outcomes in Child Placement: Messages from current research and their implications. London: HMSO

Research had also highlighted the significant challenge of the care system providing long term stable placements. Work specifically focussed on voluntary arrangements had found that consideration of voluntary admission into care at an early stage of involvement with children and families led to more admissions being made in a planned way. It was also found to lead to better planning and better collaboration with parents once children were in care (see further detail at Box 1 below). Section 20 thus very much responded to this body of research, in contrast to the prior landscape of compulsory intervention and identified resistance to voluntary arrangements. The introductory guide to the Act, published by the Department of Health in November 1989, set out the clear preference for voluntary arrangements with parents in circumstances where ‘a local authority has to arrange for a child to live away from home whether for a shorter or longer period of time because the parents are unable to care for him properly or need respite...’. It was explicit in stating that alternative care arrangements should ‘preferably be’ by way of voluntary arrangements with parents.⁵⁹

Box 1: Research prior to the Children Act 1989

Packman et al 1986 DHSS funded research ‘Who Needs Care? Social Work Decisions about Children’ focused on decisions about whether to ‘admit to care’ in two local authorities – one in which there was a high level of voluntary admissions and another where there was a higher level of ‘statutory admissions’. Drawing on 361 cases, interviews with parents and social workers at the time of admission and six months thereafter, the study advocated planned admission to care as a tool in avoiding family breakdown/crisis.⁶⁰

The study’s findings included:

- Earlier consideration of voluntary admission led to better planning and more collaborative working once the child/children became looked after;
- The authority with low level use of voluntary arrangements had fewer admissions into the care system but had higher numbers of emergency admissions that were more likely to lead to inappropriate placements, more placement moves for children, and increased likelihood of parents feeling alienated.
- There were some cases in which guidance regarding ensuring parents were appropriately informed of their legal rights and duties, was not followed.

Further research concerned with the problem of maintaining the link between children in care and their families included findings that compulsory measures led to fewer links with family and friends and a greater sense of exclusion from decision making on the part of parents.⁶¹

3.5 Facilitating short term and long term voluntary arrangements

Section 20 Children Act 1989 reflected the Government’s wish not to characterise children living away from home for unlimited periods of time as a failure on the part of either family or social worker. Where children had become looked after, Government made clear that the aim should be a speedy return home. Short-term respite placements were one of a range of services that could be provided to families and children and this was made plain within the principles and practice publication from the Department of Health in 1990:-

‘There are unique advantages for children in experiencing normal family life in their own birth family and every effort should be made to preserve the child’s home and family links. A wide variety of services, including short-term out-of-home placement, may need to be employed in order to sustain some families through particularly difficult periods.’⁶²

⁶⁰ Packman, J., Randall, J. and Jaques, N. (1986). *Who Needs Care? Social Work Decisions about Children*. Oxford: Basil Blackwell

⁶¹ Millham, S., R. Bullock, et al. (1986). *Lost in Care*. Aldershot: Gower. This study was based on a cohort of 450 children entering care in 1980 and followed up for 2 years

⁶² Chapter 2 in Department of Health, 1991. *The Care of Children: Principles and Practice in Regulations and Guidance*. HMSO London

Research detailed within the Department of Health 1991 Messages from Research publication confirmed an evidence base for such a short term care approach: ‘...most parents and children who experienced relatively brief periods of care felt that it achieved some benefits for them. Even if nothing else was done, care which was provided during a family crisis helped to resolve the immediate problem and offered most needed relief.’ and that ‘placements with the aim of “temporary care” almost always achieved this aim.’⁶³

3.6 Promoting the use of written agreements

The Act itself does not make mention of written agreements between the local authority and family when a section 20 arrangement is made but these were referred to in Department of Health Principles and Practice publication, and volume two and three of the Children Act 1989 Guidance and Regulations. The latter set out in some detail the benefits of written agreements with families and the significance of parental responsibility. For example:

‘2.14 Agreements between parents and the responsible authority should reflect the fact that parents retain their parental responsibility. The responsible authorities under these Regulations should not detract in any way from the parents’ continuing parental responsibility. Their continuing involvement with the child and exercise of their responsibility should be the basis of the agreed arrangements; all concerned in the arrangements should be aware of this.’⁶⁴

The Department recognised that information and explanation were pre-requisites for partnership working. Written agreements, (as a manifestation of, or tool for, partnership working, could operate effectively only where accompanied by appropriate information and explanation:

‘Partnership will only be achieved if parents are advised about and given explanations of the local authority’s powers and duties and the actions a local authority may need to take.’⁶⁵

3.7 Achieving proportionality and participation

The idea of proportionality was reflected in the concept of identifying and realising the ‘least coercive legal status consistent with meeting the child’s needs’. The role of parents and children in achieving that is arguably evident in the emphasis on a dynamic relationship between local authority, parent and child in a number of areas, including in relation to involvement in reviews and case conferences as well as specifically in respect of voluntary arrangements.⁶⁶ For example, it was envisaged that voluntary arrangements would follow the suggestion of a parent, specific request by a parent or where a parent ‘accepts proposals made by the local authority’. This was a seemingly positive encouragement to families to ask for this form of help and for local authorities to consider providing it.⁶⁷ In describing what each party will bring to a voluntary arrangement, both in terms of decision-making and realising the plans for the child, guidance and regulations explicitly stated:-

‘The parents contribute their experience and knowledge of the child to the decision. The local authority brings a capacity to provide services, to co-ordinate the contribution of other agencies and to plan for and review the child’s needs.’⁶⁸

This is an altogether more instrumental role for parents as compared to that which existed prior to the Act.

⁶³ Rowe, J., Hundleby, M. & Garnett, L., (1989) Child Care Now. BAAF as cited in Department of Health. (1991). Patterns & Outcomes in Child Placement: Messages from current research and their implications. London: HMSO

⁶⁴ Department of Health. (1991). The Children Act 1989 Guidance and Regulations Volume 3: Family Placements. London: HMSO

⁶⁵ Paragraph 2.10 in Department of Health. (1990). Introduction to the Children Act 1989. London: HMSO

⁶⁶ Chapter 2 in Department of Health. (1991). The Care of Children: Principles and Practice in Regulations and Guidance. London: HMSO

⁶⁷ Paragraph 2.10 in Department of Health (1990) Introduction to the Children Act 1989. London: HMSO

⁶⁸ Department of Health. (1991). The Children Act 1989 Guidance and Regulations Volume 3 Family Placements. London: HMSO

Children's views were placed centrally in the section 20 legal framework through the requirement (section 20(6)) to ascertain the wishes and feelings of the child, as far as reasonably practicable and consistent with the child's welfare; these were in turn to be given 'due consideration'. In parallel, young people aged 16 or over were to be able to seek, or agree to be provided with their plan which:

'should take into account the wishes and the feelings of the child where he is of sufficient understanding' and in respect of children over the age of 16. In these cases, the local authority will be working closely with the child to agree the plan for providing accommodation'.⁶⁹

The intention appears to have been to establish a positive duty on local authorities for children, like their parents, to now have greater say and involvement from the inception of the voluntary 'looked after' arrangement onwards.

3.8 Conclusion

Of the five original intentions suggested within this Chapter:

- emphasising support for children and families;
- establishing preference for using voluntary arrangements,
- facilitating short and long term voluntary arrangements;
- promoting the use of written agreements;
- achieving proportionality and participation

all sit comfortably and naturally under a wider umbrella theme of partnership; highlighted as being a central underlying concept of the entire Children Act 1989. Chapter four considers the second of the Knowledge Inquiry's questions – whether those original intentions are still relevant today.

⁶⁹ Ibid

Chapter 4: Are those original intentions still relevant today?

4.1 Introduction

This Chapter starts from a proposed understanding (as suggested at the conclusion of Chapter three) that the original intentions behind section 20 sit comfortably and naturally under a wider umbrella theme of partnership. This Chapter examines in more detail the meaning of partnership and research which has explored the forms that this may take as well as the barriers to it. Thereafter, some of the features and trends within today's child welfare system are considered before conclusions about the ongoing relevance of partnership and voluntary arrangements specifically are considered.

4.2 Forms of partnership

Morris & Featherstone et al. (forthcoming) carried out a targeted literature review to explore the concept of partnership as part of their research examining how families make sense of seeking help and working with welfare services.⁷⁰ They highlight that partnership in the context of state services for families (including services within the child welfare system) is underdeveloped and can take several different forms. They suggest that some authorities take a 'partnership-lite' approach in which families may be consulted about planning or may share information which contributes to professional decision-making processes. They also consider more robust forms of partnership working such as the use of family-led decision making in family group conferences or provision of advocacy services to 'propel forward family involvement'. A recently published evidence review identified family group conferencing as one model through which the benefits of 'family group decision-making and shared decision-making between practitioners' can be realised.⁷¹

4.3 Hindering and strengthening partnership

Morris and Featherstone's study explores factors that hinder and strengthen families and services working together. The researchers identify that seeking help was often the start of a 'difficult journey around and through services' and that families' accounts of 'cold-hearted encounters [which] suggests a need to pay attention to inter-personal skills and humane practices'.⁷² Lack of resources, changes of personnel, and not working with the whole family are amongst the factors identified as hindering partnership working. Time - time limited services; rushed procedures and; time spent waiting for services - was also identified as a barrier to working together. Excellent interpersonal skills, growing knowledge and skills within the family, and services that performed to the requisite standards were all identified by families as key to strengthening working together.

In her discussion of 'soft coercion' within a scoping review of voluntary placement arrangements in six European countries prepared to inform this Inquiry, Boddy considers how families may agree to voluntary placement arrangements in response to implicit or explicit threat of a court-ordered placement.⁷³ This is certainly a theme that has informed the decision of the Your Family, Your Voice Alliance to embark upon a Knowledge Inquiry focusing upon section 20 voluntary arrangements and a concern that has arisen within recent case law (see Chapter 2 for discussion of both these points). Where 'soft coercion' arises, the idea of genuine cooperation falls away and in the face of coercive practice that which is voluntary or partnership based/driven may be so in name only.

⁷⁰ Morris, K., Featherstone, B., Hill, K., & Ward, M. (forthcoming) 'Stepping up, stepping down': how families make sense of seeking help and working with welfare services. Your Family, Your Voice Alliance

⁷¹ M, Molloy., Barton, S., & Brims, L. (2017). Improving the effectiveness of the child protection system: Overview. Local Government Association & Early Intervention Foundation

⁷² In respect of families who do not seek help from services there may be a separate suite of questions to pose including: how accessible local authority 'front door' referral processes are and what role fear may place in family decision-making about asking for help

⁷³ Boddy, J. (2017) Voluntary Placement Arrangements: A scoping review of policy approaches in five European countries. Centre for Innovation and Research in Childhood and Youth, University of Sussex. Available as an annex to this report

4.4 The child welfare system today

What follows is not intended as a comprehensive review of every feature of, or every trend arising within or around, the child welfare system in England or Wales. Instead, this section highlights some of the data and research which help to provide a picture of the child welfare system today. This provides a yardstick against which to start to evaluate the relevance of the original intentions behind section 20 and indeed the Children Act 1989 more generally.

4.4.1 The numbers of looked after children

As at 31 March 2016 there were a total of 70,440 looked after children in England, the highest number since 1985.⁷⁴ More than a quarter of those children (27%) are looked after under a section 20 voluntary arrangement. Data from the Department for Education ('DfE' hereafter) reveals little variation over twenty years in the numbers of looked after children who are under a voluntary arrangement, with 18,400 as of 31 March 1993 and 18,730 as of 31 March 2016 (with the lowest figure 17,200 on 31 March 2007 and highest 20,630 on 31 March 2010).

However, the proportion of children on a voluntary arrangement as a total of all looked after children in England has fluctuated as the numbers of total looked after children has risen in recent years. As of 31 March 1993, 36% of the 51,200 children in the care system were under a voluntary arrangement; as of 31 March 2016 27% of the 70,440 looked after children are under a voluntary arrangement.

Para 4.4.3 below explains that whilst a minority of children in care are under a voluntary arrangement, nevertheless most children enter the care system under a voluntary arrangement e.g. 61% of children who started to be looked after in the year to 31 March 2016 entered the care system under a voluntary arrangement.

Table 1: Looked after children in England, under s.20 Children Act 1989, based on Department for Education statistical releases

Looked after children in England 2011 to 2016						
Number of:	31.3.11	31.3.12	31.3.13	31.3.14	31.3.15	31.3.16
All looked after unaccompanied asylum seeking children (UASC)	2740	2230	1950	2050	2740	4210
All looked after children (including UASC)	65510	67070	68060	68810	69480	70440
All Children looked after under section 20	19670	18890	17710	18780	19420	18730
Children looked after under s.20 as % of total looked after children	30%	28%	26%	27%	28%	27%

Examination of recent data shows that in Wales the looked after children population has slowly increased (by 4% between 31 March 2011 and 2016) whilst the proportion of children looked after under a section 20 voluntary arrangement has slowly reduced whilst still remaining a notable proportion of the overall population of children in the care system (see Table on the next page).

⁷⁴ Department for Education (2016) Children Looked After in England including adoption: 2015 to 2016 Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/556331/SFR41_2016_Text.pdf . Note also that the number of children who started to be looked after in England each year, has been increasing since 2012

Table 2: Looked after children in Wales, accommodated under s.20 Children Act 1989 based on data published by the StatsWales⁷⁵

Looked after children in Wales, accommodated under s.20 Children Act 1989						
Number of:	31.3.11	31.3.12	31.3.13	31.3.14	31.3.15	31.3.16
Children looked after under s.20	1310	1330	1175	1220	1045	940
Looked after children – total	5410	5720	5765	5745	5615	5660
Children looked after under s.20 as % of total looked after	24.2%	23.2%	20.3%	21.2%	18.6%	16.6%

4.4.2 The children subject to care proceedings and their parents

The number of care cases (applications coming before the courts under section 31 of the Children Act 1989) in England has reached record levels. In Wales, data published by Cafcass Cymru⁷⁶ showed a 9% rise in care proceedings in 2015/16 as compared to 2014/15.⁷⁷

In September 2016 in his 15th View from the President’s Chambers, Sir James Munby, President of the High Courts of the Family Division for England and Wales drew attention to the “seemingly relentless rise in the number of new care cases.” He stated “We are facing a crisis and, truth be told, we have no very clear strategy for meeting the crisis. What is to be done?”⁷⁸

Geographical variations

Further analysis of care order applications data reveals significant variations in the rate of care order applications per 10,000 child population between different local authorities. Family Rights Group is currently working across the child welfare and family justice sector, including with families and in conjunction with academics to scope a review to facilitate a more informed picture as to which children are most likely to be subject to care proceedings, and the factors which explain both the rise in proceedings and variations across authorities. Very recent research by Professors Broadhurst and Harwin has highlighted, for example, that children in the northwest and north east account for 27% of all children in England yet 35% of all care proceedings emanate from those regions.⁷⁹

⁷⁵ Available at: <https://statswales.gov.wales/Catalogue/Health-and-Social-Care/Social-Services/Childrens-Services/Children-Looked-After/childrenlookedafterat31march-by-localauthority-legalstatus>

⁷⁶ The role and function of Cafcass Cymru is to: provide a voice for any child in Wales that is involved with the Family Justice System in Wales; and advise Family Courts upon the best course of action for children in Wales, to ensure that the child’s needs and best interests are addressed

⁷⁷ Cafcass Cymru. (2016). Annual report 2015-16. Available at: <http://cafcass.gov.wales/leaflets-and-publications/our-annual-reports?lang=en>

⁷⁸ Sir James Munby, President of the Family Division. (September 2016). View from the President’s Chamber: Care Cases - The Looming Crisis.

Available at: <https://www.judiciary.gov.uk/wp-content/uploads/2014/08/pfd-view-15-care-cases-looming-crisis.pdf>

⁷⁹ Broadhurst, K., and Harwin, J. (2017) detailed in Tickle, L. Children in north of England 70% more likely to face care process, study shows.

Available at: <https://www.theguardian.com/society/2017/jul/03/children-in-north-of-england-70-more-like-to-be-taken-into-care-study-reveals>

The age of looked after children and children involved in care proceedings

Examination by age of *all* looked after children, as of 31 March each year, shows a rise in the number of children of all age groups in the care system over the last twenty-three years. However, proportionately the largest increase has been in babies under one-years old and teenagers aged 16 years and over.

Table 3: Number of looked after children by age⁸⁰

Number of looked after children by age					Change 1993-2016	
Age as at 31 March	1993	2008	2013	2016	Number	%
	Under 1	1310	2900	4310	3540	2230
1 to 4	6800	9000	12330	9140	2340	34.41%
5 to 9	10900	10400	13250	14090	3190	29.27%
10 to 15	21400	24900	24460	27220	5820	27.20%
16 and over	11170	12200	13710	16460	5290	47.36%

Whilst there has been a rise in 16 years and over unaccompanied asylum seeking children who are looked after in the last three years, that does not account for the overall rise in over 16s in the care system over a longer period. For example of 31 March 2008 there were 3530 unaccompanied asylum seeking children who were looked after, only a few hundred less than in 31 March 2016.

Professor Harwin's examination of care proceedings since 2013/14 shows that the age of children who are the subject of care cases has risen. The proportion of children under the age of one year old at the start of proceedings represented 30% of all children in cases between 2008/9 and 2012/13. In contrast in 2015/16 they represented 25% of all children. Children aged 10 years or older at the start of proceedings has risen from 20% of all children in 2013/14 to 23% in 2015/16.⁸¹

Young mothers, sequential removals

Research by Broadhurst has shone a spotlight on the numbers of mothers who have sequential children removed in care proceedings. Her examination of court records relating to 43,541 mothers who had children removed from their care between 2007 and 2014 revealed that large numbers of young mothers, in particular, who lost multiple infants and children through the Family Court in England. Almost one quarter of mothers whose children were the subject of care proceedings faced repeat proceedings within 7 years, with the figure rising to a third amongst those mothers who were teenagers.⁸² Approximately 50% of the mothers had mental health issues mentioned in their first set of proceedings; 65% had domestic abuse mentioned; and approximately 90% had experienced some form of neglect or abuse (emotional, physical sexual) in their childhood.⁸³

Parents who are care experienced/care leavers

A growing body of research has highlighted the prevalence of early pregnancy and early parenthood amongst young people who have themselves been in the care system as well as their increased likelihood of experiencing the removal of a child, including to adoption.⁸⁴ Further analysis carried out as part of Broadhurst's research in relation to mothers in England who had children removed between 2007 and 2014, found that six out of ten mothers who had children sequentially removed, were teenagers when they had their first children and that 40% of these mothers had themselves been looked after in the care system during their own childhood.⁸⁵

⁸⁰ Department for Education looked after children data available at:

<http://webarchive.nationalarchives.gov.uk/20130323093419/http://www.education.gov.uk/researchandstatistics/statistics/allstatistics/a00194482/children-looked-after-by-local-authorities-year-en> <https://www.gov.uk/government/statistics/children-looked-after-by-local-authorities-in-england-year-ending-31-march-2011> <https://www.gov.uk/government/statistics/children-looked-after-in-england-including-adoption-2015-to-2016>

⁸¹ Harwin, J. & Alrouh, B. (April 2017). New entrants and repeat children: continuity and change in care demand over time. *Family Law*

⁸² Broadhurst, K. et al. (2015). Connecting Events in Time to identify a Hidden Population: birth mothers and their children in recurrent care proceedings in England. *45 British Journal of Social Work* 2241

⁸³ Broadhurst, K and Mason, C. (2015). Mothers experiencing recurrent removal of children –presentation at Your Family, Your Voice Event on 2nd December 2015. Interview participants were accessed via local authorities and care leavers are still often known to local authorities

⁸⁴ See for example: Knight, A., Chase, E. & Aggleton, P. (2006). 'Someone of your own to love': Experiences of being looked after as influences on teenage pregnancy. *Children and Society*, 20, p391-403; Centre for Social Justice (January 2015). Finding Their Feet, Equipping care leavers to reach their potential. Available at: <http://www.centreforsocialjustice.org.uk/publications/finding-their-feet>

⁸⁵ Broadhurst, K. et al. (2015). Connecting Events in Time to identify a Hidden Population: birth mothers and their children in recurrent care proceedings in England. *45 British Journal of Social Work* 2241

Roberts et al. has recently published research based upon analysis of 374 social work records for children placed for adoption by local authorities in Wales between July 2014 and July 2015. The analysis revealed that one in four mothers and one in five fathers of children placed for adoption were in the care system as children.⁸⁶ The study also found that mothers who had been in the care system themselves were more likely to have diagnosed mental health problems. They were also less likely to appeal an adoption plan than a non-care leaver parent. The study suggested that this could be because care leaver parents have fewer resources with which to secure legal advice to oppose such plans, or that their past experiences lead to them feeling powerless in the face of the social care system.

