



**The Kinship Care Alliance**  
**Briefing on Children and Families Bill**  
**for**  
**The House of Commons Report Stage**

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

**Endorsed by**  
**Action for Prisoners' Families**  
**Buttle UK**  
**The Fostering Network**  
**The Grandparents' Association**  
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**PAC**  
**PACT**  
**The Who Cares? Trust**

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## What is the Kinship Care Alliance?

1. The Kinship Care Alliance is an informal network of organisations who have been meeting regularly since 2006 to develop a joint policy agenda and agree strategies to:
  - prevent children from being unnecessarily raised outside their family;
  - enhance outcomes for children who cannot live with their parents and who are living with relatives and
  - secure improved recognition and support for family and friends carers.

## Fostering for adoption (Clause 1)

2. We recognise the importance of vulnerable children, especially babies, being able to form early attachments to their permanent carers and of them experiencing as little placement disruption as possible, for their long term well-being and development. However we are very concerned that the combined impact of Clauses 1 and 6, which promote fostering for adoption and clauses 14 and 15, which accelerates decision-making in care proceedings and reduce court scrutiny, will, in practice, potentially militate against some children's best interests and their chances of being able to be cared for safely within their family network. We fear they constitute a fundamental shift in the State's relationship with the family and will, in many cases, breach the child and family's rights to respect for family life and fair process.
3. Clause 1 states that, despite there not yet having been any court decision that the child should be placed for adoption, as soon as the local authority are **considering adoption** for a child in the care system, social workers must consider placing the child with a prospective adopter who is approved as a temporary foster carer. The Contextual Information<sup>1</sup> (page 26) indicates that this could arise in the first week of the child being looked after or even in pre-birth planning discussions. The local authority will also be exempt from the current legal requirement to give preference to suitable wider family members<sup>2</sup> and will no longer be required to place the child within the local authority's area. Clause 6 also allows the local authority to place such children on the Adoption and Children Act Register to help find suitable adopters for them.
4. Once placed, the child will settle with, and form attachments to these prospective adopters and social workers will no longer be required to work with the family to identify suitable alternative long term care with relatives if the child cannot safely return to their parents. Moreover if the child is placed far away, contact between the child and the family may be very difficult to maintain.
5. A court which is later considering whether the threshold for removing the child from their family has been established and whether the child should be placed permanently with substitute carers, will be faced with the status quo argument

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<sup>1</sup> Children and Families Bill 2013: Contextual Information and Responses to Pre-Legislative Scrutiny  
<https://www.education.gov.uk/publications/eOrderingDownload/Children%20and%20Families%20Bill%202013.pdf>

<sup>2</sup> S.22C CA 1989

that the child is now settled and thriving with the adopters and to move them would be potentially harmful, even if there is a suitable family placement available.<sup>3</sup> Thus the court process will be pre-empted by a fostering for adoption placement; placement orders will effectively become redundant.

6. Clause 1 applies to children who are in care by agreement (s.20 voluntary accommodation) as well as those who are under a court order. The absence of court proceedings in accommodation and pre-birth cases means there will not have been any legal proceedings at all. Hence the parents will not have had access to the free legal advice they would receive if an application is made for an emergency protection or care order. Without legal advice, vulnerable parents (many of whom are young, care leavers, have learning difficulties and/or have experienced domestic violence), are unlikely to fully understand their options and the implications of agreeing to their child being placed with 'foster for adoption carers'. Hence many will not be able to give *informed* consent to an arrangement which may remove their child from them forever.

### **Our proposal:**

7. We concur with BAAF's view that clause 1 as drafted is unworkable. Family and friends care is a key resource for children who cannot live safely with their parents. Not only does it deliver positive outcomes for children,<sup>4</sup> it also has the same advantages for the child as fostering for adoption in terms of early attachment, stability and continuity which can continue long term if the child cannot return to their parents. We therefore recommend that any proposal for fostering for adoption should first involve a thorough exploration of safe family options **before** a fostering for adoption placement is made.
8. We recommend that Parliament:
  - adopts similar wording to Clause 65 of the Social Services and Wellbeing (Wales) Bill currently before the Welsh Assembly, which sets out a more balanced way of promoting fostering for adoption only after suitable family options have been explored first;
  - places a new duty on local authorities to explore suitable wider family options, including offering a family group conference, before a child becomes looked after (unless there is an emergency) in order to maximise early work with families and ensure that systemic delay in planning for permanence is avoided; and
  - ensures that parents have access to free legal advice and have their consent independently witnessed by CAFCASS before a fostering for adoption placement can be made unless a care order has been made.