The Council of Europe's Committee on Social Affairs, Health and Sustainable Development reported in January 2015 on the legislation and practice in European Member States in relation to removing children from their families. The report highlighted the importance of new parents including young parents (and one-parent families) in particular being offered help early on to develop good parenting techniques. The report highlighted that even where a child had been removed from a young parent, it was important to still provide the family with support to maximise the chances of successfully reuniting child and parent.

Parents with learning disabilities or difficulties

Various estimates have suggested that between 40% and 60% of parents with learning disabilities have their children removed from their care. The Working Together with Parents Network at the University of Bristol has highlighted evidence that parents with learning disabilities may be reluctant to seek the support they need, for fear of having their child removed. They suggest that such fear is 'well grounded' and cite research examining data from the English Survey of Adults with Learning Disabilities which showed that in 2003/4, 40% of parents with learning disabilities were not living with their children and that 60% of mothers with learning disabilities in the survey who were living alone or with a partner or husband did not have their children (aged under 18 years) living at home with them. Mothers were found to be more likely to have their child/ren living with them if they (the mother) were also living with another relative.⁸⁷

Research by Tarleton and Ward (2007) based on discussion with 30 parents found that there were different ways in which parents with learning disabilities were 'being helped to parent with support' and that these included help to understand court process; help to develop confidence, feel better, get their voices heard, develop learning skills, overcome 'bigger' problems associated with social disadvantage circumstance. The authors reported that if parents had access to such supports, they could keep their children and enjoy an enhanced quality of family life together. The research concluded that 'with appropriate help from services parents can be enabled to support each other, to develop confidence, and to engage more positively with the professionals and systems responsible for safeguarding the welfare of their children'.⁸⁸ Case law has underscored the importance of social work and family support practitioners being able to work appropriately with parents with learning disabilities.⁸⁹

⁸⁶ Roberts, L. (2016). Using Part-Time Fostering as a Family Support Service: Advantages, Challenges and Contractions. *British Journal of Social Work*. 26 (7): 2120-2136. Available at: <https://academic.oup.com/bjsw/article-abstract/46/7/2120/2770715/Using-Part-Time-Fostering-as-a-Family-Support?redirectedFrom=PDF> . See also Lynch, C. (2016). Young parents' involvement in the child welfare system. Family Rights Group.

⁸⁷ See Emmerson et al. (2005). Adults with learning difficulties in England, 2003/4. In Working Together with Parents Network. (2008) Facts and figures about parents with learning disabilities in England. Available at: http://www.bristol.ac.uk/sps/media/WTWPN_documents/facts-pwld.pdf

⁸⁸ Tarleton, B. and Ward, L. (2007). Parenting With Support: The Views and Experiences of Parents With Intellectual Disabilities. *Journal of Policy and Practice in Intellectual Disabilities*. Vol 4 (3) 194-202

⁸⁹ See Mr Justice Baker in *Kent CC v A Mother* [2011] EWHC 402 (Fam) at para 135: 'All social workers, and family support workers, working with children and families need to be trained to recognise and deal with parents with learning disabilities. The Guidance issued by central government needs to be followed'

4.4.3 Children moving in and out of care

Most children who become looked after enter care under a voluntary arrangement. Department for Education data concerning the 32,050 children who started to be looked after in the care system in England in the year ending 31 March 2016 reveals that 61% (19,400) started their time in the care system that year under a section 20 voluntary arrangement.⁹⁰

Of the children who ceased to be looked after in the care system during the year ending 31 March 2016 (31,710), around half were leaving a section 20 voluntary arrangement of some kind.⁹¹ As Boddy summarises in her scoping review of voluntary placement arrangements in five European Countries⁹², such data raises a number of significant questions:

‘While it is hardly surprising that children placed under voluntary arrangements are more likely to return home, the large numbers of children entering and leaving care arrangements raises question about how voluntary arrangements are used – and in particular – about the extent to which children and families are supported to address the issues that led to placement before a child returns home’.

Farmer’s 2011 research on reunification identified the value of the right support being provided to families with complex problems, for as long as needed, to help parents to meet the needs of children returning home from care.⁹³ The Care Inquiry, further confirmed that the ‘intensive team around the family’ approach might support the return of children home from care and that working with families includes helping children and adults to understand past issues in order to cope with the future.⁹⁴

More recent research focusing on the educational outcomes for children who have spent time in the care system identified that many such children will have experienced changes of placement and may well have had to change schools too. Research by Sebba et al. (2015) conducted using information from the National Pupil Database and data about Looked After Children in England examined what factors may underpin or limit the educational progress of this group of children.⁹⁵ Importantly, the findings examined the situation of children who, at the end of Key Stage 4, were not looked after but were Children In Need. These children were found to be more likely to have special educational needs, poor attendance, and more exclusions and to have progressively poorer relative attainment as they went through school as compared to the children who were in care.

⁹⁰ Department for Education (2016) Children Looked After in England including adoption: 2015 to 2016. Table C2 Available at: <https://www.gov.uk/government/statistics/children-looked-after-in-england-including-adoption-2015-to-2016>

⁹¹ Department for Education (2016) Children Looked After in England including adoption: 2015 to 2016. Table D1 Available at: <https://www.gov.uk/government/statistics/children-looked-after-in-england-including-adoption-2015-to-2016>

⁹² Boddy, J. (2017) Voluntary Placement Arrangements: A scoping review of policy approaches in five European countries. Centre for Innovation and Research in Childhood and Youth, University of Sussex. Available as an annex to this report.

⁹³ Farmer, E., et al. (2011). Achieving Successful Returns from Care: What Makes Reunification Work?, London, BAAF

⁹⁴ The Care Inquiry (2013). Final report available at: <http://www.nuffieldfoundation.org/sites/default/files/files/Care%20Inquiry%20-%20Full%20Report%20April%202013.pdf>

⁹⁵ Sebba, J, Berridge, D, Luke, N., Bell, K., Strand, S., Thomas, S., Sinclair, I., & Higgins, A. (2015) The Educational Progress of Looked After Children in England: Linking Care and Educational Data. Nuffield Foundation

Further, children who have moved into the care system and back out of it will have experienced changes of placement and may well have had to change schools too. The same study found that around 16% of children who have been in care on a short-term basis will change secondary school; 9% of children who are in need but not in care will experience a change of secondary school.⁹⁶ In light of such data, it appears important that children who have previously been in care and return home and who may be children in need are properly supported to succeed at school. It indicates that wider questions about the quality of planning and support where children return home from care requires greater focus and that providing for the educational needs of children in that context should be a priority.

Reforms in the Children and Social Work Act 2017 are designed to improve educational outcomes for children in the care system, and those who leave care to become adopted or to be raised with a family and friends carer. These children also rightly qualify for pupil premium plus. However, those who return to their parents from care, are not eligible for these measures.

4.4.4 Child protection investigations, deprivation and domestic violence

Of equal interest is information about how children come to the attention of children's services and to the child protection system. Recent research led by Professor Andy Bilson has highlighted, with reference to Government published data, that there has been a 79.4% increase in child protection investigations between 2009–10 and 2014–15.⁹⁷ A NSPCC report published in 2017 reported the number of children on a child protection plan has approximately doubled since 2001/02.⁹⁸

Research by Professor Bywaters has found that children living in the poorest areas of the UK are much more likely to become involved with the child protection system and be taken into care than children in less deprived areas. In the most deprived 10% of neighbourhoods, on average, around one child in every 90 is in out-of-home care compared to only one child in every 1000 in the 10% least deprived neighbourhoods.⁹⁹

Bilson notes that over much of the five-year period that his study was examining, the Government's safeguarding policy was attempting to reduce statutory assessments and investigations through provision of Early Help and the Common Assessment Framework – to help families at the earliest point in time to prevent difficulties escalating to points of crisis or child protection concerns. Despite this, instead of seeing a reduction in the numbers of child protection investigations there was an increase.

⁹⁶ Ibid. Note also that the study cited previous research that has suggested that placement changes and school changes are both associated with poorer educational outcomes

⁹⁷ Bilson, A, and Martin, K. (2016). Referrals and Child Protection in England: One in Five Children Referred to Children's Services and One in Nineteen Investigated before the Age of Five. *British Journal of Social Work* (2016) 0, 1–19

⁹⁸ Raff, A. and Brown, A. (2017) Trends in Child Protection. NSPCC. Note that the report acknowledges that the data is limited in only referring to those children that have been identified by local authorities as in need of a child protection plan

⁹⁹ Bywaters, P., Brady, G, Sparks, T. and Bos, E., Deprivation and Children's Services Outcomes; what can mapping looked after children and children on child protection plans tell us? Funded at Coventry University by the Nuffield Foundation, 2013-14 as discussed in the Blog Inequality Matters (December 10, 2013) by Professor Paul Bywaters, Coventry University and Professor Brid Featherstone, Open University. Available at: <http://frg.org.uk/involving-families/blogs>

Domestic violence has become a more prevalent factor triggering and/or continuing children's services involvement with children and families, sometimes resulting in the child having a child protection plan/being subject of care proceedings. Whilst it should be recognised that children may experience multiple forms of abuse (emotional, physical, sexual abuse and neglect) in the context of domestic violence, the category of 'emotional abuse' is however the second most common initial category of abuse when children are made subject of child protection plans.¹⁰⁰ Domestic violence is now the most common underlying reason why families contact FRG's advice service.¹⁰¹ Important questions are being asked by many within the child welfare sector concerning whether the routine escalation of cases involving domestic violence into the child protection arena (or indeed into care proceedings), frequently with particular emphasis placed upon the failure of the mother to protect the child from the harm, is the most humane or effective way of supporting child and adult survivors of abuse or of addressing the behaviour of perpetrators.

4.4.5 Time

Just as the forthcoming research from Morris, Featherstone et al. indicates that time is a significant part of families' narratives when discussing their experiences of welfare services, so too is time and timeliness a feature and driver of the child welfare system. The principle of 'no delay' was enshrined within the Children Act 1989¹⁰² but in recent years timescales have become a focal point within the child welfare system with the principal example being the introduction of a 26 week timetable for care proceedings (previously proceedings took place over 40 weeks and often far longer). Whilst section 32(5) Children Act 1989 makes clear that extensions to that timetable may be granted, practitioners and families alike can feel that courts are often reluctant to grant these. In parallel, other Government policies, legislative amendments and indeed case law have variously prioritised speedier establishment of potential adoptive placements; shorter timescales for conducting assessments (often resulting in less thinking and reflection time for family members and practitioners alike); and have emphasised the significance of children's existing relationships with unrelated carers where family members either come forward, or are contacted late in the day during the course of care proceedings.¹⁰³

4.4.6 Some persistent concerns

The case law in relation to both family and friends foster carers not being acknowledged as foster carers, and the duties owed to homeless 16 and 17 year olds under section 20 has been settled for some time (see Chapter two for summaries of key court decisions). Despite this, there is continued evidence that some local authorities do not recognise or act appropriately upon their duties (see Chapter 5 for data, discussion and case studies which are illustrative of the ongoing difficulties that homeless 16 and 17 year olds face in relation to local authority recognition of section 20 duties owed).

¹⁰⁰ Department for Education. (2016). Characteristics of children in need: 2015 to 2016. Neglect was the most common initial category of abuse for children in need who were the subject of a child protection plan at 31st March 2016 – this year 46.0% of children in need at 31st March had neglect as their initial category of abuse, followed by emotional abuse with 35.3%. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/564620/SFR52-2016_Main_Text.pdf

¹⁰¹ Note that this partially reflects the impact in recent years of the amendment to the legal definition of significant harm enacted in 2005 to include a child hearing or witnessing domestic violence (as made by the Adoption and Children Act 2002).

¹⁰² Section 1(2) Children Act 1989 'In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that delay in determining the question is likely to prejudice the welfare of the child

¹⁰³ Various see, for example, the governments foster for adoption policy as enacted in the Children and Families Act 2014; section 1(4)(f) Adoption and Children Act by section 9 Children & Social Work Act 2017) and also the decision in *Re W (A child)* 2016 EWCA Civ 793

In respect of family and friends care, in 2013 the Local Government Ombudsman published a report focused on family and friends care and expressing concern that family and friends carers were being treated unfairly by some local authorities (for an overview of the report at Box 1 below)¹⁰⁴. At the time of publication Dr Jane Martin, Local Government Ombudsman said:

'I hope this report will assist councils in meeting their statutory obligations, and that it helps to initiate a cultural shift to recognise the efforts of all foster carers.'¹⁰⁵

Box 1:

In a report issued on 29 November 2013, the Local Government Ombudsman stated:

"Family and friends carers provide a vital support system for children who can no longer live with their parents. We find they are being treated unfairly and not receiving the support to which they are entitled."

The report noted 'The law says councils must provide support, such as accommodation and allowances to carers, if the child has the legal status of a 'looked after' child. Sometimes there is disagreement between councils and family members about whether the local authority has placed a child with the family, and so is in law a 'looked after child', or whether it was a private family arrangement.'

The report stated that the Ombudsman had investigated cases in which:

- Councils have treated family and friends carers less favourably than its own foster carers
- Councils have failed to recognise they had a duty to accommodate a child or failed to recognise the child was a 'child in need' of support
- Family carers were given insufficient information to make an informed decision especially around the needs of the child and any financial arrangements, despite councils' involvement with the child and its family, and their concerns about the child's welfare
- Councils have denied the carer the opportunity of making an informed decision about caring for a child or got their agreement to an informal family care arrangement under duress.

The report highlighted that "family and friends carers often do not understand whether the child they are caring for should have 'looked after' status or whether the care they are providing is considered an informal family care arrangement. Without appropriate information from councils they are unable to make an informed decision when initially agreeing to care for the child.

"The injustice caused where children and carers miss out on the support they should have received cannot be underestimated. It affects some of the most vulnerable children in our society whose start in life has already been tough. If timely checks have not been made about the suitability of the placement, or it is not adequately supported, children can be put at added risk of harm."

The Ombudsman recommended that local authorities need to:

- Ensure that they publish and implement fair and effective policies for family and friends carers, as required by statutory guidance
- Keep good records of decisions about a child's care. Where the council has had involvement with the child's family before that child came to live with a family member or friend, the council should be able to show it has explained to the carer the implications of agreeing to an informal family care arrangement, rather than becoming a family and friends foster carer or seeking a special guardianship order or residence order.

¹⁰⁴ Local Government Ombudsman. (2013). Family values: Council services to family and friends who care for others' children - Focus report: learning lessons from complaints Available at: <http://www.lgo.org.uk/information-centre/news/2013/nov/family-and-friends-foster-carers-being-treated-unfairly-says-ombudsman>

¹⁰⁵ See Local Government Ombudsman. (2013). Family and friends foster carers being treated unfairly, says Ombudsman. Available at: <http://www.lgo.org.uk/information-centre/news/2013/nov/family-and-friends-foster-carers-being-treated-unfairly-says-ombudsman>

During the three year period following since the report was published concerns about the approach taken to recognising and supporting family and friends foster carers have persisted. Analysis of calls answered by FRG's advice service, in the period 1 April 2014 to 31 March 2017, found that there were 931 calls answered where the primary issue in the call was section 20 voluntary arrangements. In 387 of those calls, the caller was identifiable as being a family and friends carer. The main underlying reasons for those callers contacting the service about section 20 voluntary arrangements included financial support (in 104 cases); family support (in 47 cases); and advice about special guardianship orders (82 cases).¹⁰⁶

More than three years after the November 2013 publication, the Local Government Ombudsman has issued a further report which found that a foster carer of a young vulnerable child was left without any support for six years as a result of a local authority wrongly treating the placement as a private arrangement and failing to provide consequent support. The woman agreed to take in three children in 2010 after their mother, who had drug and alcohol problems, could not care for them. She was only "loosely connected" to the children's family but Tower Hamlets council repeatedly refused her requests for financial support, claiming the care placement was a private arrangement.

The investigation found the local authority:

- Failed to explain to the carer that it believed she would be agreeing to a private arrangement that would not qualify for financial support.
- Was wrong to claim it was not involved in the placement given the children were on child protection plans and on the verge of being taken into care.
- Failed to carry out any assessment or background check of the carer before letting the children move. A later assessment was positive of the care she provided.
- Did not consider section 17 entitlements for the children during the period it considered them as being in a private arrangement.

The ombudsman concluded the council had committed a "significant fault" and caused "significant injustice" through its actions.

As a result of the investigation the council apologised and agreed to back-pay the carer the funding she would have received over six years of caring for the youngest child. She will also receive payments covering the month she cared for the two older children before they left.

4.4.7 Challenges to partnership working

In March 2017, Councillor Richard Watts, Chair of the Local Government Association's (LGA) Children and Young People Board stated that 'Councils have been warning government for some time that the pressures facing children's services are rapidly becoming unsustainable, with a combination of government funding cuts and huge increases in demand leaving many areas struggling to cope.' The LGA's most recent analysis suggests that councils will be facing a £1.9 billion funding gap for children's services by 2020.

¹⁰⁶ Advisers are able to select more than one underlying reason when recording information on the advice service case management system. Accordingly, it is likely that some repeat cases will feature in these numbers.

The former President of the Association of Directors of Children's Services stated in March 2017: 'Our members and their teams are absolutely committed to providing high-quality and effective services that meet the needs of vulnerable children and their families, however, the impact of several years of financial austerity is now all too visible in local communities. Poor parental mental health, substance misuse and domestic abuse are sadly becoming more common and record numbers of children coming into care. With further reductions in local government funding expected and fundamental changes to our financing on the horizon, our ability to step in and prevent problems escalating to crisis point is in serious jeopardy.'

Closures to universal family support services and specialist provision such as women's refuges, rising thresholds for accessing services such as child mental health services, and benefit and immigration reforms can make it much harder for families to get the help they need to prevent problems escalating. It also means that social workers are less likely to feel reassured that the difficulties that families are facing are being addressed by other services. The media response to the death of Baby Peter Connelly, combined with an economically harsh climate, is leading to professional anxiety and fear of blame becoming prevalent forces within social work practice. High vacancy or turnover rates of social workers in some localities as well as persistent interim senior management (particularly following an inadequate or requires improvement judgement from Ofsted) exacerbates the situation.

Despite the overall picture, which can feel extremely bleak, there are examples of innovation or existing practice at both individual practitioner, team or authority level, in which families are respected, their strengths recognised and their views heard. Examples include the approach being taken within Leeds City Council, which has invested heavily in family group conference services, and in Hertfordshire which is promoting whole system reform.

4.4.8 International contexts and obligations

Human Rights Act 1998

Since the Children Act 1989 was enacted in 1991, the Human Rights Act 1998 has incorporated the European Convention of Human Rights and Fundamental Freedoms into UK law. Public bodies (including local authorities and the courts) must not act in ways which are incompatible with the rights protected under the Human Rights Act. The right to a fair trial in Article 6 (which applies to decision-making within local authorities) and the right to a private and family life under Article 8 (with only proportionate interference with this where necessary) are most often identified as those rights of particular relevance in the context of the child welfare system. The original intention that section 20 would reflect a focus upon proportionality and involvement with families and children (as we suggest is the case in Chapter 3) is entirely at one with these human rights principles.

Beyond the domestic court decisions concerned with section 20 voluntary arrangements (which are discussed in Chapter two) a 2016 decision of the European Court of Human Rights highlighted the importance of thinking broadly and fully about the nature of support that can be provided to families by the state when intervening in the lives of their children.¹⁰⁷ Though not a case concerned with the UK or voluntary care arrangements specifically, the judgment lends support to the view that it is important to understand how section 20 voluntary arrangements are being used as part of the range of support that children's services make available to struggling families and children. The original intention that section 20 would be a legal and practical way in which the provision of support for children and families would be both emphasised and facilitated remains highly relevant having regard to this decision.

¹⁰⁷ CASE SOARES DE MELO c. PORTUGAL (Application No. 72850/14), February 2016. Unofficial English language translation available at: <http://childprotectionresource.online/the-judgement-of-the-european-court-against-portugal/#comments>

Children's rights

The United Nations Convention on the Rights of the Child (UNCRC) was ratified by the UK Government in the same year that the Children Act 1989 was enacted, 1991. The Welsh Government adopted the Convention as the basis for policy making for children and young people in Wales in 2004 and in 2011 the National Assembly for Wales passed the Rights of Children and Young Persons (Wales) Measure. This placed a positive duty upon Welsh Ministers to have due regard to the substantive rights and obligations within the UNCRC and its optional protocols.

In England, in 2010, the then Children's Minister Sarah Teather MP, reported that the Government would always give 'due consideration' to the UNCRC in the making of new policy and legislation. In 2015 the then Minister of State for Children and Families, Edward Timpson in giving select committee evidence said that the government was confident that the laws and policies that the Government had in place 'are strong enough to comply with the Convention'.¹⁰⁸ The Joint Committee on Human Rights reported:

"We believe that the 2010 commitment did change things for the better. However, aside from a few recent clear examples where good practice has been sustained outside the Department for Education, the momentum for spreading good practice and awareness throughout government concerning the Convention—and to encourage departments to take the articles of the Convention seriously—seems to have lessened over the course of this Parliament. There does not seem to have been any attempt made to gauge how well the commitment was being fulfilled or to monitor the extent to which the Convention was being taken substantively into account by government department."

The most recent periodic report published by the Committee on the Rights of the Child, reviewing the UK's record on children's rights, expressed a number of significant concerns and made corresponding recommendations in relation to children deprived of a family environment including concerns relating to the provision of timely family support services (see extract at Box 2 on the next page).¹⁰⁹

¹⁰⁸ Joint Committee on Human Rights. (March 2015). Report of the Joint Committee on Human Rights – the UK's compliance with the UNCRC. Available at: <http://www.crae.org.uk/media/93148/UK-concluding-observations-2016.pdf><https://www.publications.parliament.uk/pa/jt201415/jtselect/jtrights/144/144.pdf>

¹⁰⁹ The UN Committee on the Rights of the Child. (2016). Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland. Available at: <http://www.crae.org.uk/media/93148/UK-concluding-observations-2016.pdf>

Box 2:

Extract from The Committee on the Rights of the Child's Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland *

Children deprived of a family environment

51. The Committee is concerned about:

(a) The increase in the number of children in care in England, Wales, and Northern Ireland, and the high rate of children in care in Scotland;

(b) Cases where early intervention measures have not been timely carried out, parents have not been provided with adequate family support, and the best interests of the child have not been properly assessed in the decision of taking a child into care. Children have reportedly been removed from their biological families due to the family's economic situation or because a foster family may provide a more beneficial environment for the child;

(c) The frequent changes of social workers for children in care, and children often experiencing more than two family placements in a year which negatively affects all aspects of their life;

(d) Children placed at a distance from their biological families which prevents them from keeping in contact, and siblings being separated from each other without proper reason; (e) The practice of children being placed in secure accommodation in Northern Ireland ; (f) Children leaving foster care or residential care not receiving proper support and counselling, including on their future plans, and often having to live far away from their former carers;

(g) The adoption procedure in Northern Ireland remaining outdated and not in line with the Convention.

They recommended that the UK government:

a. Intensify its efforts to render appropriate assistance to parents and legal guardians, including informal kinship carers, in the performance of their child-rearing responsibilities;

b. Ensure that the removal of children from their families is always subject to thorough investigation, is in accordance with the best interests of the child and is only used as a measure of last resort;

c. Wherever possible find a placement for the child which will facilitate contact with his or her biological parents and siblings;

d. Take all measures necessary to provide stability for children in care, including efforts to retain social workers and to avoid unnecessary changes in placement;

e. Inform and consult with children from an early stage on plans for their care and transition and provide sufficient support for care leavers, including for accommodation, employment or further education.

Unaccompanied children may include those fleeing persecution, those who have been trafficked as well as smuggled children. Many will have experienced significant challenge and trauma prior, en route to, and following arrival. Many will not speak English as a first language. As of 31 March 2016 the number of unaccompanied asylum seeking children being looked after in England was 4,210.¹¹⁰

¹¹⁰ For figures in respect of trafficked minors, data published by the National Crime Agency, based on the National Referral Mechanism (NRM), the framework for identifying victims of human trafficking or modern slavery and ensuring they receive the appropriate support. Available at: <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/2016-nrm-statistics>

Few unaccompanied children who are looked after are subject to care proceedings. There are legitimate questions about the desirability or proportionality of initiating care proceedings even if the family justice system could cope with such an increase. However, without anyone to exercise parental responsibility for them, there is a serious concern that gaps can easily arise in relation to issues of consent and decision-making in the lives of some of these children and young people, especially those aged under 16 years old. Examples of such gaps can include provision of consent for medical treatment and the (in)ability to bring challenge within education appeals systems premised upon parental consent.

Further questions arise regarding how far the specific needs of these different groups of unaccompanied children are met by local authority looked after child advocacy provisions. A report by the Children's Commissioner for England in 2016 about independent advocacy for children in care¹¹¹, concluded that there is 'a need for improved consistency of access for young people to advocacy, underpinned by a more coherent approach to the analysis of need and to commissioning on that basis'.¹¹² Shaping and delivering a truly fit for purpose advocacy service for unaccompanied children would require appropriate prioritising and resourcing.

4.5 Conclusion

The current child welfare system is under significant strain and unable to respond to the rising numbers of children coming to the attention of child welfare services and entering state care. Both services and families are under severe pressure.

There can be high levels of professional anxiety in much of the child welfare and family justice system exacerbated by staff vacancies, turnover and high workloads. Struggling families are too often seen through the lens of 'risk', even if they are not formally subject to child protection enquiries. This hinders, if not actively prevents, effective cooperation between families and the state. Yet section 20 is predicated on partnership being in the interests of the child and on a system being in place with the intent, resources and culture to facilitate cooperation with families.

At a time when the system appears to be facing a crossroads, the choices are stark: to either abandon the notion of partnership and cooperation or, instead, consider reforms to the child welfare and family justice systems which will view families' knowledge, voices and contributions as a valuable resource to be applied to improving outcomes for children and families. How the family can come to be viewed, and drawn upon, as such a resource and the different ways in which children and families can be supported in the short and longer term including through voluntary care arrangements seems as relevant as it has ever been.

¹¹¹ Office of the Children's Commissioner for England (2016). Helping children get the care experience they need Independent advocacy for children and young people in care. Available at: <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2017/06/Helping-children-get-the-care-experience-they-need-1.pdf>

¹¹² By way of current example of tailored advocacy approach, see information about the Office Trafficked Child Advocacy early adopter sites. Available at: <https://www.gov.uk/government/publications/child-trafficking-advocates-early-adopter-sites>

Chapter 5: How is section 20 presently being used in England, and section 76 (Social Services and Wellbeing (Wales) Act 2014) in Wales?

5.1 Introduction

This Chapter draws upon data generated by the Knowledge Inquiry activities. It aims to provide an impression of how section 20 voluntary arrangements are currently being used. It:

- highlights some of the prevailing experiences, views and practices of children, families and practitioners, as shared via the online consultation, in individual and focus group discussions and at the Challenge Event; and
- sets this in the context of the responses to the Freedom of Information Act requests made of local authorities as part of the Inquiry, as well as the wider pool of data and research discussed throughout this report.

Drawing data and wider material together in this way helps to focus on the experiences of families, children and practitioners. It also serves to illustrate the approaches of local authorities and, to some extent, the courts, in relation to section 20 voluntary arrangements.

5.2 Chapter structure

This Chapter explains who contributed information to the Inquiry. The Chapter then sets out the Inquiry's main activities, the types of data gathered and the approach taken to data analysis. The results of data analysis are then considered before the Chapter concludes with the Inquiry findings.

The data presented in this Chapter should be considered in conjunction with published English and Welsh Government data about the looked after child population generally and those looked after under section 20 voluntary arrangements (see Chapter four at paragraph 4.4.1). Reference should also be made to the discussion in Chapter four at paragraph 4.4.3 about children moving in and out of the care system. In particular, it is worth recalling the following:

- There has been little variation in the number of looked after children in England under a section 20 voluntary arrangement over the last twenty years. However, the proportion of children under a section 20 voluntary arrangement compared to the total looked after population has declined, as the numbers of looked after children have increased in recent years. At 31 March 1993, 36% of the 51,200 children in the care system were under a voluntary arrangement; as of 31 March 2016, 27% of the 70,440 looked after children were under a voluntary arrangement.
- In Wales, the population of looked after children has slowly increased in recent years (by 4% between 31 March 2011 and 2016). Though the proportion of children looked after under a section 20 voluntary arrangement has slowly reduced, it still remains a notable proportion of the overall population of children in the care system, at 16%.
- Although a minority of children in care are under a voluntary arrangement, most children enter the care system under a voluntary arrangement. In England, of the 32,050 children who started to be looked after in the care system in the year ending 31 March 2016, 61% (19,400) became looked after under a section 20 voluntary arrangement.¹¹³ Of the children who ceased to be looked after in the care system during that same year (31,710), around half were leaving a section 20 voluntary arrangement.¹¹⁴

¹¹³ Department for Education. (2016). Children Looked After in England including adoption: 2015 to 2016. Table C2 Available at: <https://www.gov.uk/government/statistics/children-looked-after-in-england-including-adoption-2015-to-2016>

¹¹⁴ Department for Education (2016) Children Looked After in England including adoption: 2015 to 2016. Table D1 Available at: <https://www.gov.uk/government/statistics/children-looked-after-in-england-including-adoption-2015-to-2016>

5.3 Who responded?

Eighty-one responses were received to the Inquiry's online consultation questionnaires. Of those, 38 were from parents (birth and adoptive parents) and kinship carers (family and friends carers). The submissions from these parents and carers related to the circumstances of 53 children and young people who were aged from new-born to 16 years or over at the time the section 20 voluntary arrangement was instigated. Responses pertained to Wales and all regions of England. Of the 53 children whose circumstances were described by respondent parents and kinship carers, forty-one (77%) were placed in unrelated foster care following the section 20 or section 76 voluntary arrangement. Residential care was described in 5 (9%) of the responses provided by parents and kinship carers. One parent reported that their child had been moved to a foster for adoption placement. There were two responses from children and young people to the questionnaire, a lower response rate than had been hoped for.

This Chapter explains who contributed information to the Inquiry. The Chapter then sets out the Inquiry's main activities, the types of data gathered and the approach taken to data analysis. The results of data analysis are then considered before the Chapter concludes with the Inquiry findings.

A total of 32 social care and legal practitioners responded to the consultation including front line social workers and managers, Independent Reviewing Officers, Child Protection Chairs, Assistant Directors, barristers, private practice solicitors and local authority lawyers. A further 11 responses were received from voluntary organisations, policy advisers and other child welfare bodies. There were very few responses from unrelated foster carers, despite efforts engage them in the Inquiry via local authorities and national bodies. Unrelated foster carers had assisted in earlier piloting of the foster carer questionnaire. Submissions from a voluntary sector organisation representing the interests of foster carers helped to ensure that their perspective was at least in part represented.

The total number of Inquiry participants, including those in the Challenge Event and Legal Roundtable, was in excess of one hundred. This number included participants at individual and focus group discussions: with family and friends carers; with birth and adoptive parents; and with parents and wider family members with learning disabilities or difficulties.

5.3.1 Freedom of Information request data

Freedom of Information (FOI) requests¹¹⁵ were made to all local authority children's services departments in England and Wales. The FOI requests asked that local authorities provide data on numbers of children in voluntary arrangements as of 31 March 2014, 31 March 2015, 31 March 2016 and 31 October 2016. The number of unaccompanied asylum seeking children looked after under section 20 on those dates was also requested. Welsh authorities provided information in respect of voluntary arrangements under section 20 (to April 2016) and following that date, section 76 of the Social Services and Wellbeing (Wales) Act 2014. Where local authorities failed to provide the data, this was supplemented with information for years ending 31 March 2014, 31 March 2015 and 31 March 2016 from local authority return statistics published by the Department for Education and available from StatsWales. Authorities were also asked to provide information about numbers of looked after children in voluntary arrangements in those same time periods broken down by placement type, legal arrangement (e.g. pre-proceedings; care proceedings; neither) and by age of child.

¹¹⁵ These are requests made under the Freedom of Information Act 2000. The Act gives people the right to access recorded information held by public sector organisations such as local authorities. Anyone can request information. Further information about freedom of information requests is available at: <https://www.gov.uk/make-a-freedom-of-information-request/the-freedom-of-information-act>

Local authorities in England were also asked about the use of foster for adoption arrangements including:

- The number of foster for adoption placements initiated since 25 July 2014, broken down by age and legal arrangement (e.g. during pre-proceedings; following initiation of care proceeding; neither);
- The number of foster for adoption placements under section 20 voluntary arrangements initiated since 25 July 2014, broken down by age.

Finally, the information requests made to authorities in England and in Wales asked authorities to confirm whether they had the following:

- A written policy relating to the use of section 20 voluntary agreements with parents and others with parental responsibility;
- Written guidance for social workers in the authority about the use of section 20 voluntary agreements with parents and others with parental responsibility;
- A template form of written agreement for parents regarding entering into a section 20 voluntary arrangement.

Local authorities were asked to provide copies of the relevant policies, guidance or templates.

Local authority response rates

The Inquiry is grateful to all local authorities which responded and provided data. Unfortunately response rates did vary. All authorities in the East Midlands region provided a comprehensive or near complete response to our FOI request. In contrast the response from Inner London authorities was the poorest, with many authorities in the capital either not responding, responding only after significant delay, or declining to provide any of the requested information on the grounds of excessive cost or time.

In some instances information provided by a local authority did not correspond to the question posed. In many other cases authorities provided incomplete or partial information. Upon challenge, by way of request for internal review, further information was sometimes provided, particularly where the issue at hand was a refusal to provide a breakdown of small numbers.¹¹⁶

Response rates to individual questions posed also varied. Unsurprisingly, authorities appeared more able to provide data which more closely accorded with that which they may need to supply for Department of Education reporting requirements or was 'more topical' so perhaps was being already tracked within the authority (for example, numbers of children by placement type, age as well as legal status, and numbers of unaccompanied asylum seeking children). In contrast, and though presumably highly pertinent to planning and review of service provision for children and families, local authorities were much less likely to be able to provide data about whether section 20 voluntary arrangements were instigated following the issuing of care proceedings or the pre-proceedings process. Where data from FOI request responses is included and discussed in this Chapter, the response rate relating to that aspect of the request is made clear.

¹¹⁶ If a public body does not provide the information requested they can be asked to review their decision and this process is known as 'internal review'.

5.3.2 The wider pool of data

In addition to drawing upon a wider pool of government published data about looked after children in England and in Wales, the Inquiry also drew upon data from Family Rights Group's national advice service's case management system. 6000 calls from families per year are answered by the service. Research, legal and policy materials discussed in the earlier chapters of this report, including Boddy's scoping review of voluntary placement arrangements in five other European countries are also important sources of information which have informed the Inquiry's findings.¹¹⁷

5.4 Data analysis

The Knowledge Inquiry generated a range of data including qualitative data in the form of questionnaire responses, individual interviews and focus group discussion recordings and transcripts. The Freedom of Information request response data from local authorities comprises quantitative (numerical) data about section 20 looked after child populations and qualitative data (policies, procedures, tools and guidance notes).

Consultation, interview and focus group data were manually analysed by highlighting words, phrases, experiences, and events that seemed significant across the responses and accounts. From these, themes were generated to help make sense of different elements of the data gathered from within and then across the various stakeholder groups.¹¹⁸ In turn, these themes were further refined and reviewed in light of collective analysis activities as discussed below. FOI request responses were similarly manually analysed with data inputted into a series of excel spreadsheets before being reviewed to capture patterns and trends. Department for Education in England and StatsWales aided analysis and interpretation of FOI data.

Guidance, protocols and templates provided by local authorities to the FOI request, were reviewed using a series of set topic questions. Findings were inputted into a series of spreadsheets.¹¹⁹ This exercise was done with a view to gaining an impression of any strengths or limitations of the materials that local authorities use in relation to section 20 voluntary arrangements in England and section 76 voluntary arrangements in Wales – see Box 1 below.

Box 1: Topic questions against which policy and procedures provided by local authorities were reviewed.

- What format is the policy/procedure and where is it located (e.g. freestanding document, within wider policy and procedures manual)?
- What do the policies or procedures address?
- Is specific guidance provided for social workers about the use of section 20 voluntary arrangements in specified contexts/circumstances, including those of unaccompanied asylum seeking children; respite foster care; short break provision for children with disabilities; and those returning home from care)?
- Are key legal and practice issues explicitly addressed (for example, using voluntary arrangements with parents with learning difficulties/disabilities; parents with mental health problems; parental responsibility; objection; coercion and power relations; review and care planning; right to seek legal advice)?
- Are pro-forma agreements or templates in use and do these appear legally accurate/thorough? In what respects are there any deficits?

¹¹⁷ Boddy, J. (2017) Voluntary Placement Arrangements: A scoping review of policy approaches in five European countries. Centre for Innovation and Research in Childhood and Youth, University of Sussex. Available as an annex to this report.

¹¹⁸ Including parents, children, kinship carers, social and legal practitioners, voluntary organisations, and academics.

¹¹⁹ Thanks goes to those practising solicitors and barristers who volunteered their time to assist with this task.

5.4.1 Collective data analysis activity

At the Challenge Event, participants considered the headline data and themes within group discussion and interactive workshop exercises. To stimulate thought and reflection, these activities were punctuated by presentations and panel-led discussions from members of the Inquiry expert reference group as well as other academics and voluntary organisations.

The Legal Roundtable considered legal intricacies and practice challenges highlighted by the Inquiry data. Following the Challenge Event and in turn the Legal Roundtable, analysis, materials and notes generated at the events were reviewed and further data analysis was carried out. This allowed original themes to be revisited and reworked and new ones developed.

5.5 Discussion

In this section, data is discussed under a series of themes generated during the data analysis process. Some of these themes accord strongly with those explored from the outset of the Inquiry whilst others emerged out of the Inquiry. It is not possible for every view, experience or insight arising during the Inquiry to be explicitly referred to or captured in this report. However, through the different Inquiry data gathering and analysis activities, there has been opportunity for a range of ideas, experiences, views and practices to be expressed, explored, challenged and reflected upon. The overarching themes arising out of that process are presented below together with relevant data extracts.

5.5.1 Trends in numbers of children looked after under section 20 or section 76 voluntary arrangements

Data provided by local authorities in response to the FOI requests about the numbers of children looked after under section 20 voluntary arrangements in England and section 20/76 in Wales was analysed alongside nationally published Government statistics. In every English region, except the South East, the numbers of voluntarily accommodated children fell slightly between 31 March 2015 and 31 March 2016, having risen marginally in the previous year. It is not reasonable to compare the 31 October 2016 and 31 March 2016 totals because only 110 local authorities provided data for October, whereas data is available on all 152 local authorities for March 2016. However, the average figure per authority shows a fall from 123 to 115 per authority (Table 1) during those six months. What impact recent court judgments are having on local authority decision making about issuing care proceedings does require further consideration (see Chapter two for discussion of this body of case law).

Table 1: Looked after children under section 20 arrangements, England (including unaccompanied asylum seeking children)

Looked after children under section 20 arrangements, England (including unaccompanied asylum seeking children)				
	31 March 2014	31 March 2015	31 March 2016	31 October 2016
Number	19,150	19,799	18,738	12,629
Respondents	151	151	152	110
Average per authority	127	131	123	115

Source: FOI responses

In Wales, there has been a steady decline in the numbers of children in voluntary arrangements since 31 March 2014, with an average of 39 per authority at 31 October 2016 compared with 57 per authority at 31 March 2014 (see Table 2).