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<sup>3</sup> See for example the case of *Re: P (Adoption: Care Plan)* [2004] 2 FLR 1109

<sup>4</sup> Farmer E and Moyers S (2008) Kinship Care: Fostering Effective Family and Friends Placements (Jessica Kingsley); and Hunt, J., Waterhouse, S., and Lutman, E (2008) Keeping them in the Family: Outcomes for children placed in kinship care through care proceedings. London: BAAF.

## Improved support for family and friends carers

9. Family and friends care as a suitable option for children who cannot remain safely with their parents has increased dramatically in the last decade, resulting in huge savings to the state.<sup>5</sup> An estimated 300,000 children are being raised by relatives and family friends, typically grandparents, aunts, uncles, or siblings, who are caring for the child because of parental mental or physical ill health, learning disabilities, domestic abuse, alcohol or substance misuse, imprisonment or bereavement. Only an estimated 6% of these children are *looked after* by the local authority<sup>6, 7</sup>; 94% are living with relatives and friends outside the care system, either with the parents' agreement or under a residence order or special guardianship order which they are granted by the courts.
10. Despite these children suffering from similar adversities to children in the care system, their carers often having multiple problems of their own<sup>8</sup> and support being inadequate or non-existent,<sup>9</sup> research<sup>10</sup> confirms that in terms of **outcomes for children in family and friends care**
  - they are as safe, and doing as well if not better, in relation to their health, school attendance & performance, self-esteem, social & personal relationships and show a marked improvement to emotional/behavioural problems when compared with children in unconnected foster care;
  - Most family and friends provided excellent care for the children and put the children's needs first above that of their parents. There is no significant difference between the rates of poor placements between family and friends carers and unrelated carers.
  - Family and friends carers are more likely to match their ethnicity (88% v 78%) and to be highly committed to them (63%) than unrelated foster carers, leading to more stable placements.
11. These outcomes suggest that family and friends care may be the optimal arrangement for many children who cannot stay safely at home with their parents. Moreover, it is consistent with their rights under the European Convention to respect for family life<sup>11</sup>. It is therefore an increasingly important practical option for such children, given the record numbers of children in care proceedings and the severe shortage of unrelated foster carers, which is resulting in many children in care experiencing temporary placements, being

<sup>5</sup> The cost of an independent foster care place averages £40,000 a year; the average of state expenditure on care proceedings exceeds £25,000

<sup>6</sup> A child is *looked after* by the local authority if they are in care with the agreement of parents/others with parental responsibility or if they are under an Emergency Protection or Care Order. In these circumstances the carer must refer back to the social worker regarding all major decisions about the child.

<sup>7</sup> These carers must be approved in accordance with Fostering Services Regulations 2011 and national Minimum Standards on Fostering, except in an emergency in which case they must be approved in accordance with Regulation 24 Care Planning, Placement and Case Review Regulations 2010.

<sup>8</sup> 3 out of 4 family and friends carers experience severe financial hardship; a third are lone carers and 1 in 3 live in overcrowded conditions; 3 out of 10 have a chronic illness or disability (Farmer and Moyers 2008, *ibid*)

<sup>9</sup> The kind of support that is needed includes: a social worker being allocated, help to manage the complexities of the contact arrangements particularly with the parents, and counselling and specialist help for children with the most severe emotional and behavioural problems

<sup>10</sup> Farmer and Moyers 2008; Hunt et al 2 008, *Ibid*

<sup>11</sup> Article 8(2) ECHR

split up from their siblings and having to move away from their school and family support network.

12. However, the need for support for family and friends care arrangements is acute. Many of them face huge a financial burden as a result of taking on the children:<sup>12</sup> 38% lose or have to give up their job;<sup>13</sup> most have had to refurbish their homes, buy basic items such as beds, bedding and clothing, pay for child/after school care; and pay large legal bills to secure the child's future with them.<sup>14</sup> Yet the system for supporting family and friends care is inadequate and outdated, resulting in many such placements being put under huge strain and some even breaking down<sup>15, 16</sup>. It stands to reason that the outcomes for these children could be even better if their carers received adequate support to help them meet their needs.
13. Drawing on our collective experience of advising thousands of family and friends carers each year, we believe this lack of support is attributable to a number of factors:
  - a. The local authority is only required to provide financial and other support for the small minority of children in family and friends care who are *looked after*.<sup>17</sup> The vast majority (94%) can only get such support at the local authority's discretion. Hence there is considerable inequity and local variation in access to support for this group.
  - b. With a few notable exceptions, most local authorities are not structured in a way that actively promotes and supports family and friends care. Often, there is no dedicated family and friends care team, hence the needs of these children and their carers are dealt with by a range of teams in Children's Services who may lack the necessary specialist knowledge and expertise.
  - c. There are no official published statistics on the numbers of children in family and friends care nationally or locally,<sup>18</sup> making it difficult for local authorities to effectively design, develop, finance and deliver specialist family and friends care support.