Table 2: Looked after children under section 20/section 76 arrangements, Wales (including unaccompanied asylum seeking children)

Looked after children under section 20/section 76 arrangements, Wales (including unaccompanied asylum seeking children)				
	31 March 2014	31 March 2015	31 March 2015	31 October 2016
Number	1247	1061	939	626
Respondents	22	22	22	16
Average per Authority	57	48	43	39

Source: FOI responses

The numbers of unaccompanied children who are in voluntary arrangements in England and Wales rose from an average of 15 per authority as of 31 March 2014 to 32 in 31 March 2016 but appears to have slightly fallen in the following six months. It should also be noted that the total number of children in these situations is not significantly higher than it was as of 31 March 2010 (see Table 3).

Table 3: Unaccompanied asylum seeking children looked after in voluntary arrangements in local authorities in England and Wales

Unaccompanied asylum seeking children looked after in voluntary arrangements in local authorities in England and Wales				
	31 March 2014	31 March 2015	31 March 2016	31 October 2016
Number	1938	2635	4069	3454
Respondents	129	131	127	116
Average per Authority	15	20	32	30

Source: FOI responses

5.5.2 The pertinence of age?

There was no consensus during the course of the Inquiry as to how far demarcations based on children's age may or may not be valuable in understanding and identifying appropriate and inappropriate uses of section 20 voluntary arrangements. There was however discussion amongst Challenge Event participants as to whether some underlying principles related to age might be helpful to focus on when thinking about section 20 voluntary arrangements. The first was that there was a need to ensure age appropriate involvement of children at all stages of an arrangement. Second, was the timely reminder that most children and young people in the care system return to their families.

That the need to ensure the involvement of children was a significant point was echoed by the two responses received from young people to the online consultation. Both described not being very unclear about key issues relating to the section 20 voluntary arrangement including: why they had come to be looked after, how long the arrangement was going to last and whether social workers were exploring possible family and friends care placements. Both described being 'not very included' in the decisions being made about coming into the care system.

16 and 17 year olds

The importance of section 20 powers and duties for homeless 16 and 17 years olds was underscored by barristers and solicitors, voluntary sector youth advocates and social workers alike, during the Inquiry. Many barristers and solicitors expressed concern that recent case law and commentary on the use of section 20 voluntary arrangements were primarily focused upon the very specific context of safeguarding concerns about young children and the use of voluntary arrangements as a precursor to care proceedings. This meant that debate tended to overlook other uses of section 20 including its importance for older children in need of accommodation and support.

Legal professionals and youth advocates emphasised that there was clarity in respect of local authority legal obligations towards 16 and 17 year olds, including many authorities having the necessary joint protocols between children's services and housing departments. However, this was not necessarily mirrored by consistent practice and implementation. Against that background, the availability of legal advice and representation as well as professional advocacy support for these young people is crucial. Information supplied to the Inquiry by the London-based advocacy charity Just for Kids Law revealed that 179 clients approached the organisation in 2015-16 with housing and homelessness issues. Of those, 17% of cases were concerned with local authority duties to provide accommodation and support under section 20 of the Children Act 1989.¹²⁰

Two illustrative case studies highlight the key role that legal advice and advocacy support has in ensuring section 20 duties and powers are appropriately acted upon and that humane practices are followed (see case studies 1 and 2 below). Unfortunately, as such advocacy support is sparse and severely under funded, it is out of reach of most young people in these circumstances. Legal advice and representation and advocacy support, are very much complementary. Advocates have a vital role in supporting young people to gather the relevant documentation and information that their lawyer may, need to review and to use as part of the young person's legal case. Advocates are able to provide support in the preparation for meetings with legal advisers, children's services and other agencies. With many young people struggling with rent arrears, access to education and homelessness, advocates can play a vital, coordinating role that helps young people to navigate the complexities of the child welfare and related systems.

Even where section 20 duties towards these young people are recognised voluntary sector organisations raised concerns about unsuitable accommodation being provided. It was highlighted by one such organisation in the online consultation that 16 and 17 year olds can find themselves in shared accommodation which is not a match for their level of need:

'To minimise the risks and enable young vulnerable 16 and 17 year olds to move into adulthood at an appropriate pace they require support. Support which respects their maturity and autonomy, however, support nonetheless'.

¹²⁰ Just for Kids Law provides advocacy, support and assistance to young people in London in difficulty; particularly those involved in the youth justice system, looked after children and those at risk of exclusion from school. They combine specialist legal representation (often pro bono) with individualised packages of support to address the multiple and complex issues that our young people face and that prevents them fully engaging within society. Further information available at: <http://www.justforkidslaw.org/what-we-do>

Case study 1: Anya

Anya approached Just for Kids Law when aged 20 years old. She had been known to children's services since the age of 8 and had a difficult relationship with her mother. Anya was asked to leave the family home at the age of 16 and presented at children's services explaining she was homeless. Anya's mother confirmed to children's services that Anya was homeless. Children's services did not assess Anya's needs and did not provide her with accommodation under section 20. Anya was instead provided with accommodation under section 17 of the Children Act. She was not provided with any information about the different support she would receive under section 20 as compared with section 17. She was consequently deprived of the support that a looked after child would receive and was now, aged 20, deprived of support as a former relevant child. Anya was forced to claim benefits and often fell into rent arrears and was at serious risk of eviction. She had missed a substantial amount of time in education as a result of the difficulties she faced. Following pre-action correspondence, the local authority agreed that Anya should have been a looked after child under section 20 when presenting for help as a 16 year old and that she is now a former relevant child entitled to support and assistance. Anya is now supported by a personal adviser and suitable accommodation is being identified for her.

Case study 2: Elaine

Elaine, aged 16 was living with her aunt in a private fostering arrangement. Her mother had struggled long term with substance misuse. Elaine was having some telephone contact with her mother. She had ongoing direct contact with her father who does not have parental responsibility for her but the relationship was difficult. Elaine ran away from her aunt's home on several occasions and at these times stayed with a Reena, a friend accommodated by the local authority in unrelated foster care. Reena's foster carer was not able to support Elaine on an ongoing basis and Elaine was not able to continue to stay there. A meeting was convened on a Friday afternoon by children's services – Elaine attended with a young person advocate and her aunt, and a social worker also attended. Elaine was supported to request accommodation and support under section 20 for that evening and the coming days. Elaine agreed to attend mediation with her aunt to try and resolve their conflict.

The social worker refused both the request for section 20 accommodation and to arrange mediation suggesting that the conflict should be resolved that evening and Elaine should return home or go and stay with her father. Elaine returned to her aunt's home and spent the night in her room. The following day after a further dispute Elaine left again. Elaine was found late at night wandering the streets. When Elaine returned home to her aunt's she could not get into the property and eventually called the police who collected her. Elaine fell asleep in the police station and spent the next day in a local library. Upon returning home could again not get into the house. Elaine called the out of hours social worker and explained that she was homeless. The social worker contacted Elaine's aunt and Elaine was able to return home. On Monday morning, Elaine's advocate contacted children's services to explain the events of the weekend. Children's services refused again to agree to accommodate Elaine under section 20 and stated this could not be done because Elaine's mother had not signed a consent form agreeing to this. The advocate explained that at age 16, Elaine could agree to be accommodated. The allocated social work refused to accept this.

Elaine contacted her advocate later in the day saying that her aunt and others had made abusive comments to her and she felt unsafe. The advocate accompanied Elaine to children's services. A recording of the threats that Elaine had received was played and again section 20 accommodation requested. This was again refused despite Elaine making clear she would not return home. Elaine once more spent the night sleeping at the police station. When this was relayed to Elaine's advocate, the police explained that they had also contacted children's services but were told that they would not agree to accommodate Elaine.

Children's services confirmed their view that Elaine did not meet their threshold for emergency accommodation and because her mother has not signed a section 20 agreement she could not be accommodated. No assessment of Elaine's needs had been carried out. Social workers contacted Elaine's father who agreed that she could stay with him on a temporary basis. Elaine was concerned about this arrangement but agreed to it, in desperation. Elaine has been advised that if this arrangement does not meet her needs and is not a permanent resolution to her situation, the decision of children's services not to assess her needs and offer her accommodation under section 20(11) can be challenged.

Infants and foster for adoption

Chapter four examines changes in the age of all looked after children population since the introduction of section 20. Analysis of the freedom of information data responses show that most children accommodated under section 20 in England and Wales are aged 10 years of age or over (see Table 4 below).

Table 4: Children in voluntary arrangements in England and Wales broken down by age, 31 October 2016

Children in voluntary arrangements in England and Wales broken down by age, 31 October 2016					
	Under 1 year	1-4 years	5-9 years	10-15 years	16 and over
Average per Local authority	5	8	9	30	36
Number of Respondents	100	105	104	128	130

Source: FOI responses

When comparing the above data with that published by the Department for Education on the age breakdown of all looked after children, at 31 March 2016, it can be concluded that voluntary accommodated children are more likely, than those on care orders, to be aged 16 years or over.

During the course of the Inquiry however, parents and kinship carers predominantly described the use of section 20 voluntary arrangements with babies under the age of 1 and young children aged between 1 and 4 years (37% of the children whose situations were described in the online consultation) or aged 5 to 9 years (35 % of the children whose situations were described). This resonates with the serious questions posed in recent times about timeliness of pre-birth planning and voluntary arrangements entered into immediately post-birth for the removal of new-born babies.¹²¹

The FOI data gathered has revealed a swelling number of very young children in foster for adoption arrangements including a significant number under section 20 voluntary arrangements. Freedom of Information requests also revealed a range of views and practices amongst local authorities in England in respect of using foster for adoption for babies and young children who are looked after under section 20 voluntary arrangements. Some indicated that they would not use foster for adoption placements for a voluntarily accommodated child. Some other authorities had seemingly prioritised achieving foster for adoption – with the majority of their foster for adoption arrangements having been instigated under section 20:

- 83 English local authorities reported that a total of 639 children were placed in foster for adoption arrangements between 25 July 2014 and 31 October 2016;
- 83 English local authorities provided information on the age profile of 571 children who were placed in foster for adoption arrangements of which 384 (67%) were babies aged under 6 weeks and 478 (84%) were aged under 6 months.

¹²¹ See for example the decision in *Northamptonshire County Council v AS and Others* [2015] EWHC 199

The authorities were asked how many foster for adoption placements were children looked under section 20 voluntary arrangements. The findings are:

- 83 local authorities reported that 163 voluntarily accommodated children were placed in foster for adoption placements initiated since 25 July 2014. Whilst this averaged 2 per authority, it masks huge variation in practice, with 40 of the 83 reporting that they had not used foster for adoption arrangements for any voluntarily accommodated child;
- 84 local authorities reported the age breakdown of 144 voluntarily accommodated children in foster for adoption arrangements instigated since 25 July 2014. 127 (88%) were babies aged under 6 months including 111 (77%) new borns aged under 6 weeks old.

As detailed in The Children Act 1989 guidance and regulations Volume 2: care planning, placement and case review, when a local authority places a child in a foster for adoption placements they have taken the view that that ‘the long term permanence plan for a named child is likely to be adoption’ and that attempts to rehabilitate the child with the family will be ‘highly unlikely to succeed, and adoption is the most likely outcome’. Local authorities can ask parents of a child less than 6 weeks old to enter into section 20 voluntary arrangements to bring their child into the care of adopters who are approved as foster carers for the child, possibly doing so within mere days of the child’s birth, when parents are likely to be particularly vulnerable. This arguably contrasts with the formal legal process in place for any mother who wishes to relinquish her baby to adoption, a process which includes a number of checks and balances; for example, the baby must be at least six weeks old before a mother can formally consent to a placement with adopters or to an adoption order being made and this consent must be witnessed by a Cafcass officer.

Where foster for adoption arrangements are made under section 20 voluntary arrangements in these very early weeks following birth and outside of court proceedings, it is very likely that parent will not have had access to free, independent legal advice. Even where a pre-proceedings process has been initiated, there is available only a very low level of funded legal advice and representation; this seems particularly disproportionate to the seriousness of the steps being taken in foster for adoption situations. Data discussed in Chapter four highlights the body of evidence that young parents, particularly those who have spent time in care or are care leavers, are vulnerable to early parenthood and to losing children to the care system and adoption. All of this presents a highly concerning picture of in relation to continued use of foster for adoption outside of court proceedings and in the context of section 20 voluntary arrangements.

Young parents

Throughout the Inquiry concern was expressed by parents, lawyers and social care participants about the use of voluntary arrangements of children of young parents, particularly young mothers and fathers who were themselves care experienced or care leavers. There was some evidence that some legal practitioners tried to find ways of addressing this by bending the system to enable such parents to get access to early legal advice. One example is taken from the account of a local authority lawyer who described that the cases of children of younger parents may be moved into a pre-proceedings framework to trigger access to some free, independent legal advice and representation for them:

‘We sometimes deliberately issue a pre-proceedings letter even where we don’t plan to issue, as a mechanism to allow young or vulnerable parents to receive legal advice.’ Local authority child care lawyer

Though evidently an effort to bring these parents within the scope of legal aid provision, such a step does not take account of the adverse consequences of such a letter being issued in circumstances in which it is not really deemed justified. Significant questions about proportionality of interference with family life and the undermining of cooperation and partnership clearly arise.

5.5.3 Prevalent placement types

The FOI responses were analysed to elicit where children in section 20 voluntary arrangements were placed. At 31 October 2016 in England and Wales:

- 42 children per authority were living with unrelated foster carers (average from 128 responses)
- 14 children per authority were living with family and friends foster carers (average from 114 responses)
- 23 children per authority were living in residential accommodation (average from 116 responses).

Comparisons with published placement data for 31 March 2016 for all looked after children in England¹²² reveal that children who are voluntarily accommodated are more likely than children under a care order to be living with family and friends carers or in residential care and less likely to be in unrelated foster care.

5.5.4 Information and advice

Deficits in the provision of information and advice for parents and families in relation to the use of section 20 voluntary arrangements was a prominent theme throughout the Inquiry.

Initial information

No social care respondent to the online consultation felt that there was sufficient initial information available for parents about voluntary arrangements. When expressing views during the consultation about factors that were relevant to appropriate use of voluntary arrangements, social care practitioners' responses fell into four categories all of which appear entirely related to the theme of information sharing:

- The arrangement is genuinely voluntary
- There is genuine understanding
- No alternative family carers identifiable
- The degree of risk.

That practitioners perceived absence of any alternative carers as being a pre-requisite for use of section 20 being appropriate may suggest two things: first, that they see voluntary arrangements as being primarily about the removal of children from families including the extended family network; or second, that even if that is not the case, they do not identify the creation of family and friends foster placements as being a routine application of section 20 (or section 76) powers.

Time for information sharing

Practitioners felt providing information alone was not considered to be enough. Adequate time and more time than the system presently typically allows, was felt to be required for families generally (but particularly parents with mental health difficulties or learning disabilities/difficulties) to consider information about voluntary arrangements. Three themes connecting information sharing and time arose from the Challenge Event. These were:

- More time required for families to process information
- More time required for understanding
- More time required for decision making prior to signing an agreement.

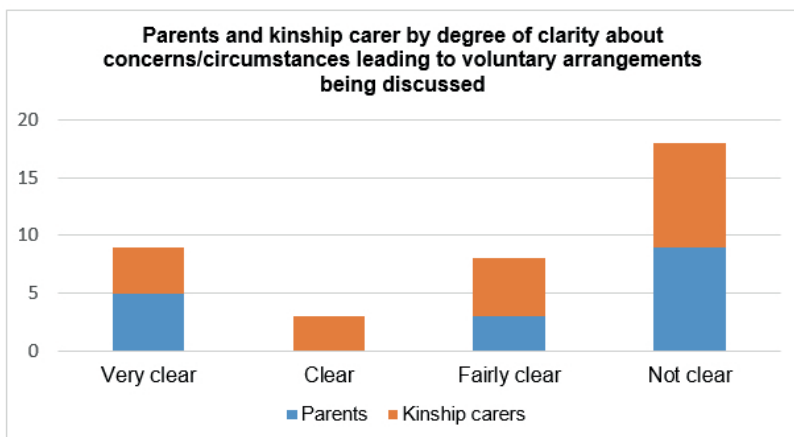
¹²² Department for Education. (2016). Looked after children. Children looked after in England (including adoption) year ending 31 March 2016. Table A2. Available at: <https://www.gov.uk/government/statistics/children-looked-after-in-england-including-adoption-2015-to-2016>

Practitioners (lawyers and social workers) highlighted that often agreements were being entered into in circumstances in which time was at a premium. This underscores the importance of early, planned work and trusting relationships being built with families in preference to late in the day involvement. It also highlights a pressing need for a clearly developed sense of what partnership working should look like where things have to be considered and decided quickly with families.

Information about trigger concerns/circumstances

Concerns about information sharing were not limited to lack of information about the law or practice at the point at which a section 20 voluntary arrangement was being proposed or instigated. Concerns were also expressed about lack of information being shared with the families about the local authority’s underlying concerns (e.g. child protection, need for family support). As part of the online consultation, parents and kinship carers were asked to describe how clear they were about the concerns or circumstances leading to a section 20 voluntary arrangement being discussed. Variations were evidenced in the experiences of parents and of kinship carers, but overall families were more likely to not be clear about what the concerns were (see Graph 1 below):

Graph 1: Parents and kinship carer by degree of clarity about concerns/circumstances leading to voluntary arrangements being discussed



Source: Knowledge Inquiry online consultation responses from parents and kinship carers (total respondents: 38)

Legal practitioners emphasised the importance of record keeping in relation to the question of understandings of trigger concerns. They described that case recordings or chronologies often did not give a clear indication of what parents had understood to be the trigger for the section 20 voluntary arrangement being explored with them by the local authority. This was viewed as important information that should be clearly evident on social work files and would help to avoid subsequent ambiguity about how arrangements came to be put in place “voluntarily”.

Some respondents also expressed concern that information about the involvement of children’s services was not shared promptly enough with potential family and friends carers thereby delaying opportunities for them to step in to provide assistance or to care for the child or children. One grandmother caring for three grandchildren age 6 months to 3 years at the time they were placed in a voluntary arrangement said:

‘The children were taken into (unrelated) foster care and I was not made aware of this until the social services traced me to ask if I would like to make an application for an SGO. The children had been in care for 3 months before I was contacted. I am their paternal grandmother... It was the court who wanted other family members to be contacted before they would grant any adoption order. If the court had not done this I probably would never have seen my grandchildren again.’¹²³

¹²³ The reference in the quote to ‘SGO’ is Special Guardianship Order, a private law order which lasts until a child turns the age of 18 years and which will give the person in whose favour the order is made, parental responsibility for the child which can be exercised to the exclusion of other (non-EGO holders) who have parental responsibility for the child too.

Ongoing information sharing and involvement

Information sharing during the course of an ongoing section 20 arrangement was deemed to be as significant. Families were evidently concerned that relevant information about the child was often not shared with a parent or carer with parental responsibility. Closely linked to this was further concern that cooperation was hindered because of parents/carers being excluded from decision-making about the child. The following examples of these information sharing gaps are drawn from across the Inquiry activities:

'[I] was not kept informed of how she was doing. Risky behaviour [was] played down and some I only heard about when my children informed me. Sometimes I was informed afterwards, sometimes only after I enquired about it. Very inconsistent and very dependent on the carer.'

(Adoptive) parent, child age 13

"I never received any paperwork to do with my children despite asking repeatedly."

(Birth) mother

Information and parents with learning disabilities or difficulties

The lack of easily accessible information (including resources in different formats) is a problem for all families whose children are looked after under a voluntary arrangement, but it can have particularly significant adverse consequences for parents with learning disabilities/difficulties, as well as those who do not speak or are not literate in English. Parents with learning disabilities described often struggling to understand complex local authority procedures, or the significance of actions e.g. assessments that the local authority were planning to undertake or the meaning of forms that parents were asked to sign. The parents recommended that information for families on section 20 be produced in film or other visual format as well as in writing. They also emphasised the importance of advocates with specialist knowledge of the child welfare system helping them to ensure that they can understand what the local authority is proposing, that they can articulate their views and make informed decisions.

Legal advice

Concern about gaps in the availability of information was closely related to concerns about the gaps in availability of free, independent legal advice and the impact of not having such advice had on their understanding of the legal framework around section 20 including their rights and options. Most parents completing online questionnaires reported not knowing or not being told the following at the time that the section 20 voluntary arrangement was instigated:

- That they could say "no" to the arrangement;
- What the implications were for parental responsibility;
- That they could seek independent legal advice in relation to the issue;
- For how long the section 20 voluntary arrangement would be in place;
- What the impact on their financial situation, specifically benefit entitlement, would or may be.

Lack of information and understanding about the fundamental planks of the section 20 voluntary arrangement legal framework inevitably undermines the notion of genuine partnership. As one mother recounted:

'I didn't have a choice. I wasn't fully informed. The children were taken from [me] without really knowing what I had signed to and when I asked for information on section 20, I was told to google it.'

(Birth) parent of children age 9 and 5

Some carers described being able to draw on their own resources or prior knowledge better to navigate the section 20 system:

'I already had two other children from the same parents so knew the process probably better than the newly qualified social worker. The other two by this time were on Special Guardianship Orders.'

Grandmother, one day old grandchild.

Others described that assumptions were made about their knowledge of voluntary arrangements when in fact they needed assistance including legal advice to make sense of what was happening, what was expected of them and what they should be able to expect of children's services:

'Do not assume that because a parent is well educated that they will automatically know how a section 20 works and what their rights are.'

(Adoptive) parent

In contrast to the earlier account from a local authority lawyer of pre-proceedings letters being issued in order to secure young parents some legal advice when section 20 was being raised, another local authority lawyer responding to the online consultation reported:

'Our practice is not to accept s20 unless the parent/person with parental responsibility has either had access to legal advice or been given the opportunity to do so. If they decline to access their own independent legal advice then they are asked to sign a document confirming this (amongst other things) before s20 is accepted'

It is not clear from that account how exactly a parent is to access such legal advice or what happens in situations in which eligibility for free legal advice has not yet arisen – possibly the local authority pay for such advice. It is however, evident that local authority legal teams are conscious of the link between informed decision-making and the receipt of legal advice.

During the Inquiry, lawyers highlighted that parents of children with disabilities who seek support by way of overnight short break accommodation often did not know the legal framework under which short break provision was being made. It was also reported that their children often did not have the appropriate form of care plan in place. Participants at the Challenge Event felt that for these families, information and understanding about the wider framework of support was especially important and that legal advice may then be helpful. Participants placed particular emphasis upon having the right advice in order to be able to try to bring together voluntary arrangements with other support elements in order to create meaningful and flexible packages of support for children with disabilities and their families. It was suggested that such plans should include advocacy provision for children; information about counselling provision for children; and the use of family group conferencing to help identify wider sources of support within the family network. That such arrangements and packages may need to in place in the longer term was also emphasised.

Information about finances

The financial implications for parents and family and friends carers of section 20 voluntary arrangements are significant. Whether the child is voluntarily accommodated or in a 'private arrangement' with a kinship carer has significant ramifications as to whether the child and their carer are entitled to any financial and other support. This is particularly important given available research highlighting the prevalence of poverty amongst kinship care families and the dearth of support for those raising children outside the care system.

Despite case law and statutory family and friends care guidance (see Chapter two), kinship carers are often unaware of their rights and options and may be fearful that they may lose the child if they make a fuss. Moreover, their routes to challenging local authority decisions are largely restricted to local authority complaints procedures and, when exhausted, having recourse to the Local Government Ombudsman unless the significant step of embarking upon a Judicial Review of the local authority's decision is pursued:

'...at this time my wife was in such emotional distress she did not want me to ask for money as it was reflected to us that this could demonstrate an inability to care adequately for the child – subsequently we lost much money and received nothing. That child stayed with us from 15-18 years'

Grandfather of child age 15

'...following initial promise [of financial support] on the day by social care this disappeared and other staff said they thought the arrangement was different from that we entered into. Differing attempts to get information from social care met with passing the buck and no one taking responsibility – we only got some payment following initiation of formal complaint.'

Grandfather to child age 14

For parents, the change in household income which results from dependent children leaving the home (which may affect the parents' ability to afford to retain a home with a bedroom for the child, which can affect reunification plans), arrangements for transfer of child benefit and information about general expectations around financial support can prove extremely difficult. Parents of children aged 12, 6 and 10 months described their experience thus:

'This is a very sore point. The first two social workers said nothing to us about benefits etc and we were not even thinking about anything like that as we were too traumatized by what had happened. It was 15 weeks later when the CP (Child Protection) [social worker] asked us if we were claiming any benefits etc. we....were shocked to learn that we had to repay over £200 in child benefits and over £3100 in child Tax credits. This would not have happened if we were informed right at the start. We are still paying these debts back over 2 years later.'

There was some practitioner awareness of this issue and it is important to highlight the careful practitioner insights about financial ramifications for parents where children become looked after under section 20 and the dilemmas social workers face in making sure this is discussed with families at the right time:

'I don't talk to parents that often in the first instance about the financial situation. When I'm talking to parents about the section 20 at that first stage I wouldn't go 'just to let you know about your benefit caps'. I think that is a case by case "Is it appropriate?" It certainly gets discussed at things like Looked After Children Reviews or later on, definitely within the first few weeks if it is that long....That's not something that is a priority for me - having discussions about the benefits - its more about them being fully aware about what section 20, the parental responsibility, their rights, their options as parents but also for the children.'

5.5.5 Respite care and return home

The importance of young people being able to spend longer periods in section 20 voluntary arrangements was emphasised by lawyers and advocates working with homeless 16 and 17 years old. These young people were described as needing ongoing provision of accommodation and support services.

Opportunities for cycles of voluntary accommodation appeared most crucial for parents of children with disabilities and the role of 'short break' accommodation was much discussed during the Inquiry.

It and was perceived as being an important provision during the Challenge Event and online consultation with some respondents identifying that respite care for non-disabled children was much needed.

Practitioners views about the periods for which voluntary arrangements should be used varied significantly. For example:

‘Should not be for long-term arrangements but I know from the job that it often is. If safeguarding concerns are that high we should be going to court. Useful in the short-term only when parents/carers are struggling.’

Social worker, safeguarding team

‘We have lots of examples where children remain in long term care under a voluntary arrangement. They will usually be older children where families themselves recognise that they cannot provide for those children at home. Younger children (8 and under) would not normally fall into this category. Where younger children are concerned; long term fostering is not a favoured option. We would routinely seek SGO (Special Guardianship Order) or adoption.’

Assistant Director of Children’s Services

A rather more prevalent narrative in the Inquiry was about parents understanding of whether arrangements were to be short term or longer term. Parents described thinking short term measures were in place to resolve a particular problem or to allow time for planning, only to then be told or to realise that it was not proposed that their child would return to their care, or for the voluntary arrangement to simply drift on. Practitioners emphasised that at the point at which voluntary arrangements are discussed with families, emotions can run high and parents may not always take in all information provided. Some practitioners felt this led to misunderstandings about duration and next steps. Family accounts of shifting sands in terms of what has been agreed seem in keeping with the concerns raised in recent case law about the misuse of section 20 powers. Clearer frameworks for agreeing voluntary arrangements and sharing information in the spirit of partnership no doubt would assist in avoiding such scenarios.

Data from the freedom of information requests concerning the numbers of children with disabilities receiving short break provision as at 31 October 2016 revealed a truly mixed picture. Some authorities had no children under section 20 in short break provision, whilst a few insisted only disabled children could be provided such short term support. Practitioners who responded to the on-line consultation did not give concrete examples of using section 20 to provide respite care for children save for children with disabilities. The idea of short term voluntary arrangements being used to avert crisis or as part of a family support strategy/service was certainly recognised though. The sense was however that there was not widespread practice experience of this happening - for example, no practitioner gave an example of any specific model of respite provision in the area in which they were working nor an example of how short term respite arrangements were actually being used within their service.

During the Challenge Event families and practitioners alike felt attracted to the prospect of short term respite for families, including this being part of longer term planning to support families including where children were returning home from care. It was widely felt however that resource constraints (or willingness to apply existing resources in this direction) were likely to be a barrier to such provision being made available routinely.

5.5.6 Sources of scrutiny

Barristers and solicitors including those who practiced within local authorities, reported three main issues of relevance to the idea of scrutiny of section 20 voluntary arrangements:

- There was little prospect of a family member receiving free, independent legal advice outside of a pre-proceedings process or court under the current legal aid framework;
- There were variable degrees of court scrutiny of pre-existing section 20 voluntary arrangements in cases where care proceedings were subsequently issued, with the extent of scrutiny often being determined by case load and the experience of the judge;
- There was felt to be a general increase in interest in pre-existing section 20 arrangements since the publication of appeal court judgments concerning section 20 voluntary arrangements.

Some social workers and lawyers referred to local strategies/protocols/'practice directions' for scrutinising section 20 voluntary arrangements in their local family justice areas. Some described local guidance or protocols which attempted to prescribe timescales within which care proceedings should be issued following the instigation of a section 20 voluntary arrangement. Requirements for particular tiers of social work manager to file explanatory statements in any case in which proceedings had not been issued within a specific timeframe were also highlighted.

During the Inquiry lawyers, in particular expressed concern at attempts to impose specific timescales for local authorities to issue care proceedings, following the instigation of a section 20 voluntary placement. Uncertainty was expressed as to the legal basis for the issuing and enforcement of 'local practice directions' that set such timescales. Several lawyers, social workers and some parents also described circumstances of children who had been looked after for years under voluntary arrangements only for their case to suddenly come before the court. Examples given included cases where young people were beyond parental control or those who had specific specialist care requirements and were cared for in a residential setting. In such cases it was felt that the parents and local authority had worked collaboratively in the children's interests, only for this trust to be ruptured by care proceedings being issued. It was felt by practitioners that such cases were a direct consequence of local authority reactions to court judgments or the unintended effects of local practice directions.

In focus group discussion, a group of social work advanced practitioners and managers in one local authority described that there should be a range of ways in which the appropriateness and lawfulness of a section 20 arrangement is scrutinised. They identified this being done via discussion with the in-house legal team where they were involved; and via parents themselves through the complaints mechanism which brings complaints to the attention of the head of service and often the local authority legal team too. Case tracking meetings, at which progression of cases is charted, were also mentioned as an important mechanism. Independent Reviewing Officers were considered to have a role in identifying poor care planning or drift in section 20 cases via looked after child reviews. Finally, Ofsted was also identified as a further source of scrutiny, with it being open to inspectors to look at section 20 cases.

'It is for me, case by case. What is for one case may not be for another case and if you have parents, [working in] partnership and working well with the local authority then they do deserve the opportunity to be not involving the courts straight away but the opportunity to try and address it [the problems/risks]. If you have parents who are not working with you and there's drift then that's not in the child's interest.'

This description of partnership places onus very much on the parent to be working in partnership with the local authority. How partnership can be described generally, and how it should be discussed and understood with parents is of critical importance. Whilst parents should understand what expectations there are of them to work in partnership with local authorities, the onus equally needs to be placed upon the local authority to work in partnership with the parent – a reciprocal arrangement based on mutual expectations.

5.5.7 Coercion and cooperation

For families, the experiences of pressure and coercion were stark and significant:

“Section 20 was never mentioned. It was only when I challenged Children’s Services to undertake the Fostering Assessment that we were told this was a private arrangement but I refuted this and got nowhere. They told us the whole time that my granddaughter could not return to her mum, and my daughter was never told that she could refuse to allow her daughter to be looked after by anyone else. When she challenged them they said she would be taken to court.”

Grandmother

“We had to call multiple times to get information and clarity was not forthcoming, we were told we HAD to become guardians, and were not given our options at all.” **Grandfather**

“I was forced to agree by the social worker at the time by being told agree the section 20 or we go to court and remove them anyway.” **(Birth) parent**

‘It was a complete shambles – we were told nothing and the parents even less. We were given no information about anything and were basically threatened that if we did not allow the section 20 to go ahead with ‘permission’, even though we nor the parents agreed with it, it would go against them in court. In the end the child was put to a foster carer under the section 20 instead of our care.’ **Grandmother, grandchild under 1 year old**

Coercion was not solely described in terms of pressure from state services being placed upon families to allow voluntary arrangements to be progressed. Examples were given of other forms of coercion and pressure. One parent described ultimately resisting the pressure to proceed with a section 20 arrangement but then in response being punished for not agreeing:

‘I did not agree to section 20, the Child Protection Plans for both my children were ended and the Child In Need Plan lasted two weeks before that ended and we were left on our own.’

Other respondents described feeling coerced in quite another direction – being actively discouraged (whether by individuals or seemingly the very operation of the child welfare system itself) from seeking or accessing help. For these parents, section 20 variously became the goal – the means by which to obtain the right support for their child – but was equally a heart-breaking decision shaped by the non-availability of services:

‘We were in a very bad situation due to our autistic son’s problems with poor mental health and the horrendous situation we were placed in as a family trying to find help where there was and [which] is so sadly almost non-existent for children with his strengths and difficulties’.

The same respondent described how section 20 was the last resort:

‘...our son really did need a lot of help and this was the only way to access it – heart-breaking as it was.....section 20 seemed to be the only way to help our son. We had been without support for months prior to that.’

Many parents contact FRG’s free, national advice line for help when the local authority has refused to provide either a short or longer term section 20 voluntary arrangement for an older child/adolescent who the parent considers is beyond their control and in need of more specialist care. Such parents often describe having asked for help over a lengthy period and enduring a significant level of resistance by the local authority to their proposal for respite or ongoing care.

These are not the only accounts of painful and coercive processes, which should not have had to be endured. A further example is this:

‘My son is still under Section 20 and has been for 6 yrs. Social services threatened at least 14 times to take me to Court to get a /court order, however I’ve been told and read numerous times ‘ I would not meet [the criteria]. My son and I see each other when we want, and the fantastic in house carers are brilliant, we all buy gifts for each other at Xmas etc and work out between ourselves contact arrangements. We are told we are quite unique...’

The question arises as to why these kinds of arrangements – the right support, the right carer or placement - cannot be achieved through a more positive, cooperative relationship between state services and families. These accounts indicate a need for the barriers to humane journeys through the child welfare system to be identified and addressed. Social care and legal practitioners appeared keenly aware of concerns about coercive practices:

“Sometimes it does feel like parents are backed into a corner, for example, your choice is either to work with us and sign section 20 or we will be applying to the court for immediate issue.” **Child Protection social worker**

“Most often, children are removed from families prior to the inception of care proceedings. This is sometimes genuinely consensual, but is more often in circumstances where the parents have little real choice”. **Barrister**

One national children’s voluntary organisation responding to the online consultation expressed grave concern about what they described as these situations of ‘parental persuasion’ characterised by the use of section 20 in a ‘transactional manner’.

The idea of pressure rather than coercion was mentioned in social worker accounts of working with section 20 voluntary arrangements. Some described being under pressure to use section 20 to avoid needing to urgently issue proceedings; yet at other times being under pressure not to establish section 20 voluntary arrangements when a child was moving to the care of someone within their family and friends network. One youth advocate responding to the online consultation said:

‘I sometimes wonder if there is a pressure on social services to push for a parent to agree to these [section 20] arrangements “to be on the safe side”.’

As one independent social worker succinctly reflected points raised by many during the Inquiry:

‘Time and work pressure and concern about managing risk are factors in my experience’.

Further guidance could help to strengthen individual, team and authority wide confidence in the use of partnership approaches and voluntary arrangements. Appropriate scrutiny and audit of section 20 voluntary arrangements within local authorities (including through robust data collection) is also likely to have an important role to play.

5.5.8 The gateways to good practice

Social care practitioners participating in Inquiry events were evenly split about the need for any further guidance in relation to the use of section 20 voluntary arrangements. One advanced social work practitioner explained her view about the need for guidance:

‘I think we definitely need guidance around it, it is case by case but definitely general guidance.....we need to be a bit more confident in knowing that “I’m doing something lawful”.’

There was a general consensus during the Inquiry that if there was further guidance required, this was needed at a national rather than local level. One social work practitioner explained:

‘It needs to be the same across the board, no matter where you go. It makes sense.’

The reason for the division in opinion about whether any further guidance is required is not clear. It is possible to speculate that this may reflect individual practitioner experiences within individual local authorities and how well resourced and supported they feel. Alternatively, it may reflect differences in practitioner confidence in understanding and applying the law in this field which in turn may be related to team, service or authority wide cultures of support, resourcing and/or professional development. Equally it may be a reflection of the 'patchwork' of guidance in relation to voluntary arrangements which this Inquiry report has suggested exists (see discussion in Chapter one). Two social work managers described their view that practitioners understand good practice but the law, particularly in light of a series of developments in case law, was confusing:

'So I think we know the good practice but the legality of some placements? Sometimes legal appear confused about this too.'

And:

'I think there needs to be greater guidance....particularly in terms of whether local authorities are using section 20 lawfully as it is much more scrutinised now. I think I do question a lot more now [in light of the case law] particularly when you mention the private family arrangements which we [the local authority] use quite a lot. I'm often questioning this, are we going down a section 20 route with this as we're in the organising phase of it and I think greater guidance around that is needed.'

There was a sense throughout the Inquiry that a great number of social care practitioners were committed to working with families and to using voluntary arrangements in an appropriate way. Equally, there were indications that working in this way was a significant challenge for individuals and for whole authorities under strain. In their online consultation responses, practitioners identified many challenges and barriers to using section 20 appropriately and effectively which related to time and importantly resources.

Practitioner resources

Information leaflets, checklists and template letters were mentioned regularly during the Inquiry. Across a range of consultation responses there was a keen sense that something was required but that it was difficult to identify exactly what that should be. There seemed to be little appetite for any approach that fostered further variation across local authority areas.

Local authorities responded to a FOI request to provide details (and copies) of any written policies relating to the use of section 20 or section 76 voluntary arrangements. They were asked to provide copies of any written guidance for social workers and any template written agreements used with families. Review of this material indicated a range of different approaches to equipping social care practitioners with relevant tools and resources to work with families and children under section 20 and under section 76 in Wales.

Some authorities' policies and procedures were contained within lengthy, online procedural manuals. By being posted online, they were in most cases available to the public to view. In many such cases reference to section 20 was, understandably given the breadth of its application, spread across a number of different parts of the wider guidance. To the user, it could feel impenetrable and the task of locating pertinent guidance and direction could easily overwhelm.

A number of local authorities explained that their policies and supporting practice tools (written agreements or other templates) were under review. They cited recent appeal court decisions as well as the newly introduced section 76 provision in Wales as reasons for this.

In response to being asked whether they had any guidance for social workers within the authority about section 20 arrangements, a number of authorities referred to the ADCS/Cafcass guidance or The Transparency Project guidance. Some relied on this guidance in lieu of having their own in-house materials, others did so in addition to their own resources. There was clearly awareness that wider guidance on this topic was available and a desire for practitioners to access it.

Where authorities had their own guidance document for social workers, this was most likely to cover the use of voluntary accommodation for 16 and 17 year olds who are homeless; family and friends foster care; and the use of section 20 in urgent situations (as an alternative to seeking an urgent court order). One local authority in Wales, had prepared a detailed briefing note for its social work teams about how the law under section 20 of the Children Act 1989 compared and contrasted with the new provisions under the Social Services and Wellbeing (Wales) Act 2014.

Where responding authorities had provided proforma written agreements for use with families, it was seen that quite contrary to the law, many such agreements required parents to give notice before removing their child from a voluntary arrangement. Notice periods prescribed in the proformas were up to 14 days and often prescribed the form in which notice would be given:

'I will give 14 days' notice in writing if I decide to terminate this placement'

In other cases, the parent was required to confirm the period for which they were agreeing to their child being accommodated before signing.

Some authorities had produced information leaflets for parents (and some indicated that they had similar materials for children and young people too). Some of these, for example a leaflet provided by one of the East Midlands local authorities, was very detailed and comprehensive in its account of the law but may have been a strain for some families to digest without additional advice or advocacy support. The intention however, to provide a truly comprehensive account of the law was evident.

Further analysis of the policy and practice materials gathered through the FOI requests will be carried out and will culminate with a short briefing publication in late Autumn 2017. It will aim to provide some detail about prevalent strengths and limitations within the resources that local authorities have developed in respect of section 20 and section 76 voluntary arrangements. This will, it is hoped, pave the way for consideration as to what additional national resources might be needed to assist authorities and help ensure consistency of practice nation-wide.