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<sup>12</sup> This is despite the parents rather than the carer being legally liable to support the children (s.1 Child Support Act 1991)

<sup>13</sup> Aziz R, Roth D and Lindley B (2012) *ibid*

<sup>14</sup> Aziz R, Roth D and Lindley B (2012) *ibid*

<sup>15</sup> Hunt, J. and Waterhouse, S. (2012) *Understanding family and friends care: the relationship between need, support and legal status* London: Family Rights Group found that 95% of family and friends carers identified at least one unmet need for support; most mentioned several. Even more worryingly, carers who were raising the most challenging children were the most likely to be receiving no support at all.

<sup>16</sup> Their experience is likely to worsen once the Welfare Reform Act 2012 is implemented because of

a) **benefit cap**: Many family and friends carers who large households, as a result of taking on a sibling group in addition to their own, will have their benefits restricted by the cap, irrespective of their needs; and

b) **conditionality requirement for job-seeker's allowance**: those caring for a school age over 5 must be available for work once they have been caring for the child for 9 months, in order to get job seeker's allowance. However, many are not working either because they were asked by Children's Services to give up work in order to raise the child; or because the children have significant needs. Such carers need job seekers allowance, because they are not entitled to maternity or adoption paid leave.

<sup>17</sup> *Ibid* n.7

<sup>18</sup> Shailen Nandy, Julie Selwyn, Elaine Farmer and Paula Vaisey (2011) *Spotlight on Kinship Care* (University of Bristol) analysed 2001 census data, but this only relates to children living with family members i.e. excludes those living with friends

14. Statutory guidance on family and friends care (April 2011),<sup>19</sup> which aimed to promote more effective help irrespective of legal status, has not sufficiently redressed these shortcomings. Over a year after the deadline set in guidance, over 30% of English local authorities failed to publish the requisite family and friends care policy<sup>20</sup> setting out local support available. Furthermore the guidance did not change the fundamental legal position that local authorities **do not have to** support the 94% of children in family and friends care who are not *looked after*. Thus in the current financial climate, non-statutory services are being cut, rather than developed, in many localities.
15. We therefore urge Parliament to maximise the use of family and friends care and outcomes for vulnerable children by:
  - a. Amending clauses 4, 5 to provide parity of support (in terms of personal budgets and access to information about support) and clause 91 (in terms of employment protection) between special guardians, many of whom are family and friends carers, and adopters;
  - b. Introducing a new duty on local authorities to establish a family and friends support service similar to that provided to adopters; and
  - c. Amending s.77 Social Security Contributions and Benefits Act 1992 to introduce a national financial allowance to support children in family and friends care who would otherwise be in the care system.

### Court scrutiny of care plans

16. Clause 15 of the Bill only requires the court to consider the ‘permanence’ aspects of the care plan, and contact, before making a care order. This does not include arrangements for siblings to be placed together where possible. Sibling relationships are the longest and often the most enduring for children in care. They provide stability, continuity and can enhance outcomes<sup>21, 22</sup> for vulnerable children. Yet most siblings in care are split up and many are prevented from seeing each other as regularly as they would like.<sup>23</sup>
17. Independent reviewing officers (IROs) do not have the same authority as courts to scrutinise care plans, for example, they cannot bring the matter back to the court directly if they consider the care plan does not promote the child’s welfare. They can only refer the matter to a CAFCASS officer, who may then bring a claim on behalf of the child if they consider there are grounds for judicial review or a freestanding claim under the Human Rights Act 1998.<sup>24</sup> In practice, this power is rarely used. Moreover, their caseloads (up to 120 for a full time worker) are such that many will not have the capacity to address this crucial

<sup>19</sup> Statutory Guidance on Family and Friends Care DfE, 2011

<https://www.education.gov.uk/publications/eOrderingDownload/Family%20and%20Friends%20Care.pdf>

<sup>20</sup> Family Rights Group lists family and friends care policies published by local authorities

<http://www.frg.org.uk/involving-families/family-and-friends-carers/local-policies-and-contacts>

<sup>21</sup> Hegar, RL (2005) ‘Sibling placement in fostering and adoption: An overview of international research’ in *Children and Youth Services Review* 27 pp 717-739

<sup>22</sup> Neil, E (1999) ‘The sibling relationships of adopted children and patterns of contact after adoption’ in Mullender, A ed *We are family: Sibling relationships in placement and beyond* London: BAAF

<sup>23</sup> Timms, JE and Thoburn, J (2003) *Your Shout! A Survey of the Views of 706 Children and Young People in Public Care* London: NSPCC

<sup>24</sup> Children and Family Court Advisory and Support Service (Reviewed Case Referral) Regulations 2004

issue when court scrutiny of care plans reduces. It is therefore an essential safeguard for children's well-being that courts continue to scrutinise arrangements for siblings as part of the permanence provisions in clause 15.