5.5.9 Fitness for purpose – unaccompanied minors

The use of voluntary arrangements for unaccompanied minors, particularly asylum seeking children, was explored at length during both the Challenge Event and Legal roundtable. The limitations of employing either section 20 or section 31 of the Children Act 1989 (and equivalent provisions) to support this group of children was considered to be a difficult and unresolved issue. It was highlighted that the experiences differed and material considerations may be different for unaccompanied asylum seeking, for trafficked children and for smuggled children. The need for a bespoke response to each such group was canvassed. There was a strong sense amongst legal practitioners that at this time there were no answers to be found within the current legal framework and therefore perhaps every indication that government needed to formally consult upon what an appropriate legal and social care framework for these groups of children would look like. One national children's charity suggested that where the unaccompanied minor has family connections in the UK, resources should be put in place to enable a successful kinship care placement, where possible.

5.6 Key findings

The following key findings reflect discussion across all the Chapters in this report thus far.

- (1) Section 20 is a broad provision with a reach that extends to children and families in variety of circumstances.
- (2) Families often do not understand their rights and options when section 20 voluntary arrangements are first discussed, are put in place or are ongoing. This is a potentially significant barrier to participation and partnership working, particularly where there are child protection or other serious concerns or where children have specialist needs.
- (3) Many parents describe having faced significant pressure from practitioners to allow section 20 voluntary arrangements to be instigated or continued. Younger parents who have been in the care system themselves appear particularly vulnerable in this regard and their experience is compounded by a lack of timely pre-birth planning. Other parents and carers, particularly adoptive parents, kinship carers and parents of children with disabilities may face significant pressure not to pursue help for their child or children through short and longer term section 20 voluntary arrangements and experience coercive journeys before accessing the right help.
- (4) Social care practitioners variously face pressure to use section 20 voluntary arrangements to avert the need to begin care proceedings or to avoid use of section 20 family and friends foster care arrangements.
- (5) Provision of information is as important to families before the instigation of a voluntary arrangement as it is after
- (6) Where a section 20 voluntary arrangement is in place, parents and carers often experience being routinely excluded from decision-making or information sharing about their child.
- (7) There is little current assistance and direction provided for social work practitioners and managers in statutory guidance about the meaning of partnership or its application when working with families today. This appears to be undermining the original principles underpinning the Children Act 1989 and the original intentions behind section 20 voluntary arrangements as discussed in the Knowledge Inquiry report.
- (8) There is an absence of recent research focused upon section 20 voluntary arrangements; it is an under-researched area cross-nationally. Within the child welfare system in England & Wales this is a significant gap and a barrier to research informed practice in this area.
- (9) There is no consensus about how far demarcations of age and duration may be relevant to identifying principles for appropriate and inappropriate use of section 20 voluntary arrangements.
- (10) There is currently only limited direction for practitioners in relation to section 20 voluntary arrangements and this is splintered across a range of different statutory guidance. This patchwork of guidance is likely to exacerbate rather than alleviate variation in practice across the country and may be one factor underlying the range of different experiences of section 20 voluntary highlighted in the Inquiry.
- (11) Some social care practitioners perceive there to be too much guidance whilst others identify a pressing need for further clarifying guidance in relation to the use of section 20 voluntary arrangements. Such disparate views may reflect variations in practice and support within individual local authorities.
- (12) Legal and social work practitioners perceive that local-level family justice guidance intended to clarify expectations and foster good or efficient practice, can in fact lead to unintended consequences including some children's cases being before the court unnecessarily.

- (13) Practitioners may be aware of the risks and impacts of 'soft' or other coercive practices but lack of tools and guidance as well as caseload and time pressures appear to impact adversely on their ability, or in some instances their willingness, to address this issue.
- (14) The range of legal and practice tools used by local authorities in relation to section 20 voluntary arrangements is narrow but variations in the quality and content of these documents appears broad. This is paralleled by inconsistency in how and whether information is shared with families more generally.
- (15) Family and friends foster carers remain vulnerable to not being recognised as such by local authorities, too often being told that they are caring for the child under a private arrangement even where this is not the case. Some practitioners would welcome further guidance in relation to this specific aspect of section 20 voluntary arrangements.
- (16) Parents with learning disabilities/difficulties often feel particularly excluded from decision making processes. They have identified measures which would help them to work in partnership with other actors including: involvement of all those relevant to the decision-making; having access to easy read and other tailored materials; and the assistance of an advocate who has specialist knowledge of their child welfare system.
- (17) There needs to be greater scrutiny of how section 20 voluntary arrangements are instigated and maintained. There are some significant ways in which parental responsibility, parental involvement and information sharing may be overlooked where voluntary arrangements are in place.
- (18) Lawyers and advocates working with homeless 16 and 17 years olds emphasise the importance of voluntary arrangements being available for longer term use for their clients. Practice experience of advocates and lawyers however is that clarity about legal obligations towards this group of young people is often not mirrored by consistent practice and implementation by local authorities. The availability of legal advice and representation as well as professional advocacy support for these young people is crucial.
- (19) The section 20 and section 31 systems as a means by which to protect and provide for unaccompanied children and young people appear limited, may not be fit for purpose and requires further review. Significant issues arise concerning the exercise of parental responsibility and medical and educational consents for these young people.
- (20) Some local authorities appear to use section 20 voluntary arrangements actively to achieve the placement of children in foster for adoption foster care, notwithstanding Government guidance identifying that to do so is 'unusual'.
- (21) The role of short term, respite care provided to struggling families or those facing crisis appears little recognised by practitioners and families as a prevailing way in which voluntary arrangements may be used. It is a service little used by many local authorities outside of the context of short break overnight accommodation for children with disabilities.
- (22) Children returning home from care are amongst the most vulnerable and most in need of support. What happens for children and families at the conclusion of section 20 voluntary arrangements is as crucial as to what happens at the instigation of such arrangements. The role of short term, respite accommodation for children returning home appears to be little considered as a potentially important support service.
- (23) Local authorities are not consistently collecting, collating and sharing more detailed information about their section 20 or section 76 looked after populations. Many authorities appear to not have processes through which they can collect and collate detailed and relevant information about how section 20/section 76 voluntary arrangements are used within their authority.

Chapter 6: What needs to change and what are the priorities?

6.1 Introduction

In this Chapter, the last of the Knowledge Inquiry questions is addressed in the form of a series of final recommendations. These recommendations respond to the Inquiry's findings set out in Chapter five and have been developed in conjunction with range of stakeholders. Two events, the Challenge Event (which brought together parents, wider family members, practitioners and managers, policy advisers and academics) and the Legal Roundtable, were designed to enable Inquiry data to be discussed and analysed and for priorities to be identified. Focus group discussions with practitioners, individual discussions with legal and social work practitioners as well as discussion with Your Family, Your Voice steering group members have also all contributed the process of developing the recommendations.

6.2 The recommendations

These final recommendations are presented under the following twelve headings:

1. Government spend on children's social care
2. Access to free, independent legal advice
3. Addressing gaps in statutory guidance and barriers to good and research-informed practice
4. National standards and templates
5. Data collection and tracking by local authorities
6. Local Family Justice
7. Foster for adoption
8. Young people aged 16 and over
9. Unaccompanied children (including unaccompanied refugee children; unaccompanied trafficked children; smuggled children)
10. Children and young people returning home from care
11. Young parents
12. Parents with learning difficulties or disabilities
13. Social care inspection and consultation

Within the body of the recommendations references to 'section 20' are to the Children Act 1989. References to 'section 76' are to the Social Services & Wellbeing (Wales) Act 2014.

The Knowledge Inquiry recommendations apply to national and local government, other public and voluntary child welfare agencies and the academic and research community. The input of parents, children and wider family will be crucial to the process of addressing the concerns laid out in the report and realising the inquiry's recommendations.

Government spending on child welfare services

Government should urgently address the severe financial pressures affecting child welfare services and which are causing family support services to close and ever rising thresholds for specialist support.

Access to free, independent legal advice

- Receiving a child into the care system on any basis, including by way of a section 20 or section 76 voluntary arrangement, has serious and potentially long-term implications for children and their families. Revisions to the legal aid framework and adequate funding of specialist, free, independent legal advice is required to reflect this and ensure that families understand their rights and options when a voluntary arrangement is being considered and can engage in the process from an informed position.
- Specialist, free, independent legal advice is also part of the checks and balances necessary to ensure appropriate use of powers and duties by local authorities and is a pre-requisite for a well-functioning child welfare system. Accordingly, at the very least:
 - (i) A specific amendment to the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013) should be made to provide that any parent (or other carer with parental responsibility) of a child:
 - (a) who is the subject of a child protection plan, or
 - (b) about whom there are serious concerns about their safety, and
 - (c) who it has been proposed should become looked after under a section 20 Children Act 1989 voluntary arrangement,shall be eligible to receive free advice and representation equivalent to that available under a pre-proceedings process pursuant to regulation 5(1)(e) of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013)
 - (ii) Government adequately funds Family Rights Group's free, national advice service to enable families whose children may become accommodated or are accommodated to be able to make informed decisions.
- It should be ensured that homeless young people aged 16 or 17 continue to have access to requisite free, independent legal advice and representation to understand the duties that local authorities have to provide accommodation and support under section 20 of the Children Act 1989 and to enable them to bring legal challenge where local authorities do not act upon these duties.

Addressing gaps in statutory guidance and barriers to research informed practice

- There is currently only limited direction for practitioners in relation to section 20 voluntary arrangements and this is splintered across a range of different statutory guidance in England. To address this Government should:
 - (i) Consider mirroring the approach taken in the wake of previous court scrutiny of section 20 Children Act 1989 in relation to homeless 16 and 17 year olds by issuing general guidance about the law as it currently applies to local authority/social work practice in respect of section 20 of the Children Act 1989;
 - (ii) Set out the principles for partnership working with families and children today, in an updated version of Working Together. This should be drawn up in consultation with stakeholders including children, families, practitioners and voluntary organisations. It should consider how partnership working should encompass not only how the authority works with families and young people in relation to their specific individual circumstances but how the authority can draw upon children and families' knowledge and expertise to inform service design, policies and provision
 - (iii) Urgently address the dearth of research about section 20 and section 76 voluntary arrangements (which in turn has implications for local authorities and individual practitioners taking a research informed approach to practice in respect of this area) by commissioning research. Government should consult about the scope of such research with stakeholders including children and families;
 - (iv) If they go ahead with their current plans for the testing of social workers, practice supervisors and practice leaders as part of the proposed National Assessment and Accreditation System (NAAS), incorporate respectful, partnership working with families and young people and their and testing about knowledge about the section 20 Children Act 1989 legal framework (including relevant principles derived from case law) and the implications of this for practice with families;
 - (v) Ensure that legal and good practice issues concerning section 20 voluntary arrangements explicitly forms part of any training the DfE proposes to commission for social work practitioners on permanence;
 - (vi) Further promote the use of existing partnership focused practices when working with families including family group conferencing and professional parental advocacy services and encourage and support commissioning of these services at local level;

Addressing gaps in statutory guidance and barriers to research informed practice (cont...)

(vii) Further promote the use of existing partnership focused practices when working with families including family group conferencing and professional parental advocacy services and encourage and support commissioning of these services at local level;

National standards & templates

- National templates for England and national templates for Wales should be developed in conjunction with parents, wider family members, practitioners and children/young people to assist and guide practitioners and families when voluntary arrangements are being discussed, explored, instigated or are continuing. These should be available in a variety of formats (including hardcopy, online/interactive, easy read etc.) and include:
 - (i) A framework for formulating written agreements for use with parents (and others with parental responsibility);
 - (ii) Information leaflets for parents and wider family members about section 20 and in Wales about section 76 voluntary arrangements. This should include (but not be limited to): how they should/can be involved in decision making; maintaining a relationship with the child; the right to object to a voluntary arrangement; right to remove a child from a voluntary arrangement without notice; and relevant local authority duties to children in care (including provision of services, promotion of contact, review processes and return home).

Data collection and tracking by local authorities

- Local authorities should ensure routine collection of the following information about their section 20/section 76 looked after child populations so that they can appropriately understand the nature of that population, and the accessibility of independent advice for families at the time voluntary arrangements are instigated. Data collected should, as a minimum, include:
 - (i) Numbers of children in section 20 voluntary arrangements by legal framework at the time of instigation including those arrangements instigated: (a) following the issuing of care proceedings; (b) during pre-proceedings ('PLO') process; and (c) whilst the child is subject of a child protection plan but not subject of a pre-proceedings process or care proceedings;
 - (ii) Numbers of children in section 20 voluntary arrangements in foster for adoption placements at the time of instigation of the voluntary arrangement, broken down by legal framework as follows:
 - (a) following the issuing of care proceedings but before the case comes before the court;
 - (b) following the issuing of care proceedings but after the case coming before the court;
 - (c) during a pre-proceedings ('PLO') prior to the parent having accessed free, independent legal advice under the legal aid framework;
 - (d) during a pre-proceedings ('PLO') but following the parent having accessed free, independent legal advice under the legal aid framework applicable during that process
 - (iii) Total numbers of section 20 voluntary arrangements initiated during each year ending 31 March broken down by age, placement type and legal framework.

Local Family Justice

- Where it is proposed that any local practice guidance in respect of the use of section 20/section 76 voluntary arrangements as they may relate to the issuing of care proceedings under section 31 of the Children Act 1989 be prepared/published, consideration be given to the findings of this report, including the following:
 - (i) That the use of section 20 voluntary arrangements as a precursor to public law proceedings (or where there are child protection or other serious concerns) represent but one way in which section 20 voluntary arrangements are used and may be used with children and families. Other examples include: accommodation intended to be short term during a period in which a family is struggling; to provide accommodation and support for 16-17 homeless children; to place children in specialist residential care placements with the agreement of their parent or carer; short break provision for children with disabilities; the accommodation and support for unaccompanied asylum seeking children;
 - (ii) Data from local authorities about their section 20 looked after child population is likely to be necessary and helpful background information;
 - (iii) Suggested timescales within which care proceedings are to be issued following the instigation of a voluntary arrangement may, without clear distinction as to the purpose of the placement, can lead in some instances to local authorities responding by: (a) placing some children's cases before the court where doing so risks undermining existing partnership working with families and children; or (b) issuing unnecessary applications.

Foster for adoption

- Government should by amendment to section 22(9)(c) of the Children Act 1989 prohibit the instigation of any foster for adoption placement for a child under a section 20 Children Act 1989 voluntary arrangement except where:
 - (i) The child is already subject of an application under section 31 Children Act 1989 which is before the court prior to any placement of the child with proposed foster for adoption foster carers; or
 - (ii) The parent has given formal, informed consent via a procedure witnessed by Cafcass, to the child being cared for by foster carers in a foster for adoption placement. This consent cannot take place until the child is at least six weeks old and the parent(s) must have been offered free independent, legal advice.
- Consistent amendments should accordingly be made to the Children Act 1989 guidance and regulations Volume 2: care planning, placement and case review (June 2015).
- For such further period as the power to place a child with foster for adoption foster carers under a section 20 voluntary arrangement remains, or in the event the prohibitions recommended are not legislated, the following amendments to secondary legislation should be urgently made:
 - (i) The Children Act 1989 guidance and regulations Volume 2: care planning, placement and case review (June 2015) which presently states that 'Children who are voluntarily accommodated under section 20 of the Act maybe placed in a section 22(9B)(c) placement but such placements are likely to be unusual' should be amended to provide as follows:

'The placement of children who are voluntarily accommodated under section 20 of the Children Act 1989 in foster for adoption (early permanence) placements under section 22(9)(c) of the Children Act 1989 should be considered inappropriate/undesirable practice having regard to the limited scope for parents (and wider family members) to obtain free, independent legal advice about such arrangements when:

 - a. proceedings under section 31 Children Act 1989 have not been initiated;
 - b. where proceedings under section 31 Children Act 1989 have been initiated but legal representation in respect of such proceedings is not yet in place for the parent/carer who is eligible to access such advice;
 - c. a pre-proceedings letter under the Public Law Outline either has not been issued, or has been issued but legal representation is not yet in place for the parent/carer who wishes to access it.

In the event that a placement with a foster for adoption foster carer under section 20 of the Children Act 1989 is made the reasons for doing so should be clearly documented, including what advice provision has been available to the parent(s) and what exploration of placement within the wider family has been made.'
 - (ii) Legal aid on par with that available to parents (or others with parental responsibility for the child) under a pre-proceedings process (as provided for at regulation 5(1)(e) of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013) should be available to the parents of any child for whom a foster for adoption under section 22(9)(c) Children Act 1989 is initiated under section 20 and where neither care proceedings nor a pre-proceedings process has been initiated.

Young people 16 years and over

- Provision of free, independent legal advice for homeless 16 and 17-year olds should be paralleled with the availability of free, independent direct advocacy given the particular challenges and difficulties that this group of young people face. Government should examine what arrangements should be made for the commissioning of such advocacy services in local authority areas or regionally.
- There should be detailed national level data collection and research about the precise nature of the accommodation that young people voluntarily accommodated under section 20 Children Act 1989 and section 76 Social Services and Wellbeing (Wales) are placed in and the suitability of this provision to meet the needs of these young people.

Unaccompanied children (including unaccompanied refugee children; unaccompanied trafficked children; smuggled children)

- Government should undertake a formal review of the adequacy of the currently available mechanisms for taking legal responsibility for this group of children and young people. The review should include:
 - (i) Assessment of whether the current legal framework under sections 20 and 31 of the Children Act 1989 can adequately address the needs and specific experiences of such young people;
 - (ii) Review learning from the Independent Trafficked Child Advocacy project and consider how such an approach to independent advocacy services for unaccompanied children might be further developed and extended;
 - (iii) Consultation with children and young people, social care and legal practitioners, and the voluntary sector;
 - (iv) Consideration of what further guidance around the use of section 20 and section 76 is needed to enable practitioners to robustly address the range of complex issues that can arise, including questions relating to capacity; medical consent; and access to education.

Children and young people returning home from care

- Guidance, including statutory guidance and the Independent Reviewing Officers' handbook should be amended so that:
 - (i) Where the placement of a looked after child with an unrelated foster carer under a voluntary arrangement (or indeed under a care order) is considered by the looked after review to no longer meet the child's needs, the child's social worker should offer the family a family group conference to explore whether there are suitable carers within the family and friends network before seeking an alternative non-family placement;
 - (ii) For children who remain in unrelated care under a voluntary arrangement (or those subject of care orders), the review should always consider in detail how contact arrangements can be supported to ensure the child has positive relationships with their parents, siblings and wider family to both support the placement and to enable a return home in the future, where this is the child's interests;
 - (iii) When the local authority is assessing whether a looked after child should return to their family, they should ensure that there has been explicit consideration of the use of forms of short-term/respite foster care provision under section 20 Children Act 1989 as well as provision of therapeutic services as part of a package of support for the family placement.

Young parents

- Government should review the recommendations of Family Rights Group's Young Parents Project report as part of a process of reviewing what explicit duties there should be upon local authorities to support young people in care and care leavers who are parents (and to prepare for parenthood).¹²⁴
- Government should amend relevant statutory guidance to provide clear direction to practitioners when working with young parents. The Children Act 1989 guidance Volume 3: planning transitions to adulthood for care leavers should be amended to recognise that access to advocacy services for looked after children will be particularly important for those young people who are also young parents including those who are being asked to consider entering into section 20 voluntary arrangements. This should be mirrored with additions to the IRO handbook.
- Where advocacy support is not made available, local authorities should embed respectful ways of working with parents, so they (parents) are clear about what they should be able to expect from children's services and so that practitioners are clear about what they can expect from families. A parents' charter entitled 'Mutual Expectations' developed by Your Family, Your Voice with families and social workers can be a useful tool to better guide interactions and expectations generally and when discussing and implementing section 20 voluntary arrangements.¹²⁵
- Local authorities should review their practices and procedures, and ensure that these maximise the opportunities to identify, involve and work in partnership with young fathers and the extended paternal family members from the earliest stages of involvement with a child. Local authorities should do so drawing on relevant existing academic and voluntary sector expertise in this area together with the expertise of young fathers themselves.

Parents with learning disabilities/difficulties

- Parents (and others with parental responsibility) with learning disabilities or difficulties should not be excluded from the opportunity to work in partnership with local authorities under section 20 or section 76 voluntary arrangements. However, section 20/76 is not appropriate where a parent lacks capacity to enter a voluntary arrangement.
- Local authorities should ensure that direct, independent advocacy support is available to all parents (and others with parental responsibility) with disabilities or difficulties during all work concerning section 20 voluntary arrangements:
 - (i) Where a parent is already entitled to/receiving statutory advocacy under the Care Act 2014, training should be available to these advocates to ensure that they have requisite knowledge and understanding of the child welfare system. This should include an understanding of the legal framework, and good practice, in relation to the use of section 20 voluntary arrangements;
 - (ii) Where a parent is not entitled to a Care Act advocate, alternative appropriate, advocacy provision should be made available;
 - (iii) Government should ensure that the provision of all such advocacy is adequately funded.
- Government should develop good practice guidance for practitioners and families concerning the use of section 20 voluntary arrangements with parents with learning disabilities or difficulties. This should include national templates and other toolkit materials to facilitate good practice prior to, at the time of, and following the instigation of section 20 voluntary arrangements.
- Government should consult with parents with learning disabilities or difficulties, wider family members (including those with learning difficulties/disabilities), social work and legal practitioners, academics and the voluntary sector in the development of the guidance and the accompanying templates and toolkit. Such guidance should build upon existing available guidance concerning good practice when working with parents with learning disabilities or difficulties.¹²⁶

¹²⁴ Lynch, C. (2016). Young Parents involved with the child welfare system. Family Rights Group. Available at: www.frg.org.uk

¹²⁵ Available at: <https://frg.org.uk/involving-families/your-family-your-voice/mutual-expectations-a-charter-for-parents-and-local-authority-children-s-services>

¹²⁶ Working Together with Parents Network (WTPN) (2007) Update of the DoH/DfES Good practice guidance on working with parents with a learning disability. University of Bristol. Available at: <http://www.bristol.ac.uk/media-library/sites/sps/documents/wtpn/2016%20WTPN%20UPDATE%20OF%20THE%20GPG%20-%20finalised%20with%20cover.pdf>

Social care inspection and consultation

- In respect of the Framework and evaluation schedule for the inspection of services for children in need of help, protection, children looked after and care leavers, Ofsted should:
 - (i) Expand the information set out in the context section of any Ofsted Inspection report in relation to children looked after in the local authority's area to include the numbers/proportions of children looked after under a section 20 voluntary arrangement in each of the categories listed (see Ofsted Framework and evaluation schedule at page 49 for the categories);
 - (ii) As part of the inspection activity to 'evaluate and explore a sample of cases of children who are looked after', ensure that this includes children looked after under a section 20 voluntary arrangement and that this sample reflects the different forms that section 20 voluntary arrangements can take including: foster for adoption placements; voluntary arrangement where no legal proceedings are under consideration; voluntary arrangements instigated following the issuing of a pre-proceedings letter; voluntary arrangements instigated following the commencement of section 31 Children Act 1989 proceedings; placement with kinship foster carers on an emergency and longer term basis; children who receive respite or 'short break' provision under section ; unaccompanied minors; and homeless 16/17 year olds);
 - (iii) Ensure that inspectors take an inclusive approach to meeting with carers, which would include meeting with family and friends carers who have a legal order; those caring for children under section 20 voluntary arrangements; and those raising children under what the local authority have categorised as a private arrangement;
 - (iv) Explicitly examine whether local authorities are complying with statutory family and friends care guidance including having a published, up to date policy in place and a named designated lead for family and friends care; and examine how good practice in respect of the recognition of, and provision of support to, section 20 voluntary arrangements with family and friends foster carers is provided for within that policy and by that designated lead;
 - Ofsted should conduct a thematic family and friends care review.
 - The annual 'point in time' social care survey should:
 - (i) Include opportunities for family and friends foster carers to contribute their views, including those who are caring for children under section 20 voluntary arrangements some of whom will have had to bring challenge through local authority complaints procedures; the Local Government Ombudsman; and/or the court in order to have the legal status of the placement recognised;
 - (ii) Include opportunities for family and friends carers raising children under a private arrangement to contribute their views;
 - (iii) Include specific, positive encouragement to providers (within the provider guidance accompanying the point in time social care surveys) to promote the independent fostering agencies and local authority fostering services questionnaire to families including:
 - a. family and friends carers; and
 - b. parents whose children are, or have been, looked after in, a section 20 voluntary arrangement including those who receive short break (and other forms of respite care) provision under section 20 Children Act 1989.
 - Ofsted should work with those voluntary sector organisations that advise and support:
 - (i) family and friends foster carers;
 - (ii) the parents and wider family members of children in kinship foster care; and
 - (iii) parents/carers of children who receive short break (or other forms of respite care) provision under section 20 Children Act 1989
- to ensure the annual point in time social care survey reaches the above groups with experience of section 20 voluntary arrangements.
- Ofsted should extend their (virtual) parents' panel model beyond schools to children's social care and to include family and friends carers.

Appendix

Voluntary Placement Arrangements

A scoping review of policy approaches in five
European countries

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1: Introduction

The overarching aim of this scoping review is to provide a cross-national perspective on the use of voluntary placements, in order to inform the Knowledge Inquiry into Section 20 Voluntary Arrangements under the Children Act 1989 that Family Rights Group (FRG) is leading on behalf of the Your Family, Your Voice Alliance. Through analysis of a range of relevant European policy and academic research concerned with voluntary child welfare arrangements, the review aims to provide a wider context for considering how voluntary arrangements are used (and could be used in future) within child welfare systems.

Specifically, the review addresses approaches to voluntary placement arrangements in five European countries, linking to family involvement about decision-making regarding placement and combined placement and family support approaches (including part-time placements). The review did not set out to compare the 'effectiveness' of family-focused work across countries, nor systematically to review all the relevant research evidence, nor to undertake primary research into family-focused work with looked after children. Rather, the aim is to provide a resource for reflection on policy and practice development in England, a way of looking with 'fresh eyes', by illustrating how, and why, different countries understand and approach voluntary arrangements for child placement.

Methods

Given the timescale for the work, the review is selective in its focus and is designed to offer a 'think piece', not a systematic review. Rather than engaging local country experts (as might be possible with a larger study), this document has focused on existing English language sources (including existing and ongoing work conducted by the author), including academic research, grey literature, and published policy/legislative material and administrative data, including published placement data in other European countries. The review includes a selective sample of five European countries – France, the Netherlands and three Nordic countries (Denmark, Norway and Finland) – which encompass variation in legal frameworks and practice, with reference to delegation of parental authority and/or use of voluntary placement measures, including frameworks for parental/family support alongside voluntary placements, and continuities between placement and other forms of support for children and families. In addition to a scoping literature review (using Google Scholar and relevant key words in relation to child placement and voluntary arrangements), the work has drawn in depth on the following key sources:

- my own research on cross-national approaches to work at the edges of care (Boddy et al. 2008, funded by DfES), and work with families of children in care (Boddy et al. 2013, funded by the Nuffield Foundation), as well an ongoing study involving young adults who have been in care in England, Denmark and Norway (funded by the Research Council of Norway, Principal Investigator Elisabeth Backe-Hansen);
- three key edited volumes:
 - Child Welfare Removals by the State, edited by Burns, Pösö and Skivenes (2017a), which includes chapters on Finland, Norway, Sweden, Germany, Switzerland, Ireland, England and the US; and
 - Social Work and Child Welfare Politics Through Nordic Lenses, edited by Forsberg and Kröger (2011) which examines child welfare and family policy in the Nordic states;
 - Child Protection Systems: International Trends and Orientations, edited by Gilbert, Parton and Skivenes (2011), which includes chapters on Anglo-American systems (US, Canada, England); Nordic systems (Sweden, Denmark, Finland and Norway); and Continental systems (Germany, Belgium and the Netherlands); and
- communication and signposting to 'grey' (non-academic and policy literature) from international colleagues (e.g., SFI, the Danish Social Research Institute; Oslo Akershus University; the Netherlands Youth Institute).

The English context

Before going on to discuss approaches in other European countries, it is useful to begin with an overview of the English context. In 2016, 18,730 young people in England who were looked after on the census day of 31 March had been placed under Section 20 of the Children Act 1989, just over one quarter of the total census day population. But a different picture emerges when considering the proportion of Section 20 placements among children who start and cease to be looked after within the year. Of those who started to be looked after in the year to 31/3/16, 60 per cent (19,400) were placed under Section 20, and Section 20 placements also account for half of those ceasing to be looked after during the year (15,980 children). While it is hardly surprising that children placed under voluntary arrangements are more likely to return home, the large number of children entering and leaving care under Section 20 arrangements raises critical questions about how voluntary arrangements are used – and in particular – at the extent to which the issues children and families are supported to address the issues that led to placement before a child returns home. Such considerations are at the heart of the Family Rights Group (FRG)/Your Family Your Voice Alliance Knowledge Inquiry into the powers and duties in section 20 Children Act, which the review presented here is designed to inform.

The use of placement as a form of support for children and families is wholly consistent with the 1989 Children Act's guidance on the use of accommodation to support children (Section 20 paragraph 4¹):

A local authority may provide accommodation for any child within their area (even though a person who has parental responsibility for him is able to provide him with accommodation) if they consider that to do so would safeguard or promote the child's welfare.

The Children Act 1989 also requires that local authorities should work in partnership with parents, specifying that parents' views should be sought in decision-making about plans for a child. This expectation is not restricted to Section 20, but applies even when the child is accommodated by care order. As Grimshaw and Sinclair (1997, p233) observed, 'working in partnership with parents in deciding how children shall be looked after – this is not a matter of choice for social workers, it is a statutory duty'.

¹ http://www.opsi.gov.uk/acts/acts1989/ukpga_19890041_en_4

2: Welfare systems in cross-national perspective

Policy approaches to voluntary placement arrangements must be understood in the context of wider differences in welfare systems. In the words of Burns, Pösö and Skivenes (2017b, p2), 'social, political, economic and systemic contexts matter for why and how decisions are made'. In cross-national research, one is rarely comparing like with like (Hantrais, 2009): each national context has its own demography, cultural expectations and social welfare regime, based in political, cultural, and ideological traditions, and the countries discussed in this review share commonalities and distinct differences. One key point to note is that the countries vary considerably in size – for example, England is similar in population size to France, but has almost ten times the population of Norway or Denmark.

The countries also differ in the extent to which service provision is decentralised, and so in the extent of local variation. The Nordic countries tend to have a higher degree of centralisation in policy approaches to child welfare, although decentralisation is also emphasised in policy discourse and this is not static. The French administrative system is complex, and can be seen as both centralised and de-centralised. From 1982 there has been legislation to shift authority within the regions to the *département* (local authority) and its *Conseil Général* (elected council). Child welfare and placement provision may be delivered via the *département* through local authority child welfare systems (*l'Aide Sociale de l'Enfance*, *l'ASE*), or through *Protection Judiciaire de la Jeunesse* (PJJ) and the children's judge, through the national system of the Ministry of Justice. In the Netherlands, major reform in the legislative system has shifted policy responsibilities from central government to local municipalities (local authorities) within the overarching framework of the national law, including the Child and Youth Act 2015, as well as legislation on Social Support and on Income and Labour (Hilverdink, Daamen and Vink 2015). Such variation is important to understand as a key caveat for the discussion that follows. National contexts are not homogeneous, and just as in England, it is important to be aware of within-country variation.

In considering population contexts, Eurostat data (which cover the UK as a whole, and do not provide separate information for UK nation states) provide a useful overview². These data show that the UK has relatively high levels of income inequality compared to other European countries. While child poverty has increased across the EU since the global financial crisis, the UK is one of only five EU countries (along with Hungary, Romania, Luxembourg, and Malta) where the risk of poverty or social exclusion for children was at least seven percentage points above the national average for the population as a whole (Eurostat 2015). Almost one third of children aged 0-15 years in the UK are at risk of poverty or social exclusion, and the UK also has higher rates of early parenthood (among 15-19 year olds) than other European countries, although this has decreased in recent years.

Such patterning is of course not random. In considering ways in which national contexts may frame the use of voluntary arrangements, we might begin with Esping-Andersen's (1990; 1999) distinction between three broad 'ideal-types' of welfare regime: neo-liberal regimes, including the UK, which seek to minimise the role of the state and to promote market solutions; social democratic welfare regimes, characteristic of Scandinavian countries, which are redistributive of wealth, in which the state assumes the greatest part of responsibility for welfare; and conservative-corporatist regimes, in countries including France, Italy and Germany, which fuse compulsory social insurance with subsidiarity traditions, emphasising social assistance rather than welfare rights.

Esping-Andersen's typology has been criticised for neglecting both gender and family (e.g., Lewis 1997), as well as for its Eurocentrism and lack of attention to differences and changes within regimes (for example between Nordic countries, or between northern and southern European states; e.g. Arts and Gelissen 2002).

² Source Eurostat 2016: <http://ec.europa.eu/eurostat/data/browse-statistics-by-theme>

In the Netherlands, the welfare regime was originally described by Esping-Andersen a hybrid case, with both conservative-corporatist and social-democratic characteristics, but Hoekstra (2003) argued that over the period since Esping-Andersen’s original research, the social democratic traits in the Dutch system have diminished, and the welfare regime has shifted to what he terms a modern corporatist approach, more individualistically oriented than Esping-Andersen’s conservative-corporatist regime. Recent analysis by Esping-Andersen (2015, p132) reported evidence of commonalities between Denmark and Norway, in comparison to France, Spain and Germany, in the extent to which their welfare regime has been ‘effective in equalizing the opportunity structure [...] primarily by enhancing the mobility prospects for those with humble social origins.’ But these patterns are changing. Denmark – which was until recently one of the most equal countries in the EU – is now the country where income inequality is growing fastest (OECD 2015).

The influence of a neo-liberal approach is evident in the history of child and family policy in England (Cunningham 2006), where provision has been dominated by a targeted or ‘residual’ approach, with family seen as a private domain and services and resources focused on those who are defined as ‘in need’ or ‘at risk’. Gilbert (1997; see Table 1), in a discussion of cross-national approaches to child abuse reporting systems³, drew a distinction between risk-focused child protection systems (including England) and family service oriented systems. Again, we must recognise that this typology is neither static nor absolute; there are differences between countries within these typologies – e.g., between UK and US approaches. Not least, as noted earlier, while England is classified as a child protection system, the Children Act 1989 sets out a clear mandate for partnership with parents. Nevertheless, 20 years after Gilbert’s analysis was published, his typology still provides a useful basis for understanding cross-national differences in approaches to work with families, and in rates of voluntary placement.

The distinction between risk-focused child protection systems and family service oriented systems also corresponds to some extent with variation in patterns of placement. Table 2 collates the most recent available data on patterns of placement across the countries included in this review, presenting data on census day populations. In general, England appears to have higher thresholds for placement of children than the other European countries discussed in this review, and this corresponds to Gilbert’s typology of a child protection oriented system, with high thresholds for intervention into family life.

Table 1. Gilbert’s (1997, p233) typology of child abuse reporting systems

	Child Protection	Family Service
Problem frame	Individual/moralistic	Social/psychological
Preliminary intervention	Legalistic/investigatory	Therapeutic/needs assessment
State-parent relationship	Adversarial	Partnership
Out-of-home placement	Involuntary	Voluntary

³ Analysis was based on country case studies in an edited volume that included US, Canada, England (child protection oriented); Sweden, Denmark, Finland (family service oriented with mandatory reporting of abuse); and Belgium, the Netherlands and Germany (family service oriented without mandatory reporting).

	Children (0-17 years) in care	Rate of children in care (per 1,000)	Percentage placed by court order (%)
France ^a	133,671	9.3	90
Finland ^b	10,365	9.6	19
Denmark ^c	11,614b	9.7 b	16
Norway ^d	11,224	9.9	65
England ^d	69,540	6.0	71

a 2010 data, source Maineaud 2012, Borderies and Trespeux 2012; note that approximately 90% of placements at that time in France were made by order of the children’s judge, but less than 2.5% involved any retraction of parental authority – see discussion below; b 2012 data; source Burns et al. 2017c; c 2013 data; d 2015 data; English rate of court ordered placements includes Care Orders and Placement Orders.

Differences in census day populations need to be interpreted with some caution, however. Not least, and as discussed in Boddy et al. (2012), England is very different from the other countries in the extent to which adoption is used (see also Skivenes and Thoburn 2016). In the other countries discussed here, most adoptions are of children in overseas countries, and domestic adoptions are most commonly ‘partner’ adoptions by step-parents. Just nine Danish born children were anonymously adopted in 2013, and 62 in Norway. In the Netherlands, there were just 36 domestic adoptions in 2010. In France, Halifax and Villeneuve-Gokalp (2005) reported that more than 90 per cent of adoptions were from overseas, and the proportion of domestic adoptions was said to be declining. In England in 2015, 5,330 looked after children were adopted (80 per cent of whom were 0-4 years old), and adoption has been strongly positioned in policy discussions of permanence (see Boddy 2013a). Variation in use of adoption has implications for the size of the care population in each country because children are no longer counted as part of that population once they have been adopted. This means that, year on year, children in the other countries who would be adopted if they were in England are likely to remain within the care population (and so continue to be counted in statistical returns), and this could appear to inflate rates of placement in a cross-national comparison of census day populations.

⁴ Figures for the Netherlands are not included in the table, because available published data relate to young people aged 0-23 years, and so rates are not comparable.

3: Use of voluntary arrangements in other European countries

In the context of the current review, perhaps the most striking feature of Table 2 is the high proportion of children placed through voluntary agreement in Finland and Denmark, in comparison to Norway, France and of course England. In the Netherlands, at the time of our Beyond Contact study (Boddy et al. 2013) three-quarters of placements were made on a voluntary basis. To interpret these differences, however, depends on considering how voluntary placements and court involvement are understood and used across national contexts. In the context of the current review, perhaps the most striking feature of Table 2 is the high proportion of children placed through voluntary agreement in Finland and Denmark, in comparison to Norway, France and of course England. In the Netherlands, at the time of our Beyond Contact study (Boddy et al. 2013) three-quarters of placements were made on a voluntary basis. To interpret these differences, however, depends on considering how voluntary placements and court involvement are understood and used across national contexts.

France

The French system is often described as a ‘double system’, including administrative measures which are not mandated by the judge, but involve a voluntary contract between parents and the local authority, and judicial measures, which are mandated in law (by the children’s judge, a specialist role, independent of the local authority). Both judicial and administrative measures can include placement or in-home support, or a combination of the two (Boddy et al. 2008). In our 2008 study of work with 10-15 year olds at the ‘edges’ of care, we interviewed professionals involved in child welfare decision-making, and asked about the involvement of the children’s judge. Interviewees in local authority children’s services (l’ASE) said they often pursued a judicial route when planning placement, even when they had parental agreement with the proposed measures, in order to ensure the stability of the placement – and the planned work – over a fixed period. This was summed up by one respondent as follows:

‘With l’accueil provisoire [placement through administrative measures] the parents can take the child away at any time, so if they are not happy with what’s going on, they can just take the child back home, and all the work that is going on risks being spoiled. Or the child says ‘I’ll be good if you take me back home’ – and that is not a very good basis for working. Whereas when the judge makes an order it is fixed for whatever period, and that gives a firmer basis for working.’

Our 2008 research observed that intervention with families had increasingly tended to follow the judicial route, with a growing proportion of placements and of home-based interventions mandated by the children’s judge. However, it is important to note that application of judicial measures in France is not equivalent to court-ordered placement in England. Notably, and in contrast to the English care order, judicial measures in France very rarely entail a loss or diminishment of parental responsibility. That reflects key principles in French constitutional law (the Napoleonic Civil Code, article 375 and subsequent material, and the Civil Proceeding Code, art. 1181 and subsequent material) about the ‘absolutism’ of parental authority. These constitutional principles mean that the children’s judge must engage parents in the process, and try to obtain parental consent for placements or interventions planned for the child. This is done through an ‘open debate’ (espace/débat contradictoire), which is required in law. In practice, this means that the judge hears from the parents (who are entitled to be represented by a defence lawyer), the child (who may have their own legal representation, although this was said to be unusual), and the éducateur (the pedagogue who has been responsible for the case). One respondent, the service manager in an independent non-profit organisation, commented that the aim of the débat contradictoire is to show the parents that they are key actors in their child’s life, and to make the family wake up to their responsibilities and engage with the process. She observed that the process is a means for the judge to say:

‘I am the judge but you are still responsible for your children, it’s you who are the parents.’

French legislation in 2002 and 2007 set out increased requirements for partnership with parents (*partenariat*), discussed in our Beyond Contact study (Boddy et al. 2013). This legislation gave child welfare ‘clients’ additional rights, including provision of information about their rights and duties and participation in developing and implementing the care plan, and participation in at least some aspects of the functioning of the service where the child is living. Relating to this shift in legislative emphasis, several ‘good practice’ guides were published, focused on co-operation between parents and professionals (Sanchez 2010; ANESM 2009; Ministère de la Santé et des Solidarités 2007). The 2007 legislation had the intent of ‘dejudicialisation’ (in the words of one French national advisor in our 2008 study) – that is to say, encouraging l’ASE to apply administrative measures, rather than resorting to judicial mandate, wherever possible. However, a senior policy adviser interviewed for Beyond Contact explained that the changes in legislation have generally resulted in emphasis on the children as clients: it is for them that their parents must be drawn into the process. She gave the example of the legal requirement for a plan to be developed for each child, the *Projet Pour l’Enfant*, jointly with the parents. This approach was said by our interviewees to help increase parental commitment and involvement, refocusing attention on their wishes, concerns and worries, with the aim of enabling families to become ‘stakeholders’ in their children’s placement, whether or not the placement is made with judicial mandate.

The Netherlands

Dutch placement data were not included in Table 2, because available published data relate to young people aged 0-23 years⁵ and so are not comparable. Despite this caveat, the available data provide an interesting illustration of differing cross-national approaches to placement. In 2014, the most recent year for which data are available, 102,175 young people aged 0-23 years were in receipt of youth care measures, including placement, in the Netherlands. Of this population, 30,115 were in placements, but more than 15,000 of those in residential and foster care are also recorded as being in receipt of other forms of youth care, including ‘*ambulante jeugdzorg*’ (literally, ambulant youth care), which can include care within the family home. As in France, these young people may be in part-time placements, or placements which combine family intervention and accommodation of the child.

At the time of our Beyond Contact study (Boddy et al. 2013), voluntary placement arrangements (which comprised about 75% of placements) required parental agreement to the care plan. The 2005 legislation required that opinions of parents must be reported in the care plan, and stipulated that arrangements for contact must be addressed (van Montfoort, van den Braak and Hordijk, 2009). Within the legislation, parents also had the right to receive information about their child’s wellbeing and development, for example, to be informed about the school or other activities of the child. One of the interviews in Beyond Contact, the director of a ‘multi-function’ NGO which delivered placement and family support services, commented on the difference between the position of the parent in voluntary and ‘enforced’ placement. He noted that, in enforced care the aim is to create a safe environment for the child, whereas in voluntary care the aim is to improve the living situation at home and to improve the skills of the parents.

Since that research, as noted earlier, the Netherlands has undergone a major legislative change, with decentralisation and integrated working approaches framed as central to the Child and Youth Act 2015. The key aspirations for the legislation include: a focus on the best interest of the child; an emphasis on earlier intervention in families; cheaper and more effective interventions; and the use of fewer child protection orders (for placement or in-home intervention), and for a shorter time. In the new legislation, mandatory intervention (which could include family intervention through a Parental Supervision Order and/or placement) has to be authorised by the Child Care and Protection Board, which is a division of the Ministry of Security and Justice. The involvement of the Board is framed as a last resort, an intervention into the ‘right and duty’ of parents to bring up their children ‘when voluntary help is failing or no longer an option’ (Ministry of Security and Justice 2015, cited in Hilverdink et al. 2015).

⁵ Source : Centraal Bureau voor de Statistiek, <http://statline.cbs.nl>

As in all the other countries discussed in the review, there is debate in the Netherlands about what Burns et al. (2017b, p8) term ‘the “soft coercion” of parents and children to participate with voluntary removal processes’, as the (sometimes implicit, sometimes explicit) threat of enforced removal underpins agreement. Vink (personal communication), a Senior Policy Adviser in the Netherlands Youth Institute, commented that it is ‘the normal way’ for placement to be combined with continuing family support or intervention, aiming to address the issues that led to the child’s placement. She noted that this emphasis has been heightened following the introduction of the 2015 Act, and is especially important when there is voluntary placement. She observed that ‘the mantra now is “versterken eigen kracht” (strengthening the own strength, literally)’, a phrase which means putting parents and children more in control, ‘in the driver’s seat’ in decision-making on help and care. Reflecting this emphasis, a further requirement in the new legislation is that families have a right to a network meeting (akin, but not identical, to a family group conference) as part of care planning. As in other countries, even when placements are mandatory, it is extremely rare that parents lose parental responsibilities entirely, and (as noted above) domestic adoption is consequently very unusual. The Dutch legislative changes discussed here are at a very early stage of implementation. Given the extent of restructuring entailed by the decentralisation, it is too early to gauge how effective the changes have been, and Vink (personal communication) noted that there inevitably practical challenges in implementing such significant change. Nonetheless, the direction of policy travel – towards greater use of voluntary arrangements, and greater involvement of parents and children in decision making – is clear.

The Nordic countries

Within the space constraints for this report, three Nordic countries (Denmark, Norway and Finland) will be discussed together. This is a useful strategy in cross-national social policy analysis which treats these countries as examples of a ‘Nordic’ or ‘universal’ welfare regime. However, as Backe-Hansen and colleagues (2013) observed, while there are important commonalities between Nordic countries in their welfare systems, there are also significant differences – for example, in the extent of use of residential and foster care placements, in rates of voluntary placement, and in the involvement of marketised welfare services, which is more common in Sweden than in the other countries. Eydal and Kröger (2011) note differences between the countries in systems for placement of children without parental consent: in Finland, decisions are made by the courts, whereas in Norway they are made by a government committee, and Denmark by a specialist municipal (local authority) child and youth committee. The countries share an emphasis on continuity between universal and targeted services; for example, this ‘continuity’ principle is stipulated in the Danish Service Act 1998 as part of a ‘single-stringed’ (estrenget) system (Boddy 2013b). Recognising those commonalities and differences, this section considers the Nordic states in comparison with each other.

Nordic welfare states are characterised as family service oriented systems within Gilbert’s (1997) typology, and Eurostat data show relatively high levels of investment in financial support and universal health and social services for children and families compared to other European countries. However, the Scandinavian countries have not been immune from the effects of the global economic crisis – in terms of the resultant pressures on family lives, and in relation to increasing neoliberalism in child welfare policy, as part of a drive to reduce costs (e.g., Backe-Hansen et al. 2013). As Kuhronen and Lahtinen (2011) note in their discussion of Finland, there has been concern in recent years that existing universal provision is not enough, and there has been increased interest and investment in targeted family support and intervention. This policy discussion appears to be sympathetically framed, for example when seen in comparison to the policy rhetoric of the English Troubled Families initiative (e.g., Churchill 2013); Kuhronen and Lahtinen write about policy designed to respond to families’ struggles in the face of:

‘the hardening of, and more demanding conditions where parents are taking care of their children in today’s society – for example, problems in reconciliation of work and family life, loosening social networks, and cutbacks in financial support and services for families’.

Kuhronen and Lahtinen (2011, p65)

Activities under this policy initiative are described in Finland as 'family work', in health care and education, a conceptualisation that also needs to be understood in the context of historical shifts in Finnish child welfare. Kuhronen and Lahtinen (op.cit.) describe a key change since in the mid-1980s, from residential care to community based child welfare, following the introduction of the 1983 Child Welfare Act, which emphasised 'supporting families and children rather than removing children away from their own homes' (op.cit. p72). Over time, however, there has been a growth in concern – which is mirrored in writing about other national contexts – that family-oriented approaches end up being adult-centred, at the expense of 'children's right to be cared for, protected and heard as individuals' (op. cit. p72). This critique led to a change in emphasis in the 2007 Child Welfare Act, with increased emphasis on the rights and best interests of the child.

Kuhronen and Lahtinen (2011) describe placement prevention as a sometimes 'hidden' agenda for family work in Finland, even as they note that numbers of children entering care have steadily increased since the 1990s. Pösö and Huhtanen (2017, p19) document three routes to placement in the Finnish legislation, including care orders and emergency placement as well as placement as part of 'in-home' services, which is a voluntary arrangement to support the family and requires the consent of those with parental responsibility (the 'custodians' in law) as well as the consent of the child, if aged 12 years or older. The authors note that establishing this agreement is not straightforward, 'if, for example, a child aged twelve years or older does not want to express his/her view' (Pösö and Huhtanen 2017, p31). This in turn informs the use of voluntary arrangements, precisely because placement is seen as a significant intervention into the child's right to family life. When consent cannot be established, opposition to the placement must be assumed – and so, if there is any uncertainty about parent or child agreement, the placement decision must be made by the court.

As with voluntary placement arrangements in the Netherlands, other forms of support to the family are routinely provided in the Finnish system – the placement comprises one component of the 'in-home' service. These voluntary arrangements are intended to be time-limited, and the law requires that they are reviewed every three months. But there is also a requirement for the agreement of the social worker to end the placement – a legislative safeguard which echoes the perspective of French professional respondents in our 'edges of care' study, that the placement should not end before the work planned for the placement is complete. In this expectation, we also see a key underpinning conceptualisation of placement as an intervention – in the child's best interest, to support the child's upbringing.

In Denmark, Hestbaek (2011) notes that policy emphasis on family intervention and preventive work reflects concern about high rates (and high costs) of child placement in Denmark. Danish child welfare policy has historically placed strong emphasis on cooperation with the child and family, and 90 per cent of placements are made with parental consent, but Hestbaek (ibid, p149) argues that there has been a shift in policy away from this partnership approach:

'the emergence of a movement away from a broader child welfare orientation based on voluntary partnerships toward a child protection regime characterized by more legalisation and with an increased use of measures without the consent of the children and families involved.'

In Denmark, legally mandated placements have increased in recent years, but as shown in Table 2, they still account for a small minority of placements. While legally mandated placements involve some delegation of parental authority, parental involvement is still stipulated in legislation. As in other Nordic countries, Danish policy centres on children's rights and best interests, and in contrast to France, children's rights – but not parent or family rights – are stipulated in the Danish constitution.

In terms of work with families when a child is in placement, one of the key tensions in Danish policy is an emphasis on stability and continuity for the child. According to Ubbesen (2013), welfare reform in 1993 was based on an understanding of continuity that focused on child relationships with birth parents, and so an emphasis on continuity demanded work towards reunification of the child and maintenance of parental involvement during placement. However, subsequent welfare reform in 2006 highlighted a different understanding of continuity, with greater emphasis on the child's relationships with significant others – such as foster carers – whilst in the placement. As Ubbesen (ibid, p18) notes, continuity 'does not have a stable meaning'.

As in other Nordic countries, child welfare policy set out in the Danish Reform for the Child 2011 (Barnets Reform) stipulates that the best interests of the child must be at the centre of practice. The child's best interests are seen to require professionals to work with the child's family too. Legislative changes following the Reform for the Child relate to four themes: early intervention; quality in intervention; security and continuity when growing up; and the rights of children and young people. This incorporates an explicit emphasis on the child's rights to continuity in relationships with their immediate family and wider network: children have a right to 'samvær' – a concept which literally means 'being together' – with parents and the wider family network, including siblings. Within that framework, the Reform for the Child also stipulates that there must be a specific plan to support the parent(s) ('handleplan') in addition to – and separate from – the care plan for the child. Again, this plan is framed in relation to the child: drawing on parental resources (and those of the network) and providing support to address their problems so that they can contribute to the development and best interests of the child, including (if possible) enabling return home.

In Norway, Skivenes and Søvig (2017, p43) describe four routes to placement, two of which are voluntary. First is placement of the child by the parents: the parents may request the placement ends at any time, but the local authority child welfare board may request a temporary 'moving ban', and if the placement lasts more than two months, the welfare agency may request formal legal approval of the placement. The second option is a voluntary placement, implemented by the child welfare agency with the agreement of the parents, and without any interventions for the parents. The third and fourth options in Norwegian law are emergency placements and care orders, neither of which requires parental agreement. Skivenes and Søvig (ibid) note that a key feature of voluntary placements is that they are intended to be temporary, to be made in exceptional circumstances such as a parent's hospitalisation.

Relating to this emphasis on the temporary nature of voluntary placements, considerations of continuity have informed approaches to placement and permanence in Norway. As in the other countries discussed here, adoption is very rarely used, and Backe-Hansen et al. (2013) note that in Norway this partly stems from a European Court of Human Rights decision in 1996, in which Article 8 (protection of family life) was judged to have been violated in a case involving the forced adoption of a girl. These authors draw a contrast with approaches in England, commenting that 'the interpretation of this decision has been very strict in Norway' (ibid, p166), although more recently, they observe that the Ministry of Child and Welfare Equality has encouraged child welfare agencies to consider whether adoption might be in the best interests of the child. This shift stems from a growing concern with attachment in understanding the child's best interests, and – in line with Ubbeson's (2013) discussion of Denmark – that includes concern with the attachments that children form during placement. Comparing Norwegian and Swedish welfare approaches, Backe-Hansen et al. (2013, p194) note that, in Norway:

In June 2013 a new guiding principle was added, as child protection workers were instructed to weigh the quality of the attachment between parents and children when assessing the care given by parents. As Skivenes (2011, p. 154) shows, the child protection services of Norway "... takes a family-sensitive and therapeutic approach to families and children..."

In the context of voluntary arrangements, there are two key implications from this understanding. First, as noted above, when placements are of significant duration (whether voluntary or not) attention must be paid to the attachment of the child to their carers and to the environment in which they are living (Section 4-8 (3) of the Child Welfare Act 1992, quoted in Skivenes and Søvig 2017, p54). Second, Backe-Hansen and colleagues (2013) comment that the idea of a 'family-sensitive' approach means that court orders are sought in serious matters, precisely because it is seen as a serious matter to intervene in the private sphere of the family. As a consequence, Skivenes and Søvig (2017) observe that court orders are likely to be used even when parents and children agree to the placement. This understanding could be seen to have commonalities with France (which also has relatively high rates of court ordered placements as discussed above), where the involvement of the children's judge partly reflects an understanding that placement is a very serious intervention into the constitutional principle of the absolutism of parental authority. In contrast to France, however, but in common with the other Nordic countries, the Norwegian constitution stipulates children's rights and best interests, and this is further reflected in requirements for children's involvement in decision-making within child welfare legislation (Skivenes and Søvig ibid).

4: Conclusions

All of the countries discussed in this review have policy and legislative frameworks which incorporate voluntary placement arrangements. In France and Norway, as in England, the majority of children in placement on the annual census day have been placed through court/judicial measures, whereas the majority of children in placement in the Netherlands, Denmark and Finland are placed through voluntary agreements with parents (and with agreement of older children where relevant). However, legislation for and implementation of voluntary arrangements must be understood in context, and the five countries differ in key aspects, including the relative emphasis on parents' and children's rights.

A complex and under-researched area

The overview presented in this review has relied on secondary sources (including my own research), and this must be recognised as a key caveat in considering the messages from the review. Discussing the French context, Barbe (2006, p102) wrote that:

'Reference to rights [in policy] remains little related to precise ways in which these rights are guaranteed or that allow for their realisation.'

As Burns, Pösö and Skivenes (2017c) concluded from their analysis of child welfare removals, the use of voluntary arrangements in child placement is an under-researched area, cross-nationally, and so we have limited understanding of how the policy frameworks outlined in this review are experienced in practice by children and families, or by professionals. Writing about Finland, Pösö and Huhtanen (2017, p31) commented that 'we do not have any solid body of research describing how the children, families and their psychosocial situations differ in voluntary and involuntary care orders', or what 'consent' really means. In the absence of such primary research, we must be cautious of any conclusions about which approaches to voluntary arrangements might be more effective in addressing the needs of children and families. While the policy frameworks discussed here provide a useful stimulus for reflection on Section 20 arrangements, we cannot assume that the grass is greener in other countries.

Soft coercion?

In all the countries discussed in the Beyond Contact study (Boddy et al. 2013), work with birth families when children are in placement was seen as a challenging and too often neglected area of practice. The concerns were summed up by a French academic, who conducted research with children in placement:

What parents most often tell me is that once the child is in placement, they – the parents – pass a long spell in the wilderness. There is certainly a designated [local authority] staff-person to contact, with this responsibility; but, in reality, there is little follow-up. The real problem of the origin of the child's placement isn't addressed.

(Senior academic, France, quoted in Boddy et al. 2013, p24)

These considerations form a critical part of the context for understanding the use of voluntary placements. One key question arising across countries was, what does consent really mean? Burns and colleagues (2017) highlight the risk of 'soft coercion', whereby families may agree to placements voluntarily, in response to the (implicit or explicit) threat of a court-ordered placement. In Finland, placements that start with parent (and potentially also child) agreement shift away from voluntariness because endings are determined by professionals and do not require parental consent (Pösö and Huhtanen 2017), and in Norway too, placements which begin as a temporary voluntary arrangement may subsequently come under the aegis of the court if requested by the child welfare agency.

Key differences in comparison to the English context

In concluding this review – and without negating the caveats outlined above, and the important differences between the five countries discussed here – three key differences stand out in comparison to the English case:

1. Growing policy emphasis on partnership with birth parents

Regardless of the extent of voluntary or court ordered arrangements, policy over recent years in all five countries has prioritised work with parents – whether in terms of their continued involvement and responsibilities for children who are placed, or through intervention to address the problems that led to placement (see also Boddy et al. 2013; Geurts et al. 2012). While the Children Act 1989 clearly stipulates statutory duties for local authorities to work in partnership with parents – whether placement is court ordered or voluntary – the Children and Families Act 2014 removed the statutory duty for local authorities to promote contact between children and their birth parents and others, ‘unless it is not reasonably practicable or consistent with his/her welfare’ (DfE 2010, p3). In the other countries discussed in this review, emphasis on continued involvement of parents (whether or not the placement has a legal mandate), is partly informed by understanding of parents’ rights and duties in respect of their children – most strikingly in the French Civil Code principles concerned with the ‘absolutism’ of parental authority. But, increasingly in France, and in policy developed over many years in the Netherlands and the Nordic countries, the policy shift towards work with families when children are in placement is informed in several countries by an understanding of children’s rights and best interests, including the child’s right to a family life. This emphasis is not without its tensions, of course, most vividly illustrated in Norwegian and Danish debates about continuity and children’s attachment to carers in relation to the child’s best interests.

2. Differences in the use of adoption as a route to permanence

Concerns about attachment and continuity of relationships also need to be understood in relation to the second key difference between England and the other countries – the extent of use of adoption, and relatedly, concern to support continuity of carer-child relationships in contexts where long-term foster placements are the key route to permanency within the care system. A senior English stakeholder (from a non-governmental organisation) who was interviewed for the Beyond Contact study (Boddy et al. 2013) commented that ‘fear of adoption is a very vibrant issue for UK families’, a fear that forms an inevitable part of the context for agreement to voluntary placement.

3. Use of voluntary placement as part of a package of family intervention

The final key difference between England and the other countries was in the extent to which the voluntary placement arrangement also involved intervention with the family into the problems which gave rise to the need for placement. Models of intervention varied (see Boddy et al. 2013 for a more detailed discussion of the countries involved in the Beyond Contact study) and did not correspond to placement in every national context, but the potential of these approaches can be seen in the examples of Denmark, where 2011 legislation requires a ‘care plan’ for the parent as well as for the child, and the Netherlands, where models of family-centred care are relatively well-established (Geurts et al. 2012) and are being developed as part of the implementation of the 2014 legislative reforms. While such work may not be straightforward in practice, the Dutch principle of strengthening the parents’ own strength (“*versterken eigen kracht*”) provides a valuable starting point for considering how best to achieve the aspirations the Children Act 1989, which was designed to move away from an adversarial system and support children and parents, including through voluntary accommodation.

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